

**AMENDED AND RESTATED  
FACILITIES AGREEMENT**

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This AMENDED AND RESTATED FACILITIES AGREEMENT (“this Agreement”) is dated as of \_\_\_\_\_, 20\_\_ by and among the Northern California Power Agency, a joint powers agency of the State of California (“NCPA”), and the signatories to this Agreement other than NCPA (“Participants”). NCPA and the Participants are referred to herein individually as a “Party” and collectively as the “Parties”.

### RECITALS

A. NCPA has heretofore been duly established as a public agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale.

B. Each of the Participants other than the Turlock Irrigation District (“TID”) is also a signatory to the Joint Powers Agreement which created NCPA and therefore is a Member. The Participants other than TID are referred to as “Member” or “Members”.

C. Each of the Participants to this Agreement has executed one or more Project Agreements to participate in a NCPA Project or Projects.

D. Each Participant is authorized by its Constitutive Documents to obtain electric capacity and energy for its present or future requirements, through contracts with NCPA or otherwise.

E. The Participants desire NCPA to establish facilities, staff and the capability for planning for the addition of generation or transmission facilities, and for entering into long-term transactions and transmission services.

F. NCPA has established facilities, staff and the capability for planning for the addition of generation or transmission facilities, and for entering into long-term transactions and transmission services.

G. The Participants desire NCPA to maintain, operate and schedule the NCPA Projects in accordance with each respective Project Agreement, applicable market rules and Good Utility Practices for the benefit of the Participants.

H. The Members and NCPA have established and may again establish NCPA Projects for the supply of electric capacity, energy, and related attributes, and desire to clearly define and facilitate the activities of NCPA in connection with such NCPA Projects.

I. This Agreement establishes the framework under which Project Agreements are created for the development, design, financing, construction, and operation of specific NCPA Projects.

J. Each of the Parties intends to observe the provisions of this Agreement in good faith and shall cooperate with all other Parties in order to achieve the full benefits of joint design, construction, and operation of facilities.

K. The Parties desire to equitably allocate costs of NCPA's provision of services under this Agreement among the Participants.

L. This Agreement amends, restates and replaces that certain Facilities Agreement dated as of December 15, 1993, as amended by Amendment No. 1 dated as of April 1, 2011 (as amended, "the prior facilities agreement"), and the prior facilities agreement is hereafter of no further force or effect.

M. The Member Service Agreements between the Parties were superseded by the prior facilities agreement, and continue to have no further force or effect.

N. The Lodi Energy Center is independently governed pursuant to separate agreements, and therefore the terms and conditions of this Agreement do not apply to it.

O. The Participants further desire, insofar as possible, to insulate other Members, whether or not such Members are also Participants, from risks inherent in the services and transactions undertaken on behalf of any given Participant or group of Participants.

NOW, THEREFORE, the Parties agree as follows:

**Section 1. Definitions.**

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 1 of this Agreement shall have the meaning indicated in Section 1 of the Power Management and Administrative Services Agreement:

1.1.1 “Administrative Services Costs” means that portion of the NCPA administrative, general and occupancy costs and expenses, including those costs and expenses associated with the operations, direction and supervision of the general affairs and activities of NCPA, general management, treasury operations, accounting, budgeting, payroll, human resources, information technology, facilities management, salaries and wages (including retirement benefits) of employees, facility operation and maintenance costs, taxes and payments in lieu of taxes (if any), insurance premiums, fees for legal, engineering, financial and other services, power management services, general settlement and billing services and general risk management costs, that are charged directly or apportioned to the development, financing, construction, improvement, maintenance, operation or decommissioning of a NCPA Project. Administrative Services Costs as

separately defined herein and used in the context of this Agreement is different and distinct from the term Administrative Services Costs as defined in Section 1 of the Power Management and Administrative Services Agreement.

1.1.2 “Agreement” means this Amended and Restated Facilities Agreement, including all Facilities Schedules.

1.1.3 “Constitutive Documents” means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder with respect to the governance of NCPA, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its City Charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant’s governing body.

1.1.4 “Defaulting Participant” has the meaning set forth in Section 10.2 of this Agreement.

1.1.5 “Event of Default” has the meaning set forth in Section 10.2 of this Agreement.

1.1.6 "Facilities Schedules" are the principles and/or procedures adopted by the Commission, which are appended to and made part of this Agreement, and are subject to change or amendment from time to time pursuant to Section 18.7.2.

1.1.7 "OSHA" means either the State or federal Occupational Safety and Health Administration, or their respective successors.

1.1.8 "Participant" has the meaning set forth in the recitals of this Agreement. Each Participant, other than TID, shall be a Member. Participants to this Agreement are listed in Facilities Schedule 1.

1.1.9 "Party" or "Parties" has the meaning set forth in the recitals hereto; provided that "Third Parties" are entities that are not Party to this Agreement.

1.1.10 "Power Management and Administrative Services Agreement" means the NCPA Power Management and Administrative Services Agreement, dated as of \_\_\_\_\_, 20\_\_ between NCPA and the Members who are signatories to that agreement by which NCPA provides Power Management and Administrative Services.

1.1.11 "Project Costs" are costs associated with a NCPA Project authorized pursuant to this Agreement and/or Project Agreements.



1.1.12 "Third Party" means an entity (including a Member) that is not a Party to this Agreement.

1.1.13 "Turlock Irrigation District" or "TID" means the Turlock Irrigation District, a California Irrigation District.

1.1.14 "Withdrawing Participant" has the meaning set forth in Section 15.2 of this Agreement.

1.2 Rules of Interpretation. All words and references as used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise, shall be interpreted pursuant to Section 1.2 of the Power Management and Administrative Services Agreement.

**Section 2. Purpose.** The purpose of this Agreement is to set forth the terms and conditions under which NCPA may acquire, construct, finance and plan for the addition of NCPA Projects, and manage, maintain, operate, schedule and perform billing for NCPA Projects.

**Section 3. Duties of the Commission.**

3.1 Commission. The Commission is responsible for the administration of this Agreement. Each Member shall be represented by its Commissioner or their designated alternate Commissioner ("Alternate") pursuant to the Joint Powers Agreement. Each Commissioner shall have

authority to act for the Participant represented with respect to matters pertaining to this Agreement.

3.2 Duties and Authorities. In addition to the administration of this Agreement, the duties and authorities of the Commission are as specified in the Joint Powers Agreement, the NCPA Commission Bylaws, and all Project Agreements between NCPA and Project Participants.

3.3 NCPA Projects. The Commission shall take all action required of it in connection with NCPA Projects in a timely manner consistent with obligations pursuant to Project Agreements, other agreements between NCPA and Project Participants and as provided in this Agreement.

3.4 Forum. Whenever any action anticipated by this Agreement is required to be jointly taken by the Participants, such action shall be taken at regular or special meetings of the NCPA Commission.

3.5 Quorum.

3.5.1 General Administration. For purposes of acting upon matters that relate to general administration of this Agreement, such as, but not limited to, establishment of common billing procedures, a quorum of the Commission shall consist of those Commissioners, or their designated Alternates, representing a numerical majority of the Member Participants.

3.5.2 Relating to a NCPA Project. For purposes of acting upon matters that relate to a NCPA Project, or more than a single NCPA Project, a quorum of the Commission shall be established as provided for in the applicable Project Agreement.

3.6 Voting.

3.6.1 General Administration. For acting upon matters that relate to general administration of this Agreement, each Member Participant shall have the right to cast one (1) vote. Actions of the Commission shall be effective only upon a majority vote of the Member Participants.

3.6.2 Relating to a NCPA Project. For acting upon matters that relate to a NCPA Project, or more than a single NCPA Project, voting shall be in accordance with the applicable Project Agreement.

3.7 Adoption and Amendment of Annual Budget. Annually, the Commission shall adopt an Annual Budget, which includes, but is not limited to, all costs attributed to services provided under this Agreement, for at least the next succeeding Fiscal Year in accordance with the NCPA Joint Powers Agreement and this Agreement. Provided, however, that the Commission may in its discretion adopt a two-year budget if permitted to do so by the NCPA Commission Bylaws or the Joint Powers Agreement.

**Section 4. Duties of the General Manager and NCPA Staff.**

4.1 Reporting Authority. The General Manager shall report to, and be supervised by, the Commission pursuant to the JPA.

4.2 NCPA Staff. The General Manager shall hire such staff or consultants as necessary to carry out NCPA's obligations pursuant to this Agreement, within the constraints of the Annual Budget.

4.3 Duties and Authority. The General Manager, or NCPA staff designated by the General Manager, shall:

- (a) Carry out directions of the Commission with respect to matters related to this Agreement;
- (b) Direct, conduct, and administer First Phase Project studies;
- (c) Direct and carry out all responsibilities of NCPA acting as project manager or agent that operates the project pursuant to this Agreement, Project Agreements, Facilities Schedules, Operating Agreements, or any other agreement between NCPA and Project Participants. Examples of said responsibilities include but are not limited to:
  - (1) Acquisition of property, easements, and water rights as necessary to construct and operate NCPA Projects;
  - (2) Obtaining federal, State, and local permits, licenses, opinions and rulings, as well as any environmental permits, allowances

- or GHG Compliance Instruments, as necessary to construct and operate NCPA Projects;
- (3) Directing the design and construction of NCPA Projects;
  - (4) Recommending methods for NCPA Project financing;
  - (5) Providing for the operation and maintenance of NCPA Projects, with contract support if necessary, in accordance with all applicable reliability standards, requirements, criteria and rules, and consistent with Good Utility Practice;
  - (6) Developing a billing system and invoicing Participants;
  - (7) Preparing and submitting proposed budgets for NCPA Projects for the ensuing Fiscal Year to the Commission and appropriate NCPA committees on such schedule as established by the Commission;
  - (8) Installing and maintaining meters and metering equipment for NCPA Projects in accordance with all applicable metering requirements and standards, including but not limited to all standards and requirements enforced in the CAISO Tariff;
  - (9) Providing Scheduling Coordination Services for NCPA Projects in accordance with the Amended and Restated Scheduling Coordination Program Agreement; and
  - (10) Presenting to the Facilities Committee proposed amendments to this Agreement and the Facilities Schedules for the Committee's review and recommendations.

4.4 Goals and Objectives. Each year, the General Manager shall propose to the Commission, specific goals and objectives for the NCPA staff as such relate to this Agreement. NCPA shall provide periodic reports to the

Commission regarding progress toward meeting the approved goals and objectives. Those goals and objectives pertaining to NCPA Projects shall be reviewed by the Facilities Committee.

**Section 5. Facilities Committee.**

5.1 Representation. The Facilities Committee is hereby established as an advisory committee to the Commission. Each Participant shall be entitled to identify a Primary Representative (“Primary Representative”) to the Facilities Committee and Alternate Representatives (“Alternate Representative”) by written notice from a Participant’s Commissioner, or their designee, to the General Manager. Provided however, that TID’s Primary Representative and Alternative Representative shall be identified by written notice from its general manager to the General Manager.

In the absence of the Primary Representative, the Alternate Representative shall have all the rights of the Primary Representative with respect to matters properly before the Facilities Committee under this Agreement. Primary and Alternate Representatives shall serve until replaced by the Participant through written notice from the Participant’s Commissioner, or their designee (or, in the case of TID, its general manager), provided to the General Manager.

5.2 Officers and Staff. The Facilities Committee shall annually elect a chair and a vice-chair to serve for the ensuing year. The chair of the Facilities

Committee is responsible for managing Facilities Committee meetings, and in the absence of the Facilities Committee chair, the vice-chair shall assume the duties of the chair. Unless otherwise determined by vote of the Facilities Committee, the vice-chair of the Facilities Committee will automatically become the chair of the Facilities Committee following conclusion of the existing chair's annual term. The General Manager, or his or her designee, shall act as staff to the Facilities Committee. The General Manager shall designate a NCPA staff person to act as secretary of the Facilities Committee.

5.3 Recommendations. Recommendations of the Facilities Committee shall be made to the Commission, Project Participants, and others, as appropriate, in coordination with the General Manager.

5.4 Meetings. Meetings of the Facilities Committee shall be held at least quarterly and be conducted in accordance with the Ralph M. Brown Act. The Facilities Committee shall adopt a meeting schedule for the next calendar year prior to the end of each calendar year. The Facilities Committee secretary shall be responsible for the posting of all agendas, for the provision of notice of meetings to the Facilities Committee, and for the keeping of minutes reflecting the discussions and decisions of the Facilities Committee.

5.5 Quorum.

5.5.1 Quorum of the Facilities Committee. A quorum of the Facilities Committee shall consist of those Primary Representatives, or their designated Alternate Representatives, representing a numerical majority of the Participants.

5.5.2 Relating to a NCPA Project. Once a meeting of the Facilities Committee has been established pursuant to Section 5.5.1, for purposes of acting upon matters relating to a NCPA Project pursuant to this Agreement, a quorum of the Project Participants shall be required and shall consist of those Primary Representatives, or their designated Alternate Representatives, representing a numerical majority of a NCPA Project's Participants, or, in the absence of such, those Primary Representatives, or their designated Alternate Representatives, representing a NCPA Project's Participants having a combined Project Participation Percentage greater than 50%.

5.5.3 Relating to More than One NCPA Project. Once a meeting of the Facilities Committee has been established pursuant to Section 5.5.1, for purposes of acting upon matters relating to more than one NCPA Project pursuant to this Agreement, a quorum of the Project Participants for each involved NCPA Project must be separately established, pursuant to Section 5.5.2, before the Facilities Committee can take formal action.



5.6 Voting.

5.6.1 General Administration. For acting upon matters not directly related to a NCPA Project, the Primary Representatives, or their designated Alternate Representatives, of each Participant shall have the right to cast one (1) vote. Actions of the Facilities Committee shall be effective only upon a majority vote of the Participants.

5.6.2 Relating to a NCPA Project. Each Primary Representative, or designated Alternate Representative, to the Facilities Committee shall have the right to cast one (1) vote with respect to actions involving a NCPA Project in which such Project Participant has a Project Participation Percentage. Actions of the Facilities Committee involving a NCPA Project shall be effective and final upon a majority vote of the Project Participants present, subject to the following exception:

- a) Upon demand of any Project Participant in the involved NCPA Project, at the meeting of the Facilities Committee, the vote on any issue relating to such NCPA Project shall be by Project Participation Percentage and sixty five percent (65%) or greater affirmative vote shall be required to take action.

5.6.3 Relating to More than One NCPA Project. For acting upon matters relating to more than one NCPA Project, a separate vote of each involved NCPA Project's Participants shall be required, and the voting

procedures specified in Section 5.6.2 shall apply. Actions of the Facilities Committee involving more than one NCPA Project shall be effective only upon an affirmative vote of the Project Participants for each affected NCPA Project.

5.6.4 Lack of Quorum. If the Facilities Committee is unable to satisfy the quorum requirements of Section 5.5 prior to casting a vote pertaining to matters involving general administration of this Agreement, a NCPA Project, or more than one NCPA Project, the result of such vote shall not be represented as an official vote of the Facilities Committee, but at the request of one or more Participants a tally of the respective votes may be collected, and presented to the Commission for informational purposes.

5.6.5 Matters Relating to TID. Notwithstanding any other provision in this Agreement to the contrary; (1) TID shall be entitled to designate a Primary Representative and Alternate Representative of TID to the Facilities Committee for so long as TID shall remain a Project Participant in Geothermal Generating Project Number 3, which representatives shall have voting rights only with respect to those matters directly relating to said project; and (2) amendments to this Agreement which do not impair the rights of TID as provided in subsection (1) of this Section 5.6.5 shall not

require the consent of TID, provided that TID shall be given written notice of any amendment to this Agreement.

5.7 Responsibilities. The Facilities Committee shall provide representation of Participants in connection with Project Agreements. The Facilities Committee shall also review, make recommendations, or take other actions pursuant to this Agreement concerning Project studies and other activities or actions conducted by, or proposed by, NCPA in connection with NCPA Projects or First Phase activities. Examples of such responsibilities include but are not limited to:

- (a) Review and make recommendations concerning Project studies conducted by NCPA staff or consultants;
- (b) Review and make recommendations concerning the proposed acquisition of property, easements, and water rights by NCPA;
- (c) Review and make recommendations concerning proposed NCPA actions relative to obtaining federal, State, and local permits, licenses, opinions and rulings, as well as any environmental permits, allowances or GHG Compliance Instruments to the extent permitted by law;
- (d) Review and make recommendations concerning NCPA Project designs;

- (e) Monitor the progress of each NCPA Project, and where appropriate, recommend actions;
- (f) Review and make recommendations concerning all plans, procedures and contracts for the procurement of fuel, equipment, materials and services related to NCPA Projects;
- (g) Review, and make recommendations regarding the operation and maintenance of NCPA Projects, including maintenance schedules and operation plans;
- (h) Review and make recommendations concerning remedial actions, settlements of disputes, granting of relief, in accordance with the dispute resolution provisions of this Agreement;
- (i) Review and make recommendations regarding NCPA Project billing procedures;
- (j) Review and make recommendations concerning the Annual Budget, and modifications thereto, proposed by the General Manager; and
- (k) Initiate, or review and make recommendations concerning proposed amendments to this Agreement and to the Facilities Schedules.

5.8 Goals and Objectives. The Facilities Committee may suggest specific goals and objectives for NCPA concerning NCPA Projects, and shall review and make recommendations concerning specific goals and objectives proposed by the General Manager for NCPA Projects.

**Section 6. Project Services, Development and Costs.**

6.1 Scope of Services. NCPA shall act as project manager or agent that operates the project on behalf of the Participants, and shall coordinate and manage all phases of NCPA Project development. NCPA will operate, maintain, schedule and perform billing for NCPA Projects as provided in this Agreement, except as otherwise specified in a specific Project Agreement.

6.2 Designation of NCPA Projects. All Projects when so designated by the Commission shall be known as NCPA Projects. All NCPA Projects subject to the terms and conditions of this Agreement are listed in Facilities Schedule 2. Facilities Schedule 2 shall be updated by NCPA upon the Commission's designation of a new NCPA Project.

6.3 NCPA Project Development Phases. Any NCPA Project undertaken by NCPA may proceed through one or more phases as provided in this Section and Facilities Schedule 11.

6.3.1 First Phase. The "First Phase" of a Project consists of all surveys and preliminary investigation work performed by NCPA regarding a

proposed Project supported out of NCPA's general funds as required by the JPA or provided voluntarily by one or more NCPA Members, pursuant to Facilities Schedule 11, and prior to the time that the Commission declares it as a NCPA Project. For the purpose of terminating the First Phase, the Commission may declare a termination of investigations regarding the proposed Project, or may declare the Project to be a NCPA Project by entering into a Project Agreement with one or more NCPA Members desiring to participate as indicated in Section 6.3.2 or 6.3.3.

6.3.2 Second Phase. The "Second Phase" of a NCPA Project consists of all work performed after one or more NCPA Members has signed a Second Phase Agreement with NCPA for Project surveys, preliminary investigations, study, design, or development, but before a Third Phase Agreement for the NCPA Project becomes effective.

6.3.3 Third Phase. The "Third Phase" of a NCPA Project consists of all work performed after one or more NCPA Members has contracted with NCPA pursuant to a Third Phase Agreement to participate in the financing, construction, operation, and maintenance, and/or rights to the output, of the NCPA Project. Nothing herein prevents the combination of the Second and Third Phases, if NCPA and the participating NCPA Members so agree.

Third Phase Agreements shall be written as “take-or-pay” (“hell-or-high-water”) agreements to the greatest extent possible, so as to insulate NCPA and all Members who are not Project Participants from liability arising from the NCPA Project. Third Phase Agreements shall obligate Project Participants to treat all Project Costs as operation and maintenance expenses of their respective Electric Systems, and shall pledge the Project Participant’s obligation to raise electric rates and/or increase Revenues upon demand of NCPA so as to pay such Project Costs.

6.4 Project Participation. Any Member desiring to participate in a NCPA Project by executing a Project Agreement must first become a Party to this Agreement.

Member Participants may elect to finance and participate in the Second Phase, Third Phase, or operation of a NCPA Project through execution of a Project Agreement.

The Project Participation Percentage shall be based on participation in the previous phase of the NCPA Project, unless the NCPA Project is not fully subscribed, or as otherwise agreed. If the NCPA Project is not fully subscribed, any unsubscribed portion of the NCPA Project shall be divided among Project Participants electing to increase their share, in proportion to their original Project

Participation Percentages, unless otherwise unanimously agreed to by such Project Participants.

Unless otherwise agreed, any Third Phase Agreement shall provide for retirement of any preliminary financing and reimbursement of any expenditure of Project Participants in the Second Phase of such NCPA Project, out of final long-term financing of the NCPA Project or other funding method, including but not limited to cash payment.

Unless otherwise agreed, those Participants not parties to the Second Phase may participate in the Third Phase provided such Participant(s) agree to assume, *pro rata*, all Second Phase obligations, that such Participants reimburse the Second Phase Participants for such *pro rata* share either as part of the long-term financing of the NCPA Project or as otherwise agreed, and that all Second Phase Project Participants agree to such participation in writing within forty-five (45) Calendar Days after written notice of a desire to participate.

6.5 Agreements. Agreements covering the several phases of NCPA Projects are generally designated as follows:

- (a) Second Phase Agreements or Licensing and Development Agreements shall govern Second Phase NCPA Projects; and



- (b) Third Phase Agreements for Construction, Operation and Financing, Participation Agreements or Power Purchase Agreements shall govern Third Phase NCPA Projects; and
- (c) Facilities Schedules established pursuant to this Agreement, Project Agreements, including Operating Agreements, and other agreements between NCPA and any Project Participant(s), shall further govern operation and maintenance of NCPA Projects, after completion.

6.6 Project Development Procedures. Procedures, criteria, rules, and standards relating to construction, operation and maintenance of NCPA Projects shall be established by the Commission or the General Manager, as provided in this Agreement and Project Agreements.

6.7 Scheduling Coordination. Except as otherwise provided by a separate agreement, NCPA shall provide Scheduling Coordination Services and shall monitor, schedule, settle and dispatch capacity, energy and associated attributes for delivery from each NCPA Project to the Project Participants in accordance with this Agreement and the Amended and Restated Scheduling Coordination Program Agreement. Therefore, each Project Participant shall become a signatory to the Amended and Restated Scheduling Coordination Program Agreement. Each Operating Entity shall coordinate with NCPA the

scheduling of its single or combined Project Participation Percentage share, of the available capacity and energy from a NCPA Project, subject to all applicable operating constraints, requirements and tariffs applicable to such activities, including, but not limited to, the CAISO Tariff, unless otherwise specified in a Project Agreement. Each Project Participant, or group of Project Participants, acting as an Operating Entity for the purpose of coordinating scheduling and dispatching of their Project Participation Percentage share of a NCPA Project with NCPA must comply with the scheduling criteria set forth in the Amended and Restated Scheduling Coordination Program Agreement.

6.8 Project Costs. All Project Costs attributed to a NCPA Project shall be allocated to the Project Participants of said NCPA Project in accordance with the provisions of the applicable Project Agreement, this Agreement, and/or the Power Management and Administrative Services Agreement.

6.9 Incidental Project Costs. Incidental costs that result from a NCPA Project, or associated transmission or other facilities located within or directly connected to the system of a Participant, will be treated as Project Costs and be borne by the NCPA Project.

6.10 Scheduling Coordination Costs. All costs of Scheduling Coordination Services, including, but not limited to, day-ahead scheduling costs, schedule coordination costs, system control and load dispatch costs, real-time

dispatch costs and settlement costs associated with monitoring, scheduling, dispatching and settlement of each NCPA Project shall be treated as Project Costs and be allocated to the Project Participants of said NCPA Project in accordance with the provisions of the applicable Project Agreements, this Agreement, the Power Management and Administrative Services Agreement, and/or the Amended and Restated Scheduling Coordination Program Agreement.

6.11 Administrative Services Costs. NCPA Projects are supported by other common activities and services provided by NCPA. Administrative Services Costs attributed to NCPA's provision of such activities and services to a NCPA Project shall be treated as a Project Cost and be allocated to each Project Participant in accordance with the provisions of the applicable Project Agreements, this Agreement, and/or the Power Management and Administrative Services Agreement.

**Section 7. Project Share Transfers, Sales, Assignments and Exchanges.**

7.1 Notice of Intent to Transfer, Sell, Assign or Exchange Project Participation Percentage Share or Associated Attributes. Prior to a Participant entering into a transfer, sale, assignment or exchange of all or any portion of its Project Participation Percentage share of a NCPA Project or its Project Participation Percentage share of a specific NCPA Project attribute, a Participant

shall provide written notice to the General Manager in accordance with Facilities Schedule 14.

7.2 NCPA Project Participation Percentage Share Transfers, Sales, Assignments or Exchanges by a Project Participant. Except where the applicable Project Agreement provides otherwise, if a Participant desires to transfer, sell, assign or exchange a portion, or its entire Project Participation Percentage share, of a NCPA Project for a specific time interval, or permanently, and a Participant directly makes the desired transfer, sale, assignment or exchange on its own behalf, and does not request NCPA to arrange the desired transfer, sale, assignment or exchange, such transfer, sale, assignment or exchange will not be subject to the right of first refusal process contained in Section 7.3.

7.3 NCPA Project Participation Percentage Share Transfers, Sales, Assignments or Exchanges through NCPA. Except where the applicable Project Agreement provides otherwise, if a Participant desires to transfer, sell, assign or exchange a portion, or its entire Project Participation Percentage share, of a NCPA Project for a specific time interval, or permanently, and a Participant requests NCPA to consummate the desired transfer, sale, assignment or exchange on behalf of the Participant, NCPA will use its best efforts in accordance with this Section 7.3 to arrange the transfer, sale, assignment or exchange of the portion of the Participant's Project Participation Percentage share

of such NCPA Project on behalf of the Participant, following the right of first refusal process listed below:

7.3.1 Before NCPA may transfer, sell, assign or exchange a Project Participation Percentage share to any person or entity other than a Project Participant in the same NCPA Project, NCPA shall give all Member Project Participants in the same NCPA Project the right to purchase or take receipt of the share.

7.3.2 Before NCPA may transfer, sell, assign or exchange a Project Participation Percentage share to any person or entity other than a Participant in this Agreement, NCPA shall give all Member Participants the right to purchase or take receipt of the share.

7.3.3 Before NCPA may transfer, sell, assign or exchange a Project Participation Percentage share to any person or entity other than a Member, it shall give all Members the right to purchase or take receipt of the share.

7.3.4 NCPA shall make all such transfers, sales, assignments or exchanges on behalf of Participants on terms and conditions consistent with the requirements of the applicable Project Agreement, and shall offer the NCPA Project Participation Percentage share to NCPA Members and other persons or entities on terms and conditions no more favorable than those on

which it offered the share to the Project Participants in the same NCPA Project.

7.4 Tax Exempt Status. All transfers, sales, assignments and exchanges arranged by NCPA or directly undertaken by a Project Participant must be made in accordance with the federal tax guidelines relating to private business use as specified in Facilities Schedule 12. Notwithstanding any provision of this Agreement to the contrary, NCPA shall not be obligated to arrange the transfer, sale, assignment or exchange of a Participant's Project Participation Percentage share of a NCPA Project if such transfer, sale, assignment or exchange may, in NCPA's opinion, adversely affect the tax exempt status of any NCPA debt obligation.

7.5 Facilities Committee Participation. Non-Member entities to whom a Participant's Project Participation Percentage share of a NCPA Project is transferred, sold, assigned or exchanged are not thereby entitled to participate in the activities of the Facilities Committee, including voting activities, other than as members of the public, nor do such entities become a member of the Facilities Committee.

7.6 Non-Participant Transferees. Neither NCPA nor a Participant shall transfer, sell, assign or exchange a Participant's Project Participation Percentage share of a NCPA Project to a non-Participant Member without such

non-Participant Member becoming a Participant to this Agreement prior to, or concurrently with, the execution of such transfer, sale, assignment or exchange.

**Section 8. Billing and Payments.**

8.1 Invoices. NCPA will issue an invoice to each Participant for its share of Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement. Such invoice may be either the All Resources Bill or separate special invoice, as determined by NCPA. Such invoices will be made pursuant to the requirements and procedures provided for in this Agreement, Project Agreements, and all other applicable agreements. At NCPA's discretion, invoices may be issued to Participants using electronic media or physical distribution.

8.2 Payment of Invoices. All invoices delivered by NCPA (including the All Resources Bill) are due and payable thirty (30) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day.

8.3 Late Payments. Any amount due and not paid by a Participant in accordance with Section 8.2 shall be considered late and bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or

reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

8.4 Billing Disputes. A Participant may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days of the date of such invoice; nonetheless the Participant shall pay the full amount billed when due. If a Participant does not timely question or dispute the accuracy of any invoice in writing, the invoice shall be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, NCPA shall issue a corrected invoice and refund any amounts that may be due to the Participant. If NCPA and the Participant fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after the Participant has disputed it, the General Manager shall promptly submit the dispute to the Commission for resolution. If the Commission and the Participant fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days of its submission to the Commission, the dispute may then be resolved under the mediation and arbitration procedures set forth in Section 17 of this Agreement. Provided, however, that prior to resorting to either mediation or arbitration proceedings, the full amount of the disputed invoice must be paid.

8.5 Billing/Settlement Data and Examination of Books and Records.



8.5.1 Settlement Data. NCPA shall make billing and settlement data available to the Participants in the All Resources Bill, or other invoice, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Participants using electronic media (e.g. electronic data portal). Procedures and formats for the provision of such electronic data submission may be established by the Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require the Participants to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

8.5.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

**Section 9. Cooperation and Further Assurances.** Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry

out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

**Section 10. Participant Covenants and Defaults.**

10.1 Each Participant covenants and agrees: (i) to make payments to NCPA, from its Electric System Revenues, of its obligations under this Agreement as an operating expense of its Electric System; (ii) to fix the rates and charges for services provided by its Electric System, so that it will at all times have sufficient Revenues to meet the obligations of this Agreement, including the payment obligations; (iii) to make all such payments due NCPA under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists; and (iv) to operate its Electric System, and the business in connection therewith, in accordance with Good Utility Practice.

10.2 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Participant (the "Defaulting Participant"):

(i) the failure of any Participant to make any payment in full to NCPA when due, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure;

(ii) the failure of a Participant to perform any covenant or obligation of this Agreement where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure.

Provided, that this subsection shall not apply to any failure to make payments specified by subsection 10.2 (i));

(iii) if any representation or warranty of a Participant material to the services provided hereunder shall prove to have been incorrect in any material respect when made and the Participant does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days of the date of receipt of notice from NCPA demanding cure; or

(iv) if a Participant is in default or in breach of any of its covenants under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement.

10.3 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces. Provided, that in order to be

relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager using telephone communication within two (2) Business Days of the onset of the Uncontrollable Force, and provide subsequent written notice to the General Manager and all other Parties within ten (10) Business Days of the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch. Provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

10.4 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 10.2 above, as may be applicable, provided, however, upon request of the Defaulting Participant the Commission may waive the default at its sole discretion, where such waiver shall not be unreasonably withheld.

10.5 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 10.2, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Participant, NCPA may take any or all of the following actions:

(i) suspend the provision of services under this Agreement to such Defaulting Participant;

(ii) demand that the Defaulting Participant provide further assurances to guarantee the correction of the default, including the collection of a surcharge or increase in electric rates, or such other actions as may be necessary to produce necessary Revenues to correct the default; or

(iii) enforce all other rights or remedies available to it under any Project Agreement in which the Defaulting Participant is a Project Participant.

10.6 Effect of Suspension.

10.6.1 Generally. The suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

10.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with subsection 10.5(i), such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, or other reasonable and necessary costs associated with such suspension and any portion of the Project Costs, scheduling and dispatch costs, and Administrative Services Costs that were not recovered from such Participant as a result of such suspension.

**Section 11. Facilities Schedules.**

11.1 Facilities Schedules. Facilities Schedules shall be established relating to operations of NCPA Projects and administrative matters for the implementation of this Agreement. All Facilities Schedules may be established, repealed or amended by the Commission in accordance with this Agreement, except as provided in Section 11.3 with respect to Facilities Schedules applicable to NCPA Projects for which a separate Operating Agreement exists. The Commission shall consider any recommendation of the Facilities Committee.

11.2 Scope of Facilities Schedules. Facilities Schedules include detailed principles, descriptions and procedures for managing, operating, scheduling, billing and settlement for the NCPA Projects.

11.3 Operating Agreements. For those NCPA Projects for which a separate Operating Agreement has been or later is executed by NCPA and the Project Participants, the applicable Facilities Schedules will supplement the Operating Agreement and shall include a note that an Operating Agreement exists. To the extent a Facilities Schedule and Operating Agreement are inconsistent, the Operating Agreement shall govern. An Operating Agreement, whether or not it is appended to this Agreement as a Facilities Schedule, may only be amended according to the terms contained therein.

**Section 12. Other Agreements.**

12.1 Precedence of Agreements. Where there is any conflict between this Agreement and the Joint Powers Agreement, a Project Agreement or a NCPA Project Indenture of Trust, the provisions in the Joint Powers Agreement, Project Agreement or NCPA Project Indenture of Trust shall control.

12.2 Member Services Agreement. The Member Service Agreements between NCPA, the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, and Ukiah, and the Plumas-Sierra Rural Electric Cooperative dated February 2, 1981, and the Member Service Agreement between NCPA and the City of Santa Clara dated February 12, 1981, were previously terminated and have no further force or effect. At such time as the City of Redding may become a Participant, then this Agreement shall supersede

and replace the Member Service Agreement between NCPA and the City of Redding dated February 12, 1981.

**Section 13. Potential Adverse Impact.**

13.1 Notification. A Participant shall promptly notify the General Manager in writing of any new or materially changed plan(s) for additions to, retirements of, or changes in transmission or other facilities, which are subject to the control of such Participant, including distribution level transmission or other facilities, and which the Participant believes could affect the capacity or deliverability of a NCPA Project located within the Participant's system. The Facilities Committee shall review such plan(s) and may recommend remedial actions.

**Section 14. Term and Termination.**

14.1 Effective Date. This Agreement shall become effective on the first day of the month after which it has been duly executed by all Participants, and delivered to and executed by NCPA (the "Effective Date"). NCPA shall notify all Participants in writing of the Effective Date.

14.2 Term and Termination. This Agreement shall continue in full effect until terminated by consent of all Parties.

**Section 15. Admission and Withdrawal of Participants.**



15.1 Admission of a New Participant. Subsequent to the initial Effective Date, a Member may become a Participant by executing this Agreement. Such Member Participant will become a Participant effective on the date of its delivery to NCPA of an executed counterpart of this Agreement.

15.2 Withdrawal of Participants. Any Participant may withdraw from this Agreement (“Withdrawing Participant”) by: (1) submitting notice, in writing to all Parties at least two (2) years in advance of the effective date of such withdrawal, provided that such withdrawal shall only be effective on the last day of a NCPA fiscal year and that the Withdrawing Participant has fully satisfied all obligations it has incurred under this Agreement; and (2) divesting its Project Participation Percentage share of all NCPA Projects through a permanent transfer, sale, assignment or exchange, so that (i) the Withdrawing Participant permanently disposes of its legal and contractual obligation to pay for all Project Costs, and other related costs, including disposing of its obligations specified in each respective Project Agreement and Project Indenture of Trust, and (ii) the party (or parties) taking permanent transfer, sale, assignment or exchange of the Withdrawing Participant’s Project Participation Percentage of a NCPA Project is or becomes a Member Participant; provided, however, the withdrawal requirements stated herein may be altered upon mutual agreement between NCPA and the Withdrawing Participant whereby all un-discharged

liabilities, credits or obligations of the Withdrawing Participant, including any contingent liabilities, credits or obligation, are fully satisfied. NCPA and the Withdrawing Participant shall negotiate in good faith and shall cooperate in reaching such mutual agreement. The two (2) year duration of the notice requirement may be waived or reduced by the Commission in its sole discretion. Withdrawal by any Participant shall not terminate this Agreement as to the remaining Participants.

15.3 No Effect on Prior Liabilities. Withdrawal by any Participant will not terminate any ongoing or un-discharged liabilities, credits or obligations, including any contingent liabilities, credits or obligations, resulting from this Agreement until they are satisfied in full, or such Withdrawing Participant has provided a mechanism acceptable to NCPA, for the satisfaction in full thereof.

A Withdrawing Participant shall not be obligated to compensate the remaining Participants for loss of any benefits that would have accrued to the remaining Participants if the Withdrawing Participant had continued its participation. Nor shall the remaining Participants be obligated to compensate the Withdrawing Participant for any benefits that accrue to the remaining Participants because of the withdrawal. Reallocation of the costs and benefits of continuing under this Agreement after a Participant has withdrawn shall not give rise to any claim against a Withdrawing Participant by the remaining

Parties. Nor shall any of the remaining Parties be obligated to compensate the Withdrawing Participant for any benefits that accrue to the remaining Parties because of such a reallocation of costs and benefits.

15.4 Associated Costs. A Withdrawing Participant shall reimburse NCPA for any and all costs resulting from the withdrawal, including but not limited to the legal, accounting, and administrative costs of winding up and assuring the complete satisfaction and discharge of the Withdrawing Participant's liabilities, credits or obligations, including any contingent liabilities, credits or obligations.

15.5 Withdrawal of Participant from the JPA. Notwithstanding the provisions of the Power Management and Administrative Services Agreement, the Amended and Restated Scheduling Coordination Program Agreement, and this Agreement, a Member Participant that terminates its membership in the joint powers agency pursuant to the Joint Powers Agreement, but has not withdrawn from this Agreement pursuant to Section 15.2, shall continue its participation in this Agreement as a non-Member Participant and remain obligated and liable to pay its Project Participation Percentage share of all Project Costs, and other related costs attributed to a NCPA Project in which the non-Member Participant is a Project Participant, as specified in the applicable Project Agreements, the Power Management and Administrative Services Agreement, the Amended and

Restated Scheduling Coordination Program Agreement, and this Agreement, provided, however, the non-Member Participant is thereby no longer a Member or a member of the Facilities Committee, and is not entitled to participate in the activities of the Commission or the Facilities Committee, including voting activities, other than as a member of the public. A non-Member Participant shall remain obligated to take Scheduling Coordination Services provided by NCPA for all NCPA Projects in which the non-Member Participant is a Project Participant notwithstanding the fact that such non-Member Participant may no longer be a signatory to the Amended and Restated Scheduling Coordination Program Agreement.

**Section 16. Reports and Records.**

16.1 Reports to Participants. NCPA shall prepare and make available to each Participant the reports listed in Facilities Schedule 13. The frequency of distribution shall be as specified in Facilities Schedule 13.

16.2 Records. Each Party shall keep such records as may be reasonably required by the General Manager to carry out his or her duties pursuant to Section 4.3 of this Agreement, and shall furnish to the General Manager such records, reports, and other information as he or she may reasonably require.

16.3 Reports to Other Agencies. NCPA will submit such reports and records which are required or may be required by the California Energy

Commission, FERC, NERC, WECC, OSHA or such other local, State, regional or federal agencies, as such reports and records are required for NCPA to fulfill its obligations under this Agreement.

**Section 17. Settlement of Disputes and Arbitration.** The Parties agree to make best efforts to settle all disputes among themselves connected with this Agreement as a matter of normal business under this Agreement. The procedures set forth in Section 10 of the Power Management and Administrative Services Agreement shall apply to all disputes that cannot be settled by the Participants themselves; provided, that the provisions of Section 8.4 shall first apply to all disputes involving invoices prepared by NCPA.

**Section 18. Miscellaneous.**

18.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. Confidential or trade secret information shall be marked or expressly identified as such.

If a Party (“Receiving Party”) receives a request from a Third Party for access to, or inspection, disclosure or copying of, any of the other Party’s (the “Supplying Party”) confidential data or information (“Disclosure Request”), then the Receiving Party shall provide notice and a copy of the Disclosure Request to

the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party's costs reasonably incurred with respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, and the Receiving Party's attorney's fees; or

(ii) the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

18.2 Indemnification and Hold Harmless. Subject to the provisions of Section 18.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing boards, officials,

officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

18.3 Several Liabilities. Except as otherwise provided herein or in an applicable Project Agreement, no Participant shall be liable under this Agreement for the obligations of any other Participant, each Participant shall be solely responsible and liable for performance of its obligations under this Agreement and the obligation of each Participant under this Agreement is a several obligation and not a joint obligation with those of the other Participants.

18.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY

SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.



18.5 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the Commission. Any such waiver by the Commission in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

18.6 Division of Responsibility. Neither the General Manager, the Parties to this Agreement, nor an entity acting on behalf of the Parties, shall be responsible for the transmission, control, use, or application of capacity and energy provided under this Agreement or the Facilities Schedules attached hereto on the receiving Party's side of such Party's point of interconnection and shall not, in any event, be liable for damage or injury to any person or property whatsoever, arising, accruing, or resulting from, in any manner, the receiving, transmission, control, use, application, or distribution by NCPA, or the Participants, or any Third Party acting on behalf of NCPA or the Parties, of said capacity and energy on the receiving Party's side of such Party's point of interconnection.

18.7 Amendments.

18.7.1 Amendments in General. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by

written instrument executed by the Parties with the same formality as this Agreement.

18.7.2 Approval and Amendment of Facilities Schedules. Any addition to, amendment to or termination of the Facilities Schedules attached hereto shall take effect after being approved by the Commission in a manner consistent with the voting procedures set forth in Section 3.6 of this Agreement, without the requirement of an approval of the individual Participants' governing bodies.

18.8 Assignment of Agreement.

18.8.1 Binding Upon Successors. This Agreement, including the Facilities Schedules, shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

18.8.2 No Assignment. This Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, where such consent shall not be unreasonably withheld. Without limiting the foregoing, this Agreement shall not be assigned by Plumas-Sierra Rural Electric Cooperative without the approval in writing of the Administrator of the Rural Electrification Administration Utilities Service.

18.9 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

18.10 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

18.11 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

18.12 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered to a Participant's Commissioner or Alternate, or in the case of TID their Primary Representative or Alternate Representative, and to the General Manager, or shall be transmitted to the Participant and the General Manager at the addresses shown on the signature pages hereof. The designation of such addresses may be changed at any time by written notice given to the

General Manager who shall thereupon give written notice of such change to each Participant. All such notices shall be deemed delivered when personally delivered, two (2) Business Days after deposit in the United States mail first class postage prepaid, or on the first Business Day following delivery through electronic communication.

18.13 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement.

18.14 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 all the signatories 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 hereto but having attached to it one or more signature pages.

18.15 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

18.16 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

18.17 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 18.2 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

18.18 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties,

to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

IN WITNESS WHEREOF, NCPA and each Participant have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.

NORTHERN CALIFORNIA  
POWER AGENCY  
651 Commerce Drive  
Roseville, CA 95678

CITY OF ALAMEDA  
2000 Grand Street  
P.O. Box H  
Alameda, CA 94501

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

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

Approved as to form:

Approved as to form:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: General Counsel  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

CITY OF BIGGS  
465 "C" Street  
Biggs, CA 95917

CITY OF GRIDLEY  
685 Kentucky Street  
Gridley, CA 95948

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

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

Approved as to form:

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By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

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By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

CITY OF HEALDSBURG  
401 Grove Street  
Healdsburg, CA 95448

CITY OF LODI  
221 W. Pine Street  
Lodi, CA 95240

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

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By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

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By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

CITY OF LOMPOC  
100 Civic Center Plaza  
Lompoc, CA 93436

CITY OF OAKLAND, acting  
by and through its  
Board of Port Commissioners  
530 Water Street  
Oakland, CA 94607

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

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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Approved as to form:

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By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Port General Counsel  
Date: \_\_\_\_\_



CITY OF PALO ALTO  
250 Hamilton Avenue  
Palo Alto, CA 94301

PLUMAS-SIERRA RURAL  
ELECTRIC COOPERATIVE  
73233 Highway 70  
Portola, CA 96122

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

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

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By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

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By: \_\_\_\_\_  
Its: General Counsel  
Date: \_\_\_\_\_

CITY OF ROSEVILLE  
311 Vernon Street  
Roseville, CA 95678

CITY OF SANTA CLARA  
1500 Warburton Avenue  
Santa Clara, CA 95050

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

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

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By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

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By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT  
300 Lakeside Drive, 16<sup>th</sup> Floor  
Oakland, CA 94612

CITY OF UKIAH  
300 Seminary Avenue  
Ukiah, CA 95482

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

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

Approved as to form:

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By: \_\_\_\_\_  
Its: General Counsel  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

TURLOCK IRRIGATION DISTRICT  
333 E. Canal Drive  
Turlock, CA 95380

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

Approved as to form:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: General Counsel  
Date: \_\_\_\_\_

**FACILITIES SCHEDULE 1**  
**LIST OF PARTICIPANTS**

The following is a list of the Participants who are signatory to this Agreement:

City of Alameda  
City of Biggs  
City of Gridley  
City of Healdsburg  
City of Lodi  
City of Lompoc  
City of Oakland, acting by and through its Board of Port Commissioners  
City of Palo Alto  
City of Roseville  
City of Santa Clara  
City of Ukiah  
Plumas-Sierra Rural Electric Cooperative  
San Francisco Bay Area Rapid Transit District  
Turlock Irrigation District

**FACILITIES SCHEDULE 2**  
**NCPA PROJECTS**

Each of the following Projects have been designated by the Commission as a NCPA Project, therefore subject to the terms and conditions of this Agreement:

North Fork Stanislaus River Hydroelectric Development Project

Combustion Turbine Project Number One

Combustion Turbine Project Number Two-Unit One

NCPA Geothermal Generating Unit #2 Project

Geothermal Generating Project Number 3

Seattle City Light Capacity and Energy Exchange Third Phase Agreement

Amended NCPA Green Power Project Third Phase Agreement

- NCPA Solar PV Project

## FACILITIES SCHEDULE 3

### BILLING PROCEDURE AND NCPA PROJECT COST DETERMINANTS

**Section 1. Billing Procedure.** NCPA will issue invoices to each Participant for its allocated share of Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement. Such invoices may be either the All Resources Bill or separate special invoice, as determined by NCPA. Notwithstanding the provisions of this Agreement, NCPA shall issue invoices to each Participant as further described in this Facilities Schedule 3.

1.1 Pre-Billing. Prior to each month, NCPA shall issue an invoice to each Participant for its estimated share of Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement. Estimated costs shall be invoiced in advance and are based on, but are not limited to, budgets, schedules, metering data, forecasted net purchases or sales of energy, forecasted congestion costs and estimates of power and related attribute prices, and charges from the CAISO pursuant to the Amended and Restated Scheduling Coordination Program Agreement.

1.2 Adjustments and True-ups. From time to time, NCPA shall review and compare its estimate of costs as set forth in the Annual Budget against actual

costs incurred during the same period of time. In the event estimated costs invoiced to Participants substantially deviate from actual costs incurred by NCPA, NCPA shall adjust the amounts to be invoiced or credited to the Participants in subsequent billings, in the respective cost category, for the balance of the Fiscal Year, to ensure NCPA collects sufficient funds to cover all budgeted and actual costs.

A substantial deviation from cost estimates approved in the Annual Budget means a permanent variation from a major objective or parameter of plus or minus five percent (5%) or more, unless otherwise provided for in the Annual Budget. A permanent variation is one that is not expected to reverse at a later date during the same Fiscal Year.

1.3 Annual Billing True-Up. At the end of each Fiscal Year, as soon as actual data is available and the annual year-end audit is complete, NCPA shall true-up all invoices based on actual cost data and actual billing determinates. The amounts calculated to be over or under collected from the Participants during the Fiscal Year, measured against actual costs, will be debited or credited to Participants as follows:

- (i) a lump sum on future invoices to the Participant;
- (ii) applied to a Participant's general operating reserve account;

or

(iii) as otherwise directed by the Commission.

**Section 2. NCPA Project Costs and Billing.** Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs associated with services provided pursuant to this Agreement shall be reflected in the Annual Budget. The NCPA Project budgets included as part of the Annual Budget shall categorize costs as fixed and variable. Fixed costs are those Project Costs incurred that are not dependent on the output of the generating unit or plant (e.g., debt service and operating labor expenses). Variable costs are those Project Costs which are dependent on the electrical output of the generating unit or plant (e.g., fuel costs and operations and maintenance costs).

2.1 Cost Recovery. NCPA shall invoice monthly one-twelfth (1/12) of the budgeted costs for each NCPA Project to the Participants based on each Participant's Project Participation Percentage share; provided, however, costs associated with fuel, GHG Compliance Instruments, or other costs that are subject to market volatility and which may change substantially from month to month during the Fiscal Year shall be invoiced based on actual costs for the respective month, or NCPA's best estimate of such costs if actual costs are not known at the time the invoice is issued to the Participants. When estimated fuel, GHG Compliance Instruments or other costs are used, final adjustments for

actual costs shall be made in the annual billing true-up as provided in Section 1 of the Facilities Schedule 3.

**Section 3. Uniform System of Accounts.** NCPA shall keep accurate records and accounts for all costs attributed to each NCPA Project and the services provided under this Agreement. All Project Costs shall be kept in general accordance with the Uniform System of Accounts (“USofA”) for electric public utilities and licensees prescribed by FERC.



**FACILITIES SCHEDULE 4**  
**SHARED FACILITIES AND COST SHARING**

**Section 1. Scope.** Project Participants desire to equitably share and use facilities and equipment common to two or more NCPA Projects, including the Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC, for the purpose of reducing costs and improving efficiencies. Such Shared Facilities and the methods for how costs are to be shared among Project Participants shall be included in this Facilities Schedule 4.

**Section 2. Definitions.**

2.1 Definitions. Unless defined in this Facilities Schedule 4, all terms used in this Facilities Schedule 4 with initial capitalization shall have the same meaning as those contained in Section 1 of this Agreement.

2.1.1 "PPC" means the Participant Committee established in accordance with Section 8 of the Lodi Energy Center Power Sales Agreement.

2.1.2 "Shared Facilities" means the facilities as documented in this Facilities Schedule 4 and which may be revised from time to time based upon recommendations and approvals of the Facilities Committee, the PPC and the Commission.

**Section 3. Joint Use of Facilities.** NCPA and Project Participants may use, operate and maintain the Shared Facilities, according to the terms and conditions of this Agreement and the percentage allocation of costs associated with such Shared Facilities detailed in this Facilities Schedule 4. Nothing in this Agreement may be construed to create a lease, sale or other disposition of real or personal property of NCPA.

**Section 4. Use of Shared Facilities.** As applicable, the Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC projects will utilize the Shared Facilities and equipment as listed in this Facilities Schedule 4. In addition thereto, the Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC projects and personnel will have:

(i) vehicular and pedestrian access rights;

(ii) use of Shared Facilities for the purpose of locating, accessing, operating, maintaining, repairing and replacing pipelines;

(iii) access for locating, accessing, operating, constructing, maintaining, repairing and replacing the steam pipeline(s), natural gas pipeline(s) and any associated equipment currently on the Combustion Turbine Project No. 2 and/or LEC sites or to be installed in the future;

(iv) access to the office building currently on the Combustion Turbine Project No. 2 site for the installation, use, maintenance, repair and

replacement of process control systems and related computer hardware associated with the Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC projects;

(v) access to the Shared Facilities for the purpose of locating, operating, repairing and replacing such improvements as may be necessary from time to time; and

(vi) personnel associated with Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC shall provide reasonable notice, each to the other, regarding any work to be conducted consistent with the above.

**Section 5. Shared Facilities Cost Allocation.** Shared Facilities costs shall be allocated among the Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC in one or more of the following ways, pursuant to this Facilities Schedule 4:

(i) headcount allocated to each project;

(ii) project capacity;

(iii) actual usage of Shared Facilities; or

(iv) such other allocation methodology as may be determined in this Facilities Schedule 4.

The Shared Facilities cost allocation set forth in this Facilities Schedule 4 may be revised from time to time when operational conditions or factors used for

the cost allocation(s) change. In such event, the PPC and the Facilities Committee will provide their respective recommendations and approvals to the Commission regarding any proposed modifications to the allocations set forth in this Facilities Schedule 4. Until such revisions as proposed by the PPC and the Facilities Committee are approved by the Commission, the cost allocation(s) set forth in this Facilities Schedule 4 will be used to allocate Shared Facilities costs among the Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC projects, irrespective of the basis used for cost allocation as listed in this Facilities Schedule 4, including those allocations that are based on estimated usage.

**Section 6. Other Costs.** The Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC projects will each be solely responsible for the payment of any and all taxes, insurance, utilities, maintenance, improvements and labor directly attributable to the construction, operation and maintenance of the respective projects. The Combustion Turbine Project No. 1, Combustion Turbine Project No. 2 and LEC projects must pay the Shared Facilities cost allocations imposed on such projects as detailed in this Facilities Schedule 4.

**Section 7. Sale of Shared Facilities.** In the event NCPA seeks to sell any of the Shared Facilities the Combustion Turbine Project No. 1, Combustion Turbine

Project No. 2 and LEC projects must be given reasonable notice and an opportunity to purchase such Shared Facilities.

**Section 8. Shared Facilities and Allocation**

Facility	Cost Allocation to NCPA Project %			
	CT1	CT2	LEC	Total
MW Capacity	75.0	49.9	280.0	404.9
Capacity CT1, CT2, LEC %	18.52%	12.32%	69.15%	100.00%
Capacity CT2, LEC %	0.00%	15.13%	84.87%	100.00%
<b>Headcount for FTE-2012</b>	3.0	4.5	17.5	25.0
Headcount % CT1, CT2, LEC	12.00%	18.00%	70.00%	100.00%
Cooling Tower Usage CT2/LEC (based on calculation below)	0.00%	0.00%	100.00%	100.00%
Vehicle Usage CT1/CT2/LEC (based on estimated usage)	90.00%	5.00%	5.00%	100.00%
<b>Anhydrous Ammonia System</b>				
Fixed O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
Variable O&M CT2/LEC (based on actual Ammonia usage)		Usage	Usage	
<b>Administration / Warehouse Building</b>				
O&M, Capital (based upon Headcount % CT1, CT2, LEC)	12.00%	18.00%	70.00%	100.00%
<b>Fire System</b>				
O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
<b>230 KV Switchyard (Common Equip)</b>				
O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
<b>Tooling and Special Equipment</b>				
(based on Headcount % CT1, CT2, LEC)	12.00%	18.00%	70.00%	100.00%

**Cooling Tower/Closed Cooling Water/Injection Well Systems**

O&M, Capital (based on Cooling

Tower Usage CT2/LEC)	0.00%	0.00%	100.00%	100.00%
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**Vehicle Usage**

O&M, Capital (based on Vehicle

Usage CT1/CT2/LEC)	90.00%	5.00%	5.00%	100.00%
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Cooling Tower CT2/LEC Usage Calculation:

Inputs

S<sub>h</sub> = Number of Operating Hours of CT2

L<sub>h</sub> = Number of Operating Hours of LEC

Constants

S<sub>f</sub> = Design flowrate for CT2 cooling water = 4,416 GPM

L<sub>f</sub> = Design flowrate for LEC cooling water = 64,584 GPM

Formula

$$\text{CT2 Percentage} = S_{\%} = \frac{(S_h * S_f)}{(S_h * S_f) + (L_h * L_f)} * 100$$

$$\text{LEC Percentage} = L_{\%} = 100 - S_{\%}$$

**FACILITIES SCHEDULE 5**

**COMBUSTION TURBINE PROJECT NO. 1 OPERATING PROCEDURES**

**Section 1. General Operating Criteria.** The following general operating criteria are applicable to the operation of the Combustion Turbine Project No. 1 generation facilities (hereinafter referred to as the “CT1 Project”). The General Manager, or his or her designee, shall act as project manager for the CT1 Project on behalf of the Project Participants.

1.1 Good Utility Practice. The CT1 Project shall be operated in accordance with Good Utility Practice.

1.2 Licenses and Regulatory Criteria. The CT1 Project shall be operated in accordance with all license and regulatory requirements that are applicable to the CT1 Project (e.g., air permit restrictions).

1.3 CT1 Project Statistics. The following are general CT1 Project statistics:

<u>Resource Name</u>	<u>Resource ID</u>	<u>Pmax</u>	<u>Pmin</u>
Alameda GT Unit 1	ALMEGT_1_UNIT 1	23.9 MW	22.8 MW
Alameda GT Unit 2	ALMEGT_1_UNIT 2	25.4 MW	24.4 MW
Lodi Gas Turbine	LODI25_2_UNIT 1	25.3 MW	22.2 MW

**Section 2. Scheduling Criteria.**

2.1 Schedule Coordination. NCPA shall act as Scheduling Coordinator for the CT1 Project, and perform such duties in accordance with the Amended and Restated Scheduling Coordination Program Agreement.

2.2 Scheduling Criteria and Project Coordination. Each Project Participant, acting as an Operating Entity, shall schedule and bid its Project Participation Percentage share of capacity, energy, and/or other project attributes in any manner, and shall coordinate the scheduling of its Project Participation Percentage share of the CT1 Project with NCPA; provided, however, that such schedules or bids shall be consistent with licensing and regulatory criteria, operational limitations, all established scheduling requirements, including, but not limited to, those requirements set forth in the CAISO Tariff and as determined by NCPA pursuant to the Amended and Restated Scheduling Coordination Program Agreement, and the provisions of the respective Project Agreement. NCPA may act as Operating Entity on behalf of a Project Participant or a group of Project Participants, pursuant to separate agreement.

2.3 Test Energy. All energy generated for testing purposes shall be allocated in proportion to each Project Participant's Project Participation Percentage share of the CT1 Project.

2.4 Allocation of Project Output. All output of the CT1 Project, including capacity, energy and/or other project attributes shall be allocated



among the Project Participants in accordance with the Project Agreement and the Amended and Restated Scheduling Coordination Program Agreement.

2.5 Outage Coordination. Prior to the beginning of each Fiscal Year the project manager shall prepare and submit for approval to the Facilities Committee a planned outage schedule for the CT1 Project. Changes or modifications made to the planned outage schedule during the course of the Fiscal Year shall be subsequently reported in a timely manner to each Project Participant. NCPA shall provide outage coordination services to track and report planned and unplanned outages pursuant to the Amended and Restated Scheduling Coordination Program Agreement.

2.6 Emergency Operation. The City of Alameda or Lodi may request that the CT1 Project unit or units physically located within their respective distribution systems be operated in the case of an usual event (e.g., approaching distribution system loading limitations, loss of transmission services, etc.). Such request shall be made from the Project Participant to the NCPA dispatch center. Prior to approving a submitted request, NCPA shall review the impact such request may have on prior commitments of NCPA and/or the Project Participants associated with the CT1 Project, including, but not limited to, Project Participant own load requirements, contractual commitments, bids submitted to and awards received from the CAISO, to determine the feasibility of such request. All costs

related to emergency operations of the CT1 Project shall be borne by the requesting Project Participant.

**Section 3. Natural Gas Fuel Supply.**

3.1 General. The CT1 Project consumes natural gas as a fuel in order to generate electric power for the benefit of the Project Participants. Section 3 of this Facilities Schedule 5 describes the terms and conditions under which NCPA will procure natural gas fuel for the CT1 Project.

3.2 Economic Dispatch and Daily Fuel Requirements. The CT Project consists of three (3) peaking generators, two (2) of which are located in the City of Alameda, and one (1) of which is located in the City of Lodi. Unless called upon to insure reliability by the CAISO, each generator is economically dispatched in accordance with this Facilities Schedule 5. In either case the fuel supply requirements of the CT1 Project are met through NCPA's contractual relationship with a supplier for index based gas delivery. The cost of fuel procured for the CT1 Project will be allocated to the Project Participants in accordance with the Project Agreement, this Agreement, and the Amended and Restated Scheduling Coordination Program Agreement.

3.3 Forward Natural Gas Procurement and Financial Hedging. In the normal course of business NCPA does not execute forward natural gas transactions for the potential fuel supply needs of the CT Project, due to the

inherent uncertainty in forecasting fuel supply requirements for small peaking generators. No financial hedges for fuel supply costs associated with the CT Project will be implemented pursuant to this Facilities Schedule 5. NCPA may assist any Project Participant that desires to procure natural gas in advance for anticipated CT1 Project fuel supply requirements, upon written request of a Project Participant, provided that NCPA and the requesting Project Participant have executed a separate agreement for such purposes.

3.4 Fuel Supply Management and Scheduling. Natural gas fuel consumed by the CT1 Project must be scheduled and transported to each generator site. To obtain necessary scheduling and transportation rights and services the Commission may periodically authorize contracts with Third Parties and/or authorize subscriptions for transportation and storage services under pipeline tariffs in accordance with procurement policies and procedures established by the Commission.

**FACILITIES SCHEDULE 6**  
**GEOHERMAL PROJECT OPERATING PROCEDURES**

**Section 1. General Operating Criteria.** The following general operating criteria are applicable to the operation of the Geothermal Project No. 2 and No. 3 generation facilities (hereinafter referred to as the “Geothermal Project”). The General Manager, or his or her designee, shall act as project manager for the Geothermal Project on behalf of the Project Participants.

1.1 Good Utility Practice. The Geothermal Project shall be operated in accordance with Good Utility Practice.

1.2 Licenses and Regulatory Criteria. The Geothermal Project shall be operated in accordance with all license and regulatory requirements that are applicable to the Geothermal Project.

1.3 Geothermal Operating Agreement. The Geothermal Project shall be operated in a manner consistent with the Amended and Restated Geothermal Project Operating Agreement between Northern California Power Agency and the Geothermal Project Participants, dated as of April 1, 2011 (hereinafter referred to as the “Geothermal Operating Agreement”). The operating procedures contained in this Facilities Schedule 6 are stated to further define and clarify the principles and procedures contained in the Geothermal Operating Agreement.

1.4 Geothermal Project Statistics. The following are general

Geothermal Project statistics:

<u>Resource Name</u>	<u>Resource ID</u>	<u>Pmax</u>	<u>Pmin</u>
NCPA Geo Plant 1 Unit 1	NCPA_7_GP1UN1	38.85 MW	20 MW
NCPA Geo Plant 1 Unit 2	NCPA_7_GP1UN2	34 MW	20 MW
NCPA Geo Plant 2 Unit 3	NCPA_7_GP2UN3	42.42 MW	15 MW
NCPA Geo Plant 2 Unit 4	NCPA_7_GP2UN4	52.73 MW	15 MW

**Section 2. Scheduling.**

2.1 Schedule Coordination. NCPA shall act as Scheduling Coordinator for the Geothermal Project, and perform such duties in accordance with the Amended and Restated Scheduling Coordination Program Agreement.

2.2 Scheduling Criteria and Project Coordination. Each Project Participant, acting as an Operating Entity, shall schedule and bid its Project Participation Percentage share of capacity, energy, and/or other project attributes in accordance with the Geothermal Operating Agreement, and shall coordinate the scheduling of its Project Participation Percentage share of the Geothermal Project with NCPA; provided, however, that such schedules or bids shall be consistent with licensing and regulatory criteria, operational limitations, all established scheduling requirements, including, but not limited to, those requirements set forth in the CAISO Tariff and as determined by NCPA pursuant to the Amended and Restated Scheduling Coordination Program Agreement,

and the provisions of the Geothermal Operating Agreement and respective Project Agreement. NCPA may act as Operating Entity on behalf of a Project Participant or a group of Project Participants, pursuant to separate agreement.

2.3 Allocation of Project Output. All output of the Geothermal Project, including capacity, energy and/or other project attributes shall be allocated among the Project Participants in accordance with the Project Agreement, the Geothermal Operating Agreement and the Amended and Restated Scheduling Coordination Program Agreement.

2.4 Outage Coordination. Notwithstanding the provisions of the Geothermal Operating Agreement, prior to the beginning of each Fiscal Year the project manager shall prepare and submit for approval to the Facilities Committee a planned outage schedule for the Geothermal Project. Changes or modifications made to the planned outage schedule during the course of the Fiscal Year shall be subsequently reported in a timely manner to each Project Participant. NCPA shall provide outage coordination services to track and report planned and unplanned outages pursuant to the Amended and Restated Scheduling Coordination Program Agreement.

**FACILITIES SCHEDULE 7**  
**NORTH FORK STANISLAUS RIVER HYDROELECTRIC DEVELOPMENT**  
**PROJECT OPERATING PROCEDURES**

**Section 1. Definitions.** Unless defined in this Facilities Schedule 7, all terms used in this Facilities Schedule 7 with initial capitalization shall have the same meaning as those contained in Section 1 of this Agreement.

1.1 “Big Trees Flow Requirement” means the quantity of flow which must be maintained in the North Fork Stanislaus River at Big Trees State Park in accordance with the provisions of the FERC License.

1.2 “Collierville Capacity” means the maximum generating capability of the Collierville power plant at any time under then existing conditions.

1.3 “Collierville Minimum Generation” means the minimum loading of one unit at the Collierville power plant necessary to supply the required consumption of the motoring unit or station power consumption as determined through testing.

1.4 “Dry Water Conditions” means the period of historic record during which the Hydroelectric Project could produce minimum project generation usable to supply Operating Entities’ load requirements.

1.5 “FERC License” means the license awarded by FERC for construction and operation of the North Fork Stanislaus River Hydroelectric Development Project, FERC Project Number 2409.

1.6 “Forecast Project Inflow” means the amount of Project Inflow for a period of one month or less based on hydrometeorologic forecast methods considering current flows, antecedent flows, snow pack measurements, antecedent precipitation, forecast precipitation, and forecast air temperatures.

1.7 “McKays Inflow” means the total inflow to McKays Diversion Dam including flows diverted from Beaver Creek via the Beaver Creek Diversion Tunnel.

1.8 “McKays Minimum Outflow Requirement” means the sum of the following minimum flow obligations: (i) required minimum downstream flow below McKays Diversion Dam, (ii) required diversions to Utica Water and Power Authority (“UWPA”) and Calaveras County Water District (“CCWD”), and (iii) supplemental releases below McKays Diversion Dam to satisfy minimum flow requirements at the confluence of the North Fork Stanislaus River and Beaver Creek.

1.9 “McKays Minimum Pool” means the minimum levels to which McKays Reservoir will be drawn down under various operating conditions.



1.10 “McKays Non-Storage-Regulated Inflow” means the inflow to McKays Diversion Dam from NSM Non-Storage-Regulated Releases.

1.11 “McKays Storage-Regulated Inflow” means the inflow to McKays Diversion Dam from NSM Storage-Regulated Releases.

1.12 “McKays Pondage” means the amount of usable storage at McKays Diversion Dam for reregulating McKays Inflow.

1.13 “NSM” means New Spicer Meadow.

1.14 “NSM Capacity” means the maximum generating capability of the NSM power plant at any time under then existing conditions.

1.15 “NSM Generation” is the total amount of capacity and energy produced by the NSM power plant.

1.16 “NSM Minimum Flow Requirements” means the quantity of flow which must be maintained in the North Fork Stanislaus River at NSM in accordance with the provisions of the FERC License.

1.17 “NSM Minimum Release Rule Curve Storage” means the quantity of water of NSM Storage which must be retained in NSM Storage to ensure that the Project can satisfy NSM Minimum Release Requirements under Dry Water Conditions.

1.18 “NSM Minimum Release Requirements” means the amount of water which must be released from NSM Storage to supply or supplement the

greater of (i) NSM Minimum Flow Requirements, (ii) Big Tree Flow Requirements, or (iii) McKays Minimum Outflow Requirements.

1.19 “NSM Non-Storage-Regulated Release” means the quantity of water which must be released from NSM Storage to supply the NSM Minimum Release Requirement.

1.20 “NSM Spill Prevention Rule Curve Storage” means the minimum quantity of water in NSM Storage which the project manager determines can be held in NSM Storage and assure refill based on conservative forecasts of runoff using snow pack measurements and long-range precipitation forecasts. NSM Spill Prevention Rule Curve Storage may be less than the NSM Minimum Release Curve Storage.

1.21 “NSM Storage” means the usable storage above NSM Dam for reregulating Project Inflow.

1.22 “NSM Storage-Regulated Release” means the quantity of water released from NSM Storage in excess of NSM Non-Storage-Regulated Releases to satisfy the generation schedules of the Operating Entities.

1.23 “Project Capacity” means the sum of the Collierville Capacity and the NSM Capacity.

1.24 “Project Inflows” means each of the following inflows to the Hydroelectric Project: (i) natural inflow to NSM reservoir from Highland Creek;

(ii) natural flows diverted from the North Fork Stanislaus River at the North Fork Diversion Dam to NSM reservoir; (iii) bypassed flows and spill at the North Fork Diversion Dam; (iv) natural inflows below NSM Dam on Highland Creek and below the North Fork Diversion Dam to the McKays Diversion Dam on the North Fork Stanislaus River; and (v) natural flows diverted from Beaver Creek to the McKays Diversion Dam at the Beaver Creek Diversion Structure.

1.25 “Project Obligations” means the obligations of the Hydroelectric Project as defined in the FERC License and agreements with local water districts and other governmental entities as applicable.

1.26 “Project Minimum Flow Obligations” are the minimum flows to be maintained at specified locations as provided in the FERC License.

1.27 “Regulation Study” means a study to determine the maximum monthly loads of an Operating Entity or of all Operating Entities which can be supplied by monthly Project Inflows when such flows are regulated by NSM Storage and the Hydroelectric Project is operated to satisfy Project Obligations under the FERC License.

**Section 2. General Operating Criteria.** The following general operating criteria are applicable to the operation of the North Fork Stanislaus River Hydroelectric Development Project generation facilities (hereinafter referred to as the “Hydroelectric Project”). The General Manager, or his or her designee,

shall act as project manager for the Hydroelectric Project on behalf of the Project Participants.

2.1 Good Utility Practice. The Hydroelectric Project shall be operated in accordance with Good Utility Practice.

2.2 Licenses and Regulatory Criteria. The Hydroelectric Project shall be operated in accordance with all license and regulatory requirements that are applicable to the Hydroelectric Project, including the FERC License.

2.3 Data Requirements. NCPA shall strive to maintain an accurate accounting of all Hydroelectric Project measurements and data, as described in this Facilities Schedule 7, which are used to manage and allocate the output of the Hydroelectric Project; provided, however, if due to failure of equipment, data transfer error or other condition in which Hydroelectric Project measurements and data are found to be incorrect, NCPA will develop and use estimated measurements and data pursuant to Good Utility Practice to perform its obligations pursuant to this Facilities Schedule 7, until such deficiency can be corrected.

2.4 Hydroelectric Project Statistics. The following are general Hydroelectric Project statistics:

<u>Resource Name</u>	<u>Resource ID</u>	<u>Pmax</u>	<u>Pmin</u>
Collierville Hydro Unit 1 & 2 Aggregation	COLVIL_7_PL1X2	246.86 MW	3 MW
Spicer Hydro Units 1-3 Aggregation	SPICER_1_UNITS	6 MW	0.1 MW

**Section 3. Forecasting Project Storage and Use**

3.1 Seasonal Runoff Forecasts. On or before the seventh (7<sup>th</sup>) Business Day of each month, December through May, the project manager will prepare a forecast of spring runoff based on hydrometeorology data including measurements of snow pack depth and water content and long-range forecasts of future precipitation. An analysis will be made to determine NSM Spill Prevention Rule Curve Storage required at the end of subsequent months through June to assure NSM Storage refill. For the period June-November, the project manager will provide a forecast based on historical information. NSM Spill Prevention Rule Curve Storage may be less than the NSM Minimum Release Rule Curve Storage. The project manager shall provide copies of all such forecasts and NSM Spill Prevention Rule Curve Storage data to the Facilities Committee for review and comment.

3.2 Long Term Schedules. Based on the information developed pursuant to Section 3.1 of this Facilities Schedule 7, and at least 10 Calendar Days prior to the start of each month for the periods described herein, each Operating Entity shall, at the request of the project manager, submit to the project manager forecasted monthly energy requirements as follows:

(i) before November of each year a schedule of monthly energy requirements for the following 14 months;

(ii) in the storage refill period before each month from January through June, changes in schedules of monthly energy requirements for the remainder of the calendar year;

(iii) in the storage draft period before each month from July through December, changes in schedules of its forecast monthly energy requirements to the end of the calendar year or for the following four (4) months, whichever is longer.

The project manager shall prepare a Regulation Study based on the Forecast Project Inflows to determine the forecast Hydroelectric Project operation of each Project Participant's Project Participation Percentage share of NSM Storage, and the total Hydroelectric Project generation for the following month based on Forecast Project Inflows. The project manager shall transmit to each Operating Entity the results of the Regulation Study for its respective Project Participation Percentage share of the Hydroelectric Project, and for the total Hydroelectric Project, within three (3) Business Days of receipt of the information supplied by the Operating Entities, including any revision made thereto.

**Section 4. Scheduling.**

4.1 Schedule Coordination. NCPA shall act as Scheduling Coordinator for the Hydroelectric Project, and perform such duties in accordance with the Amended and Restated Scheduling Coordination Program Agreement.

4.2 Scheduling Criteria and Project Coordination. Each Project Participant, acting as an Operating Entity, shall schedule and bid its Project Participation Percentage share of capacity, energy, and/or other project attributes in any manner, and shall coordinate the scheduling of its Project Participation Percentage share of the Hydroelectric Project with NCPA; provided, however, that such schedules or bid shall be consistent with licensing and regulatory criteria, operational limitations, all established scheduling requirements, including, but not limited to, those requirements set forth in the CAISO Tariff and as determined by NCPA pursuant to the Amended and Restated Scheduling Coordination Program Agreement, and the provisions of the respective Project Agreement. NCPA may act as Operating Entity on behalf of a Project Participant or a group of Project Participants, pursuant to separate agreement. The following specific scheduling criteria shall also apply to the Hydroelectric Project:

(i) each Operating Entity shall be entitled to schedule its Project Participation Percentage share of the Hydroelectric Project using its Project Participation Percentage share of Project Capacity, Project Inflow, NSM Storage,

and McKays Pondage after satisfying its Project Participation Percentage share of Project Obligations;

(ii) if the NSM Storage of an Operating Entity is equal to or less than its Project Participation Percentage share of NSM Minimum Release Rule Curve Storage, its generation schedule will be limited to its Project Participation Percentage share of NSM Non-Storage-Regulated Releases;

(iii) each Operating Entity shall be responsible for supplying its Project Participation Percentage share of NSM Non-Storage-Regulated Releases from its Project Participation Percentage share of NSM Storage;

(iv) each Operating Entity shall schedule its allocation of NSM Generation based on its NSM Non-Storage-Regulated Releases each day;

(v) each Operating Entity will be entitled to use its Project Participation Percentage share of McKays Pondage to reregulate its allocations of McKays Non-Storage-Regulated Inflow and McKays Storage-Regulated Inflow to satisfy its load requirements or other commitments;

(vi) the project manager, from time to time, will work with the Operating Entities and the Facilities Committee to identify McKays Minimum Pool, the applicable operating conditions and the associated minimum reservoir levels; the McKays Minimum Pool levels are established taking into account the Hydroelectric Project operational limitations, Project Minimum Obligations, the



amount of useable entitlement possible in the reservoir, and other criteria as appropriate; once established, Project Participants shall not draw down their Project Participation Percentage share of the McKays Reservoir below their Project Participation Percentage share of McKays Minimum Pool under any circumstances;

(vii) the Operating Entities will coordinate the operation of the NSM power plant and the Collierville power plant to maintain the McKays Pondage to strive to maximize the value of energy and ancillary services from the Hydroelectric Project.

4.3 NSM Minimum Release Obligations. The project manager shall perform a Regulation Study to determine the NSM Minimum Release Rule Curve Storage required to satisfy Project Minimum Flow Obligations under Dry Water Conditions. An Operating Entity shall not draw on its Project Participation Percentage share of NSM Storage below its Project Participation Percentage share of NSM Minimum Release Rule Curve Storage except when the established NSM Spill Prevention Rule Curve Storage is below the NSM Minimum Release Rule Curve Storage level. The Regulation Study and the NSM Minimum Release Rule Curve Storage for each Operating Entity, and in total for the Hydroelectric Project, shall be reviewed by the Facilities Committee.

4.4 Minimum Flow Obligations. Each Operating Entity shall be responsible for supplying its Project Participation Percentage share of Project Minimum Flow Obligations. If the sum of the Collierville generation preschedules of the Operating Entities during any interval of the day is less than the sum of the Collierville Minimum Generation, the project manager will coordinate with the Operating Entities and adjust the collective preschedules of the Operating Entities to meet the Collierville Minimum Generation.

4.5 Unscheduled Generation. If an Operating Entity does not schedule its Project Participation Percentage share of the Hydroelectric Project for use in its own system, or for sale to others, with the permission of that Operating Entity arranged through the project manager, the other Operating Entities may schedule such generation for their respective systems, or for sale to others. If more than one Operating Entity requests that such unscheduled generation be added to its schedule, the unscheduled generation shall be allocated in proportion to the each Operating Entity's Project Participation Entitlement share of the requesting Operating Entities.

4.6 Minimum Generation Transfers. At any time that the Hydroelectric Project is being operated at the minimum generation level to meet regulatory or operating requirements, and one Operating Entity has scheduled or is willing to schedule generation associated with such minimum generation, any other

Operating Entity may arrange with that Operating Entity to schedule output of the Hydroelectric Project that such Operating Entity would otherwise be required to schedule, upon agreement of the Operating Entities and appropriate notification to the project manager.

The responsibility for all arrangements in connection with any such transfers shall rest with the Operating Entities involved. Unless otherwise agreed by the Operating Entities and the project manager, the project manager shall have no obligation in connection with the transaction beyond operating the Hydroelectric Project to meet schedules provided and authorized by the Operating Entities.

4.7 Outage Coordination. Prior to the beginning of each Fiscal Year the project manager shall prepare and submit for approval to the Facilities Committee a planned outage schedule for the Hydroelectric Project. Changes or modifications made to the planned outage schedule during the course of the Fiscal Year shall be subsequently reported in a timely manner to each Project Participant. NCPA shall provide outage coordination services to track and report planned and unplanned outages pursuant to the Amended and Restated Scheduling Coordination Program Agreement.

**Section 5. Project Accounting.**

5.1 General Considerations. The primary objective of project accounting is to record and account for each Operating Entity's use of its Project Participation Percentage share of Project Inflow, NSM Storage, McKays Pondage, and Hydroelectric Project generation to satisfy its share of Project Minimum Flow Obligations as defined in the FERC License.

5.2 Criteria. A generation account, a NSM Storage account, and a McKays Pondage account will be established for each Operating Entity. The generation account, the McKays Pondage account and the NSM Storage account will follow a 2400 clock hour.

5.3 Required Models. Project accounting will include four basic models as follows:

- (i) Flow Calculation;
- (ii) Generation Accounting;
- (iii) NSM Storage Accounting;
- (iv) McKays Pondage Accounting.

The four models will be run in the above sequence and make the following determinations:

5.3.1 Flow Calculation. Flow calculations will determine the non-storage-regulated and storage-regulated flows available for power generation at the NSM power plant and at the Collierville power plant.

Non-storage-regulated flows include releases from NSM Storage to satisfy the project FERC License requirements and unregulated flows entering the North Fork Stanislaus River below the NSM Dam and above the McKays Diversion Dam. Flow calculations will be made in accordance with Appendix A of this Facilities Schedule 7.

5.3.2 Generation Accounting. Generation accounting will determine the quantity of project generation produced by each Operating Entity. Generation accounting will be calculated in accordance with Appendix B of this Facilities Schedule 7.

5.3.3 NSM Storage Accounting. Storage accounting will determine the amounts of NSM Storage for each Operating Entity. Storage accounting will be calculated in accordance with Appendix C of this Facilities Schedule 7.

5.3.4 McKays Pondage Accounting. McKays Pondage accounting will determine the amounts of McKays Pondage for each Operating Entity based on:

(i) the Operating Entity's allocation of McKays Non-Storage-Regulated Inflow;

(ii) the Operating Entity's allocation of McKays Storage-Related Inflow; and

(iii) the Operating Entity's allocation of Collierville generation.

McKays Pondage accounting will be calculated in accordance with Appendix D of this Facilities Schedule 7.

5.4 Project Flow Determinations. Each day the project manager will determine Hydroelectric Project flows required for NSM Storage accounting as described in Appendix A of this Facilities Schedule 7, and will provide to each Operating Entity a report on Hydroelectric Project flow determination including the following items:

- (a) UPA and CCWD project diversions;
- (b) McKays downstream releases including spill;
- (c) McKays Minimum Outflow Requirements (a + b);
- (d) Collierville discharge;
- (e) total McKays outflow (c + d);
- (f) McKays Pondage change;
- (g) McKays Inflow (e + f);
- (h) McKays Storage-Regulated Inflow;
- (i) McKays Non-Storage-Regulated Inflow;
- (j) Beaver Creek diverted flow;
- (k) Big Trees Flow Requirements (g – h);
- (l) NSM power plant discharge;

- (m) NSM outlet works discharge;
- (n) total NSM release (l + m);
- (o) NSM Storage change;
- (p) NSM inflow (n + o);
- (q) total NSM Non-Storage-Regulated Release; and
- (r) total NSM Storage-Regulated Release.

Additionally, any two (2) Operating Entities, by mutual consent, may trade water in McKays Reservoir, and make a simultaneous offsetting reverse trade of their NSM Storage. The quantity of the offsetting trade at NSM is reduced by eight percent (8%) to compensate the Operating Entity trading away at NSM for the loss of the opportunity to generate with that water through the NSM power plant.

## FACILITIES SCHEDULE 7

### APPENDIX A

#### FLOW CALCULATIONS

**Section 1. Definitions.** Unless defined in this Appendix A of Facilities Schedule 7, all terms used in this Appendix A of Facilities Schedule 7 with initial capitalization shall have the same meaning as those contained in Section 1 or Facilities Schedule 7 of this Agreement.

1.1 “Bank Storage” means the storage within the banks of a river stretch resulting from the change in river stage at different flows. Filling and emptying of Bank Storage results in time delays between changes in discharge at NSM Dam and the corresponding changes in observed flow at McKays. Bank Storage in all stretches of the river below NSM is represented as an imaginary pondage reservoir above McKays.

1.2 “NSM Storage-Regulated-Flows” means releases into Bank Storage from NSM Reservoir exclusively to produce power at the NSM power plant or to produce power or ancillary services at the Collierville power plant.

1.3 “NSM Non-Storage-Regulated-Flows” means releases into Bank Storage from the NSM Reservoir to satisfy Project Minimum Flow Obligations including: (i) minimum flows below NSM Dam, (ii) minimum flows at Big Trees State Park, (iii) required Mill Creek Tap Diversion; (iv) minimum flows below



McKays Point Dam, (v) minimum flows below the confluence of Beaver Creek and the North For Stanislaus River, and (vi) NSM spill.

1.4 “Unregulated Flow” means unregulated flow into McKays including the following: (i) inflow to the North Fork Stanislaus River below NSM Dam and below the North Fork Diversion Structure, (ii) North Fork Diversion Structure spill and fish release, and (iii) Beaver Creek diverted flows.

**Section 2. Basic Hydro Data.** All flow calculations will be based on the following measurements:

- (i) NSM releases include the following:
  - a. NSM power plant discharge;
  - b. NSM outlet works discharge; and
  - c. NSM spill;
- (ii) NSM Reservoir elevation;
- (iii) McKays Pondage inflows, including:
  - a. Avery gauge; and
  - b. Beaver Creek diverted flow measurement;
- (iv) McKays Pondage outflows, including:
  - a. Collierville power plant discharge;
  - b. Mill Creek Tap diversions;
  - c. McKays downstream fish release; and

d. McKays spill;

(v) Stream gauge below McKays Dam – indirect spill calculation

only;

(vi) McKays Pond elevation.

**Section 3. General Procedure.**

(i) All flows will be calculated and routed through the system using the model described herein.

(ii) The model will be considered to comprise three subsystems as follows:

a. NSM subsystem;

b. McKays subsystem; and

c. Bank Storage subsystem.

(iii) The Bank Storage subsystem will serve as a substitute for the effect of natural bank storage within the river system between NSM Dam and McKays Dam to represent travel time.

**Section 4. Routing.**

4.1 Routing Interval. A basic routing interval of one-half hour is used. Computations will be based on average water and power flows recorded over the routing interval.

4.2 Routing Criteria. The following criteria will be used in flow routing:

(i) Bank Storage outflow will be assumed to come:

a. First from Bank Storage of NSM Non-Storage-Regulated Flow; and

b. Second from Bank Storage of NSM Storage-Regulated Flow.

(ii) Big Trees flow in excess of available Bank Storage will be assumed to be Unregulated Inflow into McKays.

**Section 5. Flows.**

5.1 McKays Flows.

(i) Determine McKays outflow from McKays Pondage as the sum of Collierville discharge, Mill Creek Tap diverted flow, McKays fish release and McKays spill.

(ii) Determine McKays Inflow as the sum of McKays outflow plus the change in McKays Pondage.

(iii) McKays minimum outflow is the sum of the flow diverted from the Mill Creek Tap and the McKays fish release.

(iv) Determine Big Trees flows as McKays Inflow less Beaver Creek diverted flow.

5.2 NSM Flows.

(i) Determine NSM release as the sum of NSM power plant discharge, NSM outlet works discharge and NSM spill.

(ii) Determine NSM inflow as the sum of NSM release and the change in NSM Storage.

5.3 Bank Storage Flows.

(i) Bank Storage inflow is equal to the sum of NSM Storage less NSM Storage-Regulated Releases and NSM Non-Storage-Regulated Releases.

(ii) Bank Storage is accumulated in those routing intervals when Bank Storage inflow is greater than Big Trees flow. Bank Storage for each Operating Entity will be classified and accumulated as non-storage-regulated or storage-regulated, in accordance with the classification of the release from NSM.

(iii) Bank Storage outflow is used to supply Big Trees flow.

(iv) If there is not sufficient Bank Storage to supply all of the Big Trees flow, then the balance of the Big Tree flow is assumed to be Unregulated Inflow directly into McKays and not through Bank Storage.

(v) In accordance with the routing criteria stated herein, all non-storage-regulated water in Bank Storage is depleted before any storage-regulated water is released.

**FACILITIES SCHEDULE 7**  
**APPENDIX B**  
**GENERATION ACCOUNTING**

**Section 1. General Considerations.** Project generation may be placed in three principal categories:

1.1 Generation which must be produced at the Collierville power plant:

(i) to discharge unregulated flows entering the North Fork Stanislaus River below NSM Dam or below the North Fork Diversion Structure including Beaver Creek Diversion discharge; or

(ii) to discharge North Fork Diversion Dam spill or NSM spill through the Collierville power plant.

1.2 Generation produced at the NSM power plant resulting from the release of NSM Storage to satisfy minimum release requirements of the FERC License.

1.3 Generation produced at the NSM and Collierville power plant resulting from the release of storage to meet the energy and ancillary service requirements of the Operating Entities.

**Section 2. Generation Accounting.**

2.1 Operating Entity Responsibilities. Each Operating Entity is responsible for submitting NSM water release schedules, NSM energy schedules, Collierville energy schedules, ancillary service self-provision schedules and bids to the project manager in the time frames as specified in the Amended and Restated Scheduling Coordination Program Agreement. Each Operating Entity's pre-scheduled daily NSM water release schedules will be developed by the project manager based on each Operating Entity's estimate of Collierville energy use for that day. Each Operating Entity shall provide an estimate of total daily Collierville energy use no later than 07:00 each pre-scheduling day. NSM water release schedules can be adjusted for future hours, but not for the currently active hour, and not retroactively. Energy and ancillary service schedules must follow the scheduling protocols of the CAISO Tariff and the Amended and Restated Scheduling Coordination Program Agreement, and are therefore not changeable after having been processed through the CAISO scheduling process.

2.2 NSM Generation. Generation actually produced at the NSM power plant will be allocated to the Operating Entities in proportion to their water release schedules, as specified in Appendix B of the Amended and Restated Scheduling Coordination Program Agreement. This allocation means that it is the NSM water release schedules, and not the NSM energy schedules, that form the basis for the allocation of power at NSM. The NSM energy schedules are

needed to determine CAISO energy balancing purposes in the day-ahead market, and should correspond appropriately to the NSM water release schedules, but ultimately it is the NSM water release schedules that dictate the allocation.

2.3 Collierville Generation. Collierville discharge through the power plant is allocated to the Operating Entities in the same proportion as the metered energy allocation results described in Appendix B to the Amended and Restated Scheduling Coordination Program Agreement (commonly referred to as the Unit Energy Allocation or (“UEA”)).

**FACILITIES SCHEDULE 7**  
**APPENDIX C**  
**NSM STORAGE ACCOUNTING**

**Section 1. General Considerations.** Each Operating Entity will be allocated its Project Participation Percentage share of NSM Storage. Storage accounting will determine the amount of NSM Storage drafted by each Operating Entity each day and the status of the Operating Entity's allocation of NSM Storage at the end of each day.

An Operating Entity may utilize the Project Participation Percentage share of NSM Reservoir storage of other Operating Entities, provided that, if it is necessary to spill at NSM Dam, such spill will be assumed to be first from water stored by the Operating Entity who is using the Project Participation Percentage share of NSM Reservoir storage of other Operating Entities. The allocation of spill will be based on the amount the Operating Entities are "over-filled" relative to their respective Project Participation Percentage shares of NSM Reservoir storage. If more than one Operating Entity is over-filled, the initial allocation of spill will be pro-rata to each based on the amount each is over-filled. Once all water stored in the Project Participation Percentage share of others is spilled, any remaining spill is allocated based on Project Participation Percentage shares.

**Section 2. NSM Storage Accounting.**



2.1 NSM Inflow Allocation. Each Operating Entity will be allocated its NSM Inflow (as determined in accordance with Appendix A of this Facilities Schedule 7, Flow Calculations) by Project Participation Percentage share.

2.2 NSM Release Allocation. Each Operating Entity shall provide a NSM water release schedule for each interval of each day. The actual NSM water releases, calculated as described in Appendix A of this Facilities Schedule 7, will be pro-rated to the Operating Entities based on the water release schedules. The Facilities Schedule 7 model algorithm will automatically allocate the actual NSM water releases by Operating Entity in each interval first to satisfy each Operating Entity's share of the NSM Minimum Release. These are classified in accordance with Appendix A of this Facilities Schedule 7 as non-storage-regulated flows. The remainder of each Operating Entity's water release will be considered storage-regulated flows.

2.3 NSM Storage Change. The change in NSM Storage of each Operating Entity will be equal to the Operating Entity's allocation of NSM Inflow minus each Operating Entity's storage-regulated and non-storage-regulated releases.

2.4 End-of-Interval NSM Storage. The end-of-interval NSM Storage of each Operating Entity will be the algebraic sum of the Operating Entity's beginning-of-interval NSM Storage and its NSM Storage change.

**FACILITIES SCHEDULE 7**  
**APPENDIX D**  
**MCKAYS PONDAGE ACCOUNTING**

**Section 1. General Considerations.** Determinations of McKays Pondage accounts for each Operating Entity will be made each day.

**Section 2. McKays Pondage Accounting.**

2.1 McKays Entitlement. Each Operating Entity will be allocated an entitlement amount of the total useable McKays Pondage in accordance with this Appendix D of Facilities Schedule 7.

2.2 Storage in Excess of Entitlement. An Operating Entity may utilize the McKays Pondage entitlements of other Operating Entities, provided that if it is necessary to spill at McKays Dam, such spill will be assumed to be first from water stored by the Operating Entity who is using the entitlement of other Operating Entities. The allocation of spill will be based on the amount the Operating Entities are "over-filled" relative to their Project Participation Percentage share of McKays Pondage. If more than one Operating Entity is over-filled, the initial allocation of spill will be pro-rata to each Operating Entity based on the amount each Operating Entity is over-filled. Once all water stored in the entitlements of others is spilled, any remaining spill is allocated based on Project Participation Percentage shares.

2.3 Allocation of Flows. Flows are allocated to each Operating Entity as follows:

(i) Unregulated inflow, non-storage regulated inflow, inflow from Beaver Creek, Mill Creek Tap Outflow and McKays Fish Release are allocated based on Project Participation Percentage shares;

(ii) Storage-regulated inflow is allocated in accordance with the bank storage routing criteria specified in Appendix A of this Facilities Schedule 7, and the accumulated Operating Entity Project Participation Percentage shares of the storage-regulated water in bank storage, based on each Operating Entity's NSM water release schedules;

(iii) Spill is allocated as specified in Section 2.2 of this Appendix D; and

(iv) Collierville discharge through the power plant is allocated to the Operating Entities in the same proportion as the metered energy allocation results described in Appendix B of the Amended and Restated Scheduling Coordination Program Agreement (commonly referred to as the Unit Energy Allocation ("UEA")), and which allocates NSM energy based on the NSM water release schedules).

2.4 Operating Entity Pondage. At the end of each interval, each Operating Entity's McKays Pondage is determined by algebraically summing the

Operating Entity's allocation of inflows and outflows with the ending McKays Pondage from the previous interval.

2.5 Water Trades Between McKays and NSM Pondage. Any two Operating Entities, by mutual consent, may trade water in McKays, and make a simultaneous offsetting reverse trade of their Pondage at NSM. The quantity of the offsetting trade at NSM is reduced to compensate the Operating Entity trading away at NSM for the loss of the opportunity to generate with that water through the NSM power plant. The trade at NSM will be reduced by 8% (based on the historical generation water duty ratio for NSM releases) relative to the trade at McKays.

Water trades are effective as of 0001 of the agreed-upon trade day (since the Facilities Schedule 7 algorithm re-calculates each interval of the current day every half-hour, this means that there will be no retroactive computer re-runs required). A trade can be arranged to apply no earlier than 0001 of the current day. Once agreed by the trading Operating Entities, the trade will be scheduled by the project manager. Trades are of water only with no corresponding financial payments. If there is no willing partner to a proposed trade, then each Operating Entity's Pondage results are unchanged, and all Facilities Schedule 7 results, including the allocation of spill, remain unchanged.

## FACILITIES SCHEDULE 8

### COMBUSTION TURBINE PROJECT NO. 2 OPERATING PROCEDURES

**Section 1. Definitions.** Unless defined in this Facilities Schedule 8, all terms used in this Facilities Schedule 8 with initial capitalization shall have the same meaning as those contained in Section 1 of this Agreement.

1.1 “Pool” or “Pooling” has the meaning as defined in the Second Amended and Restated Pooling Agreement.

**Section 2. General Operating Criteria.** The following general operating criteria are applicable to the operation of the Combustion Turbine Project No. 2 generation facilities (hereinafter referred to as the “STIG Project”). The General Manager, or his or her designee, shall act as project manager for the STIG Project on behalf of the Project Participants.

2.1 Good Utility Practice. The STIG Project shall be operated in accordance with Good Utility Practice.

2.2 Licenses and Regulatory Criteria. The STIG Project shall be operated in accordance with all license and regulatory requirements that are applicable to the STIG Project (e.g., air permit restrictions).

2.3 Project Operation. The project manager shall normally operate the STIG Project in accordance with day ahead and active day schedules. The project manager may deviate from the scheduled operation due to system economics or

other operating conditions, provided that such deviations shall be coordinated among the Operating Entities.

2.4 STIG Project Statistics. The following are general STIG Project statistics:

<u>Resource Name</u>	<u>Resource ID</u>	<u>Pmax</u>	<u>Pmin</u>
Lodi STIG Unit	STIGCT_2_LODI	49.9 MW	25 MW

**Section 3. Scheduling Criteria.**

3.1 Schedule Coordination. NCPA shall act as Scheduling Coordinator for the STIG Project, and perform such duties in accordance with the Amended and Restated Scheduling Coordination Program Agreement.

3.2 Scheduling Criteria and Project Coordination. Each Project Participant, acting as an Operating Entity, may schedule and bid its Project Participation Percentage share of capacity, energy, and/or other project attributes in any manner, and shall coordinate the scheduling of its Project Participation Percentage share of the STIG Project with NCPA; provided, however, that such schedules or bid shall be consistent with licensing and regulatory criteria, operational limitations, all established scheduling requirements, including, but not limited to, those requirements set forth in the CAISO Tariff and as determined by NCPA pursuant to the Amended and Restated Scheduling Coordination Program Agreement, and the provisions of the respective Project

Agreement. NCPA may act as Operating Entity on behalf of a Project Participant or a group of Project Participants, pursuant to separate agreement.

Notwithstanding the foregoing, upon mutual agreement of the STIG Project Operating Entities NCPA may, acting as project manager, schedule and bid the entire STIG Project on behalf of the Project Participants for capacity, energy, and/or other project attributes into the CAISO markets and shall strive to maximize the economic value of the STIG Project while taking full consideration of other regulatory costs (e.g., GHG compliance obligations).

3.3 Load Following. The STIG Project may be utilized by NCPA to provide load following capacity, provided that Project Participants are compensated for such operation in accordance with this Facilities Schedule 8.

3.4 Allocation of Project Output. All output of the STIG Project, including capacity, energy and/or other project attributes shall be allocated among the Project Participants in accordance with the Project Agreement, this Facilities Schedule 8, and the Amended and Restated Scheduling Coordination Program Agreement.

3.5 Outage Coordination. Prior to the beginning of each Fiscal Year the project manager shall prepare and submit for approval to the Facilities Committee a planned outage schedule for the STIG Project. Changes or modifications made to the planned outage schedule during the course of the

Fiscal Year shall be subsequently reported in a timely manner to each Project Participant. NCPA shall provide outage coordination services to track and report planned and unplanned outages pursuant to the Amended and Restated Scheduling Coordination Program Agreement.

**Section 4. Natural Gas Fuel Supply.**

4.1 General. The STIG Project consumes natural gas as a fuel in order to generate electric power for the benefit of the Project Participants. Section 4 of this Facilities Schedule 8 describes the terms and conditions under which NCPA will procure natural gas fuel for the STIG Project.

4.2 Economic Dispatch and Daily Fuel Requirements. The STIG Project consists of one generator. Unless called upon by the CAISO for emergency conditions, the STIG Project is economically dispatched or self-scheduled in accordance with the operating procedures defined in this Facilities Schedule 8. In either case the fuel supply requirements of the STIG Project are primarily met through NCPA's contractual relationship with a primary supplier under a gas management agreement and supplemented with North American Energy Standards Board ("NAESB") agreements with various Third Parties to encourage competitive fuel supplies. The cost for natural gas fuel procured for the STIG Project will be allocated to the Project Participants in accordance with



the Project Agreement, this Agreement, and the Amended and Restated Scheduling Coordination Program Agreement.

4.3 Forward Natural Gas Procurement and Financial Hedging. NCPA is permitted to procure natural gas fuel in advance of generation provided that the term of the purchase does not exceed one month with delivery occurring within the next calendar month following the transaction. No financial hedges for fuel supply costs associated with the STIG Project will be implemented pursuant to this Facilities Schedule 8. NCPA may assist any Project Participant that desires to procure natural gas in advance for anticipated STIG Project fuel supply requirements, upon written request of a Project Participant, provided that NCPA and the requesting Project Participant have executed a separate agreement for such purposes.

4.4 Fuel Supply Management and Scheduling. Natural gas fuel consumed by the STIG Project must be scheduled and transported to the generator site. To obtain necessary scheduling and transportation rights and services the Commission may periodically authorize contracts with Third Parties and/or authorize subscriptions for transportation and storage services under pipeline tariffs in accordance with procurement policies and procedures established by the Commission.

**Section 5. Unused Project Participation Percentage Share.**

5.1 Unused Project Participation Percentage Share.

5.1.1 Day Ahead Scheduling. If an Operating Entity does not elect to schedule and bid its Project Participation Percentage share of the STIG Project in the day ahead market, pursuant to Section 3 of this Facilities Schedule 8, the remaining Operating Entities may request the entire output of the STIG Project. If the remaining Operating Entities desire to take energy from the STIG Project, they must take the entire minimum economic operating output as determined by the project manager. An Operating Entity that did not take their Project Participation Percentage share in the day ahead scheduling process cannot request their Project Participation Percentage share in the active day where other Operating Entities have requested to take the entire output of the STIG Project, unless otherwise mutually agreed. Any Operating Entity that does not take their Project Participation Percentage share shall be compensated for their Project Participation Percentage share by the other Operating Entities in accordance with this Facilities Schedule 8. If the STIG Project is not scheduled for any Operating Entity, the STIG Project will remain available for active day scheduling for any Operating Entity.

5.1.2 Active Day Scheduling. If an Operating Entity does not elect to schedule and bid its Project Participation Percentage share of the

STIG Project in the active day market, pursuant to Section 3 of this Facilities Schedule 8, the remaining Operating Entities may request the entire output of the STIG Project. If the remaining Operating Entities desire to take energy from the STIG Project, they must take the entire minimum economic operating output as determined by the project manager. Once an Operating Entity communicates to the project manager that it does not desire to take its Project Participation Percentage share in the active day scheduling process, they cannot request their Project Participation Percentage share in any hours of the active day where other Operating Entities have requested to take the entire output of the STIG Project, unless otherwise mutually agreed. Any Operating Entity that does not take their Project Participation Percentage share shall be compensated for their Project Participation Percentage share by the other Operating Entities in accordance with this Facilities Schedule 8. If the STIG Project is not scheduled for any Operating Entity, the STIG Project is available for use by the project manager.

**Section 6. Coordinated Settlements, Cost Recovery, and Reimbursement of Margin (Between Pool and non-Pool Project Participants).**

6.1 General Considerations.

(i) the objective of settlements and cost recovery is to ensure that Project Participants pay actual operating costs, and provide the process that will

ensure scheduling and operation by an Operating Entity does not have any adverse economic impact on another Operating Entity; and

(ii) the objective of reimbursement of margin is to ensure that if the STIG Project is scheduled to operate and an Operating Entity cancels the operation, due to economic conditions or load following, such cancellation does not adversely affect another Operating Entities' ability to receive its expected margin from the planned operation of the STIG Project.

## 6.2 Settlements.

(i) whenever the STIG Project is operated, Project Participants shall pay the variable costs of generation including any associated CAISO costs and uninstructed energy costs, according to their Project Participation Percentage share;

(ii) associated CAISO costs and uninstructed energy costs will be allocated and settled in accordance with Appendix B of the Amended and Restated Scheduling Coordination Program Agreement;

(iii) Project Participants shall be paid for project output pursuant to the CAISO Tariff and project output shall be allocated according to their Project Participation Percentage share; and

(iv) for non-Pool Operating Entities receiving energy through an inter-scheduling coordinator trade, such Operating Entity shall pay for the inter-

scheduling coordinator trade pursuant to the CAISO Tariff and Appendix B of the Amended and Restated Scheduling Coordination Program Agreement.

6.3 Cost Recovery.

(i) an Operating Entity that is taking energy greater than their Project Participation Percentage share shall compensate the other Operating Entities to ensure that those whose Project Participation Percentage share was consumed by others are, at a minimum, financially neutral;

(ii) in the context of this Facilities Schedule, financial neutrality means, if the Operating Entity scheduling less than their Project Participation Percentage share has a net cost for those hours of the day that their Project Participation Percentage share was being used by others, taking into account the costs and payments under this Facilities Schedule 8, the Operating Entity using the Project Participation Percentage share shall pay the Operating Entity whose entitlement was used an amount to ensure the net cost is zero for the Operating Entity whose Project Participation Percentage share was used by others; and

(iii) the STIG Project may be used for load following; in such case, the Pool Operating Entity shall compensate the non-Pool Operating Entity to ensure that the non-Pool Operating Entity is financially neutral or so that its contribution to margin from CAISO market awards is maintained.

## FACILITIES SCHEDULE 9

### POWER PURCHASE PROJECTS OPERATING PROCEDURES

**Section 7. Definitions.** Unless defined in this Facilities Schedule 9, all terms used in this Facilities Schedule 9 with initial capitalization shall have the same meaning as those contained in Section 1 of this Agreement.

7.1 “Power Purchase Project” means a power purchase contract or contracts which are individually or collectively deemed to be NCPA Projects.

**Section 8. General Operating Criteria.** The following general operating criteria are applicable to the operation of each Power Purchase Project. The General Manager, or his or her designee, shall act as project manager for the scheduling and operation of each Power Purchase Project.

8.1 Good Utility Practice. Power Purchase Projects shall be operated in accordance with Good Utility Practice.

8.2 Licenses and Regulatory Criteria. Power Purchase Projects shall be scheduled and operated in accordance with all license and regulatory requirements that are applicable to the Power Purchase Projects, if any.

**Section 9. Scheduling Criteria.**

9.1 Schedule Coordination. NCPA shall act as Scheduling Coordinator for each Power Purchase Project, and perform such duties in accordance with the Amended and Restated Scheduling Coordination Program Agreement.

9.2 Scheduling Criteria and Project Coordination. Each Project Participant, acting as an Operating Entity, shall schedule and bid its Project Participation Percentage share of capacity, energy, and/or other project attributes in any manner, and shall coordinate the scheduling of its Project Participation Percentage share of each Power Purchase Projects with NCPA; provided, however, that such schedules or bids shall be consistent with licensing and regulatory criteria, operational limitations, all established scheduling requirements, including, but not limited to, those requirements set forth in the CAISO Tariff and as determined by NCPA pursuant to the Amended and Restated Scheduling Coordination Program Agreement, and the provisions of the respective Project Agreement. NCPA may act as Operating Entity on behalf of a Project Participant or a group of Project Participants, pursuant to separate agreement.

9.3 Allocation of Project Output. All output of a Power Purchase Project, including capacity, energy and/or other project attributes shall be allocated among the Project Participants in accordance with the Project Agreement and the Amended and Restated Scheduling Coordination Program Agreement.

9.4 Outage Coordination. Prior to the beginning of each Fiscal Year the project manager shall prepare and submit for approval to the Facilities

Committee a planned outage schedule for each Power Purchase Project, if applicable. Changes or modifications made to the planned outage schedule during the course of the Fiscal Year shall be subsequently reported in a timely manner to each Project Participant. NCPA shall provide outage coordination services to track and report planned and unplanned outages pursuant to the Amended and Restated Scheduling Coordination Program Agreement.



**FACILITIES SCHEDULE 10**  
**RESERVE FUNDS**

Reserve funds shall be established by the Commission for each NCPA Project as set forth in this Facilities Schedule 10. Reserve Funds shall be classified as either "Mandatory Reserve Funds" or "Additional Reserve Funds."

**Section 1. Mandatory Reserve Funds.** Each NCPA Project that is financed by the issuance of notes, bonds, or other public debt ("Bonds") is secured by the provisions of a Project Indenture of Trust. Each Project Indenture of Trust establishes, among other things, various interrelated reserve funds for the protection of the holders of the Bonds. The following Mandatory Reserve Funds are governed by the provisions of the applicable Project Indenture of Trust:

1.1 Debt Service Reserve Fund. A reserve equal to the maximum annual debt service over the life of the outstanding debt. This reserve fund may be used to pay debt service in the event that amounts in the debt service fund are not sufficient.

1.2 Reserve and Contingency Fund. The renewal and replacement account is a subaccount of the reserve and contingency fund used to pay the cost of acquisition and construction relating to any capital improvement. In general, a capital improvement is a repair, addition, improvement, modification or betterment to a NCPA Project that is: (i) consistent with Good Utility Practice

and determined necessary by the Commission to keep the NCPA Project in good operating condition or to prevent a loss of revenue therefrom; (ii) required by any governmental agency having jurisdiction over the NCPA Project; or (iii) not any generating unit in addition to those included in the NCPA Project. (See the appropriate Project Indenture of Trust for specific definition).

The reserve account is a subaccount of the reserve and contingency fund used to pay the cost of the following to the extent not provided for in the Annual Budget or by an operating reserve in the operating fund: (i) acquisition and construction relating to capital improvements to the extent amounts in the renewal and replacement account are not sufficient; and (ii) items related to extraordinary operations and maintenance costs and contingencies, including payments to prevent or correct any unusual loss or damage to the NCPA Project. Any increase or decrease in the balance to be on deposit in this account must be recommended by the consulting engineer as provided in the applicable Project Indenture of Trust.

1.3 General Reserve. The general reserve is a subaccount of the general reserve used to pay any deficiencies in any other funds and accounts established by the Project Indenture of Trust and for any other purpose related to the NCPA Project. The rate stabilization account is a subaccount of the general reserve used to provide revenues so that Participant rates may be stabilized.

1.4 Operating Fund. A fund used to pay current NCPA Project operating expenses. This fund also contains any amounts set aside as working capital or operating reserves. In its Annual Budget process, the Commission will determine and establish appropriate purposes for and levels of operating reserves to be held and maintained in the operating fund of the applicable NCPA Project. Such operating reserves may include, but are not limited to, the following:

(i) the working capital reserve is a reserve equal to the average amount of capital required for operating purposes to fund expenditures made prior to receipt of revenue collections; and

(ii) the maintenance reserve is a reserve for anticipated periodic operating costs including, but not limited to, scheduled and unscheduled maintenance other than ordinary repairs and replacements, e.g., overhaul, inspection, etc.

Upon completion of construction of the applicable NCPA Project, interest income on such reserves is considered a revenue for Project Indenture of Trust purposes, and therefore treated as an operating revenue to NCPA to be allocated back to the applicable NCPA Project.

**Section 2. Additional Reserve Funds.** Additional Reserve Funds may be established by the Commission from time to time, provided their establishment

does not affect the funding, maintenance, or operation of any Mandatory Reserve Fund.

Funding mechanisms for all Additional Reserve Funds will be determined on a case by case basis by the Commission upon the recommendation of the Facilities Committee, but unless such Additional Reserve Fund is limited to a specific project, may not be funded under a Project Agreement. If the additional Reserve Fund is designated for capital improvements, the recommendation of the NCPA Finance Committee will also be requested.

NCPA shall maintain separate accounts for all Additional Reserve Funds. Unless otherwise required by a Project Indenture of Trust, at the time an Additional Reserve Fund is established, the Commission shall determine whether the interest accrued on the balance of the fund shall be treated and accounted for as: (i) operating revenue to NCPA to be allocated back to the applicable NCPA Project, or (ii) an addition to the balance of the fund. NCPA shall maintain records and provide reports for each Additional Reserve Fund as provided in this Agreement.

**FACILITIES SCHEDULE 11**  
**PROJECT PHASES**

Pursuant to Section 6 of this Agreement, any NCPA Project undertaken by NCPA may have one or more phases. Facilities Schedule supplements the description of each phase provided in Section 6 of this Agreement.

**Section 1. First Phase Projects.** Review and recommendations regarding First Phase Project activities shall be made by the Facilities Committee. Each Member obtains a right to participate in any Project identified by First Phase activity proportional to its contribution to First Phase costs at the time a Project is identified and becomes a candidate for Second Phase activity. First Phase activity includes the following typical scope of work:

(i) make general investigations and obtain currently available background, technical, economic and other preliminary data concerning the feasibility of a specific Project; and

(ii) hold initial discussions to gain sufficient understanding of data and circumstances surrounding the proposed Project to enable staff to report, and/or recommend Participant participation in Second Phase activity and execution of a Second Phase Agreement enabling such activity.

**Section 2. Second Phase NCPA Projects.** Second Phase development activity begins upon the identification of a Project in substantial detail to allow

proceeding with participation agreements resulting from investigations pursuant to First Phase activities.

Subject to the provisions of this Agreement, Second Phase participation rights are based a Participant's share of funding First Phase activities. Final Second Phase Project Participation Percentages will be determined by election by those Project Participants desiring to participate pursuant to the Second Phase Agreement. A Second Phase project must be fully subscribed to proceed with the scope of work for the project. Limitations in scope of work, off ramps or conditions of participation in Second Phase projects will be addressed in the language of the associated Second Phase Agreement.

Funding for Second Phase projects may proceed in two steps:

2.1 Step 1. Step 1, is defined as the period from identification of a Second Phase project, up to the final execution of a Second Phase Agreement for all Participants desiring participation. Step 1 funding sources will be determined at the discretion of the Project Participants. Typically, funding for Step 1 costs will be by direct assessments to Participants or by withdrawals from Participants' Second Phase funds, in accordance with each Participant's Project Participation Percentage at the time of authorization of Step 1.

Step 1 is optional and is provided in order to maintain continuity in the project or to advance the project to some gain not otherwise obtainable without

implementing Step 1. All Step 1 costs will be included for ultimate reimbursement and accounted for in the final Second Phase Agreement executed by the Project Participants. Project Participation Percentages may change from Step 1 to Step 2. In the event that the Second Phase project is terminated before final execution of a Second Phase Agreement, each Project Participant will absorb those costs expended, up to and including termination costs. No refunds are anticipated for Step 1 costs associated with a terminated project.

2.2 Step 2. Step 2 is defined as the period beginning at final execution of a Second Phase Agreement and ending either when the Third Phase Agreement for the NCPA Project becomes effective, or in the case where an NCPA Project does not progress to the Third Phase, upon termination of the Second Phase Agreement.

Step 2 costs will be funded at the discretion of the Project Participants. Typical funding for Step 2 costs will be by direct assessment, temporary financing or permanent financing, depending on the needs of the project and Project Participants. Second Phase costs will consist of all Step 1 costs (optional) and all Step 2 costs. All Second Phase costs will be included for ultimate reimbursement and accounted for in the final Third Phase Agreement executed by the Project Participants. Project Participation Percentages may change from the Second Phase to Third Phase of a project. In the event that the Second Phase

of a project is terminated prior to the final execution of a Third Phase Agreement, each Project Participant will absorb those costs expended, up to and including termination costs. No refunds are anticipated for Second Phase costs associated with a terminated project. Second Phase activity includes the following typical scope of work:

(i) licensing/permitting of a project;

(ii) preparation of design or turn-key specification documents for construction or a project; and

(iii) negotiation of contracts.

**Section 3. Third Phase NCPA Projects.** Third Phase activities are described in Section 6 of this Agreement.



## FACILITIES SCHEDULE 12

### FEDERAL TAX GUIDELINES RELATING TO PRIVATE BUSINESS USE

NCPA has issued a number of Bond issues (the “Bonds”) for the NCPA Projects which have been “traditional” tax exempt bond or Build America Bond obligations, which are “tax advantaged” under provisions of the Internal Revenue Code (the “Tax Status”). This Facilities Schedule 12 summarizes and documents the various federal tax restrictions approved by the Commission to be used as guidelines relating to private business use of the NCPA Projects and the capacity and energy from the NCPA Projects required to qualify and maintain the Tax Status of the Bonds. Failure to comply with the private business use requirements set forth in this Facilities Schedule 12 may adversely affect the Tax Status of the Bonds.

**Section 1. Definitions.** Unless defined in this Facilities Schedule 12, all terms used in this Facilities Schedule 12 with initial capitalization shall have the same meaning as those contained in Section 1 of this Agreement.

1.1 “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 a NCPA Project and to finance or refinance any contributions-in-aid-of-construction for construction necessary for the adjacent electric system to interconnect with a NCPA Project and includes additional bonds to complete a NCPA Project and may consist of that portion of an issue of NCPA bonds, notes or other evidences of indebtedness issued to finance the costs of a NCPA Project, which portion is specifically identified as Bonds.

1.2 “Build America Bonds” or “BABs” means taxable municipal bonds that feature tax credits and/or federal subsidies for bondholders and state and local government bond issuers.

1.3 “Internal Revenue Code” means all federal tax laws.

1.4 “Internal Revenue Service” means the federal agency responsible for administering and enforcing the Treasury Department’s revenue laws, through the assessment and collection of taxes, determination of pension plan qualification, and related activities.

1.5 “Treasury Regulations” means tax regulations issued by the Internal Revenue Service.

**Section 2. Restrictions on Non-Governmental Use.** Neither NCPA nor the Participants may expect that (i) more than five (5) percent of the proceeds of a Bond issue will be used to make or finance loans to any person other than a state

or local governmental unit, or (ii) except as described below, more than the permitted amount of the proceeds of a Bond issue (that is, the lesser of 10 percent or \$15 million, as applicable) will be used in any trade or business carried on by any natural person or any activity carried on by anyone other than a natural person or a State or local governmental unit.

“Use” includes the sale of power (whether consisting of capacity, energy, or both, including the sale of ancillary services) to non-governmentally owned utilities (including e.g., the federal government, Bonneville Power Administration and Western Area Power Administration) pursuant to output or requirements contracts as well as any other arrangements for the sale of power on terms different from those available to the general public. Such may include contracts with retail customers that contain provisions which obligate a customer to make payments that are not contingent on the output requirements of the customer or that obligate the customer to have output requirements (including provisions which obligate the customer not to cease operations). The private business use restrictions are applied by taking into account any arrangements NCPA or any of the Participants have with non-exempt persons (generally, for these purposes any entity or person other than a municipally owned utility) for the sale of power from a NCPA Project. Use also includes providing a non-governmental person with control, whether direct or indirect, over the

operations, maintenance or decision making as to when to run or not run a particular NCPA Project (in tax parlance such rights would be called “special legal entitlements”). Such special legal entitlements also may create private business use.

Applicable Treasury Regulations provide an exception to private business use if the non-governmental person uses the property (or the capacity or energy for the property) as a member of the general public. This occurs if the “property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business.” Use on the same basis as the general public may include a fee or charge for use, so long as the rates charged are generally applicable and uniformly applied. These rates may vary in certain respects, such as different rates based on volume, so long as the difference in rates is customary and reasonable. Any arrangement that gives the non-exempt person special priority rights or preferential benefits is not use on the same basis as the general public.

**Section 3. Specific Private Business Use Exceptions Relating to the NCPA**

**Projects.** NCPA and the Participants will enter into a variety of arrangements with non-exempt persons, including wholesale customers of NCPA, wholesale and retail customers of the Participants, and non-governmental utilities and other providers and purchasers of electric generation, transmission, and

distribution service. Each of these arrangements will be treated as private business use in evaluating compliance with the limits described in Section 2 of this Facilities Schedule 12, except to the extent that the arrangement either satisfies one of the following exceptions to the limitations on private business use and private security or payments, or NCPA or the Participants obtain an opinion of Bond Counsel to the effect that the arrangement will not adversely affect the Tax Status of the Bonds:

(i) in the case of sales of electric generation or distribution service, the term of such transaction will not exceed three (3) years (including renewal options) and will be negotiated, arm's length arrangements that provide for compensation at fair market value or are based on generally applicable and uniformly applied rates, and the related facility (e.g. a NCPA Project) was not financed with a principal purpose of providing that facility for use by that non-governmental person;

(ii) in the case of sales of electric generation or distribution service, the compensation for such service and any other payments in respect of such use will not exceed NCPA's or the Participant's, as applicable, properly allocable cost of ordinary and necessary expenses that are directly attributable to the operation of the financed property used by the non-governmental person;

(iii) in the case of sales of electric generation or distribution service, the output is sold (a) to a retail customer pursuant to a requirements contract that does not require the customer to make payments unless it actually has requirements, (b) under a contract pursuant to which the average annual payments made under the contract do not exceed the amount permitted under the de minimis rule contained in the applicable regulations, (c) under a contract the terms of which comply with (i) above, or (d) from non-bond financed system resources of the Participant which are physically capable of supplying the output being sold;

(iv) the arrangement will not involve use of the Project (e.g., non-bond financed resources or contracts involving the resale of generation provide by an investor owned utility to NCPA);

(v) the use of the NCPA Projects that would constitute private business use is allocable to (a) Bonds that have been “remediated” within the meaning of Treasury Regulation section 1.141-12 (or repaid in their entirety), or (b) equity, or (c) taxable bonds issued by NCPA, or (d) issues of bonds that have been fully repaid;

(vi) an agreement that provides for the swapping or pooling of output by one or more non-governmental persons to the extent that: (a) the swapped output is reasonably expected to be approximately equal in value

(determined over periods of one year or less), and (b) the purpose of the agreement is to enable each of the parties to satisfy different peak load demands, to accommodate temporary outages, to diversify supply, or to enhance reliability in accordance with prudent reliability standards; and

(vii) the use of the NCPA Project is by an entity that qualifies as an agency or instrumentality of NCPA approved by the Internal Revenue Service or Bond Counsel.

**Section 4. Sale of Renewable Energy Certificates.** In a private letter ruling, the Internal Revenue Service concluded that under certain circumstances the sale of renewable energy certificates (“RECs”) does not create any private business use. If a Participant transacts to sell some or all of the RECs resulting from the generation at one or more of the NCPA Projects to non-governmental person with contract terms longer than three (3) years (contracts of three (3) years or less would meet one of the exceptions from private business use described in Section 3 of this Facilities Schedule 12) such transaction must satisfy the following basic requirements to satisfy the Internal Revenue Service:

(i) that the purchase of RECs does not entitle the REC purchaser to any electric energy from the NCPA Project;

(ii) the Participant will retain exclusive control over its entitlement to the NCPA Project, its operations and any decision regarding how or whether to operate the NCPA Project;

(iii) the Participant will not be under any obligation to produce, or cause to be produced, any renewable energy or to operate, or cause the Project to be operated at all or at any particular level; and

(iv) the REC contracts will not give the REC purchaser any direct or indirect voice in how any component of the NCPA Project will be operated or maintained.

**Section 5. Compliance with Private Business Use Limits by Participants.**

Private business use limitations set forth in this Facilities Schedule apply in aggregate to all actions by NCPA and the Participants. Accordingly, NCPA will implement internal procedures and requirements necessary to assure compliance with the private business use limits as specified in this Facilities Schedule, including:

(i) contractual obligations of the Participants to comply with private business use limits and other requirements of the Internal Revenue Code, and



(ii) regularly surveying the Participants to determine compliance with the private business use limits and other requirements of the Internal Revenue Code.

Participants are required to comply with private business use limits and other requirements of the Internal Revenue Code pursuant to applicable Project Agreement, and Participants are strongly encouraged to established internal procedures and requirements necessary to assure compliance.

**FACILITIES SCHEDULE 13**  
**REPORTS TO PARTICIPANTS**

Pursuant to Section 16.1 of this Agreement, NCPA shall prepare and make available to each Participant the following reports monthly:

- (i) NCPA Project Operating Reports;
- (ii) NCPA Project Financial Operating Statements;
- (iii) Status of NCPA Budget as such applies to Project Costs; and
- (iv) such additional reports as are required under any applicable Project Agreement, this Agreement, or as requested by the Facilities Committee.

**FACILITIES SCHEDULE 14**  
**PARTICIPANT NOTICE REQUIREMENTS**

Pursuant to Section 7.1 of this Agreement a Participant that desires to enter into a transfer, sale, assignment or exchange of all or a portion of its Project Participation Percentage share of a NCPA Project or its Project Participation Percentage share of specific NCPA Project attributes shall provide notice of such transfer, sale, assignment or exchange to the General Manager in accordance with this Facilities Schedule 14.

**Section 1. Participant Notice.**

1.1 Project Participation Percentage Share. Prior to a Participant entering into a transfer, sale, assignment or exchange of all or any portion of its Project Participation Percentage share of a NCPA Project, for a specific time interval, or permanently, a Participant shall provide thirty (30) Calendar Days prior written notice to the General Manager.

1.2 NCPA Project Attributes. Prior to a Participant entering into a transfer, sale, assignment or exchange of its Project Participation Percentage share of a specific NCPA Project attribute, including, but not limited to, capacity, energy and/or other related attributes, for a specific time interval, but retain its full Project Participation Percentage share of a NCPA Project throughout the

term of such transfer, sale assignment or exchange, a Participant shall provide thirty (30) Calendar Days prior written notice to the General Manager.

**Section 2. Evaluation and Report of Impacts.** Upon receipt of a Participant's notice submitted to the General Manager pursuant to Section 1 of this Facilities Schedule 14, the General Manager shall evaluate what impacts, if any, the transfer, sale, assignment or exchange may have on NCPA's internal and external systems utilized to manage the respective NCPA Project, on NCPA's governance, and other Project Participants' interest in the respective NCPA Project. Within thirty (30) Calendar Days after the date on which written notice is received by NCPA, or a period of time greater than thirty (30) Business Days if deemed necessary by the General Manager, in his/her sole discretion, that is reasonably required to identify and evaluate impacts and interests, the General Manager will develop and deliver to the Participants in the affected NCPA Project a written report identifying such impacts and interests.

In such report the General Manager shall identify what reasonable conditions, if any, are necessary to implement such transfer, sale, assignment or exchange in a cost effective and timely manner and mitigate the impacts of the transfer, sale, assignment or exchange on NCPA and other Project Participants. The General Manager shall coordinate with the Participants in the affected NCPA Project prior to the final execution of the desired transfer, sale, assignment

or exchange, so as to mitigate any identified impacts as necessary (e.g., programming modifications, impacts to NCPA Project operations).