

CITY COUNCIL MEETING

SEPTEMBER 7, 1983

REGULAR CALENDAR

Prior to introduction of the hereinafter listed agenda items, Council Member Pinkerton indicated that he would abstain from voting on these matters.

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1) Amendment to Ordinance No. 1294 - Approving the terms and conditions of a Member Agreement between Northern California Power Agency and certain participating members and authorizing the execution of and delivery of said Agreement by Officers of the City of Lodi - NCPA Geothermal Project No. 3 - Third Phase Agreement.

2) Amend Agreement for Construction, Operation and Financing of the North Fork Stanislaus River Hydroelectric Development Project.

3) Amend Agreement to Contract for Electric Service with United States Department of Energy, WAPA.

The heretofore listed items had been reviewed by Staff at a recent Informal Informational Meeting. Information regarding each item was again provided by Staff who then responded to questions as were posed by the Council.

Following discussion, Council took the following actions:

AMENDMENT TO
ORD. NO. 1294
NCPA GEOTHERMAL
PROJECT NO. 3
THIRD PHASE
AGREEMENT

On motion of Council Member Reid, Snider second, Council re-introduced Ordinance No. 1294, including Amendment One - Ordinance of the City Council of the City of Lodi approving the terms and conditions of an agreement to a Member Agreement Between Northern California Power Agency and Certain Participating Members, and Authorizing the Execution of and Delivery of said Agreement and Amendment by Officers of the City of Lodi, NCPA, Geothermal Project No. 3 - Third Phase Agreement. The motion carried by the following vote:

ORD. NO 1294
REINTRODUCED

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

Noes: Council Members - Murphy

Council Member Murphy indicated that he was voting no as he had not had an opportunity to completely review the subject documents pertaining to this item

Absent: Council Members - None

Abstain: Council Members - Pinkerton

Draft of August 25, 1983

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AMENDMENT NUMBER ONE

Dated as of August 1, 1983

TO

**AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING
OF GEOTHERMAL GENERATING PROJECT NUMBER 3**

Dated as of July 1, 1983

By and Among

NORTHERN CALIFORNIA POWER AGENCY

and

**CITY OF ALAMEDA
CITY OF BIGGS
CITY OF GRIDLEY
CITY OF HEALDSBURG
CITY OF LODI
CITY OF LONEC
CITY OF PALO ALTO
CITY OF ROSEVILLE
CITY OF SANTA CLARA
CITY OF UKIAH
PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE**

AMENDMENT NUMBER ONE TO
AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING
OF GEOTHERMAL GENERATING
PROJECT NUMBER 3

This Amendment Number One, dated as of August 1, 1983, by and among Northern California Power Agency, a joint powers agency of the State of California (hereinafter called "NCPA") and the other entities executing this Amendment Number One.

WITNESSETH:

WHEREAS, NCPA and the other entities executing this Amendment Number One have entered or will enter into an "Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3", dated as of July 1, 1983 (the "Original Agreement") to provide for the construction, operation and financing of the Project, the sale by NCPA of capacity and energy of the Project to the Project Participants and the security of the Bonds to be issued to finance the Project; and

WHEREAS, NCPA and the other entities executing this Amendment Number One desire to amend the Original Agreement in various respects;

NOW THEREFORE, the parties hereto do agree as follows:

SECTION 1. Definitions. The capitalized terms used herein shall have the respective meanings in this Amendment Number One as ascribed thereto in the Original Agreement. All references in this Amendment Number One to the Original Agreement shall mean the Original Agreement as amended by this Amendment Number One.

SECTION 2. Amendments. (a) Section 1(f) of the Original Agreement is hereby amended to read in its entirety as follows:

"(f) "Project Entitlement Percentage" means, with respect to each Project Participant, the percentage so identified and set forth opposite the name of such Project Participant in Appendix A hereto, as such percentage shall be revised from time to time in accordance with Sections 7(d) and 13 hereof. "East Block Entitlement Percentage" and "Project No. 2 Entitlement Percentage" mean, with respect to each Project Participant, the percentages so identified and set forth opposite the name of such Project Participant in Appendix A hereto, as such percentages shall be revised from time to time in accordance with Sections 7(d) and 13 hereof."

(b) Section 7(d) of the Original Agreement is hereby amended by adding at the end thereof the following:

"Upon any change in Project Entitlement Percentage pursuant to this Section 7(d), (i) the Project No. 2 Entitlement Percentage (if any) and the East Block Entitlement Percentage of each Project Participant shall be automatically increased for the remaining term of this Agreement by allocating the Project No. 2 Entitlement Percentage (if any) and the East Block Entitlement Percentage of the defaulting Project Participant among the non-defaulting Project Participants in proportion to each Project Participant's respective increase in its Project Entitlement Percentage, and (ii) the defaulting Project Participant's Project No. 2 Entitlement Percentage and East Block Entitlement Percentage shall (but only for the purposes of computing the respective Project No. 2 Entitlement Percentages and the respective East Block Entitlement Percentages of the nondefaulting Project Participants) be reduced correspondingly."

(c) Section 12(a) of the Original Agreement is hereby amended to read in its entirety as follows:

"(a) This Agreement shall not take effect until (i) it and/or any supplement to it provided for in Section 2(c) of the Second Phase Agreement has been duly executed and delivered to NCPA by Project Participants the Project Entitlement Percentages of which, in the aggregate, equal 100%, all in accordance with Section 2(c) of the Second Phase Agreement and accompanied by an opinion for each Project Participant of an attorney or firm of attorneys in substantially the form attached hereto as Appendix B, and (ii) the Refunding Date shall have occurred."

(d) Section 16(e) of the Original Agreement is hereby supplemented by adding at the end thereof the following:

"(v) The third paragraph of Section 5B of the Project No. 2 Member Agreement shall be superseded by Section 7(d) of the Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3.

(vi) Section 1(g) of the Project No. 2 Member Agreement shall be amended by adding at the end thereof the following:

'Any Project Participant under the Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3 that has a Project No. 2 Entitlement Percentage greater than 0% under such Agreement shall be a 'Purchasing Participating Member' for all purposes of this Agreement and such Purchasing Participating Member's Purchasing Participation Percentage shall be its Project No. 2 Entitlement Percentage'."

(e) The first paragraph of Appendix B to the Original Agreement is hereby amended to read in its entirety as follows:

"I am acting as counsel to the _____ (the "Project Participant") under the Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3 dated as of July 1, 1982, as amended by Amendment Number One dated as of August 1, 1983 (the "Agreement") among the Project Participant, Northern California Power Agency (the "Agency") and certain other entities, and I have acted as counsel to the Project Participant in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of the Project Participant, (ii) all necessary documentation of the Project Participant relating to the authorization, execution and delivery of the Agreement and (iii) an executed counterpart of the Agreement."

SECTION 3. Original Agreement Remains in Full Force and Effect. Except as amended by this Amendment Number One, the Original Agreement heretofore existing remains in full force and effect.

This Amendment Number One may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF each Project Participant has executed this Amendment Number One with the approval of its governing body, and caused its official seal to be affixed and NCPA has executed this Amendment Number One in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA POWER AGENCY

By _____
And _____

CITY OF ALAMEDA

By _____
And _____

CITY OF BIGGS

By _____
And _____

CITY OF HEALDSBURG

By _____
And _____

CITY OF LODI

By _____
And _____

CITY OF LOMPOC

By _____
And _____

CITY OF PALO ALTO

By _____
And _____

CITY OF ROSEVILLE

By _____
And _____

CITY OF SANTA CLARA

By _____
And _____

CITY OF GRIDLEY

By _____
And _____

UKIAH

By _____
And _____

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

By _____
And _____

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____, APPROVING THE TERMS AND CONDITIONS OF AN AMENDMENT TO A MEMBER AGREEMENT BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND CERTAIN PARTICIPATING MEMBERS, AND AUTHORIZING THE EXECUTION OF AND DELIVERY OF SAID AMENDMENT BY OFFICERS OF THE CITY OF _____.

WHEREAS, pursuant to the provisions of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, as amended (the "Joint Powers Act"), the City of _____ (the "City") and certain other public agencies created pursuant to the laws of the State of California (collectively, the "Members"), have entered into a Joint Powers Agreement (the "Agreement"), as amended, creating the Northern California Public Agency (the "Agency"), a public entity separate and apart from the Members; and

WHEREAS, in accordance with the Agreement and the Joint Powers Act, the Agency proposes to acquire and construct or cause to be acquired and constructed and to operate or cause to be operated a project (the "Project") consisting of (i) two 55-megawatt geothermal generating units, and related facilities, including transmission facilities to the generating tie, in the State of California, and all rights, properties and improvements necessary therefor, including fuel and water facilities and resources, and capital improvements thereto that may be constructed from time to time, and interests in certain other property and rights relating thereto, including a headquarters facility for use by the Agency in connection with the Project; (ii) Project No. 2, subject to the rights of the

participants therein; and (iii) the refinancing of certain Development Fund expenditures; and

WHEREAS, the City has entered or will enter into the Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3 (the "Member Agreement") dated for convenience as of July 1, 1983, to purchase electric capacity and energy of the Project from the Agency; and

WHEREAS, this City Council finds and determines that it is desirable to amend the Member Agreement in accordance with the terms and provisions of Amendment Number One To Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3 dated as of August 1, 1983 (the "Amendment");

NOW, THEREFORE, the City Council of the City does ordain as follows:

1. The City Council hereby finds and determines that the terms and provisions of the Amendment in substantially the form submitted to this City Council be, and the same are hereby, approved.
2. The _____ and _____ are authorized to execute and deliver said Amendment by and on behalf of the City.
3. Pursuant to Section 54241 of the Government Code of the State of California, this Ordinance is subject to the provisions for referendum applicable to the City.

4. The City Clerk shall certify to the enactment of this Ordinance and shall cause this Ordinance to be published in accordance with Section 54242 of the Government Code of the State of California.

5. Thirty (30) days from and after its enactment, this Ordinance shall take effect and be in full force, in the manner provided by law.

ADOPTED by the City Council and signed by the _____ and attested by the _____ this ____ day of _____, 1983.

_____ of the City of

Attest:

_____ of the City of

(Seal)