



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Approving the First Amendment to the Lodi Energy Center Project Management and Operations Agreement and Authorizing Execution by the City Manager

MEETING DATE: June 6, 2012

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution approving the First Amendment to the Lodi Energy Center Project Management and Operations Agreement and authorizing execution by the City Manager.

BACKGROUND INFORMATION: The City of Lodi and other participants entered into the Lodi Energy Center Project Management and Operations Agreement (PMOA) dated effective August 1, 2010, for the purpose of governing all matters related to the operations and management of the Lodi Energy Center (LEC).

Since that time Assembly Bill 32 has been passed by the California State Legislature and signed by the Governor and adopted by the California Air Resources Board (CARB) on October 20, 2011, became final in December 2011, and will impose limits upon Green House Gas emissions commencing January 1, 2013.

This First Amendment to the PMOA clarifies NCPA's authority to obtain all necessary federal, state and local permits, licenses, opinions and rulings to construct, operate, and maintain the LEC Project in accordance with all legal and regulatory requirements and prudent utility practice which includes, but is not limited to, participation in CARB's Cap-and-Trade Program and the ability to transfer Compliance Instruments between NCPA and LEC Participants.

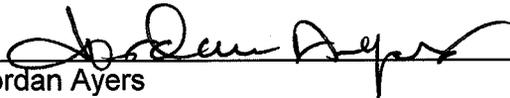
The language of the proposed new Section 3.3c to be included in the First Amendment to the PMOA was reviewed and approved by the LEC Project Participants Committee on March 12, 2012 and by the NCPA Commission on March 22, 2012; the related NCPA Staff Report is attached. Please note that the Agreement Schedule 11.00, marked draft, attached to the NCPA Staff Report is only for reference and is not part of the First Amendment. The LEC Project Participants Committee will be finalizing a new Schedule 11.00 to be approved by the NCPA Commission. Revisions to schedules in the PMOA only require NCPA Commission approval.

APPROVED:

Konradt Bartlam, City Manager

FISCAL IMPACT: No significant financial impact is expected from the approval of the First Amendment to the Lodi Energy Center Project Management and Operations Agreement.

FUNDING AVAILABLE: Included in the FY 2012/13 Budget Account No. 160642.8201.



Jordan Ayers
Deputy City Manager/Internal Services Director



Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Matt Foskett, Rates and Resources Manager

EAK/MF/lst



**FIRST AMENDMENT TO THE LODI ENERGY CENTER
PROJECT MANAGEMENT AND OPERATIONS AGREEMENT**

This First Amendment (“Amendment”) to the Lodi Energy Center Project Management and Operations Agreement is made and entered into as of the ____ day of _____, 2012 (“Effective Date”), by and between the Northern California Power Agency (“NCPA”), a joint powers agency organized under the laws of the State of California, and each of the undersigned Participants in the Lodi Energy Center Project (“Participants”) (collectively, the “Parties”).

WHEREAS, the Parties entered into the Lodi Energy Center Project Management and Operations Agreement dated effective August 1, 2010, (the “Agreement”) for the purpose of governing all matters related to the operations and management of the Lodi Energy Center, and

WHEREAS, the Agreement sets forth NCPA duties, obligations and authority in connection with the management and operation of the Lodi Energy Center; and

WHEREAS, the Parties now desire to amend the Agreement to clarify that NCPA’s authority to obtain all necessary Federal, state and local permits, licenses, opinions and rulings to construct, operate, and maintain the Project in accordance with all legal and regulatory requirements and Prudent Utility Practice includes, but is not limited to, participation in the California Air Resources Board’s Cap-and-Trade Program and the ability to transfer Compliance Instruments between NCPA and Participants as set forth below.

WHEREAS, the Lodi Energy Center Project Participant Committee voted to approve this Amendment to the Agreement on March 12, 2012; and

WHEREAS, the Parties have agreed to modify Article 3, Section 3.3, (NCPA’s Obligations, Duties and Authority) to add a new Section 3.3c, and

WHEREAS, in accordance with Article 22, Section 22.1 all changes to the Agreement must be in writing and signed by all the Parties;

NOW, THEREFORE, the Parties agree as follows:

1. Article 3, Section 3.3 (NCPA’s Obligations, Duties and Authority) of the Agreement shall be amended to add a new Section 3.3c, which shall read in full as follows:

c. 1. NCPA Obligation

emissions compliance obligations when required by law. A Compliance Instrument means an allowance, ARB offset credit, or sector-based offset credit as provided under the Cap-and-Trade Program defined below in section 3.3c.2.

2. Purpose; Future Program; Definitions



contravention of any regulations, procedures, protocols or rules applicable to such Participant. NCPA will treat any such Participant directions to purchase Compliance Instruments as confidential to the extent allowed by law. No additional costs or penalties shall be incurred by other Participants or NCPA by reason of any such transfer, placement, or direction; and any identifiable additional costs, charges, fees, penalties, liabilities and damages incurred by the Project or NCPA resulting from such activities will be fully charged to, and paid by, the Participant taking such action(s).

Under no circumstances shall any Participant be liable under the PSA, the PMOA or PMOA schedules for any costs, charges, fees, penalties, liabilities, and damages arising out of activities related to Cap-and-Trade compliance for any emission sources other than the Project, including, but not limited to, penalties for failure to comply with reporting, surrender, or other legal obligations.

(4) Project's Cap-and Trade Account

2. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

The Parties have executed this Amendment as of the Effective Date.

NORTHERN CALIFORNIA POWER AGENCY

By: _____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: _____

CITY OF GRIDLEY

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Title: _____

Date: _____

CITY OF HEALDSBURG

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Title: _____

Date: _____

CITY OF LODI

By: _____

Title: City Manager

KONRADTBARTLAM

Date: _____

Approved as to form:

Attest:

By: _____

By: _____

D. STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

RANDI JOHL
City



CITY OF LOMPOC

By: _____

POWER AND WATER RESOURCES POOLING AUTHORITY

By: _____



651 Commerce Drive
Roseville, CA 95678

phone (916) 781-3636
fax (916) 783-7693
web www.ncpa.com

Commission Staff Report

AGENDA ITEM NO.: 23

Date: March 22, 2012
To: NCPA Commission
Subject: First Amendment to the Project Management and Operations Agreement for the Lodi Energy Center

Proposal

Approve a First Amendment to the Lodi Energy Center (LEC) Project Management and Operations Agreement. The amendment adds a new Section 3.3c and will incorporate a new Agreement Schedule 11.00 (a draft of Schedule 11 is included for reference) necessary for compliance with AB32 requirements. After approval by NCPA, PMOA Amendment 1 will need to be approved by each of the LEC Project Participant's governing bodies.

Background

On April 22, 2010, the NCPA Commission adopted Resolution 10-20 authorizing the NCPA General Manager to execute the LEC Project Management and Operations Agreement (PMOA) for the management and operation of the LEC Combined Cycle 280 MW power plant. The PMOA was executed on August 1, 2010.

During the development of the regulations associated with the implementation of AB32, NCPA successfully argued to allow members to transfer freely allocated allowances to NCPA to meet NCPA's compliance obligations associated with AB32. This option avoids transaction costs and risks associated with members having to sell the allowances in an auction and NCPA having to procure allowances from the same auction. This PMOA amendment is necessary to allow this type of transaction between the Project Participants and NCPA.

The language of the proposed new Section 3.3c to be included in the First Amendment to the PMOA was reviewed and approved by the LEC Project Participants Committee on March 12, 2012.

In addition to this amendment, staff is working with the Project Participants Committee to finalize a detailed Schedule to obtain the necessary AB32 Compliance Instruments. This schedule is expected to be completed in April and be submitted to the Commission for approval at its April or May meeting.

Fiscal Impact

SR: 129:12

Annual LEC AB32 greenhouse gas (GHG) compliance costs will vary directly with the price of needed Compliance Instruments and the level of LEC operation. For 2013, the proposed LEC budget contains approximately \$7,000,000 for the AB32 obligations associated with the operation of LEC from January to June 2013 (the first period the LEC will be required to comply with AB32 requirements). The Project Participants may satisfy their Generation Entitlement Share (GES) obligations by providing cash or the transfer of freely allocated allowances to NCPA necessary to comply with AB32 requirements.

Environmental Analysis

This First Amendment to the PMOA does not constitute a project as defined in the California Environmental Quality Act (CEQA); therefore no environmental approvals under CEQA are required.

Recommendation

Staff recommends that the NCPA Commission approve Resolution 12-23 authorizing the General Manager or his designee to enter into a First Amendment to the Project Management and Operations Agreement, with any non-substantial changes recommended and approved by the General Counsel.

Respectfully submitted,



JAMES H. POPE
General Manager

Prepared by:



KEN SPEER
Assistant General Manager
Generation Services

Attachments: (2)

- Resolution
- First Amendment to Project Management and Operations Agreement for LEC

RESOLUTION 12-23

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A FIRST AMENDMENT TO THE PROJECT MANAGEMENT AND
OPERATIONS AGREEMENT FOR LODI ENERGY CENTER
(reference Staff Report #129:12)**

WHEREAS, on April 22, 2010 the Northern California Power Agency Commission adopted Resolution 10-20 authorizing the NCPA General Manager to execute the Lodi Energy Center (LEC) Project Management and Operations Agreement (PMOA); and

WHEREAS, subsequent legislation and regulatory requirements have been imposed which require that an amendment to the PMOA is necessary to address applicable obligations imposed on NCPA in its role as LEC owner/operator and to manage the Project's AB 32 related regulatory requirements and carbon allowance transfers; and

WHEREAS, on March 12, 2012 the LEC Project Participation Committee approved the language of the proposed new Section 3.3c to be included in the First Amendment to the PMOA; and

WHEREAS, the First Amendment to the PMOA indicates the LEC Project Participants shall be responsible for their respective Generation Entitlement Share (GES) of all costs incurred by NCPA in meeting Project AB 32 Compliance Obligations; and

WHEREAS, the First Amendment to the PMOA does not constitute a project as defined in the California Environmental Quality Act (CEQA); therefore no environmental approvals under CEQA are required;

NOW, THEREFORE, BE IT RESOLVED, that the Commission of the Northern California Power Agency authorize its General Manager or his designee to enter into a First Amendment to the Project Management and Operations Agreement for the Lodi Energy Center which adds a new Section 3.3c and will incorporate a new Agreement Schedule 1 necessary for compliance with AB32 requirements, with any non-substantial changes recommended and approved by the General Counsel.

PASSED, ADOPTED and APPROVED this 22nd day of March 2012, by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

GARY W. PLASS
CHAIRMAN

ATTEST:

DENISE DOW
ASSISTANT SECRETARY

PMOA new Section 3.3c as follows:

c. 1. NCPA Obligation For the sake of clarity, and as provided in Section 27.2 of the PSA and in Sections 3.3b.2 and 3.3b.5 above, the authority and obligation of NCPA and the NCPA General Manager to obtain Federal, state and local permits, licenses, opinions and rulings as necessary to construct, operate, and maintain the Project in accordance with all legal and regulatory requirements and Prudent Utility Practice includes, but is not limited to, the acquisition and surrender of any necessary Compliance Instruments to meet environmental emissions compliance obligations when required by law. A Compliance Instrument means an allowance, ARB offset credit, or sector-based offset credit as provided under the Cap-and-Trade Program defined below in section 3.3c.2.

2. Purpose; Future Program; Definitions This Section 3.3c and Agreement Schedule 11.00 are intended to address applicable obligations imposed on Covered Entities, including NCPA in its role as LEC owner/operator, by the California Global Warming Solutions Act (AB 32) and Title 17 California Code of Regulations, Article 5, Section 95800 *et seq.* (Cap-and-Trade Program or Cap-and-Trade). If any other applicable program, regulation, or law imposes requirements on NCPA, in its role as LEC owner/operator, relating to greenhouse gas emissions or similar types of environmental mandates, NCPA will consult with the PPC and will manage and comply with such requirements in a manner as similar as feasible to the process described in this Section 3.3c, including through the development of an appropriate Agreement Schedule addition to this Agreement, if necessary. Provided, however, that under all circumstances each Participant shall be responsible for its GES of all costs of such compliance. All definitions in this Section 3.3c and Agreement Schedule 11.00, not otherwise defined in the PSA or this Agreement, are as stated in the Cap-and-Trade Program.

3. Participants' Obligations; Alternatives Each Participant shall be responsible for its GES of all costs incurred by NCPA attributable to the Project in complying with Cap-and-Trade, including costs incurred in obtaining Compliance Instruments that the NCPA General Manager may acquire or purchase as provided in Agreement Schedule 11.00, as may be amended from time to time. In lieu of paying for any portion of its GES of the cost of obtaining necessary Compliance Instruments, to the extent permitted by law and administratively feasible, Participants may transfer and NCPA may accept Compliance Instruments, and/or Participants may request placement of Compliance Instruments that are directly allocated to such Participant(s) into NCPA's LEC Compliance Account as provided in Agreement Schedule 11.00, as may be amended from time to time. To the extent any directly allocated Compliance Instruments are statutorily or otherwise prohibited from being used to meet the Project's Compliance Obligations, NCPA has no obligation to accept any such placement of directly allocated Compliance Instruments into NCPA's LEC Compliance Account from any Participant. In addition, Participants may provide direction to NCPA, in accordance with procedures described in Agreement Schedule 11.00, as may be amended from time to time, for the purchase of Compliance Instruments to meet all or a portion of a Participant's GES of the Project's Compliance Obligation, in which case NCPA shall participate in Auctions and Allowance Price Containment Reserve Sales in accordance with such Participant's directions. Each Participant providing direction to NCPA to purchase Compliance Instruments warrants the authority of the person executing such direction on such Participant's behalf,

and NCPA shall be entitled to fully rely upon the authority of such person irrespective of whether such direction may be in contravention of any regulations, procedures, protocols or rules applicable to such Participant. NCPA will treat any such Participant directions to purchase Compliance instruments as confidential to the extent allowed by law. No additional costs or penalties shall be incurred by other Participants or NCPA by reason of any such transfer, placement, or direction; and any identifiable additional costs, charges, fees, penalties, liabilities and damages incurred by the Project or NCPA resulting from such activities will be fully charged to, and paid by, the Participant taking such action(s).

Under no circumstances shall any Participant be liable under the PSA, the PMOA or PMOA schedules for any costs, charges, fees, penalties, liabilities, and damages arising out of activities related to Cap-and-Trade compliance for any emission sources other than the Project, including, but not limited to, penalties for failure to comply with reporting, surrender, or other legal obligations.

(4) Project's Cap-and Trade Account NCPA shall establish, as appropriate, internal accounting for LEC separate from those of NCPA's other projects. LEC Project accounting shall include: a) Compliance instruments and Compliance Obligations to reflect the Project's share of NCPA's total Compliance Obligation; b) any Compliance Instruments provided to NCPA by Participants for the Project; and c) any Compliance Instruments purchased by NCPA for the Project pursuant to Participants' directions. NCPA shall establish procedures in Agreement Schedule 11.00, as may be amended from time to time, for accurate and timely accounting of the Project's share of NCPA's total Compliance Obligations and Compliance instruments.

(5) Participants' Cap-and-Trade Accounts NCPA shall establish, as appropriate, individual Participant accounts which shall include: a) Compliance Instruments and Compliance Obligations to reflect each Participant's GES of the Project's Compliance Obligation; b) any Compliance Instruments provided to NCPA by each Participant; and c) any Compliance Instruments purchased by NCPA pursuant to each Participant's directions. NCPA shall establish procedures in Agreement Schedule 11.00, as may be amended from time to time, for accurate and timely accounting of such Project related Compliance Obligations and Compliance instruments. Such accounting shall also include and allocate to the responsible Participant(s) any identifiable costs, charges, fees, penalties, liabilities, and damages arising out of a Participant's activities related to Cap-and-Trade compliance for the Project, including, but not limited to, penalties for failure to comply with reporting, surrender, or other legal obligations, resulting from a Participant's decisions or actions to transfer Compliance Instruments or request placement of Compliance Instruments into NCPA's LEC Compliance Account, or provide directions to NCPA. Under no circumstances shall NCPA or any other Participant be liable for such costs attributable to the responsible Participant.

Agreement Schedule 1 100

Management of Cap-and-Trade Program Compliance

(Draft to be finalized by the PPC prior to Commercial Operation Date)

The Cap-and-Trade Program imposes obligations on NCPA to report GHG emissions caused by operation of the Project and to surrender to the California Air Resources Board Compliance Instruments for such emissions to comply with the Cap-and-Trade Program which enforces the requirements of Subchapter 10 Climate Change, Article 5, Sections 95800 to 96023, Title 17, California Code of Regulations (all to be referred to as "AB32").

The procedures below outline NCPA, PPC, and Participant responsibilities with regard to procurement, payment, purchase, sale, trade, identification, certification, and all similar activities ancillary to acquiring, evaluating, and allocating requisite AB32 Offsets, Allowances, penalties, certificates or other Compliance Instruments, products, factors or considerations required and associated with the operation of the Project. Such activities include, but are not limited to, transactions between NCPA and third parties, transactions utilizing agents and/or third parties to act as intermediaries, and transactions between and among Project Participants and NCPA if requested and feasible, all as may be developed, revised, and approved by the PPC ("AB32 Compliance Activities"). Because the Cap-and-Trade Program is in its initial stages, these principles are intended to be used as general guidance and may be revised and/or developed in further detail from time to time to respond to changes in law, regulations, and market conditions.

General principles include:

1. All Participants are to be treated in an equitable manner.
2. All Participants shall be afforded the same opportunities to interact with NCPA and/or any outside agents utilized by NCPA as approved and authorized by the PPC. NCPA's AB32 Compliance Activities undertaken for the Project shall be subject to full transparency for all Project Participants except that NCPA shall treat Participant issued directions to NCPA related to any Allowance Auction and Allowance Price Containment Reserve Sales (Reserve Sales) bidding as confidential to the extent allowed by law.
3. To the extent practicable, NCPA shall allow Participants to individually manage their own risks of meeting their GES of the Project's Compliance Obligations.
4. NCPA shall procure any required and as yet unattained Compliance Instruments associated with LEC operations as close

in time as practicable to daily LEC plant operations, unless otherwise directed by the PPC, and pursuant to the protocols contained in this Agreement Schedule 11.00.

5. Participants desiring to obtain Compliance Instruments in advance of Project operations or in arrears, if such Compliance Instruments have not yet been procured by NCPA, may provide to NCPA a bid and purchase schedule, including prices and quantities, and NCPA will accordingly use best reasonable efforts to purchase Compliance Instruments needed to meet Participant's GES of the Project's Compliance Obligation in the Allowance Auctions and Allowance Price Containment Reserve Sales. In order for a Participant to request that NCPA participate in an Allowance Auction for any needed Compliance Instruments in arrears, NCPA and such Participant shall coordinate to meet any requisite depository and timeline requirements consistent with the Compliance Instrument procurement process outlined in this Agreement Schedule 11.00.
6. On a monthly basis, NCPA shall timely invoice Participants in the All Resources Bill, based on GES, for costs associated with AB32 Compliance Activities such that NCPA shall have on hand sufficient funds and/or Compliance Instruments from each Project Participant projected to meet all GES of the Project's Compliance Obligations.
7. NCPA intends, to the extent practicable, to allow Participants to perform all AB32 Compliance Activities and meet their GES of the Project's Compliance Obligations (current, future and, when required, in arrears) by conveyance of any combination of cash and or Compliance Instruments to NCPA sufficient to meet such obligations.
8. NCPA shall set up any needed accounts or accounting mechanisms such that Participants may advance to NCPA, and NCPA shall track by Participant, the combination of available cash and/or Compliance Instruments prior to actual Project operations that may be utilized to meet all or a portion of a given Participant's GES of the Project Compliance Obligation.
9. NCPA shall set up and establish any requisite reserve accounts, emissions products trading accounts and deposits, brokerage accounts and deposits, and/or other similar accounts, deposits, or reserve requirements in consultation with the PPC.
10. NCPA shall account for Compliance Obligations for the Project separately by Participant, and to the extent identifiable, account for and allocate to each individual Participant any costs, charges, fees, penalties, liabilities, and damages arising out of that Participant's AB32 Compliance Activities for the Project including, but not limited to, penalties for failure to comply with reporting, surrender, or other legal obligations resulting from a Participant's decisions and/or actions to transfer Compliance Instruments, to request placement

of Compliance Instruments into NCPA's Compliance Account, to provide direction to NCPA to purchase Compliance Instruments, and/or to pay cash. Under no circumstances shall NCPA or any other Participant be liable for such costs attributable to the responsible Participant

Definitions:

"AB32" or "Cap and Trade Regulations" or "Cap-and-Trade" means the California economy-wide Cap and Trade program for reducing greenhouse gas (GHG) emissions, and which is a core mechanism of the Global Warming Solutions Act of 2006 which requires California to reduce its climate change causing emissions back to 1990 levels by 2020, and which CARB unanimously adopted on October 20, 2011.

"Allowance" means a limited tradable authorization to emit up to one metric ton of Carbon Dioxide Equivalent, or other such unit as may be established from time to time by an authorized regulatory body or governmental agency.

"Auction" means the process of buying and or selling California Greenhouse Gas Allowances and or other environmental emission related products, by offering such products for bid, selling such products by bid, buying such products by bid, upon which, given a successful purchase or sale bid, the title of such products transfers from the respective seller(s) to buyer(s).

"Cap and Trade" means a system which seeks to constrain the aggregate emissions of regulated sources by creating a limited number of tradable emission allowances, which emission sources must secure and surrender in number equal to their emissions. In an emissions trading or cap-and-trade scheme, a limit on access to a resource (the cap) is defined and then allocated among users in the form of permits or allowances. Compliance is established by comparing actual emissions with permits surrendered including any permits traded within the cap. Under a tradable permit system, an allowable overall level of pollution is established and allocated among firms in the form of permits. Firms that keep their emission levels below their allotted level may sell their surplus permits to other firms or use them to offset excess emissions in other parts of their facilities.

"CARB" means the California Air Resources Board.

"California Greenhouse Gas Emissions Allowance" or "CAGHG Allowance" means an allowance, offset, certificate, or other similar document issued by CARB and equal to one metric ton of CO₂ equivalent.

“Carbon Dioxide” or “CO₂” means the most common of the generally defined greenhouse gases consisting on a molecular level of one carbon atom and two oxygen atoms.

“Carbon Dioxide Equivalent” or “CO₂ Equivalent” or “CO₂e” means a measure for comparing CO₂ with other greenhouse gases based on the quantity of such gases, when multiplied by the applicable global warming potential (GWP) factor, equate to the equivalent metric tons of carbon dioxide (MTCO₂e).

“Compliance Instrument” means an Allowance, ARB Offset Credit, and or sector-based offset credit that may be used for to satisfy Compliance Obligations as provided under the Cap-and-Trade Program.

“Compliance Obligation” means obligation to satisfy a Covered Entity’s regulatory responsibility under the Cap –and-Trade program.

“Covered Entity” means a major GHG emitting sources, such as electricity generation, including imports, and large stationary sources (i.e. refineries, cement production facilities, oil and gas production facilities, glass manufacturing facilities, food processing plants) that emit more than 25,000 MTCO₂e per year, as well as natural gas and propane fuel providers and transportation fuel providers, as such definition may be revised from time to time pursuant to Cap and Trade regulations.

“Greenhouse Gas,” “Greenhouse Gases,” or “GHG” means CO₂, Methane (CH₄), Sulfur Hydro fluorocarbons (HFCs), Per fluorocarbons (PFCs), and / or other gases which may be identified or classified as Greenhouse Gases from time to time by official Federal, State or local regulatory or environment bodies.

“Metric Ton” or “MT” means a common international measurement for mass, equivalent to 2, 204.6 pounds.

“Offset Credit” or “Offset” means a tradable compliance instrument issued or approved by CARB or other regulatory agency that satisfies a GHG reduction or GHG removal enhancement of one MT of CO₂e as required by law or regulation.

“Surrender Obligation” means the statutorily required quantity and timing of the transfer of appropriate Compliance Instruments to CARB to satisfy a Covered Entity’s mandated Cap and Trade responsibilities during a particular compliance time period.

The above definitions are intended to reflect definitions included in the Cap-and-Trade Program but also may affect calculations made pursuant to this Agreement Schedule 11.00. If future Cap-and-Trade Program actions revise or change any applicable definitions in this Schedule 11.00 in a manner that would affect Project and or Participant Compliance Obligations or associated calculations, the PPC

and NCPA staff will timely discuss such definition changes and make any requisite changes to this Agreement Schedule 11.00.

General Implementation Protocols

I. Forecast of Required Compliance Obligations

- A. NCPA will annually prepare and submit to the PPC a forecast of GHG emissions for LEC covering the subsequent 10 year operating period.
- B. Compliance Obligations will be tabulated such that each Participant will be provided a forecast of its GES of the Project's Compliance Obligations by month and year, for each year of the 10 year forecast period.
- C. The 10 year forecast will be updated annually and provided to the PPC by December 31st of each year for the next subsequent ten compliance years. (e.g. December 31, 2012 for compliance years 2013 through 2022)
- D. The 10 year forecast will be based on production cost model simulation utilizing NCPAs Plexos software, or successor software package or methodology should NCPA elect to utilize an alternate software package or implement other manner of producing a 10 year forecast.
- E. Production cost model assumptions and output will be reviewed with the PPC in accordance with the review schedule established for NCPAs annual budget process. (For example, the forecast prepared for compliance years 2013 through 2022 would typically be reviewed with the PPC as part of the annual budget review process during the January/February 2012 time frame).
- F. As warranted and in NCPAs sole discretion, NCPA will make adjustments to the 10 year forecast and provide the updated forecast to the PPC.

II. NCPA Compliance Instrument Invoicing, Tracking and Settlement

- A. NCPA will invoice Project Participants monthly for their GES of the estimated cost of Allowances forecast to be needed for the next operating month, in accordance with the 10 year forecast or, if available, more current forecast of Project operating levels, as part of NCPAs All Resources Bill to Participants.
- B. Project Participants may satisfy their individual GES of the Project's Compliance Obligations by providing to NCPA, or having available in an appropriate NCPA Project account, cash, Compliance Instruments, or a

combination thereof, which in aggregate, the amount or NCPAs current estimated value of which is equal to or greater than NCPAs current estimated cost to meet the Participant's net Compliance Obligation as determined in section II.C.3 where it is referred to as the "net monthly CCA balance."

- C. Invoices will specify the required Compliance Obligations forecast for each operating month in thousands of metric tons of carbon dioxide equivalent and, by extension, the estimated cost to procure the forecast number of Allowances.
1. Each Participant's GES of monthly Compliance Obligation will be reviewed and adjusted to account for:
 - a. True ups for prior months' Compliance Obligation occurring as a result of:
 - i. Variations in actual generation levels from forecast generation levels.
 - ii. Variations in the forecast cost of Allowance procurement based on changes in the forward price of Allowances as determined pursuant to section II.E below.
 - iii. Compliance Instrument transfers from Participants to the NCPA Project Compliance Account occurring since the previous All Resources Bill invoice.
 - iv. Other AB32 Compliance Activities undertaken by either a Participant or NCPA that result in a net increase or decrease in each Participant's GES of the Project's monthly Compliance Obligation (for example, certified biogas deliveries may decrease a Participant's monthly GES of Project's Compliance Obligation).
 2. NCPA will maintain at least two AB32 Compliance Obligation related accounts for each Project Participant:
 - a. MT Compliance Obligation and Instrument Account (MTA).
 - b. Compliance Cash Account (CCA).
 3. The monthly MTA at the time of the All Resources Bill, will include the following:
 - a. The prior month's MTA.
 - b. The expected GES of the Project's monthly Compliance Obligation based on a forecast of the next month's operating levels (as adjusted for any applicable biogas or other fuel deliveries which would reduce a Participant's GES of Project monthly Compliance Obligation).
 - c. The total of the following adjustments since the previous All Resources Bill:

PMOA Amendment 3.3c Draft
3-13-2012

- i. Compliance Instrument purchases/sales by NCPA on Participant's behalf.
 - ii. Transfers of Compliance Instruments to NCPA by Participant.
 - iii. Placement of CARB allocated Allowances into NCPA's Project Compliance Account by Participant.
 - iv. Adjustments for true-ups for prior month's actual operations.
 - d. The monthly MTA (net) will be the sum of 3(a) + 3(b) + 3(c)

- 4. The monthly CCA requirement will be calculated as the product of the applicable expected GHG Allowance costs as described in section II.E times the monthly MTA amount, as determined in section II.C.3(d). The monthly All Resources Bill will include the positive difference between the monthly CCA requirement less the prior month's CCA balance. Each month the CCA will be adjusted for the following:
 - a. Prior month's CCA balance.
 - b. Cash withdrawals.
 - i. Sections II.C.3(c) adjustments.
 - ii. Other refunds of excess funds as authorized by the PPC.
 - c. Cash injections.
 - iii. Monthly All Resources Bill payment.
 - iv. Other cash payments as required and paid by Participant
 - d. Net monthly CCA balance at the time of the monthly All Resources Bill will be calculated as: 4(a) + 4(b) + 4(c)

- D. Pursuant to AB32, Offsets are limited to not more than eight percent (8.00 %) of a Participant's GES of the Project's actual Compliance Obligations. To the extent one or more Participants provide Offsets that result in exceeding this eight percent level, such Participant(s) shall provide NCPA with a written description of how such Participant(s) would like the excess Offsets to be used, and NCPA will account for the Participant's Offsets according to that plan and invoice such Participant in accordance with that plan and section II.C.3. above.

- E. The estimated cost/value of any shortfall in each Participant's MTA balance will be calculated by multiplying each Participant's MTA shortfall amount by the higher of: 1) the Tier 1 Allowance Containment Reserve Price pursuant to section 95913 of the AB32 regulations for the next available Reserve Sale in which NCPA is eligible to participate, or 2) a) the forward price associated with a suitable publicly available index approved for such use by the PPC and NCPA Commission, or b) if no suitable publically available index is available, a price deemed appropriate

for such use, as determined and approved by the PPC and NCPA Commission. The forward price for the index will be established as the published index price for delivery of Allowances coincident with the next available Allowance Auction in which NCPA is able to participate as determined on the date, at close of business, two weeks in advance of the issuance of the All Resources Bill invoice.]

Comment [d1]: The PPC and NCPA staff are discussing a possible mechanism which contemplates the utilization of Tier 1, and Tier 2 prices before Tier 3 Reserve Sale pricing is finally used to fill any physical shortfall by a specified point in time: thus this section will likely be revised to incorporate this more flexible approach.

- F. NCPA will track and account for all funds and Compliance Instruments provided to NCPA by each Participant in support of its GES of the Project's Compliance Obligations. Funds and Compliance Instruments may be combined into single categorical accounts for ease of administration, but in no circumstances will funds or Compliance Instruments provided by one Participant be allocated or utilized to meet the GES of the Project's Compliance Obligations of another Participant without advance written authorization of the affected Participants.

III. Allowance Transfers to NCPA's Compliance Account

- A. Pursuant to section 95892(b)(2)(A) of the AB32 regulations, some Participants who are members of NCPA and receive an allocation of Allowances may direct the CARB Executive Officer to place such Allowances in either such Participant's Publicly Owned Electric Utility Limited Use Holding Account or in the account of a Joint Powers Authority with which such Publicly Owned Electric Utility has a contract for electricity. NCPA's Compliance Account can serve as such an account for Participants who are Publicly Owned Electric Utilities and members of NCPA.
- B. Participants electing to direct the CARB Executive Officer to place a specified number of the allocated Allowances into the NCPA Compliance Account shall provide duplicate notice to NCPA by providing a copy of the Participant's directive to the CARB Executive Officer. Upon receipt of such notice, NCPA will prepare for the transfer of Allowances, which are currently scheduled to occur once per calendar year, and separately track and account for such Allowances received, in each Participant's MTA at NCPA.

IV. Procurement of Compliance Instruments

- A. NCPA will initially acquire Compliance Instruments from four sources: 1) Allowances transferred by Participants to NCPA in accordance with

DRAFT

PMOA Amendment 3.3c Draft
3-13-2012

section 95892 of the AB32 regulations, 2) Allowances obtained through participation in CARB administered Allowance Auctions, 3) Allowances purchased through participation in the Allowance Price Containment Reserve Sales, and 4) Compliance Instruments purchased by Participants that are then transferred to NCPA.

In the event secondary markets for the sale and/or purchase of Compliance Instruments become available, Project Participants may request NCPA to modify this Agreement Schedule 11.00 to allow for NCPA's participation in such secondary markets in accordance with Article 10 of the Project Management Operating Agreement and applicable Risk Management Policies established by the NCPA Commission.

- B. In accordance with section 95832 of the AB32 regulations, the NCPA General Manager will designate a single authorized account representative and a single alternate authorized account representative to take actions in regard to NCPA's AB32 accounts and CARB administered Allowance Auctions and Allowance Price Containment Reserve Sales.
- C. NCPA will fulfill all Project mandatory reporting requirements, such as those specified in section 95850 of the AB32 regulations.
- D. Each Participant shall designate an authorized representative to provide NCPA with written directions on NCPA's participation on the Participant's behalf in Allowance Auctions, Allowance Price Containment Reserve Sales, or other Project Compliance Obligation actions NCPA may undertake on a Participant's behalf pursuant to this Agreement Schedule 11.00. Designation of a Participant's authorized representative shall be evidenced through a resolution of the governing board or designation from a Participant's executive management in a position equivalent to the General Manager, as appropriate, for each Participant. Written directions to NCPA by and through such authorized representatives shall occur through execution of a Participant Purchase Directive substantially in the form of Exhibit A to Agreement Schedule 11.00.
- E. NCPA will register with the CARB Executive Officer to be eligible to participate in all Allowance Auctions on behalf of NCPA and Participants. Allowance Auctions are currently scheduled, pursuant to section 95910 of the AB32 regulations, to take place as follows:
 - 1. In 2012, Allowance Auctions are scheduled to be held on August 15 and November 14.
 - 2. Beginning in 2013, Allowance Auctions are scheduled to be conducted on the twelfth business day of the second month of each calendar quarter.

PMOA Amendment 3.3c Draft
3-13-2012

3. On each Allowance Auction date, two separate Allowance Auctions will occur, one for the auction of Allowances from the current and previous Budget Years, and a second one for the auction of Allowances from future Budget Years.
 4. NCPA will coordinate individually with Project Participants no later than 40 days prior to scheduled Allowance Auctions to establish bid prices and quantities of Allowances that NCPA will submit on behalf of respective Project Participants. As part of its coordination, NCPA will inform each Project Participant of the quantity of funds that NCPA has available for use in the Allowance Auction on the Project Participant's behalf.
 5. Project Participants shall provide a Participant Purchase Directive, signed by an authorized representative, to NCPA specifying the respective Project Participant's authorized bid prices and quantities of Allowances at least 35 days in advance of Allowance Auctions. For each Allowance Auction date, such Participant Purchase Directive may be for the Allowance Auction for the current and previous Budget Years' Allowances and/or for the future Budget Year Allowances.
 - a. Project Participants have flexibility to establish varying bid prices and may submit multiple bids with the following conditions:
 - i. For any bid quantity requested, respective Project Participants shall have sufficient funds available in an appropriate account with NCPA established for such purpose, at least 35 days in advance of the Allowance Auction, to satisfy AB32's Allowance Auction participation security requirements.
 - b. NCPA will submit bids in the Allowance Auction in accordance with respective Project Participant's written direction.
 - c. NCPA will treat Participant Purchase Directives and bid particulars as confidential to the extent allowed by law.
- F.** NCPA will register with the CARB Executive Officer to be eligible to participate in Allowance Price Containment Reserve Sales. Reserve Sales are currently scheduled, pursuant to section 95913 of the AB32 regulations, to take place as follows:
1. The first Reserve Sale is scheduled to be conducted on March 8, 2013.
 2. Subsequent Reserve Sales are scheduled to be conducted six weeks after each quarterly Allowance Auction pursuant to section 95910.

PMOA Amendment 3.3c Draft
3-13-2012

3. Project Participants shall provide a Participant Purchase Directive, signed by an authorized representative, to NCPA specifying the respective Project Participant's prices and quantities of Allowances to procure at a Reserve Sale at least thirty-five (35) days in advance of the Reserve Sale. NCPA will treat Participant Purchase Directives and bid particulars as confidential to the extent allowed by law.
4. [Beginning with the first Allowance Price Containment Reserve Sale after an operating period, NCPA will procure all remaining required Allowances needed for each such Participant's GES of prior actual operating emission levels that have not been otherwise provided for, at the Tier 3 Allowance Price Containment Reserve Sale price.]
 - a. Project Participants will be notified of NCPA's intent to procure Allowances through an Allowance Price Containment Reserve Sale at least five weeks prior to such Reserve Sale.
 - b. Project Participants with insufficient funds on account to satisfy AB32's security requirements for participation in an Allowance Price Containment Reserve Sale will be invoiced separately for any such shortfalls, and which payment will be made by respective Project Participants to NCPA by wire transfer within five business days of the date of invoice.
 - c. Project Participants may avoid exposure to Allowance Price Containment Reserve Sale pricing by procuring sufficient Compliance Instruments through trade activities, as allowed by AB32 regulations, and assuring such Compliance Instruments obtained and are deposited into NCPA's compliance account at least 3 weeks in advance of a given Allowance Price Containment Reserve Sale.
5. Participants may direct NCPA to procure Allowances for such Participant's GES of the Project's Compliance Obligation through any Allowance Price Containment Reserve Sales that are timely available for such purpose.
 - a. Such Participants shall provide a Participant Purchase Directive, signed by an authorized representative, to NCPA specifying the respective Project Participant's authorized purchase prices and quantities of Allowances at least 35 days in advance of the scheduled Allowance Price Containment Reserve Sale. NCPA will treat Participant Purchase Directives and bid particulars as confidential to the extent allowed by law.

Comment [d2]: The PPC and NCPA staff are discussing a possible mechanism which contemplates the utilization of Tier 1, and Tier 2 prices before Tier 3 Reserve Sale pricing is finally used to fill any physical shortfall by a specified point in time; thus this section will likely be revised to incorporate this more flexible approach.

PMOA Amendment 3.3c Draft
3-13-2012

- b. Project Participants have flexibility to bid multiple tier prices and quantities of Allowances for each Allowance Price Containment Reserve Sale.
 - c. For any Participant Purchase Directive submitted to NCPA, respective Project Participants shall have sufficient funds on account with NCPA, at least 35 days in advance of the scheduled Reserve Sale, to satisfy AB32's Reserve Sale participation security requirements.
 - d. NCPA will submit a bid to purchase in the scheduled Allowance Price Containment Reserve Sale in accordance with respective Project Participant's Participant Purchase Directive.
6. For all Participants who have not fulfilled their **GES** of the Project's Compliance Obligation by the last scheduled Reserve Sale prior to a surrender date, NCPA will bid at the Tier 3 price in this last Reserve Sale to purchase any shortage of Allowances for these Participants to meet their GES of the Project's annual or triennial Compliance Obligation that NCPA must surrender.
- a. Project Participants will be notified of NCPA's intent to procure Allowances through an Allowance Price Containment Reserve Sale at least five weeks prior to the Reserve Sale.
 - b. Project Participants with insufficient funds on account to satisfy AB32's security requirements for participation in an Allowance Price Containment Reserve Sale will be invoiced separately for any such shortfalls, and which payment will be made by respective Project Participants to NCPA by wire transfer within five business days of the date of the invoice.
 - c. Project Participants may avoid exposure to Allowance Price Containment Reserve Sale pricing by procuring sufficient Compliance Instruments through trade activities, as allowed by AB32 regulations, and assuring such Compliance Instruments obtained are deposited into NCPA's compliance account at least 3 weeks in advance of the applicable Allowance Price Containment Reserve Sale.

V. Surrender of Compliance Instruments

- A. NCPA will surrender Compliance Instruments in accordance with procedures specified in section 95856 of the AB32 regulations.

DRAFT

PMOA Amendment 3.3c Draft
3-13-2012

NCPA will track any Participant's untimely surrender of Compliance Instruments, and any associated costs, including penalties, will be assessed to respective Project Participant(s) based on the calculated shortfall attributable to such Project Participant(s).

Exhibit A
Participant Purchase Directive
CONFIDENTIAL

The undersigned Participant hereby directs NCPA (both also known as the "Parties") to submit a quantity(ies) and bid price(s) in the CARB quarterly Allowance Auction(s) or Allowance Price Containment Reserve Sale, as more specifically supplemented and described below:

Purchaser: Northern California Power Agency

Auction or Reserve Sale Date: [Insert date of Auction or Reserve Sale] _____

Procurement Quantity: [insert number of -Allowances in thousands of metric tons of carbon dioxide equivalent] _____

Budget Year of Allowances: [insert Budget Year of Allowances to be procured in the Allowance Auction] _____

Procurement Price: -[insert price in \$/thousand metric tons of carbon dioxide equivalent] _____

Except to the extent herein provided for, no amendment or modification to the terms and conditions specified in Agreement Schedule 11.00 to the Lodi Energy Center Project Management Operating Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Purchase Directive and the Parties hereby warrant that they are authorized to do so.

Project Participant:

NCPA

Authorized Representative

General Manager

Date

Date

RESOLUTION NO. 2012-81

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE FIRST AMENDMENT TO THE LODI
ENERGY CENTER PROJECT MANAGEMENT AND
OPERATION AGREEMENT AND AUTHORIZING
EXECUTION BY THE CITY MANAGER

=====

WHEREAS, the City of Lodi and other participants entered into the Lodi Energy Center Project Management and Operations Agreement (PMOA) dated effective August 1, 2010, for the purpose of governing all matters related to the operations and management of the Lodi Energy Center (LEC); and

WHEREAS, since that time Assembly Bill 32 has been passed by the California State Legislature and signed by the Governor and adopted by the California Air Resources Board (CARB) on October 20, 2011, became final in December 2011, and will impose limits upon Green House Gas emissions commencing January 1, 2013; and

WHEREAS, this First Amendment to the PMOA clarifies NCPA's authority to obtain all necessary federal, state, and local permits, licenses, opinions, and rulings to construct, operate, and maintain the LEC Project in accordance with all legal and regulatory requirements and prudent utility practice which includes, but is not limited to, participation in CARB's Cap-and-Trade Program and the ability to transfer Compliance Instruments between NCPA and LEC Participants; and

WHEREAS, the language of the proposed new Section 3.3c to be included in the First Amendment to the PMOA was reviewed and approved by the LEC Project Participants Committee on March 12, 2012 and by the NCPA Commission on March 22, 2012; and

WHEREAS, the LEC Project Participants Committee will be finalizing a new Schedule 11.00 to be approved by the NCPA Commission; and

WHEREAS, revisions to schedules in the PMOA only require NCPA Commission approval; and

WHEREAS, no significant financial impact is expected from the approval of the First Amendment to the Lodi Energy Center Project Management and Operations Agreement and sufficient funding is included in the FY 2012/13 Budget Account No. 160642.8201.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the First Amendment to the Lodi Energy Center Project Management and Operations Agreement and authorize execution by the City Manager with administration by the Electric Utility Director.

Dated: June 6, 2012

=====

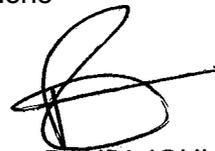
I hereby certify that Resolution No. 2012-81 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

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

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk