



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt a Resolution Authorizing the City Manager to Enter into an Interconnection Agreement Between the City of Lodi and Northern California Power Agency (NCPA) for the Existing White Slough Water Pollution Control Facility Electric Connection (EUD)

**MEETING DATE:** August 20, 2008

**PREPARED BY** Electric Utility Director

**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to enter into an Interconnection Agreement between the City of Lodi and Northern California Power Agency (NCPA) for the existing White Slough Water Pollution Control Facility electric connection.

**BACKGROUND INFORMATION:** In 2004, the White Slough Water Pollution Control Facility (Plant) made various capital improvements, significantly increasing the Plant's electric load. The Plant had previously been served by two Pacific Gas & Electric (PG&E) sources. The cost to increase the capacity of the two PG&E sources (plus the ongoing energy delivery, maintenance and standby capacity charges) was judged not to be cost effective when compared to providing service to the Plant by Lodi Electric Utility. To accomplish the provision of such service, it was necessary to interconnect the Lodi distribution system serving the Plant to the NCPA's electrical facilities at the site.

On August 18, 2004, the City Council authorized a Letter of Agreement with NCPA to develop the connection and an associated Interconnection Agreement. Recently it was found that the Interconnection Agreement was not brought to the City Council for approval, though the electrical connection was made. We now ask for approval to execute the Interconnection Agreement in order to formally document the existing state of agreement between the parties.

**FISCAL IMPACT:** None

**FUNDING:** Not applicable.

  
George F. Morrow  
Electric Utility Director

**PREPARED BY:** Ken Weisel, Assistant Electric Utility Director

GFM/KW/lst

**APPROVED:**   
Blair King, City Manager

**AGREEMENT**

**FOR**

**INTERCONNECTION**

**BY AND BETWEEN**

**THE CITY OF Lodi**

**AND**

**THE NORTHERN CALIFORNIA**

**POWER AGENCY**

This Agreement for Interconnection (Agreement) is entered into as of the 28<sup>th</sup> day of October, 2004, by and between the Northern California Power Agency, a California joint powers and public entity having its central office at 180 Cirby Way, Roseville, California 95678 (NCPA), and the City of Lodi, California, a general law California municipal corporation, having its central office at 221 W. Pine Street, Lodi, California 95240. NCPA and LODI are occasionally herein referred to individually as a "Party" or collectively the "Parties." This Agreement is premised on the following:

### **RECITALS:**

WHEREAS, NCPA provides, among other services to its membership: electric generation facility development and power resource pooling services to the majority of its member public entities and an associate nonprofit member, and technical, operational, and maintenance services on behalf of the majority of member and associate member entities, for the operation and maintenance of NCPA electric generating projects in which they are invested, as well as dispatch, scheduling coordination, trading and risk management services, so that members of NCPA on the whole, exercising their common powers pursuant to the Joint Exercise of Powers Act, may supply electrical power and energy for their residential, commercial, and industrial customers on a reliable, cost-effective, and environmentally sensitive basis, with the advantages of the economy of scale, which may, under some circumstances, benefit all of NCPA's members; and

WHEREAS, LODI, as a member of NCPA, wishes to request that NCPA interconnect its STIG Electrical System to the LODI distribution system so that LODI may, at its sole risk, and without hazard to NCPA and its other members, serve its retail service load through the STIG electrical system for the benefits of LODI's customers, although other NCPA members may not share interests in LODI's particular effort; and

WHEREAS, this Agreement has been drawn to first protect NCPA and its members from any exposure to liability of any kind that might result from any act or omission in the performance of this Agreement, to the fullest extent permitted by law, due to the fact that NCPA will be acting for the benefit of LODI and not for the benefit of any other member in its performance of this Agreement; and

WHEREAS, LODI desires to utilize the benefits of the investment in the STIG Electrical system, and expertise available through the auspices of NCPA, and NCPA having weighed the

consideration herein, and the protection LODI intends to provide NCPA and its other members in this Agreement, wishes to assist LODI; and

WHEREAS, LODI has indicated that this interconnection is temporary and to remain in place for an undetermined period of time, until a decision is made on how to permanently interconnect the loads to be served by way of this interconnection with the remainder of LODI's distribution system.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions set forth herein, the Parties have entered into this

## **AGREEMENT:**

### **ARTICLE 1 – OPERATIONAL PARAMETERS**

Upon mutual agreement, and subject to the General Conditions described below, NCPA will interconnect its STIG Electrical system to the LODI Distribution System in accordance with terms and conditions of this Agreement including the attached Schedules.

- 1.1 **General Conditions.** By reason of the interconnection established pursuant to this Agreement, NCPA shall not be obligated to provide any services to, or undertake any transactions for LODI, notwithstanding that fact that LODI may have completely and faithfully complied with each and every term, condition, and covenant of this Agreement. NCPA may decline to furnish any service or transaction requested by LODI in the sole and absolute discretion of NCPA, acting by and through its Commission without the vote of LODI, and such discretion of the Commission shall not be subject to review or to the dispute resolution provisions of this Agreement.
- 1.2 **Losses:** LODI agrees to reimburse NCPA for any real power losses arising from the interconnection.
- 1.3 **Metering:** NCPA shall install and maintain revenue meters and related communications equipment to measure capacity, energy, real and reactive power delivered to LODI. Meter data obtained under this section shall be adjusted to separate the impact of this interconnection from the meter data that otherwise would have been recorded for only the STIG electrical system according to California ISO metering protocols. **An** example of the adjustments currently anticipated is include in Schedule B to this Agreement for illustrative purposes only.

- 1.4 **Power Factor:** LODI agrees to maintain a power factor for loads on its interconnected distribution system within the range of 95% leading or lagging.
- 1.5 **Parallel Operation:** LODI shall not simultaneously take delivery of power and energy from the NCPA's STIG electrical system and either (1) any other delivery or distribution system, or (2) any backup generation installed on LODI's distribution system.
- 1.6 **Backup Generation:** Prior to installing any backup generation on its distribution system, LODI shall notify NCPA to arrange for such generators to be installed in accordance with prudent utility practice after safeguards are implemented to insure that power does not flow from the LODI distribution system to the STIG electrical system.

## ARTICLE 2 – DELIVERY SERVICES & INTERRUPTION

- 2.1 **Delivery Not Guaranteed:** NCPA through its best efforts, will attempt to deliver a continuous and sufficient supply of electric energy to the interconnected LODI distribution system, but does not guarantee delivery continuity or sufficiency of supply. NCPA will not be liable for interruption or shortage or insufficiency of supply, or any loss or damage of any kind of character occasioned thereby, if same is caused by inevitable accident, act of God, fire, strikes, riots, war, or any other cause except that arising from its failure to exercise reasonable diligence.

NCPA specifically maintains the right to interrupt its service deliveries, without liability to LODI when, in NCPA's sole opinion, such interruption is necessary for reasons including, but not limited to, the following:

1. Safety of a NCPA employee, or the public at large.
2. Breach of code or regulation on either NCPA-owned or LODI-owned facilities.
3. Emergency affecting or likely to affect NCPA's STIG Electrical system, the ISO grid or any other system through which NCPA directly or indirectly receives or supplies power.
4. Maintenance, improvements, repairs, or expansion of NCPA's STIG Electrical system.

NCPA shall be the sole judge of whether it is operationally able to receive or deliver electric energy through the STIG electrical system. NCPA shall not be liable to LODI,

for damages or losses resulting from interruption due to transmission constraint, allocation of transmission or intertie capacity, or other transmission related outage, planned or unplanned.

- 2.2 **Notice of Interruption:** When NCPA deems it necessary to make repairs or improvements to its system, NCPA will have the right to suspend temporarily the delivery of electric energy. In all such cases, reasonable notice will be given to LODI and NCPA will make repairs or improvements as rapidly as practicable. If practicable, and without additional cost to NCPA, such work will be done at a time that will cause the least inconvenience to LODI. Should NCPA be required to initiate an interruption upon order of the ISO so work may be done on the ISO transmission grid or the Stig Electrical system, NCPA will make best efforts attempt to provide LODI with notice, but shall not be liable for interruption if notice cannot be provided in a timely manner.

### ARTICLE 3 – DUE DILIGENCE

- 3.3 **Continuing Disclosure.** Annually LODI shall present NCPA with its audited financial statements. NCPA may request LODI to report contemporaneously in writing on significant events that may materially adversely affect LODI's financial capability to timely pay and retire all of the costs and liabilities associated with this Interconnection.

### ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

- 4.1 **Initial Representations and Warranties.** On the Effective Date and the date of entering into each related service hereunder, LODI represents and warrants to NCPA that:
- (i) it is duly organized, validly existing and in good standing under the laws of California and of the United States;
  - (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
  - (iii) the execution, delivery and performance of this Agreement and are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
  - (iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation

enforceable against it in accordance with its terms; subject to any Equitable Defenses.

- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any legal proceedings or investigations that could materially adversely affect its ability to perform its obligations under this Agreement;
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of NCPA in providing advice of any kind, and LODI is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- (ix) it has entered into this Agreement in connection with the conduct of its public service utility enterprise;

4.2 **Further Representations and Warranties.** On the Effective Date, LODI further represents and warrants to NCPA that: (i) all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the laws of the State of California and the charter, ordinances, bylaws or other regulations, (ii) all persons making up the governing body of LODI are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the state and local, and other applicable law, (iii) entry into and performance of this Agreement by LODI are for a proper public purpose within the meaning of all relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Agreement does not extend beyond any applicable limitation imposed by the relevant constitutional, organic or other governing documents and applicable law, (v) LODI's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating

and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures or agreements to which it is a party, and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures or agreements to which it is a party, and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all of LODI's obligations hereunder or (c) are to be made solely from a special fund of LODI set aside for this Agreement, (vi) entry into and performance of this Agreement by LODI will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of LODI or NCPA otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of LODI or create any kind of lien on, or security interest in, any property or revenues of LODI which, in either case, is proscribed by any provision of any relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

- 4.3 **Primacy of NCPA Projects.** Notwithstanding the availability of NCPA personnel and equipment LODI acknowledges and agrees that the first priority for NCPA personnel are NCPA projects in general, and specifically in this case the NCPA STIG project in which more than one member participates, and that the Interconnection that NCPA provides under this Agreement is subordinate to NCPA's duties to serve the other members.

#### ARTICLE 6 – BALANCING ACCOUNT AND SECURITY

- 6.1 **Balancing Account.** The Balancing Account is an account established at NCPA pursuant to this Agreement. The Balancing Account is established to: (i) make timely payments to NCPA under this Agreement and to a Counterparty pursuant to a service hereunder and to protect NCPA from potential Member default by providing funds and time to cure, (ii) to bridge timing differences between the receipt of payments from LODI and the date payments are due a Counterparty, (iii) satisfy any security deposit requirements, and (iv) provide security against Member default.
- 6.2 **Initial Amount.** Before the effective date of a service hereunder, LODI shall deposit in the Balancing Account an amount equal to its three highest months of projected

Counterparty invoices for the succeeding twelve (12) months. NCPA shall maintain a detailed accounting of the Balancing Account. Interest earned on the Balancing Account shall be credited to LODI. Any losses in the Balancing Account, due for example to the compulsory sale of investments to comply with a requirement of the Counterparty, shall be allocated to LODI.

- 6.3 **Periodic Reviews.** Prior to the effective date of a service hereunder and at least quarterly thereafter, NCPA shall review the balances in the Balancing Account to ensure the amount is equal to the current projection of the three highest months of LODI's projected Counterparty invoices for the succeeding twelve months. Any funds in excess of one hundred ten per cent (110%) of this amount shall be credited to LODI. If the funds on deposit in the Balancing Account are less than ninety per cent (90%) of this amount, NCPA shall prepare an invoice to LODI who shall remit such funds within thirty (30) days of the invoice date.
- 6.4 **Emergency Additions.** In the event that the funds in the Balancing Account are insufficient to allow payment of a Counterparty invoice, NCPA shall notify LODI and then prepare and send a special or emergency assessment to LODI.
- 6.5 **Return of Funds.** On the termination of this Agreement and all services hereunder, LODI may apply to NCPA for the return of its Balancing Account funds ninety (90) days after the effective date of such termination. NCPA shall, in its sole discretion, as determined by a vote of the Commission, excluding the vote of LODI, estimate the then outstanding liabilities of LODI, including any estimated contingent liabilities, such as by way of example Counterparty invoices subject to dispute or to revision by the Counterparty or the Federal Energy Regulatory Commission, and retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. NCPA may apply any remaining Balancing Account funds to any remaining obligation of LODI, including but not limited to revised Counterparty invoices.
- 6.6 **Counterparty Security Deposit.** Any security or other deposit required by a third party for a service hereunder shall be provided by LODI prior to the date NCPA provides any Agency Services and shall be maintained as may be required thereafter.
- 6.7 **Changes in Security.** Any changes in security or other deposits required by the Counterparty may be released by NCPA from the Balancing Account, and NCPA shall invoice LODI within ten (10) working days for the total NCPA released to the Counterparty.

## ARTICLE 7 – PAYMENTS AND DEFAULTS

- 7.1 **Billing and Payment.** Monthly billing statements prepared by NCPA shall be sent to LODI showing LODI's unpaid balance for services hereunder and other expenses relating to this Agreement incurred by NCPA for the previous month, This information may be provided on monthly billing statements prepared by NCPA pursuant to other Project Agreements. NCPA will provide the monthly billing statements electronically if requested by LODI; otherwise NCPA shall mail the statements First Class, U.S. Postal Service.
- 7.2 **Application of Balancing Account.** NCPA may apply LODI's Balancing Account to the payment of any portion of the monthly billing statement. Application of such funds shall not relieve LODI from any late payment charges.
- 7.3 **Late Payments.** Amounts shown on each billing statement are due and payable at the time noted on the invoice, but not later than thirty (30) days after the date of the invoice, except that any amount due on a Friday, holiday or weekend may be paid on the following working day. Any amount due and not paid by LODI shall bear interest at the per annum prime rate (or reference rate) of the Bank of America NT & SA then in effect, plus two percent per annum computed on a daily basis until paid.
- 7.4 **Settlement Data.** NCPA will make settlement data, including underlying data received from the California ISO, available to LODI.
- 7.5 **Audit Rights.** LODI shall have the right to audit at its expense any data created or maintained by NCPA pursuant to this Agreement on thirty (30) days written notice, unless otherwise agreed by LODI and NCPA.
- 7.6 **Failure To Pay.** If LODI fails to pay any amount due to NCPA within thirty (30) days of the date of the estimated or final invoice enumerating such amounts, LODI is in default and material breach under this Agreement.
- 7.7 **Other Material Breaches.** If LODI is in default or in breach of any of its covenants under any other agreement with NCPA, it shall also be considered in material default of this Agreement.
- 7.8 **Cure Period.** Upon written notice by NCPA, LODI shall cure any default within five (5) working days.
- 7.9 **Cure of Defaults.** A default shall be cured by the payment of any monies due NCPA, including any late payment charges, and repayment of any funds drawn from the

Balancing Account. A default under any other agreement with NCPA shall be cured by compliance with the covenant.

- 7.10 **Remedies in the Event of a Material Default.** NCPA may suspend the provision of any Agency Service or Advisory Service to LODI with a default which has not been cured within the Cure Period, including deducting sums in default from the Balancing Account of the defaulting Member, demanding further assurances, and taking any other legal or equitable action before or after the Cure Period to compel the correction of the default, as for example, to mandate the collection of a surcharge to produce Revenues to secure the cure of the default, (and the selection of one remedy shall not preclude the use of other remedies), on behalf of NCPA **and** other Members (in which event the defaulting Member shall not have the right to vote while such defaulting Member is in material default as determined by the NCPA Commission).
- 7.11 **Obligations in the Event of Default.** In the event that LODI's share of the Balancing Account is insufficient to cover all invoices related to a service provided hereunder to the defaulting Member, (i) the defaulting Member shall cooperate in good faith with NCPA and shall cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary, including, but not limited to, raising rates and charges to its customers to increase its Revenues to replenish its share of the Balancing Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, repairing its Electric System, and taking all such other action as will cure the default quickly; and provided, however, (ii) that neither NCPA nor any other member shall be liable under this Agreement for the obligations of the defaulting Member, and LODI shall be solely responsible and liable for performance of its obligations under this Agreement.

#### ARTICLE 8 – TERM OF THIS AGREEMENT

- 8.1 **Term of This Agreement.** This Agreement shall remain in effect for so long as the NCPA STIG electrical system remains interconnected to the LODI distribution system.
- 8.2 **Termination:** Either party may terminate this agreement upon six months' written notice to the other, provided however, all financial obligations incurred hereunder shall remain until satisfied.

## ARTICLE 9 – NO IMMUNITY CLAIM

- 9.1 **No Immunity Claim.** LODI warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of a court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

## ARTICLE 10 – MEMBER COVENANTS

The definitions in this Article 10 apply to the covenants in section 10.3 and elsewhere in this Agreement.

- 10.1 **Electric System.** Electric System means, with respect to LODI, all properties and assets, real and personal, tangible and intangible, of LODI now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent LODI is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only LODI's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.
- 10.2 **Revenues.** Revenues means, with respect to LODI, all income, rents, rates, fees, charges, and other moneys derived by LODI from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System, and (iii) the proceeds derived by LODI directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System, but the term Revenues shall not include (a) customers' deposits or any other deposits subject to refund until such deposits have become the property of LODI or (b) contributions from customers for the payment of costs of construction of facilities to serve them.

- 10.3 **Member Covenants.** LODI covenants and agrees to (i) establish and collect rates and charges for the services and commodities provided by its Electric System sufficient to provide Revenues adequate to meet its obligations under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens upon, the Revenues; (ii) make payments under this Agreement from the Revenues of, and as an operating expense of, its Electric System; (iii) make payments under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement (such payments are not subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists); and (iv) operate its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and to maintain its Electric System in good repair, working order, and condition

#### ARTICLE 11 – MAINTENANCE AND OPERATION

- 12.1 **Maintenance.** LODE shall be responsible for maintenance of their electrical distribution system on the load side of the point of interconnection, as that point is specified in Appendix A; provided however, that NCPA shall own, operate, test, and maintain all metering equipment necessary for billing and power measurement in accordance with applicable control area requirements. NCPA's ownership, operation, and maintenance rights with respect to such metering equipment shall exist notwithstanding that: (i) LODI agrees to pay for all costs of acquiring, testing, operating and maintaining the meter equipment, and (ii) the metering equipment is physically located on LODI's distribution system or on the load side of the point of interconnection. NCPA shall operate and maintain interconnection facilities installed on the line side of the point of interconnection and all such equipment and facilities located on its premises at the expense of LODI.
- 12.2 **Cooperation.** The parties agree to coordinate maintenance of their respective electrical systems in accordance with good utility practice and applicable control area requirements
- 12.3 **Access.** Each party shall provide the other with the right of access to their respective premises so that each party can perform its obligations under this agreement. Access shall be upon reasonable notice and each party may designate representatives to be present during periods of access, whether for inspection, testing, maintenance, or operations.

- 12.4 Notice of Operational Change.** LODI agrees notify NCPA notice of any operational changes on its interconnected distribution system which could affect the NCPA, including the including the of generation facilities.
- 12.5 Generators.** LODI shall not connect any generators to the its electrical distribution system on the load side of the point of interconnection with out the advance written consent of NCPA, provided that such consent shall unreasonably withheld. Any such generator connection shall be performed in accordance with good utility practice, applicable control area standards, and consistent with NCPA's interconnection agreement with PG&E.

#### ARTICLE 12 – LITIGATION

- 12.1 Litigation.** In the event of litigation, dispute resolution, governmental inquiry, including investigations or legislative inquiries, relating to any matter involving this Agreement, NCPA may select Counsel of its choice to advise and represent NCPA and LODI, and LODI shall pay NCPA for such expenses, as billed pursuant to this Agreement.

#### ARTICLE 13 – UNCONTROLLABLE CIRCUMSTANCES – SUSPENSION OF PERFORMANCE

- 13.1 Definition.** In this Agreement "Uncontrollable Circumstances" shall mean acts, events or conditions not reasonably foreseeable by a Party which prevent the affected Party from performing its obligations under this Agreement, except the obligation for the payment of money, if and only if such acts, events or conditions and their effects (i) are beyond the reasonable control of such Party (or any third Party over whom such Party has control), (ii) are not reasonably avoidable, (iii) cannot be mitigated or eliminated through reasonably available alternative actions, and (iv) are not a result of the willful or negligent action or inaction of such Party or of any third Party over whom such Party has control:

Examples of Uncontrollable Circumstances include, but are not limited to, the following:

- 13.1.1 An act of God, landslide, lightning, earthquake, fire, explosion, storm, flood, weather conditions precluding construction activity from progressing;
- 13.1.2 Acts of a public enemy, war, blockade, insurrection, strike, riot or civil disturbance, sabotage or similar occurrence or a mandate, directive, order, or restraint of any governmental, regulatory or judicial body or agency, or the

exercise of the power of eminent domain, police power, inverse condemnation or other taking by or on behalf of any public, quasi-public or private entity; or

13.1.3 A Change in Law. In this Agreement, a Change in Law shall mean a material change in the requirements of the Scope of Services or the operation or maintenance of the Project, made by a governmental authority, that becomes effective on or after the date of this Agreement.

13.2 **Suspension of Performance.** The suspension of performance due to Uncontrollable Circumstances shall be no longer than reasonably required, and the Party suffering the Uncontrollable Circumstances shall use its best reasonable efforts to overcome such circumstances and partially or fully remedy its inability to perform. The Party suffering the Uncontrollable Circumstance shall give the other Party notice that is reasonable under such circumstances, including written notice as soon as practicable.

ARTICLE 14 – INDEMNIFICATION, DEFENSE, RELEASE,  
AND COVENANT NOT TO SUE

14.1 **Indemnity Obligation of Member.** LODI hereby assumes all responsibility and liability for the Interconnection and related services provided under the Agreement as if they were performed by LODI's employees and accordingly intends to protect NCPA, its member entities, governing officials, officers, agents, and employees against claims or losses of any kind whatsoever resulting from Interconnection and related services provided pursuant to this Agreement. LODI is willing to take on such complete responsibility as an inducement to NCPA to enter into this Agreement. NCPA would not enter into this Agreement absent such inducement for NCPA's sole source of revenue comes from its members, which cannot be exposed to the risks of loss or damage due to this Agreement or services hereunder. Thus, LODI (the "Indemnifying Party") agrees to indemnify, defend and hold harmless WCPA and its members, including their respective governing officials, officers, agents, and employees ("Indemnified Party or Parties"), from and against any and all claims, suits, losses, damages, expenses and liability of any kind or nature, including, without limitation, reasonable attorneys' fees ("Claim" or collectively "Claims") to the extent caused by any breach of contract, negligence, active or passive, gross negligence or willful misconduct of the Indemnifying Party, its officers, employees, subcontractors or agents, to the maximum extent permitted by law, but only as to Claims related to this Agreement.

- 14.2 **Notice and Defense.** Promptly after receipt by an Indemnified Party of any Claim or notice of a Claim or the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in section 14.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party or Parties shall, at the expense of the Indemnifying Party, have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party or Parties.
- 14.3 **Failure to Assume Defense.** Should any of the Indemnified Parties be entitled to indemnification under section 14.1 as a result of a Claim by a third Party, and should the Indemnifying Party fail to assume the defense of such Claim after reviewing notification thereof as provided in section 14.2, then such Indemnified Party may, at the expense of the Indemnifying Party, contest or settle such Claim. To the extent that any of the Indemnified Parties is required to initiate and prevails in legal proceedings against the Indemnifying Party to enforce rights under this Article, the Indemnifying Party shall pay all costs and attorneys' fees incurred by the Indemnified Party in enforcing its rights.
- 14.4 **Release and Covenant Not to Sue.** LODI hereby FOREVER RELEASES and DISCHARGES NCPA, its members, governing officials, officers, agents, employees, and subcontractors (Released Parties) from any and all liabilities, claims, demands or causes of action that LODI may hereafter have for injuries, damages, or losses of any kind whatsoever arising out of this Agreement or services hereunder, performed or not performed, or inadequately performed by NCPA, including, but not limited to, losses caused by the PASSIVE OR ACTIVE NEGLIGENCE of the Released Parties or hidden, latent, or obvious defects in equipment or materials used.

LODI understands and acknowledges that the Project and the Services have inherent dangers that no amount of care, caution, instruction or expertise can eliminate and LODI expressly and voluntarily ASSUMES ALL RISK of death, personal injury, damages or

losses of any kind whatsoever sustained in connection with the Project and the Services, including the **risk** of passive or active negligence of the Released Parties, or hidden, latent, or obvious defects in the materials used.

LODI acknowledges the enforceability of the foregoing release under *Paralift, Inc. v. Superior Court* (1993) 23 Cal.App.4th 748 (Paralift Case). LODI hereby FOREVER COVENANTS NOT TO SUE the Released Parties for any injuries, damages, or losses, or liabilities, claims, demands or causes of action related thereto, to which the foregoing release applies, even if the Paralift Case is overruled or affected by a judicial decision or legislation, state or federal, or by an international treaty.

#### ARTICLE 15 – GENERAL PROVISIONS

- 15.1 **Independent Contractor.** NCPA shall be an independent contractor with respect to the Services to be performed hereunder. Neither NCPA nor its subcontractors, nor their agents or employees, shall be deemed to be the servants, employees, or agents of LODI, notwithstanding Article 14.
- 15.2 **Occupational Safety and Health Act.** LODI shall design, equip, and maintain and operate its Election System in accordance with all applicable rules, regulations, orders, standards and interpretations promulgated under the Occupational Safety and Health Act (1970) (OSHA), as amended and in effect as of the day of execution of this Agreement or such similar act as adopted by the State of California, if applicable.
- 15.3 **Proprietary Information.** To the extent permitted by law, in particular the California Public Records Act, the Parties shall maintain the confidentiality of proprietary information.
- 15.4 **Patents.** LODI shall defend, indemnify and hold harmless NCPA from any suit or action brought against NCPA based on a claim that any item of the Project, or materials and equipment procured therefore, or any part thereof, furnished or specified by NCPA or LODI hereunder or any use thereof for purposes of the Project, constitutes an infringement of any claim of patent.
- 15.5 **Binding Effect: Successors and Assigns.**
- 15.5.1 This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assignees.

15.5.2 Neither Party hereto shall assign or convey any of its rights, titles or interests under this Agreement without the prior written consent of the other Party hereto.

- 15.6 **Not for Benefit of Third Parties.** This Agreement and each and every provision thereof is for the exclusive benefit of LODI and not for the benefit of any other party except that NCPA and the other member entities are intended to benefit from the protections provided them in this Agreement in Article 14.
- 15.7 **Choice of Law.** This Agreement is made and is to be performed in California and any dispute arising there from shall be governed and interpreted in accordance with California laws.
- 15.8 **Article Headings and Subheadings.** All article headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 15.9 **No Waiver.** No waiver by a Party of any breach or default by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach of default in the performance by such other Party of the same or any other obligations of such other Party hereunder. The giving of a waiver by a Party in any one instance shall not limit or waive the necessity to obtain such Party's waiver in any future instance. No waiver of any rights under this Agreement shall be binding unless it is in writing signed by the Party waiving such rights.
- 15.10 **Good Faith and Fair Dealing.** The Parties agree to deal fairly and to act in good faith in the performance or enforcement of this Agreement. Wherever this Agreement requires a consent or approval of a Party hereto, such consent or approval shall not be unreasonably withheld or delayed except as otherwise specifically provided herein.
- 15.11 **Severability.** In the event that any of the provisions of this Agreement, or portions or applications thereof, are held to be unenforceable or invalid by any court of competent jurisdiction, LODI and NCPA shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.
- 15.12 **Legal Capacity.** Each Party represents and warrants that it has the legal capacity to enter into this Agreement and to perform all obligations undertaken herein.

- 15.13 **No Counterparts.** This Agreement and any amendments will not be executed in counterparts but in one or more duplicate originals which shall constitute but one and the same instrument.
- 15.14 **Further Assurances.** If either Party reasonably determines that any further instruments, representation of assurance of payment, or performance, or any other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and assurances and do all such things as the first Party reasonably deems necessary or desirable to carry out the terms of this Agreement.
- 15.15 **Hazardous Waste.** Although it is not presently contemplated that any this Agreement or services hereunder will involve “Hazardous Waste,” if on the contrary they do, then this section 15.15 shall apply. “Hazardous Waste” means (A) any product, substance, chemical, element, compound, mixture, solution, material, pollutant, contaminant or waste whose presence, nature, quantity or intensity of use, manufacture, processing, treatment, storage, disposal, transportation, spillage, release, or effect, either by itself or in combination with other materials, is regulated, monitored, or subject to reporting by any federal, state or local government entity; (B) those terms that are included within the definitions of “hazardous substances”, ”hazardous materials”, “hazardous waste”, “extremely hazardous substances”, “toxic substances”, or “oil and hazardous substances”, as defined in one or more of the following environmental laws: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 et seq. (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sec. 11001 et seq. (“EPCRTKA”); the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq. (“TSCA”); the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq. (the “Clean Water Act”); the Clean Air Act, 42 U.S.C. Sec. 7401 et seq. (“CAA”); the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 5101 et seq. (“HMTA”); the Safe Drinking Water Act, 42 U.S.C. Sec. 300f et seq. (“SDWA”), or comparable state cleanup statutes, and in the regulations promulgated pursuant to said laws, all as amended from time to time; or (C) any material, pollutant, substance or waste that comprises, in whole or in part, includes, or is a by-product or constituent of (i) petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous substance, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas

usable for fuel), (ii) asbestos, (iii) polychlorinated biphenyls, (iv) flammables or explosives, (v) biochemical agents, or (vi) radioactive materials.

If, during the course of performing under this Agreement, either Party becomes aware of any Hazardous Waste that exists on or under the location of the Interconnection or related services, whether or not created or brought on the location by a Party, the Party that so became aware shall report such condition to LODI in writing immediately and before disturbing (or further disturbing) the Hazardous Waste. NCPA shall not be liable for any Hazardous Waste on or under the location notwithstanding the fact that NCPA may have created, brought on, or released the Hazardous Waste into, over, on, or under the location. LODI shall be solely liable for any Hazardous Waste at the location because of NCPA or any of its employees or subcontractors, and LODI shall perform all cleanup, removal, remediation and disposition services with respect thereto. In the event NCPA encounters Hazardous Waste at the location, NCPA shall take reasonable actions necessary to mitigate costs to LODI or liability of LODI due to such Hazardous Waste. The cost of actions taken by NCPA pursuant to this section shall be fully reimbursed by LODI to NCPA.

**15.16 Status of Parties and Regulatory Compliance.** The Parties acknowledge that this Agreement is formed between two public agencies. Neither Party shall have any claim against LODIs, governing officials, officers, employees or agents of either Party. LODI is subject to the regulatory compliance requirements of several agencies. LODI shall be solely responsible for, and shall reimburse NCPA for any costs of compliance with any permits or license conditions, including any fines or penalties, to the maximum extent permitted by law.

**15.17 NCPA's Organization.** LODI is responsible for assuring for itself that NCPA's personnel are appropriately trained, educated, and skilled to competently perform the Services. LODI acknowledges and agrees that NCPA makes no warranties or representations regarding the qualifications of its employees, agents, and subcontractors.

**15.18 Acknowledgments and Interpretation.** The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely and fairly negotiated. The Parties acknowledge that in executing this Agreement they rely solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statements made

by any other Party or its counsel. No provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provisions.

- 15.19 **Default Termination.** Upon the occurrence of a material default, the non-breaching Party shall notify in writing the breaching Party of its intent to terminate this Agreement if the breach is not cured within thirty (30) days. If the breaching Party does not cure the event of default within such thirty (30) day period, the non-breaching Party may immediately terminate this Agreement for Default. Written notice of termination shall be delivered to the breaching Party at the address shown on page 2 of this Agreement or as changed, as provided therein.
- 15.20 **Default Termination Remedies.** In the event of a default termination for material breach or abandonment by LODI, NCPA may by appropriate court action or actions, either at law or in equity, preserve its position to recover damages and expenses associated with the breach; and/or pursue, concurrently or separately, other remedies available in law, in equity or in bankruptcy in anticipation of pursuing its remedies pursuant to Article 16 of this Agreement.
- 15.21 **Survival.** The terms of this Agreement shall survive any termination or cancellation hereof to the extent necessary to allow a Party to enforce any remedy granted hereunder in connection with such termination or cancellation. The terms of Article 14 of this Agreement, entitled "Indemnification, Defense, Release, and Covenant Not to Sue" shall survive any termination or cancellation, in perpetuity as to the Release, and otherwise for ten (10) years and one day after the effective date of termination or cancellation.

#### ARTICLE 16 – DISPUTE RESOLUTION

- 16.1 **Negotiations.** The Parties will attempt in good faith to resolve through negotiation any dispute, arising out of or relating to this Agreement. Either Party may initiate negotiations by providing written notice in letter form to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within five (5) days with a detailed statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten (10) days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to

resolve the dispute. If the Parties are unable to resolve the dispute at the meeting by negotiations, they shall consider mediation.

During any dispute and negotiation LODI shall continue to timely pay NCPA for the Interconnection and related services rendered hereunder for which obligations remain unsatisfied, even though such dispute may concern those services. NCPA agrees to continue performing the services, provided that no payment due from LODI is overdue.

- 16.2 **Mediation.** The Parties agree that any and all disputes arising out of or relating to this Agreement that are not resolved by their mutual agreement after negotiations pursuant to section 16.1, should be submitted to mediation before JAMS, or its successor or similar alternative dispute resolution (ADR) organization of respected, retired judges, or to a private judge, as LODI may determine, in its reasonable discretion, and with the written consent of NCPA, provided that LODI will be responsible for all of the expenses of mediation. Either Party may commence the mediation process called for in this Agreement by filing a written request for mediation with JAMS, its successor, or another ADR organization or private judge with a copy to the other Party. The Parties agree that they will participate in the mediation in good faith when and if LODI determines to invoke mediation as a dispute resolution remedy, at its expense.
- 16.3 **Waiver of Certain Judicial Rights.** If the Parties fail to either negotiate or mediate a mutually satisfactory resolution of any dispute, then upon written notice given twenty (20) days in advance, either Party may terminate this Agreement, subject to any unpaid or un-reimbursed compensation or costs payable by LODI to NCPA, and without affecting the survival of Article 14, entitled "Indemnification, Defense, Release, and Covenant Not to Sue" for its full term, notwithstanding any default hereunder by NCPA. The Parties agree not to, and covenant not to sue, and waive their respective rights thereto.

#### ARTICLE 17 – LIMITATION OF LIABILITY

- 17.1 **Limitation of Liability.** To the extent the law allows, NCPA, its members, governing officials, officers, employees, and agents shall have no liability to LODI under this Agreement with respect to all claims however caused, arising out of the performance or non-performance of the Services and obligations under this Agreement, whether based in contract, warranty, tort (including negligence), strict liability, or otherwise, including without limitation, liability for consequential damages pursuant to Article 18, NCPA shall

not be required to carry any insurance, and even if insurance is carried by NCPA, such insurance shall not be available to LODI for any claim, death, damages, injuries, losses of any kind whatsoever, unless, and solely to the extent, that LODI procures such insurance of its own accounts, and pays, and is solely responsible for any and all premiums and costs related to such coverage. If notwithstanding the foregoing limitations of this Section 17.1, liability is imposed, then such total liability shall be limited to the net present value of the expertise NCPA gained through this Agreement that is of value to its other members.

#### ARTICLE 18 – CONSEQUENTIAL DAMAGES

18.1 **Consequential Damages.** NCPA, its members, governing officials, officers, employees, and agents (excluding counterparties) shall not be liable to LODI, for incidental, indirect, punitive, exemplary, special or consequential loss or damage arising out of or relating to this Agreement, including, but not limited to, loss of use, customer claims and damages, loss of revenue, loss of power sales, loss of electric system reliability, outages and cascading disturbances, principal office expenses, delay, loss by reason of plant shutdown or inability to operate, increased cost of operating and maintaining the Project, debt service, rental payments or contractual damages incurred by LODI or to others. LODI is and will remain through the survival provisions of Article 15 of this Agreement, solely responsible for such risks, losses, damages and costs, however described; including consequential damages that may be suffered by NCPA, its members, governing officials, officers, employees, and agents (excluding counterparties).

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement on the Effective Date, having acknowledged and accepted the terms, conditions, promises, and covenants of this Agreement, as evidenced by the following signatures of the representatives of the Parties, who are represented and warranted to be fully and lawfully authorized, by all necessary official action, to execute and deliver this Agreement.

MEMBER:

NCPA:

CITY OF LODI

NORTHERN CALIFORNIA POWER  
AGENCY

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Blair King

Name: James H. Pope

Title: City Manager

Title: General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: D. Stephen Schwabauer

By: Michael F. Dean

Attorney

Michael F. Dean

NCPA Member

NCPA General Counsel

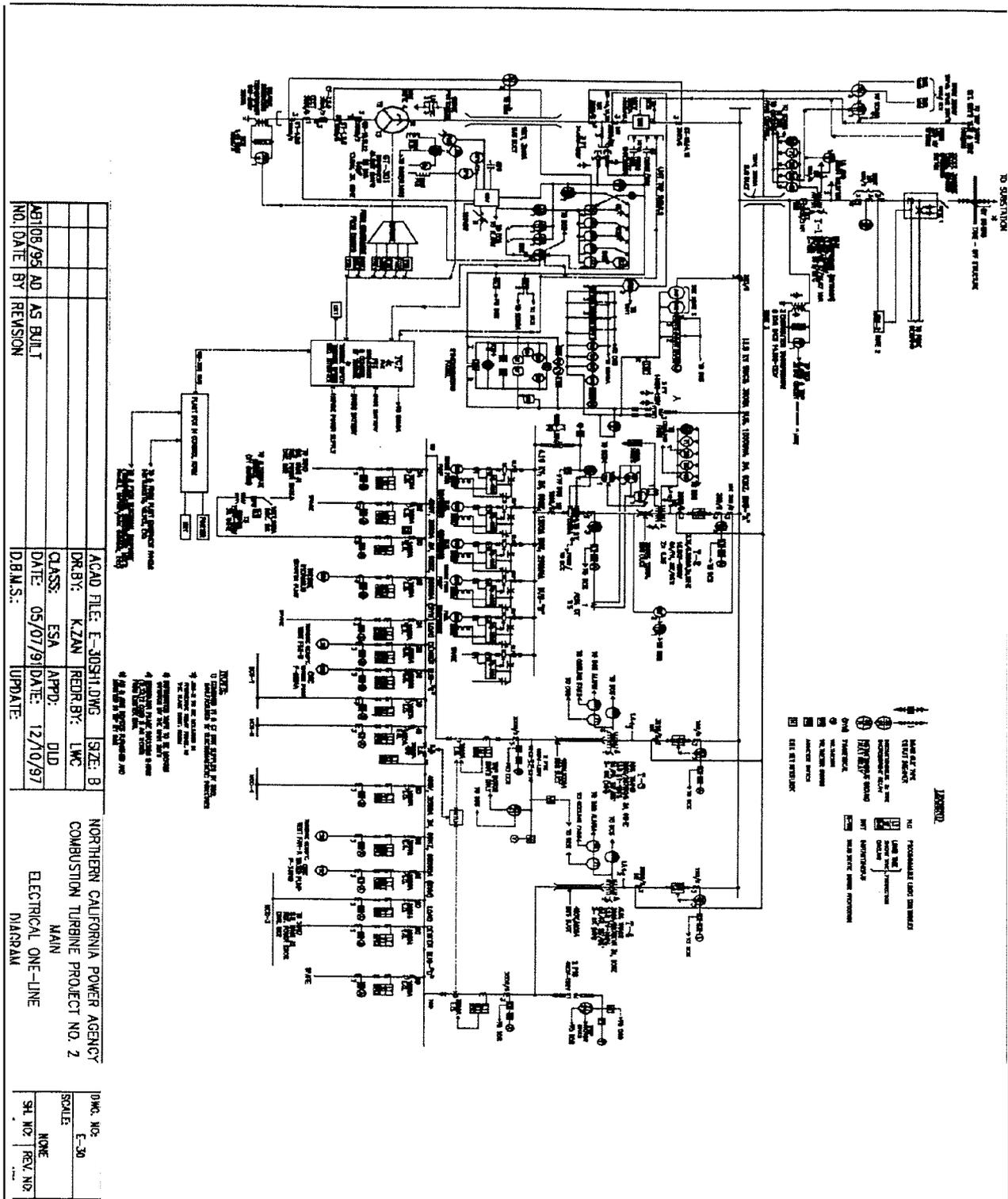
ATTEST:

By: Randi Johl

Clerk



Figure 2 – NCPA STIC Electrical System before Interconnection



## APPENDIX B – METER DATA PROTOCOLS & ADJUSTMENTS

LODI is requesting interconnection to our Stig electrical system to temporarily supplement their interconnection to PG&E and existing service via the White Slough Substation. Once the Stig interconnection is completed, the breakers will be opened on the White Slough lines and that portion of the LODI distribution system containing their wastewater treatment plant load will be fed directly from the Stig electrical system. However, with the consent of PG&E the White Slough service will remain as an emergency backup should delivery service be unavailable from the Stig electrical system.

The ISO model needs the logic below added into NCPA's MSSA. The current treatment of White Slough should remain the same.

To insure that the impact of the interconnection is accurately recorded, during operation of the Stig generator, the output of the generator will need to be increased by the load recorded on the new meter being placed between Stig and the LODI Wastewater Treatment plant. The mathematical adjustments involved to accurately account for all the components of load and generation on the interconnected Stig/LODI systems are shown below.

Grid---<---M1---->---| Stig Unit |-----M2---->---| TreatmentPlant |---breaker---<---Existing White Slough  
meters (5840502, 5840503)

M1 is the existing ISO-pollled meter on the grid side of Stig, bi-directional.

M2 is the new ISO-pollled meter between Stig and the Treatment plant, Load only.

Note that M2 will include losses when the Stig is off-line via breaker 52G. This will make the Treatment load a wholesale load.

When Stig is not generating, M1in (total station service) will be greater than M2.

$ISOTreatmentLoad = M2 + 5840502 + 5840503$

$Total\ Stig\ gen = \max(M1out + ISOTreatmentLoad - M1in, 0)$

$PG\&E\ Stig\ SS = \max((M1in - ISOTreatmentLoad), 0)$

SS for Stig)

If generating then Total Gen else 0

If generating then 0 else M1in - M2 (Net

RESOLUTION NO. 2008-162

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING  
THE CITY MANAGER TO ENTER INTO AN INTERCONNECTION  
AGREEMENT BETWEEN THE CITY OF LODI AND NORTHERN  
CALIFORNIA POWER AGENCY FOR THE EXISTING WHITE  
SLOUGH WATER POLLUTION CONTROL FACILITY  
ELECTRIC CONNECTION

---

---

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute an Agreement for Interconnection by and between the City of Lodi and the Northern California Power Agency (NCPA) relating to an electric connection between the NCPA Combustion Turbine No. 2 Project (STIG) and the Lodi White Slough Water Pollution Control Facility.

Dated: August 20, 2008

---

---

I hereby certify that Resolution No. 2008-162 was passed and adopted by the Lodi City Council of the City of Lodi in a regular meeting held August 20, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian,  
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL  
City Clerk