

**SECOND PHASE AGREEMENT  
FOR  
FUNDING THE PLANNING AND DEVELOPMENT  
ACTIVITIES  
OF THE  
SOLAR PV PROJECT**

This Second Phase Agreement for Funding the Planning and Development Activities of the SOLAR PV Project ("this Agreement") by and between the Northern California Power Agency, a joint powers agency of the State of California ("NCPA"), those members of NCPA which have individually executed this Agreement, and such other parties as may be identified in Exhibit C of this Agreement from time to time (collectively, the "Parties"), is made and entered into in Roseville, California as of \_\_\_\_\_, 2010 ("Effective Date" per Section 4 of this Agreement).

**WITNESSETH:**

WHEREAS, the Parties to this Agreement other than NCPA are referred to herein as "Project Participants" and are identified in Exhibit C of this Agreement; and

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

WHEREAS, the Project Participants desire that NCPA negotiate and enter into a renewable energy power purchase agreement ("PPA") with Lightbeam Power Company, LLC, a division of Lightbeam Energy, Inc. (referred to as

"Seller"); and

WHEREAS, the Seller proposes to develop a renewable solar photovoltaic project, to be located at multiple generation sites ("Site" or "Sites") located in the State of California (the "SOLAR PV Project"); and

WHEREAS, following study and discussion of the Project proposal made to NCPA Members, pursuant to NCPA Commission Resolution No. 10-50, the members of NCPA approved an agreement to continue project development activities; and

WHEREAS, by NCPA Commission Resolution No. 10-50, adopted on June 17, 2010, the NCPA Commission directed staff and the Project Participants to prepare this Agreement for the SOLAR PV Project, together with such non-substantive changes to that agreement as might be approved by the NCPA General Counsel; and

WHEREAS, in accordance with Section 5.2 of that certain Facilities Agreement executed by and between NCPA and certain of its members dated September 22, 1993, as amended through February 2, 2007, and included herein by reference (copies of said Facilities Agreement have been distributed to all Project Participants and NCPA will additionally distribute copies to Project Participants upon request), a project's "second phase" consists of work to be performed after NCPA completes preliminary investigations and surveys regarding a project proposal, and before a third phase agreement becomes effective as to the project's actual financing, construction, operation, maintenance, and the allocation of rights to a project's output; and

WHEREAS, to advance the due diligence investigation of the proposed SOLAR PV Project, to pursue related environmental studies, to investigate, appraise and attain property rights necessary to develop the SOLAR PV Project

on property owned by the Seller, other private parties, NCPA, and certain NCPA members, to perform project planning and design, to provide working capital for project development and finance, and to engage necessary expert professional services including those of NCPA staff and legal counsel, the NCPA Commission and the Project Participants hereby declare the SOLAR PV Project to be an “NCPA Project” as per the terms of the Facilities Agreement<sup>1</sup>, and hereby enter into this Agreement which is declared to be a “Second Phase Agreement” under the terms of the Facilities Agreement; and

WHEREAS, the Project Participants who have not already executed the Facilities Agreement are not now required to execute the Facilities Agreement, however, they agree to execute the Facilities Agreement, or a successor agreement, at such time that the project Third Phase Agreement is executed, and agree to be bound by said Facilities Agreement; and

WHEREAS, NCPA’s duties under this Second Phase Agreement will consist of the activities listed in Exhibit A, attached hereto, including, but not limited to, engineering, permitting and legal costs, and the performance of additional studies to evaluate the costs of the SOLAR PV Project, actions of which will be undertaken by NCPA pursuant to the terms of this Agreement, and subject to the withdrawal of any Project Participant after the completion of Phase 2 activities;

WHEREAS, with the exception of the City of Gridley, the Project Participants are participants of the Amended NCPA Green Power Project (“NGPP”) Third Phase Agreement; and

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<sup>1</sup> Section 1.14 of the Facilities Agreement defines the term “NCPA Project” as meaning any project which has progressed past the First Phase. Section 5.2 of the Facilities Agreement provides that for the purpose of ending the First Phase, the NCPA Commission may declare a termination of investigation regarding a project, or it may declare the project to be an NCPA Project by entering into a Second Phase agreement or Third Phase agreement with one or more participants desiring to participate in the project.

WHEREAS, the NGPP Third Phase agreement provides for NGPP project participants to purchase electricity from renewable resources and/or to develop or acquire physical renewable generation assets; and

WHEREAS, the City of Gridley has expressed its desire to join the NGPP Third Phase Agreement, and is in the process of joining the NGPP to participate in the SOLAR PV Project and has executed a Professional Services Agreement to reimburse NCPA and Project Participants for its pro-rata costs Project costs; and

WHEREAS, all Project Participants desire to participate in the development of the SOLAR PV Project and expressly agree to be bound by terms of this Agreement.

**NOW THEREFORE, the Parties hereto agree as follows:**

Section 1. Obligations - Percentage Participation - Collections and Accounting.

(a) NCPA, on behalf of itself and the Project Participants, shall advance due diligence, perform financial planning, perform necessary environmental assessments and reports, prepare or cause to be prepared design and construction documents, investigate, appraise and attain necessary land and land rights, employ experts, legal counsel, prepare permit documents for the SOLAR PV Project, negotiate the terms and conditions of draft power purchase agreements with NCPA members and outside entities as necessary, secure vital equipment and develop, at the appropriate time, a Third Phase Agreement within the meaning of the Facilities Agreement satisfactory to NCPA and the Project Participants as set forth in Sections 1.(b) and 1.(c) below.

(b) NCPA shall perform services related to the SOLAR PV Project identified in Exhibit A hereto as Phase 2 activities at a total cost not to exceed Five Hundred and Twenty Three Thousand (\$523,000.00) dollars. The Parties

anticipate that Phase 2 activities will be completed by the end of 2011.

(c) Upon the Project Participants' authorization, provided pursuant to Section 3 of this Agreement (Project Participant Direction and Review) to undertake additional activities, NCPA shall conduct such additional activities as may be necessary. Such additional activities shall be performed at an estimated cost of up to Two Hundred Thousand (\$110,000.00) dollars in addition to the not to exceed amount specified in subsection (b), above. The Parties anticipate that, if such additional activities are authorized, all Phase 2 activities will be completed by the end of 2011.

(d) Each Project Participant hereby agrees, upon request by NCPA, to pay or advance to NCPA, from each Project Participant's electric department revenues or funds only (or in the case of the Bay Area Rapid Transit District ("BART"), from its tariffs, fees or other sources of revenue, provided that such sources shall not include any sums derived from sources the use of which is limited by law to expenditures other than operating expenses) its respective Participation Percentage share of the costs authorized by Project Participants in accordance with this Agreement. Each Project Participant further agrees that it will fix the rates and charges for services provided by its electric department (or in the case of BART its general revenues) so that it will at all times have sufficient funds in its electric department revenue funds to meet this obligation.

(e) Each Project Participant's share of the Project is initially established according to the table entitled "SOLAR PV Project Capacity and Participation Percentages" attached as Exhibit C hereto, as shown in the column entitled "Total Project Share". The initial Project Capacity and Participation Percentages are estimated at this time, as the actual Project Capacity and Participation Percentages will not be confirmed until after the predevelopment studies are completed. The Parties shall amend Exhibit C when the actual Project Capacity

and Participation Percentages are confirmed.

NCPA will attempt to scale the Project Participant Participation Percentage and Project Capacity megawatt subscription of each Project Participant up or down to reach the desired installed Output of Project Participants whenever possible. The Project Participant Participation Percentage and Project Capacity megawatt subscription of each Project Participant shall be revised proportionately if and when any Project Participant withdraws, in whole or in part, provided that the combined total of any such proportionate increases in each Project Participant's Participation Percentage and Project Capacity megawatt subscription, whether resulting from less than full SOLAR PV Project Output subscription and/or the full or partial withdrawal of any Project Participant, shall not exceed fifteen (15) percent of any Project Participant's Initial Project Capacity subscription and respective Participation Percentage. Any Project Participant wholly withdrawing shall thereupon cease to be a Project Participant for all purposes.

In the event that additional Project Participants are added to this Agreement in accordance with the terms of Exhibit C, the Participation Percentage of each Project Participant and the respective Project Capacity such percentage represents shall be proportionately adjusted downward, but in no case shall such downward adjustment result in any then existing Project Participant receiving less than its Initial Project Capacity subscription in the SOLAR PV Project, unless approved by the Project Participants.

(f) From time to time, NCPA shall concurrently demand payment from each Project Participant of its share of SOLAR PV Project Phase 2 costs. NCPA shall fix and schedule the total amount payable by each Project Participant into a number of periodic payments and set the dates on which such payments will be made, and each Project Participant agrees to abide by such schedule. NCPA

shall provide a reasonable opportunity for any Project Participant to prepay, to make one payment or to establish an alternative monthly or quarterly periodic prepayment schedule to cover its total cost obligation. Any Project Participant may arrange to remit the entirety of its projected financial commitment in one payment, subject to true up from time to time, based on actual expenditures and the Participation Percentage. Any part of such demand by NCPA which remains unpaid for sixty (60) calendar days after its billing date shall bear interest from such sixtieth (60<sup>th</sup>) day at the prime rate of the Bank of America then in effect computed on a daily basis plus two (2%) percent until paid. Interest so assessed and paid shall not change any Participation Percentage or Initial Project Capacity share.

The funds paid by Project Participants according to this Section 1 (Obligations) shall be used to establish a working capital fund for payments by and obligations of NCPA under this Agreement.

Nothing in this Section 1 (Obligations) shall be construed to prohibit any Project Participant from satisfying its financial commitments from unencumbered funds otherwise on deposit at NCPA.

(g) NCPA shall maintain a separate fund to account for all monies received and expended with respect to the SOLAR PV Project. Within such separate fund, NCPA shall separately account for monies received from and costs allocated to each Project Participant. Interest accruing on funds received from Project Participants in the form of a single payment or a prepayment shall be credited to the account of such Project Participants making the single payment or prepayment. Each Project Participant shall have the right to review or inspect all financial records with respect to the SOLAR PV Project. Any Project Participant may request an accounting of monies received or expended by NCPA and a copy of any such accounting shall be made available to all Project

Participants. Any Project Participant requesting an accounting less than twelve (12) months following the last accounting shall pay for the costs of such accounting. Any expenses of accounting or other administrative expenses incurred by NCPA shall be deemed to be SOLAR PV Project related costs which shall be borne by the Project Participants.

Section 2. Limited Rights to Participate in Final Implementation and Financing.

(a) Discretion - Disposition of Output. In consideration of the payments provided for in Section 1 (Obligations) of this Agreement, each Project Participant which has not wholly withdrawn and which is not in default, shall have an option to enter into a Third Phase Agreement for all or a part of its Participation Percentage share of all Output made available to NCPA from the SOLAR PV Project on a take or pay basis. Any such Third Phase Agreement shall be consistent with an NCPA Third Phase Agreement as contemplated by the Facilities Agreement<sup>2</sup> or successor agreement.

The Third Phase Agreement entered into with a Project Participant shall be for not less than the term of any bonds sold to finance the construction of the SOLAR PV Project, shall be entered into concurrently with the approvals by Project Participants entering into the SOLAR PV Project Third Phase Agreement, and shall be in a form mutually agreed upon by NCPA and the Project Participants.

(b) Increase in Participation Percentage. Any Project Participant can, at the time of entering into a Third Phase Agreement, increase its Participation Percentage of the SOLAR PV Project's Output if additional Output is available by

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<sup>2</sup> Section 5.2 of the Facilities Agreement defines Third Phase as all work performed after one or more participants has contracted with NCPA to participate in the financing, construction, operation and maintenance, and/or rights to the output, of an NCPA project.

reason of non-participation, or if additional Output is available from Developers, in the Third Phase Agreement by one or more Project Participants. Such excess Output shall be reallocated among those Project Participants which do participate in the same proportion as their individual shares bear to the total shares of those which do not participate. If any Project Participants so entitled to such excess SOLAR PV Project Output do not wish to contract for their share of such reallocated excess Output, such remaining unallocated Output shall be disposed of or reallocated as agreed to by the Project Participants.

(c) Exercise and Effect of Taking Less than Full Entitlement. Project Participants and NCPA shall establish the terms and provisions of a Third Phase Agreement for rights to Output from the SOLAR PV Project prior to the expiration of this Agreement. The Project Participants and NCPA shall also establish the date by which the Third Phase Agreement must be executed by the Project Participants and delivered to NCPA if they are to participate in the purchase of Output from the SOLAR PV Project. Any Project Participant's failure to execute the Third Phase Agreement for any of such Project Participant's total Participation Percentage and to deliver such agreement to NCPA by the date set for execution or sixty (60) calendar days after the Project Participant's receipt of the Third Phase Agreement, whichever is later, will be an irrevocable decision on the part of that Project Participant not to purchase any such Output or otherwise participate in the SOLAR PV Project. Execution and delivery of the Third Phase Agreement for less Output than its original total Participation Percentage share, and delivery of that Project Participant's executed Third Phase Agreement to NCPA by the date set for execution or sixty (60) calendar days after Project Participant's receipt of the Third Phase Agreement, whichever is later, will likewise be an irrevocable decision on the part of that Project Participant not to purchase any such Output in excess of the share set forth in its

delivered agreement.

Supplemental agreements or other agreements will be entered into for the sale or purchase of any excess or surplus SOLAR PV Project Output not allocated pursuant to the Third Phase Agreement as described in the preceding paragraph. The procedures for processing supplemental agreements shall be consistent with those prescribed immediately above in this Section 2(c) (Exercise and Effect of Taking Less than Full Entitlement) for making purchases of Output. Any Project Participant's failure to return an executed Third Phase Agreement for any excess Output within the prescribed time period is an irrevocable decision not to purchase any such excess Output. A Project Participant making any irrevocable decision not to purchase all of its original Project Participation share of Output shall be foreclosed from receiving, and shall be relieved of further burdens related to, SOLAR PV Project Output which it has declined to purchase and shall be accordingly relieved of associated further expenses relative to the future development of the SOLAR PV Project, all as of the date of its irrevocable decision.

Section 3. Project Participant Direction and Review.

NCPA shall comply with all lawful directions of the Project Participants with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by law. Actions, authorizations and approvals of Project Participants, including giving directions, shall be conveyed in writing to NCPA's Project Manager. Actions, authorizations and approvals, including directions of Project Participants will be taken only by vote of a quorum of authorized representatives of Project Participants at meetings of the NCPA Commission or NCPA Facilities Committee duly called and held pursuant to the Ralph M. Brown Act. NCPA shall ensure that all Project Participants receive, in a timely manner notices, agendas, SOLAR PV Project related staff reports, and minutes of all NCPA

Commission and NCPA Facilities Committee meetings.

Ordinarily, voting by representatives of Project Participants will be on a one member/one vote basis, with a majority vote of Project Participant representatives eligible to vote required for action; however, upon request of a Project Participant representative, the voting on any issue will be by Project Participant Participation Percentages with a sixty-five (65%) percent or greater favorable Project Participant Participation Percentage vote, cast by two or more Project Participants, necessary to carry the action.

Within ten (10) calendar days following the mailing of notice of any SOLAR PV Project related NCPA Commission or NCPA Facilities Committee action, authorization, approval or vote, any Project Participant may veto any such action, authorization, approval or vote of the Project Participants that was not taken by a sixty-five (65%) percent or greater Project Participant Participation Percentage vote by delivering written notice of such veto to NCPA. The notice of veto will nullify such action, authorization, approval or vote unless, at a meeting of the NCPA Commission (if the vetoed action was that of the NCPA Commission) or NCPA Facilities Committee (if the vetoed action was that of the NCPA Facilities Committee) called for the purpose of considering such veto and held within thirty (30) calendar days after the delivery of such written notice of veto, Project Participants having a combined Project Participant Participation Percentage of at least sixty-five (65%) percent at such time vote to override the veto.

#### Section 4. Term.

The Effective Date of this Agreement shall be the next calendar day after formal approval by the governing bodies of Project Participants holding fifty (50%) percent of the Participation Percentage as set out in Exhibit C of this

Agreement, or such later date as may be determined by the Project Participants after an adjustment in the SOLAR PV Project Participation Percentages to provide for an adequate subscription for the financial commitment required by Section 5 (Financial Commitments) of this Agreement. This Agreement shall be terminated either when this Agreement is superseded by the Third Phase Agreement or upon completion of all Phase 2 activities.

Section 5. Financial Commitments.

To fund the SOLAR PV Project Phase 2 activities, each Project Participant agrees to a total financial commitment equal to its respective Project Participant Participation Percentage share of the total cost in Section 1(b), as may be adjusted by the inclusion of additional activities as stated in Section 1(c).

Section 6. NCPA Assignment of Right to Receive Payments.

(a) Notwithstanding any other provision of this Agreement, if NCPA requires funds to carry out the terms of this Agreement prior to the receipt of adequate funds from the Project Participants, NCPA may assign its right to receive any payments under this Agreement to a bank or other financial institution to secure a loan by NCPA or in exchange for an amount of money equal to the then present value of those payments as determined by NCPA. Project Participants hereby consent to such assignment and upon notification in writing by NCPA to each Project Participant; each such Project Participant will make each such assigned payment directly to the assignee. The assignee shall not be liable to Project Participants for the amounts as assigned, and NCPA shall use the proceeds of such borrowing or assignment solely for the purposes provided in this Agreement.

If an assignment is made under Section 6 of this Agreement (NCPA

Assignment of Right to Receive Payments), then upon the failure of any Project Participant to make any corresponding payment assigned, the Participation Percentages of each non-defaulting Project Participant shall be automatically proportionately increased for the term of the assignment, and the defaulting Project Participant's share of the Participation Percentage shall (but only for purposes of computing the respective Participation Percentages of the non-defaulting Project Participants) be reduced correspondingly; provided that the combined sum of such increase due to a defaulting Project Participant for any non-defaulting Project Participant shall not exceed, without the written consent of each non-defaulting Project Participant, an accumulated maximum of twenty-five (25%) percent of the non-defaulting Project Participant's share of the Participation Percentage, as shown in Exhibit C hereto.

If a Project Participant fails or refuses to pay any amounts due to NCPA, the fact that other Project Participants increase their obligations to make such payments shall not relieve the defaulting Project Participant of its liability for such payments and any Project Participant increasing its obligation shall have a right of recovery from the defaulting Project Participant to the extent of its respective increased obligation, in addition to the rights of NCPA discussed in the following paragraphs.

In addition, NCPA may terminate the provisions of this Agreement insofar as they entitle the defaulting Project Participant to its Project Participant Participation Percentage share of SOLAR PV Project Output.

In addition, NCPA shall have all rights and remedies under law or equity to compel payment of funds owed to NCPA by Project Participants.

(b) For the purposes of such assignment, NCPA may fix and schedule the total amount payable by each Project Participant into any number of periodic payments, and the dates on which such payments will be made, and each Project

Participant agrees to abide by such schedule. NCPA shall provide a reasonable opportunity for any Project Participant to prepay, to make one payment, or to establish an alternative mutually agreeable payment schedule to cover its total obligation.

(c) After such an assignment is made, no Project Participant may avoid the obligation so assigned by withdrawal or reduction in participation pursuant to Section 7 (Withdrawal from Further Participation) of this Agreement or otherwise.

(d) If NCPA makes an assignment pursuant to Section 6 of this Agreement (NCPA Assignment of Right to Receive Payments), it may transfer, subject to Project Participant authorization, any or all of its rights and duties to a nonprofit corporation formed to act on behalf of NCPA if the voting method of the members of such nonprofit corporation is in the same manner as that provided in Sections 3 (Project Participant Direction and Review) and 8 (Admission of New Participants) of this Agreement.

#### Section 7. Withdrawal from Further Participation.

(a) Except for increases in a Project Participant's financial obligation as provided in Section 6 (NCPA Assignment of Right to Receive Payments) of this Agreement, if at any time following the execution of this Agreement, NCPA becomes aware of a required or estimated increase in Phase 2 financial commitments beyond that contemplated in Section 5 (Financial Commitments), NCPA shall inform the Project Participants of the reasons for, and amount of, such required or estimated financial increase no later than at the next scheduled meeting of Project Participants. After being noticed of such required or estimated increases in financial commitments, Project Participants may partially withdraw, (i.e., withdraw from participation in the increase only), or may

withdraw wholly from the SOLAR PV Project, but only if such estimated increase in financial commitments is in excess of ten percent (10%) of the financial commitments contemplated in Section 5 (Financial Commitments), and Project Participants shall notice NCPA in writing of their decision to accept such increase, to partially withdraw, or to wholly withdraw from Project participation. Any SOLAR PV Project Participant(s) withdrawal shall be subject to honoring any commitments made by them or on their behalf pursuant to authorization of this Agreement up to the day of NCPA's receipt of such Project Participant's written notice of withdrawal, in part or in whole, within thirty (30) calendar days of the Project Participant(s) receipt of the notice of the increase from NCPA. Should a Project Participant fail to provide written notice of its potential withdrawal (in whole or in part) within the notice period referred to in this Section 7 (Withdrawal From Further Participation), then that Project Participant is deemed to have approved of and consented to the increase.

#### Section 8. Admission of New Participants

Following the Effective Date of this Agreement, no NCPA Member ("Additional Member") may execute this 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 Participants 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 governing body and payment of such Additional Member's share of the costs proportionate to its Participant

Percentage. Any reduction in any Allocating Participant's share of costs shall be credited to the Allocating Participant in accordance with Section 1 (Obligations) of this Agreement.

Section 9. Voting Rights and Duration.

A Project Participant is eligible to vote pursuant to Section 3 (Project Participant Direction and Review) of this Agreement until it completely withdraws from the SOLAR PV Project. If a Project Participant's share of the Participation Percentage is reduced, after such reduction, its subsequent financial commitment will be adjusted accordingly to match such Project Participant's reduced Participation Percentage share. When the Third Phase Agreement is executed or revised, Participation Percentages for voting shall be established or reestablished by dividing the amount of SOLAR PV Project Output to be purchased by each Project Participant that is a party to the Third Phase Agreement by the total amount of the Project Output.

Section 10. Quorum Defined.

The presence of either a majority of Project Participants, or of Project Participants then having a combined Project Participant Participation Percentages of at least sixty-five (65%) percent, shall constitute a quorum for the purpose of action.

Section 11. Indemnification.

Each Project Participant agrees to indemnify, defend and hold harmless NCPA and its members, including their respective governing officials, officers, agents, attorneys, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including,

without limitation, reasonable attorneys' fees ("Claims") to the extent caused by any breach of contract, negligence, gross negligence or willful misconduct of itself and its officers, employees, subcontractors or agents, to the maximum extent permitted by law, but only as to Claims arising out of or related to this Agreement.

#### Section 12. Default and Remedies

(a) The failure of any Project Participant to meet its financial commitments as required by this Agreement shall constitute a default. In the event of such a default, NCPA shall deliver a ten (10) calendar day written notice to the defaulting Project Participant to cure the default. If such default is not cured within that time NCPA shall pursue all rights, under law and equity, to collect all sums due.

(b) Any action brought to enforce any provision of this Agreement shall be filed in the County of Placer, subject to the binding arbitration provision set forth below.

(c) ANY DISPUTE REGARDING THE PERFORMANCE OF THIS AGREEMENT, OR THE LACK THEREOF, SHALL BE RESOLVED THROUGH ALTERNATIVE DISPUTE RESOLUTION CONDUCTED BY A MUTUALLY AGREEABLE MEDIATOR OR ARBITRATOR, OR IF NO AGREEMENT CAN BE REACHED, THEN THROUGH THE AUSPICES OF THE AMERICAN ARBITRATION ASSOCIATION. THE PARTIES HERETO UNDERSTAND THAT BY AGREEING TO THIS PROVISION THEY AGREE TO EXHAUST ALTERNATIVE DISPUTE RESOLUTION THROUGH MEDIATION OR ARBITRATION PRIOR TO PURSUING ANY JUDICIAL REMEDIES THAT MAY OTHERWISE BE AVAILABLE.

(d) Should any actions be necessary to enforce any provision of this

Agreement, including arbitration pursuant to Section 12(c), the prevailing party shall be entitled to the recovery of reasonable costs and reasonable attorney fees.

#### Section 13. Notices

Any notice, demand or request required or authorized by this Agreement to be given to any party shall be in writing (excluding emails and faxes) and shall either be personally delivered to Project Participant's designated representative and the Secretary of NCPA or transmitted to the Project Participant's official mailing address as listed in Exhibit B to this Agreement by sending such notice by U.S. Mail, first class postage prepaid. All such notices shall be deemed received within two (2) business days after deposit in the U.S. mail. Any party may change the address for notice by providing written notice of such change to NCPA and the other Project Participants.

#### Section 14. Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as the original instrument as if all the signatories to all of the counterparts had signed the same instrument.

#### Section 15. Amendment

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by all the Parties and approved as required. No oral understanding or Agreement not incorporated in writing in the Agreement is binding on any of the parties.

#### Section 16. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

#### Section 17. Governing Law

This Agreement shall be governed by the law of the State of California.

#### Section 18. Construction

Each party to this Agreement is sophisticated in the operation of electric utilities, and in the construction and financing of power generation facilities. Each party to this Agreement was represented by counsel during the negotiation of this Agreement. Hence, this Agreement shall be interpreted as being equally drafted by all Parties and without reference to Civil Code section 1654 requiring interpretation against parties causing an ambiguity.

#### Section 19: Exhibits

This Agreement includes the following Exhibits:

- Exhibit A: Activities to be undertaken in Phase 2
- Exhibit B: Addresses for Notice
- Exhibit C: SOLAR PV Project Capacity and Participation Percentages
- Exhibit D: Agreement to Proceed
- Exhibit E: Site Schedule
- Exhibit F: Reserved

#### Section 20: Definitions

The terms defined in this Section 20, whether in the singular or plural, when

used herein or in the Exhibits shall have the meanings ascribed thereto as set out below:

- (a) "Capacity" means, as of any time, the ability of the SOLAR PV Project to generate or produce electricity, expressed in kW or MW.
- (b) "Capital Lease" means that certain commercial arrangement entered by and between NCPA and a developer(s) of the SOLAR PV Project where in the NCPA will lease and finance all necessary capital equipment owned by developer(s) over a set duration of time and where NCPA will acquire ownership of the asset at the expiration of the lease term.
- (c) "Claims" means any and all suits, claims, losses, costs, damages, expenses and liability of any kind or nature, including, without limitation, reasonable attorneys' fees.
- (d) "Energy" means the electricity produced by the SOLAR PV Project expressed in kWh or MWh.
- (e) "Facilities Agreement" means that certain agreement dated September 22, 1993, as amended through February 2, 2007, between NCPA and certain of its members.
- (f) "Initial Project Capacity" means the megawatt subscription of each Participant in the SOLAR PV Project.
- (g) "NCPA Project" means any project which has progressed past the first phase, pursuant to Sections 1.14 and 5.2 of the Facilities Agreement.
- (h) "Output" means any and all output from the SOLAR PV Project, including, but not limited to, all Capacity, Energy and other Attributes that NCPA may receive now or in the future.
- (i) "Participation Percentage" means the percentage share of each Participant in the SOLAR PV Project.

- (j) "PPA" means a power purchase agreement.
- (k) "Project Manager" means the person designated by NCPA's General Manager with the responsibility for planning, executing and managing the SOLAR PV Project.
- (l) "Project Participants" means a party to this Agreement, other than NCPA.
- (m) "Site" means the location or locations of the SOLAR PV Project.
- (n) "SOLAR PV Project" means the renewable solar photovoltaic project, to be located at multiple generation Sites located in the State of California.

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

NORTHERN CALIFORNIA POWER AGENCY,  
a joint powers agency

By: \_\_\_\_\_  
JAMES H. POPE, General Manager

ATTEST:

By: \_\_\_\_\_  
DENISE DOW, Assistant Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MICHAEL F. DEAN, General Counsel

**PROJECT PARTICIPANTS:**

BAY AREA RAPID TRANSIT

Approved as to Legal Form

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF GRIDLEY

Approved as to Legal Form

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF LOMPOC

Approved as to Legal Form

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_



## Exhibit A

### PHASE 2 ACTIVITIES INCLUDE

- Finalize Phase 3 Project Participant Agreement
- Negotiate agreement with third party supplier for construction of SOLAR PV Project and Power Purchase Agreement or Capital Lease Agreement
- Establish a Project Participant Committee to serve as an advisory committee to make decisions about the day to day processes for management of the SOLAR PV Project
- Each Member shall delegate a duly authorized representative to the Project Participant Committee
- Establish Project Development support and reporting infrastructure
- Establish Project Parameters (sites, size, etc.)
- Assessment of real property requirements for Solar PV Project
- Perform environmental assessments
- Perform system studies
- Submit applications , as necessary, to regulatory bodies

Phase 2 are activities anticipated to be completed by end of the second quarter of 2011.



Exhibit B

ADDRESSES FOR NOTICE OF PARTIES

Northern California Power Agency

Northern California Power Agency  
Attn: Dana Griffith, SOLAR PV Project Manager  
651 Commerce Drive  
Roseville, California, 95678  
Telephone: (916) 781-3636  
Facsimile:  
Email: dana.griffith@ncpa.com

AND

Northern California Power Agency  
Attn: James H. Pope, General Manager  
651 Commerce Drive  
Roseville, California, 95678  
Telephone: (916) 781-4200  
Facsimile:  
Email: jim.pope@ncpa.com

AND

Michael F. Dean, General Counsel  
Benjamin T. Reyes II, Assistant General Counsel  
Meyers Nave Riback Silver & Wilson  
555 Capitol Mall, Ste. 1200  
Sacramento, CA 95814  
Telephone (510) 808-2000  
Facsimile: (510) 444-1108  
Email: breyes@meyersnave.com  
mdean@meyersnave.com

Bay Area Rapid Transit District

Bay Area Rapid Transit District  
Attn: Frank Schultz, Power Resources Manager  
300 Lakeside Drive, 16<sup>th</sup> Floor  
Oakland, California 94612-3534

Telephone: (510)464-6435  
Facsimile: (510)464-6118  
Email: fschult@bart.gov

City of Gridley

City of Gridley  
Attn: Rob Hickey, Electric Utility Director  
685 Kentucky Street  
Gridley, California 95948  
Telephone: (530)846-5695  
Facsimile: (530)846-3229  
Email: [rhickey@gridley.ca.us](mailto:rhickey@gridley.ca.us)

City of Lompoc

City of Lompoc  
Attn: Ronald Stassi, Utility Director  
100 Civic Center Plaza  
P.O. Box 8001  
Lompoc, California 93438-8001  
Telephone: (805)875-8299  
Facsimile: (805)875-8399  
Email: [r\\_stassi@ci.lompoc.ca.us](mailto:r_stassi@ci.lompoc.ca.us)

## Exhibit C

### SOLAR PV PROJECT CAPACITY AND PARTICIPATION PERCENTAGES

The initial Project Capacity and Participation Percentages are estimated at this time, as the actual Project Capacity and Participation Percentages will not be confirmed until after the predevelopment studies are completed. The Parties shall amend Exhibit C when the actual Project Capacity and Participation Percentages are confirmed.

Upon approval of the NCPA Commission, this Exhibit C may be amended to add Project Participants, which shall thereafter and upon execution of this Agreement, be considered a party to this Agreement, without requiring the consent of then current Project Participants provided that:

1. The added Project Participant bears its full proportionate share of costs incurred prior to its addition to this Agreement as a Project Participant, or pays its share of costs as agreed to by the current Project Participants pursuant to voting in Section 3 (Project Participant Direction and Review).
2. No existing Project Participant shall have its Initial Project Capacity reduced by such addition.
3. Upon addition of a new Project Participant, the Project Capacity and Participation Percentages, and other values reflected in this Exhibit C shall be recalculated and updated accordingly.
4. Any new Project Participant shall execute a counterpart of this Agreement, and shall be deemed to be bound as of the Effective Date of this Agreement.

Participant	Participation Status	No Site Restriction		If Behind Meter		Total Project Share	
		MW	%	MW	%	AC - MW	%
BART		5.0	100.000%	1.3	31.907%	6.3	69.952%
Lompoc		0.0	0.000%	1.0	25.323%	1.0	11.174%
Gridley		0.0	0.000%	1.7	42.770%	1.7	18.874%
Total		5.0	100.000%	3.9	100.000%	8.9	100.000%

**SAMPLE PHASE 2 BUDGET** (subject to change after Phase 2 work is completed):

NCPA PV Project - Phase 2 Budget (\$1,000's)				
Participant	Expected Phase 2 Cost	Contingency 20%	Phase 2 Cost at Risk *	Total Phase 2 Cost at Risk
BART	\$ 201.5	\$ 40.3	\$ 49.0	\$ 290.8
Healdsburg	\$ -	\$ -	\$ -	\$ -
Lodi	\$ -	\$ -	\$ -	\$ -
Lompoc	\$ 58.4	\$ 11.7	\$ 12.5	\$ 82.5
Palo Alto	\$ -	\$ -	\$ -	\$ -
Plumas Sierra	\$ -	\$ -	\$ -	\$ -
Silicon Valey Power	\$ -	\$ -	\$ -	\$ -
Ukiah	\$ -	\$ -	\$ -	\$ -
Gridley	\$ 109.7	\$ 21.9	\$ 18.0	\$ 149.6
Total =	\$ 369.5	\$ 73.9	\$ 79.5	\$ 522.9
* 1/2 Of Interconnect Studies and Fees and limited developer legal expenses (initially paid by developers)				

**EXHIBIT D**  
**AGREEMENT TO PROCEED**



**EXHIBIT E**  
**SITE SCHEDULE**



**EXHIBIT F**  
**RESERVED**

