



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Adopt Resolution Certifying Concurrence with California Energy Commission Environmental Findings and Approving Agreements with the Northern California Power Agency for Power Sales, Project Management and Operation, Ground Lease, and Recycled Water Supply (EUD)

MEETING DATE: May 5, 2010

SUBMITTED BY: Interim Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution certifying concurrence with California Energy Commission environmental findings and approving agreements with the Northern California Power Agency for power sales, project management and operation, ground lease, and water supply.

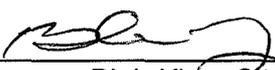
BACKGROUND INFORMATION: Lodi Energy Center (LEC) will be a 280-megawatt combined-cycle powerplant built and owned by the Northern California Power Agency on City of Lodi property. The plant will be built south of Lodi's White Slough Water Pollution Control Facility, between the NCPA Combustion Turbine Plant 2 (CT-2 or STIG) and I-5. Upon completion, LEC will be the most energy efficient gas-powered power plant in Northern California.

Based on an average price of \$7 per million British thermal units for natural gas fuel, the LEC is expected to produce electricity at an all-in cost of about 7.2 cents per kilowatt hour, while emitting 28 percent less carbon dioxide than the sources it will displace. Due to a variety of factors, the plant's actual average capability is expected to be 296 MW.

The California Energy Commission unanimously approved the license for the Lodi Energy Center on April 21. That set the stage for the power sale agreement, which NCPA will use to obtain financing for project construction, and the management and operation agreement, which sets the rules for the plant's operation.

CEQA

The California Energy Commission (CEC) is the lead agency under the California Environmental Quality Act for LEC. The CEC Final Decision on NCPA's Application for Certification (AFC) includes environmental analysis, findings, and mitigation measures and serves as the environmental impact report for LEC. On April 21, 2010, the CEC issued its Final Decision that LEC, as conditioned, will not have any significant environmental impact. Because Lodi is a "responsible agency" under CEQA, it must consider the lead agency's findings for each significant effect of the Project and make its own appropriate findings. The attached resolution makes all necessary findings for Lodi acting as a responsible agency. A copy of the order approving the AFC is forthcoming. Lodi must file a Notice of Determination (attached) of its approval with the San Joaquin County Clerk.

APPROVED: 
Blair King, City Manager

Power Sale Agreement

NCPA must have 100 percent subscription before financing the project. Lodi's currently designated 9.3561 percent Generation Entitlement Share (GES) of LEC would provide 26.20 MW and about 40 percent of Lodi's annual electric energy need. Since other participants may seek an increase or reduce their participation levels, staff recommends that the City Council authorize a range in Lodi's GES from 8.57 percent to 10 percent (or about 24 to 28 MW at a 280 MW LEC capacity level), and authorize the City Manager to set that level prior to execution of the Power Sale Agreement (PSA).

The PSA provides that the LEC will be governed by a Project Participant Committee (PPC). Each participant will have one representative on the PPC, with votes weighted based upon GES. There are 14 LEC participants.

Other PSA highlights are similar to other NCPA projects in which Lodi participates. The PSA is attached.

Project Management and Operation

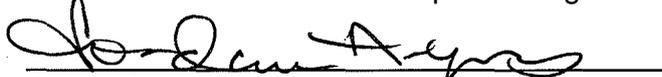
The Project Management and Operation Agreement (PMOA) provides that NCPA manage and operate the LEC Project based on NCPA's capabilities and experience in operating similar projects. The PMOA is attached.

Other Agreements

In addition, the final water supply agreement and final ground lease, implementing the Memorandum of Understanding which Council previously approved on September 2, 2009, are attached. A Purchase and Sale Agreement for the Giant Garter Snake Mitigation Conservation Easement will be on the May 19 Agenda after SJCOG sets the final mitigation easement terms.

FISCAL IMPACT: For Lodi electric ratepayers, the savings are projected to range from \$42 million to \$49 million over the projected 30-year life of the LEC. Upon project financing, the Electric Utility Department will receive a \$4.7 million reimbursement for its share of project development costs. In addition, the City will receive \$40,000 in annual lease payments, plus a minimum of \$960,000 from recycled water sales, both escalating at 2.5 percent a year for at least 10 years.

FUNDING: Lodi's share of the LEC will be paid through future electric rates (160652).


Jordan Ayers,
Deputy City Manager/Internal Services Director


Kenneth A. Weisel,
Interim Electric Utility Director

RESOLUTION NO. 2010-58

A RESOLUTION OF THE CITY OF LODI MAKING FINDINGS AS A RESPONSIBLE AGENCY UNDER CEQA; APPROVING THE LODI ENERGY CENTER POWER SALES AGREEMENT AND THE PROJECT MANAGEMENT AND OPERATION AGREEMENT; AND APPROVING THE LODI ENERGY CENTER AMENDED AND RESTATED GROUND LEASE AGREEMENT AND AGREEMENT TO SUPPLY RECYCLED WATER

WHEREAS, Lodi has elected to participate in the 280 MW (nominal) Lodi Energy Center (LEC) being developed by the Northern California Power Agency (NCPA); and

WHEREAS, Lodi's Generation Entitlement Share in the LEC is 9.3561% or a nominal 26.20 MW; and

WHEREAS, the California Energy Commission (CEC) has approved the LEC Application for Certification (AFC) on April 21, 2010, and such approval by the CEC includes various environmental analysis, findings and mitigation measures under the terms of the Warren-Alquist Act (Public Resources Code Section 25500 *et seq.*). The CEC's analysis, findings, and mitigation measures constitute the equivalent of an environmental impact report for purposes of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 *et seq.*) as a "certified regulatory program" pursuant to CEQA Guidelines Section 15251(j). The CEC has acted as the "lead agency" for this Project for purposes of environmental analysis. As a consequence, rather than conducting its own independent environmental analysis under CEQA, Lodi is acting as a "responsible agency" under CEQA and is thus responsible for considering the analysis, findings, and mitigation measures of the CEC and reaching Lodi's independent conclusions on whether and how to approve the LEC (CEQA Guidelines Section 15096); and

WHEREAS, Lodi, acting as a responsible agency, has independently considered the analysis, findings, and mitigation measures prepared by CEC as reflected in Exhibit A attached to this Resolution; and

WHEREAS, NCPA and Participants have prepared a Power Sales Agreement (PSA), which upon execution by all the LEC Participants and NCPA will permit financing, construction, and operation of the Project; and

WHEREAS, the Lodi City Council understands that, if one or more other Project Participants reduce or increase their Generation Entitlement Share (GES), Lodi may revise its GES to a GES between a minimum of 8.57% and a maximum of 10% to effectuate Project financing and construction; and

WHEREAS, the City of Lodi is desirous of NCPA managing and operating the LEC on its behalf, and on behalf of other Project participants, and NCPA and Participants have prepared a Project Management and Operation Agreement (PMOA), which upon execution by LEC Participants and NCPA provides for LEC management and operation by NCPA; and

WHEREAS, the City of Lodi acknowledges that the PSA forms a Project Participant Committee (PPC), which will provide Project governance and to establish, and from time to time revise, directives related to LEC capital expenditures, budgets, operations, and maintenance, among other items, and that Lodi is to designate a Lodi official responsible for serving as Lodi's representative and alternate representative on the PPC; and

WHEREAS, NCPA and the City of Lodi have prepared an Amended and Restated Ground Lease Agreement, which upon execution by the City of Lodi and NCPA will provide payment to the City of Lodi for the LEC's location and use of land owned by the City of Lodi for the life of the LEC; and

WHEREAS, NCPA and the City of Lodi have prepared an Agreement to Supply Recycled Water, which upon execution by the City of Lodi and NCPA will provide recycled water to LEC from the City of Lodi's White Slough Water Pollution Control Facility for the life of the LEC.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby acting in its capacity as a responsible agency for purposes of CEQA makes the findings as provided in Exhibit A of this resolution and hereby directs the City Manager or his designee to record a Notice of Determination in the County of San Joaquin reflecting these findings; and

BE IT FURTHER RESOLVED that the City Council hereby approves the Power Sales Agreement and the Project Management and Operation Agreement, authorizes the City Manager or his designee to execute these two agreements with such non-substantive changes as the City Manager finds beneficial on behalf of Lodi and to adjust Lodi's Generation Entitlement Share as reflected in the PSA and PMOA to between a minimum of 8.57% and a maximum of 10% to effectuate Project financing and construction, and authorizes the Electric Utility Director to administer these agreements; and

BE IT FURTHER RESOLVED that the City Council hereby designates the Electric Utility Director or his designee as the Lodi's representative on the PPC and authorizing the Electric Utility Director to designate alternate representatives and notify NCPA of such designations; and

BE IT FURTHER RESOLVED that the City Council hereby approves the Amended and Restated Ground Lease Agreement and the Agreement to Supply Recycled Water between NCPA and the City of Lodi, authorizes the City Manager or his designee to execute these agreements with such non-substantive changes as the City Manager finds beneficial on behalf of the City of Lodi, and authorizes the City Manager or his designee to administer these agreements.

Dated: May 5, 2010

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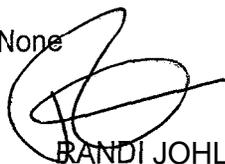
I hereby certify that Resolution No. 2010-58 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

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

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL

City Clerk

EXHIBIT A

ENVIRONMENTAL FINDINGS

The City of Lodi (Participant), as a Participant in the Lodi Energy Center (Project), makes the following findings pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.*, and the Guidelines implementing CEQA (“CEQA Guidelines”) Code of Regulations, title 14, section 15000 *et seq.*

1. The California Energy Commission (“CEC”) is the lead agency for this Project under CEQA.
2. The CEC is a certified regulatory agency pursuant to CEQA section 21080.5 and CEQA Guidelines sections 15250 – 15253.
3. As a certified regulatory agency, rather than an Environmental Impact Report (“EIR”), the CEC prepares an “EIR substitute” as the CEQA documentation for the Project.
4. The CEC’s EIR substitute for this Project is the Presiding Member’s Proposed Decision (“PMPD”) released on March 10, 2010, as supplemented by the “Errata to the Presiding Member’s Proposed Decision” dated April 20, 2010, and approved by the CEC on April 21, 2010 without further substantive change.
5. Participant is a responsible agency for the Project under CEQA.
6. Participant finds that the CEC’s process meet all of the conditions of CEQA Guidelines section 15253 that would allow Participant to use and rely upon the CEC findings. Specifically, Participant finds that:
 - a. The CEC is the first to grant a discretionary approval for the Project.
 - b. The CEC provided Participant the opportunity to consult with the CEC and to comment on the PMPD.
 - c. The PMPD considers both the significant environmental impacts of the Project that are within the jurisdiction of the Participant, if any, and considers alternatives to the Project.
 - d. The CEC exercised its powers as lead agency by considering all of the environmental impacts of the Project and made the appropriate findings pursuant to CEQA Guidelines section 15091 for each significant impact of the Project.
7. Participant has considered the PMPD and the environmental impacts of the Project described in the PMPD, pursuant to CEQA Guidelines 15096 subdivision (f).
8. The PMPD concludes that, as conditioned, the Project will not have any significant adverse effects on the environment. Thus, pursuant to CEQA Guidelines 15096 subdivision (g), Participant finds that there are no alternatives or mitigation measures within the powers of Participant to adopt that would substantially reduce or avoid any significant environmental impact of the Project.

9. Pursuant to CEQA Guidelines 15096 subdivision (h), Participant is required to make findings pursuant to CEQA Guidelines section 15091 for each significant impact of the Project. Participant has considered the PMPD, the description of the Project's environmental impacts contained therein, the findings of fact and conclusions of law contained therein, and the conditions of certification contained therein, and, exercising its independent judgment, Participant finds the following:
 - a. For all environmental impacts of the Project, changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effects as identified in the PMPD.
 - b. These findings are supported by substantial evidence in the record.
 - c. The conditions of certification imposed on the Project by the CEC are within the authority of the CEC and will be monitored and enforced by the CEC.
10. That approval of both the Power Sales Agreement and Project Management and Operation Agreement, providing for the financing, construction and operation of the Project has no impacts on the environment not addressed within the prior CEC analysis.

Notice of Determination

Appendix D

To:

Office of Planning and Research
For U.S. Mail: P.O. Box 3044
Sacramento, CA 95812-3044
Street Address: 1400 Tenth St.
Sacramento, CA 95814

County Clerk
County of: San Joaquin
44 North San Joaquin Street, #260
Address: Stockton, CA 952002
Phone: (209) 468-3939

From:

Public Agency: City of Lodi Electric Utility
Address: 1331 South Ham Lane
Lodi, CA 95242-3995
Contact: Ken Weisel
Phone: 209-333-6764

Lead Agency (if different from above):
California Energy Commission
Address: 1516 Ninth Street, MS- 15
Sacramento, CA 95814
Contact: Rod Jones
Phone: 916-654-5191

SUBJECT: *Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.*

State Clearinghouse Number (if submitted to State Clearinghouse): _____.

Project Title: Lodi Energy Center ("LEC") Project.

Project Location (include county): The site for the LEC project is 4.4 acres of land in the city of Lodi, 6 miles west of the Lodi city center, located near Interstate-5 (I-5) approximately 1.7 miles south of State Route 12. (San Joaquin County).

Project Description:

The LEC is a natural gas-fired, combined-cycle nominal 296-megawatt (MW) power generation facility located in the City of Lodi, CA.

This is to advise that the City of Lodi Electric Utility has approved the above described project on
 Lead Agency or Responsible Agency

_____ and has made the following determinations regarding the above described project:
(Date)

- 1. The project WILL NOT have a significant effect on the environment.
- 2. The California Energy Commission ("CEC") is a certified regulatory agency under Public Resources Code section 21080.5 and CEQA Guidelines section 15251. The CEC prepared a substitute document for an Environmental Impact Report pursuant to Guidelines section 15252.
- 3. Measures to mitigate the impacts of the LEC were made conditions of approval of the project.
- 4. The CEC, through a Compliance Project Manager, will monitor, oversee, and verify compliance with the conditions of CEC approval of the project.
- 5. A Statement of Overriding Consideration WAS NOT adopted for the project.
- 6. Findings WERE made pursuant to the provisions of CEQA.

This is to certify that the CEC's substitute document in place of an EIR and the record of project approval is available to the General Public at:

1331 South Ham Lane, Lodi, CA

Signature (Public Agency) _____
Title _____

Date _____ Date Received for filing at OPR _____

LODI ENERGY CENTER POWER SALES AGREEMENT

By and Among

NORTHERN CALIFORNIA POWER AGENCY

and

EACH OF THE PUBLIC AGENCIES SIGNATORY HERETO

Dated as of _____,2010

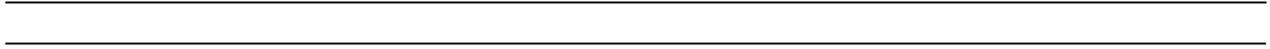


TABLE OF CONTENTS

	Page
1. PARTIES	1
2. RECITALS	1
3. AGREEMENT	2
4. DEFINITIONS	2
5. REPRESENTATIONS AND WARRANTIES	13
6. SALE AND PURCHASE OF PROJECT OUTPUT	14
7. OBLIGATIONS OF NCPA AND PARTICIPANTS	15
8. PARTICIPANT COMMITTEE	18
9. CHARACTER AND CONTINUITY OF SERVICE	22
10. PROJECT CAPACITY AND ENERGY AVAILABILITY	23
11. FUEL PROCUREMENT	23
12. METERING	23
13. RESTRICTIONS ON DISPOSITION	23
14. COST OF CONSTRUCTION OF INITIAL FACILITIES	25
15. COST OF CONSTRUCTION OF NON-FINANCED CAPITAL IMPROVEMENTS	27
16. COST OF CONSTRUCTION OF FINANCED CAPITAL IMPROVEMENTS	27
17. CHARGES AND BILLINGS	29
18. PARTICIPANT PAYMENT OBLIGATIONS AND RATE COVENANT	35
19. PARTICIPANTS' OBLIGATIONS SEVERAL	36
20. PLEDGE UNDER INDENTURES	36
21. FUNDS; APPLICATION OF PROJECT REVENUES	37
22. PAYMENT DEFAULT AND REMEDIES	39
23. DEFAULTS OTHER THAN PAYMENT DEFAULTS	45
24. INDEMNIFICATION AND RELATED MATTERS	45
25. REIMBURSEMENT OF PROJECT DEVELOPMENT COSTS	47
26. REFUNDING BONDS AND BOND RELATED DOCUMENTS	47
27. INDENTURES AND GOVERNMENTAL REQUIREMENTS	47
28. EXPRESS THIRD-PARTY BENEFICIARIES	48
29. COUNTERPARTS	48
30. OBSERVANCE OF LAWS	48
31. FURTHER ASSURANCES	48
32. EFFECTIVE DATE	48
33. TERM OF AGREEMENT	48
34. SUCCESSORS	48

TABLE OF CONTENTS

	Page
35. NOTICES	49
36. SEVERABILITY	49
37. AMENDMENTS TO AGREEMENT	49
38. ASSIGNMENTS	49
39. OFFICIAL FILE	50
40. GOVERNING LAW	50
41. SPECIAL PROVISIONS APPLYING TO CDWR AND NCPA ONLY	50
42. APPENDICES	50
APPENDIX A LODI ENERGY CENTER PROJECT PARTICIPANT SHARES	A-1
APPENDIX B DESCRIPTION OF THE INITIAL FACILITIES	B-1
APPENDIX C OPINION OF INDEPENDENT COUNSEL TO PARTICIPANT	C-1
APPENDIX D PARTICIPANT ADDRESSES FOR NOTICE	D-1
APPENDIX E STATE OF CALIFORNIA GENERAL TERMS AND CONDITIONS	E-1
APPENDIX F CERTIFICATION CLAUSES	F-1

**LODI ENERGY CENTER
POWER SALES AGREEMENT**

1. **PARTIES.** This Lodi Energy Center Power Sales Agreement, dated as of _____, 2010, is by and among the Northern California Power Agency, a joint exercise of powers agency and a public entity organized under the laws of the State of California, and each of the undersigned entities.

2. **RECITALS.** This Agreement (capitalized terms used herein and not otherwise defined shall have the meanings given such terms pursuant to Section 4) is made with reference to the following facts among others.
 - 2.1 NCPA was created pursuant to provisions contained in the Act and the Joint Powers Agreement by its members for the purpose of jointly and cooperatively undertaking planning, financing, development, construction, management, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.
 - 2.2 Pursuant to the terms of the Act and the Joint Powers Agreement, NCPA has the power to plan, develop, finance, own, acquire, design, construct, operate, maintain and repair electric generation and transmission projects or cause such projects to be planned, developed, financed, designed, constructed, operated, maintained and repaired, and to provide by agreement with a public agency of the State of California to perform such activities.
 - 2.3 The Participants include certain members of NCPA and certain entities which are not members of NCPA.
 - 2.4 All Participants have need for an economical, reliable source of electric capacity and energy to meet the demands of their current and future customers and their own power supply requirements.
 - 2.5 To address the Participants' need for an economical, reliable source of electric capacity and energy, the Participants have previously entered into the Development Agreement with NCPA in order to provide funding for certain planning, licensing, engineering and development activities related to the Project.
 - 2.6 Pursuant to the Development Agreement NCPA has completed certain planning, licensing, engineering and development activities related to the Project and has reported the results of such activities to the Participants.
 - 2.7 The Parties desire to proceed with the financing, construction, operation and maintenance of the Project, and the sale of the Project Capacity and Energy to the Participants, as provided in this Agreement to satisfy a portion of the Participants' need for an economical, reliable source of electric capacity and energy.
 - 2.8 NCPA and the Participants have determined that it is desirable to enter into this Agreement with the intent that this Agreement shall supersede the Development Agreement and the Development Agreement shall terminate upon the Effective Date, in each case except as provided in Section 25.

- 2.9 NCPA is to take or cause to be taken all steps necessary to secure such governmental permits, licenses and approvals as are necessary for, and will then proceed as appropriate with, the financing, engineering, design, equipment procurement, construction, capital improvement, operation and maintenance of the Project as provided in this Agreement.
 - 2.10 NCPA is to own the Project and is to finance the Costs of Construction of the Project and to operate the Project on the terms and conditions provided in this Agreement and the PMOA.
 - 2.11 NCPA intends to issue Bonds to pay the Indenture Group A Participants' share of the Costs of Construction of the Initial Facilities and all Financed Capital Improvements.
 - 2.12 NCPA intends to issue Bonds to pay the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of the Initial Facilities, and, unless the Indenture Group B Participant requests NCPA to issue Bonds for such purposes as provided in this Agreement, the Indenture Group B Participant shall provide Capital Contributions to fund its share of Additional Costs of the Initial Facilities and the Costs of Construction of all Financed Capital Improvements.
 - 2.13 The Indenture Group C Participant is to provide Capital Contributions for its share of the Initial Estimate of the Costs of Construction of the Initial Facilities, and, unless the Indenture Group C Participant requests NCPA to issue Bonds for such purpose as provided in this Agreement, the Indenture Group C Participant shall provide Capital Contributions to fund its share of Additional Costs of the Initial Facilities and the Costs of Construction of all Financed Capital Improvements.
 - 2.14 In order to enable NCPA to issue Bonds as provided in this Agreement, this Agreement provides that the payment obligations of the Participants hereunder, while limited to Enterprise Revenues, are unconditional and not subject to set off or reduction for any reason and that NCPA's rights hereunder, including the right to receive payments hereunder from the Participants in the various Indenture Groups, are to be pledged to the appropriate Trustees, as security for the payment of the related Bonds, and the interest thereon, subject to the application thereof to such purposes and on such terms as provided in this Agreement and the applicable Indentures.
3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, and in order to pay NCPA for each Participant's share of the cost of the Capacity and Energy of the Project, it is agreed by and between the Parties hereto as set forth in this Agreement.
 4. **DEFINITIONS.** The terms defined in this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto shall have the meanings ascribed thereto as set out below:
 - 4.1 Accumulated Maximum Step-up Percentage. The maximum total GES which can be allocated to each Indenture Group A Participant as a result of a GES Step-up which shall be [thirty-five] percent ([35]%) of such Indenture Group A Participant's GES set forth in Appendix A as of the Effective Date. The Accumulated Maximum Step-up Percentage shall not include any GES an Indenture Group A Participant voluntarily accepts in a GES Lay-Off pursuant to Section 22.2.1.

- 4.2 Act. The Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 of the California Government Code, as amended and supplemented.
- 4.3 Additional Costs. Those Costs of Construction of the Initial Facilities and/or a Financed Capital Improvement in excess of the Initial Estimate of the Costs of Construction of the Initial Facilities or such Financed Capital Improvement.
- 4.4 Agreement. This Lodi Energy Center Power Sales Agreement, as it may be amended or supplemented from time to time in accordance with its terms. This Agreement is declared by NCPA and each member of NCPA which is a Participant to be a “Third Phase Agreement” under the terms of the Member Service Agreement between NCPA and such Participant.
- 4.5 Bankruptcy Code. Title 11 of the United States Code, as amended.
- 4.6 BART. The San Francisco Bay Area Rapid Transit District.
- 4.7 Billing Statement. The written billing statement to each Participant prepared or caused to be prepared each month by, or on behalf of, NCPA pursuant to Section 17.3.
- 4.8 Bonds. Bonds, notes, bond anticipation notes, or other evidences of indebtedness issued by, or loans taken out by, or Public Finance Contracts entered into by, NCPA pursuant to an Indenture from time to time to: (i) finance or refinance the Costs of Construction of the Initial Facilities or Financed Capital Improvements; or (ii) to provide credit enhancement for or economically modify NCPA’s payment obligations with respect to such bonds, notes, bond anticipation notes, other evidences of indebtedness or loans.
- 4.9 Capacity. As of any time the ability of the Project at such time to generate or produce electricity, expressed in kW or MW.
- 4.10 Capital Budget. The budget prepared by NCPA for Costs of Construction of the Initial Facilities and each Capital Improvement pursuant to Section 7.3.
- 4.11 Capital Contribution. With respect to Additional Costs of the Initial Facilities and the Costs of Construction of each Financed Capital Improvement and the Indenture Group B Participant or the Indenture Group C Participant which has given (or has been deemed to have given) NCPA a Capital Contribution Notice with respect to its share of such Costs of Construction, the amount of payment or payments by such Participant to be made in accordance with Section 14.4, 14.5, 16.4 or 16.5.
- 4.12 Capital Contribution Notice. With respect to the Indenture Group B Participant and/or the Indenture Group C Participant, a notice provided to NCPA by such Participant to the effect that it intends to make a Capital Contribution in lieu of having NCPA issue Bonds for its share of any Additional Costs of the Initial Facilities or the Costs of Construction of a Financed Capital Improvement.
- 4.13 Capital Improvement. Any unit of property, property right, land or land right which is a replacement, repair, addition, modification, improvement or betterment to the Project or any electrical transmission or fuel facilities (including but not limited to natural gas pipelines, gas reserves and storage facilities) relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of

property constituting a part of the Project or related electrical transmission or fuel facilities which: (i) is acquired or constructed after the Commercial Operation Date; (ii) which has an estimated useful life in excess of one year; (iii) the Costs of Construction of which is not treated as an Operation and Maintenance Expense; and (iv) which is either (a) consistent with Prudent Utility Practice and, except for Required Costs, has received Participant Committee Approval or (b) required by any governmental agency having jurisdiction over the Project and reviewed by the Participant Committee.

- 4.14 CDWR. The State of California Department of Water Resources.
- 4.15 Contributions in Aid of Construction. With respect to the Costs of Construction of each Non-Financed Capital Improvement, the amount of payment or payments by the Participants to be made in accordance with Section 15.
- 4.16 Costs of Construction. With respect to the Initial Facilities and each Capital Improvement, all costs and expenses of planning, designing, acquiring, constructing and installing the Initial Facilities or such Capital Improvement, placing the Initial Facilities or such Capital Improvement in operation, disposal of the Initial Facilities or such Capital Improvement, decommissioning of the Initial Facilities or such Capital Improvement and obtaining governmental approvals, certificates, permits and licenses with respect thereto heretofore or hereafter paid or incurred by NCPA but shall not include Financing Costs or Indenture Deposits. The term Costs of Construction shall include funds required for all of the following with references to the Project being references to the Initial Facilities and each Capital Improvement as appropriate:
- (a) All costs of planning, developing, constructing and mitigating impacts of the Project, placing the Project in operation, decommissioning of the Project, and obtaining governmental approvals, certificates, permits and licenses with respect thereto, including air emission credits.
 - (b) All costs of transmission facilities or project enhancements and replacement parts related to, or for the benefit of, the Project.
 - (c) Costs of preliminary investigation and development, the performance or construction of feasibility and planning studies for the Project, Project licensing, and the securing of regulatory approvals, as well as costs for land and land rights, water and water rights, engineering, contractors' fees, labor, materials, equipment and legal fees relating to the Project, including costs incurred under the Development Agreement.
 - (d) Costs of utility services and supplies during construction.
 - (e) To the extent not included in Total Monthly Power Costs, all costs related to the construction or acquisition of resources and facilities, and the requisite supplies of fuel, fuel transportation and water for the Project.
 - (f) To the extent not included in Total Monthly Power Costs, all costs relating to injury and damage claims arising out of the development and construction/improvement of the Project less proceeds of insurance.

- (g) To the extent not included in Total Monthly Power Costs, legally required or permitted federal, state and local taxes relating to the Project.
- (h) Working capital and reserves in such amounts as shall be required during construction of the Project and for placing the Project in operation.
- (i) Training and testing costs which are properly allocable to the construction of the Project or placing the Project in operation.
- (j) All costs of insurance applicable to the period of construction and placing the Project in operation.
- (k) Amounts payable with respect to capital costs for the expansion, reinforcement, enlargement, movement, reconstruction or other improvement of facilities determined by NCPA as necessary in connection with the utilization of the Project and the costs associated with the removal from service or reductions in service of any facilities as a result of the expansion, reinforcement, enlargement or other improvement of such facilities or the construction of the Project.
- (l) All costs required to be paid to NCPA under the PMOA which are applied or are to be applied thereunder to the payment of Costs of Construction.
- (m) All other costs incurred by NCPA and properly allocable to the acquisition, construction, placing in operation or decommissioning of the Project or any portion thereof.

- 4.17 Commercial Operation Date. The initial date on which the Initial Facilities can be commercially operated and dispatched, as approved by the Participant Committee in consultation with NCPA.
- 4.18 Default Mitigation Sale. A sale of Project Capacity and/or Energy pursuant to Section 22.2.3 with respect to the GES of a Defaulting Participant.
- 4.19 Default Mitigation Sale Fund. The fund to be established and maintained by NCPA pursuant to Section 21.6.
- 4.20 Defaulting Participant. As of any time, a Participant as to which a Payment Default has occurred and is continuing.
- 4.21 Development Agreement. The Second Phase Agreement for Funding the Planning and Development Activities of the Lodi Energy Center, that became effective on or about March 1, 2008, among NCPA and the Participants. Except as provided in Section 25, the Development Agreement is superseded by this Agreement.
- 4.22 Effective Date. The date described in Section 32.
- 4.23 Energy. The electricity produced by the Project expressed in kWh or MWh.
- 4.24 Enterprise. With respect to: (i) each Participant other than CDWR, BART and the City of Oakland, the electric utility owned by such Participant; (ii) with respect to CDWR, the State Water Resources Development System (as defined in California Water Code

Section 12931); (iii) with respect to BART, its rail transit system; and (iv) with respect to the City of Oakland, the Port of Oakland (as defined in the Charter of the City of Oakland); in each case as constituted on the Effective Date and as the same may be improved, replaced and expanded.

- 4.25 Enterprise Revenues. With respect to each Participant all income, rents, rates, fees charges and other revenues derived by the Participant from the ownership or operation of its Enterprise; provided, however that a Participant's Enterprise Revenues shall not include any moneys which by law are limited to uses other than the payment of operating expenses of the Participant's Enterprise or, with respect to Capital Contributions and Contributions in Aid of Construction, capital costs of the Project.
- 4.26 Financed Capital Improvement. A Capital Improvement for which the Costs of Construction is to be paid with the proceeds of Bonds and/or Capital Contributions.
- 4.27 Financing; Costs. With respect to any Bonds, all costs and expenses incurred by NCPA in connection with the authorization, sale, and delivery of such Bonds.
- 4.28 Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending immediately before 12:01 a.m. on the next following July 1, or such other 12 month period as shall be adopted by NCPA as its fiscal year.
- 4.29 Fuel Cost. All amounts which have received Participant Committee Approval and are payable by NCPA in connection with the acquisition of natural gas for, and delivery of natural gas to, the Project, including the cost associated with contract payments under minimum or guaranteed payment provisions.
- 4.30 Fuel Cost Component. The amounts described in Section 17.1.2.
- 4.31 Funding Notice. A notice provided by NCPA to Participants pursuant to Section 14.2 or Section 16.2.
- 4.32 General Reserve Fund. The fund to be established and maintained by NCPA pursuant to Section 21.5.
- 4.33 GES. The generation entitlement share (expressed as a percentage) of a Participant to a portion of the Project Energy and Capacity, as such generation entitlement share may be amended or revised from time to time in accordance with a GES Lay-Off or a GES Step-Up. The GES of each Participant as of the Effective Date is set forth in Appendix A of this Agreement.
- 4.34 GES Lay-Off. An increase in the GES of a Participant pursuant to Section 22.2.1.
- 4.35 GES Step-Up. An increase in the GES of an Indenture Group A Participant pursuant to Section 22.2.2.
- 4.36 ICS. The indenture cost share of a Participant in an Indenture Group which is the portion of the Indenture Cost Component for such Indenture Group allocable to such Participant which is: (a) as of any time with respect to each Participant in Indenture Group A, the percentage obtained by dividing the GES of such Participant as of such time by the GES of all Indenture Group A Participants as of such time; (b) with respect to the Indenture

Group B Participant, 100%; and (c) with respect to the Indenture Group C Participant, 100%.

- 4.37 Indenture. One or more indentures of trust, resolutions, loan agreements, standby bond purchase agreements, reimbursement agreements, contracts or other applicable debt instruments or documents providing for the issuance of, or otherwise relating to, Bonds, as from time to time amended and supplemented in conformity with its provisions and the provisions of this Agreement.
- 4.38 Indenture Cost Component. The amounts described in Section 17.1.3.
- 4.39 Indenture Deposits. With respect to each Indenture, the amounts, other than the Costs of Construction, which are required to be deposited in a fund or account pursuant to such Indenture at the time Bonds are issued thereunder, including:
- (a) The deposit or deposits from the proceeds of Bonds in any funds or accounts established pursuant to an Indenture to pay capitalized interest on such Bonds.
 - (b) The deposit or deposits from the proceeds of Bonds in any fund or account established pursuant to an Indenture to meet any respective debt service reserve requirements for Bonds.
 - (c) The payment of principal, premium, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) of any obligations issued for the purpose of financing the Costs of Construction, including any related costs of financing.
- 4.40 Indenture Group(s). One or more of Indenture Group A, Indenture Group B and/or Indenture Group C.
- 4.41 Indenture Group A. A subset of the Participants consisting of the California Cities of Azusa, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Oakland, Santa Clara and Ukiah, and BART, the Plumas-Sierra Rural Electric Cooperative and the Power and Water Resources Pooling Authority.
- 4.42 Indenture Group Approval. With respect to the approval or authorization of any action, transaction, program or procedure relating to an Indenture or Bonds by the NCPA Commission after the Effective Date, that such action, transaction, program or procedure has been approved by: (i) with respect to the Indenture Group A Participants the Indenture Group A Non-Defaulting Participants as provided in Section 8.4; (ii) with respect to Indenture Group B, the Indenture Group B Participant if not then a Defaulting Participant; and (iii) and with respect to Indenture Group C, the Indenture Group C Participant if not then a Defaulting Participant.
- 4.43 Indenture Group B. A subset of the Participants consisting of the California Department of Water Resources.
- 4.44 Indenture Group C. A subset of the Participants consisting of the Modesto Irrigation District.

- 4.45 Initial Estimate. With respect to the Initial Facilities, [\$375,300,000] and with respect to each Capital Improvement, the Initial Estimate shall be the first estimate of the Costs of Construction of such Capital Improvement approved by the Participant Committee whether by way of a Capital Budget setting forth such estimate or otherwise.
- 4.46 Initial Facilities. The electric generating station and related facilities, including shared facilities, and rights described in Appendix B, as such Appendix B may be amended from time to time prior to the Commercial Operation Date.
- 4.47 Interconnection Agreement. Any agreement between NCPA and a third party regarding terms and conditions for establishing and maintaining an interconnection between the Project and the Point of Delivery.
- 4.48 Joint Powers Agreement. The Amended and Restated Northern California Power Agency Joint Powers Agreement, dated as of January 1, 2008, by and among the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah, California, the Plumas-Sierra Rural Electric Cooperative, the Turlock Irrigation District, the Port of Oakland, the Truckee-Donner Public Utilities District and the Bay Area Rapid Transit District as the same may be amended and supplemented.
- 4.49 kW. Kilowatt.
- 4.50 kWh. Kilowatt hour
- 4.51 Major Contracts. Major Contracts are: (i) the PMOA; (ii) each Interconnection Agreement; (iii) Project fuel procurement and management agreements; (iv) agreements for supplying the Project with water; (v) the lease of the Project site; and (vi) any other contract or agreement relating to the Project, other than an NCPA Multiple Project Contract, which has a total cost of more than five hundred thousand dollars and which is designated as a Major Contract by the Participant Committee, as such contracts or agreements may be entered into before, on or after the Effective Date and as they may be amended, revised or supplemented from time to time in accordance with their respective terms. No NCPA Multiple Project Contract shall constitute a Major Contract.
- 4.52 Mandatory Budget Amendment. The term Mandatory Budget Amendment shall have the meaning ascribed to this term in Section 7.2.3.
- 4.53 MW. Megawatt.
- 4.54 MWh. Megawatt hours.
- 4.55 NCPA. The Northern California Power Agency, a joint exercise of powers agency, created pursuant to the Act and the Joint Powers Agreement, and its successors.
- 4.56 NCPA Administrative Costs. That portion of the NCPA administrative, general and occupancy costs and expenses, including those costs and expenses associated with the operations, direction and supervision of the general affairs and activities of NCPA, general management, treasury operations, accounting, budgeting, payroll, human resources, information technology, facilities management, salaries and wages (including retirement benefits) of employees, facility operation and maintenance costs, taxes and

payments in lieu of taxes (if any), insurance premiums, fees for legal, engineering, financial and other services, that are charged directly or apportioned to the development, financing, construction, improvement, maintenance, operation or decommissioning of the Project.

- 4.57 NCPA Multiple Project Contract. A contract entered into by NCPA which relates to providing services, supplies or commodities with respect to the planning, financing, constructing, managing, operating, maintaining and/or improving of electric generation and/or transmission facilities, including related equipment, property, rights or facilities, with respect to the Project and one or more other NCPA projects and/or programs.
- 4.58 Non-Defaulting Participant. As of any time, each Participant which is not a Defaulting Participant as of such time.
- 4.59 Non-Financed Capital Improvement. A Capital Improvement, the Costs of Construction of which is to be paid with Contributions in Aid of Construction.
- 4.60 Non-Financed Capital Improvement Cost Component. The amounts described in Section 17.1.4.
- 4.61 OandM Step-up. An increase in the amount payable by a Participant for Operation and Maintenance Expenses beyond such Participant's GES as a result of a Payment Default by another Participant which increase shall be calculated pursuant to Section 17.1.5.
- 4.62 OandM Step-up Cost Component. The amounts described in Section 17.1.5.
- 4.63 OandM Step-up Share. As of any time of calculation and with respect to each Non-Defaulting participant, the quotient obtained by dividing (i) the GES of such Non-Defaulting Participant by (ii) the sum of the GES of all Non-Defaulting Participants.
- 4.64 Operating Cost Component. The amounts described in Section 17.1.1.
- 4.65 Operating Fund. The fund to be established and maintained by NCPA pursuant to Section 21.2.
- 4.66 Operating Reserve Fund. The fund to be established and maintained by NCPA pursuant to Section 21.3.
- 4.67 Operating Reserve Requirement. As of any time, an amount determined in accordance with the PMOA as equal to approximately 60 days of Operation and Maintenance Expenses in the Project Annual Budget in effect as of such time.
- 4.68 Operation and Maintenance Expenses. The costs paid or incurred by NCPA for operating and maintaining the Project including, but not limited to (a) all Fuel Costs; (b) all costs of water supply in connection with the Project; (c) all costs and expenses of management of the Project, including on-site operating staff and NCPA Administrative Costs; (d) all costs and expenses of maintenance and repair of the Project, including all expenses necessary or appropriate in the judgment of NCPA to maintain and preserve the Project in good repair and working order; (e) payments in-lieu of taxes to any public agency in connection with the Project; (f) all costs, expenses and charges of accountants, engineers and other consultants; (g) any cost or expense paid by NCPA to comply with

requirements of law applicable to the Project or the NCPA's ownership or operation thereof or in any capacity in connection with the Project or any activity in connection therewith; (h) costs of repairs, replacements and reconstruction of the Project that do not entail Capital Improvements; (i) costs relating to litigation and other adversarial proceedings (including attorneys' fees and disbursements and other amounts paid as a result thereof); (j) insurance costs (including amounts to fund any self-insurance program); (k) taxes and any other governmental charges required to be paid by NCPA with respect to the Project; (l) any costs payable in connection with the output of the Project; (m) all costs related to the conducting of the business of NCPA with respect to the Project; and (n) any other costs relating to the operation or maintenance of the Project, including without limitation any costs relating to funding or maintaining working capital or similar reserves approved by NCPA and the Participant Committee.

- 4.69 Outstanding. The term Outstanding, when used with respect to an obligation under an Indenture, means the obligation has not been discharged in accordance with the Indenture.
- 4.70 Participant Committee. The committee established in accordance with Section 8 of this Agreement.
- 4.71 Participant Committee Approval. The term Participant Committee Approval shall have the meaning ascribed to such term in Section 8.3.
- 4.72 Participant Monthly Power Costs. With respect to a Participant and a given month, the costs payable by such Participant pursuant to Section 17.2.
- 4.73 Participants. Those entities (other than NCPA) executing this Agreement, together in each case with their successors. Appendix A of this Agreement lists all Participants.
- 4.74 Party. The term Party, when capitalized, means NCPA or a Participant and the term Parties, when capitalized, means NCPA and all the Participants collectively.
- 4.75 Payment Default. The term Payment Default has the meaning ascribed to such term in Section 22.1.1.
- 4.76 PMOA. The Lodi Energy Center Project Management and Operations Agreement among NCPA and the Participants, relating to the Project, as it may be amended or supplemented from time to time in accordance with its terms.
- 4.77 Point of Delivery. The first point of interface between the Project facilities and the transmission facilities controlled by the entity which regulates the transmission of Energy from the Project under applicable laws and regulations. As of the Effective Date, the Point of Delivery is the first point of interface between the Project facilities and the facilities controlled by the balancing authority for the control area where the Project is located pursuant to the Western Electricity Coordinating Council.
- 4.78 Project. The Lodi Energy Center consisting of the Initial Facilities and all Capital Improvements.
- 4.79 Project Annual Budget. For any Fiscal Year, the Project budget in effect for such Fiscal Year pursuant to Section 7.2, including any amendments thereto.

- 4.80 Project Net Revenues. For any period of time, the Project Revenues less the Operation and Maintenance Expenses during such period and less the deposits to the Operating Reserve Fund during such period.
- 4.81 Project Revenues. All gross income and revenue received or receivable by NCPA from the ownership or operation of the Project, including all rates and charges for the Capacity and Energy of the Project and the other services and facilities of the Project, all proceeds of insurance covering business interruption loss relating to the Project, any Subsidy received by NCPA and all other income and revenue howsoever derived by NCPA from the ownership or operation of the Project or otherwise arising from the Project, including the proceeds of sales of Project Capacity and/or Energy pursuant to Section 6 and Section 22, but not including Contributions in Aid of Construction, Capital Contributions or grants to the extent restricted by the donor to exclude the application to be made of such grant pursuant to this Agreement.
- 4.82 Prudent Utility Practice. Any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior hereto) known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with sound utility business and financial practices approved by the Western Electricity Coordinating Council or the North American Electric Reliability Corporation (or any successors to such organizations), reliability, safety and expedition, taking into account the fact that Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at a reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice includes due regard for manufacturers' warranties and requirements of governmental agencies of competent jurisdiction and official electric industry reliability organizations and shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project.
- 4.83 Public Finance Contract. A contract or arrangement described in Section 5922 of the California Government Code as in effect on the dated date of this Agreement.
- 4.84 Reconciliation Statement. A statement prepared by NCPA pursuant to Section 17.5 or Section 17.6.
- 4.85 Required Costs. The: (i) Additional Cost of the Initial Facilities or a Financed Capital Improvement which: (a) arise while any obligations remain Outstanding under an Indenture; and (b) are either (y) required by law or governmental regulation, including environmental regulation, for the operation of the Project or (z) necessary to complete the Initial Facilities or the Financed Capital Improvement, as applicable, as a facility performing the functions intended for the Initial Facilities or such Financed Capital Improvement; and (ii) costs and expenses under a NCPA Multiple Project Contract when the use of such NCPA Multiple Project Contract in connection with the Project has been approved by the Participant Committee.

- 4.86 Revenue Account. The account in the Revenue Fund with respect to an Indenture Group as described in Section 21.1.
- 4.87 Revenue Fund. The fund to be established and maintained by NCPA pursuant to Section 21.1
- 4.88 Subsidy. With respect to Taxable Subsidy Bonds, a payment from the United States with respect to such Taxable Subsidy Bonds or the interest thereon or other benefit from the United States (such as a tax credit) in connection with such Taxable Subsidy Bonds.
- 4.89 Taxable Bonds. Bonds, other than Taxable Subsidy Bonds, the interest on which is not excluded from gross income for federal income tax purposes.
- 4.90 Taxable Subsidy Bonds. Bonds, the interest on which is not excluded from gross income for federal income tax purposes and as to which NCPA or an owner of a Bond is entitled to receive a Subsidy.
- 4.91 Tax-Exempt Bonds. Bonds, the interest on which is excluded from gross income for certain federal income tax purposes.
- 4.92 Tax Status. With respect to a Tax-Exempt Bond, the exclusion from gross income for federal income tax purposes of interest on such Bond and with respect to a Taxable Subsidy Bond, the right of NCPA or the owner of a Bond to receive a Subsidy with respect to such Bond.
- 4.93 Threshold Amount. An amount equal to \$5,000,000 or such larger amount as shall be approved by the Participant Committee pursuant to Section 8.3.2.
- 4.94 Total Monthly Power Costs. The term Total Monthly Power Costs shall have the meaning ascribed to such term in Section 17.1.
- 4.95 Trustee. A bank or other financial institution, if any, at the time serving as trustee under an Indenture or, if there is no such trustee(s) under an Indenture, the respective lender or counterparty or other party entitled to receive payments under such Indenture.
- 4.96 Uncontrollable Forces. With respect to a Party hereto, any cause beyond the control of such Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other person or entity to comply with then current contracts, an act of god, fire, flood explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license, or permit, inability of any party or any person or entity engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, or inability of NCPA to sell or issue its Bonds pursuant to acceptable terms.
- 4.97 Rules of Construction. Except where the context otherwise requires, words of any gender shall include correlative words of the other genders; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include

firms, associations, trusts, corporations or governments or agencies or political subdivisions thereof. Unless otherwise indicated, references to a Section shall be to such Section of this Agreement. The term “include” and its derivations are not limiting and shall be construed as meaning “including but not limited to”. The phrase “Participants in an Indenture Group” and any similar phrase shall refer: (i) as to Indenture Group A, the Indenture Group A Participants; (ii) as to Indenture Group B, the Indenture Group B Participant; and (iii) as to Indenture Group C, the Indenture Group C Participant. The phrase “an Indenture relating to an Indenture Group” and any similar phrase shall refer: as to Indenture Group A, an Indenture with respect to Bonds or other obligations payable from Indenture Group A Project Net Revenues; as to Indenture Group B, an Indenture with respect to Bonds or other obligations payable from Indenture Group B Project Net Revenues; and as to Indenture Group C, an Indenture with respect to Bonds or other obligations payable from Indenture Group C Project Net Revenues.

The phrase “Project Revenues relating to an Indenture Group” and any similar phrase shall refer: as to Indenture Group A, the Project Revenues relating to the Indenture Group A Participants’ GES; as to Indenture Group B, the Project Revenues relating to the Indenture Group B Participant’s GES; and as to Indenture Group C, the Project Revenues relating to the Indenture Group C Participant’s GES. The phrase “NCPA shall issue Bonds for a Participant” or any similar phrase shall be construed to mean that NCPA shall use its best reasonable efforts to issue Bonds payable from the Project Net Revenues related to such Participant’s GES, subject to any legal limitations on such issuance, limitations applicable to the terms of such Bonds, the credit evaluations for the applicable Indenture Group Participants’ Enterprise Revenues and the market conditions applicable to such issuance. References to Indentures herein shall apply only to Indentures under which obligations thereunder remain Outstanding.

The phrase “approved by the Participant Committee” and any similar phrase in connection with any action, procedure or agreement shall be construed to mean that such action, procedure or agreement has received Participant Committee Approval.

The term “construction” include planning, designing, permitting, acquiring, constructing, installing, equipping, and furnishing.

Unless otherwise specified herein, references to a day or days shall be to a calendar day or days, as applicable. Unless otherwise specified herein, references to a month or months shall be to a calendar month or months, as applicable.

Unless otherwise specified herein, the application at any time of a Participant’s GES to such Participant’s right to Project Capacity and Energy, right to vote on Participant Committee matters, obligation to make payments hereunder or any other matter hereunder determined by reference to such Participant’s GES shall refer to such Participant’s then current GES and/or the applicable percentage thereof at the time of such application.

The captions or headings in this Agreement and the Table of Contents are for convenience only and in no way define, limit or describe the scope and intent of any provisions of this Agreement.

5. REPRESENTATIONS AND WARRANTIES.

- 5.1 Representations and Warranties. NCPA and each Participant (except as noted below) do hereby represent, warrant and covenant to the other Parties as of the Effective Date as follows:
- 5.1.1 it is a duly organized and validly existing entity under the laws of the State of California;
 - 5.1.2 all authorizations necessary for it to enter into this Agreement and to legally perform its obligations hereunder have been received and are in full force and effect;
 - 5.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary actions 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, or order applicable to it;
 - 5.1.4 this Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and equitable principles;
 - 5.1.5 it is not insolvent or a debtor in a proceeding under the Bankruptcy Code and there are no proceedings pending or being contemplated by it nor, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent;
 - 5.1.6 there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement, the Major Contracts or other material agreements relating to the Project;
 - 5.1.7 no event of default or potential event of default with respect to it has occurred and is continuing in any way material to its entering with and performing its obligations under this Agreement and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
 - 5.1.8 it 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 any other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
 - 5.1.9 each Participant, on its own behalf, represents, warrants and covenants that it has entered into this Agreement in connection with the conduct of the business of its Enterprise and it has the capacity or ability to take delivery of its GES of all Capacity and Energy produced by the Project as contemplated under this Agreement; and
 - 5.1.10 NCPA represents, warrants and covenants that it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to

manage, operate and to make available to each Participant its GES of all Capacity and Energy produced by the Project as contemplated under this Agreement

6. SALE AND PURCHASE OF PROJECT OUTPUT. NCPA hereby sells to each Participant, and each Participant hereby purchases from NCPA, on the terms and conditions set forth in this Agreement, such respective Participant's GES of the Capacity of the Project and the Energy associated with such Capacity. Subject to the provisions of Section 22 and Section 23, the Energy from the Project shall be delivered to each Participant at the Point of Delivery. Participants shall not be responsible for purchasing, nor have any right to purchase, capacity or energy from any other facility owned by NCPA other than the Project unless a Participant and NCPA expressly agree in writing to such purchase.

7. OBLIGATIONS OF NCPA AND PARTICIPANTS.

7.1 General Obligations of NCPA as Project Operator. NCPA shall be responsible for planning, designing, obtaining applicable financing, constructing, improving, insuring, contracting for, managing, administering, operating and maintaining the Project as provided in this Agreement and the PMOA to effectuate the delivery of each Participant's GES of Capacity and Energy to such Participant. In the event of any conflict between the provisions of this Agreement and any provisions of the PMOA, the provisions of this Agreement shall control.

7.2 Project Annual Budget.

7.2.1 Not less than **60** days prior to the beginning of each Fiscal Year, NCPA shall prepare and submit to the Participant Committee the Project Annual Budget for such Fiscal Year which shall set forth the estimated Total Monthly Power Costs for each month of such Fiscal Year and the related Participant Monthly Power Cost for each month in the Fiscal Year. The Project Annual Budget for a Fiscal Year may be part of a multi-year budget containing such information. The Project Annual Budget for a Fiscal Year may include formulas or other methods for allocating NCPA Administrative Costs to the Project and other NCPA projects and programs; provided that, unless another allocation method is requested by NCPA and approved by the Participant Committee, NCPA shall use the same allocation method for allocating each category of NCPA Administrative Costs to the Project as for other NCPA projects and programs.

7.2.2 The Participant Committee shall promptly upon receipt thereof review and act to approve or modify the proposed Project Annual Budget. The use of NCPA Multiple Project Contracts to provide facilities, services or materials to the Project shall be subject to the approval of the Participant Committee but the rates and charges for such facilities, services or materials shall not be subject to the approval of the Participant Committee. Any allocations of NCPA Administrative Costs which are consistent with Section 7.2.1 shall not be subject to the approval of the Participant Committee.

7.2.3 At any time during a Fiscal Year, NCPA may prepare an amendment to the then current Project Annual Budget and submit such amendment to the Participant Committee for review and approval. At any time during a Fiscal Year that the Project Annual Budget for such Fiscal Year does not provide sufficient funds to pay when due all Total Monthly Power Costs for such Fiscal Year, NCPA shall

prepare and submit to the Participant Committee an amendment to the Project Annual Budget (a "Mandatory Budget Amendment") which shall provide sufficient Project Revenues to pay when due all the Total Monthly Power Costs for such Fiscal Year. The Participant Committee shall be provided the opportunity to review and discuss each Mandatory Budget Amendment with NCPA, but the Participant Committee shall not have the power to disapprove a Mandatory Budget Amendment.

7.2.4 The Project Annual Budget, and any amendment thereto other than a Mandatory Budget Amendment, shall not go into effect until it has received Participant Committee Approval. Each Mandatory Budget Amendment shall go into effect immediately without the requirement for Participant Committee Approval.

7.2.5 If by the first day of a Fiscal Year a Project Annual Budget for such Fiscal Year has not received Participant Committee Approval, then the Project Annual Budget for the immediately preceding Fiscal Year, with such modifications as shall be necessary to provide for all Total Monthly Power Costs for the then current Fiscal Year, shall be the Project Annual Budget for the then current Fiscal Year. Such Project Annual Budget shall be subject to Mandatory Budget Amendments as provided in this Agreement.

7.2.6 In the event a Project Annual Budget for a Fiscal Year receives Participant Committee Approval after the first day of such Fiscal Year, such Project Annual Budget shall replace and supersede any Project Annual Budget which is in effect for such Fiscal Year pursuant to Section 7.2.5.

7.3 Capital Improvements and Capital Budgets. NCPA shall develop and present to the Participant Committee a description, together with an estimated budget of the Costs of Construction, of all Capital Improvements which are necessary for the operation and maintenance of the Project in accordance with Prudent Utility Practice and those other Capital Improvements which NCPA determines will be of benefit to the Project. NCPA shall present each proposed Capital Improvement, and its budget, to the Participant Committee as early as NCPA deems practical. NCPA shall make a recommendation as to whether each Capital Improvement should be a Financed Capital Improvement or a Non-Financed Capital Improvement. Not less than 60 days prior to the beginning of each Fiscal Year, NCPA shall prepare and submit to the Participant Committee a budget (the "Capital Budget") for all Capital Improvements to be funded. Each Capital Budget shall include the estimate of all Costs of Construction during the next succeeding three years. The Capital Budget shall show the sources of funding, including Bonds, expected to be available for the Costs of Construction of each Capital Improvement and the estimate of funds to be collected from the Participants as Contributions in Aid of Construction for Non-Financed Capital Improvements as a part of Total Monthly Power Costs during each of the succeeding three Fiscal Years. Subject to the provisions of Section 8.10, each Capital Improvement, other than a Capital Improvement related to Required Costs, and each Capital Budget except for Required Costs, shall be subject to Participant Committee Approval.

7.4 Reports. NCPA shall prepare and issue to the Participants the reports required by the PMOA at the times required by the PMOA.

- 7.5 Records and Accounts. NCPA shall keep, or cause to be kept, accurate records and accounts of each of the facilities comprising the Project, as well as the financial transactions relating to the Project and of the operations of the Project, all as provided in this Agreement, the PMOA and each Indenture. NCPA shall establish and maintain such funds, accounts and subaccounts as are required by this Agreement and the Indentures and in addition as NCPA may find necessary or convenient in connection with the Project.
- 7.6 Periodic Audits. All transactions of NCPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit. NCPA shall select certified accountants experienced in electric utility accounting, and arrange for annual audits of the books and accounting records with respect to the Project and its operations, and any cost reimbursable consultant or cost reimbursable contractor or other professional relevant to the construction or operation of the Project. Such audit may be a separate audit or included as part of NCPA's general annual audit. Such audit shall be completed and submitted to NCPA as soon as reasonably practicable after the close of the Fiscal Year. NCPA shall promptly furnish to Participants copies of all applicable audits. No more frequently than once every calendar year, a Participant may, at its sole cost and expense, audit or cause to be audited the Project related books and cost records and any cost reimbursable Consultant or cost reimbursable contractor or other professional relevant to the construction, management or operation of the Project. Each such audit shall be conducted at a mutually agreed upon time and place. NCPA shall cooperate fully in any such audit.
- 7.7 Provide Participant Information. Each participant agrees to supply NCPA, upon request, with such information and documentation with respect to the Project, and its operations and finances, as NCPA shall reasonably determine to be necessary or desirable for the design, development, financing, refinancing, construction, improvement, operation, maintenance and decommissioning of the Project and to allow NCPA to respond to requests for information with respect from any federal, state or local regulatory or other authority with respect to the Project or such Participant's participation therein.
- 7.8 Provide NCPA Information. NCPA agrees to supply each Participant, upon request, with such information and documentation with respect to the Project, and its operations and finances, as such Participant shall reasonably determine to be necessary or desirable for the design, development, financing, refinancing, construction, improvement, operation, maintenance and decommissioning of the Project and to allow such Participant to respond to requests for information with respect from any federal, state or local regulatory or other authority with respect to the Project or NCPA's ownership or operation thereof.
- 7.9 Consultants and Advisors Available. NCPA shall make available to the Participant Committee, upon its request, all Project related consultants and advisors, including financial advisors and bond counsel, that are retained by NCPA, and such consultants and advisors shall be authorized to consult with and advise the Participant Committee on Project matters. All reports prepared by such consultants and advisors with respect to the Project shall be provided to the Participant Committee; provided, however, that such reports need not be provided to the Participant Committee, if, as set forth in an opinion of counsel to NCPA and filed with the Participant Committee, such report is subject to attorney-client privilege or attorney work product privilege and the provision of such report to the Participant Committee would adversely affect such privilege; provided, however, that under such circumstances the Parties shall cooperate in developing

nondisclosure agreements, joint defense agreements, or other mechanisms in order to afford the Participant Committee the opportunity to view such privileged documents with appropriate protections; provided that no such nondisclosure agreements, joint defense agreements, or other mechanism shall result in a waiver of the attorney-client privilege.

- 7.10 Deposit of Insurance Proceeds. NCPA, in consultation with the Participant Committee, shall promptly deposit the amount of any insurance proceeds received by NCPA as a result of damage or destruction to all or any portion of the Project into appropriate Project accounts, as shall be determined by NCPA in accordance with the applicable terms of each Indenture.

8. PARTICIPANT COMMITTEE.

- 8.1 Establishment of Participant Committee. Subject to the provisions of Section 8.11, the Participant Committee is established by this Agreement in order to provide for effective cooperation and interchange of information, and to provide coordination on a prompt and orderly basis, among the Participants and NCPA in connection with the various management, financial, administrative, operational and technical matters which may arise from time to time in connection with developing, financing, constructing, improving, maintaining, operating and decommissioning the Project. Except with respect to matters relating to an Indenture or Bonds, or as otherwise provided by this Agreement, NCPA shall comply with all lawful directions of the Participant Committee with respect to the Project which have received Participant Committee Approval, while not stayed or nullified, to the fullest extent authorized by law and to the extent such directions are not inconsistent with, and do not impair NCPA's ability to perform its obligations under any applicable Indenture. With respect to matters relating to an Indenture or Bonds for an Indenture Group, NCPA shall comply with all lawful directions of the applicable Indenture Group Participants which have received Indenture Group Approval from the applicable Indenture Group, while not stayed or nullified, to the fullest extent authorized by law and to the extent such directions are consistent with and do not impair NCPA's ability to perform its obligations under any applicable Indenture.

8.2 Participant Committee Operations.

- 8.2.1 The Participant Committee shall consist of one representative from each Participant which is not a Defaulting Participant. Each representative shall be entitled to cast one vote in matters as to which a majority of Participants is used to determine approval by the Participant Committee and a vote (expressed as a percentage) equal to the GES of the Participant it represents in matters as to which a percentage of GES is used to determine approval by the Participant Committee. NCPA shall be entitled to one non-voting representative on the Participant Committee and each subcommittee thereof. NCPA and each Participant shall, within **30** days after the Effective Date, give notice to NCPA and each other Participant of its representative on the Participant Committee. The Participant Committee shall conduct its first meeting within 45 days of the Effective Date.

- 8.2.2 Alternate representatives may be appointed for a Participant by similar notice to act on the Participant Committee, or on any subcommittee established by the Participant Committee, in the absence of the regular representative or to act on specified occasions with respect to specified matters. Each Participant shall give

notice to NCPA and each other participant of its alternate representative on the Participant Committee. An alternate representative may attend all meetings of the Participant Committee but may vote only if the representative for whom she/he serves as alternate is absent and only one alternate representative of a Participant may vote on any single motion or resolution. Each Participant shall promptly give notice to the other Participants and NCPA of any changes in the designation of its representative(s) and/or alternate representative(s) on the Participant Committee or any subcommittee thereof, and NCPA shall promptly give notice to the Participants of any changes in the designation of NCPA's representative on the Participant Committee or any subcommittee thereof.

8.2.3 The Chairperson of the Participant Committee shall be designated by nomination and vote of the Participant Committee. The Chairperson does not have a vote by virtue of his/her office, but may vote as a representative or alternate representative of one or more Participant(s) as provided above. The Chairperson of the Participant Committee shall be responsible for calling and presiding over meetings of the Participant Committee. The Chairperson shall promptly call a meeting of the Participant Committee in any manner permitted by law at the request of representatives of any two or more Participants. Participant Committee meetings may be conducted and actions of the Participant Committee may be taken by vote given in an assembled meeting or by telephone, video conferencing, telegraph, letter, e-mail or by any combination thereof, to the extent permitted by law.

8.2.4 A quorum for the Participant Committee taking any action shall consist of either: (i) the representatives of a majority of the Non-Defaulting Participants; or (ii) the representatives of Non-Defaulting Participants holding a GES of not less than a majority of the aggregate GES of all Non-Defaulting Participants.

8.3 Participant Committee Approval.

8.3.1 The approval, disapproval or authorization by the Participant Committee of any action, transaction, program or procedure relating to the Project having an aggregate cost impact on the Participants of less than the Threshold Amount shall be given by the vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect of a majority of the quorum of the meeting; provided, however, that if the representative of any Non-Defaulting Participant requests, at any time prior to, at or within 10 days after the Participant Committee meeting that such action, transaction, program or procedure be approved, disapproved or authorized, that such action, transaction, program or procedure be approved by a GES vote, then the approval, disapproval or authorization of such action, transaction, program or procedure by the Participant Committee shall be given by the vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect by the representatives of Non-Defaulting Participants then holding a GES of not less than 65% of the GES of all then Non-Defaulting Participants; and provided further that such 65% shall be reduced by the amount that the GES of each Participant having a GES in excess of 34% exceeds 34% but in no event shall such 65% be reduced below 50.10%.

8.3.2 The approval, disapproval or authorization by the Participant Committee of any action, transaction, program or procedure relating to the Project having an aggregate cost impact on the Participants at or above the Threshold Amount shall be given by the vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect of a majority of the quorum of the meeting; provided, however, that if the representative of any Non-Defaulting Participant requests, at any time prior to, at or within 10 days after the Participant Committee meeting that such action, transaction, program or procedure was approved, disapproved or authorized, that such action, transaction, program or procedure be approved by a GES vote, then the approval, disapproval or authorization of such action, transaction, program or procedure by the Participant Committee shall be given by the vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect by the representatives of Non-Defaulting Participants then holding a GES of not less than 75% of the GES of all then Non-Defaulting Participants; and provided further that such 75% shall be reduced by the amount that the GES of each Participant having a GES in excess of 24% exceeds 24% but in no event shall such 75% be reduced below 50.10%.

8.3.3 Approval or authorization by the Participant Committee in accordance with this Section 8.3 shall constitute "Participant Committee Approval" of an action, transaction, program or procedure. Disapproval by the Participant Committee in accordance with this Section 8.3 shall establish that an action, transaction, program or procedure has failed to receive "Participant Committee Approval." A Participant Committee Approval shall be evidenced by a copy of the resolution, motion or minute order approving, disapproving or authorizing the action, transaction, program or procedure certified by the secretary or an assistant secretary of the Participant Committee or a copy of the minutes of the Participant Committee meeting, or an extract thereof, with respect to the resolution, motion or minute order or other act approving, disapproving or authorizing the action, transaction, program or procedure certified by the Secretary or an assistant Secretary of the Participant Committee.

8.4 Indenture Group Approval.

8.4.1 The approval or authorization of any action, transaction, program or procedure relating to Bonds or an Indenture by the Indenture Group A Participants shall be given at a meeting of the representatives to the Participant Committee of the Indenture Group A Participants. A quorum for the Indenture Group A representatives to the Participant Committee taking any action shall consist of either: (i) the representatives of a majority of the Non-Defaulting Indenture Group A Participants; or (ii) the representatives of Non-Defaulting Indenture Group A Participants holding a GES of not less than a majority of the aggregate GES of all Non-Defaulting Indenture Group A Participants. One of the representatives to the Participant Committee of the Indenture Group A Participants shall be appointed Secretary for the meeting and shall prepare written minutes of the meeting. The approval or authorization of any action, transaction, program or procedure relating to Bonds or an Indenture by the Indenture Group A Participants shall be given by the approving vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect of a majority of the quorum of the meeting; provided,

however, that if the representative of any Non-Defaulting Indenture Group A Participant requests, at any time prior to, at or within **10** days after the Indenture Group A Participant Committee representatives meeting, that such action, transaction, program or procedure be approved by a GES vote, then the approval or authorization of such action, transaction, program or procedure by the Indenture Group A Participant Committee representatives shall be given by the approving vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect by the representatives of Non-Defaulting Indenture Group A Participants then holding a GES of not less than **65%** of the GES of all then Non-Defaulting Indenture Group A Participants; except that, for the purposes of this Section **8.4.1** only, the GES of any Non-Defaulting Indenture Group A Participant in excess of **35%** shall be reduced to **35%** so the representative of a single Non-Defaulting Indenture Group A Participant shall not be able to prevent the approval or authorization of any action, transaction, program or procedure by the Indenture Group A Participant Committee representatives pursuant to this Section **8.4.1**.

8.4.2 Approval by the Indenture Group A Participants in accordance with this Section **8.4** shall constitute “Indenture Group Approval” of such action, transaction, program or procedure by the Indenture Group A Participants. An Indenture Group Approval by the Indenture Group A Participants shall be evidenced by a copy of the resolution, motion or minute order approving the action, transaction, program or procedure certified by the Secretary of the meeting at which such action was taken or a copy of the minutes of the Indenture Group A Participants’ meeting, or an extract thereof, with respect to the resolution, motion or minute order or other act approving the action, transaction, program or procedure certified by the Secretary of the meeting at which such action was taken.

8.5 Participant Committee Responsibilities. Subject to the limitations on Participant Committee actions and approvals contained in this Agreement, the Participant Committee shall have the following responsibilities:

8.5.1 Elect a Chairperson, Vice Chairperson, Secretary and such other Participant Committee positions as deemed necessary and prudent, to conduct the business of the Participant Committee pursuant to this Agreement.

8.5.2 Establish a schedule of Participant Committee meetings, which shall be held at least four (**4**) times each year, and the permitted locations for such meetings.

8.5.3 Exercise general supervision over the subcommittees established by the Participant Committee.

8.5.4 Perform such other functions and duties as may be provided for under the PMOA or as may otherwise be appropriate or beneficial to the Project and not in conflict with this Agreement or any Indenture.

8.6 Subcommittees. The Participant Committee may establish, as needed, subcommittees including, but not limited to, fuel, auditing, legal, contracts, financial, engineering, operating, insurance, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the Participant Committee; provided, however, such authority, membership or duties shall

not conflict with the provisions of this Agreement or any Indenture or any other Project-related agreements. Each such subcommittee shall take direction from and be responsible to the Participant Committee.

- 8.7** Written Record. All actions, resolutions, determinations and reports made by the Participant Committee and each subcommittee thereof shall be set forth in a written record and/or meeting minutes by a person or persons designated by the Participant Committee to keep such written record.
- 8.8** Costs of Consultants. The Participant Committee shall not employ consultants or others in connection with the activities of the Participant Committee but the Participant Committee may direct NCPA to employ consultants and others in connection with such activities and the costs thereof shall be included in the Project Costs of Construction or Total Monthly Power Costs, as appropriate.
- 8.9** Representative's Expenses. **Any** expenses incurred by any representative or alternate representative of any Participant or group of Participants serving on the Participant Committee, any subcommittee thereof or any other Project committee or subcommittee in connection with his/her duties on such committee or subcommittee shall be paid by the Participant or Participants which he/she represents and shall not be payable under this Agreement unless the Participant Committee has taken appropriate action to authorize payment for such expenses to a representative or alternative representative for the performance of a Project related activity.
- 8.10** Inaction by Participant Committee. If the Participant Committee is unable or fails to act with respect to any matter which it is authorized to determine, resolve, approve, disapprove or otherwise act upon within seven days of the initial Participant Committee meeting wherein such matter was discussed and an opportunity to act was presented, or within any shorter time limits specified in this Agreement or the PMOA, then (i) if urgent action is required in the judgment of NCPA, (ii) the Participant Committee has not disapproved such action and (iii) the action is in furtherance of the purposes of this Agreement, NCPA is authorized to take such action, in a manner consistent with Prudent Utility Practice, as NCPA in its sole discretion deems necessary for its timely performance under this Agreement or the PMOA pending the resolution of any such inability or failure of the Participant Committee to act.
- 8.11** Compliance With Indentures. It is recognized by NCPA and Participants that the planning, financing, constructing, managing, operating and maintaining of the Project must comply in all respects with requirements of all applicable Indentures, and all licenses, permits and regulatory provisions necessary for such planning, financing, constructing, operating managing and maintaining, and it is therefore agreed that, notwithstanding any other provision of this Agreement, no action by the Participant Committee shall require NCPA to act in any manner inconsistent with any such requirements, or to refrain from acting as thereby required, and if the Participant Committee or NCPA shall fail to make recommendations or act with respect to any matter in connection with an action that is required to be taken pursuant to any of the foregoing, NCPA shall take such action(s), consistent with Prudent Utility Practice, as it deems appropriate to assure compliance with the foregoing.

9. CHARACTER AND CONTINUITY OF SERVICE.

- 9.1 Curtailment of Deliveries. NCPA may temporarily interrupt operation of the Project and/or curtail deliveries of Capacity and Energy to Participants (in proportion to the GES of each Participant to the GES of all Participants) if NCPA determines that such interruption or curtailment is necessary in case of emergencies or in order to install equipment in or make repairs to or replacements, investigations or inspections of Project facilities or to perform other maintenance work on Project facilities; provided, however, that NCPA shall use reasonable efforts to keep such interruptions or curtailment to a reasonable time and schedule such interruption or curtailment as provided in the PMOA. No such interruption or curtailment shall relieve any Participant of its obligations to make payments under this Agreement.
- 9.2 Uncontrollable Forces. NCPA shall not be required to provide, nor shall NCPA be liable for failure to provide, Capacity or Energy under this Agreement to the extent such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces; provided, however, that no Participant shall be thereby relieved of its obligations to make payments under this Agreement.

10. PROJECT CAPACITY AND ENERGY AVAILABILITY

- 10.1 Availability of Project. NCPA shall make available or cause to be made available, and each Participant shall be entitled to receive, such Participant's GES of the Capacity of the Project and the Energy associated with such Capacity, in each case on the terms and conditions of this Agreement. Subject to the terms and conditions of this Agreement, and the lawful direction of the Participant Committee pursuant to this Agreement, NCPA shall operate the Project, or cause the Project to be operated, in a manner consistent with the purposes of this Agreement and in conformity with the principles contained in the PMOA, as the same may be amended and supplemented from time to time.
- 10.2 Availability of Services. NCPA will remain available to do all things necessary and practical to deliver or cause to be delivered to or for each Participant, such Participant's GES of the Capacity and Energy of the Project. Such delivery of Project Energy will be at the Point of Delivery. Wheeling or delivery services provided by NCPA to deliver Project Energy to Participants to any location other than the Point of Delivery shall be at the requesting Participant's sole expense and as provided in service schedules and/or protocols developed pursuant to the PMOA and approved by NCPA and the applicable Participant.
11. **FUEL PROCUREMENT.** NCPA shall procure, schedule and balance, or shall cause the procurement, scheduling, and balancing of, fuel supplies to operate the Project in a manner consistent with the purposes of this Agreement and in conformity with the principles contained in the PMOA, as the same may be amended and supplemented from time to time.
12. **METERING.** NCPA, pursuant to the PMOA, shall provide for installation, maintenance and calibration of meters and shall provide, or cause to be provided, all necessary metering equipment for determining the quantity of Project Energy delivered; provided, however, that any Participant may, by arrangement with NCPA and at its own expense, check existing metering or metering records and/or, with the approval of the Participant Committee, install additional metering equipment.
13. **RESTRICTIONS ON DISPOSITION.**

- 13.1 Sales of Capacity and Energy by Participants. Subject to the restrictions contained in Section 13 and the rights of NCPA under Section 22, each Participant may sell or otherwise dispose of the Capacity and/or Energy associated with such Participant's GES; provided that before making any such sale or other disposition for a period exceeding 12 months, each Participant shall offer such Capacity and/or Energy to the Non-Defaulting Participants (on the same terms and conditions it offers such Capacity and/or Energy to others) in the priority set forth in Section 22.2.5 in the case of a sale or other disposition by an Indenture Group A Participant and in the priority set forth in Section 22.2.6 in the case of a sale or other disposition by the Indenture Group B Participant or the Indenture Group C Participant, in each case as if NCPA were offering Capacity and Energy in a Default Mitigation Sale.
- 13.2 Limitations Concerning Private Use; Transfer of Capacity and Energy. Each Participant within an Indenture Group recognizes that Bonds issued with respect to such Indenture Group may be Taxable Bonds, Taxable Subsidy Bonds, or Tax-Exempt Bonds and that any Taxable Subsidy Bonds and or Tax-Exempt Bonds shall be subject to the respective provisions of federal income tax law that limit, among other things, the arrangements permitted with respect to sale, assignment, delegation or other disposition of GES, Capacity and/or Energy. To the extent that a Participant's GES has been financed with the proceeds of Taxable Subsidy Bonds and/or Tax-Exempt Bonds, such Participant shall comply with the tax covenants contained in the respective Indentures relating to such Bonds including the private use permitted under such covenants. Except as provided in Section 22, no sale, assignment, delegation or other disposition of all or any portion of any Participant's Project rights and obligations hereunder, including Capacity and/or Energy, that have been financed with the proceeds of Taxable Subsidy Bonds and/or Tax-Exempt Bonds, shall be effective until (i) such Participant shall have given prior written notice thereof to NCPA; and (ii) NCPA's bond counsel shall have rendered an opinion to the effect that (A) such sale, assignment, delegation or other disposition will not adversely affect the Tax Status of any such Taxable Subsidy Bond or Tax-Exempt Bond, including as a result of any remedial action taken or to be taken in connection with such sale, assignment, delegation or other disposition; and (B) such sale, assignment, delegation or other disposition is within any private use restriction or other limitation on such sale, assignment, delegation or other disposition with respect to such Participant's GES of Project Capacity and/or Energy (and not the Project as a whole) in connection with such Taxable Subsidy Bonds and/or Tax-Exempt Bonds. Notwithstanding the immediately preceding sentence, each Participant may (without giving such notice or obtaining such opinion) contract to provide Energy and/or Capacity to which it is entitled hereunder in a transaction which complies with tax-related guidelines established by NCPA and approved by NCPA's bond counsel from time to time pursuant to this Section 13.2.
- 13.3 Participant Liability as Result of Loss of Tax Status of Bonds. If a Participant's Project GES has been financed with the proceeds of Taxable Subsidy Bonds and/or Tax-Exempt Bonds, and such Participant's action (or inaction) (i) adversely affects the Tax Status of any such Taxable Subsidy Bond or Tax-Exempt Bond or (ii) requires any action or payments by NCPA or any other Participant concerning such Tax Status, then such Participant shall be responsible for all costs related to its action (or inaction) and any related actions or payments by NCPA or any other Participant (including, without limitation, payments to Bondholders, payments to the Internal Revenue Service, costs incident thereto, audit expenses, and related attorney and consultants' fees).

- 13.4 Restrictions on Elimination of Payment Obligations. So long as any obligations remain Outstanding under an Indenture, no sale, assignment or other disposition of a Participant's GES shall release such Participant from its obligations under this Agreement except to the extent of moneys received by NCPA as a result of such sale, assignment or other disposition of GES, less NCPA's related costs and expenses; provided however, that such obligations may be eliminated or reduced if no obligations remain Outstanding under an Indenture and the Participant Committee and NCPA's Commission determine to eliminate or reduce such obligations, which determination shall not be unreasonably withheld.
- 13.5 Restrictions on Disposition of Participant's Entire System. A Participant shall not sell, lease or otherwise dispose of all or substantially all of its Enterprise except on 90 days prior written notice to the other Parties and, in any event, shall not so sell, lease or otherwise dispose of the same unless the following conditions shall be met: (i) such Participant shall assign its GES to such purchaser, lessee or disposee of said Enterprise, and such purchaser, lessee or disposee shall assume and agree to fully perform and discharge all the Participant's obligations hereunder; (ii) such sale, lease or other disposition shall not, in and of itself, cause the rating of any affected Bonds for the Indenture Group of which such Participant is a member to be downgraded, suspended or withdrawn (which fact shall be evidenced by letters of the rating agencies then rating such Bonds); (iii) NCPA shall determine (which determination shall not be unreasonably withheld) that such sale, lease or other disposition will not materially adversely affect the value of this Agreement as security for the payment of any applicable Indenture Cost Component; and (iv) unless waived by NCPA after consultation with its bond counsel, NCPA's bond counsel shall render an opinion to the effect that such sale, lease or other disposition of the Participant's GES financed with the proceeds of Taxable Subsidy Bonds and/or Tax-Exempt Bonds will not adversely affect the Tax Status of such Taxable Subsidy Bonds and/or Tax-Exempt Bonds, including as a result of any remedial action taken or to be taken in connection with such sale, lease or other disposition. NCPA, such Participant and such Participant's purchaser, lessee or disposee shall execute a supplement to this Agreement and any other necessary Project-related documents, as determined by NCPA in consultation with its general counsel and bond counsel, to reflect the transfer of the Participant's GES. All costs related to such sale, lease or disposition shall be paid by the Participant requesting such action.

14. COST OF CONSTRUCTION OF INITIAL FACILITIES.

- 14.1 Allocation of Costs of Construction. Each Participant's share of the Costs of Construction of the Initial Facilities shall be equal to such Participant's GES of such Costs of Construction. The Participants in each Indenture Group shall satisfy their respective obligations with respect to the Costs of Construction of the Initial Facilities either by authorizing NCPA to issue Bonds to provide funds for such share or by delivering to NCPA Capital Contributions as provided in Section 14.6.
- 14.2 Additional Costs. NCPA shall propose and submit to the Participant Committee its estimate of any Additional Costs for the Initial Facilities as soon as practical. The Additional Costs of the Initial Facilities, other than Required Costs, are subject to Participant Committee Approval. Within 30 days of the Participant Committee Approval of such estimate of Additional Cost of the Initial Facilities, or the submission to the Participant Committee in the case of Required Costs, NCPA shall provide the Indenture Group B Participant and the Indenture Group C Participant with a Funding Notice stating

the amount needed for such Participant's share of such Additional Cost, the date or dates when such amounts are due and the date that Participant must provide NCPA a request to issue Bonds to provide funds for such Participant's share of such Additional Costs.

- 14.3 Indenture Group A. NCPA shall issue Bonds to finance the Indenture Group A Participants' share of the Costs of Construction of the Initial Facilities. Such Bonds shall provide the funds necessary for the Indenture Group A Participants' share of the Costs of Construction of the Initial Facilities and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds.
- 14.4 Indenture Group B. NCPA shall issue Bonds to finance the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of the Initial Facilities. Such Bonds shall provide the funds necessary for the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of the Initial Facilities and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds. If there are Additional Costs for the Initial Facilities, at the request of the Indenture Group B Participant, NCPA shall issue Bonds to finance the Indenture Group B Participant's share of such Additional Costs, all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group B Participant does not submit written request to NCPA to issue Bonds for such Participant's share of such Additional Costs, Financing Costs and Indenture Deposits, the Indenture Group B Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Additional Costs on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date specified in the Funding Notice.
- 14.5 Indenture Group C. The Indenture Group C Participant hereby delivers its Capital Contribution Notice with respect to the Initial Estimate of the Costs of Construction of the Initial Facilities. If there are Additional Costs for the Initial Facilities, at the request of the Indenture Group C Participant, NCPA shall issue Bonds to finance the Indenture Group C Participant's share of such Additional Costs, all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group C Participant does not submit written request to NCPA to issue Bonds for such Participant's share of such Additional Costs, Financing Costs and Indenture Deposits, the Indenture Group C Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Additional Costs on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date specified in the Funding Notice.
- 14.6 Capital Contribution Notice. At any time prior to the date for the delivery of a request to NCPA to issue Bonds set forth in a Funding Notice for any Additional Costs of the Initial Facilities the Indenture Group B Participant and/or the Indenture Group C participant may deliver a Capital Contribution Notice with respect to such Costs of Construction.
- 14.7 Capital Contributions. The Capital Contribution related to each Capital Contribution Notice shall be either: (i) paid to NCPA by the first date set forth in the applicable Funding Notice; or (ii) deposited with a trustee reasonably acceptable to NCPA by the first date set forth in the applicable Funding Notice on terms which permit the release of funds to NCPA upon the trustee's receipt of a requisition signed by NCPA setting forth

the Costs of Construction to be paid with such withdrawal and certifying that the amount of such withdrawal is to be applied within 30 days of such withdrawal to the payment of the Costs of Construction described in the requisition and that the amount of such withdrawal does not exceed the GES of the Indenture Group B Participant or the Indenture Group C Participant, as applicable, with respect to the Costs of Construction described in the requisition. Amounts held by a trustee to make Capital Contributions shall not be available for any purpose other than making the Capital Contributions required by the applicable Funding Notice unless and until NCPA submits a certificate to the applicable trustee to the effect that the amounts so held by such trustee are no longer required to pay the Costs of Construction for which such deposit was made because all Costs of Construction of the applicable Initial Facilities or Financed Capital Improvement have been paid or the construction of such Initial Facilities or Financed Capital Improvement have been terminated.

15. COST OF CONSTRUCTION OF NON-FINANCED CAPITAL IMPROVEMENTS.

- 15.1 Allocation of Costs of Construction. Each Participant's share of the Costs of Construction of the Non-Financed Capital Improvements shall be equal to such Participant's GES of such Costs of Construction. Each Participant shall satisfy its respective obligations with respect to the Costs of Construction of all Non-Financed Capital Improvements by making Contributions in Aid of Construction included in such Participant's Billing Statements.
- 15.2 Contributions in Aid of Construction. The Contributions in Aid of Construction for a Non-Financed Capital Improvement shall be net of all earnings on the investment of the unspent Contributions in Aid of Construction held by NCPA or by a Trustee on behalf of NCPA and all receipts, revenues and other moneys received by NCPA from the sale of surplus equipment, materials and supplies associated with such Non-Financed Capital Improvement.

16. COST OF CONSTRUCTION OF FINANCED CAPITAL IMPROVEMENTS.

- 16.1 Allocation of Costs of Construction. Each Participant's share of the Costs of Construction of each Financed Capital Improvement shall be equal to such Participant's GES. The Participant(s) in each Indenture Group shall satisfy their respective obligations with respect to the Costs of Construction of a Financed Capital Improvement either by having NCPA issue Bonds to provide funds for such share or by delivering to NCPA Capital Contributions as provided in Section 16.
- 16.2 Costs of Construction. NCPA shall propose and submit to the Participant Committee its estimate of the Costs of Construction of each Financed Capital Improvement and its estimate of any Additional Costs for such Financed Capital Improvement as soon as practicable. The Costs of Construction of each Financed Capital Improvement, other than Required Costs, are subject to Participant Committee Approval. Within 30 days of the Participant Committee approval of such estimates, or the submission to the Participant Committee in the case of Required Costs, NCPA shall provide each Participant in Indenture Group B and Indenture Group C with a Funding Notice stating the amount needed for such Participant's share of such Costs of Construction, the date or dates on which that amount is due and the date by which the Participant must provide NCPA a request for NCPA to issue Bonds for such Participant's share of such Costs of Construction.

- 16.3 Indenture Group A. NCPA shall issue Bonds to finance the Indenture Group A Participants' shares of the Costs of Construction of all Financed Capital Improvements. Such Bonds shall provide the funds necessary for the Indenture Group A Participants' share of the Costs of Construction of such Financed Capital Improvements and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds.
- 16.4 Indenture Group B. NCPA shall issue Bonds to finance the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of each Financed Capital Improvement, at the request of the Indenture Group B Participant; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group B Participant does not submit written request to NCPA to issue Bonds for such Participant's share of the Initial Estimate of the Costs of Construction of the Financed Capital Improvement, the Indenture Group B Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Costs of Construction on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date or dates specified in the Funding Notice. Such Bonds shall provide the funds necessary for the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of the Financed Capital Improvement and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds. If there are Additional Costs for the Financed Capital Improvement, at the request of the Indenture Group B Participant, NCPA shall issue Bonds to finance the Indenture Group B Participant's share of such Additional Costs, all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group B Participant does not submit written request to NCPA to issue Bonds for such participant's share of such Additional Costs, Financing Costs and Indenture Deposits, the Indenture Group B Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Additional Costs on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date or dates specified in the Funding Notice.
- 16.5 Indenture Group C. NCPA shall issue Bonds to finance the Indenture Group C Participant's share of the Initial Estimate of the Costs of Construction of each Financed Capital Improvement at the request of the Indenture Group C Participant; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group C Participant does not submit written request to NCPA to issue Bonds for such Participant's share of the Initial Estimate of the Costs of Construction of the Financed Capital Improvement, the Indenture Group C Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Costs of Construction on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date or dates specified in the Funding Notice. Such Bonds shall provide the funds necessary for the Indenture Group C Participant's share of the Initial Estimate of the Costs of Construction of the Financed Capital Improvement and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds. If there are Additional Costs for the Financed Capital Improvement, at the request of the Indenture Group C Participant, NCPA shall issue Bonds to finance the Indenture Group C Participant's share of such Additional Costs, all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group C Participant does not submit written request to NCPA to issue Bonds for such Participant's share of

such Additional Costs, Financing Costs and Indenture Deposits, the Indenture Group C Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Additional Costs on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date or dates specified in the Funding Notice.

- 16.6 Capital Contribution Notice. At any time prior to the date for the delivery of a request to NCPA to issue Bonds set forth in a Funding Notice for the Initial Estimate of the Costs of Construction of a Financed Capital Improvement or any Additional Costs of a Financed Capital Improvement, including all related Financing Costs and Indenture Deposits, the Indenture Group B Participant and/or the Indenture Group C Participant may deliver a Capital Contribution Notice with respect to such Costs of Construction. All Capital Contributions in connection with a Financed Capital Improvement shall be held and applied as provided in Section 14.7.

17. CHARGES AND BILLINGS.

- 17.1 Total Monthly Power Costs. In the month preceding the first month when any of the Total Monthly Power Costs are not to be paid from other available funds, NCPA shall prepare and send to the Participants a Billing Statement, as provided in Section 17.3, identifying the Total Monthly Power Costs to be paid by each Participant. Such Billing Statement shall separately identify each component of the Total Monthly Power Costs as set forth in this Section 17.1. Such Billing Statement shall be due and payable as provided in Section 17.3.

All of NCPA's Project related costs for any month resulting from the development, construction, financing, ownership, management, operation and maintenance of the Project and renewals and replacements to the Project, including all Capital Improvements, to the extent not paid from the proceeds of Bonds, Contributions in Aid of Construction or Capital Contributions, shall constitute "Total Monthly Power Costs" for such month. NCPA shall apply, as a credit against the Operating Cost Component of Total Monthly Power Costs, all receipts, revenues and other moneys relating to the Project received by NCPA from the sale of surplus equipment, materials, supplies or other such sources not otherwise applied as a credit against the Costs of Construction. Total Monthly Power Costs shall consist of (i) an Operating Cost Component (described in Section 17.1.1); (ii) a Fuel Cost Component (described in Section 17.1.2); (iii) an Indenture Cost Component (described in Section 17.1.3); (iv) a Non-Financed Capital Improvement Cost Component, if applicable (described in Section 17.1.4); and (v) an OandM Step-Up Cost Component, if applicable (described in Section 17.1.5); all of which shall include, but not be limited to, the items of cost and expense referred to in this Section 17.1 that are accrued or paid by NCPA during each Month of each Fiscal Year.

In the event any Fiscal Year shall consist of fewer than twelve months, the fraction set forth in this Section 17.1 shall be adjusted accordingly and, in the event of any revision of the Project Annual Budget after the commencement of any Fiscal Year, the amounts determined pursuant to this Section 17.1 shall be appropriately adjusted so that any increase or decrease in the portion of the Project Annual Budget applicable to the relevant component of the Total Monthly Power Cost shall be evenly apportioned over the remaining months of such Fiscal Year; provided that the Fuel Cost Component may be revised to reflect the billing procedures adopted pursuant to Section 17.1.2.2.

17.1.1 Operating Cost Component. The Operating Cost Component of the Total Monthly Power Costs for each month applies to all Participants based upon their respective GES. The Operating Cost Component for a month shall consist of the sum of: (i) one-twelfth of the Operation and Maintenance Expenses, other than Fuel Costs, for the Fiscal Year included in the then current Project Annual Budget and not otherwise included under Section 17.6 or Section 17.9; plus (ii) one-twelfth of the Operating Reserve Requirement; provided that the Operating Cost Component shall not include any amount with respect to the Operating Reserve Requirement to the extent there is on deposit in the Operating Reserve Fund an amount equal to the Operating Reserve Requirement, and provided further, that the Operating Cost Component for a month shall not be less than the amount required to pay (a) the accrued and unpaid Operation and Maintenance Expenses, other than Fuel Costs, for which funds are not available in the Operating Fund and (b) the expected Operation and Maintenance Expenses for the next succeeding month.

17.1.2 Fuel Cost Component.

17.1.2.1 Except as provided in Section 17.1.2.2, the Fuel Cost Component of Total Monthly Power Costs for a month applies to all Participants based upon their respective GES. The Fuel Cost Component shall consist of the Fuel Cost included in the then current Project Annual Budget for the next succeeding month and not otherwise included under Section 17.6 or Section 17.9.

17.1.2.2 Notwithstanding the billing procedures set forth in Section 17.1.2.1 and subject to the requirements of Section 8.1.1 and the requirement that all Fuel Costs for each month be billed to the Participants, the Participant Committee may approve alternative billing procedures for billing Fuel Costs in the PMOA. The alternative billing procedures for Fuel Costs may include billing for Fuel Costs more frequently than monthly, billing Fuel Costs based on actual costs rather than budgeted costs, more frequent reconciliations than provided in Section 17.6 of actual Fuel Costs with billings of Fuel Costs based on estimates and provision for the delivery of fuel to the Project by a Participant. If such alternative basis for billing Fuel Costs is included in the PMOA, then the Fuel Cost Component shall be billed in accordance with such procedures.

17.1.3 Indenture Cost Component. The Indenture Cost Component of the Total Monthly Power Costs with respect to each Indenture Group for each month applies to all Participants in the Indenture Group based upon their respective ICS. The Indenture Cost Component of Total Monthly Power Costs for each month for each Indenture Group shall consist of the amounts payable by NCPA to the Trustee under each Indenture relating to such Indenture Group during the next succeeding month.

17.1.4 Non-Financed Capital Improvement Cost Component. The Non-Financed Capital Improvement Cost Component of the Total Monthly Power Costs for each month applies to all Participants based upon their respective GES. The Non-Financed Capital Cost Component of Total Monthly Power Costs for each

month in each Fiscal Year consists of one-twelfth of the Contributions in Aid of Construction provided in the Project Annual Budget for Non-Financed Capital Improvements for such Fiscal Year.

- 17.1.5 OandM Step-up Cost Component. The OandM Step-up Cost Component of the Total Monthly Power Costs for each month applies to all Non-Defaulting Participants based upon their respective OandM Step-up Share. The OandM Step-up Component of Total Monthly Power Costs for each month consists of the amount by which the actual transfers from the respective Revenue Accounts to the Operating Fund pursuant to Section 21.2 and to the Operating Reserve Fund pursuant to Section 21.3 in the preceding month were less than the amounts required to be transferred to such funds pursuant to such Sections.
- 17.2 Participant Monthly Power Costs. The amount of the Total Monthly Power Costs to be paid by each Participant for a particular month shall be the sum of the following:
- 17.2.1 Each Participant's GES multiplied by the Operating Cost Component of the Total Monthly Power Costs (as provided in Section 17.1.1) for such month.
- 17.2.2 Each Participant's GES multiplied by the Fuel Cost Component of the Total Monthly Power Costs for such month unless an alternate billing procedure is included in the PMOA as provided in Section 17.1.2.2, in which case each Participant shall be billed for Fuel Costs as provided in the PMOA (as provided in Section 17.1.2).
- 17.2.3 Each Participant's ICS multiplied by the Indenture Cost Component of the Total Monthly Power Cost for the Indenture Group of such Participant (as provided in Section 17.1.3) for such month.
- 17.2.4 Each Participant's GES multiplied by the Non-Financed Capital Cost Component of the Total Monthly Power Costs (as provided in Section 17.1.4) for such month.
- 17.2.5 Each Non-Defaulting Participant's OandM Step-up Share multiplied by the OandM Step-up Component of the Total Monthly Power Costs (as provided in Section 17.1.5) for such month.
- 17.3 Billing Statement. On or about the twenty-fifth (25th) day of each month, but not later than the last day of such month, during the term hereof, commencing the month preceding the first month when any of the Total Monthly Power Costs are not to be paid from other available funds, NCPA shall invoice each Participant for the amount of its Participant Monthly Power Costs by providing such Participant with a Billing Statement for such Participant Monthly Power Costs. Such Billing Statement shall detail the costs described in Sections 17.1 and 17.2 and shall set forth any adjustments as a result of correcting Billing Statements for prior months made in accordance with Sections 17.4, 17.5, 17.6 and 17.10. Subject to any credits available pursuant to Section 17.4, each Billing Statement shall be paid in full by the applicable Participant by the 30th day after the date of such Billing Statement. The Participant Committee may recommend the adoption of an alternative Billing Statement procedure in connection with Billing Statements. Any such recommended alternative Billing Statement implementation is subject to the approval of the NCPA Commission and shall satisfy the requirements of

each Indenture, shall be fiscally prudent and shall assure coverage of all anticipated and actual Project related costs and obligations of NCPA.

17.4 Disputed Billing Statement.

17.4.1 A Participant may dispute the accuracy of any data in any Billing Statement by delivering notice of such dispute to NCPA within 30 days of the delivery of such Billing Statement to the Participant. If no notice of dispute with respect to a Billing Statement is given within such 30 day period, such data shall be conclusively deemed correct. In case any portion of any Billing Statement received by a Participant shall be in dispute, such Participant shall nevertheless pay NCPA the full amount of such Billing Statement by the time required by this Agreement. NCPA will review the basis for a Participant's dispute of such data and will advise the Participant with regard to NCPA's position relative thereto within 30 days following receipt of written notification from the Participant of such dispute.

17.4.2 If NCPA agrees there is a mistake in a Billing Statement, the amount of the error will be debited or credited, as applicable, to a subsequent Billing Statement to such Participant as soon as reasonably practical.

17.4.3 If NCPA disagrees with the Participant that there is an error in the data in a Billing Statement, then NCPA shall meet with the Participant and explain the basis for the Billing Statement and attempt to resolve the matter. If NCPA and the Participant cannot reach an agreement on the matter within 180 days of NCPA's receiving the notice of the dispute, either Party may pursue any remedy available at law or in equity to enforce its rights hereunder; provided that the Participant shall not be relieved of any of its obligations hereunder, including its obligations to make all payments hereunder in full without any setoff or other reduction for any cause whatsoever.

17.4.4 Except as expressly provided with respect to a dispute as to the accuracy of the data in a Billing Statement, nothing in Section 17.4 shall be construed as waiving or limiting a Participant's rights under this Agreement, including without limitation a Participant's right to require Participant Committee Approval for any action requiring such approval hereunder.

17.5 Reconciliation of Total Monthly Power Costs. As soon as practicable after the end of each Fiscal Year, NCPA will submit to each Participant a detailed statement of the actual aggregate Participant Monthly Power Costs and other amounts payable hereunder, including credits thereto, for all of the months of such Fiscal Year, and the adjustments of the aggregate Participant Monthly Power Costs and other amounts payable hereunder, if any, for any prior Fiscal Year, based on the annual audit of accounts provided for in Section 7.6. The Participant Committee may request that NCPA perform a more frequent billing reconciliation pursuant to this Section 17.5, and NCPA shall make reasonable efforts to perform such reconciliations. If, on the basis of the statement submitted as provided in this Section 17.5, the actual aggregate Participant Monthly Power Costs and other amounts payable by a Participant for any Fiscal Year exceed the amount thereof which such Participant has been billed, such Participant shall pay NCPA such amount within 30 days of receipt of NCPA's invoice therefor. If, on the basis of the statement submitted pursuant to this Section 17.5, the actual aggregate Participant Monthly Power

Costs or other amounts payable by a Participant for any Fiscal Year are less than the amount billed to such participant, NCPA shall, unless otherwise directed by such Participant, credit such excess against such Participant's next monthly Billing Statement. In the event that the failure of any Participant in any Indenture Group to make its payments in accordance with this Agreement shall have resulted in the application of amounts in any reserve or working capital fund under an Indenture relating to such Indenture Group or under this Agreement, and other Participants shall have made up the deficiency created by such application or paid additional amounts as a result of a draw on such reserve or working capital fund, amounts thereafter paid to NCPA by such Participant for application to such past due payments including interest shall be credited on the next Billing Statements of those Participants which have made up such deficiency to the extent funds are available in the applicable account in the General Reserve Fund. The amount so credited shall be deposited in the applicable account in the Revenue Fund.

- 17.6 Reconciliation of Fuel Cost Billing. Except as another procedure is approved by the Participant Committee and included in the PMOA, as soon as practicable after the end of each month, NCPA shall compare the actual Fuel Costs payable during such month with the amount billed for the Fuel Cost Component with respect to such month. NCPA shall increase or decrease, as necessary, the respective Fuel Cost Component, or other component of the Total Monthly Power Costs if necessary, of each Participant's Billing Statement for the next month in which such adjustment can reasonably be made to reflect the difference between the amount billed for the Fuel Cost Component and the amount paid or payable for the Fuel Cost Component for the month under review.
- 17.7 Interest on Late Payments. If any Participant fails to fully pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, at a rate equal to the monthly equivalent of the Bank of America N.A. "prime" rate of interest then in effect plus two percent (2%) per annum on the unpaid amount of the bill, until such Billing Statement is paid in full. Payments by a Participant shall be credited first to accrued interest and then to any shortfall in the payments of the Billing Statement. If Bank of America N.A. ceases to publish such "prime" rate, the Participant Committee shall determine an alternative institution or comparable rate which shall be used to calculate interest on late payments.
- 17.8 Prepayment of Participant Monthly Power Costs. Any Participant may, at any time, deposit moneys with NCPA in addition to amounts then due and payable hereunder or, upon the prior approval of NCPA, utilize any credits due or amounts owed by NCPA to such Participant under any Project-related agreement or other arrangement resulting in a credit to such Participant for the purpose of prepaying all or any portion of such Participant's monthly Billing Statements. Such deposits and amounts received by NCPA resulting in a credit to a Participant shall be deposited into an account established by, or at the direction of, NCPA. Moneys in such account shall be invested consistent with NCPA's then current investment policy, and the resulting investment income shall be credited to such account on behalf of such Participant. Payment of the amount of any Billing Statement or other billings as provided for in this Agreement shall be made from moneys available in such account, or from available credits, to the extent set forth in written directions from such Participant to NCPA and received by NCPA at least seven days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce such Participant's obligations under this Agreement to make payments with respect to a GES Lay-Off or an OandM Step-up, if applicable.

17.9 Costs or Expenses Incurred for the Sole Benefit of Less than All Participants. Notwithstanding anything to the contrary in this Agreement, if a particular Project cost or expense is incurred by NCPA for the sole benefit of one or more Participants (but less than all Participants), unless otherwise approved by the Participant Committee, then such cost or expense shall be allocated only to such benefitting Participant or Participants, in which event only such benefitting Participant or Participants (and no other Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by NCPA for the sole benefit of one or more Participants (but less than all Participants) shall be payable from available amounts in the applicable account or accounts in the General Reserve Fund related to the benefitting Participant or Participants or shall be billed to such Participant or Participants separately from the Billing Statement to such Participant or Participants for Participant Monthly Power Costs. Subject to any credits available pursuant to Section 17.4, each bill submitted to a Participant pursuant to this Section 17.9 shall be paid in full by such Participant by the 30th day after the date of such bill.

17.10 Disputed ti t t

17.10.1A Participant may dispute the accuracy of any Reconciliation Statement by delivering notice of such dispute to NCPA within 75 days of the delivery to the Participant Committee of the results of NCPA's computations reflected in such Reconciliation Statement. If no notice of dispute with respect to a Reconciliation Statement is given within such 75 day period such data shall be conclusively deemed correct. In case any portion of any Reconciliation Statement received by a Participant shall be in dispute, such Participant shall nevertheless pay NCPA the full amount of each Billing Statement reflecting such Reconciliation Statement by the time required by this Agreement. NCPA will review the basis for a Participant's dispute of the data in a Reconciliation Statement and will advise the Participant with regard to NCPA's position relative thereto within 30 days following receipt of written notification by the Participant of such dispute.

17.10.2 If NCPA agrees there is a mistake in the data in a Reconciliation Statement, the amount of the error will be debited or credited, as applicable, to a subsequent Billing Statement to such Participant as soon as reasonably practical.

17.10.3 If NCPA disagrees with the Participant that there is an error in the data in a Reconciliation Statement, then NCPA shall meet with the Participant and explain the basis for the Reconciliation Statement and attempt to resolve the matter. If NCPA and the Participant cannot reach an agreement on the matter within 180 days of NCPA's receiving the notice of the dispute, either Party may pursue any remedy available at law or in equity to enforce its rights hereunder; provided that the Participant shall not be relieved of any of its obligations hereunder, including its obligations to make all payments hereunder in full without any setoff or other reduction for any cause whatsoever.

17.10.4 Except as expressly provided with respect to a dispute as to the accuracy of the data in a Reconciliation Statement, nothing in Section 17.10 shall be construed as waiving or limiting a Participant's rights under this Agreement, including without limitation a Participant's right to require Participant Committee Approval for any action requiring such approval hereunder.

18. PARTICIPANT PAYMENT OBLIGATIONS AND RATE COVENANT.

- 18.1 Unconditional Payment Obligation. Beginning with the month preceding the month that moneys need to be collected from Participants to cover Total Monthly Power Costs, each Participant shall pay NCPA the amount of its Participant Monthly Power Costs set forth in the Billing Statements submitted by or on behalf of NCPA to such Participant in accordance with the provisions of Section 17 and, including, without duplication, any amount as a result of the operation of Sections 22 and 23. Each Participant acknowledges and agrees that (a) NCPA's willingness to enter into this Agreement to plan, develop, finance, construct, operate and maintain the Project was induced and dependent upon each Participant's purchase of Capacity and Energy as herein provided; (b) NCPA's willingness to sell Capacity and Energy to each Participant was induced and dependent upon such Participant's purchase of Capacity and Energy as herein provided; and (c) each Participant's payment obligation for amounts due hereunder from its Enterprise Revenues is the absolute and unconditional obligation of such Participant. The obligations of each Participant to make all payments required to be made by such Participant hereunder from Enterprise Revenues are incurred by such Participant for the benefit of holders of Bonds issued by NCPA for such Participant and such payment obligations are absolute and unconditional. Each Participant agrees to make all payments required to be made by such Participant hereunder whether or not the Project or any part thereof is developed, constructed, is operable, operating or retired, and whether or not any Capacity or Energy is made available or furnished to such Participant at all times or at all, and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output in whole or in part for any reason whatsoever. Except for credits allowed pursuant to Section 17.5 and/or Section 17.8, all payments required to be made by a Participant hereunder shall be absolutely net, free of any deductions, and are not subject to any reduction, whether by offset, recoupment, counterclaim or otherwise. Each Participant shall make all payments required to be made by such Participant hereunder notwithstanding the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California, or any political subdivision of either of these, or any failure of any Party, a Trustee or any other person to perform and observe any covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement, any applicable Indenture(s) or any other agreement, including without limitation any agreement referred to in Sections 8.5, 14, 15 or 16; provided, however, that nothing contained in this Section 18.1 shall constitute a waiver of a Participant's right to commence an action to enforce its rights under this Agreement (including without limitation Sections 22 and 23) or its right to net portions of such Participant's payments hereunder pursuant to Section 17.8.
- 18.2 Payments an Operating Expense of Enterprise. The obligation of each Participant to make payments to NCPA under this Agreement (other than Capital Contributions and Contributions in Aid of Construction) shall constitute a cost of purchased electric capacity and energy and be payable as an operating expense of the Participant's Enterprise (and with respect to CDWR, as a maintenance and operation cost of CDWR's Enterprise pursuant to California Water Code Section 12937(b)(1)). Each Participant will annually in each and every fiscal year of the Participant during the term of this Agreement include in its Enterprise budget, as an Enterprise operating expense, whether or not any other items are included, an appropriation or commitment from its Enterprise Revenues sufficient to satisfy all payments required to be made by the Participant in such

fiscal year under this Agreement (other than Capital Contributions and Contributions in Aid of Construction) which are not paid from other available funds of the Participant until all such payments required to be made by the Participant under this Agreement have been paid in full.

18.3 Rate Covenant. Each Participant covenants and agrees that it will fix rates and charges for the commodities and services provided by its Enterprise which will provide the Participant at all times with Enterprise Revenues which will be sufficient, together with other funds available to make such payments, to meet when due its obligations under this Agreement and all other obligations payable from the Enterprise Revenues on a basis prior to or on a parity with such obligations.

18.4 Special Obligation. The obligation of each participant to make any and all payments hereunder is a special obligation of such Participant which the Participant is obligated to make solely from its Enterprise Revenues. The obligation of each Participant to make payments hereunder does not constitute a debt of such Participant or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction, nor a pledge of the full faith and credit and taxing power of such Participant or any other entity. Nothing herein shall be construed as prohibiting any Participant, in its sole discretion, from using any funds other than Enterprise Revenues for the purpose of satisfying any provisions of this Agreement, or from entering into contracts or incurring other obligations payable from its Enterprise Revenues on parity with such Participant's obligation to make payments hereunder.

18.5 Enterprise. Each Participant shall operate and maintain its Enterprise in a business like fashion and in accordance with Prudent Utility Practice.

19. PARTICIPANTS' OBLIGATIONS SEVERAL. Each Participant shall be solely responsible and liable for its performance under this Agreement and for the maintenance and operation of its Enterprise. The obligation of each Participant to make payments under this Agreement is a several obligation and not a joint obligation with the other Participants. Nothing in this Section 19 shall limit or otherwise affect the applicable GES Step-up or the OandM Step-up obligations of the each Participant pursuant to this Agreement.

20. PLEDGE UNDER INDENTURES. All or any portion of NCPA's rights under this Agreement with respect to the Participants in an Indenture Group, including NCPA's rights to the payments required to be made by the Participants in the applicable Indenture Group in accordance with or pursuant to any provision of this Agreement, may be assigned and pledged by NCPA to secure its obligations under each Indenture relating to such Indenture Group, including interest and any other payments due under such Indenture, subject to the application of the Project Revenues of such Indenture Group to such purposes and on such terms as provided in this Agreement. Such rights may include all of NCPA's right, title and interest in, to and under this Agreement with respect to the obligations of the Participants in the applicable Indenture Group, including without limitation its rights to receive from Participants in such Indenture Group all or any portion of the payments to be made by such Participants pursuant to this Agreement and all other Project Revenues related to such Indenture Group including Project Revenues received pursuant to actions taken pursuant to Sections 22 and/or 23, and its rights to enforce any obligations of such Participants under this Agreement. Each Participant does hereby acknowledge and approve any and all such pledges and assignments of NCPA. NCPA may direct the Participants in an Indenture Group to make all or any portion of such payments directly to a Trustee under an

Indenture relating to such Indenture Group and upon such directions the applicable Participants agree to make such payments to the designated Trustee.

21. FUNDS; APPLICATION OF PROJECT REVENUES.

- 21.1 Revenue Fund. NCPA shall establish and maintain as long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center Revenue Fund and which shall consist of three accounts: the Indenture Group A Revenue Account, with respect to the Indenture Group A Participants; the Indenture Group B Revenue Account, with respect to the Indenture Group B Participant; and the Indenture Group C Revenue Account, with respect to the Indenture Group C Participant. Upon receipt thereof NCPA shall deposit: (i) in the Indenture Group A Revenue Account, all Project Revenues received in connection with the Indenture Group A Participants' GES; (ii) in the Indenture Group B Revenue Account, all Project Revenues received in connection with the Indenture Group B Participant's GES; and (iii) in the Indenture Group C Revenue Account, all Project Revenues received in connection with the Indenture Group C Participant's GES; provided, however, that the proceeds of Default Mitigation Sales shall be deposited directly into the applicable account within the Default Mitigation Sale Fund as provided in Section 21.6. Moneys in the Revenue Fund shall be applied as provided in this Agreement.
- 21.2 Operating Fund. NCPA shall establish and maintain so long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center Operating Fund. Moneys in the Operating Fund shall be applied by NCPA to the Operation and Maintenance Expenses of the Project. Not later than the last day of each month, NCPA shall transfer from each Revenue Account to the Operating Fund the amount specified, in the applicable Indenture Group Participants' Billing Statements for the immediately preceding month which is attributable to Operation and Maintenance Expenses.
- 21.3 Operating Reserve Fund. NCPA shall establish and maintain so long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center Operating Reserve Fund. Moneys in the Operating Reserve Fund shall be applied by NCPA to the Operation and Maintenance Expenses of the Project in the event that the moneys in the Operating Fund are insufficient to make such payments. Not later than the last day of each month, after making the transfer required by Section 21.2, NCPA shall transfer from each Revenue Account to the Operating Reserve Fund the amount specified in the applicable Indenture Group Participants' Billing Statements for the prior month which is attributable to the Operating Reserve Requirement. Not later than the last day of each month, after making the transfer required by Section 21.2, NCPA shall transfer to each Revenue Account from the Operating Reserve Fund the pro rata amount (based on the GES attributable to each Indenture Group) by which the amount on deposit in the Operating Reserve Fund exceeds the Operating Reserve Requirement.
- 21.4 Indenture Transfers. Not later than the last day of each month, after making the transfers required by Section 21.2 and Section 21.3, NCPA shall transfer from each Revenue Account to each Trustee under an Indenture with respect to the Indenture Group related to such Revenue Account the amount applicable to such Indenture in the applicable Indenture Group Participants' Billing Statements for the immediately preceding month

attributable to amounts due under each such Indenture. In the event the amount available in an account in the Revenue Fund is not sufficient to make all payments in such month required by all Indentures relating to the Indenture Group with respect to such account, available amounts in such account shall be applied as provided in the applicable Indentures.

21.5 General Reserve Fund. NCPA shall establish and maintain as long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center General Reserve Fund and which shall consist of three accounts: the Indenture Group A General Reserve Account, with respect to the Indenture Group A Participants; the Indenture Group B General Reserve Account, with respect to the Indenture Group B Participant; and the Indenture Group C General Reserve Account, with respect to the Indenture Group C Participant. Not later than the last day of each month, after making the transfers required by Sections 21.2, 21.3 and 21.4, NCPA shall (i) transfer all moneys remaining in the Indenture Group A Revenue Account to the Indenture Group A General Reserve Account; (ii) transfer all moneys remaining in the Indenture Group B Revenue Account to the Indenture Group B General Reserve Account, and (iii) transfer all moneys remaining in the Indenture Group C Revenue Account to the Indenture Group C General Reserve Account. Amounts in each account in the General Reserve Fund shall be applied (i) first as provided in each Indenture related to the Indenture Group for which such account was established and (ii) second, as shall be approved by an Indenture Group Approval of the Indenture Group for which such account was established.

21.6 Default Mitigation Sale Fund. NCPA shall establish and maintain as long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center Default Mitigation Sale Fund and which shall consist of a separate account in the Default Mitigation Sale Fund for each Defaulting Participant for which a Default Mitigation Sale has been made. The proceeds of all Default Mitigation Sales made on behalf of the Defaulting Participant on whose behalf the account was established, less the expenses incurred in connection with such sales, including transmission costs, shall be deposited in the account in the Default Mitigation Sale Fund relating to such Defaulting Participant. Amounts in each account in the Default Mitigation Sale Fund shall be applied to the payment of amounts due and unpaid pursuant to the Billing Statements sent to the Defaulting Participant on whose behalf the account was established.

21.7 Revolving Construction Fund.

21.7.1 Except as provided in this Section 21.7, all Bonds proceeds to be used to pay Costs of Construction shall be held by the Trustee under the Indenture pursuant to which such Bonds were issued and released to NCPA upon a requisition therefor identifying the Costs of Construction to be paid with the requisitioned Bond proceeds. Except as provided in this Section 21.7, all Capital Contributions shall be held by a trustee or escrow agent under a trust or escrow instrument pursuant to which such Capital Contributions are to be released to NCPA upon a requisition therefor identifying the Costs of Construction to be paid with the requisitioned funds.

21.7.2 NCPA shall establish and maintain so long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund

designated as the Lodi Energy Center Revolving Construction Fund. In connection with the construction, acquisition and placing in operation of the Initial Facilities and any Financed Capital Improvement, NCPA may requisition from the Bond proceeds and any Capital Contributions available for the Costs of Construction of the Initial Facilities or such Financed Capital Improvements, as applicable, amounts so that the balance in the Revolving Construction Fund shall be maintained at one million dollars or such higher amount as shall be approved by the Participant Committee. Moneys in the Revolving Construction Fund shall be applied by NCPA to the Costs of Construction of the Initial Facilities or Financed Capital Improvements, as applicable.

21.8 Payment of Costs of Construction. In connection with the construction and placing in operation of the Initial Facilities and any Financed Capital Improvement, NCPA shall make requisitions from the Bond proceeds and any Capital Contributions to pay the Costs of Construction of the Initial Facilities or such Financed Capital Improvements, as applicable, pro rata among the Indenture Groups based on the ratio of the GES of each Indenture Group to the GES of all Indenture Groups.

21.9 Investment of Funds. Subject to any further limitations on the investment of such funds contained in an Indenture, amounts in any fund or account established hereunder which is held by NCPA may be invested by NCPA in any investments which at the time of investment are: (i) then legal for the investment of public funds; (ii) consistent with the NCPA investment policy; and (iii) consistent with any further limitations on the investment of such amounts approved by the Participant Committee; provided that no such amounts may be invested for a period longer than the time NCPA expects to disburse such amounts.

22. PAYMENT DEFAULT AND REMEDIES.

22.1 Payment Default.

22.1.1 Upon failure of a Participant to make any payment in full when due under this Agreement (including any Contributions in Aid of Construction specified in a Billing Statement and any Capital Contribution due under a Funding Notice), NCPA shall promptly provide written notice to such Participant in accordance with Section 35. If said failure is not cured (including any applicable late payment interest) within 30 days from the date such notice is effective under Section 35, it shall constitute a "Payment Default". The notice provided by NCPA pursuant to this Section 22.1.1 shall be entitled "NOTICE OF DEFAULT AND LOSS OF RIGHTS TO CAPACITY AND ENERGY OF LODI ENERGY CENTER" and shall set forth in reasonable summary the nature of the default and the type and amount of any payments that are then due and unpaid and shall include a statement to the effect that failure to cure such default and make full and timely payments of all amounts due and payable hereunder within 30 days from the date such notice is effective under Section 35, could result in the allocation of all or a portion of the Defaulting Participant's GES in a GES Lay-Off, the sale or other disposition of the Capacity and Energy associated with such Participant's GES in a Default Mitigation Sale and, in the case of the Indenture Group A Participants, the automatic allocation of all or a portion of its GES in a GES Step-up.

- 22.1.2 If the Defaulting Participant in good faith disputes the legality or validity of any amounts stated in the notice as being due and unpaid, it shall nevertheless make such payment within said 30-day period under written protest directed to NCPA. Such protest shall specify the reasons upon which the protest is based. Any such protest shall be treated as a dispute in a monthly Billing Statement and NCPA and the Defaulting Participant shall proceed as provided in Section 17.4.
- 22.1.3 Not less than ten days prior to any allocation of a Defaulting Participant's GES pursuant to a GES Lay-Off or a GES Step-up, NCPA shall provide an additional written notice to the Defaulting Participant concerning such allocation of such GES, which notice shall be clearly entitled "NOTICE OF ALLOCATION OF GENERATION ENTITLEMENT **SHARE** IN LODI ENERGY CENTER." No further notice shall be required.
- 22.1.4 All allocations and sales of a Defaulting Participant's GES to another Participant through a GES Lay-Off or a GES Step-up, and all Default Mitigation Sales, shall constitute sales of Project Capacity and Energy on behalf of and for the account of the Defaulting Participant and the Defaulting Participant shall remain liable to NCPA to pay the full amounts due on its Billing Statements (both before and after the Payment Default) for its GES as if such sales had not been made, except that such liability shall be discharged to the extent that NCPA receives payments with respect to any GES Lay-Off, GES Step-up or Default Mitigation Sale of the Defaulting Participant's GES. In addition to all amounts due under Billing Statements as provided in this Section 22.1.4, NCPA in all cases, and Non-Defaulting Indenture Group A Participants in the case of a GES Step-up, shall be entitled to recover from the Defaulting Participant any and all damages, legal fees and other costs incurred by NCPA as a result of such Participant's default.

22.2 Remedies on Payment Default.

22.2.1 GES Lay-Off.

- 22.2.1.1 Upon a Payment Default by any Participant, such Participant shall no longer be entitled to receive its GES of Project Capacity and Energy and NCPA shall apply such Capacity and Energy as provided in this Agreement. Upon a Payment Default by any Participant, NCPA shall notify each Non-Defaulting Participant that the GES of the Defaulting Participant is available for a GES Lay-Off. During the 60 day period following a Payment Default, NCPA shall use commercially reasonable efforts to arrange a GES Lay-Off or GES Lay-Offs of all of the GES of the Defaulting Participant. During such 60 day period NCPA shall also use commercially reasonable efforts to arrange Default Mitigation Sales of the Capacity and Energy associated with the GES of the Defaulting Participant. Not later than 60 days after a Payment Default, each Non-Defaulting Participant and entities other than Participants may agree to accept all or a portion of the Defaulting Participant's GES in a GES Lay-Off in accordance with the priority provisions of Section 22.2.5 or Section 22.2.6, as applicable.

22.2.1.2 The amount of any GES Lay-Off accepted by a Participant shall be added and become a part of such Participant's GES for all purposes of this Agreement. If any of the GES of a Defaulting Participant is accepted in a GES Lay-Off by a Participant in that Indenture Group, another Indenture Group or an entity other than a Participant, the accepting Participant or entity shall be responsible for all costs hereunder in connection with the GES accepted, including the ICS of the Defaulting Participant related to such accepted GES.

22.2.1.3 Notwithstanding any GES Lay-Off, the Defaulting Participant shall remain liable hereunder for all amounts payable hereunder with respect to its GES, including its ICS, except to the extent payments are received from the Participant or other entity entering into such GES Lay-Off as provided in Section 22.2.1.

22.2.2 GES Step-up.

22.2.2.1 On the 61st day following a Payment Default by any Indenture Group A Participant, unless all of the GES of the Indenture Group A Defaulting Participant has been allocated in GES Lay-Offs pursuant to Section 22.2.1, NCPA shall notify each Indenture Group A Non-Defaulting Participant that its GES and its ICS has been automatically increased for the remaining term of this Agreement as provided in Section 22.2.2.2.

22.2.2.2 On the 61st day following a Payment Default by any Indenture Group A Participant, the GES of each Indenture Group A Non-Defaulting participant shall be automatically increased by the amount (expressed as a percentage) obtained by: (i) multiplying the GES of the Indenture Group A Defaulting Participant which has not been accepted by another entity pursuant to a GES Lay-Off pursuant to Section 22.2.1 by (ii) the quotient obtained by dividing the GES of such Indenture Group A Non-Defaulting Participant by the GES of all Indenture Group A Non-Defaulting Participants, but in no event shall any GES Step-up cause any Indenture Group A Participant's GES to exceed, without consent of such Participant, its Accumulated Maximum Step-up Percentage.

22.2.3 Default Mitigation Sales. In connection with each Payment Default, NCPA shall use commercially reasonable efforts to sell, on behalf of and for the account of the Defaulting Participant and on commercially reasonable terms given the circumstances of such sale, the Capacity and Energy with respect to the GES of each Defaulting Participant which has not been allocated to another entity pursuant to a GES Lay-Off or a GES Step-up. The proceeds of such sales, less the expenses incurred in connection with such sales, including transmission costs, shall be deposited in the account in the Default Mitigation Sale Fund relating to the Defaulting Participant pursuant to Section 21.6.

22.2.4 Deficiency Cure. In consideration of the allocation of GES pursuant to a GES Step-up or a GES Lay-Off, each entity receiving any such GES shall pay to NCPA its pro rata share of any deficiency in Billing Statement payments by the

Defaulting Participant related to such GES Step-up or GES Lay-Off. Such share shall be based on the ratio that the GES Step-up and/or GES Lay-Off of such entity bears to the GES Step-ups and GES Lay-Offs of all entities in connection with the applicable Payment Default.

22.2.5 Priority Of Offers- Indenture Group A Defaulting Participant.

22.2.5.1 Indenture Group A Non-Defaulting Participants shall receive the first offer from NCPA of a GES Lay-Off of the GES of an Indenture Group A Defaulting Participant. Such offer shall be made pro rata based on the ratio that each Indenture Group A Non-Defaulting Participant's GES bears to the aggregate of the GES of all Indenture Group A Non-Defaulting Participants. If any of the GES of an Indenture Group A Defaulting Participant remains after such first offer, Indenture Group A Non-Defaulting Participants shall receive the second offer from NCPA of a GES Lay-Off of the remaining GES of the Indenture Group A Defaulting Participant. If the Indenture Group A Non-Defaulting Participants offer to take more GES than is available on such second offer, such available GES shall be allocated among the Indenture Group A Non-Defaulting Participants offering to acquire such GES pro rata based on the ratio that each offering Indenture Group A Non-Defaulting Participant's GES bears to the aggregate of the GES of all offering Indenture Group A Non-Defaulting Participants.

22.2.5.2 Indenture Group B and Indenture Group C Non-Defaulting Participants shall receive the third offer from NCPA of a GES Lay-Off of any GES of an Indenture Group A Defaulting Participant remaining after the allocations pursuant to Section 22.2.5.1 have been made. Such third offer shall be made pro rata based on the ratio that each Indenture Group B and Indenture Group C Non-Defaulting Participant's GES bears to the aggregate GES of all Indenture Group B and Indenture Group C Non-Defaulting Participants. If any of the GES of an Indenture Group A Defaulting Participant remains after such third offer, Indenture Group B and Indenture Group C Non-Defaulting Participants shall receive the fourth offer from NCPA of a GES Lay-Off of such remaining GES of the Indenture Group A Defaulting Participant. If the Indenture Group B and Indenture Group C Non-Defaulting Participants offer to take more GES than is available on such fourth offer, such available GES shall be allocated between the Indenture Group B and Indenture Group C Non-Defaulting Participants offering to acquire such GES pro rata based on the ratio that each offering Indenture Group B and Indenture Group C Non-Defaulting Participant's GES bears to the aggregate GES of all offering Indenture Group B and Indenture Group C Non-Defaulting Participants.

22.2.5.3 Indenture Group A Non-Defaulting Participants shall receive the first offer from NCPA of a Default Mitigation Sale of the Capacity and Energy associated with the GES of an Indenture Group A Defaulting Participant remaining after the GES Lay-Off and GES

Step-ups have been completed. Such offer shall be made pro rata based on the ratio that each Indenture Group A Non-Defaulting Participant's GES bears to the aggregate GES of all Indenture Group A Non-Defaulting Participants. Thereafter if any of the Capacity and Energy associated with the GES of a Defaulting Participant remains, Indenture Group A Non-Defaulting Participants shall receive the second offer from NCPA of a Default Mitigation Sale of the remaining Capacity and Energy. If the Indenture Group A Non-Defaulting Participants offer to take more Capacity and Energy associated with the GES than is available on such second offer, such available Capacity and Energy shall be allocated among the Indenture Group A Non-Defaulting Participants offering to acquire such Capacity and Energy pro rata based on the ratio that the GES of each offering Indenture Group A Non-Defaulting Participant bears to the aggregate GES of all offering Indenture Group A Non-Defaulting Participants.

22.2.5.4 Indenture Group B and Indenture Group C Non-Defaulting Participants shall receive the third offer from NCPA of a Default Mitigation Sale of the Capacity and Energy associated with the GES of an Indenture Group A Defaulting Participant remaining after the allocations pursuant to Section 22.2.5.3 have been made. Such third offer shall be made pro rata based on the ratio that the GES of each Indenture Group B and Indenture Group C Non-Defaulting Participant bears to the aggregate GES of all Indenture Group B and Indenture Group C Non-Defaulting Participants. If any of the Capacity and Energy associated with the GES of an Indenture Group A Defaulting Participant remains after such third offer, Indenture Group B and Indenture Group C Non-Defaulting Participants shall receive the fourth offer from NCPA of a Default Mitigation Sale of such remaining Capacity and Energy. If the Indenture Group B and Indenture Group C Non-Defaulting Participants offer to take more of such Capacity and Energy than is available on such fourth offer, such available Capacity and Energy shall be allocated between the Indenture Group B and Indenture Group C Non-Defaulting Participants offering to acquire such Capacity and Energy pro rata based on the ratio that the GES of each offering Indenture Group B and Indenture Group C Non-Defaulting participant bears to the aggregate of the GES of the offering Indenture Group B and Indenture Group C Non-Defaulting Participants.

22.2.5.5 If, after all the allocations pursuant to Section 22.2.5.1, Section 22.2.5.2, Section 22.2.5.3 and Section 22.2.5.4 have been made, any portion of the Capacity and Energy associated with the Defaulting Participant's GES remains unallocated, it shall be offered for sale by NCPA to any electric utility or other qualified purchaser that is not a Participant.

22.2.6 Priority of Offers-Indenture Group B and C Defaulting participants.

22.2.6.1 Non-Defaulting Participants shall receive the first offer from NCPA of a GES Lay-Off of the GES of a Defaulting Participant in Indenture Group B or Indenture Group C. Such offer shall be made pro rata based on the ratio that each Non-Defaulting Participant's GES bears to the aggregate GES of all Non-Defaulting Participants. Thereafter if any of the GES of a Defaulting Participant in Indenture Group B or Indenture Group C remains after such first offer, Non-Defaulting Participants shall receive the second offer from NCPA of a GES Lay-Off of the remaining GES of the Defaulting Participant in Indenture Group B or Indenture Group C. If the Non-Defaulting Participants offer to take more of such GES than is available on such second offer, such available GES shall be allocated among the Non-Defaulting Participants offering to acquire such GES pro rata based on the ratio the GES of each offering Non-Defaulting Participant bears to the aggregate of the GES of all offering Non-Defaulting Participants.

22.2.6.2 Non-Defaulting Participants shall receive the first offer from NCPA of a Default Mitigation Sale of the Capacity and Energy associated with the GES of an Indenture Group B or Indenture Group C Defaulting Participant remaining after the allocations pursuant to Section 22.2.6.1 have been made. Such offer shall be made pro rata based on the ratio that each Non-Defaulting Participant's GES bears to the aggregate of the GES of all Non-Defaulting participants. If any of the Capacity and Energy associated with the GES of an Indenture Group B or Indenture Group C Defaulting Participant remains after such first offer, Non-Defaulting Participants shall receive the second offer from NCPA of a Default Mitigation Sale of the remaining GES of the Indenture Group B or Indenture Group C Defaulting Participant. If the Non-Defaulting Participants offer to take more of the Capacity and Energy associated with Indenture Group B or Indenture Group C Defaulting Participant's GES than is available on such second offer, such available Capacity and Energy shall be allocated among the Non-Defaulting Participants offering to acquire such Capacity and Energy pro rata based on the ratio that the GES of each offering Non-Defaulting Participant bears to the aggregate of the GES of all offering Non-Defaulting Participants.

22.2.6.3 If, after all the allocations pursuant to Section 22.2.6.1 and Section 22.2.6.2 have been made, any portion of the Capacity and Energy associated with the Indenture Group B or Indenture Group C Defaulting Participant's GES remains unsold, it shall be offered for sale by NCPA to any electric utility or other qualified purchaser that is not a Participant.

22.2.7 Effect on Tax Status. No GES Lay-Off or Default Mitigation Sale shall be made by NCPA if such action would adversely affect the Tax Status of any Bond.

22.2.8 Other Remedies. In addition to all other remedies provided for herein, in the event of a Payment Default by a Participant, NCPA, any other Participant and/or any Trustee may bring any suit, action, or proceeding in law or in equity,

including an action for damages, mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to enforce any applicable covenant, agreement or obligation of this Agreement against the Defaulting Participant.

22.2.9 Defaulting Participant Remains Liable. Notwithstanding the allocation and sale of an Indenture Group A Defaulting Participant's GES to another Indenture Group A Participant pursuant to Section 22.2.2, the Indenture Group A Defaulting Participant shall remain liable, in addition to all amounts due under Billing Statements as provided in this Section 22.2.9, to NCPA and the Indenture Group A Participants receiving such GES for any damages sustained by NCPA and/or such Indenture Group A Participants as a result of the Payment Default by the Indenture Group A Defaulting Participant.

22.2.10 Costs of Enforcement. In the event of a Payment Default by a participant, NCPA and each other Party shall be entitled to recover from the Defaulting Participant any and all legal fees and costs incurred as a result of enforcing its rights hereunder.

23. DEFAULTS OTHER THAN PAYMENT DEFAULTS.

23.1 Remedies on Participant Default. In the event of any default by a Participant in the performance of any covenant, agreement or obligation under this Agreement, other than a Payment Default, any other Party and/or any Trustee may send notice of such default to the applicable Participant and request that such default be remedied. If the applicable Participant does not remedy such default within 60 days of such notice, any other Party and/or any Trustee may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to recover any damages incurred as a result of such default and/or to enforce any applicable covenant, agreement or obligation of this Agreement against the defaulting Party.

23.2 Remedies on NCPA Default. In the event of any default by NCPA in the performance of covenant, agreement or obligation under this Agreement, any other Party and/or any Trustee may send notice of such default to NCPA and request that such default be remedied. If NCPA does not remedy such default within 60 days of such notice, any other Party and/or any Trustee may bring any suit, action, or proceeding in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to cause NCPA to comply with each applicable covenant, agreement or obligation on its part under this Agreement.

23.3 Costs of Enforcement. In the event of a default by a Participant of any of its covenants, agreements, or obligations hereunder, other than a Payment Default (which is addressed in Section 22.2.10), each other Party shall be entitled to recover from such Participant any and all legal fees and costs incurred as a result of enforcing its rights hereunder.

24. INDEMNIFICATION AND RELATED MATTERS.

24.1 Release. Each Participant agrees that, to the extent permitted by law, neither NCPA nor any of its commissioners, directors, officers, employees or agents shall be liable to any Participant for loss of profits or direct or consequential loss or damage suffered by such

Participant as a result of (i) the performance or non-performance by NCPA or any of its commissioners, directors, officers, employees or agents under any Project-related agreement (whether negligent or otherwise) or (ii) the performance or non-performance (whether negligent or otherwise) of NCPA or any of its commissioners, directors, officers, employees or agents under this Agreement. Each Participant releases NCPA and its commissioners, directors, officers, employees and agents from any claim or liability (whether negligent or otherwise) as a result of any actions or inactions of NCPA under this Agreement or the performance or non-performance by NCPA under any Project-related agreement. The provisions of this Section 24.1 shall not be construed so as to relieve NCPA from any obligation under this Agreement, the PMOA, or other Project-related agreement. No such performance or non-performance by NCPA shall relieve any Participant from its obligations under this Agreement, including its obligation to make payments required under this Agreement, and such payments shall not be subject to any reduction, whether by offset, counterclaim or otherwise. Each Participant acknowledges and expressly waives the provisions of California Civil Code Section 1542 as applicable hereto.

- 24.2 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 24.1 shall, to the extent permitted by law, apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, each Participant may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of NCPA and each Participant shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by such Participant in accordance with Section 17.4.
- 24.3 Indemnification for Claims of Retail Customers. Each Participant shall assume all liability for any claim, action or judgment, whether or not caused by negligence, arising out of or in connection with service to any of its retail customers caused by the operation or failure of operation of the Project or any portion thereof under this Agreement and, to the fullest extent permitted by law, shall indemnify, defend and hold harmless each of the other Participants and NCPA, as Project operator, as issuer of Bonds and in every other capacity, and its commissioners, directors, officers, employees and agents from any such claim, action or judgment.
- 24.4 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 24.1, 24.2 and 24.3, each Party may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty of another **Party** hereunder.
- 24.5 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in Section 24, the provisions of Section 24 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.
- 24.6 NCPA Commissioners, Officers, Employees, Agents Not Individually Liable; No General Liability of NCPA. It is hereby recognized and agreed that no member of NCPA's Commission, officer, employee or agent of NCPA or member of NCPA in its capacity as a member of NCPA shall be individually liable in respect of any undertakings by NCPA under any Project-related agreement, including this Agreement. The undertakings by NCPA under this Agreement shall never constitute a debt or

indebtedness of NCPA within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit but shall be payable only from the funds provided and available to NCPA under this Agreement.

24.7 Liability of Participants Strictly Limited to the Project. NCPA's debts, liabilities and obligations shall not constitute debts, liabilities or obligations of any Participant except to the extent that such Participant has specifically contracted to be liable under this Agreement or another written agreement. Accordingly, except as set forth in this Agreement and any other written agreement between NCPA and such Participant with respect to the Project, NCPA and all Participants agree that no Participant or NCPA member shall have any liability or responsibility for, and no claim may be asserted against any Participant in connection with, any other project, undertaking or contract of NCPA, past, present or future. NCPA shall, to the fullest extent permitted by law, indemnify and hold harmless, but only from Project Revenues available therefor, each of the Participants and all other NCPA members from any such claim, action or judgment (including the obligation to pay reasonable attorneys' fees and other costs of defense).

25. REIMBURSEMENT OF PROJECT DEVELOPMENT COSTS. Notwithstanding that this Agreement supersedes the Development Agreement, Section 4 of the Development Agreement remains in effect pursuant to its terms.

26. REFUNDING BONDS AND BOND RELATED DOCUMENTS.

26.1 Refunding Bonds. In the event that the Participant Monthly Power Costs for an Indenture Group may be reduced by the refunding of any Bonds issued with respect to such Indenture Group, or in the event it shall otherwise be advantageous, in the opinion of NCPA to refund any such Bonds, NCPA may issue and sell refunding Bonds for such Indenture Group in accordance with the respective Indenture(s), applicable law, and this Agreement, including Section 8.1.

26.2 Bond-Related Documents. Participants in each Indenture Group agree to supply NCPA, upon request, with such information and documentation, including opinions of counsel for each Participant, as NCPA shall reasonably determine to be necessary or desirable to facilitate the issuance and maintenance of Bonds for such Indenture Group and to comply with continuing disclosure requirements (including, but not limited to, requirements under Rule 15c2-12 of the United States Securities and Exchange Commission), to obtain credit ratings, bond insurance, credit facilities, liquidity facilities and to complete other transactions and matters relating to such Bonds.

27. INDENTURES AND GOVERNMENTAL REQUIREMENTS.

27.1 Agreement Subject to Indentures and Governmental Requirements. It is recognized by the Parties hereto that NCPA, in undertaking the planning, financing, construction, improvement, management, operation and maintenance of the Project, must comply with the requirements of each Indenture and all licenses, permits and approvals or other governmental authorizations necessary for such planning, financing, construction, operation and maintenance and it is therefore agreed that this Agreement is made subject to the provisions of the each Indenture, and all such licenses, permits, approvals and governmental authorizations.

- 27.2 NCPA Covenant to Comply With Indentures and Certain Governmental Requirements. NCPA covenants and agrees for the benefit of each Participant to comply in all material respects with all terms, conditions and covenants of each Indenture, and all licenses, permits, approvals and governmental authorizations relating to the Project, provided that NCPA shall not be prevented from contesting the validity or applicability of any requirements relating to such licenses, permits, approvals and governmental authorizations in good faith by appropriate proceedings.
28. **EXPRESS THIRD-PARTY BENEFICIARIES.** In addition to any rights which a Trustee may have as an assignee of NCPA's rights hereunder, each Trustee shall be an express third party beneficiary hereof and shall have the right as a third party beneficiary to initiate and maintain suit to enforce this Agreement to the extent provided in the applicable Indenture. No person other than a Trustee shall be a third party beneficiary of this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than NCPA, the Participants and each Trustee, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of NCPA, the Participants and each Trustee.
29. **COUNTERPARTS.** This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.
30. **OBSERVANCE OF LAWS.** NCPA and each Participant shall at all times comply with all federal and state laws and regulations applicable to their respective performances of this Agreement.
31. **FURTHER ASSURANCES.** NCPA and each Participant agree to execute and deliver all further instruments and documents (including any certification demonstrating compliance with other contracts that control such Party's right to execute and deliver this Agreement, if any), and take all further actions that may be reasonably necessary for, or to evidence, such Party's performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.
32. **EFFECTIVE DATE.** This Agreement shall become effective on the first day when all of the following have occurred (i) this Agreement shall have been executed and delivered by NCPA and Participants subscribing to 100% of Project GES, and (ii) each such Participant shall have delivered to NCPA an opinion of an attorney or firm of attorneys in substantially the form attached hereto as Appendix C. NCPA will provide a written notice of the Effective Date to each Participant within seven days of the Effective Date; provided that failure to provide such notice shall not affect the establishment of the Effective Date.
33. **TERM OF AGREEMENT.** The term of this Agreement shall begin on the Effective Date. Unless terminated earlier pursuant to this Section 33, the term of this Agreement shall expire on the later of (i) the expiration of the useful life of the Project as approved by the Participant Committee; and (ii) the date on which (A) no obligations remain Outstanding under an Indenture and (B) all costs, obligations and liabilities of NCPA to decommission, salvage, discontinue, and dispose of the Project have been provided for.
34. **SUCCESSORS.** The rights and obligations under this Agreement shall inure to the benefit of and shall be binding upon the respective successors of the Parties to this Agreement.

- 35. NOTICES.** All notices, requests and other communications under this Agreement shall be in electronic or written form (including telegram, facsimile, e-mail or similar writing) and shall be given to the Party to whom addressed, at its address or facsimile number or e-mail address set forth in Appendix D hereto, or such other address or facsimile number or e-mail address as such Party may hereafter specify in writing to NCPA; provided that any notice of a Payment Default and each Funding Notice shall be hand-delivered by overnight messenger service and deemed effective upon such delivery. NCPA shall maintain a master list of all such addresses, facsimile numbers and e-mail addresses for NCPA and all Participants and shall promptly provide a copy of any notice, request or other communication received from a Participant to all other Participants. Each such notice, request or communication shall be effective (i) if given by e-mail, telecopy or other electronic means by 5 p.m. on a Business Day to the number on the master list maintained by NCPA pursuant to this Section 35, when the appropriate confirmation of receipt is received; or (ii) if given by e-mail, telecopy or other electronic means after 5 pm on a Business Day to the number on the master list maintained by NCPA pursuant to this Section 35 and the appropriate confirmation of receipt is received, on the Business Day following the date on which sent by such e-mail, telecopy or other electronic means; or (iii) if given by mail, five days after such communication is deposited in the United States mail with first class postage prepaid, addressed to the address on the master list maintained by NCPA pursuant to this Section 35.
- 36. SEVERABILITY.** In case any one or more of the provisions of this Agreement (other than the unconditional obligation of the Participants to make all payments due hereunder from Enterprise Revenues without deduction or setoff), shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision (other than the unconditional obligation of the Participants to make all payments due hereunder from Enterprise Revenues without deduction or setoff) had not been contained herein unless a court holds that such provisions are not separable from all other provisions of this Agreement.
- 37. AMENDMENTS TO AGREEMENT.** Each amendment to this Agreement shall be in writing signed by all the Parties; provided, however, that any amendment of this Agreement affecting the Plumas Sierra Rural Electric Cooperative shall be effective only upon the prior written consent of the Rural Utilities Service of the United States Department of Agriculture. So long as any obligations of NCPA remain Outstanding under any Indenture and any Indenture has not been fully satisfied in accordance with its terms, this Agreement shall not be terminated, amended, modified or otherwise altered in any manner which will materially reduce the respective payments to be made by each Participant or extend the time of such payments provided herein or which will materially impair or materially adversely affect the rights of the owners from time to time of the Bonds or the obligations to be performed under any Indenture.
- 38. ASSIGNMENTS.** Except as provided in the next sentence, so long as any obligations remain Outstanding under an Indenture with respect to an Indenture Group, and except as otherwise provided in this Section 38 and in this Agreement with respect to GES Lay-Offs, GES Step-ups, and sales of Capacity and Energy, no Party shall assign any of its rights or obligations hereunder and any purported such assignment shall be null and void. The Indenture Group C Participant may assign and transfer its rights to the Capacity and Energy in connection with any financing of its share of the Costs of Construction of the Initial Facilities and/or any Financed Capital Improvement; provided that no such assignment and transfer shall relieve the Indenture Group C Participant of any of its obligations hereunder or affect the status of the Indenture Group C Participant as a Participant hereunder. When no obligations remain Outstanding under an Indenture, and except as otherwise provided herein with respect to GES Lay-Offs, GES Step-ups

and sales of Capacity and Energy, a Party may assign any of its rights or obligations hereunder; provided that (i) such Party shall first offer to assign such rights and obligations to the Non-Defaulting participants on the same terms, and (ii) no such assignment shall relieve the assigning Party of any of its obligations hereunder.

39. OFFICIAL FILE. NCPA shall maintain or cause to be maintained an official file containing a true and correct copy of this Agreement executed by all Parties, together with current Appendices hereto and history of changes to such Appendices, and which official file shall be made available upon request to any Participant or any Trustee.

40. GOVERNING LAW. This Agreement shall be interpreted, governed by and construed under the laws of the State of California without reference to any conflict of law principles.

41. SPECIAL PROVISIONS APPLYING TO CDWR AND NCPA ONLY.

41.1 California General Terms and Conditions. The State of California General Terms and Conditions and Certification Clauses shown in Appendix E and Appendix F are incorporated in this Agreement. Appendix E and Appendix F apply only to CDWR and NCPA concerning this Agreement.

41.2 Department of General Services Review. The Parties to this Agreement acknowledge that this Agreement, as it applies to CDWR, must be reviewed and approved by the Director of the Department of General Services, or his designee, before it becomes of full force and effect. CDWR shall provide a letter opinion from CDWR Counsel indicating that Department of General Services' review and approval of this Agreement has occurred and that all relevant procedural requirements for State of California contracting have been met.

42. APPENDICES. This Agreement includes the following Appendices:

Appendix A: Lodi Energy Center Project Participation Shares

Appendix B: Description of Initial Facilities

Appendix C: Opinion of Independent Counsel

Appendix D: Participant Addresses for Notice

Appendix E: State of California General Terms and Conditions

Appendix F: Certification Clauses

IN WITNESS WHEREOF, each Participant has executed this Agreement with the approval of its governing body, and NCPA has executed this Agreement in accordance with the authorization of its Commission.

SIGNATURE PAGES

NORTHERN CALIFORNIA
POWER AGENCY

Approved as to Legal Form

By: _____

Date: _____

Date: _____

BAY AREA RAPID TRANSIT DISTRICT

Approved as to Legal Form

By: _____

Date: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF AZUSA

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Approved as to Legal Form

By: _____

Date: _____

Date: _____

CITY OF BIGGS

Approved as to Legal Form

By: _____

Date: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF GRIDLEY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF HEALDSBURG

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

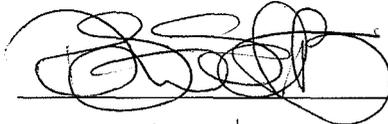
Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF LODI



Date: April 20, 2010

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF LOMPOC

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved **as** to Legal Form

By: _____

Date: _____

CITY OF SANTA CLARA

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF UKIAH

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

MODESTO IRRIGATION DISTRICT

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal **Form**

By: _____

Date: _____

PLUMAS-SIERRA RURAL ELECTRIC
COOPERATIVE

Date: _____

Approved as to Legal **Form**

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal **Form**

By: _____

Date: _____

CITY **OF** OAKLAND ACTING BY AND
THROUGH ITS BOARD **OF** PORT
COMMISSIONERS

Date: _____

Approved as to Legal **Form**

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

POWER AND WATER RESOURCES
POOLING AUTHORITY

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Approved as to Legal Form

By: _____

Date: _____

Date: _____

STATE OF CALIFORNIA DEPARTMENT OF
WATER RESOURCES

Approved as to Legal Form and Legal Sufficiency

By: _____

Date: _____

Date: _____

APPENDIX A

**LODI ENERGY CENTER
PROJECT PARTICIPANT SHARES**

Participant"	Generation Entitlement Share (GES)*	MW**	Indenture Cost Share (ICS)*
California Department of Water Resources	%		
City of Azusa	%		
City of Biggs	%		
City of Gridley	%		
City of Healdsburg	%		
City of Lodi	%		
City of Lompoc	%		
City of Oakland - Port of Oakland	%		
City of Santa Clara	%		
City of Ukiah	%		
Modesto Irrigation District	%		
Plumas-Sierra Rural Electric Cooperative	%		
Power and Water Resources Pooling Authority	%		
San Francisco Bay Area Rapid Transit District	%		
Total	100.000%		

*

As of the Effective Date.

** Based on the expected nameplate capacity of the Initial Facilities.

APPENDIX B

DESCRIPTION OF THE INITIAL FACILITIES

The Initial Facilities of the Lodi Energy Center consist of a natural gas fueled, combined-cycle electric generating station located in Lodi, California, including a gas fired combustion turbine generator, a heat recovery steam generator, a selective catalytic reduction pollution control system, a steam turbine generator, control and administrative buildings, wet mechanical-draft cooling towers, recirculating water system, auxiliary cooling water heat exchangers, interconnection and transformer facilities, land rights, water rights, governmental permits, Emission Reduction Credits, all appurtenant facilities and resources, including fuel and water, as well such facilities' share of any shared facilities and resources used in common with the existing 49-MW NCPA Combustion Turbine Project Number Two – Unit One (the “STIG Plant”) as listed below and related facilities on or adjacent to the site of the Lodi Energy Center, together with all other rights, equipment and facilities ancillary to or associated with such electric generating station.

The following existing elements of the STIG Plant’s infrastructure will be shared between the Project and the STIG Plant:

- The anhydrous ammonia system, including both the 12,000-gallon storage tank and unloading facilities.
- The 230-kilovolt switchyard and interconnect.
- The fire systems, including fire water storage tanks and diesel-fired emergency fire pump.
- The domestic water systems, including eye wash stations and emergency showers.
- The existing Class I underground injection well.

The following facilities will be modified or built as part of the Initial Facilities:

- The administration building, including the control room, office space, maintenance shop and communication systems. These facilities will be shared by both the Project and the STIG Plant.
- The warehouse facilities. These facilities will be shared by both the Project and the STIG Plant.
-

The following facilities will be modified or built with the cost of such modification or building included in the Costs of Construction of the Initial Facilities but will not be shared by the Project and the STIG Plant and are not a part of the Project:

- The existing commercial cooling tower for the STIG Plant will be relocated to accommodate the Project.
- The existing gas metering station for the STIG Plant will be relocated to accommodate the Project.

The remaining facilities and activities at the STIG Plant will not be shared between the Project and the STIG Plant and are not part of the Project.

APPENDIX C

OPINION OF INDEPENDENT COUNSEL TO PARTICIPANT

Commissioners
Northern California Power Agency
651 Commerce Drive
Roseville, California 95678

MONTH XX, 20YY

[underwriter or lender]

[credit facility provider, if any]

[bond counsel]

Ladies and Gentlemen:

I am counsel to _____, a _____ (the “[City] [District] [CDWR]”) in connection with the Lodi Energy Center Power Sales Agreement, dated as of _____ (the “Power Sales Agreement”) among the [City] [District] [CDWR], the Northern California Power Agency (“NCPA”) and the other public entities named therein, and I have acted as counsel to the [City] [District] [CDWR] in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of the [City] [District] [CDWR], (ii) all necessary documentation of the [City] [District] [CDWR] relating to the authorization, execution and delivery of the Power Sales Agreement and (iii) an executed counterpart of the Power Sales Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Power Sales Agreement

Based upon the foregoing and an examination of such other information, instruments and documents as I deem necessary or advisable to enable me to render this opinion, I am of the opinion that:

1. The [City] [District] [CDWR] is a _____ duly created, organized and existing under the laws of the State of California (the “State”) and duly qualified to operate and maintain its Enterprise.

2. The Participant has full legal right, power and authority to enter into the Power Sales Agreement and to carry out and consummate all transactions contemplated thereby, and the [City] [District] [CDWR] has complied with the provisions of applicable law in all matters relating to such transactions.

3. The Power Sales Agreement has been duly authorized, executed and delivered by the [City] [District] [CDWR], is in full force and effect and, assuming due authorization, execution and delivery by NCPA and the other Participants of the Power Sales Agreement, constitutes the legal, valid and binding obligation of the [City] [District] [CDWR] enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency, reorganization and other similar laws affecting creditors’ rights generally and to general principles of equity.

4. No order, filing, exemption of or registration with, approval, consent or authorization of any governmental or public agency, authority or person is required in connection with the execution and delivery by the [City] [District] [CDWR] of the Power Sales Agreement, or the performance by the [City] [District] [CDWR] of its obligations thereunder.

5. The [City] [District] [CDWR] is not in material breach of or default under, and the authorization, execution and delivery of the Power Sales Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under: (i) any instrument relating to the organization, existence or operation of the [City] [District] [CDWR]; (ii) any loan agreement, lease agreement, indenture, bond, note, Public Finance Contract, credit facility, resolution, commitment, agreement or other instrument to which the [City] [District] [CDWR] is a party or by which it or its property or assets is bound or affected, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a material default or event of default under any such instrument, which breach or default would have a material adverse impact on NCPA's ownership or operation of the Project or the ability of the [City] [District] [CDWR] to fully perform its obligations under the Power Sales Agreement; or (iii) any applicable constitutional provision, law, ruling, administrative regulation, ordinance, judgment, order or decree to which the [City] [District] [CDWR] (or any of its officers in their respective capacities as such) or its properties is subject.

6. There is no action or suit (with service of process having been accomplished) or proceeding, inquiry or investigation at law or in equity before any court, public board or body, pending or, to my knowledge after due inquiry, threatened against or affecting the [City] [District] [CDWR] or any entity affiliated with the [City] [District] [CDWR] or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the right, power or authority of the [City] [District] [CDWR] referred to in paragraph 2 above or the validity of the proceeding taken by the [City] [District] [CDWR] in connection with the authorization, execution or delivery of the Power Sales Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Power Sales Agreement, or which, in any way, would adversely affect the validity or enforceability of the Power Sales Agreement or the ability of the [City] [District] [CDWR] to comply with its obligations thereunder.

7. The obligations of the [City] [District] [CDWR] to make payments under the Power Sales Agreement (other than Capital Contributions and Contributions in Aid of Construction) constitute a cost of purchased electric capacity and energy and the [City] [District] [CDWR] is obligated to make such payments from its Enterprise Revenues as an operating expense.

Very truly yours,

APPENDIX D

PARTICIPANT ADDRESSES FOR NOTICE

Northern California Power Agency

Northern California Power Agency
Attn: Ed Warner, Lodi Energy Center Manager
651 Commerce Drive
Roseville, California, **95678**
Telephone: **(209)728-1387 x-22** or **(209)768-5887**
Facsimile:
Email: Ed.Warner@ncpagen.com

With a copy to

Northern California Power Agency
Attn: Ken Speer, Assistant General Manager-Generation Services
651 Commerce Drive
Roseville, California, **95678**
Telephone:
Facsimile:
Email: Ken.Speer@ncpa.com

City of Azusa

City of Azusa
Azusa Light & Water Department
Attn: George Morrow, Electric Utility Director
729 N. Azusa Avenue
P.O. Box 9500
Azusa, California **91702-9500**
Telephone: **(626)812-5214**
Facsimile: **(626)334-3163**
Email: gmorrow@ci.azusa.ca.us

Bay Area Rapid Transit District

Bay Area Rapid Transit District
Attn: Frank Schultz, Power Resources Manager
300 Lakeside Drive, 16th Floor
Oakland, California **94612-3534**
Telephone: **(510)464-6435**
Facsimile: **(510)464-6118**
Email: fschult@bart.gov

Modesto Irrigation District

Modesto Irrigation District
Attn: Gregory Salyer, P.E.,
Resource Planning and Development Manager
P.O. Box 4060
1231 Eleventh Street
Modesto, California 95352
Telephone: (209)526-7550
Facsimile: (209)526-7575
Email: gregs@mid.org

California Department of Water Resources:

Department of Water Resources
Attn: Chi Doan
Chief, Power Contracts Branch
3310 El Camino Avenue, LL94
Sacramento, California 95821
Telephone: (916) 574-0612
Facsimile: (916) 574-0660
Email: chi@water.ca.gov

Plumas-Sierra Rural Electric Cooperative

Plumas-Sierra REC
Attn: Bob Marshall, General Manager
73233 Highway 70
Portola, California 96122-7064
Telephone: (530)832-4261
Facsimile: (530)832-6070
Email: marshall@psln.com

City of Biggs

City of Biggs
Attn: Pete Carr, City Administrator
465 "C" Street
P.O. Box 307
Biggs, California 95917-0307
Telephone: (530)868-5493
Facsimile: (530)868-5239
Email: biggs1@biggs-ca.gov

City of Gridley

City of Gridley
Attn: Rob Hickey, City Administrator
685 Kentucky Street
Gridley, California 95948-2117
Telephone: (530)846-5695
Facsimile: (530)846-3229
Email: rhipkey@gridley.ca.us

City of Healdsburg

City of Healdsburg
Attn: Elizabeth Kirkley, Electric Utility Director
435 Allan Court
Healdsburg, California 95448
Telephone: (707)431-3346
Facsimile: (707)431-2710
Email: ekirkley@ci.healdsburg.ca.us

City of Lodi

City of Lodi
Attn: Ken Weisel, Acting Utility Director
221 W. Pine Street
Lodi, California 95240
Telephone: (209)333-6762
Facsimile: (209)333-6839
Email: kweisel@lodielectric.com

City of Lompoc

City of Lompoc
Attn: Ronald Stassi, Utility Director
100 Civic Center Plaza
P.O. **Box** 8001
Lompoc, California 93438-8001
Telephone: (805)875-8299
Facsimile: (805)875-8399
Email: r_stassi@ci.lompoc.ca.us

City of Oakland- Port of Oakland

Port of Oakland
Attn: _____

Oakland, California _____
Telephone: _____
Facsimile: _____
Email: _____

City of Santa Clara

Silicon Valley Power
Attn: John Roukema, Electric Utility Director
1500 Warburton Avenue
Santa Clara, California 95050
Telephone: (408)261-5490
Facsimile: (408)249-0217
Email: jroukema@siliconvalleypower.com

City of Ukiah

City of Ukiah
Attn: Mel Grandi, Utility Director
300 Seminary Avenue
Ukiah, California 95482
Telephone: (707)463-6298
Facsimile: (707)463-6740
Email: mgrandi@cityofukiah.com

Power and Water Resources Purchasing Authority

Power and Water Resources Purchasing Authority
Attn: Kent W. Palmerton, General Manager
2106 Homewood Way, Ste 100
Carmichael, California 95608
Telephone: (916) 483-5368
Facsimile: (916) 485-3537
Email: kent@,wkpalmerton.com

APPENDIX E

STATE OF CALIFORNIA

GENERAL TERMS AND CONDITIONS

This Appendix E contains standard terms required by the State of California and which apply only to NCPA as part of the Agreement to which this Appendix E is an appendix.

1. **APPROVAL:** This Agreement is of no force or effect until signed by both NCPA and CDWR and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code 98546.7, Pub. Contract Code § 10115 et seq., CCR Title 2, Section 1896).
3. **INDEPENDENT CONTRACTOR** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
4. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all Major Contracts.

5. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in Appendix F to the Agreement are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

6. **TIMELINESS:** Time is of the essence in this Agreement.
7. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
8. **CHILD SUPPORT COMPLIANCE ACT:** "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 71 10, that:
 - (a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - (b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."
9. **PRIORITY HIRING CONSIDERATIONS:** If the Agreement includes services in excess of \$200,000, NCPA shall give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code Section 10353.

APPENDIX F

CERTIFICATION CLAUSES

THIS APPENDIX F CONTAINS THE STATE OF CALIFORNIA CCC 307. CCC 307 CONTAINS SEVEN (7) PROVISIONS PERTAINING TO CONTRACTOR CERTIFICATION CLAUSES AND EIGHT (8) PROVISIONS PERTAINING TO DOING BUSINESS WITH THE STATE OF CALIFORNIA, ALL OF WHICH ~~ARE~~ INCLUDED FOR REFERENCE. CCC 307 APPLIES TO THIS AGREEMENT ONLY WITH RESPECT TO NCPA AND CDWR AND AS ACCEPTED, MODIFIED OR DESCRIBED BY PROVISION BELOW.

CONTRACTOR CERTIFICATION CLAUSES

- 1) STATEMENT OF COMPLIANCE – NOT APPLICABLE, NCPA IS A PUBLIC ENTITY.
- 2) DRUG-FREE WORKPLACE REQUIREMENTS – ACCEPTED.
- 3) NATIONAL LABOR RELATIONS BOARD CERTIFICATION – NOT APPLICABLE, NCPA IS A PUBLIC ENTITY.
- 4) CONTRACT FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT – NOT APPLICABLE; NCPA IS NOT PERFORMING LEGAL SERVICES FOR CDWR.
- 5) EXPATRIATE CORPORATIONS – ACCEPTED.
- 6) SWEATFREE CODE OF CONDUCT – NOT APPLICABLE, NCPA IS NOT FURNISHING ANY APPAREL, GARMENTS OR CORRESPONDING ACCESSORIES TO CDWR.
- 7) DOMESTIC PARTNERS - NOT APPLICABLE/ WAIVED PER PUBLIC CONTRACT CODE SECTION 10295.3(C)(4).

ccc-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Date Executed</i>	<i>Executed in the County of</i>

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made

false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

2. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
3. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

- 1) CONFLICT OF INTEREST – ACCEPTED.
- 2) LABOR CODE/WORKERS’ COMPENSATION – ACCEPTED.
- 3) AMERICANS WITH DISABILITIES ACT - ACCEPTED.
- 4) CONTRACTOR NAME CHANGE – ACCEPTED.
- 5) CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA – NOT APPLICABLE, NCPA IS NOT A CORPORATION.
- 6) RESOLUTION – ACCEPTED.
- 7) **AIR** OR WATER POLLUTION VIOLATION – ACCEPTED.
- 8) PAYEE DATA RECORD FORM STD. 204 – NOT APPLICABLE^y NCPA IS A GOVERNMENTAL ENTITY.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code § 10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code § 10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code § 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code § 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: **An** amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Lodi Energy Center

Project Management and Operations Agreement

TABLE OF CONTENTS

PARTIES

RECITALS

ARTICLE 1:	DEFINITIONS
ARTICLE 2:	PROJECT PARTICIPANTS
ARTICLE 3:	NCPA'S OBLIGATIONS
ARTICLE 4:	PROJECT PARTICIPANT COMMITTEE
ARTICLE 5:	PROJECT OPERATIONS AND DISPATCH SERVICES
ARTICLE 6:	ALLOCATION OF NCPA ADMINISTRATIVE COSTS AND JPA COST ASSESSMENT FOR NON-MEMBERS
ARTICLE 7:	DIFFERENTIAL TRANSMISSION COST ADJUSTMENT
ARTICLE 8:	ACCOUNTING AND AUDITING
ARTICLE 9:	BILLING AND BILLING DISPUTES
ARTICLE 10:	AGREEMENT SCHEDULES
ARTICLE 11:	SHARED FACILITIES AND COST SHARING
ARTICLE 12:	PROJECT FUNDS
ARTICLE 13:	POTENTIAL PROJECT IMPACT
ARTICLE 14:	TERM OF AGREEMENT
ARTICLE 15:	NOTICES
ARTICLE 16:	WAIVER
ARTICLE 17:	UNCONTROLLABLE FORCES
ARTICLE 18:	LIABILITY
ARTICLE 19:	REPORTS
ARTICLE 20:	ASSIGNMENT OF AGREEMENT
ARTICLE 21:	SETTLEMENT OF DISPUTES
ARTICLE 22:	MISCELLANEOUS PROVISIONS
ARTICLE 23:	SPECIAL PROVISIONS APPLYING TO CDWR AND NCPA ONLY

PMOA Agreement Schedules

Agreement Schedule 0.00	Introduction to Agreement Schedules
Agreement Schedule 1.00	Scheduling and Dispatch Operations and Economic Criteria
Exhibit 1	Heat Rate Curve
Exhibit 2	VOM
Exhibit 3	Margin
Exhibit 4	GenBenefit
Exhibit 5	CAISO Settlement Charge Matrix
Agreement Schedule 2.00	Fuel Supply Procurement, Delivery, and Management
Agreement Schedule 300	Participant Requested Operations During Non-Economic Periods
Agreement Schedule 4.00	Shared Facilities and Cost Sharing
Agreement Schedule 5.00	Project Funds
Agreement Schedule 6.00	Contact List
Agreement Schedule 7.00	Differential Transmission Cost Adjustment
Agreement Schedule 8.00	Delegation of Authority
Agreement Schedule 9.00	LEC Project Participants and their Shares
Agreement Schedule 10.00	Billing and Payments
Appendix A	General Terms and Conditions between CDWR and NCPA

PARTIES

This Lodi Energy Center Project Management and Operations Agreement (this "Agreement"), made and entered into as of this 1st day of _____, 2010, by and between the NORTHERN CALIFORNIA POWER AGENCY, a joint powers agency and public entity organized under the laws of the State of California ("NCPA"), and each of the undersigned entities ("Participants", sometimes hereinafter referred to individually as "Participant" and, together with NCPA, as "Parties" or individually as "Party").

RECITALS

This Agreement (capitalized terms used herein and not otherwise defined shall have the meanings given such terms pursuant to Article 1 of this Agreement) is made with reference to the following facts among others:

A. NCPA was created pursuant to the provisions relating to the joint exercise of powers contained in the Act and the JPA by its members for the purpose of jointly and cooperatively undertaking planning, financing, development, acquisition, construction, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.

B. Pursuant to the terms of the Act and the JPA, NCPA has the power to plan, develop, finance, own, acquire, design, construct, operate, maintain and repair electric generation and transmission projects or cause such projects to be planned, financed, developed, acquired, constructed, operated, maintained and repaired, and to provide by agreement with a public agency of the State of California to perform such activities.

C. The Participants have investigated the feasibility of constructing a generating facility called the Lodi Energy Center, including all necessary and appurtenant facilities thereto, the applicable portion of any common facilities, interconnection facilities and all related facilities (hereinafter referred to as the "Project," as more fully described in Appendix B of the Power Sales Agreement ("PSA") entitled "Description of the Initial Facilities"), in order to, among other things, provide Capacity and Energy, including related Attributes, for the Participants.

D. NCPA has entered into a PSA with the Participants for the sale of, in the aggregate, the entire output of the Project to the Participants.

E. NCPA will own the Project and, pursuant to the terms of the PSA, is responsible for the ownership, operation and maintenance of the Project.

F. The PSA provides for the establishment of a Participant Committee ("PPC"), composed of representatives of the Parties to the PSA, to exercise the powers and duties of the PPC with respect to the operation and maintenance of the Project.

G. The purpose of this Agreement is to set forth the agreement among the Parties on the management and operation of the Project.

H. Each of the Parties intends to observe the provisions of this Agreement in good faith and shall cooperate with all other Parties in order to achieve the full benefits of joint design, construction and operation of the Project.

I. The Participants are public entities which seek to obtain the benefits of the Project to economically meet the needs of their ratepayers or for their operations or facility loads.

J. This Agreement is intended to promote and ensure equitable and fair treatment of all Participants; specifically, it is intended that all Participants may seek the benefits of the Project, without disadvantaging any other Participant.

K. The Parties generally intend that NCPA as Project operation manager will operate the Project when it is economic to do so, and Participants will take available Energy and Capacity and other Attributes proportionally according to their GES.

AGREEMENT

For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between the Parties hereto as follows:

A. **DEFINITIONS:** The definitions in the PSA are incorporated herein by reference. Other terms are defined in Article 1 - "Definitions" and Agreement Schedule 0.00. In the event of a conflict between the PSA and any definition in this Agreement, the PSA's definition applies, unless the Parties agree otherwise.

B. **RELATION TO PSA:** This Agreement does not amend, alter or revise the PSA, and Participants retain all rights and obligations under the PSA. In the event of a conflict between the PSA and this Agreement, the PSA shall prevail.

C. **RULES OF CONSTRUCTION:** The Rules of Construction in the PSA contained in Section 4.96 apply to this Agreement.

ARTICLE 1

DEFINITIONS

Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

- 1.1. “Act” has the meaning given to it in Section 4.2 of the PSA.
- 1.2. “Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Project.
- 1.3. “Balancing Authority” means the responsible entity that integrates resource plans ahead of time and maintains generation-load interchange-balance within a Balancing Authority Area, and supports the applicable interconnected electric system network frequency in real time, or as redefined by the North American Electric Reliability Corporation or its successor.
- 1.4. “Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area, or as redefined by the North American Electric Reliability Corporation or its successor.
- 1.5. “Billing Statement” has the meaning given it in Section 4.7 of the PSA.
- 1.6. “Business Day” means Monday through Friday, except for federal or state holidays.
- 1.7. “CAISO” means the California Independent System Operator, a non-profit public benefit corporation responsible for the provision of fair and open transmission access and maintaining reliable and efficient operation of that portion of the electric grid within the State of California referenced pursuant to Chapter 2.3, Part 1, Division 1 of the California Public Utilities Code.
- 1.8. “Capacity” has the meaning given to it in Section 4.9 of the PSA.
- 1.9. “Commercial Operation Date” has the meaning given to it in Section 4.17 of the PSA.
- 1.10. “Commission” means the governing body of NCPA established pursuant to the NCPA JPA.
- 1.11. “CT1” means the Combustion Turbine Project No. 1, which consists of five General Electric Frame 5 simple cycle electrical generating units rated at a nominal generating capacity of 25 megawatts (MW) per unit. The units are located in three locations: one unit at the City of Lodi, two units at the City of Alameda and two units at the City of Roseville.
- 1.12. “CT2” means the Combustion Turbine Project No. 2, which is an LM5000, steam injected electrical generating facility rated at a nominal generating capacity of 49.9 megawatts (MW). The CT2 is sometimes also referred to as the “STIG”, and is located in Lodi, California, on property adjacent to the City of Lodi White Slough Water Pollution Control Facility WPCF.
- 1.13. “Defaulting Participant” has the meaning given to it in Section 4.20 of the PSA.

- 1.14. "Delegation of Authority" means the authority that the PPC delegates to NCPA under Agreement Schedule 8.00.
- 1.15. "Economic Operations" means the Project is operated with the intent to maximize the sum of the benefits less the sum of the costs and a pre-determined PPC approved margin. Economic Operations is further defined in Agreement Schedule 1.00.
- 1.16. "Effective Date" for this Agreement means the date described in Article 14.1 of this Agreement.
- 1.17. "Energy" has the meaning given it in Section 4.23 of the PSA.
- 1.18. "Exporting Participant" means a Participant who has no load in the Balancing Authority Area in which the Project is located and is an original signatory to the Second Phase Agreement.
- 1.19. "Facilities Agreement" means that certain agreement executed by and between NCPA and certain of its members dated September 22, 1993, as amended through February 2, 2007.
- 1.20. "Facilities Committee" means the committee established pursuant to the Facilities Agreement.
- 1.21. "FERC" means the Federal Energy Regulatory Commission.
- 1.22. "Fiscal Year" has the meaning given it in Section 4.28 of the PSA.
- 1.23. "General Manager" means the General Manager of NCPA who is the person designated by the Commission as General Manager pursuant to the NCPA JPA and NCPA bylaws.
- 1.24. "GES" has the meaning given it in Section 4.33 of the PSA.
- 1.25. "JPA" has the meaning given it in Section 4.48 of the PSA.
- 1.26. "JPA Cost Assessment" means that annual contribution determined by the Commission assessment pursuant to Article IV, Section 3(a) of the JPA.
- 1.27. "JPA Cost Assessment Rate" means that rate determined during NCPA's annual budget process for the JPA Cost Assessment defined in Section 1.26 of this Agreement, which shall require approval by the Commission and may be up to \$0.15 per megawatt hour pursuant to Article IV, Section 3(a) of the JPA.
- 1.28. "LEC" means the Lodi Energy Center, which will be a natural gas-fired, combined-cycle electrical generating facility rated at a nominal generating capacity of 280 megawatts (MW).
- 1.29. "NCPA Administrative Costs" has the meaning given to it in Section 4.56 of the PSA.
- 1.30. "NCPA Member" means any signatory to the NCPA JPA.
- 1.31. "Non-NCPA Member Participant" means any participant to an NCPA project that is not an NCPA Member.

- 1.32. "Participant" means an entity that is a signatory to the PSA, and any successor to a Participant pursuant to the PSA.
- 1.33. "PMOA Schedules" or "Agreement Schedules" means the procedures, protocols and guidelines, appended to and part of this Agreement, which are subject to change or amendment from time to time, as set forth in this Agreement.
- 1.34. "PPC Approval" means the approval granted by the PPC, pursuant to Section 4.71 of the PSA.
- 1.35. "Point of Delivery" has the meaning given to it in Section 4.77 of the PSA.
- 1.36. "Project Agreement" means an agreement, including any Second Phase Agreement, PSA or Project Management and Operations Agreement, between NCPA and Project Participants to enable NCPA on behalf of Project Participants to carry out plans for the construction, operation and financing of the LEC Project.
- 1.37. "Project Annual Budget" has the meaning given to it in Section 4.79 of the PSA.
- 1.38. "Prudent Utility Practice" has the meaning given it in Section 4.83 of the PSA.
- 1.39. "PSA" means the Power Sales Agreement entered into among the Parties.
- 1.40. "Scheduling Coordinator" means the authorized agent who can execute transactions with the Balancing Authority.
- 1.41. "Second Phase Agreement" means the Second Phase Agreement for Funding the Planning and Development Activities of the Lodi Energy Center that became effective on or about March 1, 2008, among NCPA and the Participants.
- 1.42. "Shared Facilities" means the facilities attached as Agreement Schedule 4.00 and which may be revised from time to time based upon the recommendations and approvals of the Facilities Committee, the PPC and the Commission.

ARTICLE 2

PROJECT PARTICIPANTS

A list of Project Participants along with their respective GES in the Project is provided in the PSA, Appendix A, and is incorporated herein. NCPA shall maintain and update as needed a list of Participants and their respective GES in Agreement Schedule 9.00.

ARTICLE 3

NCPA'S OBLIGATIONS

- 3.1 General Responsibilities. NCPA will be responsible for planning, negotiating, designing, financing, constructing, insuring, contracting for, administering, operating, and maintaining the Project to effectuate the delivery and sale to each Participant of its share of Capacity and Energy, including other Attributes, from the Project. Certain specific delegations to NCPA are described under Agreement Schedule 8.00, Delegation of Authority.
- 3.2 NCPA Staff. The General Manager shall hire such staff as necessary to carry out NCPA's obligations pursuant to this Agreement and shall have full authority and responsibility for all personnel issues including, but not limited to, hiring, setting salaries, replacements, discharging, disciplinary actions, authorizing training and related travel.
- 3.3 Duties and Authority. The General Manager shall be responsible for and have commensurate authority to take any and all actions and perform all functions necessary to:
- a. Carry out directions of the PPC and Commission with respect to matters related to this Agreement;
 - b. Direct and carry out all responsibilities of NCPA pursuant to this Agreement, Project Agreements, Agreement Schedules, or any other agreement between NCPA and Participants related to the Project. Examples of said responsibilities include but are not limited to the following:
 1. Acquire property, easements, and water rights as necessary to construct and operate the Project;
 2. Obtain Federal, State, and local permits, licenses, opinions and rulings as necessary to construct and operate the Project;
 3. Direct the design and construction of the Project;
 4. Recommend methods for financing the Project;
 5. Operate and maintain the Project in accordance with all legal and regulatory requirements and Prudent Utility Practice;
 6. Provide for scheduling and dispatch services, as outlined in Article 5;
 7. Develop a billing system and bill Participants in accordance with the terms and conditions of the PSA and NCPA billing procedures;
 8. Prepare and submit proposed budgets for the Project for the ensuing Fiscal Year to the Commission and PPC;

9. Prepare financial data, reports and operating information pertaining to the Project;
10. Prepare and maintain necessary operating, maintenance, and environmental health and safety procedures pertaining to the Project;
11. Arrange for the fuel delivery and management for the Project, including, as appropriate, contracts with third parties for such delivery and management service, or such other fuel supply management structure as approved by the PPC;
12. Propose to the PPC amendments to this Agreement and its Agreement Schedules, exhibits, or appendices; and
13. Prepare a planned outages and curtailment schedule for the Project prior to the beginning of each Fiscal Year for PPC Approval.

ARTICLE 4

PROJECT PARTICIPANT COMMITTEE

4.1 Establishment of PPC

The establishment of the PPC shall be governed by the provisions of the PSA, Section 8.1.

4.2 PPC Operations

The operations of the PPC shall be governed by the provisions of the PSA, Section 8.2.

4.3 PPC Approval

PPC Approval shall be governed by the provisions of the PSA, Section 8.3 and Article 4.4 of this Agreement.

4.4 PPC Responsibilities

The PPC shall have the following responsibilities related to this Project, in addition to those listed in Section 8.5 of the PSA:

- 4.4.1 Elect a Chairperson, Vice Chairperson and/or other PPC positions as deemed necessary and prudent, to conduct the business of the PPC pursuant to this Agreement and the PSA.
- 4.4.2 If the pre-construction studies or other related Project development activities have not been completed by the Effective Date of this Agreement, oversee the continuation and completion of such studies or activities.
- 4.4.3 Review and approve the proposed acquisition of property, easements and water rights by NCPA staff.
- 4.4.4 Review and approve project studies conducted by NCPA staff or consultants related to the Project.
- 4.4.5 Review and approve proposed NCPA actions relative to obtaining Federal, State, and local permits, licenses, opinions and rulings.
- 4.4.6 Review and approve plans, procedures and contracts for the procurement of fuel, equipment, materials and services.
- 4.4.7 Provide liaison among NCPA and the Participants at the management level with respect to the development, financing, construction, improvement, maintenance, repair, replacement and operation of the Project.

- 4.4.8 Exercise general supervision over any committee or subcommittee established.
- 4.4.9 Make recommendations to NCPA with respect to the development, financing, management, construction, improvement, maintenance, repair, replacement and operation of the Project.
- 4.4.10 Review, modify and approve the form of written statistical and administrative reports and information and other similar records to be furnished to the PPC by NCPA.
- 4.4.11 Review and approve annual maintenance schedules.
- 4.4.12 Review, modify and approve dispatch and scheduling criteria contained in Agreement Schedule 1.00.
- 4.4.13 Review, modify and approve all Project budgets and revisions, including operating and capital budgets, prepared and submitted by NCPA.
- 4.4.14 Review, modify and approve recommendations by NCPA made pursuant to the provisions of this Agreement and the PSA.
- 4.4.15 Review, modify and approve all Project financing or other provisions for the payment or financing thereof, with such review, modification and approval subject to each Participant's association with a particular Indenture Group or Indenture Groups as applicable, as identified in Section 8.4 of the PSA,.
- 4.4.16 Review, modify and approve Project related liability, business interruption and other applicable insurance including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of an uninsured claim that NCPA may settle without PPC Approval.
- 4.4.17 Review, modify and approve procedures for Participants' optional Capital Contributions, as described in Section 14.5 of the PSA.
- 4.4.18 Establish a schedule of meetings, which shall be held at least four (4) times each year and conducted in accordance with the Ralph M. Brown Act.
- 4.4.19 Initiate, review and make recommendations concerning proposed amendments to the PSA, this Agreement and to its Agreement Schedules.
- 4.4.20 Perform such other functions and duties as may be provided for under the PSA, this Agreement, or as may otherwise be appropriate or beneficial to the Project.

4.5 Additional Subcommittees

The PPC may establish subcommittees pursuant to Section 8.6 of the PSA.

4.6 Written Record

Any written records maintained or generated by the PPC shall be made pursuant to Section 8.7 of the PSA.

4.7 Change in Representative

Each Participant shall promptly give notice in writing to the other Participants and NCPA of any changes in the designation of its representative(s), including any change in its voting representative, on any committee or subcommittee, and NCPA shall promptly give notice to the Participants of any changes in the designation of NCPA's representative on the PPC or any committee or subcommittee.

4.8 Costs of Consultants

The employment and costs of consultants shall be governed by Section 8.8 of the PSA.

4.9 Representative's Expenses

Any expenses incurred by any representative or alternate representative of any Participant shall be governed by Section 8.9 of the PSA.

4.10 Inaction by PPC.

Any inaction or inability to act by the PPC shall be governed by Section 8.10 of the PSA.

4.11 Compliance With Indentures

Compliance with the Indenture Groups for the planning, financing, constructing, managing, operating and maintaining the Project shall be governed by Section 8.11 of the PSA.

ARTICLE 5

PROJECT OPERATIONS AND DISPATCH SERVICES

5.1 Operations.

NCPA will operate the Project by adhering to all applicable governing laws and regulations, Prudent Utility Practices, and in accordance with the principles and guidelines outlined in this Article, and which shall be reflected in the protocols in Agreement Schedule 1.00 (Scheduling and Dispatch Operations and Economic Criteria), including its exhibits, and Agreement Schedule 2.00 (Gas Supply Procurement, Delivery and Management). The Project shall be managed and operated in a manner which shall not diminish the rights of a Participant to receive its GES. The following principles and guidelines shall be followed in operating the Project:

5.1.1 Economic Operations.

- a. NCPA will operate the Project on an Economic Operations basis as further described in Agreement Schedule 1.00.
- b. NCPA shall allocate Project Energy and Capacity consistent with Section 6 of the PSA and costs (e.g. fuel requirements) consistent with Section 17 of the PSA to Participants in accordance with their respective GES.
- c. If a Participant desires physical delivery of its GES of Energy, Capacity and/or other Attributes, NCPA will deliver such Participant's GES of Project Energy, Capacity and/or other Attributes to a Participant at the Point of Delivery designated by the Balancing Authority for the Project or effect a unit contingent export. If a Participant does not desire physical delivery of its GES of Energy, Capacity and/or other Attributes, NCPA shall liquidate such Participant's GES of Project Energy, Capacity and/or other Attributes in the markets on behalf of such Participant. NCPA has no obligation to provide transmission service to any Participant pursuant to this Agreement beyond the Point of Delivery. The Project Participant will be responsible for all costs related to the scheduling and delivery of Project Energy, Capacity and other Attributes beyond the Point of Delivery.
- d. If the Project is not scheduled to operate based on Economic Operations criteria during one or more periods pursuant to Agreement Schedule 1.00, and the Project is available for operations, then any Participant (or group of Participants) may request that NCPA operate the Project for such periods. The Participant(s) must bear the full costs for such operation. Agreement Schedule 3.00 contains the procedures and cost responsibilities of such requests.
- e. The PPC shall approve and may, from time to time, revise the calculations and parameters (e.g. heat-rate curves, start-up costs, physical operating plant limits, shutdown costs, and the like) used by NCPA to determine Economic Operations as set forth in Agreement Schedule 1.00.

- f. The Project will be bid and operated in a manner to preserve the value of all Energy, Capacity and other Attributes.
- g. Forward commitments by NCPA of Project Energy, Capacity and other Attributes will be limited to the daily and spot markets; however, an individual Participant(s) may allow NCPA to enter into forward commitments beyond the daily and spot market periods up to its GES of Energy, Capacity and other Attributes. Such forward commitments shall be executed under a separate agreement between NCPA and the individual Participant(s) and shall not affect the GES of the other Participants.
- h. In the case of a Defaulting Participant, the limitation on forward commitments identified in Section 5.1.1 (g) shall not limit any actions or remedies available under the PSA.

5.1.2 Fuel Procurement.

- a. NCPA is responsible for arranging for fuel procurement, delivery and management service on a daily basis, as described in Agreement Schedules 1.00 and 2.00.
- b. NCPA may contract with a third party for such fuel procurement, delivery and management service, or may use another fuel supply management structure as approved by the PPC.
- c. Each Participant shall be responsible for its GES of all costs of fuel and fuel management services. Participants may provide up to their GES of the Project's total fuel requirements, as provided in Agreement Schedules 1.00 and 2.00, provided that no additional costs are incurred by other Participants by reason of such self-supply of fuel.
- d. Billing charges will include fuel commodity and transportation charges to the plant burner tip plus any applicable ancillary charges (e.g. fuel management administration fees, scheduling imbalance adjustments, and the like), adjusted for Participant supplied fuel. Any additional charges resulting from Participant supplied fuel will be fully charged to such Participant.
- e. Forward commitments by NCPA for fuel will be limited to the daily and spot markets; however, individual Participant(s) may allow NCPA to enter into forward commitments beyond the daily and spot market periods up to its GES of fuel. Such forward commitments shall be executed under a separate agreement between NCPA and the individual Participant(s) and shall not affect the GES of the other Participants.
- f. In the case of a Defaulting Participant, the limitation on forward commitments identified in Section 5.1.2(e) shall not limit any actions or remedies available under the PSA.

ARTICLE 6

ALLOCATION OF NCPA ADMINISTRATIVE COSTS AND JPA COST ASSESSMENT FOR NON-MEMBERS

6.1 NCPA Administrative Costs

NCPA Administrative Costs, including power management costs, shall be allocated to Participants pursuant to Section 7.2 of the PSA.

6.2 Additional Cost for Non-Members

Since NCPA members pay a JPA Cost Assessment under the JPA, they will not be subject to an additional JPA Cost Assessment under this Agreement. However, Non-NCPA Member Participants will be subject to the JPA Cost Assessment in accordance to this Article 6.2, and NCPA shall use the same JPA Cost Assessment Rate that the NCPA Members pay, but only as applied to each Participant's respective GES of Energy. Such JPA Cost Assessment shall be charged in twelve equal billings, be separately identified for each Non-NCPA Member Participant and be included in the Billing Statements. If a Non-NCPA Member Participant later becomes an NCPA Member, such Participant will no longer be required to pay the additional costs as described in this Article 6.2. If an NCPA Member Participant later withdraws from NCPA and is no longer a NCPA Member, such Participant will thereafter be subject to the JPA Cost Assessment as described in this Article 6.2.

6.2.1. JPA Cost Assessment.

- a. Until a full calendar year after the Commercial Operation Date is achieved, the forecast methodology below shall be used to determine the JPA Cost Assessment for each Non-NCPA Member Participant:

$$\text{JPA Cost Assessment} = \text{JPA Cost Assessment Rate} \times \text{GES} \times 80\% \text{ capacity factor} \times 280 \text{ MW} \times 8760 \text{ hours}$$

The JPA Cost Assessment for the first Fiscal Year shall be prorated for the remaining number of months of commercial operation in the first Fiscal Year.

- b. Subsequent Fiscal Years will be based on the previous full calendar year's actual generation measured in MWh.

ARTICLE 7

DIFFERENTIAL TRANSMISSION COST ADJUSTMENT

7.1 Differential Transmission Cost Adjustment

Each Participant acknowledges that Exporting Participant(s) may or could have their GES of Project Energy delivered to a different Balancing Authority. As a result, such Exporting Participant(s) may be subject to additional or duplicative Balancing Authority Area charges. All Participants agree that the PPC is authorized to establish, approve, implement, administer and revise from time to time a differential transmission cost adjustment to mitigate or partially mitigate additional or duplicative Balancing Authority Area charges applicable to affected Exporting Participant(s) when Project Energy is delivered to such Exporting Participant(s)' load. NCPA will track the cumulative charges and benefits for each Exporting Participant. The PPC will consider the following general principles, and such other protocols and guidelines as it deems necessary, pursuant to Agreement Schedule 7.00, in determining the differential transmission cost adjustment.

7.1.1 Limitations

Any differential transmission cost adjustment shall apply only to Exporting Participant(s) and shall be limited to that portion of the Exporting Participant(s)' GES of the Project that is exported from the Balancing Authority Area in which the Project is located to another Balancing Authority Area adjacent to the Project and in which the Exporting Participant has load.

7.1.2 Calculation Methodology

The established differential transmission cost adjustment shall be understandable by all Participants, calculable, and based on publicly available information sources or agreed upon factors as determined by the PPC, pursuant to Agreement Schedule 7.00.

7.1.3 Mitigation

All Parties agree to cooperate as reasonably required to establish such Project protocols and guidelines that reduce the expected amount and incidence of the differential transmission cost adjustment, as more particularly described in Agreement Schedule 7.00.

7.1.4 Other Benefits,

All Parties agree that, to the extent that an Exporting Participant receiving the benefit of the differential transmission cost adjustment attains additional Project value above what such Exporting Participant would have attained, or would likely have attained, if the Project had been located in the same Balancing Authority Area as such Exporting Participant's load subject to Section 7.1.1, these additional benefits will be netted from the differential transmission cost adjustment as approved by the PPC,

pursuant to Agreement Schedule 7.00. If at the end of the Fiscal Year, the cumulative charges are greater than the cumulative benefits for an Exporting Participant, the Exporting Participant shall be reimbursed the net amount or credited the net amount by the Project. Any reimbursement will be billed to all Project Participants based upon their GES. If at the end of the Fiscal Year, the cumulative benefits are greater than the cumulative charges for an Exporting Participant, the Exporting Participant shall reimburse or credit the Project up to any differential transmission cost adjustments the Exporting Participant previously received. Any reimbursement received by the Project shall be reimbursed or credited to all Project Participants based on their GES up to the amount of differential transmission cost adjustments each Participant has paid. For each Exporting Participant, the PPC shall review the cumulative charges and benefits and make determination of when payments shall be reimbursed to avoid large accumulation of obligations under this Article. Any such reimbursement shall be calculated and credited pursuant to Agreement Schedule 7.00. Cumulative charges and benefits that are not reimbursed at the end of a Fiscal Year shall be carried over to the next Fiscal Year.

7.1.5 Billing

Any differential transmission cost adjustment approved for implementation by the PPC will be billed according to the procedures approved by the PPC in Agreement Schedule 7.00 and shall be allocated to all Participants in proportion to their respective GES.

7.1.6 Annual Review

The PPC shall at least annually review the application and result of any applied differential transmission cost adjustment, The PPC shall compare this cost adjustment against the net of the actual transmission cost differential experienced and other benefits received during the same period by the Exporting Participants, and collect or refund any significant under or over cost adjustment amounts. In addition, the PPC shall make any needed changes to the differential transmission cost adjustment methodology used in Agreement Schedule 7.00 for the subsequent period.

7.1.7 Audit Rights

Any Participant, at its own expense and upon reasonable notice to NCPA and the PPC, may review and audit the calculation and implementation of the differential transmission cost adjustment.

ARTICLE 8

ACCOUNTING AND AUDITING

8.1 Records and Accounts

NCPA shall keep records and accounts for the Project pursuant to Section 7.5 of the PSA and Article 19 of this Agreement.

8.2 Settlement Data

NCPA will make settlement data, including underlying data received from the Balancing Authority, available to the Participants. Procedures and formats for the provision of such settlement data will be established by the PPC and NCPA from time to time.

8.3 Periodic Audit

NCPA shall arrange for periodic audits to be performed, pursuant to Section 7.6 of the PSA.

ARTICLE 9

BILLING AND BILLING DISPUTES

Billing and billing disputes shall be handled in accordance with Section 17 of the PSA.

In addition to the monthly Billing Statements provided for in the PSA, NCPA may submit additional invoices to the Participants to fund Project Funds as authorized under the PSA and as provided for in Article 12 and Agreement Schedule 5.00 and the Participants shall pay such invoices when due.

ARTICLE 10

AGREEMENT SCHEDULES

10.1 Agreement Schedules

Agreement Schedules shall be established for the implementation of this Agreement. The Agreement Schedules may be adopted, amended or deleted by the PPC subject to the provisions of the PSA and this Agreement. NCPA Commission approval to adopt, amend or delete an Agreement Schedule may be required, as described in Article 10.3 below. Upon PPC Approval, adoptions, amendments, or deletions of Agreement Schedules shall be effective immediately without the necessity of approval by the governing board or commission of any Participant. NCPA shall upon adoption, amendment or deletion of an Agreement Schedule ensure that each Participant is promptly provided notice of such adoption, amendment or deletion.

10.2 Scope of Agreement Schedules

Agreement Schedules provide detailed descriptions, procedures, protocols and guidelines (including operating and cost recovery procedures) for the operation of the Project.

10.3 Agreement Schedules Requiring;NCPA Commission Approval

If ~~an~~ Agreement Schedule could be reasonably viewed as having an impact on other NCPA projects, but specifically excluding impacts to market prices, approval by both the PPC and NCPA Commission will be required to adopt, amend, or delete such Agreement Schedule. Those Agreement Schedules requiring approval of both PPC and the NCPA Commission shall be described in Agreement Schedule 0.00, and as new Agreement Schedules are added after the Effective Date which requires NCPA Commission approval, Agreement Schedule 0.00 will be amended to reflect such additions.

ARTICLE 11

SHARED FACILITIES AND COST SHARING

11.1 Shared Facilities

Participants desire to equitably share and use facilities and equipment common to two or more NCPA projects, including the CT1, CT2 and LEC projects, for the purpose of reducing costs and improving efficiencies for all participants of these projects. Such Shared Facilities and the basis for such cost sharing shall be included in the Schedules to the Facilities Agreement, which governs the operations of the CT1 and CT2..

11.1.1 Construction of Facilities: The Project will construct and pay for any new Shared Facilities required as a result of the LEC, and particularly facilities to be shared between the LEC and CT1 and/or CT2, pursuant to the applicable project agreements.

11.1.2 Joint Use of Facilities: NCPA and the Participants may use, operate and maintain the Shared Facilities, attached as Agreement Schedule 4.00, according to the terms and conditions of this Agreement and the percentage allocation of costs associated with such Shared Facilities detailed in Agreement Schedule 4.00. Nothing in this Agreement may be construed to create a lease, sale, or other disposition of real or personal property of NCPA.

11.1.3 Use of Shared Facilities: As applicable, the LEC, CT1 and CT2 projects will utilize the Shared Facilities and equipment as listed in Agreement Schedule 4.00. In addition thereto, the LEC, CT1 and CT2 projects and personnel will have:

- a. Vehicular and pedestrian access rights.
- b. Use of Shared Facilities for the purpose of locating, accessing, operating, maintaining, repairing and replacing pipelines.
- c. Access for locating, accessing, operating, constructing, maintaining, repairing and replacing the steam pipeline(s), natural gas pipeline(s) and any associated equipment currently on the LEC and/or CT2 sites or to be installed in the future.
- d. Access to the office building currently on the CT2 site for the installation, use, maintenance, repair and replacement of process control systems and related computer hardware associated with the LEC, CT1 and CT2.
- e. Access to the Shared Facilities for the purpose of locating, operating, repairing and replacing such improvements as may be necessary from time to time.
- f. Personnel associated with LEC, CT1 and CT2 shall provide reasonable notice, each to the other, regarding any work to be conducted consistent with the above.

11.2 Shared Cost Allocation

Shared costs shall be allocated among the LEC, CT1 and/or CT2 in one or more of the following ways, pursuant to Agreement Schedule 4.00:

- a. Headcounts allocated to each project; or
- b. Capacity; or
- c. Actual usage; or
- d. Such other allocation mechanisms as may be determined in Agreement Schedule 4.00.

The shared cost allocations set forth in Agreement Schedule 4.00 may be revised from time to time when operational conditions or factors used for the shared cost allocation(s) change. In such event, the PPC and the NCPA Facilities Committee will provide their respective recommendations and approvals to the Commission regarding any proposed modifications to the allocations set forth in Agreement Schedule 4.00.

11.3 Other Costs

The LEC, CT1 and CT2 projects will each be solely responsible for the payment of any and all taxes, insurance, utilities, maintenance, improvements and labor directly attributable to the construction, operation and maintenance of the respective projects. The LEC, CT1 and CT2 projects must pay the shared cost allocations imposed on such projects as detailed in Agreement Schedule 4.00. The Project will pay all costs for which it is responsible in a timely manner and will ensure no claims or liens are filed against the Project or the LEC site property leased from the City of Lodi.

11.4 Sale of Shared Facilities

In the event NCPA seeks to sell any of the Shared Facilities the LEC, CT1 and CT2 projects must be given reasonable notice and an opportunity to purchase such Shared Facilities.

ARTICLE 12

PROJECT FUNDS

12.1 Project Funds

In accordance with Section 21 of the PSA, this Article and Agreement Schedule 5.00 of this Agreement, Project Funds shall be established and approved as set forth therein. Project Funds shall be classified as either “Mandatory Project Funds” or “Additional Project Funds.” NCPA shall maintain records and provide reports for each Project Fund pursuant to Section 7.5 of the PSA and Article 19 of this Agreement.

12.2 Mandatory Project Funds

The Project is financed by the issuance of notes, bonds, or other public debt (“Bonds”) secured by the provisions of multiple Indentures of Trust. The Indenture of Trust (“Indenture”) is a contract(s) between NCPA and the holders of the related debt instruments. Each Indenture establishes, among other things, various interrelated Project Funds that are established for the protection of the holders of the Bonds. Such Project Funds established in any NCPA Indenture or that are otherwise legally required shall be classified as Mandatory Project Funds and are not subject to change by the PPC. A listing of the Mandatory Project Funds for the Project is included in Agreement Schedule 5.00.

12.3 Additional Project Funds

Additional Project Funds may be established by from time to time, consistent with the PSA and this Agreement, provided their establishment does not affect the funding, maintenance, or operation of any Mandatory Project Fund. As described in Agreement Schedule 5.00, certain Additional Project Funds are established by the Commission, the PPC, or both.

Funding mechanisms for all Additional Project Funds will be determined on a case-by-case basis with PPC Approval.

NCPA shall maintain separate accounts for all Additional Project Funds. The interest accrued on the balance of an Additional Project Fund shall be treated and accounted for as an addition to the balance of such Additional Project Fund. A listing of the Additional Project Funds for the Project is included in Agreement Schedule 5.00.

ARTICLE 13

POTENTIAL PROJECT IMPACTS

13.1 Notification

A Participant shall promptly notify NCPA and the PPC of any new or materially changed plan(s) for additions to, retirements of, or changes in transmission or other facilities, which are subject to the control of such Participant, and which the Participant believes or reasonably should know could materially affect the Capacity, Energy, or other Attributes of the Project. The PPC may review such plan(s) and suggest remedial actions, but such remedial actions shall not be binding on such Participant.

ARTICLE 14

TERM OF AGREEMENT

14.1 Effective Date

This Agreement shall become effective on the date on which it has been duly executed and delivered to NCPA by all Parties. To the extent the PSA and this Agreement are not simultaneously executed, certain rights and obligations under this Agreement may relate back to the effective date of the PSA.

14.2 Termination

This Agreement shall continue in effect until terminated by the first of the following to occur: (i) the retirement of the Project; (ii) the written consent of all Participants and NCPA; or (iii) the expiration or termination of the PSA as to all Parties. Notwithstanding the preceding, no termination of this Agreement shall take place unless there shall have been provided reserves for, or a means of paying for, satisfactory to the PPC, any claims against the Project yet to be paid or settled, pursuant to Section 33 of the PSA.

ARTICLE 15

NOTICES

15.1 NOTICES

All notices, requests and other communications under this Agreement shall be provided in the manner described in Section 35 of the PSA.

ARTICLE 16

WAIVER

16.1 Waiver

No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the NCPA Commission, as to NCPA, and by Participant's authorized representative, as to each Participant. Any such waiver in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

ARTICLE 17

UNCONTROLLABLE FORCES

17.1 Uncontrollable Forces

Except for any obligation to make payments pursuant to this Agreement or other agreements relating to the Project, a Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces, as defined in Section 4.95 of the PSA.

ARTICLE 18

LIABILITY

18.1 Liability and Indemnity

Section 24 of the PSA in its entirety is incorporated to apply to this Agreement.

18.2 Counsel Representation

Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement as indicated in the signature blocks to this Agreement evidencing the approval as to form by each Participant's legal counsel. In light of this representation, those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in the litigation or settlement in a manner inconsistent with the provisions of Section 24 of the PSA were intentionally so drafted by the Parties.

ARTICLE 19

REPORTS

19.1 Reports to Participants

NCPA shall prepare and make available to each Participant the following reports:

- 19.1.1 Project operating reports;
- 19.1.2 Statements of financial position and revenues, expenses and changes in accumulated net revenues;
- 19.1.3 Project Annual Budget status report;
- 19.1.4 Annual and monthly Project operational forecasts of projected Project Energy, Capacity and other Attributes based on historic operations and market conditions, forecasted market conditions and scheduled Project maintenance activities, and other information as approved by the PPC; and
- 19.1.4 Such additional reports as may be required under any applicable Project Agreement, Agreement Schedule, or as requested from time to time by the PPC or the Participants.

19.2 Reports to Other Agencies

NCPA will submit such reports and records which are required or may be required by any local, state, regional, federal, or international agencies, as such reports and records are required for NCPA to fulfill its obligations under this Agreement.

ARTICLE 20

ASSIGNMENT OF AGREEMENT

20.1 Binding Upon Successors

This Agreement, including the Agreement Schedules, shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement, pursuant to Section 34 of the PSA.

20.2 Assignment

Assignment of this Agreement shall be effective only if made in conjunction with an assignment made pursuant to the PSA.

ARTICLE 21

SETTLEMENT OF DISPUTES

21.1 Attorneys' Fees

In the event of a default by a Participant of any of its covenants, agreements, or obligations hereunder, each other Party shall be entitled to recover from such Participant any and all legal fees and costs incurred as a result of enforcing its rights hereunder.

21.2 Venue

In the event that any Party brings any action against any other Party(ies) under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Sacramento.

ARTICLE 22

MISCELLANEOUS PROVISIONS

22.1 Amendments

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by all the Parties. Provided, however, that Agreement Schedules may be adopted, amended or deleted in accordance with Article 10 of this Agreement.

22.2 Integrated Agreement

This is an integrated agreement and contains all of the understandings of the Parties.

22.3 Severability

In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

22.4 Governing Law

This Agreement shall be interpreted, governed by and construed under the laws of the State of California without reference to any conflict of law principles.

22.5 Additional Parties

Subsequent to the initial execution of this Agreement, any new signatory to the PSA shall also become a Party to this Agreement. In such event, NCPA shall issue a new Agreement Schedule 9.00 reflecting the new Party's participation and GES.

22.6 Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form thereto but having attached to it one or more signature pages.

IN WITNESS WHEREOF, each Participant has executed a counterpart of this Agreement with the approval of its governing body, and represents and warrants that the Participant has all requisite authority, and has duly agreed to be bound by all of the terms and conditions of this Agreement, and NCPA has executed each counterpart of this Agreement in accordance with the authorization of its Commission.

ARTICLE 23

SPECIAL PROVISIONS APPLYING TO CDWR AND NCPA ONLY

23.1 Special Provisions

The State of California General Terms and Conditions and Certification Clauses shown in Appendix A are incorporated in this Agreement. Appendix A applies only to CDWR and NCPA concerning this Agreement.

NORTHERN CALIFORNIA POWER AGENCY

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

CITY OF BIGGS

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

CITY OF GRIDLEY

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

CITY OF HEALDSBURG

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

CITY OF LODI

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____



CITY OF LOMPOC

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

PLUMAS SIERRA RURAL ELECTRIC COOPERATIVE

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

CITY OF SANTA CLARA

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

MODESTO IRRIGATION DISTRICT

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

CITY OF UKIAH

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

CITY OF AZUSA

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

BAY AREA RAPID TRANSIT

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

PORT OF OAKLAND

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

POWER AND WATER RESOURCES POOLING AUTHORITY

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

SILICON VALLEY POWER

Approved as to form:

By: _____

By: _____

Title: _____

Title: _____

Project Management and Operations Agreement
Agreement Schedule 0.00

Introduction to PMOA Agreement Schedules

Separate Agreement Schedules have been established for this Agreement. Agreement Schedules will provide detailed descriptions, protocols, procedures and guidelines (including operating and cost recovery procedures) for the Project pursuant to this Agreement.

Agreement Schedules will provide for:

- Project operating procedures and protocols.
- Project specific accounting requirements.
- Project billing procedures.
- The establishment and maintenance of Project Funds.
- Fuel purchasing procedures and protocols.
- Other topics as needed in the future.

The Agreement Schedules will be organized as follows:

- Agreement Schedule 1.00 = Scheduling and Dispatch Operations and Economic Criteria
 - Exhibit 1 = Heat Rate
 - Exhibit 2 = VOM
 - Exhibit 3 = Margin
 - Exhibit 4 = GenBenefit
 - Exhibit 5 = CAISO Settlement Charge Matrix*
- Agreement Schedule 2.00 = Fuel Supply Procurement, Delivery and Management
- Agreement Schedule 3.00 = Participant Requested Operations During Non-Economic Periods
- Agreement Schedule 4.00 = Shared Facilities and Cost Sharing*
- Agreement Schedule 5.00 = Project Funds**
- Agreement Schedule 6.00 = Contact List
- Agreement Schedule 7.00 = Differential Transmission Cost Adjustment
- Agreement Schedule 8.00 = Delegation of Authority
- Agreement Schedule 9.00 = LEC Project Participants and their Shares
- Agreement Schedule 10.00 = Billing and Payments
- Appendix A = General Terms and Conditions between CDWR and NCPA

Agreement Schedules marked with * above require NCPA Commission approval, pursuant to Article 10 of this Agreement. Agreement Schedules marked with ** above require NCPA Commission approval for certain sections of the Agreement Schedule as detailed in such Agreement Schedule.

Definitions as set forth in Article 1 of this Agreement shall have the same meaning in the Agreement Schedules. IEEE and NERC standard definitions shall also be applicable in the Agreement Schedules. The following additional terms, when used in these Agreement Schedules, in either the singular or the plural, shall have the following meanings:

1. “All Resources Bill” (“ARB”) means the single, combined monthly bill from NCPA to a Participant that includes all operating project, plant, and other program costs and revenues contained in the then fiscal year operating Project Annual Budget at the *summary* level, pursuant to Section 17 of the PSA. The ARB provides year-to-date tracking of budget amounts billed, third party revenues collected, prior month’s billing adjustments and various other details. In the PSA, the ARB is referred to as the Billing Statement.
2. “A/S” means Ancillary Services as defined in the CAISO tariff, which include capacity reserve services/products, e.g. Regulation-Up (RegU), Regulation-Down (RegD), Spin, Non-Spin or as revised by the CAISO from time-to-time.
3. “Balancing Authority” or “BA” is the CAISO in these Agreement Schedules.
4. “DAM” means the Day Ahead Market as defined in the CAISO tariff.
5. “Fuel Management Contract” means the Project Gas Supplier and Management Agreement (see Agreement Schedule 2.00).
6. “GasPrice_{PG&E Citygate}” means the cost for gas delivered at the PG&E Citygate.
7. “GenBenefit” means generation benefits to be determined by the PPC pursuant to Exhibit 4 of Agreement Schedule 1.00, e.g., avoided transmission wheeling access charge for behind the meter generation.
8. “GMC” means the Grid Management Charge as defined in the CAISO tariff.
9. “Heat Rate” or “Heat Rate Curve” is the measure of generating plant/project efficiency in MMBtu per MWh (see Exhibit 1 of Agreement Schedule 1.00).
10. “IST” means an Inter-SC Trade, which is a commitment between two SCs as defined in the CAISO tariff.
11. “LDC” means PG&E’s Local Distribution Charges, as defined in the PG&E Gas Tariffs as a volumetric charge for costs to transport gas from the PG&E Citygate to the Project meter in dollars per MMBtu.
12. “LMP_{LEC}” means the CAISO’s Locational Marginal Price for Energy at the Point of Delivery of the Lodi Energy Center in \$/MWh.

13. “Margin” (\$/MWh) as used in the Economic Operation is to be determined by PPC pursuant to Exhibit 3 of Agreement Schedule 1.00,
14. “MP” means market price from the applicable market.
15. “MSSA” means Metered Subsystem Aggregator for Metered Subsystem entities (MSS). Certain NCPA Members are MSS as defined by the CAISO Tariff and the CAISO’s MSS and MSSA Agreements.
16. “Operation and Maintenance Expenses” has the meaning given it in the PSA, Section 4.68.
17. “Other Revenues” means revenue from Capacity (e.g., CAISO A/S) and other Attributes provided by the Project.
18. “PG&E Citygate” means any point where the backbone natural gas pipeline system of PG&E connects with its local distribution gas pipeline system.
19. “Project Capacity” is the total Project generating capability in MWs.
20. “Project Emergency Situation” means situations that require NCPA to take immediate action, including the expenditure of funds to act appropriately under the situation to protect Project personnel, environment, Project equipment including Shared Facilities, and safety and security of the surrounding areas.
21. “Project Generation” is the total Energy produced by the Project as measured at the Point of Delivery in MWhs.
22. “Project Node” means the Point of Delivery designated by the CAISO for determination of the LMP_{LEC} .
23. “Sc” means Scheduling Coordinator as defined by the CAISO tariff.
24. “SCID” means a name designated by the CAISO for a Scheduling Coordinator.
25. “Self-Scheduling” means being a price taker by submitting bids with no specification of prices into the CAISO’s markets for the products provided by the Project, and as more specifically defined in the CAISO tariff.
26. “VOM” means variable operation and maintenance cost in \$/MWh, including but not limited to startup/shutdown costs (\$/startup or \$/shutdown), running costs, and overhaul costs (\$/specified number of hours of operation) (see Exhibit 2 of Agreement Schedule 1.00).

Agreement Schedule 1.00

Scheduling and Dispatch Operations and Economic Criteria

General Operating; Protocol Guideline

NCPA shall be the SC for the Project and shall operate and schedule the Project in accordance with the directives of the PPC as manifested in Article 5 and this Agreement Schedule 1.00. NCPA shall comply with applicable regional and Balancing Authority tariffs, business practice manuals, regulations, scheduling requirements and timelines as published or as changed from time to time.

NCPA Scheduling; and Bidding Principles

1. NCPA will schedule the Project output using scheduling option (a) or (b) as shown below. A Participant may additionally elect option (c) up to its GES.
 - a. Awarded schedules resulting from bidding into the CAISO markets: Except as noted in option (b), NCPA will submit Energy and A/S bids into the CAISO markets based on Economic Operations. Economic Operations of the Project shall mean the following over the CAISO scheduling period (currently 24 hours/day):

$$[LMP_{LEC} + MP(s) \text{ for A/S} + \text{value of other Attributes}] \geq [\text{Heat Rate} \times (\text{GasPrice}_{PG\&E \text{ Citygate}} + \text{LDC}) + \text{VOM} + \text{Margin} - \text{GenBenefit} + \text{CAISO GMC}]$$

Participants will receive their GES of revenues based on (i) the LMP_{LEC} for Energy and (ii) the applicable $MP(s)$ for A/S provided from Project Capacity. In addition, if there are other applicable revenues from Attributes, Participants will receive their GES of these revenues. Participants will also receive bid cost recovery revenues from the CAISO when the sum of the product of Energy price bids and the awarded Energy scheduled, the startup costs, and Project minimum operating level costs is greater than the sum of the LMP_{LEC} revenues for Energy from the Project over the CAISO scheduling period (currently 24 hours/day).

- b. Self-Scheduling: If the CAISO markets do not function correctly, NCPA may elect to Self-Schedule the Project Energy and Capacity and shall inform the Participants of such action as soon as possible. Participants will receive their GES of revenues based on (i) the LMP_{LEC} for Energy, and (ii) the applicable $MP(s)$ for A/S provided from Project Capacity. In addition, if there are other applicable revenues from Attributes, Participants will receive their GES of these revenues.
 - c. IST or unit contingent export: Each Participant has the right to request physical delivery of part or all of its GES of Project Energy and/or Energy associated with its GES of Capacity, in which case NCPA will schedule as follows:

- i. For delivery inside of the CAISO Balancing Authority Area, NCPA will schedule a physical IST(s) in the DAM or the hour-ahead market at the Project Node.
- ii. For delivery—outside of the CAISO Balancing Authority Area, NCPA will schedule/coordinate a unit contingent export as described in the CAISO Business Practice Manuals and in accordance with regional scheduling and tagging practices.

Participants requesting physical delivery shall be responsible for all related CAISO and NCPA costs, charges, and credits (e.g. due to scheduling, transmission, scheduling/pricing differences, outage, etc.). Exhibit 5 of this Agreement Schedule contains the details for CAISO costs, charges and credits.

2. NCPA will produce monthly reports summarizing the results of the previous months' bidding results. This information will be reviewed by the PPC to provide changes or adjustments in the bidding principles.
3. NCPA will schedule the Project using the NCPA SCID but outside of the NCPA MSSA portfolio.
4. The SC options (i.e. NCPA SCID, unique SCID to the Project, included as a part the MSSA, etc.) and calculations/parameters involved in making the economic determinations and estimations are subject to review and revision by the PPC from time to time based on Project operating experience, Project production costs, market conditions, and other factors affecting the assessment of Project cost and the value of Project Energy, Capacity, and other Attributes.

Scheduling Timelines and Economic Criteria

The following provides a listing of the daily scheduling and dispatching activities, information requirements, and timelines:

Day Ahead (“DA”) Bilateral Market for the bilateral electricity and fuel markets (Activity time-frame is normally 5:00 – 7:00 am the day before the trading day):

NCPA will forecast expected Economic Operations and fuel requirements to determine DA Energy and A/S bids for the CAISO's markets. NCPA shall make such bids over the entire scheduling period when the Project is available for operations.

Fuel requirements (MMBtu/day) – NCPA will manage the fuel supply with the objective of minimizing fuel imbalances by considering forecasts and historical results of the DAM and actual operations.

NCPA will allocate expected Project output and fuel requirements by Participants' GES by 6:30 am.

Participant(s) may supply its own fuel requirements up to Participant's GES of the Project fuel requirements at full Project output.

- i) Participant(s) providing its own fuel supply will notify and schedule with NCPA by 6:30 AM. The information required from Participant(s) is as follows: Gas supplier ID and the amount (MMBtu/day). Delivery shall be at PG&E Citygate.
 - (1) At or after 6:30 AM, NCPA will order remaining fuel supply and/or sell excess fuel supply.
 - (2) The price at burner-tip is the sum of the day ahead PG&E City Gate Index (or quote) and LDC, pursuant to the Fuel Management Contract per Agreement Schedule 2.00.
- ii) NCPA will notify the Project Gas Supplier and Manager of the Fuel Management Contract (see Agreement Schedule 2.00) 1.5 hours prior to 9:30 AM and 2 hours prior to 4:00 PM for the day ahead fuel nominations, and 2 hours prior to 8:00 AM and 3:00 PM on the trading day for the day of fuel nominations. These nomination revisions help mitigate fuel imbalances but do not establish the price for the changes. In general, the price for differences or changes after the day ahead bilateral fuel market, that closes at approximately 7 AM PPT, is established by quote or the change is left as an imbalance to be priced at the next available day ahead bilateral fuel market (at the PG&E Citygate).

CAISO DAM: NCPA schedules and bids the Project in the CAISO DAM. (Activity time frame is 10:00 AM – 1:30 PM):

- a. NCPA may Self-Schedule Project output (from the Project minimum operating level up to entire Project Capacity) at the Project Node prior to 10:00 AM.
- b. NCPA will bid the remaining Project output that is not Self-Scheduled into the DAM based upon Energy and A/S bids determined using the forecasted Economic Operations at the Project Node prior to 10:00 AM.

Energy and A/S bids are awarded by 1:30 PM, and NCPA subsequently shall notify the Project Gas Supplier and Manager of fuel supply changes and revise initial fuel supply requirements.

- c. If a Participant is using an IST, such Participant must submit its request to NCPA and schedule a DAM IST(s) at the Project Node prior to 8:30 AM. The CAISO will verify the IST after 12:00 PM.
- d. If a Participant is using a unit contingent export from the CAISO Balancing Authority Area, such Participant must coordinate/schedule the unit contingent export with NCPA prior to 8:30 AM.

- e. Each Participant(s) is responsible for scheduling its load, export, or sales to a third party including all costs and revenues associated with such schedules.

NCPA Dispatch Operations

- a. Real-Time (“RT”) CAISO market: This is the CAISO’s Hour Ahead Scheduling Process (“HASP”), and it includes the following, which must be submitted 75 minutes prior to the next trading hour:
 - i) Supplemental Energy bids
 - ii) A/S bids
 - iii) Unit contingent exports and ISTs. (Any Participant changes to its DAM unit contingent exports or ISTs must be provided to NCPA 135 minutes or 105 minutes prior to the next trading hour, respectively.)
- b. NCPA dispatch operations include all 24x7 dispatch functions and tasks:
 - i) To match Project output with fuel nominations and to awarded schedules of Energy and A/S;
 - ii) To adjust for emergency operations; and
 - iii) To adjust and coordinate for reliability and safety requirements.

Settlements:

As the SC of the Project using NCPA’s SCID, NCPA shall review, validate, and reconcile CAISO invoices, and file timely disputes and appropriately pursue resolution of disputes with the CAISO. Current CAISO charge types and, if applicable, the basis for allocation of CAISO charges and payments to the Project are detailed in Exhibit 5 of this Agreement Schedule.

EXHIBIT 1

Heat Rate

[To Be Determined During Testing Of The Project]

EXHIBIT 2

VOM

[To Be Determined Prior to Commercial Operation Date]

EXHIBIT 3

Margin

[To be determined by the PPC prior to Commercial Operation Date. If not determined by the PPC prior to Commercial Operation Date, NCPA shall develop and use a Margin for this Exhibit 3 until the PPC determines and approves the Margin.]

EXHIBIT 4

GenBenefit

[To Be Determined at a Later Date By The PPC As Appropriate]

EXHIBIT 5

CAISO Settlement Charge Matrix

The attached matrix details the option chosen by the Participants to utilize NCPA's current SCID.

Agreement Schedule 2.00

Fuel Supply Procurement, Delivery, and Management

NCPA is responsible for the fuel supply procurement, delivery, and management for the Project and will develop and negotiate the Project Gas Supplier and Management Agreement (“Fuel Management Contract”). NCPA will analyze the proposals from fuel suppliers for these services and recommend a fuel supplier for the Fuel Management Contract to the PPC for its approval. This Fuel Management Contract will govern, for example, the daily fuel scheduling (nominations), fuel purchasing/sales, fuel balancing and fuel pricing. In addition, it will allow Participants and NCPA to arrange for the delivery of third party fuel (fuel which is not purchased under the Fuel Management Contract) to the Project. To provide alternate/additional fuel supply sources, NCPA may execute third party fuel supply agreements in the future **as** approved by the PPC. Any additional charges resulting from Participant supplied fuel will be fully charged to such Participant.

The PPC and NCPA will develop the protocols for this Agreement Schedule once the Fuel Management Contract is executed.

Agreement Schedule 3.00

Participant Requested Operations During Non-Economic Periods

[To Be Developed at a Later Date by the PPC]

Agreement Schedule 4.00

Shared Facilities and Cost Sharing

Listing of Shared Facilities and Allocations to Projects

Facility	Cost Allocation to NCPA Project (%)			Total
	CT1	CT2	LEC	
MW Capacity	124.9	49.9	280.0	454.8
Capacity CT1, CT2, LEC %	27.50%	11.00%	61.50%	100.00%
Capacity CT2, LEC %	0.00%	15.10%	84.90%	100.00%
Headcount for FTE-2012	3.0	4.5	17.5	25.0
Headcount % CT1 ,CT2, LEC	12.00%	18.00%	70.00%	100%
Cooling Tower Usage CT2/LEC (based on calculation below)	0%	1.30%	98.70%	100.00%
Vehicle Usage CT1/CT2/LEC (based on estimated usage)	90.00%	5.00%	5.00%	100.00%
Anhydrous Ammonia System				
Fixed O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
Variable O&M CT2/LEC (based on actual Ammonia usage)		Usage	Usage	
Administration / Warehouse Building				
O&M, Capital (based upon Headcount % CT1 ,CT2, LEC)	12.00%	18.00%	70.00%	100.00%
Fire System				
O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
230 KV Switchyard (Common Equip)				
O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
Tooling and Special Equipment				
(based on Headcount % CT1, CT2, LEC)	12.00%	18.00%	70.00%	100%

Agreement Schedule 5.00
LEC Project Management and Operations Agreement

Cooling Tower/Closed Cooling Water/Injection Well Systems

O&M, Capital (based on Cooling Tower Usage CT2/LEC)	0.00%	1.30%	98.70%	100.00%
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Vehicle Usage

O&M, Capital (based on Vehicle Usage CT1/CT2/LEC)	90.00%	5.00%	5.00%	100.00%
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Cooling Tower CT2/LEC Usage calculation:

Inputs

S_h = Number of Operating Hours of CT2

L_h = Number of Operating Hours of LEC

Constants

S_f = Design flowrate for CT2 cooling water = 4,416 GPM

L_f = Design flowrate for LEC cooling water = 64,584 GPM

Formula

$$\text{CT2 Percentage} = S\% = \frac{(S_h * S_f)}{(S_h * S_f) + (L_h * L_f)} * 100$$

$$\text{LEC Percentage} = L\% = 100 - S\%$$

Agreement Schedule 5.00

Project Funds

Project Funds are classified as either “Mandatory Project Funds” or “Additional Project Funds,” as outlined in Article 12. A listing of the current funds established for the LEC Project is below:

Mandatory Project Funds Established and Approved by the Commission:

Revenue Fund: See PSA Section 21.1

Operating Fund: See PSA Section 21.2. A fund used to pay current Operation and Maintenance Expenses.

Operating Reserve Fund: Referenced in Section 21.3 of the PSA. The minimum balance, referred to as the Operating Reserve Requirement in Section 4.67 of the PSA, in the Operating Reserve Fund shall be equal to 60 days of Operation and Maintenance Expenses for the LEC Project. The minimum balance may be increased by the PPC from time to time.

- a) Such Operating Reserve Fund shall include amounts for:
1. Working capital required for operating purposes to fund expenditures made prior to receipt of revenue collections.
 2. Maintenance account for anticipated periodic operating costs including, but not limited to, scheduled and unscheduled maintenance other than ordinary repairs and replacements, e.g., overhaul, inspection, etc.

General Reserve Fund: See PSA Section 21.5.

Default Mitigation Sale Fund: See PSA Section 21.6.

Revolving Construction Fund: See PSA Section 21.7.2.

Construction Fund: See PSA Section 21.7.1. All Costs of Construction, as defined in Section 4.16 of the PSA, shall be paid from this fund.

Debt Service Fund: This Debt Service Fund shall hold amounts collected to pay bond interest and principal until they are due to the bond holders. Amounts are transferred to the trustee on a monthly basis for this purpose and the trustee pays amounts due to bondholders from this Fund, generally on a semi-annual basis.

Debt Service Reserve Fund: A reserve equal to one-half of the maximum annual debt service over the life of the outstanding debt. This Debt Service Reserve Fund may be used to pay debt service in the event that amounts in the Debt Service Fund are not sufficient.

Costs of Issuance Fund: This fund is used to pay the costs of issuing bonds, including but not limited to legal services, financing and consulting fees, underwriter's discount, fees for the verification agent, trustee, escrow agent and rating agencies, printing costs and other miscellaneous expenses related to financing,

Rebate Fund: This fund shall hold monies due to the United States government for arbitrage rebate payments as required under the Bond Indenture, and by tax laws of the United States.

Additional Project Funds Established and Approved by the Commission:

Scheduling; Reserve Funds include the following two funds:

1. Reserves for Estimated CAISO Scheduling Charges:

- a) Initial Amount. NCPA shall invoice Participants in proportion to their GES and deposit in the Scheduling Reserve Fund an amount equal to NCPA's estimate of the three highest months of projected CAISO GMC and export related charges for the succeeding twelve (12) months for the LEC Project.
- b) Periodic Reviews. At least quarterly, NCPA shall review the balance in this account to ensure the aggregate amount is equal to the current projection of the three highest months of the Project's projected CAISO GMC and export related charges for the succeeding twelve months. Any funds on deposit in the Scheduling Reserve Fund in excess of one hundred ten per cent (110%) of this current projection shall be credited back to the Project Participants on the ARB. If the funds on deposit in the Scheduling Reserve Fund are less than ninety per cent (90%) of this current projection, NCPA shall prepare an invoice in accordance with Article 9 which shall be due within 30 days of the invoice or include the billing on the next ARB to bring the balance back to 100 per cent (100%) of this current projection.
- c) Emergency Additions. In the event that the funds in the Scheduling Reserve Fund are insufficient to allow payment of a CAISO invoice, NCPA shall notify Participants and then prepare and send a special or emergency invoice to the Participants in accordance with Article 9. Such special or emergency invoice will be due as necessary to permit NCPA to make timely payments to the CAISO. Participants acknowledge that under some circumstances this may require same day payment of invoices.

2. Reserves for CAISO Security Deposits:

- a) Prior to the date NCPA provides any SC services for the Project, NCPA shall invoice the Participants for any security or other deposit required by the CAISO for the Project, and such security deposit shall be maintained by NCPA as may be required by the CAISO thereafter.
- b) Any changes in security or other deposits required by the CAISO for the Project may be provided by NCPA from the Scheduling Reserve Fund, and NCPA shall invoice the Participants within three (3) working days of this payment to the CAISO in proportion to participants' GES.

- c) NCPA shall allocate any security or deposit required by the CAISO for the Project to the Participants in proportion to their GES.

Additional Project Funds Established and Approved by the PPC:

None at this time.

Additional Project Funds Established and Approved by both the PPC and the NCPA Commission:

None at this time.

Agreement Schedule 6.00

Contact List

PARTICIPANT ADDRESSES FOR NOTICE

Northern California Power Agency

Northern California Power Agency
Attn: Ed Warner, Lodi Energy Center Manager
651 Commerce Drive
Roseville, California, 95678
Telephone: (209) 728-1387 x-22 or (209) 768-5887
Facsimile:
Email: Ed.Warner@ncpagen.com

With a copy to

Northern California Power Agency
Attn: Ken Speer, Assistant General Manager-Generation Services
651 Commerce Drive
Roseville, California, 95678
Telephone:
Facsimile:
Email: Ken.Speer@ncpa.com

City of Azusa

City of Azusa
Azusa Light & Water Department
Attn: George Morrow, Director of Utilities
729 N. Azusa Avenue
P.O. Box 9500
Azusa, California 91702-9500
Telephone: (626) 812-5214
Facsimile: (626) 334-3163
Email: gmorrow@ci.azusa.ca.us

Bay Area Rapid Transit District

Bay Area Rapid Transit District
Attn: Frank Schultz, Power Resources Manager
300 Lakeside Drive, 16th Floor
Oakland, California 94612-3534
Telephone: (510) 464-6435
Facsimile: (510) 464-6118
Email: fschult@bart.gov

Agreement Schedule 6.00

LEC Project Management and Operations Agreement

Modesto Irrigation District

Modesto Irrigation District
Attn: Gregory Salyer, P.E.,
Resource Planning and Development Manager
P.O. Box 4060
1231 Eleventh Street
Modesto, California 95352
Telephone: (209) 526-7550
Facsimile: (209) 526-7575
Email: grens@mid.org

California Department of Water Resources:

Department of Water Resources
Attn: Chi Doan
Chief, Power Contracts Branch
3310 El Camino Avenue, LL94
Sacramento, California 95821
Telephone: (916) 574-0612
Facsimile: (916) 574-0660
Email: chi@water.ca.gov

Plumas-Sierra Rural Electric Cooperative

Plumas-Sierra REC
Attn: Bob Marshall, General Manager
73233 Highway 70
Portola, California 96122-7064
Telephone: (530) 832-4261
Facsimile: (530) 832-6070
Email: marshall@psln.com

City of Biggs

City of Biggs
Attn: Pete Carr, City Administrator
465 "C" Street
P.O. Box 307
Biggs, California 95917-0307
Telephone: (530) 868-5493
Facsimile: (530) 868-5239
Email: biggs1@biggs-ca.gov

City of Gridley

City of Gridley
Attn: Rob Hickey, City Administrator
685 Kentucky Street
Gridley, California 95948-2117
Telephone: (530) 846-5695
Facsimile: (530) 846-3229
Email: rhickey@gridley.ca.us

City of Healdsburg

City of Healdsburg
Attn: Elizabeth Kirkley, Electric Utility Director
401 Grove Street
Healdsburg, California 95448
Telephone: (707) 431-3346
Facsimile: (707) 431-2710
Email: ekirkley@ci.healdsburg.ca.us

City of Lodi

City of Lodi
Attn: Kenneth A. Weisel, Interim Electric Utility Director
1331 S. Ham Lane
Lodi, California 95242
Telephone: (209) 333-6762
Facsimile: (209) 333-6839
Email: kweisel@lodielectric.com

City of Lompoc

City of Lompoc
Attn: Ronald Stassi, Utility Director
100 Civic Center Plaza
P.O. Box 8001
Lompoc, California 93438-8001
Telephone: (805) 875-8299
Facsimile: (805) 875-8399
Email: r_stassi@ci.lompoc.ca.us

City of Oakland- Port of Oakland

Port of Oakland
Attn: Wing Lau, Port **Supervising Engineer**
530 Water Street, PO Box 2064
Oakland, California 94607
Telephone: (510) 627-1457
Facsimile: (510) 763-1877
Email: wlau@portoakland.com

City of Santa Clara

Silicon Valley Power
Attn: John Roukema, Electric Utility Director
1500 Warburton Avenue
Santa Clara, California 95050
Telephone: (408) 261-5490
Facsimile: (408) 249-0217
Email: jroukema@siliconvalleypower.com

City of Ukiah

City of Ukiah
Attn: Mel Grandi, Utility Director
300 Seminary Avenue
Ukiah, California 95482
Telephone: (707) 463-6298
Facsimile: (707) 463-6740
Email: mgrandi@cityofi&iah.com

Power and Water Resources Purchasing Authority

Power and Water Resources Purchasing Authority
Attn: Kent W. Palmerton, General Manager
2106 Homewood Way, Ste 100
Carmichael, California 95608
Telephone: (916) 483-5368
Facsimile: (916) 485-3537
Email: kent@,wkpalmerton.com

Agreement Schedule 7.00

Differential Transmission Cost Adjustment [To be finalized by the PPC prior to Commercial Operation Date]

Sample Differential Transmission Cost Adjustment using MID as the Exporting Participant:

The differential transmission cost adjustment is to be computed including cost and cost offset information and calculations including, but not limited to, the following cost and cost offset categories:

1. CAISO Charges:

The CAISO has over 130 different charge codes associated with different types of transactions and services. Certain charges represent pre-determined rates, while others are more market-based and are subject to variation due to market or system conditions. Only a subset of the CAISO charges would comprise part of the differential transmission cost adjustment. The costs included in this Agreement Schedule shall be from the actual CAISO invoices received.

The CAISO posts online its currently applicable and historical GMC and transmission access charges (TAC) at the following website locations:

- GMC: <http://www.caiso.com/docs/2005/03/20/2005032013150120093.html>
- TAC: <http://www1.caiso.com/docs/2002/02/05/2002020510502821880.html>

2. Western Area Power Administration Western Charges and Other Western Factors:

Western's transmission service rate will be a deduction in the differential transmission cost adjustment calculation. Western's transmission service charges are known and available in advance of the settlement period and are currently displayed at the following website:

- <http://www.wapa.gov/sn/marketing/rates/>

Other Western factors that might be deductions in the differential transmission cost adjustment calculation include adjustments/estimates for alternative interconnection related costs (the additional cost and/or debt service burden, for example, had the LEC been interconnected to the Western transmission system instead of the PG&E transmission system) of the LEC Project. In addition, the cost and/or operational burden differentials associated with the provision of LEC related system reserve arrangements shall be quantified and based upon such reasonably identifiable costs and obligations given LEC interconnection to the CAISO system or the Western system and the resulting net cost differential shall be used in computing the differential transmission cost adjustment.

3. Other Benefit Factors:

The differential transmission cost adjustment is to reflect adjustments to account for other elements of value which can be identified as a function of plant location in either the CAISO or Western Balancing Authority Areas. Such factors include, but are not limited to, ancillary services revenues, markets and prices, the ability to exchange capacity and/or energy between other entities within a particular control area and thus avoid all or some differential transmission cost adjustment, the ability to share cost savings resulting from “behind the meter” generation within the CAISO, and other differential costs and/or benefits that may accrue to LEC Participants due to Project location in either the Western or CAISO Balancing Authority Areas.

4. Cumulative Balancing Accounts:

NCPA will track 2 cumulative balancing accounts for each Exporting Participant. The first is the cumulative charges and benefits for an Exporting Participant. . . The second is the cumulative net payments made by the Project to an Exporting Participant.

If at the end of the Fiscal Year, the cumulative charges are greater than the cumulative benefits for an Exporting Participant, the Exporting Participant may be reimbursed the net amount by the Project and all Project Participants will be billed based upon their GES. If at any time the cumulative benefits are greater than the cumulative charges for an Exporting Participant, the Exporting Participant shall reimburse the Project up to any differential transmission cost adjustments the Exporting Participant previously received and all Project Participants will be reimbursed based upon their GES and up to the amount of differential transmission cost adjustments each Participant has paid. For each Exporting Participant, the PPC shall review the cumulative charges and benefits and make determination of when payments shall be reimbursed to avoid large accumulation of obligations.

Sample Differential Transmission Cost Summary Table for MID

Item	Particulars	Estimated Rate			Cumulative Charges-Benefits Account Balance	Cumulative adjustments paid by the Project to the Exporting Participant
			Benefits	Charges		
1	CAISO Charges					
	GMC (export and load)	(\$2.15)		(\$452,896)		
	CAISO TAC (HV, \$/MWh)	(\$5.26)		(\$1,105,862)		
	Other Applicable CAISO Chgs (\$/MWh)			\$0		
	Total CASIO Charges (\$/MWh)	(\$7.41)		(\$1,558,758)		
2	Western Charges					
	Western/CVP Xmission Rate (\$/MWh)	\$1.38	\$290,131			
	Proxy Western Reserves Impact (\$/kw-yr)	\$30.00	\$180,000			
	Differential of capital cost for a Western Interconnect vs CAISO		\$174,245			
	Other Applicable Western Chgs (\$/MWh)		\$0			
	Total Western Charges (\$/MWh)		\$644,376			
3	Other Benefit Adjustments					
	Net Behind Meter/ Energy Swap Impacts					
	Net A/S Obligations and Sales Value		\$857,143			
	Estimated Western A/S Sales Value					
	Other Applicable Adjustments (\$/MWh)					
	Total Adjustments (\$/MWh)		\$857,143			
4	Net affect on MID					
	Net MID Differential (\$/MWh)			(,240)		
5	Reimbursement Calculations					
	PPC approved reimbursement to MID			\$57,240		\$57,240
	PPC approved reimbursement from MID to Project			\$0		0
6	Cumulative Balance Accounts					
	Beginning Cumulative (Charges-Benefits)				0	
	Beginning Cumulative Reimbursement to MID					0
	Ending Cumulative (charges-benefits)				\$0	
	Ending Cumulative Reimbursement to MID					\$57,240

Assumptions/Model Inputs		Notes
MID Exported energy out of CAISO	210240	1
Western reserve sharing requirement for capacity	20%	2
Reserve Pricing from CAISO \$/kw-yr	\$30.00	3
Additional Capital Costs of connecting to Western	\$25,000,000	4
Net Behind the meter/ Energy Swaps		5
Net Ancillary Services Revenue from CAISO	\$8,000,000	6
Estimated Ancillary Services Revenue from Western		7
CAISO GMC		8
CAISO TAC		9
Western Transmission Rate		10

Notes

1. The actual energy exported from CAISO to MID. Obtained from CAISO Invoices.
2. Western Reserve resource sharing requirement will be estimated by an independent consultant to determine what the requirement would have been from Western if the plant was interconnected to Western.
3. Reserve pricing will be determined using CAISO market for capacity.
4. Additional Capital Costs. PPC has approved the value of \$xxxxx for this category. The interest rate will be the weighted interest rate of Indenture Group A and B. This is the data NCPA has available. Could be the weighted interest of Indenture Group A, B, C. PPC decision.
5. Net Behind Meter / Energy Swap Impacts is the benefit received by the project times MID GES for any revenues associated with a behind the meter generation as a result of City of Lodi installing a new transmission line that avoids CAISO charges.
6. Net Ancillary Services Revenue from CAISO- Based upon actual invoice received from the CAISO minus any costs or lost opportunity revenue as a result of A/S sales.
7. Estimated net ancillary services revenue from Western will be estimated by an independent consultant to determine what the net A/S revenue sales would have been if this project was interconnected to the Western Balancing Authority Area.

8. CAISO GMC will be the actual invoices received from the CAISO. For this sheet we have estimated the costs assuming that the entire MID share of Energy is exported and using the current CAISO tariffs.
9. CAISO TAC will be the actual invoices received from the CAISO. For this sheet we have estimated the costs assuming that MID share of Energy is exported and using the current CAISO tariffs.
10. Western Transmission Rate will be the published and based upon the full MID GES of energy from this project.

Estimated GMC Costs for MID Utilizing CAISO 2010 Rates (Monthly Figures)				
Charge Code	Description	Rate	MWh	Costs
4503	Core Reliability Services (CRS) Exports	\$1.829	210,240	\$384,529
4505	Energy Transmission Services (ETS) Net Energy	\$0.314	210,240	\$66,015
4511	Forward Scheduling	\$2.532	572	\$1,448
4535	Market Usage Instructed Energy	\$0.230	2,040	\$469
4537	Market Usage Forward Energy	\$0.225	1,930	\$434
Total				\$452,896
Estimated Average Rate for MID				\$2.154

Table Notes:

- (1) Estimate based on applicable components of the GMC from CAISO invoices to MID under MRTU.
- (2) Based on GMC rates effective as of April 1, 2010.
- (3) MID's LEC monthly energy deliveries based on a 80 percent capacity factor and a 30 MW MID Capacity share of a 280 MW LEC Project.
- (4) The PPC may add, delete or revise applicable CAISO Charge Codes.

Agreement Schedule 8.00

Delegation of Authority

For NCPA to efficiently and economically operate the Project, the PPC has adopted the following Delegation of Authority, as modified by the PPC from time to time:

1. Issuance of Purchase Orders: NCPA is authorized to issue Purchase Orders (POs) for goods and services for the Project for an amount not to exceed \$100,000 per PO, except under the “Project Emergency Situation” section below.
2. Project Emergency Situation: Under a Project Emergency Situation, NCPA is authorized to take immediate action, including the expenditure of funds to act appropriately under the situation to protect Project personnel, environment, Project equipment including Shared Facilities, and safety and security of the surrounding areas.
3. Contracts: NCPA is authorized to execute contracts and agreements for the Project for an amount not to exceed \$100,000 per contract or agreement.
4. Personnel: NCPA is authorized to handle all Project personnel issues in accordance with Article 3. However, any increase in Project staffing level will be subject to PPC approval.
5. Project Outages: NCPA is authorized to schedule Project outages after consulting with PPC.
6. Forced Outages: NCPA is authorized to take immediate action when subjected to forced outages, and NCPA will attempt to advise the PPC of any such action.
7. Permits: NCPA is authorized to request appropriate modifications to the Project’s permits necessary to comply with the then existing regulatory standards, report non-compliances with appropriate clarifications/explanations, and pay fines for violation/non-compliance.

Agreement Schedule 9.00

LEC Project Participants and their shares

Lodi Energy Center (GES) Generation Entitlement Shares	
Project Participant	Generation Entitlement Share
Azusa	2.7857%
BART	6.2500%
Biggs	0.2679%
CDWR	33.3332%
Gridley	1.9643%
Healdsburg	1.5714%
Lodi	9.3561%
Lompoc	2.0000%
Modesto Irrigation District	10.7143%
Plumas-Sierra REC	0.7857%
Port of Oakland	1.1607%
PWRPA	2.6679%
Silicon Valley Power	25.3571%
Ukiah	1.7857%
Total	100.0000%

Agreement Schedule 10.00

Billing and Payments

Billing and payment shall be made pursuant to Sections 17 and 18 of the PSA.

APPENDIX A

GENERAL TERMS AND CONDITIONS

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** Included as Article 22.1 of this Agreement.
3. **ASSIGNMENT:** Superseded by Article 20 of this Agreement.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **DISPUTES:** Disputes are addressed in Article 21 of this Agreement.
6. **TERMINATION FOR CAUSE:** Superseded by Article 14.2 of this Agreement.
7. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
8. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

9. **CERTIFICATION CLAUSES:** The **CONTRACTOR CERTIFICATION CLAUSES** contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
10. **TIMELINESS:** Time is of the essence in this Agreement.
11. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
12. **GOVERNING LAW:** Article 22.4 addresses governing law.
13. **CHILD SUPPORT COMPLIANCE ACT:** "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
 - (a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - (b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."
14. **UNENFORCEABLE PROVISION:** Article 22.3 addresses this topic.

CERTIFICATION CLAUSES

THIS APPENDIX A CONTAINS THE STATE OF CALIFORNIA CCC 307. CCC 307 CONTAINS SEVEN (7) PROVISIONS PERTAINING TO CONTRACTOR CERTIFICATION CLAUSES AND EIGHT (8) PROVISIONS PERTAINING TO DOING BUSINESS WITH THE STATE OF CALIFORNIA, ALL OF WHICH ARE INCLUDED FOR REFERENCE. CCC 307 APPLIES TO THIS AGREEMENT ONLY WITH RESPECT TO NCPA AND CDWR AND AS ACCEPTED, MODIFIED OR DESCRIBED BY PROVISION BELOW.

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE – NOT APPLICABLE, NCPA IS A PUBLIC ENTITY.
2. DRUG-FREE WORKPLACE REQUIREMENTS – ACCEPTED.
3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION – NOT APPLICABLE, NCPA IS A PUBLIC ENTITY.
4. CONTRACT FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT – NOT APPLICABLE; NCPA IS NOT PERFORMING LEGAL SERVICES FOR CDWR.
5. EXPATRIATE CORPORATIONS – ACCEPTED.
6. SWEATFREE CODE OF CONDUCT – NOT APPLICABLE, NCPA IS NOT FURNISHING ANY APPAREL, GARMENTS OR CORRESPONDING ACCESSORIES TO CDWR.
7. DOMESTIC PARTNERS - NOT APPLICABLE / WAIVED PER PUBLIC CONTRACT CODE SECTION 10295.3(C)(4).

ccc-307

Appendix A
LEC Project Management and Operations Agreement

CERTIFICATION

I, the official named below, **CERTIFY UNDER PENALTY OF PERJURY** that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>	<i>Federal ID Number</i>

CONTRACTOR CERTIFICATION CLAUSES

1. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person’s or organization’s policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company’s drug-free workplace policy statement; and,

- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

2. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
3. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

- 1) CONFLICT OF INTEREST – ACCEPTED.
- 2) LABOR CODE/WORKERS' COMPENSATION – ACCEPTED.
- 3) AMERICANS WITH DISABILITIES ACT - ACCEPTED.
- 4) CONTRACTOR NAME CHANGE – ACCEPTED.
- 5) CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA – NOT APPLICABLE, NCPA IS NOT A CORPORATION.
- 6) RESOLUTION – ACCEPTED.
- 7) AIR OR WATER POLLUTION VIOLATION – ACCEPTED.
- 8) PAYEE DATA RECORD FORM STD. 204 – NOT APPLICABLE, NCPA IS A GOVERNMENTAL ENTITY.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code § 10410):

Appendix A
LEC Project Management and Operations Agreement

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code \$10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code § 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code \$10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

1403257.3

AGREEMENT TO SUPPLY RECYCLED WATER

This Agreement To Supply Recycled Water ("**Agreement**")s made on _____ (the "**Effective Date**") between Northern California Power Agency ("**NCPA**"), a joint powers agency, and the City of Lodi ("**Lodi**") a municipal corporation, (Lodi and NCPA are herein referred to singularly as "**Party**" and collectively as "**Parties**") in order to provide recycled water from the Lodi Waste Water Treatment Plant to NCPA for use in conjunction with its power generating facilities, including without limitation, NCPA's Lodi Energy Center, a combustion turbine power plant ("**LEC**" or "**Project**").

RECITALS

- A. The Parties concur with California Water Code sections 13510-13512, that prudent water management in California requires effective water conservation and reuse to meet diverse water needs;
- B. The Parties believe that it is sound public policy to develop Recycled Water resources through economically, financially, and environmentally sound projects;
- C. The Parties believe that the use of existing facilities benefits the ratepayers and constituents of both Parties by enabling the productive use of existing facilities;
- D.** The Parties declare their intent to establish and maintain a business relationship that utilizes the reliable supply of Recycled Water from the Lodi White Slough Water Pollution Control Facility ("**WSWPCF**") for the CT2 power plant and LEC Project;
- E. The Parties are authorized to enter into this Agreement pursuant to the following laws, regulations and orders:
- (i) NCPA's enabling legislation, Amended and Restated Joint Powers Agreement dated January 1, 2008, which permits NCPA to construct, operate, and maintain facilities for the generation and transmission of electric power;
 - (ii) California Code of Regulations, Title 22, Division 4, Chapter 3, which provides standards for Recycled Water quality; and
 - (iii) The State Water Resources Control Board ("**SWRCB**") Recycled Water Policy and the associated implementing resolution (State Water Board Resolution No. 2009-0011), and additional pertinent orders as the SWRCB or the Regional Water Quality Control Board ("**RWQCB**") may from time to time propound.
- F. NCPA desires to use treated waste water effluent from the Lodi WSWPCF for cooling tower make-up water and/or for other uses as appropriate at the LEC.

NOW, THEREFORE, for good and valuable consideration, the amount and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. GENERAL E INT

The purpose of this Agreement is to provide the terms and conditions under which Lodi will provide Recycled Water to NCPA. For the purposes of this Agreement, the following will apply:

1.1 Subsequent agreements between the Parties regarding specific Recycled Water projects will be implemented in accordance with this Agreement;

1.2 Lodi provides Recycled Water to one (or more) energy projects owned and operated by NCPA including the Combustion Turbine 2 Project. It is anticipated and planned that Lodi will provide Recycled Water for the LEC;

1.3 The Parties recognize that it may be appropriate to negotiate additional agreements relating to specific Recycled Water projects pursuant to the conditions imposed in this Agreement;

1.4 The Parties recognize that it may be appropriate to consider modifying this Agreement in a mutually acceptable manner to maintain a fair and positive business relationship, particularly when legal, statutory, or regulatory changes materially affect the ability to produce or purvey Recycled Water.

2. DEFINITIONS

When used in this Agreement, the terms described below will have the meanings as set forth in this section:

2.1 **“Combustion Turbine 2 Project” (“CT2”)** is a LM5000 simple cycle electrical generating facility rated at a nominal generating capacity of **49.9** megawatts (MW). The CT2 is located in Lodi, California on property near the City of Lodi WSWPCF.

2.2 **“Existing Recycled Water Facilities”** means those Lodi Recycled Water production and delivery facilities on the Lodi WSWPCF site or within Lodi easements outside the WSWPCF site as of the Effective Date of this Agreement including without limitation, the filter plant, the filter plant pumps and appurtenances, conveyance facilities to and from the clearwell, the clearwell, the meter, the clearwell pumping station including effluent and backwash pumps, the 8-inch industrial Recycled Water pipeline from the clearwell to the terminating point at the NCPA CT2 facility, and those Lodi Recycled Water production, delivery and distribution facilities as of the Effective Date of the Agreement including, without limitation, Recycled Water storage tanks; generally shown on Exhibit B (Map).

2.3 The “Lodi Energy Center” (“LEC”) will be a natural gas-fired, combined-cycle electrical generating facility rated at a nominal generating capacity of 280 megawatts (MW). The LEC is proposed to be constructed on a parcel of approximately 4.4 acres located adjacent to the Lodi WSWPCF to the east, treatment and holding ponds associated with the WSWPCF to the north, the existing CT2 (STIG plant) to the west, and the San Joaquin County Mosquito and Vector Control Facility to the south.

2.4 “Lodi Treatment Plant Site” means that area within the current treatment plant property boundaries as shown on Amended Exhibit A.

2.5 “NPDES permit” means the National Pollutant Discharge Elimination System permit issued by the RWQCB to each Party respectively as the context requires.

2.6 “Recycled Water” or “Reclaimed Water” means water that results from the treatment of wastewater, meets all applicable requirements established from time to time by pertinent federal or state agencies having jurisdiction and regulating the use of Recycled Water (including the RWQCB) and that is suitable for appropriate and approved non-potable uses, including without limitation the requirements of California Code of Regulations, Title 22, Division 4, Chapter 3 specifically for use in a cooling tower. For the purpose of this Agreement, Recycled Water and Reclaimed Water are considered synonymous.

2.7 “Recycled Water Facilities” includes both existing Recycled Water Facilities and facilities proposed to be constructed by Lodi or NCPA for the purpose of producing, delivering, and/or distributing Recycled Water.

3. TERM

This Agreement shall become effective on the Effective Date stated above and remain in place for the term of the Amended and Restated Ground Lease between the Lodi and NCPA dated of same date and any extensions thereof.

4. PAST COSTS

4.1 Lodi will not seek any compensation from NCPA for Lodi’s past costs associated with the providing Recycled Water to the CT2 plant, or to other Existing Recycled Water Facilities constructed, or studies undertaken and completed, prior to the Effective Date of this Agreement.

4.2 Similarly, NCPA will not seek compensation from Lodi for the costs associated with the existing NCPA Recycled Water Facilities constructed or studies undertaken and completed prior to the Effective Date of this Agreement.

4.3 Each Party may recover capital funds invested in Recycled Water Facilities since _____, through the sale of Recycled Water subsequent to the Effective Date of this Agreement.

5. Intentionally Left Blank

6. **DEVELOPMENT OF FUTURE PROJECTS BY LODI**

Future recycledwater projects may be developed by Lodi. However, Lodi's development of future projects may not affect NCPAs right to RecycledWater under this Agreement and may not diminish the quality, quantity, price, availability and delivery of RecycledWater. Lodiwill inform NCPA of planning activities regardingfuture recycledwater projects. Joint planning efforts may be undertaken by the Parties through mutual agreement.

7. **AGREEMENT TO USE RECYCLEDWATER**

NCPA hereby agrees to use RecycledWater for the LEC and CT2 Projects. NCPA agrees to use the RecycledWater for the purposes of generating electricity or for the use of irrigating landscaping that is associated with its generating facilities. Lodi will supply RecycleWater to the standards contained in California Code of Regulations, Title 22, for the specific use in power plants cooling towers.

8. **RESPONSIBILITY AT DELIVERY POINT**

The delivery point of the RecycledWater will be the WSWPCF Clearwell Pumping Station. Lodi will be responsible for all facilities for the treatment, transportation, conveyance and storage of the RecycledWater up to the delivery point. NCPA will be responsible for facilities for the treatment, transportation, storage or use of the RecycledWater from the point of delivery.

9. **PRICE AND QUANTITY OF RECYCLEDWATER FOR THE LEC**

Commencing upon the operation of the LEC, or on another mutually agreed upon date, Lodi agrees to provide ReclaimedWater to the LEC in accordance with California Code of Regulations Title 22, Division 4, Chapter 3 and the following terms:

9.1 Lodi will supply NCPA 1600 acre feet per year ("**afy**") of RecycledWater, which will be considered the "**BaseWater Allocation.**"

9.2 NCPA will pay for the BaseWater Allocation regardless of whether it uses the full allotment.

9.3 The initial price for the BaseWater Allocation will be \$600 per afy ("**Price for Water**").

9.4 NCPA may increase its RecycledWater usage from 1600 afy to 1800. In the event NCPA increases its RecycledWater usage above 1600 afy, it will pay one

hundredtwenty-fivepercent (125%) the Pricefor Water for any RecycledWater above 1600 afy.

9.5 NCPA will pay for RecycledWater usage above 1800afy at one hundred-fifty percent (150%) the Pricefor Water.

9.6 The Pricefor Water will increaseat a rate of ~~two~~ and one-half percent (2.5%) per year on the anniversary of the date that water is first supplied to the LEC under this Agreement.

9.7 On the ten (10) year anniversary date of the Effective Date of this Agreement, either Lodi or NCPA may initiate a review of the then existing Pricefor Water based on then existing market circumstancesfor ReclaimedWater used in an industrialcapacity such as a power plant. Such reviewwill be conducted by a mutually acceptableobjectivethird party. Any supportedadjustmentto the then existing Pricefor Water shall not exceed more than or less than twenty-five percent (+/- 25%) of the then existing Pricefor Water.

9.8 NCPA will make a one-time payment of Three HundredThousand Dollars (\$300,000 US) within thirty (30) days after the NCPA secures financing for the LEC.

10. **OBLIGATION TO SUPPLY WATER**

Lodi will deliver RecycledWater twenty-four (**24**) hours per day. Lodi will supply the RecycledWater year round and will not ration RecycledWater to NCPA in the event of a drought. The amount of RecycledWater received by NCPA shall be confirmed by monthly meter readings performed by NCPA. If Lodi fails to supply the minimum amount in a calendar year then NCPA may take reasonable steps to procure Water from other vendors or suppliers without affecting its rights under this Agreement.

11. **INTERRUPTION OF DELIVERY**

The Parties acknowledge that it is impossible to anticipate all the events that may occur which would prevent Lodi from delivering RecycledWater to NCPA pursuant to the Agreement. It is the intention of the Parties that Lodi may be relieved of the responsibility for providing RecycledWater when it is not reasonably within its means to do so. Such events shall include but are not limited to:

11.1 Acts of God (earthquakes, floods, etc.),

11.2. Orders by regulatory bodies or a court of competent jurisdiction. (changes in water use requirements), or

11.3 Equipment failure and unanticipated treatment upsets,

12. WATER QUALITY REPRESENTATION

Notwithstanding the prior statements above regarding water quality, this Agreement does not guarantee water quality at any given time. A violation of Lodi's NPDES permit that affects its ability to deliver Title 22 water quality for use at the NCPA Power Plants is not to be construed as a breach of this Agreement. Lodi shall notify the on duty NCPA operator as soon as practical after it experiences such an occurrence.

13. RESPONSIBILITY FOR COMPLIANCE WITH LAW

A. Lodi represents and warrants that it has complied with all laws related to its ability to sell recycled water and has enacted any and all appropriate resolutions or ordinances required to sell or provide recycled water to NCPA.

B. Each Party will be responsible for its own acts and omissions and for compliance with all applicable laws with respect to its respective undertakings under this Agreement, including without limitation all waste discharge requirements and warnings required by the RWQCB or otherwise in connection with Recycled Water. Should one Party learn or have reason to believe that a violation of such laws, statutes, ordinances, orders and/or regulations by itself or the other Party has occurred or is threatened, that Party must promptly so inform the other Party.

14. EFFECT OF AGREEMENT

14.1 This Agreement supersedes all prior oral or written representations, statements, promises, premises, negotiations, or agreements for Recycled Water only between the Parties. This Agreement does not affect other contracts, written representation, statements or promises between NCPA and Lodi. This Agreement may be modified or amended only by written agreement of the two Parties.

14.2 This Agreement is the product of negotiations between the Parties with regard to which the Parties have had ample opportunity to consult with their respective attorneys, and each Party therefore agrees that the rule of construction that documents are construed against the drafter thereof shall have no application to this Agreement. This Agreement is entered into under and shall be governed by and interpreted under California law. Captions and headings in this Agreement are solely for convenience in locating provisions, and they are not to be construed as limiting, expanding, or otherwise affecting the provisions of this Agreement.

15. SUCCESSORS AND ASSIGNS

Neither Party may assign or delegate any right or obligation hereunder without first having received the written consent duly executed of the other Party. The Agreement shall bind and shall inure to the benefit of any successors or assigns of either Party following such consent but does not otherwise create duties or obligations to or

rights in third parties not parties to this Agreement, nor will this Agreement affect the legal liability of either Party by imposing any standard of care different from that otherwise imposed by law.

16. NOTICES

All notices or communications of any kind which either Party may desire or be required to give or serve upon the other Party under this Agreement, must be in writing and either (i) delivered personally, or (ii) sent by facsimile transmission to the telephone numbers set forth below with the original deposited in the **U.S.** mail, postage prepaid, first class, addressed as set forth below, or (iii) sent by Certified Mail, return receipt requested, postage pre-paid, first class, addressed as set forth below. Such notices will be deemed effective upon personal delivery or transmission by facsimile; a notice sent only by Certified Mail will be deemed effective upon date received as set forth in the respective receipts. Each Party may designate at any time a different address, facsimile number, or telephone number for receipt of communications.

City of Lodi

Attn: City Manager
221 West Pine Street
Lodi, CA 95240
Fax: (209)333-6807

Northern California Power Agency

Attn: General Manager
651 Commerce Drive
Roseville, CA 95678
Fax: (916)783-7693

With a copy to:

City of Lodi

Attn: City Attorney
221 West Pine Street
Lodi, CA 95240
Fax: (209)333-6807

Northern California Power Agency

Attn: General Counsel
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814
Fax: 916-556-1516

17. INDEMNIFICATION

17.1 NCPA agrees to indemnify and defend Lodi and its officers, directors and employees from any loss, cost, expense, liability, claim or demand, including reasonable attorneys' fees, as to property damage and bodily and personal injury, including death, arising out of the sole negligence or willful misconduct of NCPA or its officers, directors, employees, or agents in connection with this Agreement or arising out of NCPA's breach of this Agreement.

17.2 Lodi agrees to indemnify and defend NCPA, its officers, directors and employees from any loss, cost, expense, liability, claim or demand, including reasonable attorneys' fees, as to property damage and bodily and personal injury, including death, arising out of the sole negligence or willful misconduct of Lodi or its

officers, directors, employees, or agents in connection with this Agreement or arising out of Lodi's breach of this Agreement.

17.3 If the negligence or willful misconduct of both NCPA and Lodi or their respective officers, directors, employees, or agents is a cause of such damage or injury, the loss, cost, expense, claim, demand or liability shall be shared between NCPA and Lodi in proportion to their relative degree of negligence, willful misconduct, or comparative faults, and the obligation to defend shall apply for such proportion. For the purpose of this section, the term "fault" shall include breach of this Agreement.

18. INSURANCE

Each Party must procure and maintain, at its own expense, casualty insurance insuring the Recycled Water Facilities against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State fire insurance coverage, in an amount sufficient to cover the full replacement value of the Recycled Water Facilities. NCPA and Lodi shall procure and maintain, each at its own expense, liability coverage at least as broad as the most current ISO Commercial General Liability policy form, with minimum limits of five million dollars (\$5,000,000) per occurrence and the following requirements:

18.1 Each Party must name the other Party and its officers, directors, board/council members, employees, agents, representatives, and volunteers as additional insureds.

18.2 NCPA's insurance shall be primary with respect to NCPA facilities and equipment, except that Lodi's insurance shall be primary for any covered event arising from Lodi's use of the facilities. Lodi's insurance shall be primary with respect to Lodi's facilities and equipment, except that NCPA's insurance shall be primary for any covered event arising from NCPA's use of the facilities. The Parties' respective policies must provide for cross-liability coverage for NCPA and Lodi and for severability of interests.

18.3 All or any portion of the required insurance coverage may be met by self-insurance or by policies that include self-insured retentions or deductibles larger than those typically carried by similarly situated non-self-insured entities. Within sixty (60) days of the Effective Date each Party shall advise the other Party of its self-insurance program, self-insured retentions, or deductibles. If a Party elects to self-insure, it must provide the other Party with the same benefits and protections as if the self-insured Party carried insurance with a private insurance company satisfying the requirements of this Agreement.

18.4 The foregoing requirements are not intended to and may not in any manner limit or qualify the liabilities and obligations otherwise assumed by NCPA or the Lodi pursuant to this Agreement, including but not limited to, the provisions in this Agreement concerning indemnification.

19. DISPUTE RESOLUTION

19.1 Mediation. The Parties agree to first submit any dispute arising out of or in connection with this Agreement to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In such event, neither Party may proceed with arbitration until the completion of mediation, the mediation being an express condition precedent to further remedies. The Parties may, however, agree in writing to proceed directly to arbitration. Each Party will pay an equal share of the costs of retaining the professional mediator but will bear its own costs, including, but not limited to its own attorneys' fees associated with participating in any mediation.

19.2 Binding arbitration. Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 19.1 above, either Party may give written notice to the other Party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 19.2. The Party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the Parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("**JAMS**") if such entity is then in existence, appoint an arbitrator in accordance with then current procedures. The arbitrator must be a retired judge of the Superior Court of California or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the San Joaquin Superior Court will appoint an arbitrator in accordance with its then current procedures.

19.2.2 The rules and procedures for arbitration shall be as follows:

19.2.2.1 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

19.2.2.2 The arbitration proceedings must be conducted in San Joaquin County, California, at a time and location as agreed to in writing by the Parties, or in absence of an agreement, as designated by the arbitrator.

19.2.2.3 Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration. The California Evidence Code shall generally guide the arbitrator in making such decisions.

19.2.2.4 The arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the

Parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the arbitrator must follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the arbitrator will have no authority or jurisdiction to enter an award, order, or decision for consequential, special, exemplary or punitive damages. The arbitrator may also grant such ancillary relief as is necessary to make effective the award, order, or decision, including the issuance of declaratory relief, compelling specific performance, or any other relief or action permitted by California law.

19.2.2.5 Both Parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the arbitrator will have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either Party will have the right to demand in writing that the other Party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at hearing. The responding Party's list(s) must be served personally or by registered or certified mail on the requesting Party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

19.2.2.6 Each Party may be represented by counsel.

19.2.2.7 No later than sixty (60) days following closing of the arbitration hearing, the arbitrator will make an award, order, or decision and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award, order, or decision. The arbitrator may include in his or her award, order, or decision pre-award interest and post-award interest at the legal rate where authorized by law. The Party against whom the award, order, or decision is made or remedy or relief ordered will have thirty (30) days after receipt of the award, order, or decision to commence and thereafter diligently pursue to completion any action or proceeding in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision. If the award, order, or decision is mailed, it will be deemed to be received within five (5) days after deposit in the mail.

19.2.2.8 If no such action or proceeding is timely commenced, the award, order, or decision will thereupon immediately become final. The Party against whom the award, order, or decision is made or remedy or relief ordered shall within thirty (30) days after the award, order, or decision becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award, order, or decision. The Party in whose favor the award, order, or decision is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of San Joaquin a Judgment upon the award, order, or decision rendered by the arbitrator, which may thereafter be entered in the records of said court.

19.2.2.9 If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to

obtain judicial review of the award, order, or decision, the Parties will have the right to seek vacation or modification of any portion of the award, order, or decision according to the grounds provided by California law at the time for the vacation or modification of an award, order, or decision in a non-judicial arbitration. The findings of fact of the arbitrator will be binding on all Parties and shall not be subject to further review except as allowed by the appeal provisions of this Section 19.2.2.9.

19.2.2.10 The arbitrator will be paid a per diem or hourly charge as established at the time of appointment. Each Party will bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the arbitrator's compensation, will be shared equally.

19.2.2.11 This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Agreement, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

19.2.2.12 Unless otherwise provided in this Agreement or otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of arbitration proceedings.

19.2.2.13 Except as modified or stated to the contrary in this Section 19, the rules and procedures of the Arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

20. TERMINATION

This Agreement may only be terminated by a mutual written agreement.

21. SURVIVAL

The provisions of the Agreement concerning past costs (Section 4), replacement of prior contracts (Section 5), applicable insurance provisions (Section 18) are continuing in nature and shall survive any termination of this Agreement.

22. AMENDMENTS

This Agreement is not subject to modification or amendment, except in writing as executed by both NCPA and Lodi, which writing shall expressly state that it is intended by the Parties to amend the terms and conditions of this Agreement.

23. CONTROLLING LAW

This Agreement and all matters relating to it shall be governed by the laws of the State of California.

24. WHOLE AGREEMENT

This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all discussions, negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

25. ASSIGNMENT

This Agreement cannot be assigned without written amendment signed by both Parties.

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized officers, as set forth below:

**NORTHERN CALIFORNIA
POWER AGENCY**

James H. Pope
General Manager

, Attest

Approved as to Form

Denise Dow, Assistant Secretary

Michael F. Dean, General Counsel

CITY OF LODI

City Manager

Attest

Approved as to Form

City Clerk

City Attorney

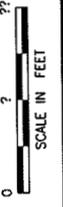


EXHIBIT A

LODI TREATMENT
PLANT SITE

LEGEND

PROPERTY OF
UNDEVELOPED LAND



WEST YOST
ASSOCIATES
Consulting Engineers

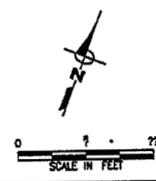


EXHIBIT A
LODI TREATMENT
PLANTSITE



LEGEND

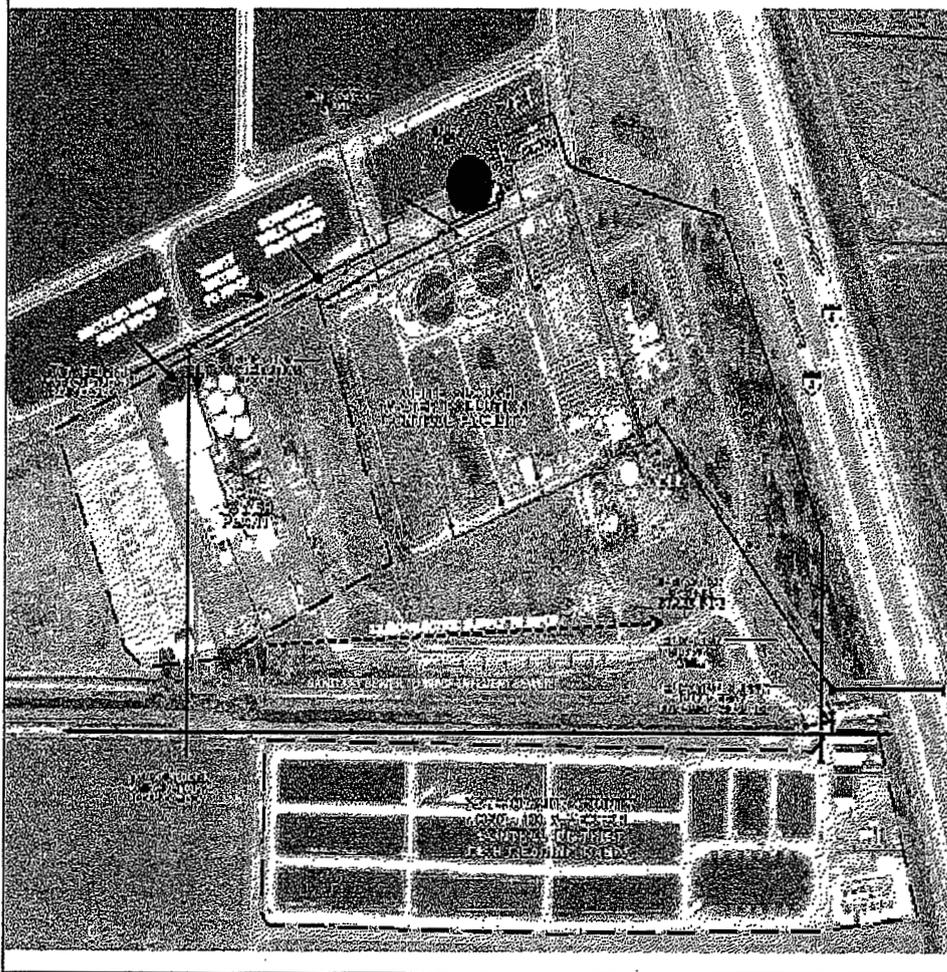
BOUNDARY OF
CITY-OWNED LAND



WEST YOS
ASSOCIATE
Consulting Engineers

EXHIBIT B

Diagram! Map of Recycled Water Facilities



AMENDED AND RESTATED GROUND LEASE

THIS AMENDED AND RESTATED GROUND LEASE (this “**Lease**” or this “**Agreement**”), dated this _____ day of _____, 2010 (“**Effective Date**”), is entered into by and between the CITY OF LODI, a California municipality (“**Landlord**”), and NORTHERN CALIFORNIA POWER AGENCY, a California joint powers agency (“**Tenant**”). Landlord and Tenant, and their successors and assigns, are singularly referred to as a “**Party**” and jointly referred to as the “**Parties**.”

RECITALS

A. WHEREAS, the Parties entered into that certain Ground Lease dated February 17, 1993 (“**Original Lease**”); and

B. WHEREAS, the Parties desire to amend and restate the Original Lease in its entirety as set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the Original Lease is fully amended and restated as follows:

I. Definitions. When used in this Agreement, the terms described below will have the meanings as set forth in this Section.

1.1 “**Base Rent**” is the rent for the CT2 site under the Lease and is defined further in Section 7.1.1.

1.2 “**Commencement Date**” means January 1, 1993, the date that the Lease commenced.

1.3 “**CT2 Project**” refers to the Combustion Turbine 2 Project, which is a LM5000 simple cycle electrical generating facility rated at a nominal generating capacity of 49.9 megawatts. The CT2 is located in Lodi, California on property near the City of Lodi White Sough Water Pollution Control Facility.

1.4 “Easement Area” refers to the easement on the east side of the Leased Premises for the construction of a road and is more fully defined in Section 3.

1.5 “**Effective Date**” means the date first written above upon which the Parties entered into the Amended and Restated Lease.

1.6 “**Landlord**” refers to the City of Lodi, a California municipality.

1.7 “**Leased Premises**” or “**Premises**” refers to the real property in the City of Lodi that is the subject of this Lease, as more fully described in Section 2.

1.8 The “**Lodi Energy Center**” (“**LEC**”) will be a natural gas-fired, combined-cycle electrical generating facility rated at a nominal generating capacity of 255 megawatts (MW). The LEC is proposed to be constructed on a parcel of approximately 4.4 acres located adjacent to the Lodi WSWPCF to the east, treatment and holding ponds associated with the WSWPCF to the north, the existing CT2 (STIG plant) to the west, and the San Joaquin County Mosquito and Vector Control facility to the south.

1.9 The “**LECRent**” means the rent to be paid for the portion of the Leased Premises to be used for the LEC and is more fully defined in Section 7.2.1.

1.10 The “**Original Lease**” refers to that certain Ground Lease dated February 17, 1993.

1.11 “**Offer**” refers to a bonafide offer from a third party to purchase all or a portion of the Leased Premises.

1.12 “**Party**” singularly refers to either the Landlord or the Tenant and “**Parties**” refers to the Landlord and Tenant collectively.

1.13 “**Project**” refers to the construction, operation and maintenance of a gas turbine power generation plant and incidental ancillary uses including without limitation, the transmission of energy.

1.14 “**Tenant**” refers to the Northern California Power Agency, a California joint powers agency.

1.15 “**Term**” refers to the term of the Lease as defined in Section 6.

1.16 “**Utilities**” refers to various utility lines, pipelines and a test well located on or below the Leased Premises.

2. Premises.

Landlord leases to Tenant and Tenant leases from Landlord that real property in the City of Lodi, County of San Joaquin, California, described on the map in Exhibit A attached hereto and incorporated into this Agreement by reference (the “**Leased**

Premises” or the “**Premises**”) for the term (described below) and upon the terms and conditions set forth in this Agreement.

3. Easements. In addition to the Premises, Tenant needs additional land adjacent to the east side of the Leased Premises for a road. A map identifying the additional area (the “Easement Area”) is contained in Exhibit B attached to this Agreement and incorporated herein by this reference. Landlord likewise needs access to this area to maintain the adjacent berm. Tenant and Landlord agree to enter into and record the Easement Agreement contained in Exhibit C attached to this Agreement and made a part hereof pursuant to which Tenant shall be provided with an access and roadway easement across the Easement Area throughout the term of this Lease as such may be extended. Tenant’s rights to use the Easement Area shall be exclusive aside from access rights reserved to Landlord as set forth in the Easement Agreement.

4. Use. Tenant may use the Leased Premises for the purpose of the construction, operation and maintenance of gas turbine power generation plants and incidental ancillary uses including without limitation, the transmission of energy, (collectively, the “**Project**”), and for any other lawful purpose.

5. Landlord’s Retained Rights.

5.1 Landlord maintains various utilities, pipelines and a test well (collectively “**Utilities**”) located on or below the Leased Premises. The Utilities are described more fully in Exhibit D attached hereto and incorporated herein by this reference. Landlord hereby retains the right to access the Leased Premises, upon seventy two (72) hours written notice to Tenant (except in the event of emergency), to repair or maintain or remove the Utilities. Landlord agrees not to interfere with Tenant’s activities on the Premises and will expeditiously repair or replace any damage that Landlord causes on the Premises at Landlord’s sole expense. With a minimum of seventy two (72) hours notice to Landlord, Tenant, at its sole expense, may relocate any or all of Landlord’s Utilities. The schedule for such relocation shall be at a time mutually agreed upon by the Parties. Tenant agrees to reconstruct the Utilities to standards acceptable to Landlord.

5.2 Landlord must remove the groundwater monitoring well located on the south east corner of the Premises, as shown on Exhibit A, within ninety (90) days of the Effective Date of this Agreement.

6. Term: Extension. The Term of this Lease shall commence on January 1, 1993 (“**Commencement Date**”), and shall terminate (unless extended pursuant to this Section 6 or earlier terminated in accordance with the provisions of this Lease) on the fiftieth (50th) anniversary of the Commencement Date (“**Term**”). Subject to Landlord’s retained rights as described in Sections 3 and 5, Tenant’s right to exclusive possession of the Leased Premises shall commence on the Commencement Date. Tenant shall have the right to extend the Term of this Lease on all the terms and conditions set forth herein for an additional period of fifty (50) years, to be exercised by written notice to Landlord during the last year of the initial Term of this Lease.

7. Rent

7.1 Rent for CT2 Site.

7.1.1 Annual Rent. On or before July 1 of each year during the term of this Lease, Tenant agrees to pay to Landlord in advance annual rent (“Base Rent”) in the amount of Twenty Thousand Three Hundred Ten Dollars (\$20,310) for the following Lease Year (i.e., each twelve (12) month period during the term of this Lease, commencing on July 1 and ending on June 30).

7.2 Rent for LEC.

7.2.1 Annual Rent. In addition to the Base Rent, commencing upon the earliest of the date upon which: (i) the California Energy Commission issues the AFC License for the Lodi Energy Center Unit Project (“**LEC**”), (ii) the Project Participants execute the Phase 3 agreements supporting construction of the LEC, or (iii) the Project Participants execute Power Purchase Agreements supporting construction of the LEC, Tenant agrees to pay to Landlord advance annual rent in the amount of Forty Thousand Dollars (\$40,000.00) (the “**LECRent**”) on or before July 1 of each year for the following Lease Year. For the initial Lease Year for which LEC Rent is payable pursuant to this Section 7.2.1, the LEC Rent shall be prorated on the basis of a 365 day year and shall be payable for the number of days remaining in such initial Lease Year.

7.2.2 Annual Rental Adjustments. During the ten (10) year period commencing on July 1 of the first full Lease Year after the obligation to pay LEC Rent commences, the LEC Rent will increase by two and one half percent (2.5%) annually starting after the first full year. The rental increase will go into effect on July 1st of each year.

7.3 Rental Adjustments. Other than as specified in Section 7.2.2, and in this Section 7.3, there shall be no adjustment to the Base Rent or the LEC Rent payable pursuant to this Agreement. On the ten (10) year anniversary of the Effective Date of this Agreement, either Tenant or Landlord may initiate a review of the then existing Base Rent and/or LEC Rent based on the market conditions at the time of the requested review. Such review must be conducted by a mutually acceptable neutral third party. The Parties will share equally in the cost of any mutually approved neutral third party's services. Any supported adjustment to the then existing Base Rent or LEC Rent may not vary by more than twenty five percent (25%) up or down (+/- 25%) from the then existing rent.

7.4 Payments. All rent to be paid by Tenant to Landlord under this Agreement must be in lawful money of the United States of America and must be paid without deduction or offset, prior notice or demand, and at such place or places as may be designated from time to time by Landlord.

8. Utility Payments. During the term of this Lease, except for utility payments related to Landlord's Utilities, Tenant agrees to pay all charges and expenses in connection with utility services and to protect Landlord and the Leased Premises from all such charges and expenses.

9. Repairs and Maintenance.

9.1 At all times during the term of this Lease, Tenant shall, at its cost and expense, maintain the Leased Premises and all improvements thereon in good order and repair and safe condition, including but not limited to, fences and roadways predominantly used by Tenant. Tenant will keep Landlord apprised of the volume and nature of truck traffic upon the Leased Premises.

9.2 Except as provided in this Agreement, Landlord shall not be obligated to make any changes, alterations, additions or repairs in, on or about the

Leased Premises or any part hereof or any improvements installed thereon. Tenant waives all provisions of law that may impose a duty of repair on Landlord.

9.3 Tenant shall indemnify and save harmless Landlord against all actions, claims and damages by reason of ~~(1)~~ Tenant's failure to perform Tenant's obligations set forth in this Section 9, or (2) Tenant's nonobservance or nonperformance of any law, ordinance or regulation applicable to the Leased Premises, and any liability or duty to repair imposed by the laws of the State of California.

9.4 Tenant agrees to construct a perimeter fence around the Leased Premises,

9.5 Notwithstanding Tenant's obligations to maintain and repair the Property in this Section 9, Tenant will have no obligation to maintain or repair any of Landlord's Utilities identified in Exhibit D.

10. Mechanic's Liens.

10.1 Covenant Against Liens and Claims. Tenant shall not allow or permit to be enforced against the Leased Premises or any part thereof, any mechanic's, material men's, contractor's or subcontractor's liens arising from any claim growing out of work of any construction, repair, restoration, operation, replacement or improvement, or any other claim or demand no matter how the same may arise. Tenant shall pay or cause to be paid all of said liens, claims or demands, arising as a result of Tenant's activities before any lawsuit is brought to enforce them against the Leased Premises. Tenant agrees to indemnify and hold the Landlord and the Leased Premises free and harmless from all liability for any and all such liens, claims and demands arising as a result of Tenant's activities, together with reasonable attorneys' fees and all costs and expenses incurred by Landlord in connection therewith except to the extent any such liens, claims, demands, fees, costs and expenses arise as a result of Landlord's actions or failure to act.

10.2 Tenant's Right to Contest Liens. Notwithstanding anything to the contrary set forth above, if Tenant shall in good faith contest the validity of any such lien, claim or demand, then Tenant shall, at its expense, defend itself and Landlord against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Leased Premises.

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10.3 Landlord Paying Claims. In the event Tenant fails to pay and discharge or cause to be paid and discharged, when due and payable, any tax, assessment or other charge upon or in connection with the Leased Premises that is the responsibility of Tenant pursuant to this Lease, or any lien or claim for labor or material employed or used or any claim for damages arising out of Tenant's construction, repair, restoration, replacement, maintenance and use of the Leased Premises and any improvements thereon, or any judgment on any contested lien or claim that results from Tenant's activities on the Leased Premises, or any insurance premium or expense in connection with the Leased Premises and improvements that Tenant is obligated to provide pursuant to this Lease, or any other claim, charge or demand which Tenant has agreed to pay or cause to be paid under the terms of this Lease, and if Tenant, after ten (10) business days' written notice from Landlord to do so fails to pay and discharge the same, or in the event Tenant contests such tax, assessment, claim or charge then Landlord may, at its option, pay any such tax, assessment, insurance expense, lien, claim, charge or demand, or settle or discharge any action therefore, or judgment thereon, and all costs, expenses and other sums incurred or paid by Landlord in connection with any of the foregoing shall be paid by Tenant to Landlord upon demand, together with interest thereon at Bank of America's prime rate from the date incurred or paid. Any default in such repayment by Tenant shall constitute a breach of the covenants and conditions of this Lease.

11. Insurance and Indemnity.

11.1 Landlord's Nonliability. Except for (a) Landlord's Utilities; (b) Landlord's activities to maintain, install, remove or access its Utilities; or (c) any other negligent or willful act or omission by Landlord, its employees, agents, invitees or volunteers that results in injury or damage to persons or property, Landlord shall not be liable for any loss, damage or injury of any kind to any person or property arising from Tenant's use of the Leased Premises, or any part thereof, or caused by any defect in any building, structure or other improvements thereon or in any equipment or other facility therein installed by Tenant, or caused by or arising from any act or omission of Tenant or any of its agents, employees, licensees or invitees, or by or from any accident on the Leased Premises or any fire or other casualty thereon, or occasioned by the

failure of Tenant to maintain the Leased Premises and all improvements thereto in a safe condition, or arising from any other cause.

11.2 Indemnification of Landlord. Notwithstanding anything to the contrary contained in this Lease, and irrespective of any insurance carried by Tenant for the benefit of Landlord under the terms of this Lease, Tenant agrees to protect, indemnify and hold the Landlord and the Leased Premises harmless from any and all damages and liabilities at any time occasioned by or arising out of (1) any act, activity or omission of Tenant, or of anyone holding under Tenant, or (2) the occupancy or use of the Leased Premises or any part thereof, by or under Tenant, or (3) any state or condition of the Leased Premises or any part thereof arising after the Commencement Date of the Original Lease and caused by Tenant.

11.3 Liability Insurance. Tenant shall procure and maintain at all times during the term of this Lease, at its sole cost and expense, a policy or policies of commercial general liability insurance by the terms of which **NCPA** is a named Insured and the City of Lodi is an additional insured and are indemnified against liability for damage or injury to property or person, including death, of any person entering upon or using the Leased Premises or any improvements thereon or any part thereof, with a combined single limit for bodily injury and property damage in an amount of not less than Five **Million** Dollars (\$5,000,000). Such public liability insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Landlord and shall contain a provision (provided such provisions are available without increased premium) that the Landlord, although named as an additional insured shall nevertheless be entitled to recover under that policy for any **loss**, injury or damage to the Landlord, its agents and employees or the property of such persons by reason of the negligence of Tenant. Tenant may at its option self-insure upon the foregoing terms.

11.4 Certificate of Insurance. All policies of insurance procured and maintained by Tenant hereunder shall be issued by companies having not less than Best's A: Class X rating and shall be issued in the name of the Landlord and Tenant for the mutual and joint benefit and protection of the parties. Executed copies of all insurance policies or a certificate thereof shall contain a provision that not less than

thirty (30) days' written notice shall be given to Landlord prior to the cancellation, reduction of coverage, expiration or any material change in any such policy.

11.5 Failure to Provide Insurance. If Tenant fails or refuses to procure or to maintain insurance as required by this Lease or fails or refuses to furnish Landlord with required proof that the insurance has been procured and is in force and paid for, Landlord shall have the right at Landlord's election, upon ten (10) days advance written notice, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as added rent due from Tenant with interest at the Bank of America prime rate, to be paid within thirty (30) days of demand. Landlord shall give prompt notice of the payments of such premiums, stating the amounts paid and the names of the insurer or insurers; and Landlord shall provide copies of insurance policies to Tenant.

11.6 Waiver of Subrogation. Each Party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either Party in connection with any damage covered by any policy, provided obtaining such a waiver in each such policy is then available at a reasonable charge. This provision is intended to restrict each Party (as permitted by law) to recovery against insurance carriers to the extent of such coverage, and waive fully, for the benefit of each Party, any rights or claims that might give rise to a right of subrogation by any insurance carrier.

12. Landlord's Covenants.

12.1 Water Supply to CT2 Project. Landlord shall make available to Tenant a minimum of 550,000 gallons per day of reclaimed water meeting the requirements of California Code of Regulations, Title 22, Division 4, Chapter 3 from the White Slough Water Pollution Control Facility to the CT2 project.

12.2 Water Supply to the LEC Project. Landlord agrees to make available to Tenant reclaimed water for the LEC project upon the terms and conditions contained in the Agreement to Supply Recycled Water attached to this Agreement as Exhibit E and incorporated herein.

12.3 Discharge of Water. Landlord shall upon payment by Tenant of applicable connection fees, accept Tenant's domestic wastewater from the Project into the White Slough Water Pollution Control Facility or other suitable treatment plant.

13. Repair and Restoration. If during the term of this Lease any building or improvement on the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Tenant may, at its sole cost and expense, repair or restore the same or may elect not to repair or restore. If Tenant elects not to repair or restore, Tenant may in its sole discretion choose to terminate this Lease effective as of the date of such damage or destruction. Any monies received by Landlord as compensation for damage or loss to improvements installed by Tenant on the Premises shall be paid to Tenant and are hereby assigned to Tenant.

14. Assignment and Subletting. Tenant may not encumber, assign, sublease or otherwise transfer this Lease, or any right or interest hereunder, or in or to any of the improvements constructed or installed on the Leased Premises, in whole or in part, without the prior written consent of Landlord which consent will not be unreasonably withheld, conditioned or delayed.

15. Default. The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

15.1 Failure to pay an installment of rent or other sum;

15.2 Failure to pay any insurance premium, lien, claim, demand, judgment or other charge provided for in this Lease to be paid or caused to be paid by Tenant at the time and in the manner as provided in this Lease;

15.3 Failure to maintain the Leased Premises or cause the same to be maintained as provided for in this Lease;

15.4 Abandonment of the Leased Premises after completion of construction for a continuous period of one hundred twenty (120) days; or

15.5 Failure to perform or breach of any other covenant, condition or restriction provided for in this Lease.

16. Remedies in Event of Default. Upon any default of Tenant, and in the event the default is due to the failure of Tenant to make the payment of any installment of rent or other sum when due, and in the event Tenant fails to remedy such default within ten (10) business days after written notice to do so, or upon any other default by Tenant, and in the event that Tenant fails to remedy such other default within thirty (30) days after written notice from Landlord so to do specifying the nature of such default, or

if such default cannot be cured within thirty (30) days and Tenant has not commenced corrective action and prosecuted the same to completion with due diligence, or in the event that the default is of such a nature that it cannot be cured by any action of Tenant, then and in any of these events, in addition to any other remedy Landlord may have by operation of law, Landlord shall have the right but not the obligation without any further demand or notice, to reenter the Leased Premises and eject all persons from the Leased Premises, using due process of law, and immediately terminate Tenant's right to possession of the Premises, and repossess the same by summary proceedings or other appropriate action, and Landlord shall thereupon be entitled to receive from Tenant all damages allowed by law.

17. Estoppel Certificates. Landlord and Tenant shall, respectively, at any time and from time to time upon not less than ten (10) business days' prior written request by the other, deliver to the requesting party an executed and acknowledged statement in writing certifying:

17.1 That this Lease is unmodified and in full force and effect or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications;

17.2 That to its knowledge the requesting party is not in default under this Lease or if any such default exists, the specific nature and extent thereof;

17.3 The date to which rent and other charges have been paid in advance, if any; and

17.4 Such other information pertaining to this Lease as may reasonably be requested.

Each certificate delivered pursuant to this Section 17 may be relied on by any prospective purchaser or transferee of the Leased Premises or of Landlord's or Tenant's interest hereunder or by any fee mortgagee of the Leased Premises or of Landlord's or Tenant's interest hereunder or by any assignee of any such mortgagee.

18. Ownership of Improvements. Title to any buildings, improvements or fixtures which may be placed on the Premises by Tenant shall remain in Tenant. Landlord agrees to subordinate all rights, if any, which Landlord may have in any of such improvements to the rights of Tenant. Tenant may remove the improvements at

any time during the term of this Lease. Any improvements remaining on the Premises after expiration or sooner termination of the Lease shall become the property of Landbrd.

19. Pavmentsand Notices. Any notice to be given or other document to be delivered by either party to the other party may be given by personal delivery or may be deposited in the United States mail in the State of California, duly registered or certified] with postage prepaid, and addressed to the party for whom intended as follows, or it may be sent via facsimile with a hard copy deposited in the United States mail addressed to the party to whom it was intended with sufficient postage pre-paid and will be duly given upon receipt of successful transmission to the following facsimile numbers:

To Landlord: City of Lodi
 Attn: City Manager
 221 West Pine Street
 Lodi, CA 95240
 Facsimile: 209-333-6807

To Tenant: Northern California Power Agency
 Attn: Assistant General Manager
 Generation Services
 651 Commerce Drive
 Roseville, CA 95678
 Facsimile: 916-783-7693

Either party may from time to time by written notice to the other party designate a different address which shall be substituted for the one specified above. If any notice or other document is sent by registered or certified mail, as provided above, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof.

20. Right of First Refusal. Landlord shall not at any time during the term of this Lease as such may be extended sell or convey or agree to sell or convey all or any portion of the Leased Premises without first having complied with the requirements of this Section 20. If Landlord desires to sell or convey all or any portion or portions of the Leased Premises, Landlord must obtain from a third party a bona fide arms' length offer (the "Offer") and Landlord must submit a written copy of the Offer to Tenant and must

give Tenant forty-five **(45)** days within which to elect to meet the Offer. If Tenant elects to meet the Offer, Tenant will give Landlord written notice thereof and closing must be held within forty-five (45) days thereafter, whereupon Landlord will convey to Tenant all or any portion of the Leased Premises which are the subject of the Offer. At closing, Landlord shall deliver to Tenant a grant deed, sufficient to convey to Tenant fee simple title to the subject portion of the Leased Premises free and clear of all liens, restrictions and encumbrances. Landlord shall pay all transfer taxes in connection with such conveyance. This right of first refusal shall continue as to any and all portions of the Leased Premises throughout the term of this Lease as such may be extended. In the event Tenant elects not to meet any Offer, Landlord may thereafter sell the portion or portions of the Leased Premises which are the subject of the Offer only to the party who made the Offer and only strictly in accordance with the terms thereof. To prevent Landlord from defeating the rights of Tenant hereunder, Landlord agrees that Landlord will at no time accept an offer to purchase all or any portion of the Leased Premises together with any other property of Landlord in contravention of Tenant's right to purchase the Leased Premises.

21. Abandonment of Wells

21.1 Abandonment and Closure of Injection Wells. Upon termination of this Lease, Tenant, at its sole expense, will abandon and close any and all injection wells utilized on the Premises by Tenant. Such abandonment shall be done in compliance with all applicable state and federal laws and regulations and under the direction of the California Department of Oil and Gas.

21.2 Abandonment Of Southeast Corner Test Well. The Landlord at its sole expense will abandon and close the test well located in the southeast corner of the Premises and will abandon the well in a timeframe mutually agreed to by the Parties. Such abandonment shall be done in compliance with all applicable local, state and federal laws and regulations.

22. Dispute resolution.

22.1 Mediation. The Parties agree to first submit any dispute arising out of or in connection with this Lease to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In

such event, neither Party may proceed with arbitration until the completion of mediation, the mediation being an express condition precedent to further remedies. The Parties may, however, agree in writing to proceed directly to arbitration. Each Party will pay an equal share of the costs of retaining the professional mediator but will bear its own costs, including, but not limited to its own attorneys' fees associated with participating in any mediation.

22.2 Binding arbitration. Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 22.1 above, either Party may give written notice to the other Party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 22.2. The Party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the Parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an arbitrator in accordance with then current procedures. The arbitrator must be a retired judge of the Superior Court of California or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the San Joaquin Superior Court will appoint an arbitrator in accordance with its then current procedures.

22.2.1 The rules and procedures for arbitration shall be as follows:

22.2.2 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

22.2.3 The arbitration proceedings must be conducted in San Joaquin County, California, at a time and location as agreed to in writing by the Parties, or in absence of an agreement, as designated by the arbitrator.

22.2.4 Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the arbitrator shall have the authority to make all

decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration. The California Evidence Code shall generally guide the arbitrator in making such decisions.

22.2.5 The arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the Parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the arbitrator must follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the arbitrator will have no authority or jurisdiction to enter an award, order, or decision for consequential, special, exemplary or punitive damages. The arbitrator may also grant such ancillary relief as is necessary to make effective the award, order, or decision, including the issuance of declaratory relief, compelling specific performance, or any other relief or action permitted by California law.

22.2.6 Both Parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the arbitrator will have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either Party will have the right to demand in writing that the other Party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at the hearing. The responding Party's list(s) must be served personally or by registered or certified mail on the requesting Party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

22.2.7 Each Party may be represented by counsel.

22.2.8 No later than sixty (60) days following closing of the arbitration hearing, the arbitrator will make an award, order, or decision and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award, order, or decision. The arbitrator may include in his or her award, order, or decision pre-award interest and post-award interest at the legal rate where authorized by law. The Party against whom the award, order, or decision is made or remedy or relief ordered will have thirty (30) days after receipt of the award, order, or decision to commence and thereafter diligently pursue to completion any action or

proceeding in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision. If the award, order, or decision is mailed, it will be deemed to be received within five (5) days after deposit in the mail.

22.2.9 If no such action or proceeding is timely commenced, the award, order, or decision will thereupon immediately become final. The Party against whom the award, order, or decision is made or remedy or relief ordered shall within thirty (30) days after the award, order, or decision becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award, order, or decision. The Party in whose favor the award, order, or decision is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of San Joaquin a Judgment upon the award, order, or decision rendered by the arbitrator, which may thereafter be entered in the records of said court.

22.2.10 If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision, the Parties will have the right to seek vacation or modification of any portion of the award, order, or decision according to the grounds provided by California law at the time for the vacation or modification of an award, order, or decision in a non-judicial arbitration. The findings of fact of the arbitrator will be binding on all Parties and shall not be subject to further review except as allowed by the appeal provisions of this Section 22.2.10.

22.2.11 ■ The arbitrator will be paid a per diem or hourly charge as established at the time of appointment. Each Party will bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the arbitrator's compensation, will be shared equally.

22.2.12 This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Lease, any motion, application,

complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

22.2.13 Unless otherwise provided in this Lease or otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Lease during the pendency of arbitration proceedings.

22.2.14 Except as modified or stated to the contrary in this Section 22, the rules and procedures of the Arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

23. Miscellaneous.

23.1 Attorneys' Fees. Except as otherwise provided in Section 22 respecting attorneys' fees in mediation and arbitration, in the event any action is brought by Landlord or Tenant against the other to enforce or for the breach of any of the terms, covenants or conditions contained in this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed by the Court, together with costs of suit therein incurred.

23.2 Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of either party to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default under this Lease.

23.3 Holding Over. If Tenant holds over the Leased Premises after the expiration of the term hereof with the consent of Landlord, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations in this Lease, and Tenant hereby agrees to pay to Landlord the same monthly rent as provided in this Lease; provided, however; that nothing herein contained may be construed to give Tenant any rights to so hold over and to continue in possession of the Leased Premises after the expiration of the term hereof.

23.4 Surrender at End of Term. Upon the end of the term of this Lease, as provided herein, or any extension thereof, or sooner termination of this Lease,

Tenant shall surrender to Landlord all the Leased Premises, together with all improvements as hereinabove provided, and all fixtures. Upon surrender of the Premises, Tenant shall, if directed by the Public Works Director, remove at its own expense any and all equipment remaining thereon.

23.5 Lease Binding Upon Successors and Assigns. Subject to the limitations on assignment and subleasing, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and inure to the benefit of not only Landlord and Tenant, but each of their successors and assigns. Whenever in this Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the successors and assigns of the Parties as if in every case expressed.

23.6 Inspection. Landlord reserves the right for Landlord and Landlord's agents and representatives to enter upon the Leased Premises at any reasonable time with seventy-two (72) hours advance written notice for the purpose of attending to Landlord's interest hereunder and to inspect the Leased Premises.

23.7 Relationship of Parties. The relationship of the Parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that merely as a result of this Lease, Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venture with Tenant in the conduct of Tenant's business or otherwise, except as provided by the Phase 2 and Phase 3 combustion turbine project number 2 agreements or the LEC agreements or any similar agreement.

23.8 Time of the Essence. Time is expressly declared to be of the essence of this Lease.

23.9 Memorandum of Lease. This Agreement will not be recorded, but the Parties agree to execute and deliver a Memorandum of this Lease in recordable form, which Memorandum shall be recorded in the office of the Recorder in San Joaquin County, California.

23.10 Quitclaim. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord within five (5) days after written demand from Landlord to Tenant any quitclaim deed or other document required

by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

23.11 Number and Gender. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm, entity or association. If there is more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several.

23.12 Headings and Titles. The marginal headings or titles to the paragraphs of this Lease are not a part of this Lease and have no effect upon the construction or interpretation of any part of this Lease.

23.13 Entire Agreement. This Lease and the Exhibits hereto contain the entire agreement of the Parties hereto with respect to the matters covered hereunder, and no previous written or oral agreements, statements or promises made by any Party to this Agreement respecting the lease of the Premises that are not contained in this Lease will be binding or valid.

23.14 Force Majeure. Except as to the payment of rent, neither of the Parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the control of the Parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Lease.

23.15 Disclaimer of Representation. Except as otherwise specifically provided in this Lease, Landlord has made no representations or warranties to the Tenant concerning the Leased Premises, the present use thereof or the suitability for Tenant's intended use of the property. The foregoing disclaimer includes, without limitation, topography, climate, air, water, water rights, utilities, present and future zoning, soil, subsoil, drainage, access to public roads, proposed routes of roads, or extension thereof, or effect of any state or federal environmental protection laws or regulations. Tenant represents and warrants to Landlord that Tenant and its

representatives have made or will make their own independent inspection and investigation of the Leased Premises and Tenant, in entering into this Lease, is relying solely on such inspection and investigation. No patent or latent physical condition of Leased Premises, whether or not known or discovered, will affect the rights of either party hereto. Any agreement, warranties or representations relating to this Lease and not expressly contained in this Agreement shall in no way bind either Tenant or Landlord. Landlord and Tenant waive any right of rescission and all claims for damages by reason of any statement, representations, warranty, promise and agreement, if any, not contained in this Lease.

23.16 Quiet Enjoyment. This Lease is subject and junior only to all existing easements, covenants, conditions and restrictions and other matters and encumbrances of record as of the date of this Lease or that are a part of this Lease. As long as Tenant is not in default of any provision of this Lease, Tenant shall have quiet enjoyment of the premises.

23.17 Termination. Tenant may terminate this Lease at any time upon six (6) months advance notice.

23.18 Counterparts. This Lease may be executed in counterparts each of which is deemed an original, and all such counterparts constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated Ground Lease as of the date first set forth above.

LANDLORD:

CITY OF LODI, a municipal corporation

Blair King, City Manager

ATTEST:

Randi Johl, J.D., City Clerk

TENANT:

NORTHERN CALIFORNIA POWER
AGENCY

James H. Pope, General Manager

ATTEST

Denise Dow, Assistant Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM

D. Stephen Schwabauer
City Attorney

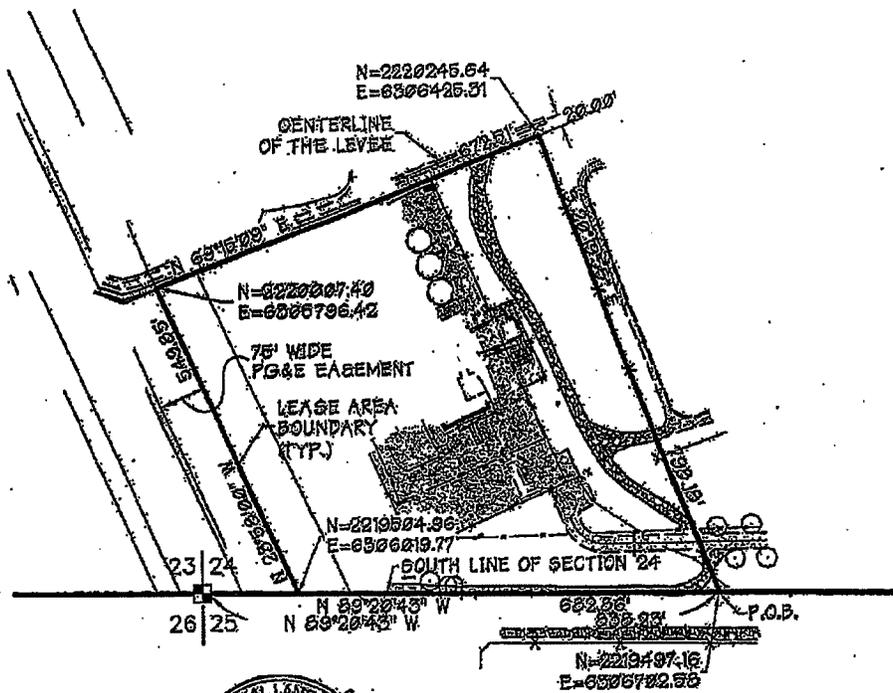
Michael F. Dean, General Counsel



EXHIBIT LIST

EXHIBIT A	Legal Map and Description of Premises
EXHIBIT B	Roadway and Incidental Purpose Easement
EXHIBIT C	Easement Agreement
EXHIBIT D	Utilities

Lease Exhibit A



3/1/2009 2:04pm Exh1 B-LEASE

EXHIBIT A

Lease Area

All that real property situated in the southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly described as follows:

BEGINNING AT A POINT on the South line of said Section 24 from which the Southwest corner of said Section 24 bears North $89^{\circ}21'43''$ West 888.23 feet. Thence from said Point of Beginning North $89^{\circ}21'43''$ West 682.85 feet along said South line, thence leaving said South line along the East boundary of an easement granted to Pacific Gas & Electric Company described in that Deed dated September 6, 1957 recorded in Book 2013 of Official Records at Page 426, San Joaquin County Records, North $23^{\circ}58'01''$ West 549.85 feet to a point measuring 20.00 feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Skimming Ponds, thence parallel with and 20.00 feet distant from the centerline of said levee North $69^{\circ}15'69''$ East 672.51 feet, thence South $20^{\circ}19'55''$ East 793.18 feet to the Point of Beginning.

Containing 16.1 Acres (432,050 Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 33 Page 175 with San Joaquin County Recorder's Office.



EXHIBIT B

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463, Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 20.00 feet in width, the centerline of which is described as follows:

BEGINNING AT A POINT on the East boundary of a lease parcel to Northern California Power Agency (NCPA) from which the Southwest corner of said Section 24 bears the following two (2) courses: 1) South $20^{\circ}19'35''$ East 88.05 feet along said East boundary to the South line of said Section 24, 2) North $89^{\circ}20'43''$ West 838.23 feet along the South line of said Section 24 to the Southwest corner thereof. Thence from said Point of Beginning North $89^{\circ}30'37''$ East 483.64 feet along the centerline of an existing asphalt road to the beginning of a curve to the left, thence through said curve to the left having a Radius of 273.31 feet, an Arc Length of 526.14, and being subtended by a Chord bearing North $34^{\circ}21'38''$ East 448.58 feet, thence North $20^{\circ}47'20''$ West 347.74 feet to the beginning of a curve to the right, thence through said curve to the right having a Radius of 84.46 feet, an Arc Length of 74.71 feet, and being subtended by a Chord bearing North $04^{\circ}54'09''$ East 73.29 feet, thence North $29^{\circ}55'37''$ East 44.45 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 88.66 feet, an Arc Length of 79.45 feet, and being subtended by a Chord bearing North $04^{\circ}34'49''$ East 75.91 feet, thence North $20^{\circ}46'02''$ West 1048.49 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 3013.60 feet, an Arc Length of 99.99 feet, and being subtended by a Chord bearing North $21^{\circ}43'04''$ West 99.99 feet, thence North $22^{\circ}40'06''$ West 489.23 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 1670.10 feet, an Arc Length of 169.96 feet, and being subtended by a Chord bearing North $24^{\circ}33'16''$ West 109.94 feet, thence North $26^{\circ}26'26''$ West 44.61 feet to the North line of the Southwest One-Quarter of said Section 24.

The sidelines of said strip of land shall be lengthened or shortened to terminate at the North line of the Southwest One-Quarter of said Section 24 and the East boundary of said NCPA Lease parcel, respectively.

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.

Containing 1.54 Acres (67,148 Sq. Ft.)





1"=400'

Road Easement Exhibit B

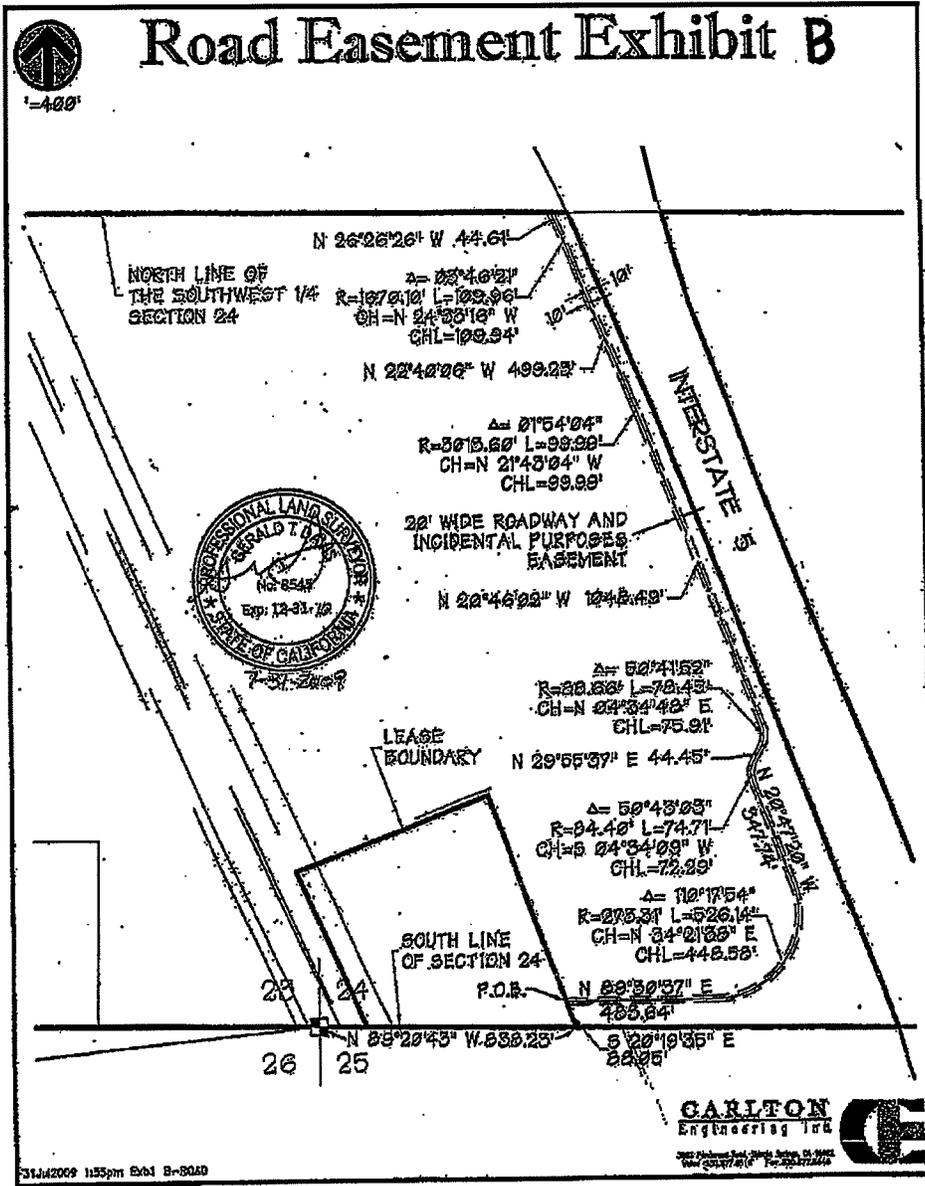


EXHIBIT C
EASEMENT AGREEMENT

Recording Requested by
and when Recorded, return to:

Northern California Power Agency
Attn: Assistant General Manager
651 Commerce Drive
Roseville, CA 95678

EXEMPT FROM RECORDING FEES PER GOVERNMENT
GOVERNMENT CODE §§ 6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE)

This Easement Agreement (**"Agreement"**) is made and entered into this ___ day of _____, 2009, and is by and between the City of Lodi, a California municipality (**"City"**) and the Northern California Power Agency, a California joint powers agency (**"NCPA"**). The City and NCPA, and their successors and assigns, are singularly referred to as a **"Party"** and jointly referred to as the **"Parties."**

RECITALS

- A.** The Parties entered into that certain Amended and Restated Ground Lease dated as of the same date as this Agreement for property located in the City adjacent to the White Water Slough Water Pollution Control Facility as more fully identified on the map attached hereto as Exhibit A (the **"Property"**) for the purpose of constructing, operating and maintaining gas turbine power generation plants;
- B.** NCPA is constructing a new gas turbine power plant on the Property and is in need of additional land adjacent to the east side of the Property, also identified in the map attached as Exhibit A to this Agreement, (the **"Land"**) for the purpose of constructing a road;
- C.** The City uses the Land to maintain the berm located immediately adjacent to the Land;
- D.** The Parties recognize that their uses for the Land are not mutually exclusive and that the City can provide NCPA with a non-exclusive easement to construct its road while at the same time maintaining the City's access to maintain the berm.

NOWHEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easement. The City hereby grants, conveys, and dedicates to NCPA for use as a roadway or buffer over the Land identified on Exhibit A and more fully defined in the legal description attached hereto as Exhibit B (the “**Easement**”). NCPA's right to use the Land will be exclusive with the exception of the City's use to maintain, construct or reconstruct the berm shown in Exhibit A. The City covenants that, save the rights retained by the City to maintain the berm, it will not grant any rights to any other persons or entities.
2. Character of Easement. The Easement granted in this Agreement is expressly for the benefit of NCPA to use as a roadway for access to, or buffer adjacent to the Lodi Energy Center Project located on the Property. The Property is thus the dominant estate and the Land upon which the Easement is located is the servient estate. The Easement created by this Agreement is appurtenant to the Property that is the dominant estate to which it relates, shall run with the land and may not be transferred, assigned or encumbered except as an appurtenance to the dominant estate.
3. Easement Runs with the Land/Successors and Assigns. Each covenant contained in this Agreement (a) constitutes a covenant running with the Land; (b) binds successors in interest of each Party, and (c) will inure to the benefit of each Party's successors in interest. Any person or entity accepting a deed or other instrument conveying, granting, leasing or assigning any property affected or benefitted by this Agreement or any portion thereof or interest therein will take title subject to this Agreement, and such person will be deemed to have assumed all of the applicable obligations imposed in this Agreement with regard to such property regardless of whether this Agreement is mentioned in the deed, lease or other instrument. Whenever a reference in this Agreement is made to the City or NCPA, the reference will be deemed to also mean a reference to the successors in interest of each Party, or the Parties, as applicable, as if in every case so expressed.

4. Term of Easement. This Agreement will remain in full force and effect concurrently with the term of the Amended and Restated Ground Lease and any extensions thereto.
5. Rent. The rent for the easement will be \$1.00 per year and will be paid in advance on or before July 1st of each year.
6. Maintenance of the Easement. NCPA will, at its sole cost, maintain the Easement in a safe condition as appropriate for the use to which NCPA will put the Easement. In the event NCPA installs a roadway, it will be for the sole use of NCPA and will not be made a public roadway. NCPA will not be required to install curbs, gutters or sidewalks, or paint any markings on the road. The road will not be available for access or use by the general public. The City will, at its sole cost, maintain the berm adjacent to the roadway.
7. No Barriers. The Parties agree that absent the written consent of the Parties and with the exception of the berm, no wall, fence, or barrier of any kind which impairs or impedes access to, or use of, the Easement will be constructed or maintained on or adjacent to the Easement, nor will the Parties do anything that will prevent, impair or discourage the use or exercise of the entire Easement or the free access and movement across the Easement area.
8. Indemnification. NCPA will indemnify, defend, protect and hold harmless, the City, its elected and appointed officials, employees, and agents from and against all claims, demands, liabilities, judgments, losses, costs and expenses arising out of or related to NCPA's or its agent's, employee's or invitee's use and maintenance of the Easement. The City will indemnify, defend, protect and hold harmless, NCPA, its elected and appointed officials, employees, and agents from and against all claims, demands, liabilities, judgments, losses, costs and expenses arising out of or related to the City's or its agent's, employee's or invitee's use of the Easement and maintenance of the berm.
9. Insurance. At all times during the term of this Agreement, NCPA shall include the Easement in the insurance it is obligated to maintain on the Property under the Amended and Restated Ground Lease.

10. Default/Remedies. An “**Event of Default**” under this Agreement occurs if either Party fails to comply with any of the covenants or obligations in this Agreement or fails to commence to cure with reasonable diligence such failure within ten (10) days after receipt of written notice from the other Party of the default. Upon the occurrence of an Event of Default under this Agreement, the aggrieved Party may pursue all remedies at law or in equity, including without limitation, the remedy of specific performance of this Agreement.

11. Dispute Resolution

11.1 Mediation. The Parties agree to first submit any dispute arising out of or in connection with this Agreement to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In such event, neither Party may proceed with arbitration until the completion of mediation, the mediation being an express condition precedent to further remedies. The Parties may, however, agree in writing to proceed directly to arbitration. Each Party will pay an equal share of the costs of retaining the professional mediator but will bear its own costs, including, but not limited to its own attorneys' fees associated with participating in any mediation.

11.2 Binding arbitration. Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 11.1 above, either Party may give written notice to the other Party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 11.2. The Party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the Parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an arbitrator in accordance with then current procedures. The arbitrator must be a retired judge of the Superior Court of California or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the

Presiding Judge of the San Joaquin Superior Court will appoint an arbitrator in accordance with its then current procedures.

11.2.2 The rules and procedures for arbitration shall be as follows:

11.2.2.1 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

11.2.2.2 The arbitration proceedings must be conducted in San Joaquin County, California, at a time and location as agreed to in writing by the Parties, or in absence of an agreement, as designated by the arbitrator.

11.2.2.3 Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration. The California Evidence Code shall generally guide the arbitrator in making such decisions.

11.2.2.4 The arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the Parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the arbitrator must follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the arbitrator will have no authority or jurisdiction to enter an award, order, or decision for consequential, special, exemplary or punitive damages. The arbitrator may also grant such ancillary relief as is necessary to make effective the award, order, or decision, including the issuance of declaratory relief, compelling specific performance, or any other relief or action permitted by California law.

11.2.2.5 Both Parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the arbitrator will have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either Party will have the right to demand in writing that the other Party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at

hearing. The responding Party's list(s) must be served personally or by registered or certified mail on the requesting Party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

11.2.2.6 Each Party may be represented by counsel.

11.2.2.7 No later than sixty (60) days following closing of the arbitration hearing, the arbitrator will make an award, order, or decision and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award, order, or decision. The arbitrator may include in his or her award, order, or decision pre-award interest and post-award interest at the legal rate where authorized by law. The Party against whom the award, order, or decision is made or remedy or relief ordered will have thirty (30) days after receipt of the award, order, or decision to commence and thereafter diligently pursue to completion any action or proceeding in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision. If the award, order, or decision is mailed, it will be deemed to be received within five (5) days after deposit in the mail.

11.2.2.8 If no such action or proceeding is timely commenced, the award, order, or decision will thereupon immediately become final. The Party against whom the award, order, or decision is made or remedy or relief ordered shall within thirty (30) days after the award, order, or decision becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award, order, or decision. The Party in whose favor the award, order, or decision is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of San Joaquin a Judgment upon the award, order, or decision rendered by the arbitrator, which may thereafter be entered in the records of said court.

11.2.2.9 If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision, the Parties will have the right to seek vacation or modification of any portion of the award, order, or decision according to the grounds provided by California law at the time for the vacation or modification of

an award, order, or decision in a nonjudicial arbitration. The findings of fact of the arbitrator will be binding on all Parties and shall not be subject to further review except as allowed by the appeal provisions of this Section **11.2.2.9**.

11.2.2.10 The arbitrator will be paid a per diem or hourly charge as established at the time of appointment. Each Party will bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the arbitrator's compensation, will be shared equally.

11.2.2.11 This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Agreement, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

11.2.2.12 Unless otherwise provided in this Agreement or otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of arbitration proceedings.

11.2.2.13 Except as modified or stated to the contrary in this Section 11, the rules and procedures of the Arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

12. Memorandum of Agreement. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of Agreement substantially in the form of Exhibit C hereto. NCPA shall cause such Memorandum of Agreement to be recorded against the Property in the County of San Joaquin Recorder's Office within three (3) business days after the execution thereof. The Parties agree to record a reconveyance of the Easement upon termination of the Amended and Restated Ground Lease.

13. Miscellaneous.

13.1 Payments and Notices. Any notice to be given or other document to be delivered by either Party to the other Party may be given by personal delivery or may be deposited in the United States mail in the State of California, duly registered or certified, with postage prepaid, and addressed to the Party for whom intended as follows, or it

may be sent via facsimile and will be duly given upon receipt of successful transmission to the following facsimile numbers:

To City: City of Lodi
Attn: City Manager
221 West Pine Street
Lodi, CA 95240
Facsimile: 209-333-6807

To NCPA: Northern California Power Agency
Attn: Assistant General Manager
Generation Services
651 Commerce Drive
Roseville, CA 95678
Facsimile: 916-783-7693

Either Party may from time to time by written notice to the other Party designate a different address which shall be substituted for the one specified above. If any notice or other document is sent by registered or certified mail, as provided above, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof.

13.2 Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions in this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of either Party to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default under this Agreement.

13.3 Holding Over. If NCPA holds over the Leased Premises (as that term is defined in the Amended and Restated Ground Lease) after the expiration of the term of the Amended and Restated Ground Lease with the consent of City, either express or implied, this Agreement shall likewise remain in full force and effect for as long as the Amended and Restated Ground Lease remains in full force and effect, subject to all the covenants, conditions and obligations in this Agreement.

13.4 Relationship of Parties. It is expressly understood and agreed that merely as a result of this Agreement, the City does not in any way nor for any purpose become a partner of NCPA or a joint venture with NCPA in the conduct of NCPA's business or otherwise, except as provided by the Phase 2 and Phase 3 combustion turbine project number 2 agreements or the LEC agreements or any similar agreement.

13.5 Severability. If any term, provision, covenant or condition contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement will continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

13.6 Attorneys' Fees. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall recover attorneys' fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action in addition to any other relief awarded, and such attorneys' fees and costs shall be included in any judgment in such action.

13.7 Time of the Essence. Time is expressly declared to be of the essence in this Agreement.

13.8 Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender includes the feminine and neuter genders, and the word "person" includes corporation, firm, entity or association.

13.9 Headings and Titles. The marginal headings or titles to the sections of this Agreement are not a part of this Agreement and have no effect upon the construction or interpretation of any part of this Agreement.

13.10 Entire Agreement. This Agreement and the Exhibits hereto contain the entire agreement between the Parties with respect to the matters covered hereunder, and no other previous agreement, statement or promise made by any Party hereto which is not contained in this Agreement shall be binding or valid.

13.11 Force Maieure. Except as to the payment of rent, neither of the Parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the

control of the Parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Agreement.

13.12 Termination. NCPA may terminate this Agreement at any time upon six (6) months advance notice, but in all cases, the Easement granted in this Agreement will terminate concurrently with the termination of the Amended and Restated Ground Lease.

13.13 Counterparts. This Agreement may be executed in counterparts each of which is deemed an original, and all such counterparts constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY:

NCPA:

CITY OF LODI, a municipal corporation

NORTHERN CALIFORNIA POWER
AGENCY

Blair King, City Manager

James H. Pope, General Manager

Date: _____

Date: _____

ATTEST:

ATTEST

Randi John, J.D., City Clerk

Denise Dow, Assistant Secretary

APPROVED **AS** TO FORM:

APPROVED AS TO FORM:

D. Stephen Schwabauer,
City Attorney

Michael F. Dean,
General Counsel

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT LIST

- Exhibit A Map of the Property
- Exhibit B Legal Description
- Exhibit C Memorandum of Easement

EXHIBIT C

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 403 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 26.00 feet in width, the sides of which shall be shortened or extended to terminate respectively at the South line of said Section 24 and 20.00 feet measured at a right angle from the centerline of a levee, the West line of which is described as follows:

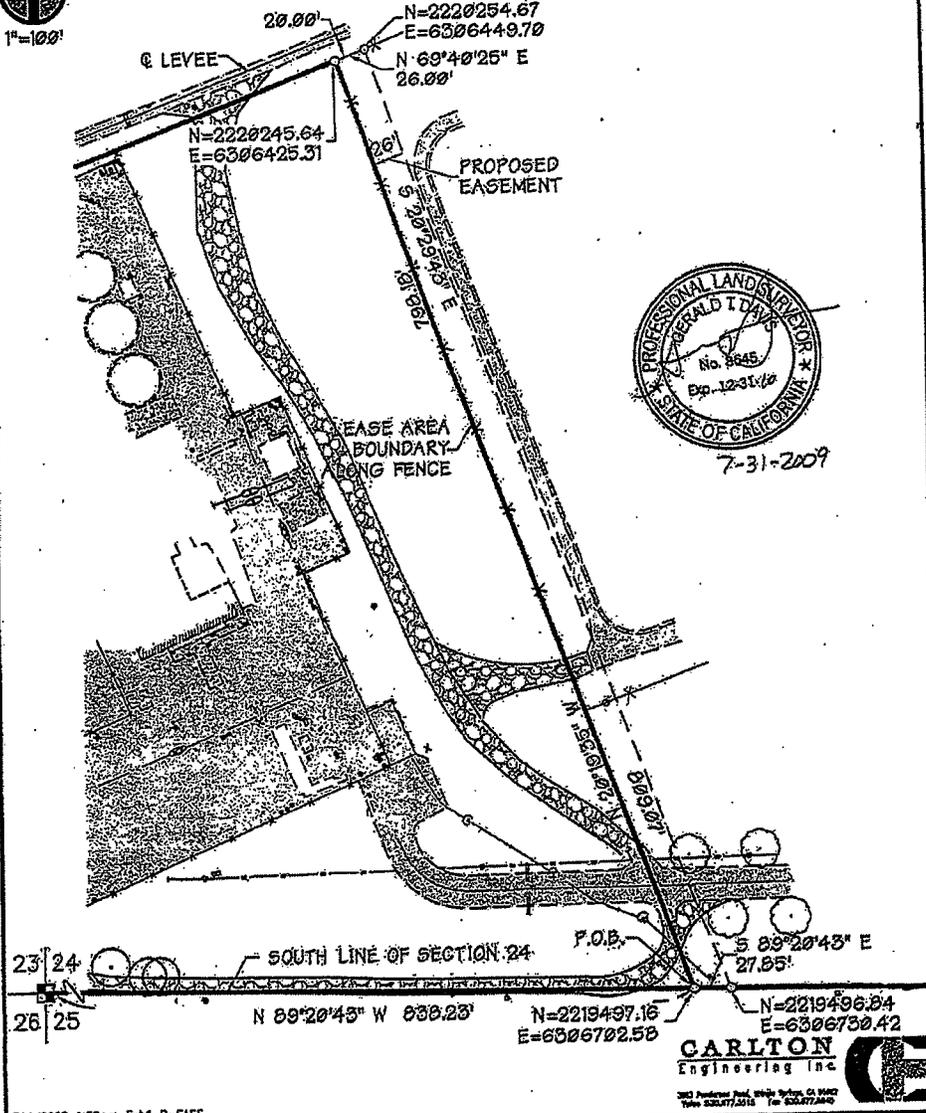
BEGINNING AT A POINT on the South line of said Section 24 from which the Southwest corner of said Section 24 bears North 89°20'43" West 838.23 feet. Thence from said Point of Beginning North 20°19'35" West 798.18 feet to a point measuring 20.00 feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Skimming Ponds.

Containing 0.5 Acres (20,885 Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.



Easement Exhibit C



CARLTON
 Engineering Inc

Recording Requested by
and when Recorded, return to:

Northern California Power Agency
Attn: Assistant General Manager
651 Commerce Drive
Roseville, CA 95678

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE
§§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF EASEMENT

This Memorandum of Easement (this "**Memorandum**") dated as of _____, 2009, is made by and between the City of Lodi, a municipal corporation ("**City**") and the Northern California Power Agency, a California joint powers agency ("NCPA"). The City and NCPA are jointly referred to as the "Parties."

Pursuant to an Easement Agreement by and between the City and NCPA (the "Easement Agreement"), the City has granted to NCPA an easement, on the terms and conditions set forth in the Easement Agreement on real property located in the City of Lodi, San Joaquin County, California and more particularly described in Attachment 1 attached hereto and incorporated herein (the "**Easement Area**"). NCPA's use of the Easement Area shall be exclusive, with the exception of the City's right to use the Easement Area for maintenance, construction or reconstruction of the berm shown on Attachment 2 attached hereto and incorporated herein.

This Memorandum incorporates all of the terms and provisions of the Easement Agreement as though fully set forth herein. The term of the Easement Agreement runs concurrently with the term of the Amended and Restated Ground Lease on the dominant estate.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Easement Agreement. In the event of any inconsistency between this Memorandum and the Easement Agreement, the Easement Agreement shall control.

This Memorandum and the Easement Agreement shall bind and inure to the benefit of the Parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of the date first written above.

CITY:

CITY OF LODI, a municipal corporation

Blair King, City Manager

Date: _____

NCPA:

NORTHERN CALIFORNIA POWER AGENCY

James H. Pope, General Manager

Date: _____

ATTACHMENT LIST

- | | |
|--------------|-------------------|
| Attachment 1 | Map of Property |
| Attachment 2 | Legal Description |

EXHIBIT C

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 26.00 feet in width, the sidelines of which shall be shortened or extended to terminate respectively at the South line of said Section 24 and 20.00 feet measured at a right angle from the centerline of a levee, the West line of which is described as follows:

BEGINNING AT A POINT on the South line of said Section 24 from which the Southwest corner of said Section 24 bears North $89^{\circ}20'43''$ West 838.23 feet. Thence from said Point of Beginning North $20^{\circ}19'35''$ West 798.13 feet to a point measuring 20.00 feet, at right angle, to the centerline of the South levee of the White Slough Water Pollution Control Plant Sidraining Ponds.

Containing 0.5 Acres (20,885 Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.



STATE OF CALIFORNIA)
) **ss**
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

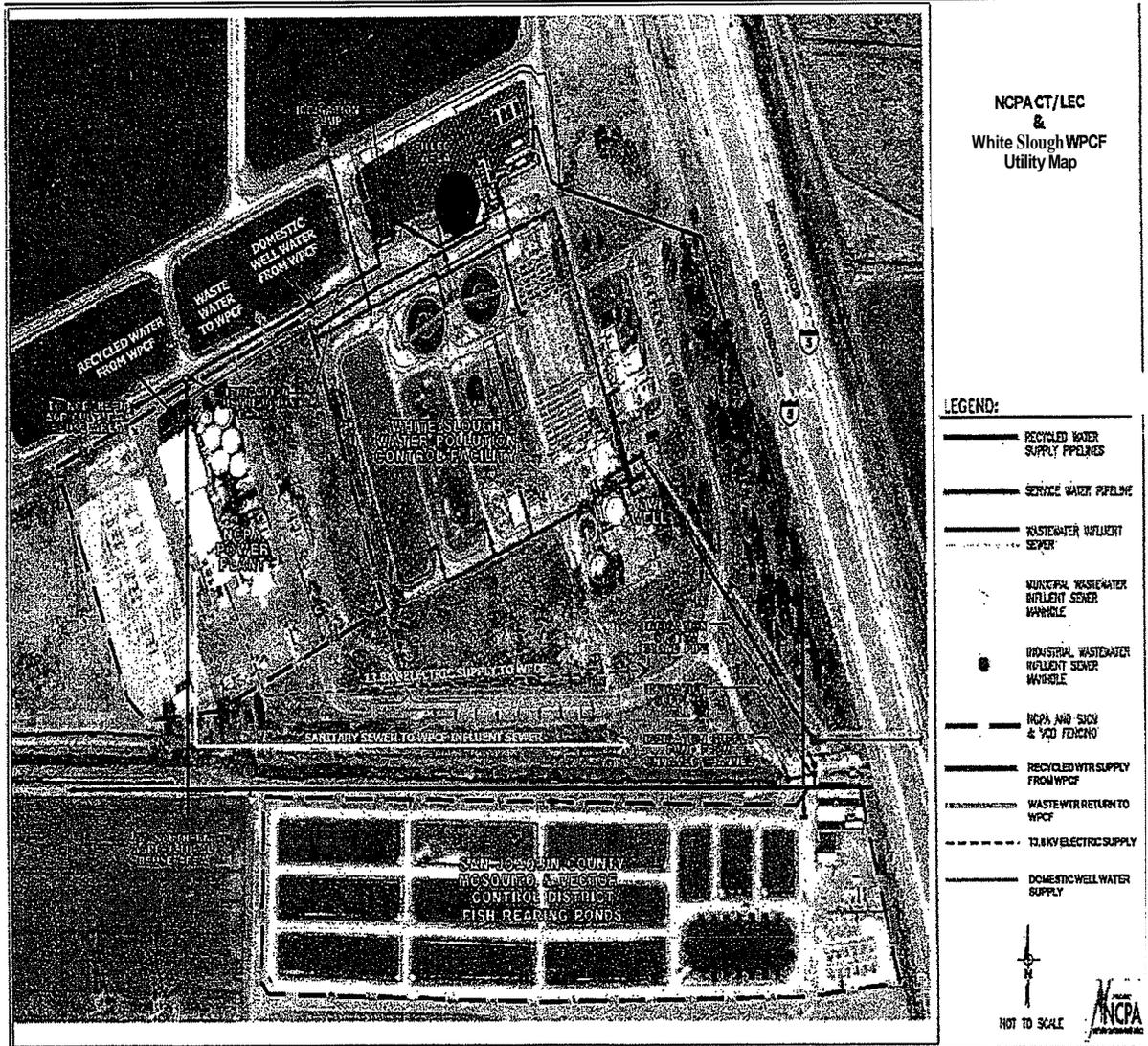
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT D

UTILITIES



**Lodi Energy Center
Participants**

**Share
Percentage**

**Nominal Project
Capacity (MW)**

Azusa	2.7857%	7.80
BART	6.2500%	17.50
Biggs	0.2679%	0.75
CDWR	33.3332%	93.33
Gridley	1.9643%	5.50
Healdsburg	1.5714%	4.40
Lodi	9.3561%	26.20
Lompoc	2.0000%	5.60
Modesto ID	10.7143%	30.00
Plumas-Sierra	0.7857%	2.20
Port of Oakland	1.1607%	3.25
PWRPA	2.6679%	7.47
Silicon Valley Power	25.3571%	71.00
Ukiah	1.7857%	5.00
Total	100.0000%	280.00

EXHIBIT A

ENVIRONMENTAL FINDINGS

The City of Lodi (Participant), as a Participant in the Lodi Energy Center (Project), makes the following findings pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.*, and the Guidelines implementing CEQA (“CEQA Guidelines”) Code of Regulations, title 14, section 15000 *et seq.*

1. The California Energy Commission (“CEC”) is the lead agency for this Project under CEQA.
2. The CEC is a certified regulatory agency pursuant to CEQA section 21080.5 and CEQA Guidelines sections 15250– 15253.
3. As a certified regulatory agency, rather than an Environmental Impact Report (“EIR”), the CEC prepares an “EIR substitute” as the CEQA documentation for the Project.
4. The CEC’s EIR substitute for this Project is the Presiding Member’s Proposed Decision (“PMPD”) released on March 10, 2010, as supplemented by the “Errata to the Presiding Member’s Proposed Decision” dated April 20, 2010, and approved by the CEC on April 21, 2010 without further substantive change.
5. Participant is a responsible agency for the Project under CEQA.
6. Participant finds that the CEC’s process meet all of the conditions of CEQA Guidelines section 15253 that would allow Participant to use and rely upon the CEC findings. Specifically, Participant finds that:
 - a. The CEC is the first to grant a discretionary approval for the Project.
 - b. The CEC provided Participant the opportunity to consult with the CEC and to comment on the PMPD.
 - c. The PMPD considers both the significant environmental impacts of the Project that are within the jurisdiction of the Participant, if any, and considers alternatives to the Project.
 - d. The CEC exercised its powers as lead agency by considering all of the environmental impacts of the Project and made the appropriate findings pursuant to CEQA Guidelines section 15091 for each significant impact of the Project.
7. Participant has considered the PMPD and the environmental impacts of the Project described in the PMPD, pursuant to CEQA Guidelines 15096 subdivision (f).
8. The PMPD concludes that, as conditioned, the Project will not have any significant adverse effects on the environment. Thus, pursuant to CEQA Guidelines 15096

subdivision (g), Participant finds that there are no alternatives or mitigation measures within the powers of Participant to adopt that would substantially reduce or avoid any significant environmental impact of the Project.

9. Pursuant to CEQA Guidelines 15096 subdivision (h), Participant is required to make findings pursuant to CEQA Guidelines section 15091 for each significant impact of the Project. Participant has considered the PMPD, the description of the Project's environmental impacts contained therein, the findings of fact and conclusions of law contained therein, and the conditions of certification contained therein, and, exercising its independent judgment, Participant finds the following:
 - a. For all environmental impacts of the Project, changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effects as identified in the PMPD.
 - b. These findings are supported by substantial evidence in the record.
 - c. The conditions of certification imposed on the Project by the CEC are within the authority of the CEC and will be monitored and enforced by the CEC.
10. That approval of both the Power Sales Agreement and Project Management and Operation Agreement, providing for the financing, construction and operation of the Project has no impacts on the environment not addressed within the prior CEC analysis.



APPLICATION FOR **CERTIFICATION** FOR THE
LODI ENERGY CENTER
NORTHERN CALIFORNIA POWER AGENCY

DOCKET No. 08-AFC-10

ERRATA TO THE PRESIDING MEMBER’S PROPOSED DECISION

After reviewing the comments submitted by the parties on April 12, 2010, we incorporate the following changes to the March 10, 2010 Presiding Member’s Proposed Decision (PMPD):

INTRODUCTION

- 1. **Page 2, Second Paragraph, change as follows:**

... A ~~new~~, ~~approximately~~ 1100 foot 230-kV line will be constructed to transmit the plant output to the electrical grid via the existing 230-kV switchyard adjacent to the existing plant. Additionally, a new ~~2.7~~ mile-long gas ...

Deleted: 520-foot

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Deleted: 2.5

PROJECT DESCRIPTION

- 2. **Page 7, Last Full Paragraph, First Sentence, change to read:**

“Construction costs are estimated to be between \$275 ~~and~~ \$375 million.

- 3. **Page 8, Section 3. Power Plant Equipment and Linear Facilities, First Sentence, change to read:**

“One natural gas ~~fired~~ gas-fired Siemens STGS-5000F combustion turbine-generator (CTG), ...

- 4. **Page 8, Section 5. Natural Gas Supply, change to read:**

~~In March 2009, the Applicant submitted Supplement C to reflect that natural gas will be delivered to the project through a new off-site pipeline about 2.7 miles long running parallel to the 3-mile existing natural gas pipeline (#108) owned by Pacific Gas and Electric which services the existing STIG plant adjacent to the LEC project site. (Ex. 30) ...~~

- 5. **Page 9, Section 6. Water Supply, First Paragraph, first sentence, change to read as follows:**

The recycled water will be provided by a new pipeline that will be located immediately adjacent to the existing pipeline serving the STIG.

Deleted: Recycled water will be used for cooling needs for the LEC project and will be provided by a 48-diameter pipeline in the utility corridor connecting the LEC and city of Lodi's WPCF

6. **Page 9, Section 7. Wastewater Discharge, delete third sentence:**

✓

Deleted: The remaining small portion will be captured in underground storage tanks and disposed of appropriately

7. **Page 10, Finding of Fact 2. change to read as follows:**

The project will have a nominal ~~name-plate~~ capacity rating of 296MW.

8. **Footnote 2 should also be changed to reflect the same:**

"296 MW is the ~~name-plate or rated~~ nominal capacity of the project,..."

9. **Page 10, Findings of Fact 3. change to read as follows:**

The project involves construction of a new ~~520-foot kilovolt,~~ approximately 1100 feet in length, transmission/generation tie-line to the existing 230 kV switchyard substation adjacent to the plant

PROJECTAL ERNA1

10. **Page 14, Alternatives Table 1, modify as follows:**

LEC Column: Electrical = approximately 1100 feet.

Deleted: 520 feet

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11. **Page 15, Footnote 1 to Alternatives Table 1, replace with the following sentence:**

The recycled water will be provided by a new pipeline that will be located immediately adjacent to the existing pipeline serving the STIG.

12. **Page 17, First Paragraph, change first two sentences to read as follows:**

To minimize NOx emissions, the LEC combustion turbine generators will be equipped with ~~water injection combustors~~ dry low NOx combustors and selective catalytic reduction using anhydrous ammonia as the reducing agent. (Ex. 1, p. 6-18). However the Applicant considered the following combustion turbine NOx control alternatives: steam injection and water injection ~~dry low NOx combustors.~~

FACILITY DESIGN

13. *Pages 45-46, Facility Design Table I:*

Second row, CT Enclosure Structure,... the Quantity should be 1

Page 46, fifth row:

Fire/Raw should be changed to Service

Delete thirteenth row (Warehouse Structure). Not Part of project

Delete fifteenth row, (Control Room Structure). Not Part of project

Eighteenth row, delete the parenthetical entry after Drainage Systems (including sanitary drain and waste)

Twentieth row, delete the parenthetical entry after Temperature Control and Ventilation Systems (including water and sewer connections)

POWER PLANT RELIABILITY

14. *Page 65, Section 2. Plant Maintainability, Third Bullet, change as follows:*

- Two 100 percent capacity condensate pumps;

Deleted: Three 50

TRANSMISSION SYSTEM ENGINEERING

15. *Page 70, Section 1. Switching Station Upgrades. Last paragraph, second sentence, change to read:*

...line would approximately be approximately 1100 feet and would be supported by monopole, . . .

Deleted: 520 feet

16. *Page 77, Condition of Certification TSE-5, change to read as follows:*

- A. The LEC project will be interconnected to the NCPA Lodi Switching Station via a single 230 kV transmission line, ~~approximately~~approximately 1100 feet, with 1272 kcmil ACSR, Bittern conductor or conductor with a higher rating.

Deleted: 520 feet long

TRANSMISSION LINE SAFETY AND NUISANCE

17. *Page 81, Summary and Discussion of Evidence, First Sentence, change to read as follows:*

The LEC Project includes building and operating a new on-site, approximately 1100 feet 230-kV overhead transmission line.

Deleted: 500-foot long

18. *Page 81, Summary and Discussion of Evidence, Aviation Safety, last paragraph, change to read as follows:*

. . .The evidence further shows, however, that the 73- 78-foot height of the line's support structures is well below the 200-foot height threshold of concern for the FAA.

19. Page 84, Findings of Fact 1, change to read as follows:

The Lodi Energy Center Project includes the construction and operation of a new on-site 230-kV switchyard and an on-site, approximately 1100 feet long overhead 230-kV transmission line.

Deleted: 500-foot

AIR QUALITY

20. Page 102, fourth line under Air Quality Table 3

,should be changed to 200.8 MW

Deleted: 185 MW

21. Page 118, Findings of Fact 3

,should be changed to 200.8 MW

Deleted: 185 MW

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HAZARDOUS MATERIAL MANAGEMENT

22. Pages 187 and 188, Hazardous Material Management A

In the Row for under the Application column, change entire entry to now read or ; and under Maximum Quantity on Site column, 20,000 to 1000 cubic feet;

In the Row for Oxvuen, add cycle water treatment after Welding gas in the Application column;

In the Row for Sodium Hydroxide, change the Maximum Quantity on Site column entry off 40 gallons;

Deleted: 10 gallons

In the Row for Auueous Ammonia, under the column Application, pH control should be changed to pH control and flammable should be changed to flammability in the last line of the Hazardous Characteristics column.

BIOLOGY

23. Page 213, first paragraph and Page 228, BIO-11:

Change all references to \$16,342.68 to \$16,343.28.

24. Page 213, second paragraph, second sentence, change to read:

White-tailed kite is a California Fully Protected species that is a yearlong resident of the Central Valley, coastal range, and foothills. A white-tailed kite nest was observed on the side of Laydown Area D of the LEC Project site during a survey conducted on April 30, 2008. The parties agree and we find . . .

Deleted: The evidence indicates that there are no records of the presence of white-tailed kite within a five-mile radius of the project.

Page 217, second sentence under LORS Compliance, change to read:

NCPA will has participated in the SJMSCP for the ~~entire life of the~~ LEC Project.

25. Page 215, Section 4. Operational Impacts and Mitigation, last paragraph:

The LEC project includes a 150-foot exhaust stack, a 105-foot heat recovery steam generator, one turning pole no more than 73 feet tall, and ~~two five~~ 73-foot monopole support towers. The transmission tower structures will support ~~520~~ approximately 1100 feet of new transmission lines that will tie the plant to the existing STIG power plant's 230-kV switchyard.

26. Page 217, 6. LORS Compliance, second sentence, change to read:

NCPA, has participated in the SJMSCP for the ~~L~~EC Project.

[Formatted: Indent: Left 0"]

[Deleted: will

Deleted: entire life of the

27. Page 227, BIO-9

Change ~~\$27,164.06~~ to \$27,162.07

SOIL AND WATER

28. Page 237, 4. Wastewater, change to read as follows:

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The evidence indicates that the project will discharge up to ~~225-489~~ gpm of nonhazardous process wastewater to an on-site Class I injection well. Presently, NCPA owns and operates a Class I injection well for wastewater injection at the STIG facility. NCPA has ~~submitted a new~~ received an Underground Injection Control (UIC) permit application to ~~from~~ the USEPA Region IX for the combined STIG-LEC facility. (Ex. 15.) The receipt of the permit was based on the application submitted by NCPA (Exhibit 43) which contains the initial (Ex. 300, p. 4.9-6.)

Seond paragraph, change maximum rate as follows:

. injection at a maximum rate of 225 ~~489~~ gpm. . .

CULTURAL RESOURCES

29. Page 261, CUL-2, Verification, first sentence:

At least 40 days prior to the start of ground disturbance, the project owner shall provide copies of the AFC, data responses, confidential cultural resources documents, all supplements, and the Energy Commission SA to the CRS (if needed) and copies of the subject maps and drawings to the ~~PG,~~ CRS, and CPM

GEOLOGY AND PALEONTOLOGY

30. Page 275, PAL-4, first sentence, change to read as follows:

If after review of the plans provided pursuant to **PAL-2**, the PRS determines that materials with moderate or high _____ paleontological sensitivity could be....

31. Page 276, PAL-4 Verification, first sentence, change to read:

Not more than 5 days prior to ground disturbance, after implementation . . .

LAND USE

32. Page 287, Section I. The Site, first sentence, change as follows:

The 4.4-acre LEC site and the ~~5.4-acre~~ 9.8-acre temporary laydown and parking areas are located on land owned . . .

NOISE AND VIBRATION

33. Page 312, second paragraph, change to read as follows:

New off-site linear facilities include a ~~2.7~~ 2.5-mile-long natural gas pipeline. The Applicant intends to ~~use an existing~~ construct a new water supply pipeline from the WPCF and use existing transmission lines . . .

VISUAL RESOURCES

34. Page 327, Section a. Construction Impacts, first sentence:

"Construction activities will occur over approximately ~~27~~ 24 months"

35. Page 329, first paragraph, change to read:

Three transmission poles and the turning pole and lines will be installed on the east side of the property. Two ~~Five~~ transmission poles and lines will be installed on the north . . . ~~to cooling water and sewer connections.~~ A new gas pipeline, which will extend beyond the project site, and recycled water Pipeline, will be constructed below ground.

36. Pages 342, Section 2. Visible Vapor Plumes, first two paragraphs, change to read as follows:

The record indicates that the combustion turbine generators (CTGs) include a ~~plume-abated-cooling tower.~~ . . .

A visible plume frequency of 20 percent of seasonal (November through April) daylight clear hours was used as a plume impact study threshold trigger. . . . See **Visible Plume Figure Table 1**:

37. Page 343, insert the following paragraph after Visible Fume Table 1:

Subsequent to the preparation of this table, Applicant revised the turbine design to one that will not include duct firing. The evidence indicates that this new turbine selection will not change the impact determination for the HRSG visible plumes, as the impact remains less than significant due to low visible plume frequency potential for the turbine/HRSG exhaust.

38. Page 344, Section 4. Cumulative Impacts and Mitigation, first paragraph, last sentence, change to read as follows:

According to the City of Lodi Public Works Department, the improvements to the White Slough WPCF, are scheduled to begin in 2010 and last between 18 to 24 months, will accommodate the increased water flow needed by the LEC.

39. Page 345, Findings of Fact 1, change to read:

. . . approximately ~~27~~ to 24 months.

40. Page 345, Findings of Fact 9, change to read:

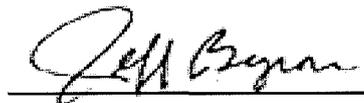
The combustion turbine generators (CTGs) include a ~~plume abated~~ cooling tower which. . .

41. Page 345, delete Findings of Fact 10.

Dated: April 20, 2010, at Sacramento, California.



KAREN DOUGLAS
Chairman and Presiding Member
Lodi Energy Center AFC Committee



JEFFREY D. BYRON
Commissioner and Associate Member
Lodi Energy Center AFC Committee

CALIFORNIA ENERGY COMMISSION

**“PRESIDING MEMBER’S PROPOSED DECISION”
(407 PAGES)**

**PROVIDED ON THE CITY’S WEBPAGE
WWW.LODI.GOV**

Lodi Energy Center

City Council Meeting

May 5, 2010



Overview

- The Project
- CEQA
- Power Sales Agmt
- Proj Mgmt & Ops Agmt
- Ground Lease
- Water Supply Agmt



Lodi Energy Center Statistics

Capacity: 280 MW (net)

Expected Energy Cost: \$72 per MWh

Expected Capacity Factor: 80%

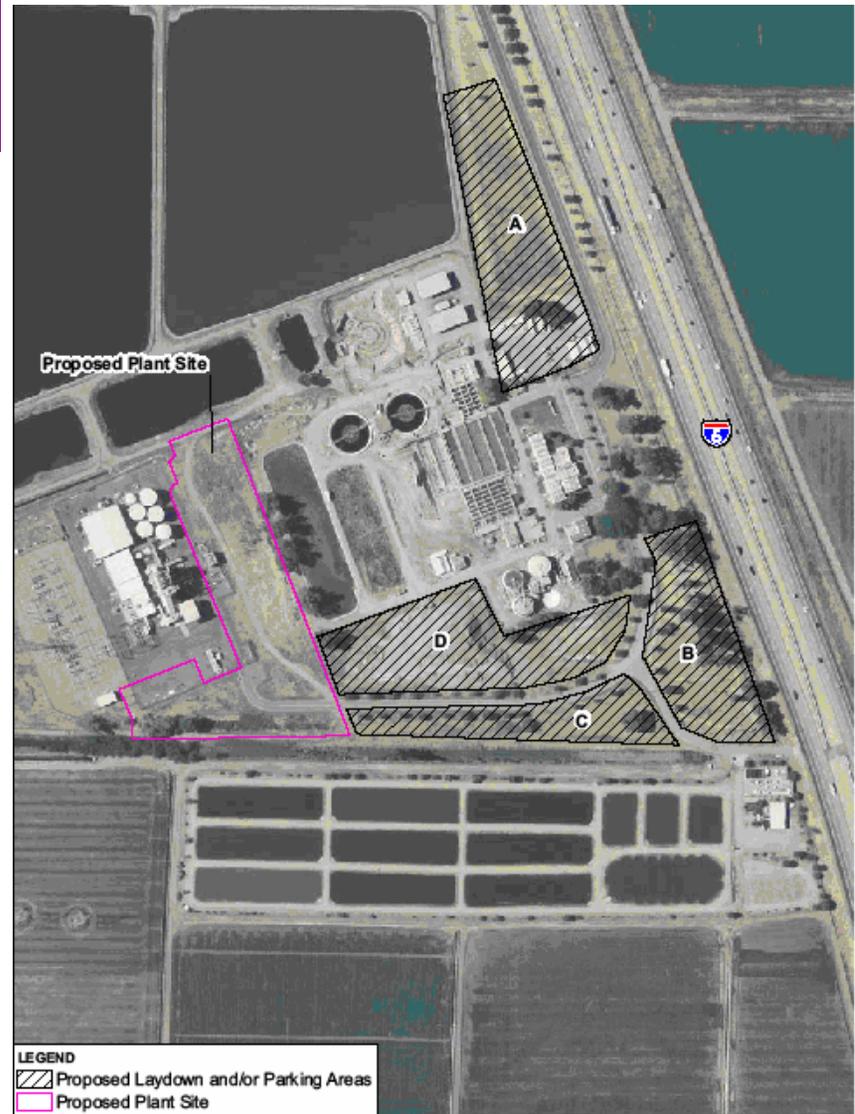
Expected Heat Rate: 6,824 Btu/kWh

Reductions in GHG: 28%

Will use White Slough treated sewage effluent for cooling

All air quality and other permits are in place

Received CEC permit on April 21, 2010



Ownership

**Northern California Power Agency
owns, constructs, operates, and
maintains**

14 Participants:

10 NCPA Members, 4 non-members

NCPA financing for 13 Participants

**Each Participant has its percentage
of costs/obligations and
benefits/outputs**



Cost Summary

Costs	Million \$
Development (Ph 1 & 2 & Eng'g)	\$25
Equipment, materials & parts	\$215
Labor & services	\$82
Interconnection & fees	\$26
Contingency	\$27
Subtotal	\$375
Financing & reserves	\$77
Total to be financed	\$452



Cost/kWh Summary

4.78 c/kWh gas (at \$7/millionBtu)

1.55 c/kWh debt service

0.63 c/kWh O&M

0.26 c/kWh scheduling/CAISO/other

**7.22 cents/kWh Total Cost
(with \$7/millionBtu gas)**



Participants	Generation Entitlement	Nominal MW
Azusa	2.7857%	7.80
BART	6.2500%	17.50
Biggs	0.2679%	0.75
CDWR	33.3332%	93.33
Gridley	1.9643%	5.50
Healdsburg	1.5714%	4.40
Lodi	9.3561%	26.20
Lompoc	2.0000%	5.60
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Plumas-Sierra	0.7857%	2.20
Port of Oakland	1.1607%	3.25
PWRPA	2.6679%	7.47
Silicon Valley Power	25.3571%	71.00
Ukiah	1.7857%	5.00
Total	100.0000%	280.00



Approval Schedule

CEC License	April 21, 2010
NCPA Commission Approval of CEQA, PSA & PMOA	April 22, 2010
Participant Approvals	April 21-May 5, 2010
File NOD at County	by May 6, 2010
Signed Copies of PSA to NCPA	May 15, 2010
“Power Island” Notice to Proceed	June 15, 2010
Financing Complete	June 22, 2010
Start Construction	July 1, 2010
Commercial Operation	June 1, 2012



CEQA Compliance

As lead agency, CEC found no significant impact. Key findings:

Air Quality

- GHG will be reduced as a result of the plant
- Other emissions mitigated by purchasing reduction credits

Biological Resources

- Conservation easement of 21.2 acres needed to mitigate potential impact to Giant Garter Snake and other animals

Social Economics

- Local benefit from project

Lodi must adopt findings as a responsible agency



Power Sales Agreement

- **NCPA agrees to sell, Lodi agrees to buy its share of power**
- **Project Participant Committee governs**
Voting rights by generation entitlement shares
- **Step-up in case a participant defaults**



Project Management & Operation Agreement

- Tied closely to Power Sales Agreement
- Similar to NCPA's "Facilities Agreement" (for operation of other NCPA plants)
- NCPA to manage, operate, and maintain
- Directs the approach to operating LEC: fuel buying, maintenance, dispatching, etc



September MOU

Finalize agreements with NCPA

- Ground lease
- Agreement to supply recycled water

Conclusion

- **Adopt CEQA findings**
- **Approve PSA and PMOA**
- **Approve Ground Lease and Water Supply Agreements**

