

CENTRAL VALLEY PROJECT CORPORATION MEMBERSHIP AGREEMENT

This Membership Agreement (this "Agreement") is made and entered into effective as of August 8, 2003 between the Central Valley Project Corporation, a California nonprofit corporation ("CVP Corp"), and each undersigned participant, collectively referred to as "Participants" and individually as a "*Participant." The CVP Corp and any of the Participants individually are called "Party" and collectively are called "Parties."

Whereas, the CVP Corp is formed for the benefit of, and to carry out the purposes of, the Participants by helping the Participants achieve cost savings and efficiencies; and

Whereas, the CVP Corp can benefit the Participants by facilitating CVP customer involvement in activities associated with the Western Area Power Administration ("Western") and others; and

Whereas, the CVP Corp was also formed to act as a funding agent for those CVP customers that voluntarily requested that service; and

Whereas, the Participants through the CVP Corp will provide review, funding, and oversight for selected activities and projects on a case by case basis for those items requiring funding; and

Whereas, the CVP Corp has entered into a contract with Western to act as payment agent for certain Participants; and

Whereas, each undersigned Participant agrees to become a member and may choose which activities, services, and/or projects it would like to participate in as offered by the CVP Corp; and

Whereas, each Participant is willing to fund a proportionate share of the funding commitment for each activity, service, and/or projects that the Participant has agreed to participate in as delineated in the applicable Exhibit.

Now, therefore, in consideration of the terms, conditions and obligations of the CVP Corp and the Participants in this Agreement, the Parties agree as follows:

- a) Exhibits Made Part of Agreement. Each activity, service and/or project offered by the CVP Corp shall be delineated in an Exhibit, which shall become a part of this Agreement during the term fixed by its provisions. Exhibit(s) existing under this Agreement may change during the term hereof, provided, however, that each Exhibit attached hereto shall be in force and effect in accordance with its terms until respectively superseded by a subsequent exhibit, as allowed by the terms of the exhibit.

- b) **Funding Commitment:** Each undersigned Participant hereby agrees to fund a pro-rata share of the total funding commitment for each activity, service or project in which the Participant agrees to participate as delineated in the applicable Exhibit. Each Participant further agrees to fund a pro-rata share of the CVP Corp's start-up and administrative costs as determined by the CVP Corp Board of Directors annually. A Participant may withdraw from funding the activity designated in an Exhibit in accordance with the withdrawal terms contained in the Exhibit but only after all of the obligations it has committed to fund to date have been satisfied.

- c) **Deposit and Use of Funds:** The Participant hereby appoints CVP Corp and CVP Corp hereby accepts appointment as payment agent for the Participant for purposes of accepting funds provided by the Participant to satisfy the funding commitments in each Exhibit(s) designated by the Participant and disbursing those funds as required by each Exhibit. Each Participant shall deposit its pro-rata share of the funding commitment with the CVP Corp, acting on behalf of and as an agent for all of the Participants, in payments as described in the Exhibit(s). The CVP Corp will deposit, hold and maintain an accounting for the funds received from the Participants and use such funds only for the purposes of satisfying the funding commitment of the Participant. In the event the Participants' funds are received prior to the time they are to be disbursed pursuant to the Exhibit, such funds shall be invested pursuant to investment policies established by the CVP Corp Board of Directors and net earnings from such investment shall be retained for the benefit of the Participant. If any funds remain after commitments for any period have been satisfied in full, the remaining funds shall be returned to the Participants in proportion to the amount contributed by each Participant. Participant acknowledges and agrees that CVP Corp may engage third parties for the financial management of all funds received and that such funds may be commingled with those of other Participants and third parties.

- d) **Investment Earnings.** The CVP Corp will invest funds paid to the CVP Corp by the Participants, and will track the interest and/or earnings applicable to each Participant; any net earnings will be credited to each Participant in proportion to the individual Participant's amount of funds retained and being managed by the CVP Corp. Periodic reports will be provided at least annually to each participant showing the total amount of payments made to the CVP Corp, including the amount of payments made by the CVP Corp on behalf of the Participant and the net earnings credited to the Participant.

- e) **Obligation for Payment of Pro-Rata Share.** Each Participant shall pay its funding commitment to the CVP Corp in payments as stated in the applicable Exhibits. The CVP Corp intends to request funds from the Participant at such times and in such amounts as necessary to meet the obligations contained in the Exhibit(s). If a Participant fails to make a payment within the time period

listed in the Exhibit the Participant will be considered to be in default as to that Exhibit.

- f) Right of Set-off. If a Participant defaults as to its obligations under any Exhibit, the CVP Corp shall have the right to utilize any excess funds credited to that Participant under any other Exhibit(s), including the Participant's share of interest or earnings, in order to satisfy the Participant's outstanding obligations.
- g) Resolution of Disputes. The Parties will use good faith efforts to settle all disputes arising under, or in relation to, this Agreement. Should any dispute remain unresolved for a period of twenty (20) days, such dispute shall be forwarded to the Board of Directors for resolution. The Board of Directors shall meet within thirty (30) days to discuss and attempt to reach a resolution of the dispute. If a Participant fails to meet all of its obligations, it will be excluded from participating in the CVP Corp's activities, services and/or projects until its outstanding obligations are satisfied or otherwise resolved. The Participant's obligations under this Agreement shall remain until satisfied, unless otherwise modified by procedures to resolve any outstanding disputes, or settled by legal proceedings, with any and all accrued interest due as a result of late payments to the CVP Corp. No Participant shall be liable under this Agreement for the obligations of any other Participant.
- h) Budgets and Billing Procedures. Budgets and billing procedures will be delineated in the applicable Exhibit.
- i) Board of Directors. The Board of Directors will make decisions concerning the administration of the CVP Corp's rights and obligations under this agreement.
- j) Term of the Agreement; Termination. This Agreement shall become effective upon execution by the CVP Corp and upon the signature of a sufficient number of Participants as determined by the CVP Corp Board of Directors and, unless earlier terminated, shall remain in effect until December 31, 2024. This Agreement may be terminated by CVP Corp (i) if the CVP Corp Board of Directors determines that CVP Corp's activities, services and/or projects are not effective and efficient; provided, however, that such termination will not be effective until CVP Corp shall have received written notice from Western that all current obligations of the CVP Corp under the CVP Corp/Western Agreement have been completed and provided further that CVP Corp shall have provided a one hundred twenty (120) day written notice to all Participants prior to such termination or (ii) sixty (60) days following a default under of this Agreement or any Exhibit by the Participant which remains uncured for sixty (60) days provided that CVP Corp shall have provided a one hundred twenty (120) day written notice to such Participant prior to such termination. Any Participant may terminate its individual

participation in the Agreement by providing a one hundred twenty (120) day written notice to the CVP Corp; provided, however, that such termination by the Participant shall not be effective until all the Participant's outstanding obligations are met as delineated in the Exhibit(s).

k) Miscellaneous Provisions.

- a) Limitation of Liability. In no event shall any party hereto be liable for any special, incidental, indirect or consequential (including loss of profit) or punitive damages in connection with this agreement, whether based on breach of contract, breach of warranty, strict liability in tort or any other cause of action.
- b) Attorneys' Fees. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.
- c) Entire Agreement. This Agreement, including the Exhibits hereto, constitutes the entire agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.
- d) Assignment. Neither a Participant nor the CVP Corp may assign this Agreement without prior written consent of the Participant and the CVP Corp.
- e) Amendment; Waiver of Breach. Any term of this Agreement may be amended or waived only with the written consent of the Participant and the CVP Corp. No waiver of any term or breach of any of the provisions contained in this Agreement or any Exhibit shall be construed to be a waiver of any subsequent breach of the same or of any other provision of this Agreement.
- f) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, without giving effect to the principles of conflict of laws.
- g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

- h) **Successors and Assigns.** Subject to the provision of the Agreement, all of the terms, covenants and conditions of this Agreement shall inure to the benefit of and shall bind the parties hereto and their permitted successors and assigns.
- i) **Separate Entities.** The CVP Corp and each Participant are separate entities, and nothing in this Agreement shall be construed to create or imply any partnership or joint venture among the entities or any of them, or to create any rights or liabilities of any entity hereto for rights or liabilities of any other entity hereto, except to the extent otherwise expressly provided herein or in any other agreement between the entities.
- j) **Severability.** If any clause, sentence, paragraph, or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of the Agreement but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which the judgment is rendered. If such judgment modifies or holds invalid any material terms or conditions of the Agreement in such a manner that either the *CVP Corp* or any Participant(s) is required to incur new or different obligations not expressly provided herein or forego benefits which it was otherwise entitled to, these entities shall in good faith renegotiate the terms and conditions affected by the judgment so as to restore the original balance of benefits and burdens contemplated by the entities as of the effective date of this Agreement. Such renegotiated terms and conditions shall be in the form of an amendment to the Agreement that shall be effective upon execution by the *CVP Corp* or any Participant(s). The original Agreement shall remain in full force and effect, as modified by said judgment, until the negotiation process for the amendment is complete.

IN WITNESS WHEREOF ,the parties have executed this Agreement as of the date first written above.

CVP Corp

By: 

[Name]

Chair, Board of Directors

Participant

By: 

Name: Dick DeWees

Title: Mayor, City of Lompoc

CERTIFIED COPY

RESOLUTION NO. 5106(03)

NCPA
AUG 11 2003

**A Resolution Of The Council Of The City Of Lompoc,
County of Santa Barbara, State of California,
Authorizing the City of Lompoc to become a member of the CVP Corp and
authorizing the Mayor to execute the Membership Agreement**

WHEREAS, The City of Lompoc receives a power entitlement from the Central Valley Project (CVP) through 2024 as administered by the Western Area Power Administration (Western); and

WHEREAS, the commissioners of Northern California Power Agency (NCPA) directed NCPA to create an organization in which all CVP water and power customers can participate, resulting in the Central Valley Project Corporation (CVP Corp); and

WHEREAS, the CVP Corp will facilitate the efficient and cost effective use of available CVP resources: and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. To authorize the Mayor to execute the CVP Corp Membership agreement.

SECTION 2. Participate in the "Restoration Fund Financing Program"

SECTION 3. Authorize the City Administrator, or its designees, to administer the provisions of membership of CVP Corp, and make payments supporting CVP Corp projects up to \$25,000 per project.

SECTION 4. This Resolution is effective upon its adoption

The above and foregoing Resolution was proposed by Councilmember Siminski, seconded by Councilmember Keller, and was duly passed and adopted by the Council of the City of Lompoc at its regular meeting on August 5, 2003 by the following vote:

AYES: Councilmember: DeWayne Holmdahl, Janice Keller,
Will Schuyler, Michael Siminski,
and Dick DeWees

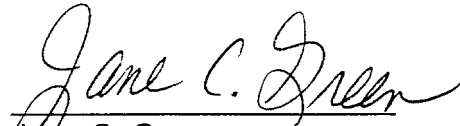
NOES: Councilmember: None

ABSENT: Councilmember: None



Dick DeWees, Mayor
City of Lompoc

ATTEST:


Jane C. Green
City Clerk, City of Lompoc

Attachments:

- Exhibit A – “Central Valley Project Corporation – Founding Documents”
- Exhibit B – “Central Valley Project Corporation Membership Agreement”

I HEREBY CERTIFY THAT THE

**foregoing instrument is a true and
correct copy of the original on file in
the Lompoc City Clerk's Department.**

ATTEST:

