



**CITY OF LODI  
COUNCIL COMMUNICATION**

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**AGENDA TITLE:** Approve Second Amended and Restated Ground Lease with Northern California Power Agency (NCPA) for Lodi Energy Center and Terminating the Agreement to Supply Recycled Water

**MEETING DATE:** March 6, 2013

**PREPARED BY:** City Attorney's Office

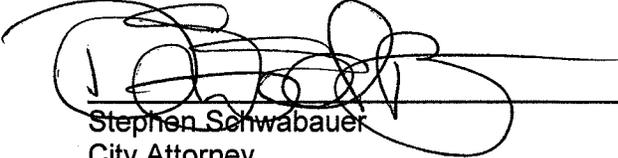
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**RECOMMENDED ACTION:** Approve Second Amended and Restated Ground Lease with Northern California Power Agency (NCPA) for Lodi Energy Center and Terminating the Agreement to Supply Recycled Water

**BACKGROUND INFORMATION:** Attached is a draft Second Amended Ground Lease for the Lodi Energy Center's location at White Slough. The revised lease rolls the Water Supply agreement into the Lease. As re-constituted, NCPA will be paying 1,000,000 per year in rent and the water will be supplied at no cost, sharing the same structure as the agricultural leases at White Slough. The City has also agreed to grant, NCPA a five year exclusive right to locate a new plant on the site, and agreed to a rent reduction in the event of water supply interruptions. The remainder of the business terms are unchanged.

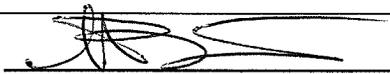
**FISCAL IMPACT:** Loss of unknown potential revenue for water use over the base allocation.

**FUNDING AVAILABLE:** None Required.

  
Stephen Schwabauer  
City Attorney

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APPROVED:

  
Konradt Bartlam, City Manager

**SECOND AMENDED AND RESTATED**

**GROUND LEASE**

by and between

**CITY OF LODI**  
(Landlord)

and

**NORTHERN CALIFORNIA POWER AGENCY**  
(Tenant)

Dated \_\_\_\_\_, 2013

TABLE OF CONTENTS .....	Page No.
1. Definitions.....	4
2. Recycled Water Agreement Rescinded.....	6
3. Premises.....	6
4. Easements.....	7
5. Use.....	7
6. Landlord's Retained Rights.....	7
7. Term; Extension.....	7
8. Rent.....	8
8.1 Rent for CT2 Site.....	8
8.2 Rent for LEC.....	8
8.2.1 2012 Annual Rent.....	8
8.2.4 Rental Reduction During LEC Decommissioning.....	8
8.3 Rental Adjustments.....	9
8.3.1 Rent Offsets Permitted.....	9
8.4 Payments.....	9
9. Utility Payments.....	9
10. Recycled Water.....	10
10.1 Recycled Water Agreement Rescinded.....	10
10.2 Past Costs.....	10
10.3 Development of Future Projects by Lodi.....	10
10.4 Agreement to use Recycled Water.....	10
10.5 Responsibility at Delivery Point.....	10
10.6 Quantity of Recycled Water for the LEC.....	10
10.7 Quantity of Recycled Water for the STIG.....	11
10.8 Obligation to Supply Water.....	11
10.9 Interruption of Delivery.....	11
10.10 Water Quality Representation.....	11
10.11 Responsibility for Compliance with Law.....	12
11. Repairs and Maintenance.....	12
12. Mechanic's Liens.....	13
12.1 Covenant Against Liens and Claims.....	13
12.2 Tenant's Right to Contest Liens.....	13
12.3 Landlord Paying Claims.....	13
13. Insurance and Indemnity.....	14
13.1 Landlord's Nonliability.....	14
13.2 Indemnification of Landlord.....	14
13.3 Indemnification of Tenant.....	14
13.4 Liability Insurance.....	14
13.5 Certificate of Insurance.....	15
13.6 Failure to Provide Insurance.....	15
13.7 Waiver of Subrogation.....	15
14. Landlord's Covenants.....	15
14.1 Water Supply to CT2 Project.....	16
14.2 Water Supply to the LEC Project.....	16
14.3 Discharge of Water.....	16
14.4 Stormwater.....	16
15. Repair and Restoration.....	16
16. Assignment and Subletting.....	16
17. Default.....	16
18. Remedies in Event of Default.....	17

19.	Estoppel Certificates.....	17
20.	Ownership of Improvements.....	18
21.	Payments and Notices.....	18
22.	Right of First Refusal.....	19
22.1	Right of First Refusal to Purchase Leased Premises.....	19
22.2	Right of First Refusal to Lease Additional Land with Rental Obligations.....	20
22.3	Right to Lease Additional Land with Rental Obligations.....	21
23.	Abandonment of Wells.....	21
23.1	Abandonment and Closure of Injection Wells.....	21
23.2	Abandonment Of Southeast Corner Test Well.....	21
24.	Dispute resolution.....	21
24.1	Mediation.....	21
24.2	Binding arbitration.....	21
25.	Miscellaneous.....	24
25.1	Attorneys' Fees.....	24
25.2	Waiver.....	24
25.3	Holding Over.....	24
25.4	Surrender at End of Term.....	25
25.5	Lease Binding Upon Successors and Assigns.....	25
25.6	Inspection.....	25
25.7	Relationship of Parties.....	25
25.8	Time of the Essence.....	25
25.9	Memorandum of Lease.....	25
25.10	Quitclaim.....	26
25.11	Number and Gender.....	26
25.12	Headings and Titles.....	26
25.13	Entire Agreement.....	26
25.14	Force Majeure.....	26
25.15	Disclaimer of Representation.....	26
25.16	Quiet Enjoyment.....	27
25.17	Termination.....	27
25.18	Severability.....	27
25.19	Counterparts.....	27

Exhibit A	Existing Recycled Water Facilities
Exhibit B	Lodi Treatment Plant Site
Exhibit C	Optioned Premises
Exhibit D	Legal Map and Description of Premises
Exhibit E	Roadway and Incidental Purpose Easement
Exhibit F	Easement Agreement
Exhibit G	Utilities
Exhibit H	Will Serve Letter, dated October 17, 2008

## SECOND AMENDED AND RESTATED GROUND LEASE

THIS SECOND AMENDED AND RESTATED GROUND LEASE (this "**Lease**" or this "**Agreement**"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013, is entered into by and between the CITY OF LODI, a California municipality ("**Landlord**" or "**Lodi**"), 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**"); entered that certain Amended and Restated Ground Lease dated March 22, 2010 ("**First Amended Lease**"); and entered into an Agreement to Supply Recycled Water dated March 22, 2010 ("**Recycled Water Agreement**") and

B. WHEREAS, the Parties desire to amend and restate the First Amended Lease in its entirety as set forth below and rescind the Recycled Water Agreement effective January 1, 2013.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the First Amended Lease is amended and restated in its entirety and the Recycled Water Agreement is rescinded as follows:

1. Definitions. When used in this Agreement, the terms described below will have the meanings as set forth in this Section 1.

1.1 "**Base Rent**" is the rent for the CT2 site under the Lease and is defined further in Section 8.1.1.

1.2 "**Commencement Date**" means January 1, 1993, the date that the Original Lease commenced.

1.3 "**CT2 Project**" refers to the NCPA Combustion Turbine 2 Project, also known as the "STIG" plant, 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 Slough Water Pollution Control Facility ("**WSWPCF**").

1.4 "**Easement Area**" refers to the easement on the east side of the Leased Premises for the construction and maintenance of a road and is more fully defined in Section 4.

1.5 "**Effective Date**" of this Second Amended and Restated Ground Lease is January 1, 2013.

1.6 "**Existing Recycled Water Facilities**" means those Lodi Recycled Water production and delivery facilities on the Lodi WSWPCF or within Lodi easements outside the

WSWPCF site as of March 22, 2010, 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 CT2 Project, and those Lodi Recycled Water production, delivery and distribution facilities as of March 22, 2010 including, without limitation, recycled water storage tanks; generally shown on Exhibit A.

1.7 The "**Initial LEC Rent**" means the advanced annual rent to be paid for the portion of the Leased Premises to be used for the LEC and is more fully defined in Section 8.2.1.

1.8 "**Landlord**" refers to the City of Lodi, a California general law city.

1.9 "**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 3.

1.10 The "**Lodi Energy Center**" ("**LEC**") is a natural gas-fired, combined-cycle electrical generating facility owned by NCPA and rated at a nominal generating capacity of 255 megawatts (MW). The LEC sits on a portion of the Leased Premises consisting 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 STIG to the west, and the San Joaquin County Mosquito and Vector Control facility to the south.

1.11 The "**Lodi Treatment Plant Site**" means the area within the current WSWPCF treatment plant property boundaries as shown on Exhibit B.

1.12 The "**LEC Rent**" 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 8.2.1.

1.13 "**NPDES Permit**" means the National Pollution Discharge Elimination System permit issued by the Regional Water Quality Control Board-Central Valley Region ("RWQCB") to each Party respectively as the context requires.

1.14 The "**Original Lease**" refers to that certain Ground Lease dated February 17, 1993.

1.15 "**Offer**" refers to a bona fide offer from a third party to purchase all or a portion of the Leased Premises or the Optioned Premises.

1.16 "**Optioned Premises**" means the land near the Leased Premises more particularly described on the map and described in more detail in the legal description attached to the map in Exhibit C.

1.17 "**Party**" singularly refers to either the Landlord or the Tenant and "Parties" refers to the Landlord and Tenant collectively.

1.18 "**Project**" refers to the construction, operation and maintenance of power generation plants and incidental ancillary uses including without limitation, the transmission of energy.

1.19 "**Recycled Water**" or "**Reclaimed Water**" means the water that results from the treatment of wastewater, meets all applicable requirements established from time to time by pertinent federal and 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 purposes of this Agreement, Recycled Water and Reclaimed Water are synonymous.

1.20 "**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, storing and distributing Recycled Water.

1.21 "**Rental Obligations**" refers to the Landlord's obligations to provide access to the transmission lines, Recycled Water and allow interconnection with the natural gas pipeline. 1.21 "**Tenant**" refers to the Northern California Power Agency, a California joint powers agency.

1.22 "**Term**" refers to the term of the Lease as defined in Section 7.

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

1.24 "**WSWPCP**" refers to the White Slough Water Pollution Control Facility owned by Lodi and located in Lodi, California.

2. Recycled Water Agreement Rescinded. The Parties agree, acknowledge and represent that NCPA is taking the Recycled Water from the WSWPCP as an accommodation to the City of Lodi and as a part of the consideration from NCPA to the City of Lodi. The Parties recognize that the primary value of the Premises is its unique location away from residential facilities, along a natural gas supply line, adjacent to a Recycled Water source and along a major transmission line. Accordingly, the Parties hereby rescind the Recycled Water Agreement effective January 1, 2013. The Recycled Water Agreement is replaced by the provisions of section 10 of this Agreement.

3. Premises. Landlord leases to Tenant and Tenant leases from Landlord the real property in the City of Lodi, County of San Joaquin, California, described on the map in Exhibit

D 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.

4. Easements. In addition to the Premises, Tenant employs additional land adjacent to the east side of the Leased Premises for a road to access the Premises. A map identifying the additional area (the "**Easement Area**") is contained in Exhibit E attached to this Agreement and incorporated herein by this reference. Landlord likewise needs access to the Easement Area to maintain the adjacent berm. Tenant and Landlord entered into and recorded the Easement Agreement contained in Exhibit F attached to this Agreement and made a part hereof pursuant to which Tenant has been 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 are exclusive aside from access rights reserved to Landlord as set forth in the Easement Agreement, which is affirmed hereby .

5. Use. Tenant may use the Leased Premises for the Project and for any other lawful purpose.

6. Landlord's Retained Rights. Landlord maintains various Utilities located on or below the Leased Premises. The Utilities are described more fully in Exhibit G 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, 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 construct the facilities to standards reasonably acceptable to Landlord.

7. Term: Extension. The Original Lease commenced on the Commencement Date. This Lease shall terminate (unless extended pursuant to this Section 7 or earlier terminated in accordance with the provisions of this Lease) on the Fiftieth (50<sup>th</sup>) anniversary of the Effective Date ("**Term**"). Under this Agreement and subject to Landlord's retained rights as described in Sections 4 and 6, Tenant's rights to exclusive possession of the Leased Premises shall commence on the Effective 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.

8. Rent.

8.1 Rent for CT2 Site.

8.1.1 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).

8.2 Rent for LEC.

8.2.1 2012 Annual Rent. As of the Effective Date of this Agreement, Tenant has already prepaid rent as required in the First Amended Lease in the amount of Forty Thousand Dollars (\$40,000) (the "**Initial LEC Rent**") for the period from July 1, 2012 through June 30, 2013; therefore, any prepaid rent for January 1, 2013 through June 30, 2013 shall be credited toward the rental payments called for in Section 8.2.2 of this Agreement.

8.2.2 Annual Rent 2013 and Forward. Beginning on the Effective Date, the terms of this Section 8.2.2 shall determine annual rent. Tenant agrees to pay to Landlord annual rent in the amount of One Million Dollars (\$1,000,000.00) (the "**LEC Rent**"). Because the initial 2013 Lease Year for which LEC Rent is due and payable pursuant to this Section 8.2.2 will only contain six fiscal year months (based on a July 1 through June 30 fiscal year), rent shall be \$500,000 less the amount of prepaid rent under Section 8.2.1 above, if any. Commencing on the Effective Date, the LEC Rent will be paid on a monthly basis in twelve equal payments of Eighty Three Thousand, Three Hundred and Thirty Three Dollars (\$83,333.00) due and payable on or before the first of each month.

8.2.3 Annual Rental Adjustments. For the first ten (10) years following the Effective Date, the LEC Rent will increase by two and one half percent (2.5%) annually starting in 2014. The rental increase will go into effect on July 1<sup>st</sup> of each year.

8.2.4 Rental Reduction During LEC Decommissioning. It is anticipated that the LEC will be decommissioned at the end of its useful life. During the decommissioning period, when the LEC is no longer providing electricity in the commercial market, Tenant shall cease paying the full LEC Rent and for the decommissioning period. Instead, Tenant will pay annual rent based on the following calculation: The Initial LEC Rent multiplied by two and one half percent for up to ten years multiplied by the number of years the LEC has operated since July 1, 2014 ( $\$40,000 \times 2.5\% \times (X-2014)$ = annual rent during LEC decommissioning). In no event will the rent calculated during decommissioning be greater than the rent under Section

8.2.3, above. Tenant will give Landlord one hundred and eighty days (180) notice of its intent to decommission the Project.

8.3 Rental Adjustments. Other than as specified in this Section 8, there shall be no adjustment to the Base Rent or the LEC Rent payable pursuant to this Agreement.

8.3.1 Rent Offsets Permitted. LEC Rent shall be adjusted if Landlord cannot provide the real estate or related rights and services, including without limitation, Recycled Water in the amount of 4.38 acre feet per day ("**Rental Obligations**"), on a regular basis. In the event Landlord cannot provide its Rental Obligations, an offset may be made against the following month's rental payment based on the number of days that the Landlord could not meet its Rental Obligations under this Agreement for the LEC. Tenant may deduct Two Thousand Six Hundred and Eighty Eight Dollars and Seventeen Cents (\$2,688.17) per day multiplied by the rental adjustment of 2.5% per year as made under Section 8.2.3, that Landlord cannot meet the Rental Obligations. Such deduction will be taken off of the following month's LEC Rent.

8.3.2 On the ten (10) year anniversary of the Effective Date of this Agreement, and on every ten (10) year anniversary thereafter, 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, who will be charged with reviewing all the Rental Obligations under this Agreement to arrive at a fair value for the Leased Premises. 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.

8.4 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-- unless otherwise permitted in this Lease, prior notice or demand, and at such place or places as may be designated from time to time by Landlord.

9. 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.

10. Recycled Water.

10.1 Past Costs.

10.1.1 Lodi will not seek any compensation for its past costs associated with 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 the Recycled Water Agreement.

10.1.2 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 the Recycled Water Agreement.

10.2 Development of Future Projects by Lodi. Future Recycled Water projects may be developed by Lodi. However, Lodi's development of future projects may not affect NCPA's right to Recycled Water under this Agreement and may not diminish the quality, quantity, price, availability and delivery of Recycled Water. Lodi will inform NCPA of planning activities regarding future Recycled Water projects. Joint planning efforts may be undertaken by the Parties through mutual agreement.

10.3 Agreement to use Recycled Water. NCPA hereby agrees to use Recycled Water for the LEC and CT2 Projects. NCPA agrees to use the Recycled Water for the purposes of generating electricity. NCPA may also use its allocation to irrigate landscaping that is associated with its generating facilities. NCPA agrees to take the City's wastewater and consume the wastewater in the LEC or for irrigation purposes. However, NCPA does not guarantee wastewater consumption at any level because of various market and operational factors. Lodi will supply Recycled Water in the volume identified in this Section 10 and to the standards contained in California Code of Regulations, Title 22, for the specific use in power plants' cooling towers.

10.4 Responsibility at Delivery Point. The delivery point of the Recycled Water will be the WSWPCF Clearwell Pumping Station. Lodi will be responsible for all facilities for the treatment, transportation, conveyance and storage of the Recycled Water up to the delivery point. NCPA will be responsible for the facilities for the treatment, transportation, storage, and use of Recycled Water from the point of delivery.

10.5 Quantity of Recycled Water for the LEC. Lodi agrees to provide a minimum of 4.384 acre feet per day, totaling 1600 acre feet per year ("afy") of Recycled Water to the LEC in accordance with California Code of Regulations, Title 22, Division 4, Chapter 3. If

requested and if available, Lodi will provide additional Recycled Water up to 2000 afy, meeting California Code of Regulations, Title 22, requirements.

10.6 Quantity of Recycled Water for the STIG. Lodi agrees to provide a minimum of 1.687 acre feet per day of Recycled Water to the STIG in accordance with California Code of Regulations, Title 22, Division 4, Chapter 3.

10.7 Obligation to Supply Water. Lodi will deliver Recycled Water twenty-four (24) hours per day. Lodi will supply the Recycled Water year round and will not ration Recycled Water to NCPA in the event of a drought. The amount of Recycled Water received by NCPA will 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.

10.8 Interruption of Delivery.

10.8.1 The Parties acknowledge that it is impossible to anticipate all the events that may occur which would prevent Lodi from delivering Recycled Water to NCPA pursuant to the Agreement. In the event Lodi cannot provide a minimum 4.384 acre feet of the Recycled Water per day for the LEC, in addition to any other rights and remedies Tenant may have under this Agreement, Tenant may also offset Rent on a daily basis as provided in Section 8.3, above..

10.8.2 It is the intention of the Parties that Lodi may be relieved of the responsibility for providing Recycled Water when it is not reasonably within its means to do so, despite its best efforts to do so. In such case, the rental offset provisions in Section 8.3, above, will apply. Such events that may relieve Lodi of providing Recycled Water shall include but are not limited to:

10.8.2.1 A Force Majeure pursuant to Section 25.14,

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

10.8.2.3 Equipment failure and unanticipated treatment upsets, notwithstanding Lodi's best efforts to maintain the equipment including, without limitation, the WSWPCP.

10.9 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.

10.10 Responsibility for Compliance with Law. Lodi represents and warrants that it has complied with all laws related to its ability to provide Recycled Water and has enacted any and all appropriate resolutions or ordinances required to provide Recycled Water to NCPA. 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 connections 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.

11. Repairs and Maintenance.

11.1 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. Landlord must maintain the roadway easement up to the Leased Premises. Tenant will keep Landlord apprised of the volume and nature of truck traffic upon the Leased Premises.

11.2 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.

11.3 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 11, 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.

11.4 Tenant agrees to construct a perimeter fence around the Leased Premises.

11.5 Notwithstanding Tenant's obligations to maintain and repair the Property in this Section 11, Tenant will have no obligation to maintain or repair any of Landlord's Utilities identified in Exhibit G.

12. Mechanic's Liens.

12.1 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.

12.2 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.

12.3 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 will constitute a breach of the covenants and conditions of this Lease.

13. Insurance and Indemnity.

13.1 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 will 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.

13.2 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.

13.3 Indemnification of Tenant. Landlord agrees to indemnify, protect, hold harmless and defend Tenant, with counsel reasonably approved by Tenant, from and against any and all claims, causes of action, liabilities, damages and expenses arising out of or in any way related to actions by Landlord in entering into this Agreement, performing its obligations or assuming the benefits of this Agreement including without limitation, challenges to the validity of this Agreement. Tenant agrees to give Landlord timely notification of any claims or notices that would trigger the indemnification in this Section 13.3. Likewise, Landlord agrees to give Tenant timely notification of any claims or notices respecting this Agreement.

13.4 Liability Insurance. Tenant must 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 liability insurance policy or policies shall be stated to be primary and noncontributing with any insurance or self 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.

13.5 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.

13.6 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.

13.7 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.

14. Landlord's Covenants.

14.1 Water Supply to CT2 Project. Landlord shall make available to Tenant Reclaimed Water for the CT2 project upon the terms and conditions contained in Section 10 of this Agreement.

14.2 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 Section 10 of this Agreement.

14.3 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 at no cost to Tenant.

14.4 Stormwater. Subject to the terms of Lodi's NPDES permit or other applicable stormwater discharge permit, Lodi agrees to accept storm water runoff from the Leased Premises under the "Will Serve Letter" dated October 17, 2008, attached hereto as Exhibit H.

15. Repair and Restoration. If during the term of this Lease any building or improvement on the Leased Premises or any part thereof is 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, in whole or in part, 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.

16. 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.

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

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

17.2 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;

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

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

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

18. 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 will thereupon be entitled to receive from Tenant all damages allowed by law.

19. 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:

19.1 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;

19.2 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;

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

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

Each certificate delivered pursuant to this Section 19 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.

20. 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 Landlord.

21. 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 it is 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 is 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.

22. Right of First Refusal.

22.1 Right of First Refusal to Purchase Leased Premises. 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 22. 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 attributable solely to the land and not to the Improvements. Landlord and Tenant recognize the benefit to Landlord of Tenant's willingness to take the Recycled Water and the benefit to Tenant of locating the STIG and the LEC in an industrial area adjacent to transmission lines, a Recycled Water source and a natural gas pipeline for interconnection purposes. In the event that Tenant exercises its option under this Section 22, Lodi agrees to continue to provide Recycled Water in the quantity provided in this Agreement and Tenant agrees to compensate Landlord for its costs to provide the water. In the event, Landlord and Tenant cannot mutually agree on compensation for Lodi's costs to provide the water, then the Parties agree to a valuation by a mutually acceptable objective third party. 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 and subject to the terms of this Lease provided Landlord sells the Leased Premises only to the party who made the Offer and only strictly in accordance with the terms thereof and subject to Landlord's continued obligation to provide Recycled Water as required by this Agreement.

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 or to use of the Recycled Water.

22.2 Right of First Refusal to Lease Additional Land with Rental Obligations. At any time during the Term of this Lease, Landlord shall not rent, lease, or convey all or a portion of the Optioned Premises, without first having complied with this Section 22.2. If Landlord desires to rent, lease, sell or convey the Optioned Premises, Landlord must obtain from a third party a bona fide arms' length offer ("Bona Fide Offer") after which Landlord must submit a copy of the Bona Fide Offer in writing to Tenant and must give Tenant forty-five (45) days within which to elect to meet the Bona Fide Offer. If Tenant elects to meet the Bona Fide Offer, Tenant will give Landlord written notice thereof and may lease the Optioned Premises under the same terms and conditions contained in the Bona Fide Offer. In the event that Tenant chooses not to exercise its rights under this Section 22.2, Landlord agrees that Tenant, as the Tenant with prior rights shall have the priority to all Rental Obligations including, without limitation, Recycled Water. Further, in the event Tenant elects not to meet any Bona Fide Offer, Landlord may thereafter rent, sell or convey the portion or portions of the Optioned Premises which are the subject of the Bona Fide Offer only to the party who made the Bona Fide Offer and only strictly in accordance with the terms thereof. This right of First Refusal will continue as to any and all portions of the Optioned Premises throughout the term of this Lease as such may be extended to prevent Landlord from defeating the rights of Tenant in this Section 22.2. Landlord agrees that Landlord will at no time accept an offer to rent, lease or purchase all or any portion of the Optioned Premises together with any other property of Landlord in contravention of Tenant's right to lease, rent or purchase the Optioned Premises. Notwithstanding Landlord's rights to solicit a Bona Fide Offer from third parties, Landlord agrees that it will not entertain an offer to rent, lease or purchase the Optioned Premises for use as an electric power generating facility prior to 2018. In the event Tenant does not exercise its Right of First Refusal under this Section 22.2 and the rental terms of the Bona Fide Offer are more

favorable than the rental terms and conditions in this Agreement, Landlord agrees to modify the terms of this Agreement to match those in the Bona Fide Offer.

22.3 Right to Lease Additional Land with Rental Obligations. Notwithstanding the Right of First Refusal in Section 22.2, above, and even without a Bona Fide Offer from a third party, Landlord grants to Tenant an option to lease additional land with all Rental Obligations, including without limitation, necessary access and utility easements and sufficient Recycled Water so that Tenant may construct accessory power related structures or a new power plant on all or any portion of the Optioned Premises . If the Parties cannot agree to a mutually acceptable annual rent, then the Parties Agree to hire a mutually acceptable neutral third party who will value the land and the Rental Obligations and set a base rent for the Optioned Premises. The Parties agree to negotiate in good faith a ground lease agreement for the Optioned Premises with a term of no less than fifty (50) years. The term of the option in this Section 22.3 may be coterminous with the Term of this Lease as such may be extended.

23. Abandonment of Wells.

23.1 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.

23.2 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.

24. Dispute resolution.

24.1 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.

24.2 Binding arbitration. Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 24.1 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 24.2. 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.

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

24.2.2 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than one hundred and eighty (180) days after the date upon which the demand for arbitration is filed.

24.2.3 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.

24.2.4 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 will generally guide the arbitrator in making such decisions.

24.2.5 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.

24.2.6 The provisions of CCP section 1283.05 are incorporated into this Agreement to arbitrate. Both Parties may conduct discovery (except issuance of interrogatories) 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.

24.2.7 Each Party may be represented by counsel.

24.2.8 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.

24.2.9 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.

24.2.10 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 24.2.10.

24.2.11 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.

24.2.12 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.

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

24.2.14 Except as modified or stated to the contrary in this Section 24, the rules and procedures of the arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

25. Miscellaneous.

25.1 Attorneys' Fees. Except as otherwise provided in Section 24 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.

25.2 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.

25.3 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.

25.4 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 Landlord, remove at its own expense any and all equipment remaining thereon.

25.5 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.

25.6 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.

25.7 Relationship of Parties. The parties acknowledge that Landlord is a member of the Tenant joint powers authority, and that as a member, it is a participant in both the CT2 and LEC Projects. Notwithstanding the foregoing, 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 3 CT2 agreement or the LEC Power Sales and Project Management and Operations agreements or any similar agreement.

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

25.9 Memorandum of Lease. This Agreement will not be recorded, but the Parties agree to execute and deliver an Amended and Restated Memorandum of this Lease in recordable form, which Memorandum shall be recorded in the office of the Recorder in San Joaquin County, California and which will supersede the memorandum of lease previously recorded with reference to the Original Lease.

25.10 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.

25.11 Number and Gender. Whenever the singular number is used in this Lease and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders, and the word "person" includes 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. 25.12 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.

25.13 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.

25.14 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 performances of this Lease.

25.15 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 or rescission and all claims for damages by reason of any statement, representations, warranty, promise and agreement, if any, not contained in this Lease.

25.16 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.

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

25.18 Severability. In the event any portion of this Agreement is held invalid or unenforceable for any reason, the Parties agree that the rental of the STIG and LEC shall revert to and be governed by the First Amended Lease and the Recycled Water Agreement.

25.19 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

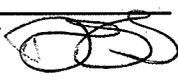
\_\_\_\_\_  
Konradt Bartlam, City Manager

**ATTEST:**

\_\_\_\_\_  
Randi Johl, J.D., City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
D. Stephen Schwabauer  
City Attorney



**TENANT:**

NORTHERN CALIFORNIA POWER AGENCY

\_\_\_\_\_  
James H. Pope, General Manager

**ATTEST**

\_\_\_\_\_  
Denise Dow, Assistant Secretary

**APPROVED AS TO FORM**

\_\_\_\_\_  
Michael F. Dean, General Counsel

**EXHIBIT LIST**

- Exhibit A Existing Recycled Water Facilities
- Exhibit B Lodi Treatment Plant Site
- Exhibit C Optioned Premises
- Exhibit D Legal Map and Description of Premises
- Exhibit E Roadway and Incidental Purpose Easement
- Exhibit F Easement Agreement
- Exhibit G Utilities
- Exhibit H Will Serve Letter, dated October 17, 2008

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