

CITY COUNCIL MEETING
SEPTEMBER 21, 1983

ORDINANCES

NCPA GEOTHERMAL
PROJECT NO. 3
THIRD PHASE
AGREEMENT

Ordinance No. 1294 - An Ordinance 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 the Officers of the City of Lodi. NCPA Geothermal Project No. 3 Third Phase Agreement having been reintroduced at a regular meeting of the City Council held September 7, 1983 was brought up for passage on motion of Mayor Pro Tempore Snider, Reid second. Second reading of the Ordinance was omitted after reading by title, and the Ordinance was then adopted and ordered to print by the following vote:

ORD. NO. 1294
ADOPTED

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

CITY COUNCIL

EVELYN M. OLSON, Mayor
JOHN R. (Randy) SNIDER
Mayor Pro Tempore
ROBERT G. MURPHY
JAMES W. PINKERTON, Jr.
FRED M. REID

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
POST OFFICE BOX 320
LODI, CALIFORNIA 95241
(209) 334-5634

HENRY A. GLAVES, Jr.
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

September 28, 1938

TO: Gail Sipple
NCPA

FROM: Alice M. Reimche
City Clerk

SUBJECT: Geothermal Project No. 3 Member Agreement (Third Phase)
Supporting Ordinance and Amendment

Pursuant to your recent letter, enclosed herewith are the following documents pertaining to the above project:

1. A signed copy of the Subject Agreement
2. A signed copy of the Subject Amendment
3. A signed copy of the Ordinance (No. 1294)
4. Opinion of Counsel

We will forward to you, shortly, the proof of publication and a certified copy of the minutes approving the Agreement and Amendment.

Very truly yours,


Alice M. Reimche
City Clerk

AMR:jj
Enc.

CITY COUNCIL

EVELYN M. OLSON, Mayor
JOHN R. (Randy) SNIDER
Mayor Pro Tempore
ROBERT C. MURPHY
JAMES W. PINKERTON, Jr.
FRED M. REID

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City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

Northern California Power Agency
8421 Auburn Boulevard
Suite 160
Citrus Heights, California 95610

Dear Sirs:

I am acting as counsel to the City of Lodi (the "Project Participant"), under the Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3 dated as of July 1, 1983 (the "Agreement") among the Project Participant, the 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.

Based upon the foregoing and an examination of such other information, papers and documents as I deem advisable to enable me to render this opinion, including the Constitution and laws of the State of California together with the charter, other governing instruments, ordinances and public proceedings of the Project Participant, I am of the opinion that:

1. The Project Participant is a municipal corporation of the State of California, duly created, organized and existing under the laws of the State of California and duly qualified to furnish electric service within said State.

2. The Project Participant has authority and right to execute deliver and perform, pursuant to the terms of the Agreement, and the Project Participant has complied with the provisions of applicable law in all matters relating to such transactions.

3. The Agreement has been duly authorized, executed and delivered by the Project Participant, is in full force and effect as to the Project Participant in accordance with its terms assuming the other Project Participants

have complied with the requirements of Section 12(a) of such Agreement and, assuming that the Agency has all the requisite power and authority, and has taken all necessary action, to execute and deliver such Agreement, constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms.

4. Payments by the Project Participant under the Agreement will constitute an operating expense of the Project Participant and are to be made solely from the Revenues of its Electric System as provided in Section 5(c) of the Agreement.

5. No approval, consent or authorization of any governmental or public agency, authority or person is required for the execution and delivery by the Project Participant of the Agreement, or the performance by the Project Participant of its obligations thereunder.

6. The authorization, execution and delivery of the Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the Project Participant, any commitment, agreement or other instrument to which the Project Participant is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the Project Participant (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the Project Participant and its affairs.

7. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or, to my knowledge, threatened against or affecting the Project Participant or any entity affiliated with the Project Participant or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the powers of the Project Participant referred to in paragraph 2 above or the validity of the proceedings taken by the Project Participant in connection with the authorization, execution or delivery of the Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Agreement, or which, in any way, would adversely affect the validity or enforceability of the Agreement.

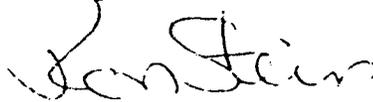
The opinion expressed in paragraph 3 above is qualified to the extent that the enforceability of the Agreement may be limited by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization, or other similar laws affecting creditors' rights

generally or as to the availability of any particular remedy.

This opinion is rendered only with respect to the laws of the State of California and the United States of America, and is addressed only to the Agency. No other person is entitled to rely on this opinion, nor may you rely on it in connection with the transactions other than those described herein.

(Note: Where it shall be necessary for the Project Participant to obtain the authorization or approval of a Federal, state or local regulatory authority relating to such Project Participant's performance under the Agreement, the form of opinions set forth in paragraphs 2, 5 and 6 hereof may be appropriately adjusted to reflect the necessity for such authorization or approval and paragraph 5 hereof shall be adjusted to include therein an exception thereto specifically describing the requisite authorization or approval and stating that it has been duly given or obtained and is in full force and effect.)

Very truly yours,



RONALD M. STEIN
City Attorney

RMS:vc

Draft of August 25, 1983

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 LONPOC
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 hereto 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 *William O'Sullivan* Mayor
And *Allen M. Rumsche* City Clerk

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 _____

Final Draft of July 28, 1983

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 LOMPOC
CITY OF PALO ALTO
CITY OF ROSEVILLE
CITY OF SANTA CLARA
CITY OF UKIAH
PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

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

This Agreement, dated as of July 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 Agreement.

WITNESSETH:

WHEREAS, NCPA has entered into the Steam Sales Agreement with Shell Oil Company (with its successors and assigns, the "Steam Supplier"), under which NCPA agreed to construct or cause to be constructed, one or, upon the conditions stated therein, two 55-megawatt geothermal generating units on a leasehold specified therein (the "East Block"); and

WHEREAS, pursuant to the Steam Sales Agreement and this Agreement, NCPA proposes to acquire and construct or cause to be acquired and constructed and to operate or cause to be operated the Project described herein; and

WHEREAS, NCPA and certain of its members have entered into a "Member Agreement (Second Phase) for Financing of Planning and Development Activities of the Shell East Block Geothermal Project" made as of June 1, 1981, as amended by Amendment No. One thereto, dated as of June 1, 1981 and Amendment No. Two thereto, dated as of January 13, 1983 providing for the financing of certain activities in connection with the East Block portion of the Project (said Agreement, as it may be amended and supplemented from time to time, being hereinafter called the "Second Phase Agreement"); and

WHEREAS, this Agreement is the "Final Power Contract" contemplated in the Second Phase Agreement; and

WHEREAS, NCPA and its members have entered into one of three Member Service Agreements, effective February 12, 1981 (said Agreements, as they may be amended and supplemented from time to time, being hereinafter called the "Member Service Agreement"), which provide for services which NCPA shall perform for its members, among other things, and for the provisions to be contained in second and third phase agreements, such as the Second Phase Agreement, and this Agreement; and

WHEREAS, all participants in NCPA's Geothermal Generating Project No. 2 ("Project No. 2") are Project Participants (as hereinafter defined), the development of the Project will benefit Project No. 2 by, among other things, satisfying certain obligations

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of NCPA under the Steam Sales Agreement, and the actions authorized herein to be taken by NCPA with respect to Project No. 2 will benefit the Project; and

WHEREAS, NCPA and the Project Participants wish to enter into this Agreement to provide further 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 for the Bonds to be issued to finance the Project;

NOW THEREFORE, the parties hereto do agree as follows:

1. Definitions. The following terms shall, for all purposes of this Agreement, have the following meanings:

(a) "Bonds" means bonds, notes or other evidences of indebtedness of NCPA (or of a nonprofit corporation on behalf of NCPA) issued to finance or refinance the Project, and includes additional Bonds to complete the Project.

(b) "Bond Resolution" means the resolution or resolutions providing for the issuance of Bonds and the terms thereof.

(c) "Development Fund" means the fund authorized by the "NCPA Member Agreement for Participation in Electric Power Development Fund," dated July 1, 1975, as amended.

(d) "Electric System" means all properties and assets, real and personal, tangible and intangible, of the Project Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; provided, however, that to the extent the Project Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described electric purposes, only the Project Participant's ownership interest in such asset or property or only the part of the asset or property so used for electric purposes shall be considered to be part of its Electric System.

(e) "Project" means a project consisting of (i) two 55-megawatt geothermal generating units, on the East Block, 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 NCPA in connection with the Project; provided that inclusion of such headquarters facility in this definition of "Project" shall only be effective upon the receipt, prior to the first issuance of Bonds, of either (a) a 100% vote approving such inclusion of all Project Participants, taken at a meeting in accordance with

Section 11 hereof, (b) written approval of such inclusion from the representative of each Project Participant on the Commission of NCPA; (ii) Project No. 2, subject to the rights of the participants therein; and (iii) such refinancing of Development Fund expenditures as shall, in the discretion of the Commission of NCPA, be included in any issue of Bonds.

(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 Appendix A shall be amended from time to time in accordance with Section 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 Appendix A shall be amended from time to time in accordance with Section 13 hereof.

(g) "Project No. 2 Member Agreement" means the "Member Agreement for Construction, Operation and Financing of NCPA Geothermal Generating Unit No. 2 Project", dated as of June 15, 1977, as amended and supplemented.

(h) "Project No. 2 Steam Sales Agreement" means the Geothermal Steam Sales Agreement between NCPA and the Steam Supplier dated June 27, 1977, as amended and supplemented.

(i) "Project Participants" means those entities listed in Appendix A hereto and executing this Agreement, together in each case with their respective successors or assigns.

(j) "Refunding Date" means the date of the refinancing with Bonds of (i) the outstanding Public Power Revenue Bonds, 1981 Series A, dated July 1, 1981, and the outstanding Public Power Revenue Bonds, 1982 Series A, dated July 1, 1982, (ii) the outstanding loan of NCPA pursuant to a Loan Agreement between NCPA and Bank of Montreal (California), dated October 2, 1980, and (iii) certain Development Fund expenditures.

(k) "Revenues" means all income, rents, rates, fees, charges, and other moneys derived by the Project Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing, and supplying of the electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and (iii) the proceeds derived by the Project Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System as permitted hereby, but the

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term "Revenues" shall not include (y) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Project Participant, or (z) contributions from customers for the payment of costs of construction of facilities to serve them.

(l) "Steam Sales Agreement" means the "NCPA East Block Steam Sales Agreement" with the Steam Supplier, dated September 15, 1980, as amended and supplemented.

(m) "Trustee" means the entity or entities designated by NCPA pursuant to any Bond Resolution, to administer any funds or accounts required by such Bond Resolution or otherwise.

2. Purpose. The purpose of this Agreement is to sell capacity and energy of the Project to the Project Participants; to provide the terms and conditions of such sale and to provide for the financing of the Project.

3. Construction and Operation. NCPA will use its best efforts to cause or accomplish the construction, operation and financing of the Project, the obtaining of all necessary authority and rights, and the performance of all things necessary and convenient therefor. Each Project Participant will cooperate with NCPA to that end, and will give any and all clarifying assurances by supplemental agreements that may be reasonably necessary in the opinion of NCPA's legal counsel to make the obligations herein more specific and to satisfy legal requirements and provide security for the Bonds.

NCPA may pledge and assign to any Trustee for any Bonds, all or any portion of the payments received hereunder from Project Participants, and upon notice from NCPA, each Project Participant shall make payments due by it hereunder directly to any Trustee for the Bonds. Such pledge and assignment by NCPA shall be made effective for such time as NCPA shall determine and provide.

4. Sale and Delivery of Capacity and Energy from the Project. (a) Pursuant to the terms of this Agreement NCPA shall provide to each Project Participant, and each Project Participant shall take, or cause to be taken, such Project Participant's Project Entitlement Percentage of the capacity and energy of the Project; provided, however, that NCPA shall first provide to each project participant for Project No. 2, and each such project participant shall take, or cause to be taken, such project participant's Project No. 2 Entitlement Percentage of the capacity and energy of Project No. 2, in accordance with the terms of the Project No. 2 Member Agreement.

(b) NCPA will remain available to do all things necessary and possible to deliver or cause to be delivered to or for the Project Participants, in accordance with their respective Project Entitlement Percentages, subject to the terms of the Project No. 2 Member Agreement, the capacity and energy of the Project. Such delivery shall be at points mutually agreed upon by NCPA and each

Project Participants. Such agreement shall not be unreasonably withheld by either NCPA or a Project Participant. NCPA will remain available to make or cause to be made all necessary and possible arrangements for transmission of such capacity and energy to such points over the lines of NCPA or others, and for additional capacity and energy required from others as reserves against planned or emergency service interruptions with respect to the Project. Wheeling or delivery services by NCPA with related energy sales to the Project Participants shall be as provided in service schedules as provided in Article III of the Member Service Agreement.

5. Rates and Charges. (a) Commencing on the Refunding Date, NCPA shall fix charges to the Project Participants under this Agreement to produce revenues to NCPA from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service on the Bonds, reserves for the payment of debt service on the Bonds and other payments required under the Bond Resolution other than payments described in (ii) and (iv) below, (ii) all other payments provided to be made by NCPA under the Steam Sales Agreement and the Project No. 2 Steam Sales Agreement, (iii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs other than costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) hereof, and (iv) costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) of this Agreement. NCPA shall fix charges to the Project Participants to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on East Block Entitlement Percentages applied to such costs allocable to the East Block portion of the Project and Project No. 2 Entitlement Percentages applied to such costs allocable to the Project No. 2 portion of the Project; and to meet the costs described in (iii) above based on the anticipated energy sales of the the East Block portion of the Project and, on the anticipated energy sales of the Project No. 2 portion of the Project, respectively. If NCPA delivers Project capacity and energy to or for any Project Participant pursuant to Section 4(b) hereof, NCPA shall fix charges to each such Project Participant so as to pay the costs of such delivery without liability under this Section 5(a) of any Project Participant for whom Project capacity and energy is not so delivered by NCPA. The obligations of the respective Project Participants that are participants in Project No. 2 under this Section 5(a) shall be deemed to be satisfied to the extent such obligations are satisfied pursuant to the Project No. 2 Member Agreement.

(b) To the extent that the funds provided under Section 5(a) of this Agreement are at any time not sufficient for such purposes, each Project Participant shall pay to NCPA an amount equal to such Project Participant's Project Entitlement Percentage of the total cost to pay all amounts of principal and interest on the Bonds,

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reserves for the payment of debt service and other payments required under the Bond Resolution and all other payments required to be made by NCPA under the Steam Sales Agreement. The obligation of this Section 5(b) is incurred by each Project Participant for the benefit of future holders of Bonds, and shall commence and continue to exist and be honored by Project Participants whether or not capacity or energy is furnished to them from the Project at all times or at all (which provision may be characterized as an obligation to pay all costs on a take-or-pay basis whether or not such Project capacity or energy is delivered or provided).

(c) Notwithstanding that NCPA may utilize services under the PG and E Interconnection Agreement among Pacific Gas and Electric Company, NCPA and certain of the Project Participants (the "PG and E Interconnection Agreement") in complying with Section 4(b) hereof, any payments required to be made by, or costs incurred by NCPA or the Project Participants pursuant to Section 9.5 of the Interconnection Agreement shall not be made under this Agreement.

(d) Each Project Participant shall make payments under this Agreement solely from the Revenues of, and as an operating expense of, its Electric System. Nothing herein shall be construed as prohibiting any Project Participant from using any other funds and revenues for purposes of satisfying any provisions of this Agreement.

(e) Each Project Participant shall make payments under this Agreement whether or not the Project is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output or the capacity and energy contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by NCPA or any Project Participant under this Agreement or any other agreement; provided, however, that the obligations of the respective Project Participants that are participants in Project No. 2 under Section 5(a) hereof shall be deemed to be satisfied to the extent such obligations are satisfied pursuant to the Project No. 2 Member Agreement.

(f) No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement and for the maintenance and operation of its respective properties not included as part of the Project. The obligation of each Project Participant to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

(g) Each Project Participant covenants and agrees to establish and collect fees and charges for electric capacity and energy furnished through facilities of its Electric System sufficient

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to provide Revenues adequate to meet its obligations under this Agreement and to pay any and all other amounts payable from or constituting a charge or lien upon any or all such Revenues.

(h) Each Project Participant covenants and agrees that it shall, at all times, operate the properties of its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and shall maintain its Electric System in good repair, working order and condition.

6. Annual Budget and Billing Statement. Prior to the beginning of each NCPA fiscal year, the Commission of NCPA will adopt an annual budget for such fiscal year for costs and expenses relating to the Project and shall promptly give notice to each Project Participant of its projected share of such costs and expenses.

A billing statement prepared by NCPA based on estimates will be sent to each Project Participant not later than the fifteenth (15th) day of each calendar month showing the amount payable by such Project Participant of costs payable under Section 5(a) hereof for the second succeeding calendar month, any amount payable by such Project Participant as its Project Entitlement Percentage of costs payable under Section 5(b) hereof, and the amount of any credits or debits as a result of any appropriate adjustments. Amounts shown on the billing statement are due and payable thirty (30) days after the date of the billing statement. Any amount due and not paid by the Project Participant within thirty (30) days after the date of the billing statement shall bear interest from the due date until paid at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget.

On or before the day five (5) calendar months after the end of each NCPA fiscal year, NCPA shall submit to each Project Participant a statement of the aggregate monthly costs for such fiscal year. If the actual aggregate monthly costs and the Project Participant's share thereof pursuant to this Agreement, and other amounts payable for any fiscal year, exceed the billings to the Project Participant, the deficiency shall be added to the Project Participant's immediately succeeding billing statement. If the actual aggregate monthly costs and the Project Participant's share thereof pursuant to this Agreement, and other amounts payable for any fiscal year, are less than the billings to the Project Participant, such excess shall be credited to the Project Participant's billing statements for such period (not to exceed the immediately succeeding six months) and in such amounts as shall be determined by NCPA.

If a Project Participant questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within thirty (30) days of the receipt of such billing statement request an explanation from NCPA. If the bill is determined to be incorrect, NCPA will issue a corrected bill and

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refund any amount which may be due the Project Participant which refund shall bear interest from the date NCPA received payment until the date of the refund at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget. If NCPA and the Project Participant fail to agree on the correctness of a bill within thirty (30) days after the Project Participant has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 et seq. of the Code of Civil Procedure.

7. Obligation in the Event of Default. (a) Upon failure of any Project Participant to make any payment in full when due under this Agreement, NCPA shall make written demand upon such Project Participant, and if said failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each other Project Participant by NCPA.

(b) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, NCPA shall use its best efforts to sell and transfer for the defaulting Project Participant's account all or a portion of such Project Participant's Project Entitlement Percentage of Project capacity and energy for all or a portion of the remainder of the term of this Agreement. NCPA shall not sell such capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code. Notwithstanding that all or any portion of the Project Participant's Project Entitlement Percentage of Project capacity and energy is so sold or transferred, the Project Participant shall remain liable to NCPA to pay the full amount of its Project Entitlement Percentage of monthly costs as if such sale or transfer had not been made, except that such liability shall be discharged to the extent that NCPA shall receive payment from the purchaser or transferee thereof.

(c) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement and causes NCPA to be in default under the Steam Sales Agreement, the Project No. 2 Steam Sales Agreement or any Bond Resolution, NCPA may (in addition to the remedy provided by subsection (b) of this Section 7) terminate the provisions of this Agreement insofar as the same entitle the defaulting Project Participant to its Project Entitlement Percentage of Project capacity and energy. Irrespective of such termination, the obligations of the Project Participant under this Agreement shall continue in full force and effect.

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(d) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, and except as sales or transfers are made pursuant to subsection (b) of this Section 7, (i) the Project Entitlement Percentage of each nondefaulting Project Participant shall be automatically increased for the remaining term of this Agreement pro rata with those of the other nondefaulting Project Participants and (ii) the defaulting Project Participant's Project Entitlement Percentage shall (but only for purposes of computing the respective Project Entitlement Percentages of the nondefaulting Project Participants) be reduced correspondingly; provided, however, that the sum of such increases for any nondefaulting Project Participant shall not exceed, without written consent of such nondefaulting Project Participant, an accumulated maximum of 25% of the nondefaulting Project Participant's Project Entitlement Percentage, all as initially set forth in Appendix A.

(e) If a Project Participant shall fail or refuse to pay any amounts due to NCPA, the fact that other Project Participants have increased their obligation to NCPA pursuant to this Section 7 shall not relieve the defaulting Project Participant of its liability under this Agreement, and any Project Participant increasing such obligation shall have a right of recovery from the defaulting Project Participant to the extent of such respective increase in obligation caused by the defaulting Project Participant.

(f) Any Trustee for any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement shall have the right, as a third party beneficiary, to initiate and maintain suit to enforce this Agreement to the extent provided in the related Bond Resolution.

8. **Transfers, Sales and Assignments of Capacity.** Each Project Participant has full and unfettered rights to make transfers, sales, assignments and exchanges (collectively "transfers") of capacity, energy, and rights thereto except as expressly provided otherwise in this Agreement.

(a) No Project Participant shall transfer ownership of all or substantially all of its Electric System to another entity until it has first complied with the provisions of this subsection (a). A consolidation with another governmental entity or change in governmental form is not deemed a transfer of ownership.

(1) Such disposition or transfer shall be under terms and conditions that provide assurance that the obligations of the transferring Project Participant under this Agreement, and that NCPA's obligations under this Agreement, the Steam Sales Agreement, and any Bond Resolution, and the Project No. 2 Steam Sales Agreement, and under other agreements made or to be made by NCPA to carry out the Project, will be promptly and adequately

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met. NCPA may require that sufficient moneys of the transferring Project Participant to discharge such obligations be irrevocably set aside and maintained in a trust account, as a condition to the transfer of the Electric System, if no other adequate assurance is available.

(2) The transferring Project Participant shall give ninety (90) days' advance written notice to NCPA of any proposed transfer pursuant to this subsection (a). Appendix A to this Agreement shall be amended as appropriate to reflect any transaction pursuant to this subsection (a).

(b) Notwithstanding any other provision of this Agreement, no Project Participant shall transfer, assign, sell or exchange any Project capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

9. Surplus Capacity and Energy. When a Project Participant has surplus capacity and/or energy from the Project, NCPA shall, if requested by such Project Participant to do so, sell such surplus capacity and/or energy on behalf of such Project Participant in the following manner:

(a) NCPA shall use its best efforts to sell such surplus capacity and/or energy at a price at least equal to the Project Participant's cost therefor.

(b) Other Project Participants shall have a right of first refusal, and other NCPA members shall have the second right at the sales prices set forth in subsections (c) and (d) of this Section 9.

(c) If NCPA can purchase equivalent capacity and/or energy from other sources for less than the Project Participant's cost for surplus capacity and/or energy from the Project, as the case may be, the sales price of such capacity and/or energy to another Project Participant or NCPA member shall be equal to the cost of purchasing the capacity and/or energy from such other source.

(d) If the alternative cost of purchasing capacity and/or energy for other Project Participants or members of NCPA is more than the Project Participant's cost of surplus capacity and/or energy from the Project, then the sales price shall be the Project Participant's cost plus one-half the difference between the Project Participant's cost from the Project and the cost of capacity and/or energy from an alternative source.

(e) NCPA shall not sell such surplus capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

10. Insurance and Indemnification. NCPA shall obtain or cause to be obtained insurance for the Project covering such risks (including earthquakes), in such amounts and with such deductibles as shall be determined by NCPA. NCPA shall indemnify and hold harmless each Project Participant from any liability for personal injury or property damage resulting from any accident or occurrence arising out of or in any way related to the construction or operation of the Project, provided, however, that such liability of NCPA shall be limited to the extent the proceeds of insurance and other moneys available to NCPA hereunder are available therefore.

11. Member Direction and Review. NCPA shall comply with all lawful directions of the Project Participants with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by law. Actions of Project Participants, including giving such directions to NCPA, will be taken only at meetings of authorized representatives of Project Participants duly called and held pursuant to the Ralph M. Brown Act or other laws applicable to such meetings, in effect from time to time.

(a) A quorum of the Commission of NCPA for purposes of acting upon matters related to the Project shall consist of those Commissioners (including for all purposes of this Section 11, their designated alternates), representing a numerical majority of the Project Participants, or, in the absence of such, representing Project Participants having a combined Project Entitlement Percentage of at least a majority in interest at such time.

(b) Special meetings of the Commission to act only on matters relating to the Project may be called by a majority of the Commissioners of Project Participants upon notice as required by the Ralph M. Brown Act or other laws applicable to such meetings, in effect from time to time.

(c) At regular or special meetings of the Commission, voting on matters relating to the Project shall be by Project Entitlement Percentage, and the affirmative vote of a majority in interest at such time shall be required to take action, unless the Project Participants agree at such meetings that voting will be on a one member one vote basis, with a majority vote of those present required for action.

(d) Notwithstanding subsection (c) of this Section 11, upon demand of any Commissioner of any Project Participant, at any meeting of the Commission other than a special meeting referred to in subsection (b) of this Section 11, the vote on any issue relating to the Project shall be by Project Entitlement Percentage at such time and 65% or greater affirmative vote shall be required to take action.

(e) Any Project Participant may veto a discretionary action of the Project Participants relating to the Project that was not taken by a 65% or greater Project Entitlement Percentage vote within 10 days following mailing of notice of such Commissioners' action, by giving written notice of veto to NCPA, unless at a meeting of Commissioners of Project Participants called for the purpose of considering the veto and held within 30 days after such veto notice, the holders of 65% or greater of the Project Entitlement Percentage shall vote to override the veto.

(f) The sixty-five percent of the Project Entitlement Percentage specified in this Section 11 shall be reduced by the amount that the Project Entitlement Percentage of any Project Participant shall exceed 35%, but such 65% shall not be reduced below a majority in interest.

12. Term. (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.

(b) Notwithstanding the delay in the effective date of this Agreement until Project Entitlement Percentages in the aggregate equal 100% and the other provisions of Section 12(a) hereof have been complied with, it is agreed by all signatories hereto that in consideration for NCPA's signature hereto and for its commitment to use its best efforts to obtain the commitment for Project Entitlement Percentages in the aggregate equal to 100%, each Project Participant upon its execution and delivery of this Agreement to NCPA along with required opinion and any required evidence of compliance as required by Section 12(a) hereof shall be immediately bound not to withdraw its respective offer herein made to enter into this Agreement as executed and/or supplemented or to decrease or terminate its Project Entitlement Percentage. Such a decrease or termination by a Project Participant may be made only if this Agreement has not taken effect

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before January 1, 1984 and only by giving written notice thereof to NCPA between January 1 and January 15, 1984.

(c) Notwithstanding the foregoing, each Project Participant shall be entitled to decrease or terminate its Project Entitlement Percentage upon giving written notice thereof to NCPA within fifteen (15) days after January 1, 1986, if by January 1, 1986 NCPA shall not have issued any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement.

(d) The term of this Agreement shall continue until the later of (i) the expiration of the useful life of the Project, or (ii) the date on which all Bonds issued have been retired, or full provision made for their retirement, including interest until their retirement date; provided, however, that in no event shall the term of this Agreement extend beyond the date of the termination of the existence of NCPA. In the event of the termination of the existence of NCPA it is the intent of the Project Participants that the Agreement be construed as an agreement among the Project Participants.

13. Termination and Amendments. This Agreement shall not be subject to termination by any party under any circumstances, whether based upon the default of any other party under this Agreement, or any other instrument, or otherwise, except as specifically provided herein.

Except as otherwise provided in this Agreement, so long as any Bonds are outstanding and unpaid and funds are not set aside for the payment or retirement thereof in accordance with the applicable Bond Resolution, this Agreement shall not be amended, modified or otherwise changed or rescinded by agreement of the parties without the consent of each Trustee for Bonds whose consent is required under the applicable Bond Resolution.

14. Member Service Agreement. This Agreement is a service schedule and a third phase agreement attached to and incorporated into the Member Service Agreement. This Agreement shall be construed as the more specific terms governing the general relationship between the parties set out in the Member Service Agreement in connection with the Project.

15. Second Phase Agreement. The Second Phase Agreement is superseded by this Agreement upon the issuance of any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement and upon provision for payment of any notes or other evidences of indebtedness of NCPA secured by payments made by the Project Participants under the Second Phase Agreement, except that section 4 thereof shall remain in effect as provided by section 5 of the Second Phase Agreement unless changed by

formal action of all of the Project Participants. Said section 4 is as follows:

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"Section 4. Conditional Repayment to Members. All payments and advances made heretofore, including Development Fund Advances, and those hereafter made pursuant to Section 1, excluding interest paid on delinquent payments, shall be repaid to each of the entities making such payments and advances pursuant to this Agreement out of the proceeds of the first issuance of the Project bonds or as and when there are sufficient funds available from the partial sale of Bonds. Such reimbursements shall be made within 60 days following the sale of any Project bonds and shall include interest computed monthly at a rate equivalent to the prime rate of the Bank of America NT&SA at the end of such month. Any interest due under the third paragraph of section 1 of this Agreement and unpaid shall be deducted from the repayment. If NCPA is not successful in financing the Project, there shall be no reimbursement except out of unused Project funds along with all other receipts to which NCPA is entitled in connection with the Project."

16. Sharing of Resources, Facilities and Costs.

(a) NCPA may, in accordance with Section 11 hereof, enter into agreements for the transfer or sharing of resources, facilities and costs between and among the Project and other entities and projects (including without limitation Project No. 2), which agreements may provide, among other things, for the transfer or sharing of steam, transmission facilities and rights to use the same, maintenance and repair facilities, generating equipment, spare parts, staff, insurance, taxes and payment in lieu thereof, and delay payments under the Steam Sales Agreement and the Project No. 2 Steam Sales Agreement and for the integrated operation of the Project and Project No. 2 by NCPA.

(b) NCPA may, in accordance with the Project No. 2 Member Agreement and upon compliance with the requirements of any trust indenture or other instrument applicable thereto, including without limitation any consents required thereby, enter into agreements for (i) the transfer or sharing of resources, facilities and costs between and among Project No. 2 and other entities and projects (including without limitation the Project), which agreements may provide, among other things, for the transfer or sharing of steam, transmission facilities and rights to use the same, maintenance and repair facilities, generating equipment, spare parts, staff, insurance, taxes and payment in lieu thereof, and delay payments under the Project No. 2 Steam Sales Agreement, and for the integrated operation of the Project and Project No. 2 by NCPA, and (ii) the modification or refinancing of all or any portion of the obligations incurred by NCPA or a nonprofit corporation for Project No. 2, including without

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limitation the refinancing thereof with Bonds and the modification or refinancing of the loan guaranteed by the United States Department of Energy.

(c) This Agreement shall constitute approval by the participants in Project No. 2 of (i) the refinancing of (a) the outstanding Public Power Revenue Bonds, 1981 Series A, dated July 1, 1981, and the outstanding Public Power Revenue Bonds, 1982 Series A, dated July 1, 1982, (b) the outstanding loan of NCPA pursuant to a Loan Agreement between NCPA and Bank of Montreal (California), dated October 2, 1980, and (c) certain Development Fund expenditures, with Bonds so long as, in the judgment of the Commissioners of NCPA representing the participants in Project No. 2, the debt service secured or to be secured by the Project No. 2 Member Agreement is not increased thereby and the other terms of such refinancing are not materially adverse to the participants in Project No. 2; and (ii) equal sharing between Project No. 2 and the East Block portion of the Project of steam from the Project No. 2 area and the East Block area.

(d) The Project No. 2 Member Agreement shall be construed so as to be compatible with this Agreement to accomplish the purposes hereof. Any financing or refinancing of Project No. 2 shall be accomplished by the issuance of Bonds secured by this Agreement unless the Project Participants refuse to authorize such financing or refinancing as may be requested by the participants in Project No. 2. The respective obligations of NCPA under Section 4 hereof and of the Project Participants under Section 5 hereof shall be deemed satisfied to the extent of performance thereof pursuant to the Project No. 2 Member Agreement, and (iv) subject to the specific terms of the agreement or agreements contemplated by subsections (a) and (b) of this Section 16, Project No. 2 and the East Block portion of the Project shall be conducted for the mutual benefit of all participants therein.

(e) The Project No. 2 Member Agreement shall be amended by the provisions hereof as follows:

(i) Section 6 of the Project No. 2 Member Agreement shall be superseded by Sections 8, and 9 hereof,

(ii) subsection (a) of Section 5 of the Project No. 2 Member Agreement shall be superseded by the following:

"(a) Commencing with the commercial operation of the Project, NCPA shall fix charges to the Purchasing Participating Member under this Agreement to produce revenues to NCPA from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service

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on the Bonds, reserves for the payment of debt service on the Bonds and other payments required under the Bond Indenture or other agreement or instrument providing for the issuance and payment of Bonds other than payments described in (iii) and (iv) below, (ii) all other payments provided to be made by NCPA under the Shell Agreement, (iii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs other than costs and expenses pursuant to Section 4 hereof, and (iv) costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4 hereof. NCPA shall fix charges to the Purchasing Participating Members to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on Purchasing Participating Member's Purchasing Participation Percentage and to meet the costs described in (iii) above based on the anticipated energy sales of the Project. If NCPA delivers Project capacity and energy to or for any Purchasing Participating Member pursuant to Section 4 of this Agreement, NCPA shall fix charges to each such Purchasing Participating Member so as to pay the costs of such delivery without liability to any Purchasing Participating Member for whom Project capacity and energy is not so delivered by NCPA.

Any payments required to be made, or costs incurred, by NCPA or the Project Participants pursuant to the PG and E Interconnection Agreement shall not be made or incurred under this Agreement."

(iii) Section 3 of the Project No. 2 Member Agreement shall be supplemented by the following:

"NCPA may pledge and assign to any Trustee for any Bonds all or any portion of the payments received hereunder from Purchasing Participating Members and upon notice from NCPA, each Purchasing Participating Member shall make payments due by it hereunder directly to any Trustee for the Bonds. Such pledge and assignment by NCPA shall be made effective for such time as NCPA shall determine and provide. For the purposes of this Agreement the term "Bonds" shall include any bonds, notes or other evidences of indebtedness issued by NCPA to refinance the cost of the Project."

(iv) Section 5C of the Project No. 2 Member Agreement shall be deleted.

17. Miscellaneous. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

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

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

NORTHERN CALIFORNIA POWER AGENCY
By _____
And _____

CITY OF PALO ALTO
By _____
And _____

CITY OF ALAMEDA
By _____
And _____

CITY OF ROSEVILLE
By _____
And _____

CITY OF BIGGS
By _____
And _____

CITY OF SANTA CLARA
By _____
And _____

CITY OF HEALDSBURG
By _____
And _____

CITY OF GRIDLEY
By _____
And _____

CITY OF Lodi
By Edwin O'Sullivan
And Miss M. Bernick City Clerk

UKIAH
By _____
And _____

CITY OF LOMPOC
By _____
And _____

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE
By _____
And _____

SCHEDULE OF PROJECT PARTICIPANTS
AND PROJECT ENTITLEMENT PERCENTAGES

<u>Project Participant</u>	<u>Project No. 2 Entitlement Percentage</u>	<u>East Block Entitlement Percentage</u>	<u>Project Entitlement Percentage</u>
City of Alameda	14.994%	18.771%	16.8825%
City of Biggs	0.000	.454	.227
City of Gridley	.334	.456	.395
City of Healdsburg	3.252	4.096	3.674
City of Lodi	14.560	9.158	11.859
City of Lompoc	3.266	4.096	3.681
City of Palo Alto	0.000	9.158	4.579
City of Roseville	3.252	12.514	7.883
City of Santa Clara	54.651	34.13	44.3905
City of Ukiah	4.972	6.257	5.6145
Plumas-Sierra Rural Electric Cooperative	<u>.719</u>	<u>.91</u>	<u>.8145</u>
Total	100.000%	100.000%	100.000%

FORM OF OPINION OF COUNSEL

Northern California Power Agency
8421 Auburn Boulevard
Suite 160
Citrus Heights, California 95610

Dear Sirs:

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 _____, 1982 (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.

Based upon the foregoing and an examination of such other information, papers and documents as I deem necessary or advisable to enable me to render this opinion, including the Constitution and laws of the State of California together with the [charter], other governing instruments, ordinances and public proceedings of the Project Participant, I am of the opinion that:

1. The Project Participant is [state form of organization] _____, duly created, organized and existing under the laws of the State of California and duly qualified to furnish electric service within said State.

2. The Project Participant has authority and right to execute, deliver and perform, pursuant to the terms of, the Agreement, and the Project Participant has complied with the provisions of applicable law in all matters relating to such transactions.

3. The Agreement has been duly authorized, executed and delivered by the Project Participant, is in full force and effect as to the Project Participant in accordance with

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its terms assuming the other Project Participants have complied with the requirements of Section 12(a) of such Agreement and, assuming that the Agency has all the requisite power and authority, and has taken all necessary action, to execute and deliver such Agreement, constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms.

4. Payments by the Project Participant under the Agreement will constitute an operating expense of the Project Participant and are to be made solely from the Revenues of its Electric System as provided in Section 5(c) of the Agreement.

5. No approval, consent or authorization of any governmental or public agency, authority or person is required for the execution and delivery by the Project Participant of the Agreement, or the performance by the Project Participant of its obligations thereunder.

6. The authorization, execution and delivery of the Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the Project Participant, any commitment, agreement or other instrument to which the Project Participant is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the Project Participant (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the Project Participant and its affairs.

7. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or, to my knowledge, threatened against or affecting the Project Participant or any entity affiliated with the Project Participant or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the powers of the Project Participant referred to in paragraph 2 above or the validity of the proceedings taken by the Project Participant in connection with the authorization, execution or delivery of the Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Agreement, or which, in any way, would adversely affect the validity or enforceability of the Agreement.

The opinion expressed in paragraph 3 above is qualified to the extent that the enforceability of the Agreement may be limited by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization, or other similar laws affecting auditors' rights generally or as to the availability of any particular remedy.

This opinion is rendered only with respect to the laws of the State of California and the United States of America, and is addressed only to the Agency. No other person is entitled to rely on this opinion, nor may you rely on it in connection with any transactions other than those described herein.

[Note: Where it shall be necessary for the Project Participant to obtain the authorization or approval of a Federal, state or local regulatory authority relating to such Project Participant's performance under the Agreement, the form of opinions set forth in paragraphs 2, 5 and 6 hereof may be appropriately adjusted to reflect the necessity for such authorization or approval and paragraph 5 hereof shall be adjusted to include therein an exception thereto specifically describing the requisite authorization or approval and stating that it has been duly given or obtained and is in full force and effect.]

Very truly yours,

Northern California Power Agency

8421 Auburn Boulevard, Suite 160 Citrus Heights, California 95610

ROBERT E. GRIMSHAW

General Manager

(916) 722-7815

August 2, 1983

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ALICE M. REIMCHE
CITY CLERK
CITY OF LODI

TO: Geothermal Project No. 3 Participants
Transmission Project No. 1 Participants

FROM: Gail Sipple

SUBJECT: Third Phase Agreements

Pursuant to the Commission meeting of July 28, 1983, enclosed are two Third Phase Agreements and supporting documents to be presented to your governing body for approval. (Santa Clara will only receive documents relating to Geothermal Project No. 3).

These documents are:

1. Geothermal Project No. 3 Member Agreement (Third Phase)
. Supporting Ordinance
2. Transmission Project No. 1 Member Agreement (Third Phase)
. Supporting Ordinance

As you will recall, Mr. Grimshaw discussed the urgency in approving these agreements and, therefore, it is requested that they be approved no later than September 2, 1983. Upon approval, please return to me the following:

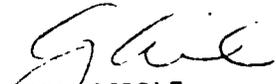
1. A signed copy of each agreement
2. A legal opinion in the form of Appendix B (attached to agreements)
3. A signed copy of each ordinance
4. Proof of publication of each ordinance
5. A certified copy of the minutes approving each agreement

By copy of this letter I am also forwarding these documents to your City Clerk for processing.

Page Two

If you have any questions, please contact me or Mike De Angelis of Mudge Rose
at (212) 701-1256.

Yours truly,


GAIL SIPPLE
Executive Assistant

Enc.

MEMORANDUM

FOR

To the Project Participants

August 1, 1983

Re: Publication requirements for the ordinances approving the Transmission Member Agreement and the Geothermal Member Agreement

The ordinance approving the Transmission Member Agreement and the ordinance approving the Geothermal Member Agreement (the "Agreements") should be published in the same manner as all other ordinances of the City are published.

If the City has no procedure for the publication of ordinances then under Section 54242 of the Cal. Gov't Code the ordinances approving the Agreements must each be published once in a newspaper of general circulation in the city within 15 days after their adoption. A "newspaper of general circulation" is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers and has been established, printed and published at regular intervals in the City for at least one year preceding the date of publication of the ordinances.

All publications of the ordinances must be set in nonpareil type and must be preceded by a notice of adoption worded in black-face, nonpareil type that generally describes the terms or character of the ordinances approving the Agreements.

RESOLUTION NO. 83- 56
 NORTHERN CALIFORNIA POWER AGENCY

Pr. APPROVE
to California
Government
of New Project

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BE IT RESOLVED BY THE COMMISSION OF THE NORTHERN CALIFORNIA POWER AGENCY,
 as follows:

Section 1. The form of "Agreement for Construction, Operation and Financing of Geothermal Generating Project Number Three", designated July 28, 1983, a Third Phase Agreement under the Member Services Agreements, is hereby approved; and the Assistant Secretary is directed to send copies of the same to the Project Participants named therein, and request that it be approved and executed by ordinance in accordance with the terms of Section 13 thereof.

Section 2. The General Manager is authorized to execute said agreement on behalf of this Agency.

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
City of - Alameda	<u>Agree</u>	_____	_____
Biggs	_____	_____	<u>X</u>
Gridley	<u>Agree</u>	_____	_____
Healdsburg	_____	_____	<u>X</u>
Lodi	<u>Agree</u>	_____	_____
Lompoc	<u>Agree</u>	_____	_____
Palo Alto	<u>Agree</u>	_____	_____
Redding	_____	<u>X</u>	_____
Roseville	<u>Agree</u>	_____	_____
Santa Clara	<u>Agree</u>	_____	_____
Ukiah	<u>Agree</u>	_____	_____
Plumas-Sierra	<u>Agree</u>	_____	_____

ADOPTED AND APPROVED this 28th day of July, 1983.

ORDINANCE NO. _____

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____, CALIFORNIA, APPROVING THE TERMS AND CONDITIONS OF A MEMBER AGREEMENT BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND CERTAIN PARTICIPATING MEMBERS AND AUTHORIZING THE EXECUTION OF AN DELIVERY OF SAID AGREEMENT 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") creating the Northern California Power Agency (the "Agency"), a public entity separate and apart from the Members; and

WHEREAS, in accordance with the Agreement and the Joint Powers Agreement 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 need for an economical, reliable source of electric power and energy to meet the demands of the customers of its electric system, and, as such

WHEREAS, this City Council finds and determines that it is in the best interests of the customers of the electric system of the City for the City to enter into the Agreement for construction, operation and financing of Geothermal Generating Project Number 3 (the "Member Agreement") in substantially the form submitted to this City Council and dated for convenience as of July 1, 1983;

WHEREAS, this City Council finds and determines that it is in the best interests of the customers of the electric system of the City for the City to purchase electric capacity and energy of the Project from the Agency;

WHEREAS, payments by the City pursuant to the Member Agreement will be used in part by the Agency for payment of principal

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of and interest on its bonds, notes or other evidences of indebtedness issued in connection with the construction, operation and financing of the Project;

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

1. The City Council hereby finds and determines that the terms and conditions of the Member Agreement (including the East Block Entitlement Percentage and the Project Entitlement Percentage of the City set forth in Appendix A thereto) in substantially the form submitted to this City Council be, and the same are hereby, approved.

2. The East Block Entitlement Percentage of the City as set forth in Appendix A to said Member Agreement may be increased to such percentage, not be exceed ___ percent (___%), as shall be determined by the _____ of the City.

3. The Project Entitlement Percentage of the City as set forth in Appendix A to said Member Agreement may be increased to such percentage, not be exceed ___ percent (___%), as shall be determined by the _____ of the City.

4. The City is hereby authorized to enter into the Member Agreement and the _____ and the _____ are hereby authorized to execute and deliver the Member Agreement by and on behalf of the City.

5. 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.

6. 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.

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

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

Attest:

(SEAL)

Final Draft of July 28, 1983

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**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 LOMPOC
CITY OF PALO ALTO
CITY OF ROSEVILLE
CITY OF SANTA CLARA
CITY OF UKIAH
PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE**

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

This Agreement, dated as of July 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 Agreement.

WITNESSETH:

WHEREAS, NCPA has entered into the Steam Sales Agreement with Shell Oil Company (with its successors and assigns, the "Steam Supplier"), under which NCPA agreed to construct or cause to be constructed, one or, upon the conditions stated therein, two 55-megawatt geothermal generating units on a leasehold specified therein (the "East Block"); and

WHEREAS, pursuant to the Steam Sales Agreement and this Agreement, NCPA proposes to acquire and construct or cause to be acquired and constructed and to operate or cause to be operated the Project described herein; and

WHEREAS, NCPA and certain of its members have entered into a "Member Agreement (Second Phase) for Financing of Planning and Development Activities of the Shell East Block Geothermal Project" made as of June 1, 1981, as amended by Amendment No. One thereto, dated as of June 1, 1981 and Amendment No. Two thereto, dated as of January 13, 1983 providing for the financing of certain activities in connection with the East Block portion of the Project (said Agreement, as it may be amended and supplemented from time to time, being hereinafter called the "Second Phase Agreement"); and

WHEREAS, this Agreement is the "Final Power Contract" contemplated in the Second Phase Agreement; and

WHEREAS, NCPA and its members have entered into one of three Member Service Agreements, effective February 12, 1981 (said Agreements, as they may be amended and supplemented from time to time, being hereinafter called the "Member Service Agreement"), which provide for services which NCPA shall perform for its members, among other things, and for the provisions to be contained in second and third phase agreements, such as the Second Phase Agreement, and this Agreement; and

WHEREAS, all participants in NCPA's Geothermal Generating Project No. 2 ("Project No. 2") are Project Participants (as hereinafter defined), the development of the Project will benefit Project No. 2 by, among other things, satisfying certain obligations

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of NCPA under the Steam Sales Agreement, and the actions authorized herein to be taken by NCPA with respect to Project No. 2 will benefit the Project; and

WHEREAS, NCPA and the Project Participants wish to enter into this Agreement to provide further 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 for the Bonds to be issued to finance the Project;

NOW THEREFORE, the parties hereto do agree as follows:

1. Definitions. The following terms shall, for all purposes of this Agreement, have the following meanings:

(a) "Bonds" means bonds, notes or other evidences of indebtedness of NCPA (or of a nonprofit corporation on behalf of NCPA) issued to finance or refinance the Project, and includes additional Bonds to complete the Project.

(b) "Bond Resolution" means the resolution or resolutions providing for the issuance of Bonds and the terms thereof.

(c) "Development Fund" means the fund authorized by the "NCPA Member Agreement for Participation in Electric Power Development Fund," dated July 1, 1975, as amended.

(d) "Electric System" means all properties and assets, real and personal, tangible and intangible, of the Project Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; provided, however, that to the extent the Project Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described electric purposes, only the Project Participant's ownership interest in such asset or property or only the part of the asset or property so used for electric purposes shall be considered to be part of its Electric System.

(e) "Project" means a project consisting of (i) two 55-megawatt geothermal generating units, on the East Block, 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 NCPA in connection with the Project; provided that inclusion of such headquarters facility in this definition of "Project" shall only be effective upon the receipt, prior to the first issuance of Bonds, of either (a) a 100% vote approving such inclusion of all Project Participants, taken at a meeting in accordance with

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Section 11 hereof, or (b) written approval of such inclusion from the representative of each Project Participant on the Commission of NCPA; (ii) Project No. 2, subject to the rights of the participants therein; and (iii) such refinancing of Development Fund expenditures as shall, in the discretion of the Commission of NCPA, be included in any issue of Bonds.

(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 Appendix A shall be amended from time to time in accordance with Section 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 Appendix A shall be amended from time to time in accordance with Section 13 hereof.

(g) "Project No. 2 Member Agreement" means the "Member Agreement for Construction, Operation and Financing of NCPA Geothermal Generating Unit No. 2 Project", dated as of June 15, 1977, as amended and supplemented.

(h) "Project No. 2 Steam Sales Agreement" means the Geothermal Steam Sales Agreement between NCPA and the Steam Supplier dated June 27, 1977, as amended and supplemented.

(i) "Project Participants" means those entities listed in Appendix A hereto and executing this Agreement, together in each case with their respective successors or assigns.

(j) "Refunding Date" means the date of the refinancing with Bonds of (i) the outstanding Public Power Revenue Bonds, 1981 Series A, dated July 1, 1981, and the outstanding Public Power Revenue Bonds, 1982 Series A, dated July 1, 1982, (ii) the outstanding loan of NCPA pursuant to a Loan Agreement between NCPA and Bank of Montreal (California), dated October 2, 1980, and (iii) certain Development Fund expenditures.

(k) "Revenues" means all income, rents, rates, fees, charges, and other moneys derived by the Project Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing, and supplying of the electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and (iii) the proceeds derived by the Project Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System as permitted hereby, but the

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term "Revenues" shall not include (y) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Project Participant, or (z) contributions from customers for the payment of costs of construction of facilities to serve them.

(l) "Steam Sales Agreement" means the "NCPA East Block Steam Sales Agreement" with the Steam Supplier, dated September 15, 1980, as amended and supplemented.

(m) "Trustee" means the entity or entities designated by NCPA pursuant to any Bond Resolution, to administer any funds or accounts required by such Bond Resolution or otherwise.

2. Purpose. The purpose of this Agreement is to sell capacity and energy of the Project to the Project Participants; to provide the terms and conditions of such sale and to provide for the financing of the Project.

3. Construction and Operation. NCPA will use its best efforts to cause or accomplish the construction, operation and financing of the Project, the obtaining of all necessary authority and rights, and the performance of all things necessary and convenient therefor. Each Project Participant will cooperate with NCPA to that end, and will give any and all clarifying assurances by supplemental agreements that may be reasonably necessary in the opinion of NCPA's legal counsel to make the obligations herein more specific and to satisfy legal requirements and provide security for the Bonds.

NCPA may pledge and assign to any Trustee for any Bonds, all or any portion of the payments received hereunder from Project Participants, and upon notice from NCPA, each Project Participant shall make payments due by it hereunder directly to any Trustee for the Bonds. Such pledge and assignment by NCPA shall be made effective for such time as NCPA shall determine and provide.

4. Sale and Delivery of Capacity and Energy from the Project. (a) Pursuant to the terms of this Agreement NCPA shall provide to each Project Participant, and each Project Participant shall take, or cause to be taken, such Project Participant's Project Entitlement Percentage of the capacity and energy of the Project; provided, however, that NCPA shall first provide to each project participant for Project No. 2, and each such project participant shall take, or cause to be taken, such project participant's Project No. 2 Entitlement Percentage of the capacity and energy of Project No. 2, in accordance with the terms of the Project No. 2 Member Agreement.

(b) NCPA will remain available to do all things necessary and possible to deliver or cause to be delivered to or for the Project Participants, in accordance with their respective Project Entitlement Percentages, subject to the terms of the Project No. 2 Member Agreement, the capacity and energy of the Project. Such delivery shall be at points mutually agreed upon by NCPA and each

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Project Participant. Such agreement shall not be unreasonably withheld by either NCPA or a Project Participant. NCPA will remain available to make or cause to be made all necessary and possible arrangements for transmission of such capacity and energy to such points over the lines of NCPA or others, and for additional capacity and energy required from others as reserves against planned or emergency service interruptions with respect to the Project. Wheeling or delivery services by NCPA with related energy sales to the Project Participants shall be as provided in service schedules as provided in Article III of the Member Service Agreement.

5. Rates and Charges. (a) Commencing on the Refunding Date, NCPA shall fix charges to the Project Participants under this Agreement to produce revenues to NCPA from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service on the Bonds, reserves for the payment of debt service on the Bonds and other payments required under the Bond Resolution other than payments described in (iii) and (iv) below, (ii) all other payments provided to be made by NCPA under the Steam Sales Agreement and the Project No. 2 Steam Sales Agreement, (iii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs other than costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) hereof, and (iv) costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) of this Agreement. NCPA shall fix charges to the Project Participants to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on East Block Entitlement Percentages applied to such costs allocable to the East Block portion of the Project and Project No. 2 Entitlement Percentages applied to such costs allocable to the Project No. 2 portion of the Project; and to meet the costs described in (iii) above based on the anticipated energy sales of the the East Block portion of the Project and, on the anticipated energy sales of the Project No. 2 portion of the Project, respectively. If NCPA delivers Project capacity and energy to or for any Project Participant pursuant to Section 4(b) hereof, NCPA shall fix charges to each such Project Participant so as to pay the costs of such delivery without liability under this Section 5(a) of any Project Participant for whom Project capacity and energy is not so delivered by NCPA. The obligations of the respective Project Participants that are participants in Project No. 2 under this Section 5(a) shall be deemed to be satisfied to the extent such obligations are satisfied pursuant to the Project No. 2 Member Agreement.

(b) To the extent that the funds provided under Section 5(a) of this Agreement are at any time not sufficient for such purposes, each Project Participant shall pay to NCPA an amount equal to such Project Participant's Project Entitlement Percentage of the total cost to pay all amounts of principal and interest on the Bonds,

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reserves for the payment of debt service and other payments required under the Bond Resolution and all other payments required to be made by NCPA under the Steam Sales Agreement. The obligation of this Section 5(b) is incurred by each Project Participant for the benefit of future holders of Bonds, and shall commence and continue to exist and be honored by Project Participants whether or not capacity or energy is furnished to them from the Project at all times or at all (which provision may be characterized as an obligation to pay all costs on a take-or-pay basis whether or not such Project capacity or energy is delivered or provided).

(c) Notwithstanding that NCPA may utilize services under the PG and E Interconnection Agreement among Pacific Gas and Electric Company, NCPA and certain of the Project Participants (the "PG and E Interconnection Agreement") in complying with Section 4(b) hereof, any payments required to be made by, or costs incurred by NCPA or the Project Participants pursuant to Section 9.5 of the Interconnection Agreement shall not be made under this Agreement.

(d) Each Project Participant shall make payments under this Agreement solely from the Revenues of, and as an operating expense of, its Electric System. Nothing herein shall be construed as prohibiting any Project Participant from using any other funds and revenues for purposes of satisfying any provisions of this Agreement.

(e) Each Project Participant shall make payments under this Agreement whether or not the Project is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output or the capacity and energy contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by NCPA or any Project Participant under this Agreement or any other agreement; provided, however, that the obligations of the respective Project Participants that are participants in Project No. 2 under Section 5(a) hereof shall be deemed to be satisfied to the extent such obligations are satisfied pursuant to the Project No. 2 Member Agreement.

(f) No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement and for the maintenance and operation of its respective properties not included as part of the Project. The obligation of each Project Participant to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

(g) Each Project Participant covenants and agrees to establish and collect fees and charges for electric capacity and energy furnished through facilities of its Electric System sufficient

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to provide Revenues adequate to meet its obligations under this Agreement and to pay any and all other amounts payable from or constituting a charge or lien upon any or all such Revenues.

(h) Each Project Participant covenants and agrees that it shall, at all times, operate the properties of its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and shall maintain its Electric System in good repair, working order and condition.

6. Annual Budget and Billing Statement. Prior to the beginning of each NCPA fiscal year, the Commission of NCPA will adopt an annual budget for such fiscal year for costs and expenses relating to the Project and shall promptly give notice to each Project Participant of its projected share of such costs and expenses.

A billing statement prepared by NCPA based on estimates will be sent to each Project Participant not later than the fifteenth (15th) day of each calendar month showing the amount payable by such Project Participant of costs payable under Section 5(a) hereof for the second succeeding calendar month, any amount payable by such Project Participant as its Project Entitlement Percentage of costs payable under Section 5(b) hereof, and the amount of any credits or debits as a result of any appropriate adjustments. Amounts shown on the billing statement are due and payable thirty (30) days after the date of the billing statement. Any amount due and not paid by the Project Participant within thirty (30) days after the date of the billing statement shall bear interest from the due date until paid at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget.

On or before the day five (5) calendar months after the end of each NCPA fiscal year, NCPA shall submit to each Project Participant a statement of the aggregate monthly costs for such fiscal year. If the actual aggregate monthly costs and the Project Participant's share thereof pursuant to this Agreement, and other amounts payable for any fiscal year, exceed the billings to the Project Participant, the deficiency shall be added to the Project Participant's immediately succeeding billing statement. If the actual aggregate monthly costs and the Project Participant's share thereof pursuant to this Agreement, and other amounts payable for any fiscal year, are less than the billings to the Project Participant, such excess shall be credited to the Project Participant's billing statements for such period (not to exceed the immediately succeeding six months) and in such amounts as shall be determined by NCPA.

If a Project Participant questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within thirty (30) days of the receipt of such billing statement request an explanation from NCPA. If the bill is determined to be incorrect, NCPA will issue a corrected bill and

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refund any amount which may be due the Project Participant which refund shall bear interest from the date NCPA received payment until the date of the refund at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget. If NCPA and the Project Participant fail to agree on the correctness of a bill within thirty (30) days after the Project Participant has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 et seq. of the Code of Civil Procedure.

7. Obligation in the Event of Default. (a) Upon failure of any Project Participant to make any payment in full when due under this Agreement, NCPA shall make written demand upon such Project Participant, and if said failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each other Project Participant by NCPA.

(b) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, NCPA shall use its best efforts to sell and transfer for the defaulting Project Participant's account all or a portion of such Project Participant's Project Entitlement Percentage of Project capacity and energy for all or a portion of the remainder of the term of this Agreement. NCPA shall not sell such capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code. Notwithstanding that all or any portion of the Project Participant's Project Entitlement Percentage of Project capacity and energy is so sold or transferred, the Project Participant shall remain liable to NCPA to pay the full amount of its Project Entitlement Percentage of monthly costs as if such sale or transfer had not been made, except that such liability shall be discharged to the extent that NCPA shall receive payment from the purchaser or transferee thereof.

(c) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement and causes NCPA to be in default under the Steam Sales Agreement, the Project No. 2 Steam Sales Agreement or any Bond Resolution, NCPA may (in addition to the remedy provided by subsection (b) of this Section 7) terminate the provisions of this Agreement insofar as the same entitle the defaulting Project Participant to its Project Entitlement Percentage of Project capacity and energy. Irrespective of such termination, the obligations of the Project Participant under this Agreement shall continue in full force and effect.

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(d) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, and except as sales or transfers are made pursuant to subsection (b) of this Section 7, (i) the Project Entitlement Percentage of each nondefaulting Project Participant shall be automatically increased for the remaining term of this Agreement pro rata with those of the other nondefaulting Project Participants and (ii) the defaulting Project Participant's Project Entitlement Percentage shall (but only for purposes of computing the respective Project Entitlement Percentages of the nondefaulting Project Participants) be reduced correspondingly; provided, however, that the sum of such increases for any nondefaulting Project Participant shall not exceed, without written consent of such nondefaulting Project Participant, an accumulated maximum of 25% of the nondefaulting Project Participant's Project Entitlement Percentage, all as initially set forth in Appendix A.

(e) If a Project Participant shall fail or refuse to pay any amounts due to NCPA, the fact that other Project Participants have increased their obligation to NCPA pursuant to this Section 7 shall not relieve the defaulting Project Participant of its liability under this Agreement, and any Project Participant increasing such obligation shall have a right of recovery from the defaulting Project Participant to the extent of such respective increase in obligation caused by the defaulting Project Participant.

(f) Any Trustee for any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement shall have the right, as a third party beneficiary, to initiate and maintain suit to enforce this Agreement to the extent provided in the related Bond Resolution.

8. Transfers, Sales and Assignments of Capacity. Each Project Participant has full and unfettered rights to make transfers, sales, assignments and exchanges (collectively "transfers") of capacity, energy, and rights thereto except as expressly provided otherwise in this Agreement.

(a) No Project Participant shall transfer ownership of all or substantially all of its Electric System to another entity until it has first complied with the provisions of this subsection (a). A consolidation with another governmental entity or change in governmental form is not deemed a transfer of ownership.

(1) Such disposition or transfer shall be under terms and conditions that provide assurance that the obligations of the transferring Project Participant under this Agreement, and that NCPA's obligations under this Agreement, the Steam Sales Agreement, and any Bond Resolution, and the Project No. 2 Steam Sales Agreement, and under other agreements made or to be made by NCPA to carry out the Project, will be promptly and adequately

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met. NCPA may require that sufficient moneys of the transferring Project Participant to discharge such obligations be irrevocably set aside and maintained in a trust account, as a condition to the transfer of the Electric System, if no other adequate assurance is available.

(2) The transferring Project Participant shall give ninety (90) days' advance written notice to NCPA of any proposed transfer pursuant to this subsection (a). Appendix A to this Agreement shall be amended as appropriate to reflect any transaction pursuant to this subsection (a).

(b) Notwithstanding any other provision of this Agreement, no Project Participant shall transfer, assign, sell or exchange any Project capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

9. Surplus Capacity and Energy. When a Project Participant has surplus capacity and/or energy from the Project, NCPA shall, if requested by such Project Participant to do so, sell such surplus capacity and/or energy on behalf of such Project Participant in the following manner:

(a) NCPA shall use its best efforts to sell such surplus capacity and/or energy at a price at least equal to the Project Participant's cost therefor.

(b) Other Project Participants shall have a right of first refusal, and other NCPA members shall have the second right at the sales prices set forth in subsections (c) and (d) of this Section 9.

(c) If NCPA can purchase equivalent capacity and/or energy from other sources for less than the Project Participant's cost for surplus capacity and/or energy from the Project, as the case may be, the sales price of such capacity and/or energy to another Project Participant or NCPA member shall be equal to the cost of purchasing the capacity and/or energy from such other source.

(d) If the alternative cost of purchasing capacity and/or energy for other Project Participants or members of NCPA is more than the Project Participant's cost of surplus capacity and/or energy from the Project, then the sales price shall be the Project Participant's cost plus one-half the difference between the Project Participant's cost from the Project and the cost of capacity and/or energy from an alternative source.

met. NCPA may require that sufficient moneys of the transferring Project Participant to discharge such obligations be irrevocably set aside and maintained in a trust account, as a condition to the transfer of the Electric System, if no other adequate assurance is available.

(2) The transferring Project Participant shall give ninety (90) days' advance written notice to NCPA of any proposed transfer pursuant to this subsection (a). Appendix A to this Agreement shall be amended as appropriate to reflect any transaction pursuant to this subsection (a).

(b) Notwithstanding any other provision of this Agreement, no Project Participant shall transfer, assign, sell or exchange any Project capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

9. Surplus Capacity and Energy. When a Project Participant has surplus capacity and/or energy from the Project, NCPA shall, if requested by such Project Participant to do so, sell such surplus capacity and/or energy on behalf of such Project Participant in the following manner:

(a) NCPA shall use its best efforts to sell such surplus capacity and/or energy at a price at least equal to the Project Participant's cost therefor.

(b) Other Project Participants shall have a right of first refusal, and other NCPA members shall have the second right at the sales prices set forth in subsections (c) and (d) of this Section 9.

(c) If NCPA can purchase equivalent capacity and/or energy from other sources for less than the Project Participant's cost for surplus capacity and/or energy from the Project, as the case may be, the sales price of such capacity and/or energy to another Project Participant or NCPA member shall be equal to the cost of purchasing the capacity and/or energy from such other source.

(d) If the alternative cost of purchasing capacity and/or energy for other Project Participants or members of NCPA is more than the Project Participant's cost of surplus capacity and/or energy from the Project, then the sales price shall be the Project Participant's cost plus one-half the difference between the Project Participant's cost from the Project and the cost of capacity and/or energy from an alternative source.

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(e) NCPA shall not sell such surplus capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

10. Insurance and Indemnification. NCPA shall obtain or cause to be obtained insurance for the Project covering such risks (including earthquakes), in such amounts and with such deductibles as shall be determined by NCPA. NCPA shall indemnify and hold harmless each Project Participant from any liability for personal injury or property damage resulting from any accident or occurrence arising out of or in any way related to the construction or operation of the Project, provided, however, that such liability of NCPA shall be limited to the extent the proceeds of insurance and other moneys available to NCPA hereunder are available therefore.

11. Member Direction and Review. NCPA shall comply with all lawful directions of the Project Participants with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by law. Actions of Project Participants, including giving such directions to NCPA, will be taken only at meetings of authorized representatives of Project Participants duly called and held pursuant to the Ralph M. Brown Act or other laws applicable to such meetings, in effect from time to time.

(a) A quorum of the Commission of NCPA for purposes of acting upon matters related to the Project shall consist of those Commissioners (including for all purposes of this Section 11, their designated alternates), representing a numerical majority of the Project Participants, or, in the absence of such, representing Project Participants having a combined Project Entitlement Percentage of at least a majority in interest at such time.

(b) Special meetings of the Commission to act only on matters relating to the Project may be called by a majority of the Commissioners of Project Participants upon notice as required by the Ralph M. Brown Act or other laws applicable to such meetings, in effect from time to time.

(c) At regular or special meetings of the Commission, voting on matters relating to the Project shall be by Project Entitlement Percentage, and the affirmative vote of a majority in interest at such time shall be required to take action, unless the Project Participants agree at such meetings that voting will be on a one member one vote basis, with a majority vote of those present required for action.

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(d) Notwithstanding subsection (c) of this Section 11, upon demand of any Commissioner of any Project Participant, at any meeting of the Commission other than a special meeting referred to in subsection (b) of this Section 11, the vote on any issue relating to the Project shall be by Project Entitlement Percentage at such time and 65% or greater affirmative vote shall be required to take action.

(e) Any Project Participant may veto a discretionary action of the Project Participants relating to the Project that was not taken by a 65% or greater Project Entitlement Percentage vote within 10 days following mailing of notice of such Commissioners' action, by giving written notice of veto to NCPA, unless at a meeting of Commissioners of Project Participants called for the purpose of considering the veto and held within 30 days after such veto notice, the holders of 65% or greater of the Project Entitlement Percentage shall vote to override the veto.

(f) The sixty-five percent of the Project Entitlement Percentage specified in this Section 11 shall be reduced by the amount that the Project Entitlement Percentage of any Project Participant shall exceed 35%, but such 65% shall not be reduced below a majority in interest.

12. Term. (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 by evidence satisfactory to NCPA of compliance by such Project Participant with Section 5C of the Project No. 2 Member Agreement and in compliance with any other similar requirements of other agreements between NCPA and such Project Participant, and (ii) the Refunding Date shall have occurred.

(b) Notwithstanding the delay in the effective date of this Agreement until Project Entitlement Percentages in the aggregate equal 100% and the other provisions of Section 12(a) hereof have been complied with, it is agreed by all signatories hereto that in consideration for NCPA's signature hereto and for its commitment to use its best efforts to obtain the commitment for Project Entitlement Percentages in the aggregate equal to 100%, each Project Participant upon its execution and delivery of this Agreement to NCPA along with required opinion and any required evidence of compliance as required by Section 12(a) hereof shall be immediately bound not to withdraw its respective offer herein made to enter into this Agreement as executed and/or supplemented or to decrease or terminate its Project Entitlement Percentage. Such a decrease or termination by a Project Participant may be made only if this Agreement has not taken effect

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before January 1, 1984 and only by giving written notice thereof to NCPA between January 1 and January 15, 1984.

(c) Notwithstanding the foregoing, each Project Participant shall be entitled to decrease or terminate its Project Entitlement Percentage upon giving written notice thereof to NCPA within fifteen (15) days after January 1, 1986, if by January 1, 1986 NCPA shall not have issued any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement.

(d) The term of this Agreement shall continue until the later of (i) the expiration of the useful life of the Project, or (ii) the date on which all Bonds issued have been retired, or full provision made for their retirement, including interest until their retirement date; provided, however, that in no event shall the term of this Agreement extend beyond the date of the termination of the existence of NCPA. In the event of the termination of the existence of NCPA it is the intent of the Project Participants that the Agreement be construed as an agreement among the Project Participants.

13. Termination and Amendments. This Agreement shall not be subject to termination by any party under any circumstances, whether based upon the default of any other party under this Agreement, or any other instrument, or otherwise, except as specifically provided herein.

Except as otherwise provided in this Agreement, so long as any Bonds are outstanding and unpaid and funds are not set aside for the payment or retirement thereof in accordance with the applicable Bond Resolution, this Agreement shall not be amended, modified or otherwise changed or rescinded by agreement of the parties without the consent of each Trustee for Bonds whose consent is required under the applicable Bond Resolution.

14. Member Service Agreement. This Agreement is a service schedule and a third phase agreement attached to and incorporated into the Member Service Agreement. This Agreement shall be construed as the more specific terms governing the general relationship between the parties set out in the Member Service Agreement in connection with the Project.

15. Second Phase Agreement. The Second Phase Agreement is superseded by this Agreement upon the issuance of any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement and upon provision for payment of any notes or other evidences of indebtedness of NCPA secured by payments made by the Project Participants under the Second Phase Agreement, except that section 4 thereof shall remain in effect as provided by section 5 of the Second Phase Agreement unless changed by

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formal action of all of the Project Participants. Said section 4 is as follows:

"Section 4. Conditional Repayment to Members. All payments and advances made heretofore, including Development Fund Advances, and those hereafter made pursuant to Section 1, excluding interest paid on delinquent payments, shall be repaid to each of the entities making such payments and advances pursuant to this Agreement out of the proceeds of the first issuance of the Project bonds or as and when there are sufficient funds available from the partial sale of Bonds. Such reimbursements shall be made within 60 days following the sale of any Project bonds and shall include interest computed monthly at a rate equivalent to the prime rate of the Bank of America NT&SA at the end of such month. Any interest due under the third paragraph of section 1 of this Agreement and unpaid shall be deducted from the repayment. If NCPA is not successful in financing the Project, there shall be no reimbursement except out of unused Project funds along with all other receipts to which NCPA is entitled in connection with the Project."

16. Sharing of Resources, Facilities and Costs.

(a) NCPA may, in accordance with Section 11 hereof, enter into agreements for the transfer or sharing of resources, facilities and costs between and among the Project and other entities and projects (including without limitation Project No. 2), which agreements may provide, among other things, for the transfer or sharing of steam, transmission facilities and rights to use the same, maintenance and repair facilities, generating equipment, spare parts, staff, insurance, taxes and payment in lieu thereof, and delay payments under the Steam Sales Agreement and the Project No. 2 Steam Sales Agreement and for the integrated operation of the Project and Project No. 2 by NCPA.

(b) NCPA may, in accordance with the Project No. 2 Member Agreement and upon compliance with the requirements of any trust indenture or other instrument applicable thereto, including without limitation any consents required thereby, enter into agreements for (i) the transfer or sharing of resources, facilities and costs between and among Project No. 2 and other entities and projects (including without limitation the Project), which agreements may provide, among other things, for the transfer or sharing of steam, transmission facilities and rights to use the same, maintenance and repair facilities, generating equipment, spare parts, staff, insurance, taxes and payment in lieu thereof, and delay payments under the Project No. 2 Steam Sales Agreement, and for the integrated operation of the Project and Project No. 2 by NCPA, and (ii) the modification or refinancing of all or any portion of the obligations incurred by NCPA or a nonprofit corporation for Project No. 2, including without

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limitation the refinancing thereof with Bonds and the modification or refinancing of the loan guaranteed by the United States Department of Energy.

(c) This Agreement shall constitute approval by the participants in Project No. 2 of (i) the refinancing of (a) the outstanding Public Power Revenue Bonds, 1981 Series A, dated July 1, 1981, and the outstanding Public Power Revenue Bonds, 1982 Series A, dated July 1, 1982, (b) the outstanding loan of NCPA pursuant to a Loan Agreement between NCPA and Bank of Montreal (California), dated October 2, 1980, and (c) certain Development Fund expenditures, with Bonds so long as, in the judgment of the Commissioners of NCPA representing the participants in Project No. 2, the debt service secured or to be secured by the Project No. 2 Member Agreement is not increased thereby and the other terms of such refinancing are not materially adverse to the participants in Project No. 2; and (ii) equal sharing between Project No. 2 and the East Block portion of the Project of steam from the Project No. 2 area and the East Block area.

(d) The Project No. 2 Member Agreement shall be construed so as to be compatible with this Agreement to accomplish the purposes hereof. Any financing or refinancing of Project No. 2 shall be accomplished by the issuance of Bonds secured by this Agreement unless the Project Participants refuse to authorize such financing or refinancing as may be requested by the participants in Project No. 2. The respective obligations of NCPA under Section 4 hereof and of the Project Participants under Section 5 hereof shall be deemed satisfied to the extent of performance thereof pursuant to the Project No. 2 Member Agreement, and (iv) subject to the specific terms of the agreement or agreements contemplated by subsections (a) and (b) of this Section 16, Project No. 2 and the East Block portion of the Project shall be conducted for the mutual benefit of all participants therein.

(e) The Project No. 2 Member Agreement shall be amended by the provisions hereof as follows:

(i) Section 6 of the Project No. 2 Member Agreement shall be superseded by Sections 8, and 9 hereof,

(ii) subsection (a) of Section 5 of the Project No. 2 Member Agreement shall be superseded by the following:

"(a) Commencing with the commercial operation of the Project, NCPA shall fix charges to the Purchasing Participating Member under this Agreement to produce revenues to NCPA from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service

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on the Bonds, reserves for the payment of debt service on the Bonds and other payments required under the Bond Indenture or other agreement or instrument providing for the issuance and payment of Bonds other than payments described in (iii) and (iv) below, (ii) all other payments provided to be made by NCPA under the Shell Agreement, (iii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs other than costs and expenses pursuant to Section 4 hereof, and (iv) costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4 hereof. NCPA shall fix charges to the Purchasing Participating Members to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on Purchasing Participating Member's Purchasing Participation Percentage and to meet the costs described in (iii) above based on the anticipated energy sales of the Project. If NCPA delivers Project capacity and energy to or for any Purchasing Participating Member pursuant to Section 4 of this Agreement, NCPA shall fix charges to each such Purchasing Participating Member so as to pay the costs of such delivery without liability to any Purchasing Participating Member for whom Project capacity and energy is not so delivered by NCPA.

Any payments required to be made, or costs incurred, by NCPA or the Project Participants pursuant to the PG and E Interconnection Agreement shall not be made or incurred under this Agreement."

(iii) Section 3 of the Project No. 2 Member Agreement shall be supplemented by the following:

"NCPA may pledge and assign to any Trustee for any Bonds all or any portion of the payments received hereunder from Purchasing Participating Members and upon notice from NCPA, each Purchasing Participating Member shall make payments due by it hereunder directly to any Trustee for the Bonds. Such pledge and assignment by NCPA shall be made effective for such time as NCPA shall determine and provide. For the purposes of this Agreement the term "Bonds" shall include any bonds, notes or other evidences of indebtedness issued by NCPA to refinance the cost of the Project."

(iv) Section 5C of the Project No. 2 Member Agreement shall be deleted.

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17. Miscellaneous. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

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



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

NORTHERN CALIFORNIA POWER AGENCY

By _____
And _____

CITY OF PALO ALTO

By _____
And _____

CITY OF ALAMEDA

By _____
And _____

CITY OF ROSEVILLE

By _____
And _____

CITY OF BIGGS

By _____
And _____

CITY OF SANTA CLARA

By _____
And _____

CITY OF HEALDSBURG

By _____
And _____

CITY OF GRIDLEY

By _____
And _____

CITY OF LCDI

By _____
And _____

UKIAH

By _____
And _____

CITY OF LOMPOC

By _____
And _____

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

By _____
And _____



APPENDIX A

SCHEDULE OF PROJECT PARTICIPANTS
AND PROJECT ENTITLEMENT PERCENTAGES

<u>Project Participant</u>	<u>Project No. 2 Entitlement Percentage</u>	<u>East Block Entitlement Percentage</u>	<u>Project Entitlement Percentage</u>
City of Alameda	14.994%	18.771%	16.8825%
City of Biggs	0.000	.454	.227
City of Gridley	.334	.456	.395
City of Healdsburg	3.252	4.096	3.674
City of Lodi	14.560	9.158	11.859
City of Lompoc	3.266	4.096	3.681
City of Palo Alto	0.000	9.158	4.579
City of Roseville	3.252	12.514	7.883
City of Santa Clara	54.651	34.13	44.3905
City of Ukiah	4.972	6.257	5.6145
Plumas-Sierra Rural Electric Cooperative	<u>.719</u>	<u>.91</u>	<u>.8145</u>
Total	100.000%	100.000%	100.000%



FORM OF OPINION OF COUNSEL

Northern California Power Agency
8421 Auburn Boulevard
Suite 160
Citrus Heights, California 95610

Dear Sirs:

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 _____, 1982 (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.

Based upon the foregoing and an examination of such other information, papers and documents as I deem necessary or advisable to enable me to render this opinion, including the Constitution and laws of the State of California together with the [charter], other governing instruments, ordinances and public proceedings of the Project Participant, I am of the opinion that:

1. The Project Participant is [state form of organization] _____, duly created, organized and existing under the laws of the State of California and duly qualified to furnish electric service within said State.

2. The Project Participant has authority and right to execute, deliver and perform, pursuant to the terms of, the Agreement, and the Project Participant has complied with the provisions of applicable law in all matters relating to such transactions.

3. The Agreement has been duly authorized, executed and delivered by the Project Participant, is in full force and effect as to the Project Participant in accordance with

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its terms assuming the other Project Participants have complied with the requirements of Section 12(a) of such Agreement and, assuming that the Agency has all the requisite power and authority, and has taken all necessary action, to execute and deliver such Agreement, constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms.

4. Payments by the Project Participant under the Agreement will constitute an operating expense of the Project Participant and are to be made solely from the Revenues of its Electric System as provided in Section 5(c) of the Agreement.

5. No approval, consent or authorization of any governmental or public agency, authority or person is required for the execution and delivery by the Project Participant of the Agreement, or the performance by the Project Participant of its obligations thereunder.

6. The authorization, execution and delivery of the Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the Project Participant, any commitment, agreement or other instrument to which the Project Participant is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the Project Participant (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the Project Participant and its affairs.

7. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or, to my knowledge, threatened against or affecting the Project Participant or any entity affiliated with the Project Participant or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the powers of the Project Participant referred to in paragraph 2 above or the validity of the proceedings taken by the Project Participant in connection with the authorization, execution or delivery of the Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Agreement, or which, in any way, would adversely affect the validity or enforceability of the Agreement.

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The opinion expressed in paragraph 3 above is qualified to the extent that the enforceability of the Agreement may be limited by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization, or other similar laws affecting auditors' rights generally or as to the availability of any particular remedy.

This opinion is rendered only with respect to the laws of the State of California and the United States of America, and is addressed only to the Agency. No other person is entitled to rely on this opinion, nor may you rely on it in connection with any transactions other than those described herein.

[Note: Where it shall be necessary for the Project Participant to obtain the authorization or approval of a Federal, state or local regulatory authority relating to such Project Participant's performance under the Agreement, the form of opinions set forth in paragraphs 2, 5 and 6 hereof may be appropriately adjusted to reflect the necessity for such authorization or approval and paragraph 5 hereof shall be adjusted to include therein an exception thereto specifically describing the requisite authorization or approval and stating that it has been duly given or obtained and is in full force and effect.]

Very truly yours,

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RESOLUTION NO. 83- 56
NORTHERN CALIFORNIA POWER AGENCY

BE IT RESOLVED BY THE COMMISSION OF THE NORTHERN CALIFORNIA POWER AGENCY,
as follows:

Section 1. The form of "Agreement for Construction, Operation and Financing of Geothermal Generating Project Number Three", designated July 28, 1983, a Third Phase Agreement under the Member Services Agreements, is hereby approved; and the Assistant Secretary is directed to send copies of the same to the Project Participants named therein, and request that it be approved and executed by ordinance in accordance with the terms of Section 13 thereof.

Section 2. The General Manager is authorized to execute said agreement on behalf of this Agency.

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
City of - Alameda	<u>Agree</u>	_____	_____
Biggs	_____	_____	<u>X</u>
Gridley	<u>Agree</u>	_____	_____
Healdsburg	_____	_____	<u>X</u>
Lodi	<u>Agree</u>	_____	_____
Lompoc	<u>Agree</u>	_____	_____
Palo Alto	<u>Agree</u>	_____	_____
Redding	_____	<u>X</u>	_____
Roseville	<u>Agree</u>	_____	_____
Santa Clara	<u>Agree</u>	_____	_____
Ukiah	<u>Agree</u>	_____	_____
Plumas-Sierra	<u>Agree</u>	_____	_____

ADOPTED AND APPROVED this 25th day of July, 1983.

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____, CALIFORNIA, APPROVING THE TERMS AND CONDITIONS OF A MEMBER AGREEMENT BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND CERTAIN PARTICIPATING MEMBERS AND AUTHORIZING THE EXECUTION OF AN DELIVERY OF SAID AGREEMENT 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") creating the Northern California Power Agency (the "Agency"), a public entity separate and apart from the Members; and

WHEREAS, in accordance with the Agreement and the Joint Powers Agreement 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 need for an economical, reliable source of electric power and energy to meet the demands of the customers of its electric system, and, as such

WHEREAS, this City Council finds and determines that it is in the best interests of the customers of the electric system of the City for the City to enter into the Agreement for construction, operation and financing of Geothermal Generating Project Number 3 (the "Member Agreement") in substantially the form submitted to this City Council and dated for convenience as of July 1, 1983;

WHEREAS, this City Council finds and determines that it is in the best interests of the customers of the electric system of the City for the City to purchase electric capacity and energy of the Project from the Agency;

WHEREAS, payments by the City pursuant to the Member Agreement will be used in part by the Agency for payment of principal

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of and interest on its bonds, notes or other evidences of indebtedness issued in connection with the construction, operation and financing of the Project;

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

1. The City Council hereby finds and determines that the terms and conditions of the Member Agreement (including the East Block Entitlement Percentage and the Project Entitlement Percentage of the City set forth in Appendix A thereto) in substantially the form submitted to this City Council be, and the same are hereby, approved.

2. The East Block Entitlement Percentage of the City as set forth in Appendix A to said Member Agreement may be increased to such percentage, not be exceed ____ percent (____%), as shall be determined by the _____ of the City.

3. The Project Entitlement Percentage of the City as set forth in Appendix A to said Member Agreement may be increased to such percentage, not be exceed ____ percent (____%), as shall be determined by the _____ of the City.

4. The City is hereby authorized to enter into the Member Agreement and the _____ and the _____ are hereby authorized to execute and deliver the Member Agreement by and on behalf of the City.

5. 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.

6. 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.

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

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

Attest:

(SEAL)

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Final Draft of July 28, 1983

**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 LOMPOC
CITY OF PALO ALTO
CITY OF ROSEVILLE
CITY OF SANTA CLARA
CITY OF UKIAH
PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE**



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

This Agreement, dated as of July 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 Agreement.

WITNESSETH:

WHEREAS, NCPA has entered into the Steam Sales Agreement with Shell Oil Company (with its successors and assigns, the "Steam Supplier"), under which NCPA agreed to construct or cause to be constructed, one or, upon the conditions stated therein, two 55-megawatt geothermal generating units on a leasehold specified therein (the "East Block"); and

WHEREAS, pursuant to the Steam Sales Agreement and this Agreement, NCPA proposes to acquire and construct or cause to be acquired and constructed and to operate or cause to be operated the Project described herein; and

WHEREAS, NCPA and certain of its members have entered into a "Member Agreement (Second Phase) for Financing of Planning and Development Activities of the Shell East Block Geothermal Project" made as of June 1, 1981, as amended by Amendment No. One thereto, dated as of June 1, 1981 and Amendment No. Two thereto, dated as of January 13, 1983 providing for the financing of certain activities in connection with the East Block portion of the Project (said Agreement, as it may be amended and supplemented from time to time, being hereinafter called the "Second Phase Agreement"); and

WHEREAS, this Agreement is the "Final Power Contract" contemplated in the Second Phase Agreement; and

WHEREAS, NCPA and its members have entered into one of three Member Service Agreements, effective February 12, 1981 (said Agreements, as they may be amended and supplemented from time to time, being hereinafter called the "Member Service Agreement"), which provide for services which NCPA shall perform for its members, among other things, and for the provisions to be contained in second and third phase agreements, such as the Second Phase Agreement, and this Agreement; and

WHEREAS, all participants in NCPA's Geothermal Generating Project No. 2 ("Project No. 2") are Project Participants (as hereinafter defined), the development of the Project will benefit Project No. 2 by, among other things, satisfying certain obligations

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of NCPA under the Steam Sales Agreement, and the actions authorized herein to be taken by NCPA with respect to Project No. 2 will benefit the Project; and

WHEREAS, NCPA and the Project Participants wish to enter into this Agreement to provide further 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 for the Bonds to be issued to finance the Project;

NOW THEREFORE, the parties hereto do agree as follows:

1. **Definitions.** The following terms shall, for all purposes of this Agreement, have the following meanings:

(a) "Bonds" means bonds, notes or other evidences of indebtedness of NCPA (or of a nonprofit corporation on behalf of NCPA) issued to finance or refinance the Project, and includes additional Bonds to complete the Project.

(b) "Bond Resolution" means the resolution or resolutions providing for the issuance of Bonds and the terms thereof.

(c) "Development Fund" means the fund authorized by the "NCPA Member Agreement for Participation in Electric Power Development Fund," dated July 1, 1975, as amended.

(d) "Electric System" means all properties and assets, real and personal, tangible and intangible, of the Project Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; provided, however, that to the extent the Project Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described electric purposes, only the Project Participant's ownership interest in such asset or property or only the part of the asset or property so used for electric purposes shall be considered to be part of its Electric System.

(e) "Project" means a project consisting of (i) two 55-megawatt geothermal generating units, on the East Block, 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 NCPA in connection with the Project; provided that inclusion of such headquarters facility in this definition of "Project" shall only be effective upon the receipt, prior to the first issuance of Bonds, of either (a) a 100% vote approving such inclusion of all Project Participants, taken at a meeting in accordance with

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Section 11 hereof, or (b) written approval of such inclusion from the representative of each Project Participant on the Commission of NCPA; (ii) Project No. 2, subject to the rights of the participants therein; and (iii) such refinancing of Development Fund expenditures as shall, in the discretion of the Commission of NCPA, be included in any issue of Bonds.

(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 Appendix A shall be amended from time to time in accordance with Section 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 Appendix A shall be amended from time to time in accordance with Section 13 hereof.

(g) "Project No. 2 Member Agreement" means the "Member Agreement for Construction, Operation and Financing of NCPA Geothermal Generating Unit No. 2 Project", dated as of June 15, 1977, as amended and supplemented.

(h) "Project No. 2 Steam Sales Agreement" means the Geothermal Steam Sales Agreement between NCPA and the Steam Supplier dated June 27, 1977, as amended and supplemented.

(i) "Project Participants" means those entities listed in Appendix A hereto and executing this Agreement, together in each case with their respective successors or assigns.

(j) "Refunding Date" means the date of the refinancing with Bonds of (i) the outstanding Public Power Revenue Bonds, 1981 Series A, dated July 1, 1981, and the outstanding Public Power Revenue Bonds, 1982 Series A, dated July 1, 1982, (ii) the outstanding loan of NCPA pursuant to a Loan Agreement between NCPA and Bank of Montreal (California), dated October 2, 1980, and (iii) certain Development Fund expenditures.

(k) "Revenues" means all income, rents, rates, fees, charges, and other moneys derived by the Project Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing, and supplying of the electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and (iii) the proceeds derived by the Project Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System as permitted hereby, but the

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term "Revenues" shall not include (y) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Project Participant, or (z) contributions from customers for the payment of costs of construction of facilities to serve them.

(l) "Steam Sales Agreement" means the "NCPA East Block Steam Sales Agreement" with the Steam Supplier, dated September 15, 1980, as amended and supplemented.

(m) "Trustee" means the entity or entities designated by NCPA pursuant to any Bond Resolution, to administer any funds or accounts required by such Bond Resolution or otherwise.

2. Purpose. The purpose of this Agreement is to sell capacity and energy of the Project to the Project Participants; to provide the terms and conditions of such sale and to provide for the financing of the Project.

3. Construction and Operation. NCPA will use its best efforts to cause or accomplish the construction, operation and financing of the Project, the obtaining of all necessary authority and rights, and the performance of all things necessary and convenient therefor. Each Project Participant will cooperate with NCPA to that end, and will give any and all clarifying assurances by supplemental agreements that may be reasonably necessary in the opinion of NCPA's legal counsel to make the obligations herein more specific and to satisfy legal requirements and provide security for the Bonds.

NCPA may pledge and assign to any Trustee for any Bonds, all or any portion of the payments received hereunder from Project Participants, and upon notice from NCPA, each Project Participant shall make payments due by it hereunder directly to any Trustee for the Bonds. Such pledge and assignment by NCPA shall be made effective for such time as NCPA shall determine and provide.

4. Sale and Delivery of Capacity and Energy from the Project. (a) Pursuant to the terms of this Agreement NCPA shall provide to each Project Participant, and each Project Participant shall take, or cause to be taken, such Project Participant's Project Entitlement Percentage of the capacity and energy of the Project; provided, however, that NCPA shall first provide to each project participant for Project No. 2, and each such project participant shall take, or cause to be taken, such project participant's Project No. 2 Entitlement Percentage of the capacity and energy of Project No. 2, in accordance with the terms of the Project No. 2 Member Agreement.

(b) NCPA will remain available to do all things necessary and possible to deliver or cause to be delivered to or for the Project Participants, in accordance with their respective Project Entitlement Percentages, subject to the terms of the Project No. 2 Member Agreement, the capacity and energy of the Project. Such delivery shall be at points mutually agreed upon by NCPA and each

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Project Participant. Such agreement shall not be unreasonably withheld by either NCPA or a Project Participant. NCPA will remain available to make or cause to be made all necessary and possible arrangements for transmission of such capacity and energy to such points over the lines of NCPA or others, and for additional capacity and energy required from others as reserves against planned or emergency service interruptions with respect to the Project. Wheeling or delivery services by NCPA with related energy sales to the Project Participants shall be as provided in service schedules as provided in Article III of the Member Service Agreement.

5. **Rates and Charges.** (a) Commencing on the Refunding Date, NCPA shall fix charges to the Project Participants under this Agreement to produce revenues to NCPA from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service on the Bonds, reserves for the payment of debt service on the Bonds and other payments required under the Bond Resolution other than payments described in (iii) and (iv) below, (ii) all other payments provided to be made by NCPA under the Steam Sales Agreement and the Project No. 2 Steam Sales Agreement, (iii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs other than costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) hereof, and (iv) costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) of this Agreement. NCPA shall fix charges to the Project Participants to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on East Block Entitlement Percentages applied to such costs allocable to the East Block portion of the Project and Project No. 2 Entitlement Percentages applied to such costs allocable to the Project No. 2 portion of the Project; and to meet the costs described in (iii) above based on the anticipated energy sales of the the East Block portion of the Project and, on the anticipated energy sales of the Project No. 2 portion of the Project, respectively. If NCPA delivers Project capacity and energy to or for any Project Participant pursuant to Section 4(b) hereof, NCPA shall fix charges to each such Project Participant so as to pay the costs of such delivery without liability under this Section 5(a) of any Project Participant for whom Project capacity and energy is not so delivered by NCPA. The obligations of the respective Project Participants that are participants in Project No. 2 under this Section 5(a) shall be deemed to be satisfied to the extent such obligations are satisfied pursuant to the Project No. 2 Member Agreement.

(b) To the extent that the funds provided under Section 5(a) of this Agreement are at any time not sufficient for such purposes, each Project Participant shall pay to NCPA an amount equal to such Project Participant's Project Entitlement Percentage of the total cost to pay all amounts of principal and interest on the Bonds,

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reserves for the payment of debt service and other payments required under the Bond Resolution and all other payments required to be made by NCPA under the Steam Sales Agreement. The obligation of this Section 5(b) is incurred by each Project Participant for the benefit of future holders of Bonds, and shall commence and continue to exist and be honored by Project Participants whether or not capacity or energy is furnished to them from the Project at all times or at all (which provision may be characterized as an obligation to pay all costs on a take-or-pay basis whether or not such Project capacity or energy is delivered or provided).

(c) Notwithstanding that NCPA may utilize services under the PG and E Interconnection Agreement among Pacific Gas and Electric Company, NCPA and certain of the Project Participants (the "PG and E Interconnection Agreement") in complying with Section 4(b) hereof, any payments required to be made by, or costs incurred by NCPA or the Project Participants pursuant to Section 9.5 of the Interconnection Agreement shall not be made under this Agreement.

(d) Each Project Participant shall make payments under this Agreement solely from the Revenues of, and as an operating expense of, its Electric System. Nothing herein shall be construed as prohibiting any Project Participant from using any other funds and revenues for purposes of satisfying any provisions of this Agreement.

(e) Each Project Participant shall make payments under this Agreement whether or not the Project is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output or the capacity and energy contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by NCPA or any Project Participant under this Agreement or any other agreement; provided, however, that the obligations of the respective Project Participants that are participants in Project No. 2 under Section 5(a) hereof shall be deemed to be satisfied to the extent such obligations are satisfied pursuant to the Project No. 2 Member Agreement.

(f) No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement and for the maintenance and operation of its respective properties not included as part of the Project. The obligation of each Project Participant to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

(g) Each Project Participant covenants and agrees to establish and collect fees and charges for electric capacity and energy furnished through facilities of its Electric System sufficient

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to provide Revenues adequate to meet its obligations under this Agreement and to pay any and all other amounts payable from or constituting a charge or lien upon any or all such Revenues.

(h) Each Project Participant covenants and agrees that it shall, at all times, operate the properties of its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and shall maintain its Electric System in good repair, working order and condition.

6. Annual Budget and Billing Statement. Prior to the beginning of each NCPA fiscal year, the Commission of NCPA will adopt an annual budget for such fiscal year for costs and expenses relating to the Project and shall promptly give notice to each Project Participant of its projected share of such costs and expenses.

A billing statement prepared by NCPA based on estimates will be sent to each Project Participant not later than the fifteenth (15th) day of each calendar month showing the amount payable by such Project Participant of costs payable under Section 5(a) hereof for the second succeeding calendar month, any amount payable by such Project Participant as its Project Entitlement Percentage of costs payable under Section 5(b) hereof, and the amount of any credits or debits as a result of any appropriate adjustments. Amounts shown on the billing statement are due and payable thirty (30) days after the date of the billing statement. Any amount due and not paid by the Project Participant within thirty (30) days after the date of the billing statement shall bear interest from the due date until paid at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget.

On or before the day five (5) calendar months after the end of each NCPA fiscal year, NCPA shall submit to each Project Participant a statement of the aggregate monthly costs for such fiscal year. If the actual aggregate monthly costs and the Project Participant's share thereof pursuant to this Agreement, and other amounts payable for any fiscal year, exceed the billings to the Project Participant, the deficiency shall be added to the Project Participant's immediately succeeding billing statement. If the actual aggregate monthly costs and the Project Participant's share thereof pursuant to this Agreement, and other amounts payable for any fiscal year, are less than the billings to the Project Participant, such excess shall be credited to the Project Participant's billing statements for such period (not to exceed the immediately succeeding six months) and in such amounts as shall be determined by NCPA.

If a Project Participant questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within thirty (30) days of the receipt of such billing statement request an explanation from NCPA. If the bill is determined to be incorrect, NCPA will issue a corrected bill and

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refund any amount which may be due the Project Participant which refund shall bear interest from the date NCPA received payment until the date of the refund at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget. If NCPA and the Project Participant fail to agree on the correctness of a bill within thirty (30) days after the Project Participant has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 et seq. of the Code of Civil Procedure.

7. **Obligation in the Event of Default.** (a) Upon failure of any Project Participant to make any payment in full when due under this Agreement, NCPA shall make written demand upon such Project Participant, and if said failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each other Project Participant by NCPA.

(b) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, NCPA shall use its best efforts to sell and transfer for the defaulting Project Participant's account all or a portion of such Project Participant's Project Entitlement Percentage of Project capacity and energy for all or a portion of the remainder of the term of this Agreement. NCPA shall not sell such capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code. Notwithstanding that all or any portion of the Project Participant's Project Entitlement Percentage of Project capacity and energy is so sold or transferred, the Project Participant shall remain liable to NCPA to pay the full amount of its Project Entitlement Percentage of monthly costs as if such sale or transfer had not been made, except that such liability shall be discharged to the extent that NCPA shall receive payment from the purchaser or transferee thereof.

(c) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement and causes NCPA to be in default under the Steam Sales Agreement, the Project No. 2 Steam Sales Agreement or any Bond Resolution, NCPA may (in addition to the remedy provided by subsection (b) of this Section 7) terminate the provisions of this Agreement insofar as the same entitle the defaulting Project Participant to its Project Entitlement Percentage of Project capacity and energy. Irrespective of such termination, the obligations of the Project Participant under this Agreement shall continue in full force and effect.

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(d) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, and except as sales or transfers are made pursuant to subsection (b) of this Section 7, (i) the Project Entitlement Percentage of each nondefaulting Project Participant shall be automatically increased for the remaining term of this Agreement pro rata with those of the other nondefaulting Project Participants and (ii) the defaulting Project Participant's Project Entitlement Percentage shall (but only for purposes of computing the respective Project Entitlement Percentages of the nondefaulting Project Participants) be reduced correspondingly; provided, however, that the sum of such increases for any nondefaulting Project Participant shall not exceed, without written consent of such nondefaulting Project Participant, an accumulated maximum of 25% of the nondefaulting Project Participant's Project Entitlement Percentage, all as initially set forth in Appendix A.

(e) If a Project Participant shall fail or refuse to pay any amounts due to NCPA, the fact that other Project Participants have increased their obligation to NCPA pursuant to this Section 7 shall not relieve the defaulting Project Participant of its liability under this Agreement, and any Project Participant increasing such obligation shall have a right of recovery from the defaulting Project Participant to the extent of such respective increase in obligation caused by the defaulting Project Participant.

(f) Any Trustee for any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement shall have the right, as a third party beneficiary, to initiate and maintain suit to enforce this Agreement to the extent provided in the related Bond Resolution.

8. Transfers, Sales and Assignments of Capacity. Each Project Participant has full and unfettered rights to make transfers, sales, assignments and exchanges (collectively "transfers") of capacity, energy, and rights thereto except as expressly provided otherwise in this Agreement.

(a) No Project Participant shall transfer ownership of all or substantially all of its Electric System to another entity until it has first complied with the provisions of this subsection (a). A consolidation with another governmental entity or change in governmental form is not deemed a transfer of ownership.

(1) Such disposition or transfer shall be under terms and conditions that provide assurance that the obligations of the transferring Project Participant under this Agreement, and that NCPA's obligations under this Agreement, the Steam Sales Agreement, and any Bond Resolution, and the Project No. 2 Steam Sales Agreement, and under other agreements made or to be made by NCPA to carry out the Project, will be promptly and adequately

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met. NCPA may require that sufficient moneys of the transferring Project Participant to discharge such obligations be irrevocably set aside and maintained in a trust account, as a condition to the transfer of the Electric System, if no other adequate assurance is available.

(2) The transferring Project Participant shall give ninety (90) days' advance written notice to NCPA of any proposed transfer pursuant to this subsection (a). Appendix A to this Agreement shall be amended as appropriate to reflect any transaction pursuant to this subsection (a).

(b) Notwithstanding any other provision of this Agreement, no Project Participant shall transfer, assign, sell or exchange any Project capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

9. Surplus Capacity and Energy. When a Project Participant has surplus capacity and/or energy from the Project, NCPA shall, if requested by such Project Participant to do so, sell such surplus capacity and/or energy on behalf of such Project Participant in the following manner:

(a) NCPA shall use its best efforts to sell such surplus capacity and/or energy at a price at least equal to the Project Participant's cost therefor.

(b) Other Project Participants shall have a right of first refusal, and other NCPA members shall have the second right at the sales prices set forth in subsections (c) and (d) of this Section 9.

(c) If NCPA can purchase equivalent capacity and/or energy from other sources for less than the Project Participant's cost for surplus capacity and/or energy from the Project, as the case may be, the sales price of such capacity and/or energy to another Project Participant or NCPA member shall be equal to the cost of purchasing the capacity and/or energy from such other source.

(d) If the alternative cost of purchasing capacity and/or energy for other Project Participants or members of NCPA is more than the Project Participant's cost of surplus capacity and/or energy from the Project, then the sales price shall be the Project Participant's cost plus one-half the difference between the Project Participant's cost from the Project and the cost of capacity and/or energy from an alternative source.

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(e) NCPA shall not sell such surplus capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

10. **Insurance and Indemnification.** NCPA shall obtain or cause to be obtained insurance for the Project covering such risks (including earthquakes), in such amounts and with such deductibles as shall be determined by NCPA. NCPA shall indemnify and hold harmless each Project Participant from any liability for personal injury or property damage resulting from any accident or occurrence arising out of or in any way related to the construction or operation of the Project, provided, however, that such liability of NCPA shall be limited to the extent the proceeds of insurance and other moneys available to NCPA hereunder are available therefore.

11. **Member Direction and Review.** NCPA shall comply with all lawful directions of the Project Participants with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by law. Actions of Project Participants, including giving such directions to NCPA, will be taken only at meetings of authorized representatives of Project Participants duly called and held pursuant to the Ralph M. Brown Act or other laws applicable to such meetings, in effect from time to time.

(a) A quorum of the Commission of NCPA for purposes of acting upon matters related to the Project shall consist of those Commissioners (including for all purposes of this Section 11, their designated alternates), representing a numerical majority of the Project Participants, or, in the absence of such, representing Project Participants having a combined Project Entitlement Percentage of at least a majority in interest at such time.

(b) Special meetings of the Commission to act only on matters relating to the Project may be called by a majority of the Commissioners of Project Participants upon notice as required by the Ralph M. Brown Act or other laws applicable to such meetings, in effect from time to time.

(c) At regular or special meetings of the Commission, voting on matters relating to the Project shall be by Project Entitlement Percentage, and the affirmative vote of a majority in interest at such time shall be required to take action, unless the Project Participants agree at such meetings that voting will be on a one member one vote basis, with a majority vote of those present required for action.

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(d) Notwithstanding subsection (c) of this Section 11, upon demand of any Commissioner of any Project Participant, at any meeting of the Commission other than a special meeting referred to in subsection (b) of this Section 11, the vote on any issue relating to the Project shall be by Project Entitlement Percentage at such time and 65% or greater affirmative vote shall be required to take action.

(e) Any Project Participant may veto a discretionary action of the Project Participants relating to the Project that was not taken by a 65% or greater Project Entitlement Percentage vote within 10 days following mailing of notice of such Commissioners' action, by giving written notice of veto to NCPA, unless at a meeting of Commissioners of Project Participants called for the purpose of considering the veto and held within 30 days after such veto notice, the holders of 65% or greater of the Project Entitlement Percentage shall vote to override the veto.

(f) The sixty-five percent of the Project Entitlement Percentage specified in this Section 11 shall be reduced by the amount that the Project Entitlement Percentage of any Project Participant shall exceed 35%, but such 65% shall not be reduced below a majority in interest.

12. Term. (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 by evidence satisfactory to NCPA of compliance by such Project Participant with Section 5C of the Project No. 2 Member Agreement and in compliance with any other similar requirements of other agreements between NCPA and such Project Participant, and (ii) the Refunding Date shall have occurred.

(b) Notwithstanding the delay in the effective date of this Agreement until Project Entitlement Percentages in the aggregate equal 100% and the other provisions of Section 12(a) hereof have been complied with, it is agreed by all signatories hereto that in consideration for NCPA's signature hereto and for its commitment to use its best efforts to obtain the commitment for Project Entitlement Percentages in the aggregate equal to 100%, each Project Participant upon its execution and delivery of this Agreement to NCPA along with required opinion and any required evidence of compliance as required by Section 12(a) hereof shall be immediately bound not to withdraw its respective offer herein made to enter into this Agreement as executed and/or supplemented or to decrease or terminate its Project Entitlement Percentage. Such a decrease or termination by a Project Participant may be made only if this Agreement has not taken effect

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before January 1, 1984 and only by giving written notice thereof to NCPA between January 1 and January 15, 1984.

(c) Notwithstanding the foregoing, each Project Participant shall be entitled to decrease or terminate its Project Entitlement Percentage upon giving written notice thereof to NCPA within fifteen (15) days after January 1, 1986, if by January 1, 1986 NCPA shall not have issued any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement.

(d) The term of this Agreement shall continue until the later of (i) the expiration of the useful life of the Project, or (ii) the date on which all Bonds issued have been retired, or full provision made for their retirement, including interest until their retirement date; provided, however, that in no event shall the term of this Agreement extend beyond the date of the termination of the existence of NCPA. In the event of the termination of the existence of NCPA it is the intent of the Project Participants that the Agreement be construed as an agreement among the Project Participants.

13. Termination and Amendments. This Agreement shall not be subject to termination by any party under any circumstances, whether based upon the default of any other party under this Agreement, or any other instrument, or otherwise, except as specifically provided herein.

Except as otherwise provided in this Agreement, so long as any Bonds are outstanding and unpaid and funds are not set aside for the payment or retirement thereof in accordance with the applicable Bond Resolution, this Agreement shall not be amended, modified or otherwise changed or rescinded by agreement of the parties without the consent of each Trustee for Bonds whose consent is required under the applicable Bond Resolution.

14. Member Service Agreement. This Agreement is a service schedule and a third phase agreement attached to and incorporated into the Member Service Agreement. This Agreement shall be construed as the more specific terms governing the general relationship between the parties set out in the Member Service Agreement in connection with the Project.

15. Second Phase Agreement. The Second Phase Agreement is superseded by this Agreement upon the issuance of any Bonds the payment of which is secured by payments made by the Project Participants under this Agreement and upon provision for payment of any notes or other evidences of indebtedness of NCPA secured by payments made by the Project Participants under the Second Phase Agreement, except that section 4 thereof shall remain in effect as provided by section 5 of the Second Phase Agreement unless changed by

formal action of all of the Project Participants. Said section 4 is as follows:

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"Section 4. Conditional Repayment to Members. All payments and advances made heretofore, including Development Fund Advances, and those hereafter made pursuant to Section 1, excluding interest paid on delinquent payments, shall be repaid to each of the entities making such payments and advances pursuant to this Agreement out of the proceeds of the first issuance of the Project bonds or as and when there are sufficient funds available from the partial sale of Bonds. Such reimbursements shall be made within 60 days following the sale of any Project bonds and shall include interest computed monthly at a rate equivalent to the prime rate of the Bank of America NT&SA at the end of such month. Any interest due under the third paragraph of section 1 of this Agreement and unpaid shall be deducted from the repayment. If NCPA is not successful in financing the Project, there shall be no reimbursement except out of unused Project funds along with all other receipts to which NCPA is entitled in connection with the Project."

16. Sharing of Resources, Facilities and Costs.

(a) NCPA may, in accordance with Section 11 hereof, enter into agreements for the transfer or sharing of resources, facilities and costs between and among the Project and other entities and projects (including without limitation Project No. 2), which agreements may provide, among other things, for the transfer or sharing of steam, transmission facilities and rights to use the same, maintenance and repair facilities, generating equipment, spare parts, staff, insurance, taxes and payment in lieu thereof, and delay payments under the Steam Sales Agreement and the Project No. 2 Steam Sales Agreement and for the integrated operation of the Project and Project No. 2 by NCPA.

(b) NCPA may, in accordance with the Project No. 2 Member Agreement and upon compliance with the requirements of any trust indenture or other instrument applicable thereto, including without limitation any consents required thereby, enter into agreements for (i) the transfer or sharing of resources, facilities and costs between and among Project No. 2 and other entities and projects (including without limitation the Project), which agreements may provide, among other things, for the transfer or sharing of steam, transmission facilities and rights to use the same, maintenance and repair facilities, generating equipment, spare parts, staff, insurance, taxes and payment in lieu thereof, and delay payments under the Project No. 2 Steam Sales Agreement, and for the integrated operation of the Project and Project No. 2 by NCPA, and (ii) the modification or refinancing of all or any portion of the obligations incurred by NCPA or a nonprofit corporation for Project No. 2, including without

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limitation the refinancing thereof with Bonds and the modification or refinancing of the loan guaranteed by the United States Department of Energy.

(c) This Agreement shall constitute approval by the participants in Project No. 2 of (i) the refinancing of (a) the outstanding Public Power Revenue Bonds, 1981 Series A, dated July 1, 1981, and the outstanding Public Power Revenue Bonds, 1982 Series A, dated July 1, 1982, (b) the outstanding loan of NCPA pursuant to a Loan Agreement between NCPA and Bank of Montreal (California), dated October 2, 1980, and (c) certain Development Fund expenditures, with Bonds so long as, in the judgment of the Commissioners of NCPA representing the participants in Project No. 2, the debt service secured or to be secured by the Project No. 2 Member Agreement is not increased thereby and the other terms of such refinancing are not materially adverse to the participants in Project No. 2; and (ii) equal sharing between Project No. 2 and the East Block portion of the Project of steam from the Project No. 2 area and the East Block area.

(d) The Project No. 2 Member Agreement shall be construed so as to be compatible with this Agreement to accomplish the purposes hereof. Any financing or refinancing of Project No. 2 shall be accomplished by the issuance of Bonds secured by this Agreement unless the Project Participants refuse to authorize such financing or refinancing as may be requested by the participants in Project No. 2. The respective obligations of NCPA under Section 4 hereof and of the Project Participants under Section 5 hereof shall be deemed satisfied to the extent of performance thereof pursuant to the Project No. 2 Member Agreement, and (iv) subject to the specific terms of the agreement or agreements contemplated by subsections (a) and (b) of this Section 16, Project No. 2 and the East Block portion of the Project shall be conducted for the mutual benefit of all participants therein.

(e) The Project No. 2 Member Agreement shall be amended by the provisions hereof as follows:

(i) Section 6 of the Project No. 2 Member Agreement shall be superseded by Sections 8, and 9 hereof,

(ii) subsection (a) of Section 5 of the Project No. 2 Member Agreement shall be superseded by the following:

"(a) Commencing with the commercial operation of the Project, NCPA shall fix charges to the Purchasing Participating Member under this Agreement to produce revenues to NCPA from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service

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on the Bonds, reserves for the payment of debt service on the Bonds and other payments required under the Bond Indenture or other agreement or instrument providing for the issuance and payment of Bonds other than payments described in (iii) and (iv) below, (ii) all other payments provided to be made by NCPA under the Shell Agreement, (iii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs other than costs and expenses pursuant to Section 4 hereof, and (iv) costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4 hereof. NCPA shall fix charges to the Purchasing Participating Members to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on Purchasing Participating Member's Purchasing Participation Percentage and to meet the costs described in (iii) above based on the anticipated energy sales of the Project. If NCPA delivers Project capacity and energy to or for any Purchasing Participating Member pursuant to Section 4 of this Agreement, NCPA shall fix charges to each such Purchasing Participating Member so as to pay the costs of such delivery without liability to any Purchasing Participating Member for whom Project capacity and energy is not so delivered by NCPA.

Any payments required to be made, or costs incurred, by NCPA or the Project Participants pursuant to the PG and E Interconnection Agreement shall not be made or incurred under this Agreement."

(iii) Section 3 of the Project No. 2 Member Agreement shall be supplemented by the following:

"NCPA may pledge and assign to any Trustee for any Bonds all or any portion of the payments received hereunder from Purchasing Participating Members and upon notice from NCPA, each Purchasing Participating Member shall make payments due by it hereunder directly to any Trustee for the Bonds. Such pledge and assignment by NCPA shall be made effective for such time as NCPA shall determine and provide. For the purposes of this Agreement the term "Bonds" shall include any bonds, notes or other evidences of indebtedness issued by NCPA to refinance the cost of the Project."

(iv) Section 5C of the Project No. 2 Member Agreement shall be deleted.

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17. **Miscellaneous.** The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

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

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

NORTHERN CALIFORNIA POWER AGENCY

By _____
And _____

CITY OF PALO ALTO

By _____
And _____

CITY OF AJAMEDA

By _____
And _____

CITY OF ROSEVILLE

By _____
And _____

CITY OF BIGGS

By _____
And _____

CITY OF SANTA CLARA

By _____
And _____

CITY OF HEALDSBURG

By _____
And _____

CITY OF GRIDLEY

By _____
And _____

CITY OF LCDI

By _____
And _____

UKIAH

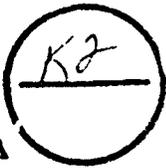
By _____
And _____

CITY OF LOMPOC

By _____
And _____

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

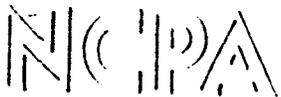
By _____
And _____



APPENDIX A

SCHEDULE OF PROJECT PARTICIPANTS
AND PROJECT ENTITLEMENT PERCENTAGES

<u>Project Participant</u>	<u>Project No. 2 Entitlement Percentage</u>	<u>East Block Entitlement Percentage</u>	<u>Project Entitlement Percentage</u>
City of Alameda	14.994%	18.771%	16.8825%
City of Biggs	0.000	.454	.227
City of Gridley	.334	.456	.395
City of Healdsburg	3.252	4.096	3.674
City of Lodi	14.560	9.158	11.859
City of Lompoc	3.266	4.096	3.681
City of Palo Alto	0.000	9.158	4.579
City of Roseville	3.252	12.514	7.883
City of Santa Clara	54.651	34.13	44.3905
City of Ukiah	4.972	6.257	5.6145
Plumas-Sierra Rural Electric Cooperative	<u>.719</u>	<u>.91</u>	<u>.8145</u>
Total	100.000%	100.000%	100.000%



Northern California Power Agency

8421 Auburn Boulevard, Suite 160 Citrus Heights, California 95610

ROBERT E. GRIMSHAW
General Manager

(916) 722-7815

August 26, 1983

RECEIVED
1983 AUG 29 AM 8 54

ALICE M. REIMCHE
CITY CLERK
CITY OF LODI

TO: Geothermal Project No. 3 Participants
Calaveras Project Participants

FROM: Gail Sipple

SUBJECT: Amendment No. 1 to the Project No. 3 Third Phase Agreement
Amendment No. 1 to the Calaveras Project Third Phase Agreement

Pursuant to the Commission meeting of August 25, 1983, enclosed are the following documents to be presented to your governing body for approval:

1. Amendment No. 1 to the Geothermal Project No. 3 (Third Phase Agreement)
 - . Supporting Ordinance
2. Amendment No. 1 to the North Fork Stanislaus Hydro Project (Calaveras Third Phase Agreement)
 - . Supporting Ordinance

As you are aware, the financing package cannot be completed until these documents are adopted. Therefore, it is requested that these amendments be presented for approval as soon as possible. Upon approval, please return to me the following:

1. A signed copy of each amendment
2. A signed copy of each ordinance
3. Proof of publication of each ordinance
4. A certified copy of the minutes approving each amendment

By copy of this letter I am also forwarding these documents to your City Clerk for processing.

Yours truly,


GAIL SIPPLE
Executive Assistant

Enc.

NCPA 3 GEOTHERMAL PROJECT PHASE 3 SUMMARY

LODI'S BENEFITS/OBLIGATIONS

<u>Lodi % Participation</u>	<u>Base Load Growth to Yr.</u>	<u>Lodi Debt - \$M¹</u>	<u>Debt Reduction - \$M²</u>	<u>Comments</u>
9.16	1999	19.39	-	Lodi's Phase 2 Participation
7.00	1996	15.26	4.13	Maximum Suggested Phase 3 Participation
6.00	1994	13.34	6.05	Recommended Phase 3 Participation
4.00	1991	9.51	9.88	Minimum Suggested Phase 3 Participation

¹ Includes financing for transmission .

² Compared to Lodi's Phase 2 participation debt obligation (\$19.39 M).

McDONOUGH, HOLLAND & ALLEN

A PROFESSIONAL CORPORATION
ATTORNEYS

555 CAPITOL MALL, SUITE 950
SACRAMENTO, CALIFORNIA 95814
(916) 444-3900

COSTA MESA OFFICE
3200 PARA CENTER DRIVE, SUITE 710
COSTA MESA, CALIFORNIA 92626
(714) 850-1180

IN REPLY REFER TO:

MARTIN McDONOUGH
ALFRED E. HOLLAND
BRUCE F. ALLEN
V. BARLOW GOFF
JOSEPH E. COOMES, JR.
WILLIAM G. HOLLIMAN, JR.
DAVID J. SPOTTISWOOD
ELMER R. MALACHOFF
RICHARD W. NICHOLS
DONALD C. POOLE
RICHARD W. OSEN
RICHARD E. BRANDT
GARY F. LOVERIDGE
G. RICHARD BROWN
DENNIS D. O'NEIL
DAVID W. POST
SUSAN R. EDLING
BRUCE McDONOUGH
WILLIAM L. OWEN
D. WILLIAM DENTING
DAVID F. BEATTY
JAMES B. O'NEAL
ALICE A. WOODYARD
MICHAEL T. FOGARTY

HARRY E. MULL, JR.
STEPHEN ROBBINS
DENNIS W. DE CUIP
ANN O'CONNELL
JEFFRY R. JONES
ROBERT W. O'CONNOR
BETSY S. KIMBALL
WILSON B. HART
SUSAN L. SCHOENIG
SABINA D. GILBERT
DAWN H. COLE
JOHN W. TAYLOR
JANET N. ELEY-KVARNEM
JOHN E. DI GIUSTO
JOHN L. CARRIER
CRAIG K. POWELL
MARK J. HUEBSCH
SHARON D. ROSEME
JOHN J. FLYNN III
RONALD A. WORLEY
TRIS P. YANG

August 15, 1983

TO: NCPA LEGAL COMMITTEE

Gentlemen:

Subject: Third Phase Agreements for
Project No. Three, and Transmission
Projects

Enclosed are a revised page 13 to the Project 3 Agreement, and revised pages 11 and 12 to the Transmission Agreement, prepared by bond counsel to eliminate any suggestions that Section 5C of the Shell member agreement requires an engineer certificate; the principle is that the Third Phase Agreement for Project No. Three will eliminate the requirement in the Shell Member Agreement by its express terms.

Please telephone me if you have a question about this.

We will depend upon the lawyers to get the replacement pages in the documents that their Councils are approving; Gail thinks that if she sends it to the City Clerks it will cause confusion. Let me know if you can't handle it.

Sincerely yours,


Martin McDonough
Attorney

MMcD:pa
enc.
cc: Robert E. Grimshaw

AUG 16 1983

MUDGE ROSE GUTHRIE ALEXANDER & FERDON

20 BROAD STREET
NEW YORK, N.Y. 10005-2680

212-701-1000

NATHAN ABRAMOWITZ
JOHN H. ALEXANDER
JOHN L. ALTIERI, JR.
GEORGE F. ANDEREGG, JR.
BLISS ANSNES
THOMAS BARR IX
JOHN G. BOVE
WALTER E. BREEN
WILLIAM H. CANNON
ROBERT A. CANTOR
NICHOLAS J. CAPOZZOLI, JR.
ALAN F. CARIDDI
JOSEPH J. CARROLL
J. D. CLAYTON
JOSEPH C. DALEY
FREDERICK M. DANZIGER
JOEL DAVIDOW
DENNIS R. DEVENET
MARTIN J. DOCKERY
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RICHARD S. FARROW
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JAMES G. FRANCOIS
LAWRENCE J. GANNON
GERRIT GILLIS
ROBERT J. GILLISPIE
HOWARD W. GOLDSTEIN
JUDAH GRIBETZ
MICHAEL J. HANNIGAN
MATTHEW G. HEROLD, JR.
DANA W. HISCOCK
JOHN J. KIRBY, JR.
WILLIAM J. KRAMER
HAROLD G. LEVISON
JOHN C. LILLIE
FRANKLIN B. LINCOLN, JR.
EDWARD W. LONG
CARL F. LYON, JR.
WILLIAM A. MADISON
ARTHUR J. MAHON
FRANCIS X. MALONEY
JAMES P. MARLIN
GEORGE J. MARTIN, JR.
ARTHUR F. McMAHON, JR.
MITCHELL E. MENAKER
J. ROGER MENTZ
RICHARD H. NICHOLLS
DOUGLAS M. PARKER
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THOMAS C. RUSSELL
NORMAN M. SEGAL
LAURENCE V. SENN, JR.
HARRY G. SILLECK, JR.
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ARNOLD H. TRACY
DAVID A. VAUGHAN
WILLIAM N. WALKER
DONALD J. ZOELLER

RANDOLPH H. GUTHRIE
MILTON C. ROSE
HENRY ROOT STERN, JR.
H. RIDGELY BULLOCK
COUNSEL

CABLE ADDRESS
BALUCHINS-NEW YORK

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TELECOPIER

212-701-1667

212-425-4109

212-701-1698/99

2121 K STREET, N.W.

WASHINGTON, D.C. 20037

202-429-9355

12, RUE DE LA PAIX

75002, PARIS, FRANCE

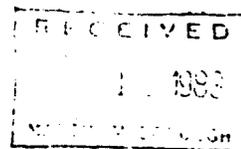
2 61-57-71

SUITE 3166

333 SOUTH GRAND AVENUE

LOS ANGELES, CALIF. 90071

213-613-1112



August 12, 1983

Martin McDonough, Esq.
McDonough Holland & Allen
555 Capital Mall
Suite 950
Sacramento, California 94814

Re: Project No. 3 Third Phase Agreement and
Transmission Project Third Phase Agreement

Dear Martin:

Since some question has been raised concerning the effectiveness of the above agreements and the timing of the amendment to the Calaveras third phase agreement to delete the requirement of an engineer's certificate, I have enclosed a revised page 13 to the Project 3 Agreement and revised pages 11 and 12 to the Transmission Agreement to clarify the fact that the effectiveness of the agreement is not to be contingent on such certificates. These changed pages should be provided to the respective city clerks for the participants.

Very truly yours,

Michael A. DeAngelis

cc: Gail Sipple

TRANSMISSION AGREEMENT, pages 11 and 12

PROJECT AGREEMENT, page 13



Northern California Power Agency

8421 Auburn Boulevard, Suite 160 Citrus Heights, California 95610

ROBERT E. GRIMSHAW

General Manager

(916) 722-7815

August 5, 1983

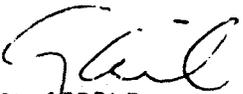
TO: City Clerk

FROM: Gail Sipple

SUBJECT: Publication Requirements for Ordinances Approving the
Transmission Project Third Phase Agreement and the
Geothermal Project No. 3 Third Phase Agreement

On August 2, 1983, I forwarded to you a package containing the above-mentioned agreements along with other supporting documents. One of items included was a memo from Mudge Rose outlining the publication requirements. Because there was some confusion over the last paragraph, Mudge Rose has prepared a revised memo which is attached.

Yours truly,


GAIL SIPPLE
Executive Assistant

Attachment

MEMORANDUM

FOR

Project Participants

August 4, 1983

Publication requirements for the separate ordinances approving the Transmission Member Agreement and the Geothermal Member Agreement

The separate ordinances approving the Transmission Member Agreement and the Geothermal Member Agreement should be published in the same manner as all other ordinances of the Project Participant are published.

If the Project Participant has no procedure for the publication of ordinances, then a special procedure under Section 54242 of the California Government Code applies. Under the special procedure, the separate ordinance approving each Agreement must be published once in a newspaper of general circulation in the city within 15 days after its adoption. A "newspaper of general circulation" is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers and has been established, printed and published at regular intervals in the city for at least one year preceding the date of publication of the ordinance.

Further, under the special procedure, all publications of the separate ordinances must be set in nonpareil type and must be preceded by a notice of adoption worded in blackface, nonpareil type substantially as follows:

NOTICE OF ADOPTION OF AN ORDINANCE APPROVING THE EXECUTION AND DELIVERY OF THE _____ MEMBER AGREEMENT WHEREBY THE CITY ENTERS INTO A FORMAL LEASEBACK AGREEMENT WITH NORTHERN CALIFORNIA POWER AGENCY.

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RESOLUTION NO. 83- 56
NORTHERN CALIFORNIA POWER AGENCY

BE IT RESOLVED BY THE COMMISSION OF THE NORTHERN CALIFORNIA POWER AGENCY,
as follows:

Section 1. The form of "Agreement for Construction, Operation and Financing of Geothermal Generating Project Number Three", designated July 28, 1983, a Third Phase Agreement under the Member Services Agreements, is hereby approved; and the Assistant Secretary is directed to send copies of the same to the Project Participants named therein, and request that it be approved and executed by ordinance in accordance with the terms of Section 13 thereof.

Section 2. The General Manager is authorized to execute said agreement on behalf of this Agency.

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
City of - Alameda	<u>Agree</u>	_____	_____
Biggs	_____	_____	<u>X</u>
Gridley	<u>Agree</u>	_____	_____
Healdsburg	_____	_____	<u>X</u>
Lodi	<u>Agree</u>	_____	_____
Lompoc	<u>Agree</u>	_____	_____
Palo Alto	<u>Agree</u>	_____	_____
Redding	_____	<u>X</u>	_____
Roseville	<u>Agree</u>	_____	_____
Santa Clara	<u>Agree</u>	_____	_____
Ukiah	<u>Agree</u>	_____	_____
Plumas-Sierra	<u>Agree</u>	_____	_____

ADOPTED AND APPROVED this 28th day of July, 1983.