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CITY COUNCIL MEETING

SEPTEMBER 7, 1983

AGREEMENT TO  
CONTRACT FOR  
ELECTRIC SERVICE  
WITH WAPA

RES. NO. 83-99

On motion of Mayor Pro Tempore Snider, Reid second, Council adopted Resolution No. 83-99 approving Amendatory Agreement between the City of Lodi and the United States Department of Energy, Western Power Administration - (Electric Service Arrangement for Cogeneration and Renewable Resource Projects NCPA 2) and authorized the City Manager and City Clerk to execute the Agreement on behalf of the City. The motion carried by the following vote:

Ayes: Council Members - Murphy, Reid, Snider, and Olson (Mayor)

Noes: Council Members - None

Absent: Council Members - None

Abstain: Council Members - Pinkerton

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UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
Central Valley Project

AMENDATORY AGREEMENT WITH THE CITY OF LODI

(Electric Service Arrangement for  
Cogeneration and Renewable Resource Projects - NCPA 2) \*

UNITED STATES  
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AMENDATORY AGREEMENT WITH THE CITY OF LODI

(Electric Service Arrangement for  
Cogeneration and Renewable Resource  
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UNITED STATES  
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K3

AMENDATORY AGREEMENT WITH THE CITY OF LODI  
(Electric Service Arrangement for  
Cogeneration and Renewable Resource Projects-NCPA 2)

1. THIS AMENDATORY AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 1983, in pursuance of the Act of Congress approved June 17, 1902 (32 Stat. 388), the Act of Congress approved August 26, 1937 (50 Stat. 844, 850), the Act of Congress approved August 4, 1939 (53 Stat. 1187), the Act of Congress approved August 12, 1955, (69 Stat. 719), the Act of Congress approved October 23, 1962, (76 Stat. 1173, 1191), and the Act of Congress approved August 4, 1977 (91 Stat. 565), and acts amendatory thereof or supplementary thereto, between the UNITED STATES OF AMERICA, Department of Energy, Western Area Power Administration (the United States) acting by and through the officer executing this contract, a duly appointed successor or a duly authorized representative, and the CITY OF LODI (City or Contractor), a municipal corporation organized and existing under the laws of the State of California,

WITNESSETH,

2. WHEREAS, the United States operates an electric power system including generation and transmission facilities to serve preference

customers of the Central Valley Project (CVP); and

3. WHEREAS, the City operates an electric utility system, including transmission and generation, and is a preference customer of the United States under the provisions of Contract No. DE-MS65-82WP-59015, effective March 1, 1982, which as such agreement may be amended or replaced shall hereinafter be called the Original Agreement; and

4. WHEREAS, the United States has entered into Contract No. 14-06-200-2948A, dated July 31, 1967, as amended, supplemented or superseded, with Pacific Gas and Electric Company, (PGandE), which provides for, among other things, a right of the United States to use PGandE's transmission system for the transmission of power and energy from the CVP to preference customers of the CVP, including the City; and

5. WHEREAS, in settlement of the lawsuit entitled The City of Santa Clara vs. Duncan et. al., the United States and other parties to the lawsuit entered into a memorandum of understanding dated February 8, 1980, hereinafter called the Santa Clara Settlement, which provides for PGandE to support an increase of 102 MW in the customer load level of the CVP, enabling the United States to market additional power and energy to CVP preference customers; and

6. WHEREAS, the United States declared its intent in its 1981 CVP Final Power Marketing Plan to support renewable resources and

cogeneration projects through the marketing of 30 MW of its increased CVP customer load level to preference entities which are willing to make available to the United States electric energy; and

7. WHEREAS, the City is a member of the Northern California Power Agency (NCPA), a joint powers agency of the State of California, and has an entitlement to 14.560 percent of the output of the NCPA Geothermal Project No. 2 which will have an installed capacity of 110 MW; and

8. WHEREAS, the United States is willing to allocate 1.5 MW of its increased CVP customer load level and associated energy to the City in exchange for an equivalent amount of energy from the Powerplant or from other sources available to the City;

NOW, THEREFORE, the parties hereto mutually agree as follows:

#### TERM OF AGREEMENT

9. a) This Amendatory Agreement shall be effective on the date of execution, and shall terminate at 2400 hours on June 30, 1994.

b) In addition to termination provisions specified in the Original Agreement, this Amendatory Agreement may be terminated at the end of any Contract Year by the City on one year notice of termination to the United States.

c) Upon termination of this Amendatory Agreement, benefits conferred upon the parties and obligations incurred hereunder shall be preserved until satisfied.

DEFINITION AND EXPLANATION OF TERMS

10. a) "Contract Rate of Delivery" means the City's maximum rate of delivery of firm electric energy from the CVP pursuant to the Original Agreement and the PGandE Contract.

b) "Contract Year" means the period beginning on January 1 and ending on the following December 31; the first Contract Year shall begin at 0000 hour on the first day of the first month following execution of this Amendatory Agreement and the last Contract Year shall end at 2400 hours on June 30, 1994.

c) "Energy Deficit Account" means the energy account kept by the United States to record the amount of energy owed by the City to the United States under article 14 herein.

d) "Energy Surplus Account" means the energy account kept by the United States to record the amount of energy owed by the United States to the City under article 14 herein.

(e) "Interconnection Agreement" means the agreement between

NCPA and PGandE, as such agreement may hereinafter be amended, supplemented or superseded, providing for the interconnection and transmission of resources owned by the City.

f) "Off-Peak Hours" means those hours between 10:00 p.m. and 7:00 a.m. Monday through Saturday, those hours between 10:00 p.m. on Saturday and 7:00 a.m. on Monday, and those hours between 7:00 a.m. and 10:00 p.m. on holidays.

g) "PGandE Contract" means Contract No. 14-06-200-2948A dated July 31, 1967 between the United States and PGandE, as such Contract may hereinafter be amended, supplemented or superseded, providing for, among other things, a right of the United States to use PGandE's transmission system for the transmission of power and energy from the CVP to preference customers of the CVP, including the City.

h) "Point of Receipt" means the point at PGandE's Fulton or Lakeville Substation near the Powerplant where energy is delivered by the City to PGandE for service to CVP loads, or such other locations as may be agreed to by the United States and the City.

i) "Power Bill" means the statement of charges issued to meet the obligations of the United States and the City under the Original Agreement.

j) "Powerplant" means the NCPA Geothermal Project Number 2 of which the City has an entitlement to 14.560 percent of the output and which will have an installed capacity of 110 MW.

k) "Powerplant Capability" means the City's share of the average amount of power available from the Powerplant over any Contract Year under Powerplant conditions existing during such Contract Year.

l) "Projected Powerplant Capability" means the Powerplant Capability from the City's ownership share of the Powerplant projected to be available during a Contract Year determined by the City in accordance with generally accepted utility practice two months in advance of each Contract Year.

m) "Renewable Resource Allocation" means the 1.5 MW portion of the City's Contract Rate of Delivery made available to the City by the United States pursuant to article 11 hereunder, and energy associated with such portion.

#### RENEWABLE RESOURCE ALLOCATION

11. a) Effective at 0000 hour on the first day of the first month following execution of this Amendatory Agreement, the City's Contract Rate of Delivery shall be increased by 1.5 MW. Such portion of the City's Contract Rate of Delivery shall hereinafter be referred to as

the City's Renewable Resource Allocation.

b) All rights and obligations of the City and the United States with respect to the City's Renewable Resource Allocation shall be consistent with the Original Agreement and the PGandE Contract.

ENERGY DELIVERIES BY THE CITY

12. a) The City shall be obligated to sell to the United States, in exchange for the Renewable Resource Allocation, an amount of energy equal to the amount of energy associated with the Renewable Resource Allocation subject to the provisions described below.

(b) Each Contract Year the City shall use its best efforts to deliver or arrange to have delivered to the United States at the Point of Receipt an amount of energy equal to the amount of energy associated with its Renewable Resource Allocation for such Contract Year. The United States shall use its best efforts to schedule energy supplied from other sources in a manner which enables it to accept energy delivered by the City hereunder.

c) At any time other than Off-Peak Hours from April 15 to June 30, the obligation of the City to deliver energy to the United States pursuant to subarticle (a) above shall, at the option of the City, be reduced to the extent the United States refuses delivery of

such energy due to:

(i) Curtailments by PGandE of CVP power generation or purchases due to low load conditions in the PGandE service area;

(ii) Purchases of energy by the United States in amounts, which are in excess of that which the United States is able to use in its loads or store in accounts with PGandE or others;

(iii) Uncontrollable forces, as described in article E of the General Power Contract Provisions attached to the Original Agreement, on the system of the United States or PGandE when and to the extent such uncontrollable force continues for a period of over 30 days;

(iv) For any other reason causing curtailment by the United States of energy scheduled by the City hereunder if preschedules of such energy were submitted by the City on or after the previous workday and were accepted by the United States; or

(v) For any other condition causing curtailment of energy deliveries hereunder by the United States, when and only to the extent such condition continues for a period of over 30 days.

d) The rate of delivery for energy delivered by the City to

the United States hereunder shall be determined by the City and designated in preschedules submitted by the City; provided, however; reductions in the City's obligation for those conditions described in subarticle (c) above shall be limited to energy scheduled up to, but not greater than twice the Renewable Resource Allocation.

e) The obligation of the City to deliver energy to the United States hereunder may be reduced at any time upon agreement between the parties.

f) During Contract Years when the City is unable to deliver to the United States the amount of energy specified in subarticle (a) above as reduced pursuant to this article, and such inability is partially or wholly attributable to an unanticipated failure of the Powerplant Capability for the Contract Year to meet the Projected Powerplant Capability for such Contract Year, the deficit in the City's obligation due to such failure shall be entered into the Energy Deficit Account pursuant to subarticle (h) and article 14 hereunder.

g) To the extent the City is unable to deliver or have delivered to the United States the amount of energy specified in subarticle (a) above as reduced pursuant to this article, without affecting its capacity credit for the Powerplant under the Interconnection Agreement, the deficit in the City's obligation shall be entered into the Energy Deficit Account pursuant to subarticle (h) below and article 14.

h) To the extent the City is unable to deliver or have delivered to the United States the amount of energy specified in subarticle (a) above as reduced pursuant to this article, the deficit in the City's obligation due to such inability shall be entered into the Energy Deficit Account pursuant to article 14.

i) (i) Unless otherwise agreed, at the end of a Contract Year in which the City has failed to satisfy substantially all of its energy obligation described in subarticle (a) above as reduced pursuant to this article and less the balance in the Energy Surplus Account, and such failure is not attributable to conditions described in subarticles (f) and (g) above or forces beyond the City's control, the United States may reduce or revoke the City's Renewable Resource Allocation upon one year's notice.

(ii) Upon such notice, the City shall have one year in which to make up its energy obligation under arrangements acceptable to the United States and upon satisfaction of such obligation within one year, shall be entitled to retain its Renewable Resource Allocation under the terms hereof.

ENERGY SCHEDULING PROCEDURES

13. All deliveries of energy by the City to the United States hereunder shall be in accordance with procedures agreed upon between the City and the United States and attached hereto. Such procedures shall be developed for the period prior to the development of independent NCPA dispatching ability and for the period subsequent to the development of such ability, and shall include the following:

a) Written notice by the City to the United States two months in advance of each Contract Year except for the first Contract Year, indicating the amount of energy which the City expects to make available to the United States during such Contract Year on a monthly basis and the Projected Powerplant Capability for each month of such year;

b) Prescheduling by the City in advance of each month of hourly or half-hourly amounts of energy for each month; and

c) Procedures for adjustment of daily and hourly or half-hourly schedules.

ENERGY ACCOUNTING

14. a) During any Contract Year, the amounts of energy which the

City is unable to deliver to the United States, as provided in subarticles 12(f), 12(g), and 12(h) shall be entered into an Energy Deficit Account. If, during any Contract Year, the City is able to deliver to the United States an amount of energy in excess of the amount associated with its Renewable Resource Allocation for the Contract Year, the United States shall enter the excess in an Energy Surplus Account, provided that the United States shall not be obligated to accept such energy to the extent the City's obligation to deliver energy to the United States pursuant to article 12 has been met for the Contract Year.

b) The amount remaining in the Energy Deficit Account or Energy Surplus Account at the end of the Contract Year, if not settled pursuant to this article, shall be carried over to be netted against the amount remaining in the next year's Energy Surplus Account or Energy Deficit Account, respectively.

c) The City may reduce the balance in the Energy Deficit Account by delivering energy to the United States at any time agreed upon. Energy delivered to reduce the Energy Deficit Account shall be delivered pursuant to the provisions contained in articles 12 and 13.

d) The City shall use its best efforts to settle each year's Energy Deficit Account as soon as practicable, but shall have one Contract Year in which to settle such account without interest. If the City is unable to settle the Energy Deficit Account within one year of

the last day of the Contract Year in which the deficit was incurred, the amount remaining in the Energy Deficit Account shall accrue interest in additional energy at 5 percent per annum, which amount shall be included as part of the total Energy Deficit Account to be netted in subsequent years.

e) The United States may settle the Energy Surplus Account by reducing the amount of energy which the City is obligated to deliver hereunder at times and in amounts necessary to balance the account.

f) The parties shall use their best efforts to bring the energy account balances to zero prior to termination of this Amendatory Agreement. If there is a balance in the Energy Deficit Account upon termination of this Amendatory Agreement, the City shall deliver energy in an amount sufficient to balance the account within one year, unless otherwise agreed by the parties.

g) If either party fails to satisfy its respective obligations within one year after termination of this Amendatory Agreement, it shall pay an amount in dollars determined as the amount of energy owed times the payment described under subarticle 15(a). Such payment shall include a 10 percent per annum interest penalty, unless otherwise agreed, for each 30 day period in which such obligation is not fulfilled.

PAYMENT

15. a) For energy delivered to the United States at the Point of Receipt to satisfy the City's obligation hereunder, the United States shall pay the City at a rate commencing at \$.035/kWh. Such rate shall be increased at the beginning of each Contract Year by the percentage of increases in operation and maintenance costs and geothermal steam costs associated with the Powerplant which take effect during the previous Contract Year, up to \$.05/kWh. If such rate, the CVP composite rate for capacity and energy and the rate for energy from the United States' Bank Account No.2 with PGandE exceed \$.05/kWh then the rate shall be same as the lesser of the CVP composite rate + \$.005/kWh or the rate for energy from Bank Account No. 2.

b) The City shall provide to the United States a monthly statement of charges for energy delivered during the preceding month.

c) The United States may credit monthly amounts due the City for energy made available hereunder against the Power Bill for such month. In the event the amount due by the City under the Power Bill is less than the amount owed by the United States under this Amendatory Agreement, the United States shall pay the difference to the City as soon as the necessary vouchers can be prepared, ordinarily by the last day of the month following the month in which the statement of charges was delivered to the United States.

d) The City shall pay the United States for its Renewable Resource Allocation at established CVP rates for firm power and energy.

OTHER AGREEMENTS

16. a) Where conflicts exist between any of the terms of this Amendatory Agreement with the terms of the PGandE Contract, the terms of the PGandE Contract shall control. This provision shall not constitute a waiver of claims which the City might otherwise have against the United States or PGandE, and which do not affect interpretation of the terms of this Amendatory Agreement.

b) This Amendatory Agreement shall be in addition to and shall supplement the Original Agreement. Termination of this Amendatory Agreement or breach of any of the terms of this Amendatory Agreement shall not constitute termination of the Original Agreement or breach of any of the terms of the Original Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

UNITED STATES OF AMERICA

Department of Energy

By \_\_\_\_\_

Title \_\_\_\_\_

Address Western Area Power Administration

2800 Cottage Way

Sacramento, CA 95825

CITY OF LODI, CALIFORNIA

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Attest

\_\_\_\_\_

Title

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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RESOLUTION

BE IT RESOLVED by the City Council of the City of Lodi, California, that the Mayor and City Manager be and they are hereby authorized to execute for and on behalf of the City of Lodi, California, the attached Contract for Electric Service with the UNITED STATES OF AMERICA, which Contract was duly presented to the City Council, and which Contract is hereby approved.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

I, \_\_\_\_\_, the duly appointed and qualified clerk of the City of Lodi, do hereby certify that the foregoing is a true, accurate and complete copy of a resolution duly passed and adopted at a regular meeting of the City Council of the City of Lodi, California, held on \_\_\_\_\_, 19 \_\_\_\_.

Date: \_\_\_\_\_ By \_\_\_\_\_  
Title \_\_\_\_\_

(SEAL)

EXHIBIT B

(CONTRACT RATE OF DELIVERY)

1. This revised Exhibit B, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, to be effective under and as a part of Contract No. DE-MS65-82WP59015, dated February 24, 1982, (hereinafter called the Contract), shall become effective on the first day of \_\_\_\_\_, 19\_\_\_\_, and shall remain in effect until superseded by another Exhibit B; Provided, That this Exhibit B or any superseding Exhibit B shall be terminated by the termination of the Contract.

Contract Rate of Delivery (CRD)

2. (a) On and after the effective date of this Exhibit B the CRD for firm power shall be 8,277 kilowatts of Westlands Withdrawable power and 3,673 kilowatts of the 26 megawatts of firm power and 1,500 kilowatts pursuant to Amendment No. 1, to this agreement which provides for the City's renewable resource allocation, for a total CRD of 13,450 kilowatts.

(b) The City's renewable resource allocation will be terminated on the date of termination of Amendment No. 1.

3. The original allocation referred to in Article 10(c) of this contract shall be 8,327 kilowatts of Westlands Withdrawable power and 3,673 kilowatts of the 26 megawatts of firm power for a total of 12,000 kilowatts.

THE UNITED STATES OF AMERICA

By \_\_\_\_\_

Title Area Manager

Address Western Area Power Administration  
2800 Cottage Way  
Sacramento, CA 95825

CITY OF LODI

By \_\_\_\_\_

Title City Manager

Address City of Lodi  
221 W. Pine Street  
Lodi, CA 95240