

**THIRD PHASE AGREEMENT**

**FOR**

**WESTERN GEOPOWER, INC. GEOTHERMAL PROJECT**

**RENEWABLE ENERGY POWER PURCHASE AGREEMENT**

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EXHIBIT A RENEWABLE ENERGY POWER PURCHASE AGREEMENT between NORTHERN CALIFORNIA POWER AGENCY and WESTERN GEOPower INCORPORATED	
EXHIBIT B PARTICIPATION PERCENTAGES	

This Third Phase Agreement for the the Western GeoPower, Inc. Geysers Geothermal Project Renewable Energy Power Purchase Agreement (this "Agreement") is between the Northern California Power Agency, a joint powers agency of the State of California ("NCPA") and those of its Members who execute this Agreement ("**Participants**"). NCPA and the Participants are referred to herein individually as a "**Party**" and collectively as the "**Parties.**"

### RECITALS

A. WHEREAS, NCPA and the Participants are interested in purchasing additional renewable electric capacity and energy for the benefit of the Participants' customers; and

B. WHEREAS, on or about May 6, 2008, NCPA and certain of its members executed the "Third Phase Agreement for Western Geopower Incorporated Renewable Energy Power Purchase Agreement" ("the Previous Third Phase Agreement"), by which which NCPA agreed, on behalf of those members executing the Previous Third Phase Agreement, to enter into a power purchase agreement ("PPA") with Western GeoPower, Inc. ("Western GeoPower") to purchase the entire expected Project Output from a new WesternGeoPower geothermal project located in the Geysers Geothermal Field in the Mayacamas Mountains of Sonoma and Lake Counties in the State of California ("the Project"); and

C. WHEREAS, on May 16, 2008, in conformance with the Previous Third Phase Agreement, NCPA executed a PPA with Western GeoPower to purchase the entire expected Project Output at a price of \$98 per megawatt hour; and

D. WHEREAS, due to certain financial conditions, WesternGeoPower was unable to build the Project and has proposed that the price for energy be increased, which proposal is acceptable to NCPA and to the Participants, who desire that NCPA enter into a revised PPA with Western GeoPower; and

E. WHEREAS, the Previous Third Phase Agreement has been terminated by an Agreement Terminating the Third Phase Agreement for Western GeoPower Incorporated Renewable Energy Power Purchase Agreement, dated \_\_\_\_\_, 2011; and

F. WHEREAS, on \_\_\_\_\_, 2011 NCPA and Western GeoPower propose to enter into an Amended and Restated Renewable Energy Power Purchase Agreement (“Amended PPA”) by which NCPA would agree to purchase the entire expected Project Output of the Project from Western GeoPower at a price of \$113 per megawatt hour; and

G. WHEREAS, NCPA and the Participants wish to enter into this Agreement to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the Amended PPA and to enable and obligate the Participants to take delivery of and pay for such electricity and to pay NCPA for the costs of undertaking the foregoing activities;

H. WHEREAS, NCPA and its members have (or will have) entered into the Facilities Agreement, dated September 22, 1993, which provides for services which NCPA shall perform for its members, and for the provisions to be contained in third phase agreements such as this Agreement;

I. WHEREAS, NCPA and its members have (or will have) entered into the Scheduling Coordination Program Agreement (“SCPA”), dated August 28, 2002, which provides for CAISO scheduling services and cost allocations which NCPA shall perform for its members;

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree and intend to be legally bound, 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:

1.1.1 “Agreement” means this Third Phase Agreement for North Geysers Geothermal Project, including all Exhibits attached hereto, as the same may be amended from time to time in accordance with the terms and conditions hereof.

1.1.2 “Amended PPA” means the Amended and Restated Renewable Energy Power Purchase Agreement between NCPA and Western GeoPower, Inc., dated as of \_\_\_\_\_, attached hereto as Exhibit A.

1.1.3 “Annual Budget” means the budget for the ensuing Budget Year adopted by the Commission, as it may be amended from time to time.

1.1.4 “Associate Member” means an associate member of NCPA admitted to NCPA in accordance with Article IV, Section 7 of the Joint Powers Agreement.

1.1.5 “Budget Year” means the NCPA fiscal year; currently the twelve month period beginning July 1 and ending on the next following June 30.

1.1.6 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time.

1.1.7 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full capacity of the Project may be counted toward a resource adequacy requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state law, to require NCPA to procure, or to procure at NCPA’s expense, Resource Adequacy Capacity or other such products.

1.1.8 “Claims” has the meaning set forth in Section 11.2.

1.1.9 “Commission” means the NCPA Commission.

1.1.10 “Constitutive Documents” means, with respect to NCPA, the Amended and Restated Joint Powers Agreement and any resolutions or bylaws adopted thereunder, and with respect to each Participant, the California Government Code and Public Utilities 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.

1.1.11 “Defaulting Party” has the meaning set forth in Section 10.1.

1.1.12 “Effective Date” has the meaning set forth in the Section 9 of this Agreement.

1.1.13 “Electric System” means, with respect to each Participant, all properties and assets, real and personal, tangible and intangible, of the Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Participant’s ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.

1.1.14 “Energy” means the electricity generated by the Generating Facility pursuant to this Agreement, as expressed in units of KWh or MWh as measured at the meter(s), as that term is defined in the PPA.

1.1.15 “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the power purchase. Environmental Attributes include, but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2),

methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Environmental Attributes do not include: (1) any Energy, capacity, reliability or other power attributes; (2) production tax credits associated with the construction or operation of the energy Projects and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation; (3) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (4) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits.

1.1.16 "Event of Default" has the meaning set forth in Section 5.5.3 and Section 10.1.

1.1.17 "Generating Facility" means Western GeoPowers, Inc.'s electricity generating facility as more particularly described in Exhibit 2 [Description of Generating Facility] of the Amended PPA, together with all materials, equipment systems, structures, features and improvements necessary to produce electricity at such facility, specifically including the site, land rights, mineral rights and interests in land.

1.1.18 "Joint Powers Agreement" means the Amended and Restated Northern California Power Agency Joint Power Agreement dated January 1, 2008, establishing NCPA, as the same may be amended from time to time.

1.1.19 "Member" means any Member of NCPA or Associate Member of NCPA.

1.1.20 "MW" means megawatt.

1.1.21 "MWh" means megawatt hour.

1.1.22 "NCPA" has the meaning set forth in the preamble hereto.

1.1.23 "Participation Percentage" has the meaning, with respect to each Participant, the percentage of the total capacity of the Project, and the Energy associated with such capacity, to which such Participant is entitled pursuant to the terms of this Agreement. The Project Participation Percentage for each Participant shall be in the percentage set forth in Exhibit B, attached hereto and incorporated herein. Exhibit B shall be amended from time to time in accordance with this Agreement.

1.1.24 "Project" refers to the Western Geopower project to develop, finance, operate and maintain the Generating Facility which is the subject of the Amended PPA.

1.1.25 "Project Cost Allocation" means the Project Costs allocated to the Participants in the Annual Budget.

1.1.26 "Project Costs" means any and all costs, directly or indirectly, incurred by NCPA as a result of entering into the Amended PPA. Project costs include, but are not limited to related legal fees and associated staff time, administrative and general overhead costs, scheduling coordination costs, charges for transmission, transmission related costs and costs associated with the Amended PPA or other NCPA associated Agreements, including the Facilities Agreement and the SCPA or a successor agreement.

1.1.27 "Project Output" means all Energy generated pursuant to the Amended PPA from the geothermal Project currently being developed by Western GeoPower in conjunction with this Project, and related Environmental Attributes and Capacity Attributes;

1.1.28 "Participant" has the meaning set forth in the preamble hereto.

1.1.29 "Party" or "Parties" has the meaning set forth in the preamble hereto; provided that "third parties" are entities that are not party to this Agreement.

1.1.30 "Resource Adequacy Capacity" is that capacity in MWs that has been approved by each Participant as capacity available to ensure that adequate resources are



available to meet peak demand and operating and planning reserves for the purposes of local area and system reliability.

1.1.31 “Revenues” means, with respect to each Participant, all income, rents, rates, fees, charges, and other moneys derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and Energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System; and (c) the proceeds derived by the Participant, directly or indirectly, from the sale, lease or other disposition of all or a part of the Electric System. The term “Revenues” shall not include: (i) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the Participant or (ii) contributions from customers for the payment of costs of construction of facilities to serve them.

1.1.32 “Scheduling Protocols” means the applicable provisions of the SCPA, or successor document and any other contractual or other arrangements between NCPA and the relevant Participant concerning the scheduling, delivery and metering of the Amended PPA.

1.1.33 “Security Account” means the account established by NCPA and funded by the Participants in accordance with Section 5.3, the funds of which are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.34 “Term” has the meaning set forth in Section 9.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: the terms “herein,” “hereto,” “herewith” and “hereof” are references to this Agreement taken as a whole and not to any particular provision; the term “include,” “includes” or “including” shall mean “including, for

example and without limitation;" and references to a "Section," "subsection," "clause," or "Exhibit" shall mean a Section, subsection, clause or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof. A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

**Section 2. Effectiveness of Agreement.** This Agreement shall be effective as to each Participant as of the Effective Date upon execution by the Participant, as described in Section 9 below.

**Section 3. Delivery of Electricity/Allocation of Resource Adequacy Capacity and Environmental Attributes.** By executing this Agreement, each Participant acknowledges and agrees to be bound by the take-or-pay process contained in or referenced herein. Any electricity delivered to NCPA under the PPA shall be delivered to each Participant in proportion to such Participant's Participation Percentage and each Participant shall accept and pay for its relevant percentage of such Energy. To the extent Participant is unable to accept such deliveries in full, NCPA shall dispose of such surplus in its discretion, in such a manner as to attempt to maximize Participant value. Notwithstanding the above, NCPA may allocate capacity and Energy procured through the Amended PPA among the Participants in such percentages as NCPA may, in its reasonable discretion, determine are necessary, desirable, or appropriate, in order to accommodate Participant Transfer Rights pursuant to Section 7, herein. Such Energy shall be scheduled for the Participants in accordance with the Scheduling Protocols. Resource Adequacy Capacity and Environmental Attributes obtained by NCPA as a result of performance under this Agreement shall likewise be allocated to each Participant by its Participation Percentage.

3.1 Payments to Counterparty. NCPA shall pay all costs incurred hereunder using operating funds or Security Account funds, paid to NCPA in accordance with Section 5, or such other sources as may be agreed upon in writing by the Parties from time to time.

**Section 4. Cooperation and Further Assurances.** Each of the Parties agrees 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 not inconsistent 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.

**Section 5. Payment Obligations, Security Account, Invoicing.**

5.1 Participant Payment Obligations. Each Participant agrees to pay to NCPA each month its respective portion of the Project Costs. In addition, each Participant shall maintain working capital in accordance with NCPA's Annual Budget, and maintain its Security Account as provided in this Agreement.

5.2 Calculation of and True-Up for Project Costs. NCPA will calculate interim true-ups of monthly Project Costs periodically as appropriate and practicable throughout the year, and upon the conclusion of a Budget Year, NCPA shall compare each Participant's payment of estimated Project Costs with the actual Project Costs incurred on behalf of each Participant such that overpayments will be credited to, and underpayments will be debited to, the Participant's account in accordance with NCPA's Annual Budget settlements.

5.3 Security Account.

5.3.1 Initial Amounts. NCPA shall notify each Participant three (3) months prior to the expected initial delivery of Energy of the initial security amounts which Participant shall be obligated to pay for under this Agreement. Each Participant shall ensure that sufficient funds are on deposit in the Security Account equal to the highest (3) months of the immediately following (12) months of estimated Project Costs; provided, however, that such

deposit may be satisfied, in whole or in part, either in cash, by posting an irrevocable standby letter of credit or furnishing any other negotiable instrument satisfactory to NCPA's General Manager, exercising his or her reasonable discretion. Such Security Account will be separate and apart from any other security account held by NCPA on behalf of a Participant.

5.3.2 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of all costs for which each Participant shall be obligated to pay for under this Agreement for the succeeding twelve (12) months. Following such review, NCPA shall determine whether each Participant has a sufficient balance in the Security Account. To the extent that any Participant's balance in the Security Account is greater than one hundred and ten percent (110%) of the amount required herein, NCPA shall credit such amount as soon as practicable to the Participant's next following invoice. To the extent that any Participant's balance in the Security Account is less than ninety percent (90%) of the amount required herein, NCPA shall add such amount as soon as practicable to such Participant's next invoice. Credits or additions shall not be made to Participants who satisfy these Security Account requirements in whole, through the use of a letter of credit, provided that the amount of the letter of credit shall be adjusted in a like manner to assure an amount equal to the highest three (3) months of estimated Project Costs.

5.3.3 Use of Security Account Funds. NCPA may use any and all funds deposited into the Security Account to pay any costs it incurs hereunder, including making payments to the counterparty under the Amended PPA. NCPA may use any and all funds without regard to any individual Participant's balance in the Security Account or proportionate share of Project Costs and irrespective of whether NCPA has issued an invoice for such costs to the Participants or whether a Participant has made timely payments of invoices. Should a Participant have satisfied its Security Account requirements, in whole or in part, by posting a letter of credit, NCPA may draw on such letter of credit to satisfy Participant's obligations hereunder.

5.3.4 Emergency Additions. In the event that the funds are withdrawn pursuant to section 5.3.3, or if the Security Account is insufficient to allow payment of an invoice, demand, request for further assurances by third parties, or Claims, NCPA shall notify all

Participants and then prepare and send a special or emergency assessment to the Participants. Each Participant shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment or consent to and direct NCPA to draw on any existing letter of credit Participant has established for such purposes.

5.3.5 Accounting and Interest. NCPA shall maintain a detailed accounting of each Participant's deposits into and shares of withdrawals from the Security Account. Interest earned on the Security Account shall be proportionately credited to the Participants in accordance with their Security Account balances. Any losses in the Security Account caused by early termination of investments shall be allocated among the Participants in accordance with their proportionate Participation Percentages.

5.3.6 Return of Funds. On the termination of this Agreement with respect to a Participant in accordance with this Agreement, the affected Participant or Participants may apply to NCPA for the return of their share of Security Account funds ninety (90) days after the effective date of such termination or withdrawal. NCPA shall, in its sole discretion, as determined by the General Manager, estimate the then outstanding liabilities of the Participant(s), including any estimated contingent liabilities and shall retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. The balance of the Participant's share of the Security Account will be refunded to the Participant.

5.3.7 Default Relating to Security Account. In addition to any other remedy available in this Agreement or at law or in equity, in the event of an Event of Default relating to the Security Account, NCPA shall have those rights provided in Section 10.4.4 and the Participant agrees to take the actions specified in that section to cure such Event of Default.

#### 5.4 Invoicing.

5.4.1 Invoices. As part of NCPA's regular, monthly, advance billing or by separate special invoice, as required in the circumstances, NCPA will issue an invoice to each Participant for its proportionate share of the Project Costs due (or any adjustments thereto) based on Sections 5.1 and 5.2 above. Such invoices may include estimated costs and estimated settlement and meter data. Each invoice shall include: (i) the total Project Costs attributable to the activities under this Agreement for such month and the relevant Participant's share thereof; (ii) the quantity of Energy, Resource Adequacy Capacity and Environmental Attributes delivered to such Participant (or an estimate thereof) and the unit price for such Energy; (iii) appropriate settlement and meter data (or an estimate thereof); and (iv) any adjustments to prior invoices required based on actual data received that was estimated in a previous invoice. NCPA may also invoice an amount, if any, that NCPA has paid or reasonably expects to pay using funds available in the Security Account; and amounts due from (or credited to) such Participant under Section 5.3.2.

5.4.2 Payment of Invoices. All invoices delivered by NCPA hereunder are due and payable on the date indicated on such invoice; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day. NCPA may apply a Participant's share of the Security Account to the payment of all or any portion of an invoice issued to such Participant, provided that application of such funds from the Security Account shall not relieve the Participant from any late payment charges pursuant to Section 5.4.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by the relevant Participant, NCPA shall deposit the relevant portion of the payment into the Security Account and credit such deposit to such Participant.

5.4.3 Late Payments. Any amount due and not paid by a Participant in accordance with Section 5.4.2 shall 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.

5.5 Settlement Data and Examination of Books and Records.

5.5.1 Settlement Data. NCPA will make metering and settlement data available to the Participants. Procedures and formats for the provision of such data will be as established by the Participants and NCPA from time to time.

5.5.2 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.

5.5.3 Revenue Covenant. Any failure of a Participant to meet its obligations hereunder or to cure such failure in a timely manner shall constitute an Event of Default and the Defaulting Party shall be subject to such remedies of NCPA as provided for herein. Each Participant covenants and agrees (i) to continue to pay or advance to NCPA, from its electric department revenues only, its percentage share of the costs authorized by Participants in accordance with this Agreement in connection with its participation in the Project. Each Participant further agrees that it will fix the rates and charges for services provided by its electric department, so that it will at all times have sufficient money in its department revenue funds to meet this obligation; (ii) to make payments under this Agreement from the Revenues of, and as an operating expense of, its Electric System; (iii) to make payments 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 provided such interruption, interference or reduction in services is caused by forces constituting a force majeure<sup>1</sup> and not reasonably contemplated by the Parties; and (iv) to operate its Electric System in an efficient manner and to maintain its facilities in good repair, condition and working order so that: (a) the Participant's obligations to make payments under this Agreement are not adversely affected or threatened; and

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<sup>1</sup> For the purposes of Section 5.5.3, a force majeure shall be defined as any natural disaster or uncontrollable force not preventable by any human agency, such as, but not limited to, any storm, flood, or violent or destructive natural force.

(b) NCPA's bond rating and ability to negotiate and enter into a PPA are not adversely affected or threatened.

**Section 6. Administration of Agreement**

6.1 General. The NCPA Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents and Section 6.2.

6.2 Action by Participating Members.

(a) Forum. Whenever any action anticipated by this Agreement is required to be taken by the Participants, such actions shall be taken at a regular or special meeting of the NCPA Commission but shall be participated in only by those Commissioners, or their designated alternates, who are Participants.

(b) Quorum. A quorum at NCPA Commission meetings for purposes of acting upon matters relating to this Agreement shall consist of Commissioners, or their designated alternates, representing at least two Participants having a combined majority interest based upon Participation Percentages.

(c) Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement, including with respect to actions taken by NCPA relating to the Amended PPA, with a majority vote of the Participating Members required for action subject to the following exceptions:

(i) Upon request of any Participant representative, the voting on an issue related to this Agreement shall be by Participation Percentage with a 65% or more favorable vote necessary to carry the action. The 65% required by the preceding sentence shall be reduced by the amount that the Participation Percentage of any Participant exceeds 35%, but shall not be reduced below a majority interest.

(ii) After any decision related to this Agreement is taken by the affirmative vote of less than 65% of the Participation Percentage, the action may be reviewed and



revised if a Participant gives notice of intention to seek such review and revision to NCPA and each of the other Participants within ten (10) days following the date on which such action was taken. Upon receipt of such a request for reconsideration, NCPA shall agendize the matter for reconsideration at the next regular meeting of the Commission or at a special meeting if the circumstances so warrant. The action shall be upheld upon the affirmative vote by Participation Percentage of not less than 65%. Any action taken upon reconsideration shall be final. The vote of 65% of the Participation Percentage required by the previous sentence may be reduced by the amount that the Participation Percentage of any Participant exceeds 35%, but shall not be reduced below a majority interest.

(iii) Participants agree to abide by the terms and conditions of NCPA's Facilities Agreement, as it may be amended from time-to-time. Any Participants who are not currently signatories to the Facilities Agreement agree to become signatories within thirty (30) days of the date of this Agreement.

**Section 7. Admission of New Participants.** Following the Effective Date of this Agreement, no Member ("Additional Member") may execute this Amended Agreement and become a Participant unless one or more of the Participants ("Allocating Participants") elect to allocate a portion of its Participant Percentage to such Member. Upon agreement of the Allocating Participant and the Additional Member, the Additional Member shall deliver to NCPA and each other Participant the written agreement between the Additional Member and the Allocating Participant(s) indicating the agreed upon change in Participation Percentage(s), a counterpart of this Agreement executed by the Additional Member, evidence that such agreements have been approved in accordance with its applicable Constitutive Documents and payment of such Member's share of the Security Account. Any reduction in any Allocating Participant's share of the Security Account shall be credited to the Allocating Participants in accordance with Section 5.3. Upon receipt of all required documents, NCPA shall provide to all Participants an updated Exhibit B reflecting the revised Participation Percentages.

**Section 8. Withdrawal of Participants.** No Participant may withdraw from this Agreement after the Effective Date.

**Section 9. Term and Termination.**

9.1 This Agreement shall become effective on the Effective Date when it has been executed and delivered to NCPA by Participants, the Participation Percentages of which, in the aggregate, equal at least 65% participation in the Project. NCPA shall provide written notices to all Participants, establishing the Effective Date. The remaining Participants listed in Exhibit B shall have forty-five (45) days, following the notice of the Effective Date to execute and deliver counterparts of this Agreement to NCPA. If any Participants listed on Exhibit B fail to execute and deliver this Agreement or the Facilities Agreement within such forty-five (45) days, unless otherwise agreed to by the Participants who have executed the Agreement, the Participating Percentages of such member or members shall be allocated to those Participants in proportion to, but not exceeding, their Participation Percentages.

9.2 This Agreement shall be coterminous with the Amended PPA contained in Exhibit A.

9.3 This Agreement may be terminated by the Parties if NCPA successfully exercises its right of first refusal to purchase the entire Western GeoPower Project as set forth in Section 3.5(a) of the Amended PPA. In the event of termination pursuant to this Section 9.2, the Participants shall pay to NCPA all previously unpaid costs and obligations incurred as of the date of such termination. Following such termination, the Participants shall cooperate and act in good faith to negotiate and agree upon the method of allocating among the Participants, in proportion to their respective Participation Percentages the costs and benefits of the Amended PPA and any financing agreements or commitments and any matters pertaining to the administration, management, control, operation and maintenance of the Amended PPA, including, but not limited to, re-subscribing the Project capacity with additional NCPA Members or non-Member participants. NCPA shall reasonably cooperate with the Participants and other NCPA Members in connection with implementing the foregoing, and the Participants shall indemnify NCPA for any costs and obligations incurred in connection therewith, including reasonable attorneys' fees, fees and expenses of other experts, including auditors and accountants and other reasonable and necessary costs.

**Section 10. Default and Remedies**

10.1 Events of Default. An Event of Default under this Agreement shall exist with respect to a Party (the “Defaulting Party”) upon the occurrence of any one or more of the following:

(i) if any Party fails to make any payment or to provide assurances as required of NCPA under this Agreement when due hereunder two (2) Business Days after receipt of notice given by NCPA of such non-payment; or

(ii) the failure of the Defaulting Party to perform any other covenant or obligation under this Agreement where such failure is not cured within ten (10) calendar days following receipt of a notice from NCPA demanding cure (provided that this shall not apply to any failure to make payments (which is covered by Section 10.1 (i)); or

(iii) if any representation or warranty of the Defaulting Party material to the transactions contemplated hereby is or shall prove to have been incorrect in any material respect when made and the Defaulting Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within ten (10) calendar days of the date of receipt of notice from any other Party 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 period(s) specified in such agreement or, if not specified, within ten (10) calendar days of the date of receipt of notice; or

(v) the failure of NCPA to perform any covenant or obligation under this Agreement within ten (10) calendar days following the delivery of a notice to cure by any non-defaulting Member.

10.2 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied within the time period specified in Section 10.1, above, as may be applicable after written notice has been sent to the Defaulting Party from NCPA specifying the default and demanding that the same be remedied; provided, that failure of a Party to provide such notice shall not be deemed a waiver of such default.

10.3 Participation Rights Of Defaulting Party. Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default and until such Event of Default is cured, a Participant that is the Defaulting Party shall not have the right to participate under Section 6.2 on any matters with respect to this Agreement.

10.4 Remedies in the Event of Default.

10.4.1 Upon the occurrence of an Event of Default where a Participant is the Defaulting Party, without limiting its other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppels of any right, action or cause of action NCPA or a non-defaulting Participant may have against the Participant, NCPA may:

(i) suspend the provision of goods and/or services under this Agreement to such Defaulting Party, including the delivery of Energy and other attributes of the Amended PPA until the Event of Default is cured; and

(ii) demand that the Defaulting Party provide further assurances to compel the correction of the default, including mandating the collection of a surcharge to produce Revenues to secure the cure of the Event of Default; and

(iii) terminate this Agreement as to the Defaulting Party on ten (10) days prior written notice to the Defaulting Party and following approval of the non-defaulting Participants.

10.4.2 Sale/Transfer of Participants Account Upon Default. Upon any default of a Participant caused by the failure of such Participant to pay any sums due, and provided that such default is not cured in a timely manner, then NCPA shall use its best efforts to sell and transfer for the Defaulting Party's account all or a portion of the Participant's capacity and/or Energy and/or Environmental Attributes for the remainder of the term of this Agreement. Notwithstanding that all or any portion of the Participant's capacity, energy or environmental attributes may be so sold or transferred, the Participant shall remain liable for all of its obligations hereunder.

10.4.3 Remedies of Participants. Upon the occurrence of an Event of Default, and following the applicable cure periods, where NCPA is the Defaulting Party, the Participant may, without limiting their 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 the Participants may have against NCPA, bring such action as may be applicable to compel performance by NCPA.

10.4.4 Special Covenants Regarding Security Account. In the event that a Participant's balance of the Security Account is insufficient to cover all invoices for costs incurred under this Agreement sent to such Participant, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, such Participant shall cooperate in good faith with NCPA and shall cure said default within thirty (30) days, on an emergency basis, taking all such action as is necessary, including, but not limited to, raising rates and charges to its customers to increase its Revenues to replenish its share of the Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default.

10.5 Effect of Termination or Suspension.

10.5.1 The suspension or termination of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged contingent liabilities or obligations arising from this Agreement until such obligations are satisfied in full, and all of the costs incurred by NCPA in connection with such suspension or termination, including reasonable attorneys' fees, the fees and expenses of other experts, including auditors and accountants, other costs and expenses that NCPA is entitled to recover under this Agreement, and other reasonable and necessary costs associated with any and all of the remedies, are paid in full.

10.5.2 Suspension by NCPA. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with Section 10.4.1(i), such Participant shall pay any and all costs and obligations incurred by NCPA as a result of such suspension, including reasonable attorneys' fees, the fees and expenses of other experts,

including auditors and accountants, other reasonable and necessary costs associated with such suspension and any portion of the Project Costs that were not recovered from such Participant as a result of such suspension.

10.5.3 Termination by NCPA. If this Agreement is terminated by NCPA with respect to a Participant in accordance with Section 10.4.1 (iii), such Participant shall pay any and all costs and obligations incurred by NCPA as a result of such termination including reasonable attorneys' fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of the Project Costs that were not, or will not be, recovered from such Participant as a result of such termination; provided, however, if NCPA terminates this Agreement with respect to the last Participant, then this Agreement shall terminate.

10.5.4 Termination by Participants. This Agreement may be terminated by unanimous consent of all of the Parties hereto. In that event, the Participants shall pay to NCPA all previously unpaid costs and obligations incurred as of the date of such termination, and following such termination, the Participants shall cooperate and act in good faith to negotiate and agree upon the method of allocating among the Participants in proportion to their respective Participation Percentages the costs and benefits of the Amended PPA and any financing agreements or commitments and any matters pertaining to the administration, management, control, operation and maintenance of the Amended PPA. NCPA shall reasonably cooperate with the Participants in connection with implementing the foregoing and the Participants shall indemnify NCPA for any costs and obligations incurred in connection therewith, including reasonable attorneys' fees, fees and expenses of other experts, including auditors and accountants and other reasonable and necessary costs. If the Parties are unable to reach agreement as to the foregoing, then the Parties agree to submit the matter to mediation with a mutually agreed upon mediator. If the Parties are still unable to reach agreement following mediation, then the matter shall be submitted to binding arbitration subject to the rules of the American Arbitration Association, the costs of such arbitration being borne proportionally among the Participants.

**Section 11. Miscellaneous.**

11.1 Confidentiality. The Participants and NCPA 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. It shall be the responsibility of the holder of the claim of confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.

11.2 Indemnification and Hold Harmless. Subject to the provisions of Section 11.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing 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 ("Claims"), to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of a Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

11.3 Several Liabilities. No Participant shall be liable under this Agreement for the obligations of any other Participant, and each Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein, and the obligation of each Participant under this Agreement is a several obligation and not a joint obligation with those of the other Participants. Notwithstanding the foregoing, the Participants acknowledge that any debts or obligations incurred under this Agreement shall be borne solely by such Participants, and not by non-Participant Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement. It is intended that notwithstanding the provisions of the Joint Powers Agreement and the general nature of the severability of liabilities in this Agreement, the Participants acknowledge and agree that if there is a default by NCPA under the Amended PPA, the Participants will be severally liable for their proportionate share of such default until NCPA is able to fully recover from the defaulting Participant.

11.4 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.

11.5 Amendments. 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.

11.6 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.



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

11.8 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.

11.9 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 and the Secretary of the Commission or transmitted to the Participant and the Secretary of the Commission at the address shown on the signature pages hereof. The designation of such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Participant.

11.10 Warranty of Authority. Each Participant, and NCPA, 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 as to the Participant and as to NCPA. 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, that such authority was duly exercised in accordance with such Participant's Constitutive Documents.

11.11 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.

11.12 Assignment. Except as provided by Section 7, no Participant may assign or otherwise transfer its interest in its Participation Percentage or any other rights and obligations

under this Agreement without the express written consent of NCPA, which shall not be unreasonably withheld.

11.13 Participation Options.

11.13.1 Exercise of the Right of First Refusal. The Parties contemplate that NCPA may exercise an option to purchase the underlying assets of the Amended PPA as per the voting procedures of this Agreement outlined in Section 6. Participation in any such purchase shall be in accordance with the then existing Participation Percentages, unless such Participation Percentages are otherwise agreed upon by the Participants. At such time as NCPA exercises its right of first refusal, this Agreement shall be amended to reflect the purchase of the underlying assets and the Project. If any Participant elects not to participate in the purchase of the Project, then this Agreement shall terminate as to such Participant, subject to the Participant not being a Defaulting Party under any of its obligations of this Agreement.

11.13.2 Expansion Plant Output. If Participants elect to purchase Expansion Plant Output, as that term is defined in the Amended PPA, pursuant to Section 3.5(b) of the Amended PPA, each Participant shall deliver a notice to NCPA of its intent to participate in the purchase of any Expansion Plant Output. Participation shall be in accordance with the then existing Participation Percentages, unless such Participation Percentages are otherwise agreed upon by the Participants. Notwithstanding the foregoing, Participants may elect not to participate in the purchase of any Expansion Plant Output, in which case the Participation Percentages in Exhibit B shall be revised to reflect the desired Participation Percentages in any Expansion Plant Output. If the Participation Percentages cannot be revised to fully subscribe the Expansion Plant Output, then NCPA shall reject the purchase of the Expansion Plant Output.

11.14 List of Exhibits. The Exhibits referenced herein shall be denoted as follows:

Exhibit A - AMENDED AND RESTATED RENEWABLE ENERGY POWER PURCHASE AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND WESTERN GEOPower INCORPORATED

Exhibit B - PARTICIPATION PERCENTAGES



IN WITNESS WHEREOF, each Participant has executed this Agreement with the approval of its governing body, and NCPA has authorized this Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA  
POWER AGENCY

Approved as to Legal Form

\_\_\_\_\_

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

By: \_\_\_\_\_  
Its: **Attorney** \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF LOMPOC

Approved as to Legal Form

\_\_\_\_\_

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

By: \_\_\_\_\_  
Its: **Attorney** \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF PALO ALTO

Approved as to Legal Form

\_\_\_\_\_

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

By: \_\_\_\_\_  
Its: **Attorney** \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF ROSEVILLE

Approved as to Legal Form

\_\_\_\_\_

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

By: \_\_\_\_\_  
Its: **Attorney** \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF SANTA CLARA

Approved as to Legal Form

\_\_\_\_\_

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

By: \_\_\_\_\_  
Its: **Attorney** \_\_\_\_\_  
Date: \_\_\_\_\_

PORT OF OAKLAND

Approved as to Legal Form

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

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: **Attorney** \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**RENEWABLE ENERGY POWER PURCHASE AGREEMENT BETWEEN NORTHERN  
CALIFORNIA POWER AGENCY and WESTERN GEOPower INCORPORATED**

[See attached]

## EXHIBIT B

### PARTICIPATION PERCENTAGES

<b>Participant</b>	<b>Participation Percentage*</b>	<b>Equivalent MW</b>
Santa Clara	0.505	13.13
Roseville	0.269	6.99
Palo Alto	0.150	3.90
Lompoc	0.038	0.99
Port of Oakland	0.038**	0.99
Total	1.000	26

\* Participation Percentage is based on the project's expected, long term capacity of 26 mw net. Based on preliminary geothermal reservoir forecasts and operation plans, it is possible the project's output will exceed the expected long term net capacity for the first three years of the contract period by as much as 2 mw (28 mw maximum capacity).

\*\* Port of Oakland does not want their project share to exceed 15,000 mwhrs in any given year over the contract term. To the degree that the annual average project capacity exceeds 45.0 mw net (45.0 mw x 0.038 participation percentage x 8760 hrs/yr = 14,980 mwhrs), any Port of Oakland share above 15,000 mwhrs will be allocated to the other project participants based on their original project participation percentage.