

RESOLUTION NO. 92-133
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A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING EXECUTION OF THE
COMBUSTION TURBINE PROJECT NUMBER TWO
THIRD-PHASE AGREEMENT

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WHEREAS, the Northern California Power Agency (NCPA) has evaluated the possible construction of a 49-megawatt rated, highly efficient, combustion turbine generation facility to be located in Lodi, California; and

WHEREAS, the results have been positive and the project has reached the state of development where each participating NCPA member, including the City of Lodi, must make its determination whether or not to participate further in the project; and

WHEREAS, the NCPA Third-Phase Agreement providing for NCPA member participation in the construction, operation and financing of the project and associated rights and obligations has been drafted; and

WHEREAS, NCPA Counsel and the NCPA Commission have reviewed the Third-Phase Agreement and recommend its approval by the participants; and

WHEREAS, the Electric Department's review of this matter indicates that the participation level should be 39.5 percent, which translates into approximately 20 megawatts.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes a 39.5 percent participation in the Combustion Turbine Project Number Two and approves the NCPA Third-Phase Agreement.

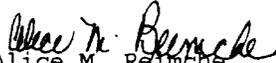
BE IT FURTHER RESOLVED that the City Manager is authorized to execute the Combustion Turbine Project Number Two Agreement.

Dated: August 5, 1992

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I hereby certify that Resolution No. 92-133 was passed and adopted by the Lodi City Council in a regular meeting held August 5, 1992 by the following vote:

- Ayes: Council Members - Hinchman, Sieglock, Snider and Pinkerton (Mayor)
- Noes: Council Members - None
- Absent: Council Members - None
- Abstain: Council Members - Pennino


Alice M. Reimche
City Clerk

AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING
OF COMBUSTION TURBINE PROJECT NUMBER TWO

Dated as of August 5, 1992

By and Among

NORTHERN CALIFORNIA POWER AGENCY

and

CITY OF ALAMEDA
CITY OF LODI
CITY OF LOMPOC
CITY OF ROSEVILLE

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**AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING
OF COMBUSTION TURBINE PROJECT NUMBER TWO**

This Agreement, dated as of August 5 _____, 1992, by and among Northern California Power Agency, a joint powers agency of the State of California (hereinafter called "NCPA") and the NCPA members executing this Agreement (collectively, the "Project Participants" and, individually, a "Project Participant"),

WITNESSETH:

WHEREAS, NCPA proposes to acquire and construct or cause to be acquired and constructed, and to operate or cause to be operated, the Project (capitalized terms used herein shall have the meanings given such terms in Section 1 hereof) as described herein; and

WHEREAS, NCPA and certain of its members entered into an "Agreement for Financing of Planning and Development Activities for Construction of Combustion Turbine Project No. Two" dated as of July 23, 1990, providing for the financing of certain planning and development activities in connection with 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 "Third Phase Agreement" 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, and any successor agreements such as the Facilities Agreement, being hereinafter called the "Member Service Agreement"), which provide for services which NCPA shall perform for its members, and for the provisions to be contained in second and third phase agreements, such as the Second Phase Agreement and this Agreement; and

WHEREAS, NCPA and the Project Participants now 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) "Bond Resolution" means an instrument providing for the issuance of Bonds and the terms thereof and may be a resolution, indenture of trust, order, agreement, or other instrument.

(b) "Bonds" means bonds, notes or other evidences of indebtedness of NCPA (including, without limitation, contracts relating to letters of credit or other credit enhancement devices, interest rate swap and other agreements relating to interest rate or other cash-flow exchanges such as those authorized by the Public Finance Contracts Law, and other contracts which are characterized as debt by NCPA at or prior to the execution thereof) issued to finance or refinance the Project and to finance or refinance any contributions-in-aid-of-construction for construction necessary for the adjacent electric system to interconnect with the Project and includes additional bonds to complete the Project. For purposes of this Agreement, Bonds shall be considered outstanding as of any date if such Bonds have not been paid or if provision for the payment of the principal, premium, if any, and interest on such Bonds has not been made in accordance with the Bond Resolution pursuant to which such Bonds have been authorized.

(c) "Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder and shall include any successors to such statute and regulations.

(d) "Commission" means the Commission which is the governing body of NCPA established pursuant to the Joint Powers Agreement.

(e) "Commissioner" means the representative of a member of NCPA on the Commission and shall include any alternate designated by such member while acting as the member's representative on the Commission.

(f) "Debt Service" means, with respect to any period, the aggregate of the amounts required by each Bond Resolution to be paid during said period into any fund or account created by the Bond Resolution for the sole purpose of paying or providing reserves for paying the principal (including sinking fund installments) of and premium, if any, and interest on all the Bonds from time to time outstanding.

(g) "Electric System" means, with respect to each Project Participant, 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 equipment 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.

(h) "Facilities Agreement" means the Interim Facilities Agreement, dated as of June 27, 1991, among the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, Santa Clara and Ukiah, the Plumas-Sierra Rural Electric Cooperative and the Turlock Irrigation District, as amended and supplemented from time to time, and includes any successor agreement.

(i) "Fiscal Year" means the then current fiscal year of NCPA, which on the date of this Agreement is the period from July 1 to the next succeeding June 30.

(j) "Full Operation Date" means the first date when the Project is capable of producing and delivering capacity and energy in commercial operation, as shall be determined by the Commission of NCPA in accordance with prudent utility practices.

(k) "Interconnection Agreement" means the Interconnection Agreement among Pacific Gas and Electric Company, NCPA, and certain members of NCPA, as the same may be amended and supplemented from time to time, and including any successor agreement.

(l) "Joint Powers Agreement" means the Joint Exercise of Powers Agreement - Northern California Power Agency, dated as of July 19, 1968, as amended, among the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah, the Plumas-Sierra Rural Electric Cooperative, the Turlock Irrigation District and the Truckee Donner Public Utility District, establishing NCPA.

(m) "Project" means a combustion turbine, electric generating resource with a nameplate capacity of approximately 49 megawatts located in the City of Lodi, California and related facilities and interests, including electric facilities necessary for the Project to interconnect with the adjacent electric system and all rights, properties and improvements necessary therefor, including fuel and water facilities and resources and rights thereto or therein, and capital improvements thereto (including replacement of the generating unit presently included in the Project but excluding any additional generating units unless specifically approved by each of the Project Participants) that may be constructed from time to time.

(n) "Project Participation Percentage" means, with respect to each Project Participant, the percentage of the total capacity of the Project, and the energy associated with such

capacity, to which such Project Participant is entitled pursuant to the terms of this Agreement. The Project Participation Percentage for each Project participant shall be 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 this Agreement.

(o) "Project Participant" means each of the NCPA members executing this Agreement, together in each case with their respective successors or assigns.

(p) "Public Finance Contracts Law" means Chapter 12 of Division 6 of Title 1 of the Government Code of the State of California, as the same may be amended and supplemented from time to time, and shall include any successors to such statute.

(q) "Revenues" means, with respect to each Project Participant, 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 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.

(r) "Trustee" means the entity or entities designated by NCPA as the Trustee under any Bond Resolution.

2. **Purpose.** The purpose of this Agreement is to provide the terms and conditions of the financing, construction and operation of the Project by NCPA and the sale by NCPA, and the purchase by the Project Participants, of the capacity and associated energy of the Project.

3. **Construction and Financing of the Project.** NCPA will use its best efforts to cause or accomplish the construction and financing of the Project, including obtaining all necessary authority and rights therefor and performing all things necessary or convenient in connection therewith. Each Project Participant will cooperate with NCPA to that end and will give any and all clarifying assurances by executing supplemental agreements that

may be requested by NCPA's legal counsel to make the obligations herein more specific, to satisfy legal requirements and provide security for the Bonds.

4. Obligation to Make Project Capacity and Energy Available. (a) Pursuant to the terms of this Agreement, NCPA shall make available or cause to be made available, and each Project Participant shall be entitled to receive, such Project Participant's Project Participation Percentage of the capacity of the Project and the energy associated with such capacity. Subject to the terms of this Agreement, and any directions of the Project Participants pursuant to Section 11 hereof, NCPA shall operate the Project, or cause the Project to be operated, in accordance with the principles contained in the Facilities Agreement, as the same may be amended and supplemented from time to time.

(b) NCPA will remain available to do all things necessary and practical to deliver or cause to be delivered to or for each Project Participant, such Project Participant's Project Participation Percentage, of the capacity of the Project and the energy related thereto. Such delivery shall be at points mutually agreed upon by NCPA and each 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 practical arrangements for transmission of such capacity and energy to such points over the lines of NCPA or others. Wheeling or delivery services by NCPA with respect to the delivery of Project energy to the Project Participants shall be as provided in service schedules as set forth in Article III of the Member Service Agreement applicable to the respective Project Participants.

5. Rates and Charges. (a) Commencing on the Full Operation Date, NCPA shall fix charges to the Project Participants under this Agreement in accordance with this Section to produce revenues to NCPA for capacity and energy of the Project equal to the amounts 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 and other payments required under the Bond Resolutions other than the payments described in (ii) and (iii) below; (ii) any other operation, maintenance and replacement costs of the Project, including the cost of fuel, a reasonable reserve for contingencies, and all other Project costs not described in (i) above or (iii) below; and (iii) the costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) hereof. NCPA shall fix charges to the Project Participants to produce revenues to NCPA from the Project to meet the costs described in (i) above based on Project Participation Percentages. The costs described in (ii) above will be divided between capacity charges and energy charges as provided in the Facilities Agreement. Capacity charges for the costs described

in (ii) above shall be based on Project Participation Percentages applied to such costs. Energy charges for the costs described in (ii) above shall be based on actual energy deliveries to each Project Participant from the Project. 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 that such Project Participant shall pay only the costs described in (iii) above which are attributable to such Project Participant.

(b) To the extent that the funds provided under Section 5(a) of this Agreement at any time and for any reason, including without limitation that the Full Operation Date has not occurred, are not sufficient for such purposes, each Project Participant shall pay to NCPA an amount equal to such Project Participant's Project Participation Percentage of the Debt Service on the Bonds and all other payments required to be made under the Bond Resolutions. The obligations under this Section 5(b) are incurred by each Project Participant for the benefit of future holders of Bonds, shall commence and continue to exist and be honored by the Project Participants whether or not capacity and energy from the Project is made available or furnished to them at all times or at all and constitutes an obligation to pay all such costs whether or not capacity and energy from the Project is made available or delivered or provided.

(c) Notwithstanding that NCPA may utilize services under the Interconnection Agreement in complying with Section 4(b) hereof, any payments required to be made by, or costs incurred by, NCPA or a Project Participant pursuant to Section 9.5 of the Interconnection Agreement shall not be made under this Agreement.

(d) Each Project Participant is obligated to 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 or any part thereof is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output or the Project 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 other Project Participant under this Agreement or any other 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 Electric System. 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 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.

(h) 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 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, lien, or encumbrance upon any or all such Revenues; provided that the obligation of the Project Participant to make payments under this Section 5 shall not constitute a legal or equitable pledge, lien or encumbrance upon any property of the Project Participant or upon any of its income, receipts or revenues; and further provided that neither the Project Participants nor the State of California or any agency or political subdivision thereof shall ever be obligated or compelled to levy ad valorem taxes to make the payments provided for in this Section 5.

6. Budgets and Billing Statements. (a) Prior to the beginning of each Fiscal Year, the Commission of NCPA will adopt an annual budget for such Fiscal Year for costs and expenses relating to the Project which may be part of a multi-year budget containing such information. NCPA shall promptly give notice to each Project Participant of its projected share of such costs and expenses.

(b) NCPA shall prepare and send out billing statements for amounts payable by the Project Participants pursuant to Section 5(a) of this Agreement as provided in the Facilities Agreement and such billing statements shall be subject to the applicable terms and conditions of the Facilities Agreement; provided, however, that, notwithstanding anything herein or in the Facilities Agreement to the contrary, NCPA shall bill each Project Participant for amounts due pursuant to Section 5(a) of this Agreement at such times and in such amounts that NCPA will receive moneys in time to make all payments required by the Bond Resolutions when due.

7. Obligations in the Event of Default. (a) Upon the 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 thirty (30) day period. Notice of such demand shall be provided to each other Project Participant by NCPA.

(b) Upon the failure of any Project Participant to perform any of its obligations hereunder, except for the obligation to make any payment in full when due under this Agreement, NCPA shall give such Project Participant written notice of such failure and if such failure is not remedied within sixty (60) days from the date of such notice, such failure shall constitute a default at the expiration of such sixty (60) day period. A copy of any such notice shall be provided to each other Project Participant by NCPA.

(c) In addition to the rights and remedies available to NCPA pursuant to subsection (d) of this Section, NCPA may protect and enforce its rights hereunder by suit or suits in equity or at law, whether for the specific performance of any covenant herein or for damages or in aid of the execution of any power granted herein or any other remedy available under any provision of applicable law. No remedy by the terms of this Agreement conferred upon or reserved to NCPA is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity or by statute on or after the effective date of this Agreement.

(d) Upon the failure of any Project Participant to make any payment which failure constitutes a default under subsection (a) of this Section, each Project Participant severally agrees that, (i) the Project Participation Percentage of each nondefaulting Project Participant shall be automatically increased by a pro rata share (based on the Project Participation Percentages of all nondefaulting Project Participants) of the defaulting Project Participant's Project Entitlement Percentage for the remaining term of this Agreement and (ii) the defaulting Project Participant's Project Participation Percentage shall 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 twenty-five percent (25%) of the nondefaulting Project Participant's original Project Participation Percentage, as set forth in Appendix A hereto as such Appendix A may be revised pursuant to subsection (c) of Section 12 of this Agreement.

(e) Each nondefaulting Project Participant which has its Project Participation Percentage increased pursuant to subsection (d) of this Section, shall be entitled to the rights which the defaulting Project Participant loses upon the default with respect to such Project Participation Percentage and shall assume, subject to subsection (f) of this Section, all of the

obligations of the defaulting Project Participant with respect to such Project Participation Percentage hereunder. Increases in the Project Participation Percentages of the nondefaulting Project Participants shall be applicable to any payments due and not paid by the defaulting Project Participant at the time of the increase and all subsequent payments due and not paid by the defaulting Project Participant.

(f) If any Project Participant's Project Participation Percentage is increased pursuant to subsection (d) of this Section, the defaulting Project Participant shall not be relieved of any of its obligations or liabilities under this Agreement and each Project Participant whose Project Participation Percentage is so increased shall have a right of recovery from the defaulting Project Participant to the extent of any damages sustained as a result of such default and the respective increase in Project Participation Percentage caused by the defaulting Project Participant.

(g) NCPA may pledge and assign this Agreement and any or all of its right, title and interest in, to and under this Agreement, including without limitation NCPA's rights to receive all or any portion of the payments hereunder from Project Participants, to secure the payment of Bonds. Notwithstanding any other provision of this Agreement, upon notice from NCPA each Project Participant shall make payments due by it hereunder directly to a Trustee for Bonds specified in such notice. Such pledge and assignment by NCPA shall be made effective for such time shall be provided in the applicable Bond Resolution.

(h) In addition to any rights which a Trustee may have as an assignee pursuant to subsection (g) of this Section, each Trustee shall be a third party beneficiary hereof and shall have the right as a third party beneficiary to initiate and maintain suit to enforce this Agreement to the extent provided in the applicable Bond Resolution.

8. Transfers, Sales and Assignments. Each Project Participant has full and unfettered rights to make transfers, sales, assignments and exchanges (collectively "transfers") of such Project Participant's Project Participation Percentage of Project capacity and/or the energy associated therewith and rights thereto except as expressly provided otherwise in the Facilities Agreement and this Agreement. Except as provided in subsection (b) of Section 9 of this Agreement, such transfers shall not affect any of the obligations of the Project Participant under this Agreement.

9. Surplus Capacity and Energy. (a) When a Project Participant has surplus capacity and/or energy from the Project, NCPA shall, if requested by such Project Participant to do so, use its best efforts to sell such surplus capacity and/or energy on behalf of such Project Participant; provided, however, other

Project Participants shall have a right of first refusal to such surplus capacity and/or energy in proportion to their respective Project Participation Percentages, and other NCPA members which are parties to the Facilities Agreement shall have the second right of refusal to such surplus capacity and/or energy, and other NCPA members shall have the third right of refusal to such surplus capacity and/or energy. The sales price for any such surplus capacity and/or energy shall be as determined by the buyer and seller of such surplus capacity and/or energy.

(b) Notwithstanding the sale by NCPA of all or a portion of a Project Participant's surplus Project capacity and/or energy, the Project Participant shall remain liable to NCPA to pay the full amount of its share of Project costs, determined as provided in this Agreement, as if such sale had not been made, except that such liability shall be reduced to the extent that NCPA shall receive payment from the purchaser of such surplus Project capacity and/or energy.

10. Insurance and Indemnification. NCPA shall obtain and continue in force, or cause to be obtained and continued in force, property insurance for the Project and liability insurance with respect to 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 indemnification by NCPA shall be limited to the extent the proceeds of insurance and other moneys are available to NCPA for such purposes.

11. Project Participant Direction and Review.

(a) NCPA shall comply with all lawful directions of the Project Participants with respect to the Project, while not stayed or nullified, to the fullest extent authorized by law and to the extent such directions are not inconsistent with, and do not impair NCPA's ability to perform its obligations under, any Bond Resolution.

(b) While NCPA shall own, operate and maintain the Project in accordance with this Agreement, in recognition of the Project Participants' interest in the Project, NCPA agrees that it shall take no action with respect to the Project pursuant to the authorization or approval of its Commission if a Commissioner representing a Project Participant requests that such authorization or approval be based upon Project Participation Percentages and such authorization or approval does not receive the affirmative vote of Commissioners representing Project Participants then having a combined Project Participation Percentage of at least 65%.

(c) Any Project Participant may veto any authorization or approval of the Commission relating to the Project that was not taken by a 65% or greater Project Participation Percentage vote within 10 days following the mailing of notice of such Commission action, by delivering written notice of veto to NCPA, unless at a meeting of the Commission called for the purpose of considering the veto and held within 30 days after delivery of such written notice of veto, the Commissioners representing Project Participants having a combined Project Participation Percentage of at least 65% at such time shall vote to override the veto.

(d) The 65% of Project Participation Percentage specified in subsections (b) and (c) of this Section shall be reduced by the amount that the Project Participation Percentage of any Project Participant shall exceed 35% but such 65% shall not be reduced below ~~50%~~ *A MAJORITY IN INTEREST.*

12. Term. (a) Subject to subsection (b) of this Section, this Agreement shall take effect when it has been duly executed and delivered to NCPA by Project Participants the initial Project Participation Percentages of which, in the aggregate, equal one hundred percent (100%).

(b) Notwithstanding the provisions of subsection (a) of this Section, 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 signatures of other NCPA members hereto, each Project Participant which executes and delivers this Agreement to NCPA prior to the effectiveness of this Agreement agrees not to take any action to withdraw from this Agreement or otherwise affect its status as a Project Participant hereunder before July 23, 1992. Upon the effectiveness of this Agreement pursuant to subsection (a) of this Section, no Project Participant shall have any right to withdraw from this Agreement or otherwise affect its status as a Project Participant hereunder.

(c) 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 no Bonds remain outstanding; provided, however, that in no event shall the term of this Agreement with NCPA as a party extend beyond the date of termination of NCPA. In the event of the termination of the existence of NCPA it is the intent of the Project Participants that this Agreement be construed as an agreement among the Project Participants.

(d) Upon the termination of this Agreement and at the request of any Project Participant, all Project Participants desiring to partake shall be entitled to an equitable distribution of, or an equitable ownership interest in, the Project, based upon their respective Project Participation Percentages, upon the payment to NCPA of the sum of one dollar.

13. **Termination and Amendments.** (a) This Agreement shall not be subject to termination by any party under any circumstances prior to the term specified in subsection (c) of Section 12 hereof, whether based upon the default of any other party under this Agreement, the release of any party of any of its obligations hereunder or for any other cause whatsoever.

(b) So long as any Bonds are outstanding, 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; provided that no amendment to Appendix A hereto pursuant to subsection (d) of Section 7 hereof shall require the consent of any Trustee to become effective.

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 in accordance with the more specific terms governing the general relationship between the NCPA and its members set out in the Member Service Agreement in connection with the Project.

15. **Second Phase Agreement.** The Second Phase Agreement, as it relates to the Project Participants, is superseded by this Agreement.

16. **Conditional Repayment to Project Participants.** All payments and advances heretofore made by Project Participants with respect to the Project, excluding interest paid on delinquent payments, shall be repaid to each of the Project Participants making such payments and advances out of the proceeds of the first issuance of Bonds which can economically provide therefor, or as and when there are sufficient funds available from partial sale of Bonds, if Bonds are issued to finance the Project. Such reimbursements shall be made within 60 days following the sale of any Bonds and shall include interest computed monthly at a rate equivalent to the end of the month reference rate of the Bank of America NT&SA. Any interest due under the third paragraph of section 1 of the Second Phase Agreement and unpaid shall be deemed due pursuant to this Section 16 and deducted from the repayment. If NCPA determines to complete the Project, but is not successful in obtaining all necessary approvals and financing therefor, there shall be no reimbursement except out of unused Project funds including those then in the working capital fund, along with all other receipts to which NCPA is entitled in connection with the Project.

17. **Tax Covenant.** Notwithstanding any other provision of this Agreement, neither NCPA nor any Project Participant shall transfer, assign, sell or exchange any portion of the capacity and/or energy of the Project, or any other interest in the Project or the capacity and/or energy thereof, directly or

indirectly, in any manner, or shall take, or to the extent it can control the same permit to be taken, any other action or actions, which would adversely affect the exclusion of the interest on any of the Bonds from gross income for federal income tax purposes under Section 103 of the Code, including without limitation, by reason of classification of any of such Bonds as a "private activity bond" within the meaning of said Code.

18. **Notices.** Any notice, demand or request required or authorized by this Agreement to be given shall be in writing, and shall either be personally delivered to the representative of the Project Participant on the Commission, if to a Project Participant, or to the General Manager of NCPA, if to NCPA, or transmitted by telecopy, facsimile or other electronic means to NCPA or the Project Participant at the address shown on the signature pages hereof addressed to such parties. The designated party and any such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Project Participant. Any such notice, demand or request shall be deemed to be given when so delivered.

19. **Records and Accounts.** (a) NCPA shall keep accurate records and accounts for the Project, for each identifiable service which it supplies to any Project Participant through this Agreement and for other transactions of NCPA related to the Project. Such records and accounts shall be kept in general accordance with the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (18 CFR 101), as prescribed by the Federal Energy Regulatory Commission, as amended from time to time. NCPA shall cause those records and accounts to be audited annually by a firm of independent certified public accountants experienced in electric utility accounting and of national reputation. All public records and accounts shall be made available to the Project Participants for inspection at any reasonable time. A copy of the annual auditor's report shall be submitted to the Project Participants not later than four months after the end of each Fiscal Year. All records are subject to audit at the request of any Project Participant provided that such audits shall be conducted at the expense of the Project Participant(s) requesting them.

20. **Reports to Other Agencies.** NCPA shall submit such reports and records which are required by the California Energy Commission, the Federal Energy Regulatory Commission or any other local, state or federal agencies having jurisdiction in connection with the Project.

21. **Reports to Project Participants.** Following the Full Operation Date NCPA shall prepare and issue to the Project Participants the following reports monthly:

- (a) Project Operating Reports.
- (b) Project Financial Operating Statement.
- (c) Status of the Project budget.
- (d) Such additional reports as are requested by the Project Participants.

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

23. **Opinions of Counsel.** Each Project Participant shall, if requested by NCPA in connection with the issuance of any Bonds, cause an opinion or opinions in substantially the form attached hereto as Appendix B to be delivered by an attorney or firm of attorneys acting as counsel for such Project Participant.

24. **Construction.** This Agreement shall be construed in accordance with the laws of the State of California.

25. **Severability.** 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.

26. **Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if NCPA and all the Project Participants to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form thereto but having attached to it one or more signature pages.

IN WITNESS WHEREOF, each Project Participant has executed a counterpart of this Agreement with the approval of its governing body, and represents and warrants that the Project Participant has all requisite authority, and has duly agreed to be bound by all of the terms and conditions of this Agreement, and NCPA has executed each counterpart of this Agreement in accordance with the authorization of its Commission.

ADDRESSES FOR NOTICES

NORTHERN CALIFORNIA POWER
AGENCY

Northern California Power Agency
180 Cirby Way

By _____
And _____

Roseville, CA 95678
Attention: General Manager
Telecopy: (916) 783-7693

CITY OF ALAMEDA
By _____
And _____

City of Alameda
Bureau of Electricity
2000 Grand Avenue
Alameda, CA 94501
Attention: _____
Telecopy: _____

CITY OF LODI
By Thomas A. Peterson
City Manager, Thomas A. Peterson
And Alice M. Reimche
City Clerk, Alice M. Reimche

City of Lodi
221 West Pine Street
Lodi, CA 95241
Attention: _____
Telecopy: _____

CITY OF LOMPOC
By _____
And _____

City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93438
Attention: _____
Telecopy: _____

CITY OF ROSEVILLE
By _____
And _____

City of Roseville
2090 Hilltop Circle
Roseville, CA 95678
Attention: _____
Telecopy: _____

APPENDIX A

SCHEDULE OF PROJECT PARTICIPATION PERCENTAGE

<u>Project Participant</u>	<u>Project Entitlement Percentage</u>
City of Alameda	
City of Lodi	
City of Lompoc	
City of Roseville	
	<hr/>
TOTAL	

CITY COUNCIL

JAMES W. PINKERTON, Mayor

PHILLIP A. PENNINO

Mayor Pro Tempore

DAVID M. HINCHMAN

JACK A. SIEGLOCK

JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET

P.O. BOX 3006

LODI, CALIFORNIA 95241-1910

(209) 334-5634

FAX (209) 333-6795

THOMAS A. PETERSON
City Manager

ALICE M. REIMICHE
City Clerk

BOB McNATT
City Attorney

July 31, 1992

Northern California Power Agency
180 Cirby Way
Roseville, California 95678

Ladies and Gentlemen:

I am acting as counsel to the City of Lodi, a municipal corporation (the "Project Participant"), under the Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two, dated as of July 23, 1990 (the "Agreement") among the Project Participant, Northern California Power Agency (the "Agency") and certain other entities (the "Project Participants"), 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 law and 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 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, duly created, organized and existing under the laws of the State of California and duly qualified to furnish electric service within the State of California.

2. The Project Participant has full legal right, power and authority to enter into the Agreement and to carry out and consummate all transactions contemplated thereby, 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 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(d) of the Agreement.

5. No approval, consent or authorization of any other 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, or 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 or 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, other similar laws affecting creditors' rights generally and 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.

Sincerely,



BOB W. McNATT
City Attorney

BM:vc