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**CITY COUNCIL MEETING
SEPTEMBER 21, 1983**

**AMENDMENT TO
NORTH FORK
STANISLAUS RIVER
HYDROELECTRIC
DEVELOPMENT
PROJECT AGREEMENT**

Ordinance No. 1298 - An Ordinance of the City Council of the City of Lodi, approving the Terms and Conditions of an Amendment to a Member Agreement between Northern California Power Agency and Certain Participating Members, and Authorizing the Execution of and Delivery of said Amendment by the Officers of the City of Lodi, North Fork Stanislaus River Hydroelectric Development Project having been introduced at a regular meeting of the City Council of the City of Lodi 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. 1298
ADOPTED**

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

Noes: Council Members - Pinkerton

Absent: Council Members - Murphy

Agg. 24



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. GRAVES, Jr.
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

September 27, 1983

TO: Gail Sipple
NCPA

FROM: Alice M. Reimche
City Clerk

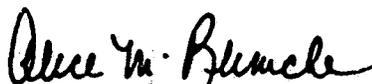
SUBJECT: Amendment No. 1, North Fork Stanislaus River
Hydroelectric Development Project (Calaveras
Third Phase Agreement)

Pursuant to your August 26, 1983 letter, enclosed herewith please find the following documents pertaining to the above project.

1. A signed copy of the subject agreement
2. A signed copy of the Ordinance (No. 1298)

The proof of Publication of the Ordinance (No. 1298) and a certified copy of the minutes approving each amendment will be forwarded to you shortly.

Very truly yours,


Alice M. Reimche
City Clerk

AMR:jj
Enc.

AMENDMENT NUMBER ONE

Dated as of August 1, 1983

TO

**AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING
OF THE NORTH FORK STANISLAUS RIVER
HYDROELECTRIC DEVELOPMENT PROJECT**

Dated as of September 1, 1982

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 Redding
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 THE NORTH FORK STANISLAUS RIVER
HYDROELECTRIC DEVELOPMENT PROJECT**

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 other entities executing this Amendment Number One.

WITNESSETH:

WHEREAS, NCPA and the other entities executing this Agreement have heretofore entered into an "Agreement For Construction, Operation and Financing of the North Fork Stanislaus River Hydroelectric Development Project", dated as of September 1, 1982 (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 for the Bonds to be issued to finance the Project; and

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

NOW THEREFORE, the parties hereto do agree as follows:

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

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

"(b) "Project Entitlement Percentage" means, with respect to each Project Participant, the percentage 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 Sections 7(d) and 14 of this Agreement."

(b) Section 1(d) of the Original Agreement is hereby amended to read as follows:

"(d) "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 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."

(c) Section 1 of the Original Agreement is hereby supplemented to read as follows:

"(g) The Project shall have the meaning in this Agreement as ascribed thereto in the Power Purchase Contract, provided, however that the Project may be amended by the Project Participants in accordance with Section 12 of this Agreement, provided that any such amendment shall not have a material adverse effect on the security for the NCPA Bonds."

(d) Section 5(c) of the Original Agreement is hereby amended to read as follows:

"(c) Each Project Participant shall make payments under this Agreement solely from the Revenues of, and as an operating expense of, its Electric System; provided, however, that so long as no Bonds other than Temporary Bonds are outstanding, to the extent stated in the Bond Resolution authorizing Temporary Bonds then outstanding, Project Participants shall make payments under this Agreement from the Revenues of such Project Participants' Electric Systems but only after the payment of operating expenses thereof. 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) Section 5 of the Original Agreement is hereby supplemented as follows:

"(h) 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 among Pacific Gas and Electric Company, NCPA and certain of the Project Participants shall not be made or incurred under this Agreement."

(f) Section 6 of the Original Agreement is hereby amended in its entirety to read as follows:

"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 Project Entitlement Percentage 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 Project Entitlement Percentage 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 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."

(g) Section 8 of the Original Agreement is hereby deleted in its entirety.

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, NCPA has executed this Agreement in accordance with the authorization of its Commission and each of the other undersigned entities has executed this Agreement with the approval of its governing body, and caused its official seal to be affixed.

NORTHERN CALIFORNIA POWER AGENCY

By _____
And _____

CITY OF ALAMEDA

By _____
And _____

CITY OF BIGGS

By _____
And _____

CITY OF GRIDLEY

By _____
And _____

CITY OF HEALDSBURG

By _____
And _____

CITY OF LODI

By _____
And _____ Mayor
City Clerk

CITY OF LOMPOC

By _____
And _____

CITY OF PALO ALTO

By _____
And _____

CITY OF REDDING

By _____
And _____

CITY OF ROSEVILLE

By _____
And _____

CITY OF SANTA CLARA

By _____
And _____

CITY OF UKIAH

By _____
And _____

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

By _____
And _____

ORDINANCE NO. 1298

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

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 Lodi, California (the "City") and certain other public agencies created pursuant to the laws of the State of California (collectively, the "Members"), have entered into a Joint Powers Agreement (the "Agreement"), as amended, creating the Northern California Public Agency (the "Agency"), a public entity separate and apart from the Members; and

WHEREAS, in accordance with the Agreement and the Joint Powers Act, the Agency has entered or will enter into agreements to acquire a project (the "Project") to consist of rights to capacity and energy from the North Fork Stanislaus River Hydroelectric Development Power Project, a hydroelectric project proposed to be constructed in the State of California, and capital improvements thereto that may be constructed from time to time, and interests in certain other properties and rights relating thereto; and

WHEREAS, the City has heretofore entered into the Agreement for Construction, Operation and Financing of the North Fork Stanislaus River Hydroelectric Development Project (the "Member Agreement") dated for convenience as of September 1, 1982, to purchase electric capacity and energy of the Project from the Agency; and

WHEREAS, this City Council finds and determines that it is desirable to amend the Member Agreement in accordance with the terms

and provisions of Amendment Number One To the Agreement for Construction, Operation and Financing of the North Stanislaus River Hydroelectric Development Project dated as of August 1, 1983 (the "Amendment");

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

1. The City Council hereby finds and determines that the terms and provisions of the Amendment in substantially the form submitted to this City Council be, and the same are hereby, approved.

2. The Mayor and City Clerk are authorized to execute and deliver said Amendment by and on behalf of the City.

3. Pursuant to Section 54241 of the Government Code of the State of California, this Ordinance is subject to the provisions for referendum applicable to the City.

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

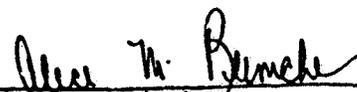
5. Thirty (30) days from and after its enactment, this Ordinance shall take effect and be in full force, in the manner provided by law.

ADOPTED by the City Council and signed by the Mayor and attested by the City Clerk this 21st day of September, 1983.



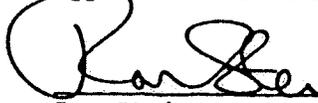
Evelyn M. Olson
Mayor of the City of Lodi

Attest:



Alice M. Reinche
City Clerk of the City of Lodi

Approved as to form



Ron Stein
City Attorney