Commission Staff Report

AGENDA ITEM NO.: 21

Date: October 22, 2009
To: NCPA Commission
Subject: Lodi Energy Center Project Labor Agreement (PLA) and Maintenance Labor Agreement (MLA) with California Unions for Reliable Energy (CURE)

Proposal

Authorize NCPA General Manager or his designee to execute the Project Labor Agreement (PLA) and Maintenance Labor Agreement (MLA) with CURE with any non-substantial changes as approved by the NCPA General Counsel.

Background

Project Labor Agreement Purpose

A large labor pool represented by the Unions will be required to execute the work involved in the Project. Employers wish and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work and related work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions.

Summary of the Project Labor Agreement

Covered Work: The PLA covers all on-site construction, alteration, fabrication, painting & related activities within the craft jurisdiction of one of the Unions, and which is part of the Project—so called “Covered Work”. (See Section 2.1)

Start-Up: Covered Work also includes work performed by craft labor to support startup and commissioning, including system flushes & testing, loop checks, rework and modifications. Covered Work also includes the support of operational testing up to and including the final running test. NCPA, manufacturer’s and vendor’s representatives, and plant operating personnel may perform, supervise and direct this activity, and such craft work is typically performed as part of a joint effort with these representatives & personnel. (See Section 2.2)

Excluded Work: Covered Work does not include pre-manufactured units, systems and components, any work performed on the waste water treatment plant adjacent to the Project

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site, or specialized work requiring specialized training or technical experience which Union members do not possess. (See Sections 2.1, 2.6 & 2.7)

Signatories to the PLA: Any contractor performing Covered Work on the Project must, as a condition to working on the Project, perform all work under the terms of the PLA and the applicable union Master Agreement. (See Sections 3.1 & 3.2)

Craft Employees & Apprentices: The Unions will be the source of all craft employees for Covered Work, and will utilize registered apprentices to the maximum extent available. However, if the Union hall does not refer employees as requested by the contractor within a 48-hour period (excluding Saturdays, Sundays and holidays), the contractor may employ applicants from any source. (See Sections 5.3 & 5.4)

No Strike Clause: The PLA contains a no-strike clause, even in the event of jurisdictional disputes between crafts. If an Arbitrator determines that a violation has occurred, the crafts shall pay as liquidated damages the following amounts: for the first shift in which the violation occurred, $20,000; for the second shift, $25,000; for the third shift, $30,000; for each shift thereafter on which the craft has not returned to work, $30,000 per shift. (See Sections 6.1 through 6.6 & Section 9.3).

Management Rights: NCPA and its construction contractor will have the right to implement reasonable Project rules, security, and environmental & safety regulations. Also, NCPA's construction contractor will negotiate the Drug and Alcohol Policy to be utilized on the Project. A violation of the Project rules/security/regulations/policies is just cause for disciplinary action up to and including termination, subject to the applicable PLA grievance procedure. (See Sections 12.1 and 12.2)

Labor Management Trust: NCPA will contribute $150,000 to the California Construction Industry Labor-Management Cooperation Trust. (See Section 13.1)

Term: The PLA will commence on the execution date, and will continue until completion of all Covered Work, or until NCPA withdraws its Application from the CEC and the Application proceeding is terminated. (See Sections 18.1 and 18.2)

Maintenance Labor Agreement Purpose

The Project will be a large, complex project that will require periodic maintenance by skilled craft workers. A large pool of skilled labor represented by the Unions will be required to execute the work involved in maintaining the Project. Employers wish and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all maintenance work and related work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions.
Summary of Maintenance Labor Agreement

Covered Work: The MLA includes all planned outage maintenance, major overhauls, and other maintenance work performed on the Project that is contracted out to a contractor in the construction industry within the craft jurisdiction of one of the Unions—so called "Covered Work". (See Section 2.1)

Excluded Work: Covered Work does not include work performed by OEM labor for warranty, repair or maintenance on the vendor's equipment if required by the OEM's warranty agreement, work performed on the existing 49.9 MW steam turbine adjacent to the Project site, work performed in the existing 230 KV Switchyard, work performed on the existing waste water treatment plant adjacent to the Project site, or work that is immediately necessary to repair a unit or piece of equipment as the result of an emergency, act of God or other sudden unexpected events outside of NCPA's control. (See Sections 2.2.1, 2.2.7, 2.2.8, 2.2.9 & 2.2.10)

Signatories to the MLA: Any contractor performing Covered Work on the Project must, as a condition to working on the Project, perform all work under the terms of the MLA and the applicable union Master Agreement. (See Sections 3.1 & 3.2)

Craft Employees & Apprentices: The Unions will be the source of all craft employees for Covered Work, and will utilize registered apprentices to the maximum extent available. However, if the Union hall does not refer employees as requested by the contractor within a 48-hour period (excluding Saturdays, Sundays and holidays), the contractor may employ applicants from any source. (See Sections 5.3 & 5.4)

No Strike Clause: The MLA contains a no-strike clause, even in the event of jurisdictional disputes between crafts. If an Arbitrator determines that a violation has occurred, the crafts shall pay as liquidated damages the following amounts: for the first shift in which the violation occurred, $20,000; for the second shift, $25,000; for the third shift, $30,000; for each shift thereafter on which the craft has not returned to work, $30,000 per shift. (See Sections 6.1 through 6.6 & Section 9.1).

Labor Management Trust: Each contractor who performs Covered Work on the Project will contribute twenty-five cents ($0.25) per hour for each hour paid for or worked by employees to the California Construction Industry Labor-Management Cooperation Trust. (See Section 12.1)

Term: The MLA will be effective upon commencement of commercial operation of the Project, and will continue for thirty (30) years thereafter. The MLA will be reviewed and revised if necessary by the State Council, Local Council and NCPA every ten (10) years during the Term. Any revisions, deletions or additions at that time will be agreed to by all three parties. (See Section 16.1)

The Project Participants Committee approved the following motion during their October 5th meeting

The PPC directs the NCPA LEC Project Manager, or his designee, to execute the LEC Project Labor Agreement and Maintenance Labor Agreement with CURE (California Unions for Reliable Energy) which provide for certain terms and conditions related to labor

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arrangements affecting the LEC Project and recommends that these agreements be approved by the NCPA Commission.

Fiscal Impact

Project Labor Agreement
Within ten (10) business days of the first hour of Covered Work being performed on the Project, Primary Employer shall contribute the sum of $150,000 to the California Construction Industry Labor-Management Cooperation Trust or its designee. After such payment is made, there shall be no further obligation by the Primary Employer or any other Employer(s) to make any contribution to the Trust.

Maintenance Labor Agreement
Each Employer at every tier who performs work within the scope of this Agreement shall contribute the sum of twenty five cents ($0.25) per hour for each hour paid for or worked by employees, and shall remit that sum by payment postmarked no later than the 15th of the month following the month in which those hours were paid for or worked, directly to the California Construction Industry Labor-Management Cooperation Trust or its designee. This is estimated to be approximately $7,000 per year.

Environmental Impact Analysis

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

Recommendation

Staff recommends the Commission approve Resolution 09-90 authorizing the NCPA General Manager or his designee to execute the Project Labor Agreement and Maintenance Labor Agreement with California Unions for Reliable Energy with any non-substantial changes as approved by the NCPA General Counsel.

Respectfully submitted,

JAMES H. POPE
General Manager

Prepared by:

KEN SPEER
Assistant General Manager
Generation Services

JHP/KS/EW:dd

Attachments (1):
Lodi Energy Center MLA
Lodi Energy Center PLA

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RESOLUTION 09-90

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY

LODI ENERGY CENTER PROJECT LABOR AGREEMENT AND MAINTENANCE
LABOR AGREEMENT BETWEEN NCPA AND CALIFORNIA UNIONS FOR
RELIABILITY ENERGY (CURE)

(Staff Report #218:9)

WHEREAS, the Project Participants approved the Project Labor Agreement and
Maintenance Labor Agreement for the Lodi Energy Center during a special meeting on
October 5, 2009; and

WHEREAS, the environmental impact is addressed in Staff Report #218:9; and

NOW, THEREFORE BE IT RESOLVED that the Commission of the Northern California
Power Agency authorizes the NCPA General Manager or his designee to execute the Project
Labor Agreement and Maintenance Labor Agreement with CURE with any non-substantial
changes as approved by the NCPA General Counsel.

PASSED, ADOPTED and APPROVED this 22nd day of October 2009, by the following vote on
roll call:

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LARRY HANSEN
CHAIRMAN

ATTEST:
DENISE DOW
ASSISTANT SECRETARY
PROJECT LABOR AGREEMENT

FOR

THE LODI ENERGY CENTER PROJECT

LODI, CALIFORNIA
1. INITIAL PROVISIONS

1.1. This Project Labor Agreement ("Agreement") is entered into by the Northern California Power Agency ("Primary Employer"}, the State Building and Construction Trades Council of California ("State Council") and the Building and Construction Trades Council of San Joaquin, Calaveras, and Alpine Counties ("Local Council") and the local unions who have executed this Agreement, all of whom are referred to collectively as the "Unions."

1.2. The Lodi Energy Center Project (the "Project") is an approximately 255 MW power plant located in the City of Lodi, San Joaquin County, California. The Project is owned by the Northern California Power Agency ("Owner"). It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project and that this Agreement applies to the Project as it is finally approved by such entities and agencies.

1.3. The Primary Employer is a California Joint Power Agency. It is an employer in the construction industry. Its employees currently perform construction work and will perform construction work on the Project. It has a collective bargaining relationship with the International Brotherhood of Electrical Workers and Operating Engineers. Subject to the provisions of this Agreement, Primary Employer retains the right to control and coordinate all Project construction work by determining work scheduling, including start times, the necessity for and the times of shift work, by directly enforcing the controlled substance policy agreed to by the Local Council, and otherwise directly removing any employee whether employed directly or by any contractor or subcontractor for breach of reasonable rules promulgated by any Employer governing conduct on the job. Primary Employer shall have the right upon receipt of the written complaint of any employee to order corrective action necessary to maintain reasonable and lawful standards for workplace health and safety. Primary Employer may
participate in monthly labor/management meetings, participate in pre-job conferences and mark-up meetings, and participate in the resolution of any grievances in accordance with the provisions of Article 8.

1.4. As provided below, all project managers, construction managers, contractors, subcontractors or other persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2), or authorizing another party to assign, award or subcontract Covered Work, or performing Covered Work will be subject to this Agreement by executing Attachment A, the Employer Agreement to be Bound (all of whom, including the Primary Employer, are individually and collectively referred to as "Employer" or "Employers").

1.5. The Unions are labor organizations whose members are construction industry employees who generally work in close proximity to one another at construction job sites and whose jobs are closely related and coordinated. Each of the Unions is a party to a multi-employer collective bargaining agreement ("Master Agreement") that covers the geographic area of the Project. Where the term Master Agreement is used, it means the existing Master Agreement currently in effect as to each of the Unions.

1.6. A large labor pool represented by the Unions will be required to execute the work involved in the Project. Employers wish and it is the purpose of this Agreement to ensure that a sufficient supply of skilled craft workers are available at the Project, that all construction work and related work performed by the members of the Unions on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions.

1.7. It is a central purpose of the parties in executing this Agreement to protect the Project against the jobsite friction that could arise at a common-situs
jobsite if union employees had to work alongside non-union employees in their own craft or in those other crafts with which they generally work in close proximity performing work that is closely related and coordinated. This Agreement accomplishes this purpose by ensuring that all Covered Work will be performed by workers who are union members. In the event that any construction work falls outside the scope of this Agreement, the Primary Employer further protects itself from the natural result of jobsite friction by prohibiting all strikes, picketing or similar activity for any reason whatsoever, and by imposing severe penalties on any Union that violates this prohibition.

1.8. In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with the management of the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement. In furtherance of these goals, to the extent permitted by law the Unions agree to use best efforts to recruit union employees located within a 50-mile radius of the Project site, with preference given to the Sacramento area, where possible.

2. SCOPE OF AGREEMENT

2.1. This Agreement covers all on-site construction, alteration, painting or repair of buildings, structures and other works and related activities for the Project that is within the craft jurisdiction of one of the Unions and which is part of the Project, including, without limitation, pipelines (including those in linear corridors built to serve the Project), pumps and pump stations, start-up, site preparation, material inspection and testing (excluding work performed by a civil, mechanical, geotechnical or other licensed engineer whose scope of work is not covered by a collective bargaining agreement of a union signatory to this Agreement), all on-site fabrication work provided such work is within the fabrication provision of a local master or national agreement of one of the Unions, demolition of existing
structures, and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. On-site fabrication work includes work done for the Project in temporary yards or areas near the Project. All fabrication work over which the Owner possesses the right of control, including, without limitation, the fabrication of air-handling systems and ducts and HVAC sheet metal work (but excluding all pre-manufactured units, systems and components), and which is traditionally claimed as on-site fabrication, shall be performed on-site. For the convenience of the Primary Employer or other Employers, such work may be performed off-site. In that event, such fabrication work shall be performed in accordance with the union standards established by this Agreement for the appropriate craft Union or by a fabrication agreement approved by the craft’s International Union. Due to physical limitations at the Project site, the parties acknowledge that more pre-manufacturing work and more off-site fabrication work may take place than typically encountered for projects of this nature, however nothing in this sentence changes the fabrication provisions of this Agreement. On-site construction shall also include the site of any batch plant constructed solely to supply materials to the Project. All work within the scope of this Agreement is referred to as "Covered Work."

2.2. This Agreement covers all work typically performed by craft labor in California that is part of supporting startup and commissioning, including, but not limited to, system flushes and testing, loop checks, rework and modifications. This Agreement will also cover the support of functional and operational testing up to and including the final running test. It is understood that Primary Employer, manufacturer’s and vendor’s representatives, and plant operating personnel may perform, supervise and direct this activity, and that craft work is typically performed as part of a joint effort with these representatives and personnel. A manufacturer or its representatives may perform industry standard work to satisfy its guarantee or warranty prior to startup of a piece of equipment. After a system or subsystem becomes operational and upon acceptance, Covered Work on that
system or subsystem is completed. However, further system flushes, as well as rework and modifications normally provided as a function of the construction effort, and other related work normally provided by members of the Unions will be performed by members of the Unions. Nothing set forth in this Section 2.2 shall be construed as prohibiting or limiting permanent operating personnel from operating systems prior to Covered Work being completed.

2.3. Once the construction and installation of equipment and the associated system has achieved mechanical/electrical Substantial Completion (Substantial Completion being defined as the equipment and its system is/are ready for testing and commissioning without the use of temporary feeds or jumpers, and poses no threat to personnel or equipment), the system will be released to the specialty contractor responsible for both schedule and any damage to the relevant equipment as a result of its work. During the testing and commissioning period, the specialty contractor will make no change or modifications to the installed equipment (beyond minor alterations such as adding jumpers or moving terminations) without the support of Union craft. The specialty contractor will provide only oversight and direction to the Union craft for activities such as flushing, replacing cables or process piping where required, and support of the first fire, reliability, and performance test.

2.4. Covered Work as defined in this Article 2 does not include any work performed by supervisors not covered by a collective bargaining agreement, technical or non-manual employees of Primary Employer and each other Employer, including, but not limited to, executives, office and clerical employees, timekeepers, messengers, guards; or any civil, mechanical or other professional engineers, drafters and inspectors not covered by a collective bargaining agreement of a Union signatory to this Agreement; or staff employees, and operators and personnel of vendors or their agents or subsidiaries performing warranty work; or any other employees above the classification of general foreman or who perform administrative/clerical functions.
2.5. Covered Work as defined in this Article 2 does not include work performed by Pacific Gas & Electric or another utility or local water purveyor.

2.6. Covered Work as defined in this Article 2 does not include any work performed on the existing waste water treatment plant adjacent to the Project site.

2.7. Covered Work as defined in this Article 2 does not include specialized or technical work requiring specialized training, unique skills, or a level of specific technical experience which employees represented by the Union do not possess. At least one (1) working day’s notice shall be given to the Local Council before any work is performed pursuant to this Section 2.7.

2.8. Covered Work as defined in this Article 2 does not include any work performed by employees reporting, either directly or indirectly, to local, state or federal governmental agencies (e.g., CBO inspectors), or to Primary Employer’s employees charged with inspecting and evaluating Project quality control.

3. SUBCONTRACTING

3.1. Primary Employer and each other Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.

3.2. Primary Employer and each other Employer agree that they will subcontract Covered Work only to a person, firm, corporation or other entity who is or becomes a party to this Agreement and who is or becomes signatory to either a local, area or regional Master Agreement with the craft Union having traditional and customary building trades craft jurisdiction over the work or, only in the case of a national contractor, a national agreement with the International Union(s) of the craft Union(s) having traditional and customary jurisdiction over the work. Any Employer (including Primary Employer) performing Covered Work on the Project
shall, as a condition to working on the Project, perform all work under the terms of this Agreement and the applicable Master Agreement, and, except for a contractor signatory to a national agreement, become signatory to the applicable Master Agreement. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing Attachment A, the Agreement to be Bound. Every Employer shall notify the Local Council and the State Council in writing within five (5) business days after it has subcontracted work, and shall at the same time provide to the Local Council and the State Council a copy of the executed Agreement to be Bound.

3.3. Notwithstanding Section 3.2, any Employer not already bound to a Master Agreement who signs and becomes bound to a Master Agreement to participate on this Project, shall not be required to apply the terms of that Master Agreement to any other construction project in which that Employer is already engaged or which that Employer has already been contractually bound to perform.

3.4. Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer, or any other Employer, to subcontract Covered Work or to select its contractors or subcontractors; provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract or perform Covered Work shall be required to comply with the provisions of this Agreement. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement and the Master Agreement. Any Employer that fails to provide the Local Council and State Council with the Agreement to be Bound executed by its contractor or subcontractor shall be liable for any failure of that contractor or subcontractor, or any contractor or subcontractor at a lower tier, to comply with the provisions of this Agreement,
including any contributions to any trust funds that the contractor or subcontractor, or any subcontractor to that subcontractor, fails to make.

4. WAGES AND BENEFITS

4.1. The parties acknowledge that this Project will be constructed in accordance with California's prevailing wage law. Accordingly, all employees covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages, other compensation including but not limited to travel, subsistence, and shift premium pay, and contributions made on their behalf to multi-employer trust funds, all in accordance with the then current multi-employer Master Agreement of the applicable Union.

4.2. Any special interest bargaining which establishes wage rates, classifications, zones, or wage escalations which apply exclusively to the Project will not be recognized. In addition, there shall be no redlining of the Project in any future multi-employer collective bargaining agreements by singling out, either by name or by effect, the Project or the Employers for less favorable wages, benefits or working conditions than are generally accorded other industrial projects in the same general geographic area.

5. UNION RECOGNITION

5.1. The Employers recognize the Unions signatory to this Agreement as the sole and exclusive collective bargaining agents for their respective construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of each Union.

5.2. All employees performing Covered Work shall be or shall become and then remain members in good standing of the appropriate Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.
5.3. The Unions shall be the source of all craft employees for Covered Work for the Project, and shall utilize registered apprentices to the maximum extent available, consistent with the applicable Master Agreement. Employers agree to be bound by the hiring and layoff practices of the respective Union, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4. In the event the referral facilities maintained by the Unions do not refer the employees as requested by the Employer within a forty-eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays and holidays excepted), the Employer may employ applicants from any source.

5.5. Each Union shall have the right to designate a working journeyman as a steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. Each steward shall be concerned with the employees of the steward’s Employer and not with the employees of any other Employer. A steward at the appropriate time of day shall be allowed a reasonable amount of time to perform his duties. This provision shall not be abused.

6. WORK STOPPAGES AND LOCKOUTS

6.1. During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, interference with the work or other disruptive activity for any reason by the Union or by any employee, and there shall be no lockout by any Employer. Failure of any Union or employee to cross any picket line established at the Employer’s project site is a violation of this Article.

6.2. The Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge,
and, if justifiably discharged for the above reasons, shall not be eligible for rehire on the same project for a period of not less than one hundred and eighty (180) days.

6.3. The Union shall not be liable for acts of employees for which it has no responsibility. The principal officer or officers of a Union will immediately instruct, order and use the best efforts of his office to cause the employees the Union represents to cease any violations of this Article. A Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Employer to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

6.4. The Union(s) agrees that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal and refuse to honor such picket line or work stoppage.

6.5. In the event of any work stoppage, strike, sympathy strike, picketing interference with the work or other disruptive activity in violation of this Article, the Employer may suspend all or any portion of the Project work affected by such activity at the Employer’s discretion and without penalty to said Employer.

6.5.1. There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, interference with the work, or other disruptive activity, affecting the Project site during the term of this Agreement. Any Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another Union which is in violation of this Article agrees, as a remedy for said violation, to pay liquidated damages in accordance with Section 6.6.8 of this Article.

6.6. In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union(s) and/or local union(s) has been notified of the fact.

6.6.1. The party invoking this procedure shall notify Norman Brand or Joe Grodin, who the parties to this agreement agree shall be the permanent
Arbitrators under this procedure. In the event that either of the permanent Arbitrators is unavailable at any time, the American Arbitration Association shall select an alternative arbitrator within twenty-four (24) hours of notice. Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means to the party alleged to be in violation and the involved International Union President and/or local union.

6.6.2. Upon receipt of said notice, the Arbitrators named above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists.

6.6.3. The Arbitrator shall notify the parties by fax or electronic means or any other effective written means of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

6.6.4. The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article by the Union, and such Award shall be served on all parties by hand or registered mail upon issuance.

6.6.5. Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to herein above in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 6.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order
or orders enforcing the Arbitrator's Award shall be served on all parties by hand or
by delivery to their last known address or by registered mail.

6.6.6. Any rights created by statute or law governing arbitration
proceedings inconsistent with the above procedure or which interfere with
compliance therewith are hereby waived by the parties to whom they accrue.

6.6.7. The fees and expenses of the Arbitrator shall be borne by the
party or parties found in violation, or in the event no violation is found, such fees
and expenses shall be borne by the moving party.

6.6.8. If the Arbitrator determines that a violation has occurred in
accordance with Section 6.6.4 above, the party or parties found to be in violation
shall pay as liquidated damages the following amounts: for the first shift in which
the violation occurred, $20,000; for the second shift, $25,000; for the third shift,
$30,000; for each shift thereafter on which the craft has not returned to work,
$30,000 per shift. The Arbitrator shall retain jurisdiction to determine compliance
with this section and this Article.

6.7. The procedures contained in Section 6.6 shall be applicable to alleged
violations of this Article. Disputes alleging violation of any other provision of this
Agreement, including any underlying disputes alleged to be in justification,
explanation or mitigation of any violation of this Article, shall be resolved under the
grievance procedures of Article 8.

6.8. Notwithstanding the provisions of Section 6.1 above, it is agreed that
with forty-eight (48) hours prior notice to the Primary Employer, a Union retains
the right to withhold the services of its members from a particular contractor or
subcontractor who fails to make timely payments to the Union's benefit plans or
fails to timely pay its weekly payroll in accordance with its agreements with the
Union; provided, however, that in the event the Union or any of its members
withhold their services from such contractor or subcontractor, Primary Employer
shall have the right to replace such contractor or subcontractor with any other
contractor or subcontractor who executes the Agreement to be Bound. No employee
shall be required to work for any contractor who fails to timely pay its weekly payroll; however, employees of other contractors shall continue to work without interruption. For the avoidance of doubt, as long as a contractor is making weekly payroll payments, disputes over the amount of pay owed to members is a matter to be addressed under Article 8 below, and the unions shall not withhold the services of its members from a particular contractor over a dispute in the amount of pay owed.

6.9. It will not be a violation of this Agreement when the Employer considers it necessary to shut down to avoid the possible loss of human life because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Employer requests employees to wait in a designated area available for work, the employees will be compensated for the waiting time.

6.10. In the event that any applicable labor agreement expires and the parties to that agreement fail to reach agreement on a new contract by the date of expiration, a Union shall continue to provide employees to the Employers working on the Project under all the terms of the expired agreement until a new agreement is negotiated, at which time all terms and conditions of that new agreement shall be applied to Covered Work at the Project, except to the extent they conflict with any provision of this Agreement. In addition, if the new labor agreement provides for wage or benefit increases, then any Employer shall pay to its employees who performed Covered Work at the Project during the hiatus between the effective dates of such labor agreements, an amount equal to any such wage and benefit increases established by the new labor agreement for such work performed.

7. HOURS OF WORK AND HOLIDAYS

7.1. The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for
lunch. Common start times may be established by the Employer during this window period. Proposed modifications to the standard work day may be submitted by an Employer to the Local Council for approval. This approval shall not be unreasonably withheld. The standard work week shall be five (5) consecutive days of work commencing on Monday. Proposed modifications to the standard work week may be submitted by an Employer to the Local Council for approval. The Local Council shall respond within five (5) working days and bargain in good faith over any such proposed modification. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.

7.2. Common shifts may be established when considered necessary by the Employer. The Employer shall provide at least one week notice to the Local Council prior to any change in shift time, except in unforeseen circumstances, in which case notice shall be given as soon as practicable. Any shifts established shall continue for the established work week.

7.3. Whenever minimum reporting pay is provided for employees they will be required to remain at the project site available for work for such time as they receive pay, unless released sooner by the Employer's principal supervisor or designated representative. The provisions of this Section 7.3 are not applicable where the employee voluntarily quits, refuses to work, is in a condition where he cannot work, is off by reason of a strike, or as provided in Section 6.9 above, in which case he shall be paid for the actual time worked.

7.4. The Employer may, as it deems necessary, schedule one, two or three shifts within a 24-hour period in order that work on any job may continue without interruption consistent with the requirements of the Project. If only two shifts are to be worked, the Employer may regulate starting times of the two shift operations to permit the maximum utilization of daylight hours.

7.5. Primary Employer may establish a uniform break time for the Project. Employees shall be afforded time to take rest period at the rate of ten (10) minutes net rest time for every four (4) hours worked or a major fraction thereof. Any
employee who works less than three and one-half (3 & 1/2) hours in a day will not
be provided a rest period. Breaks shall be taken in the employee's immediate work
area.

7.6. Recognized holidays shall be as follows: New Year's Day, Martin
Luther King, Jr. Day, Presidents' Day, Memorial Day, Fourth of July, Labor Day,
Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day. Under
no circumstances shall any work be performed on Labor Day except in cases of
emergency involving life or property. In the event a holiday falls on Saturday, the
previous day, Friday, shall be observed as such holiday. In the event a holiday falls
on Sunday, the following day, Monday, shall be observed as such holiday. There
shall be no paid holidays. If employees are required to work on a holiday, they shall
receive the appropriate rate, but in no case shall such overtime rate be more than
double the straight time rate.

8. GRIEVANCE PROCEDURE

8.1. It is mutually agreed that any question arising out of and during the
term of this Agreement involving its interpretation and application (other than
jurisdictional disputes or successorship) shall be considered a grievance. Questions
between or among parties signatory to a Master Agreement arising out of or
involving the interpretation of a Master Agreement shall be resolved under the
grievance procedure provided in that Master Agreement.

8.2. The Primary Employer and other Employers, as well as the Unions,
may bring forth grievances under this Article.

8.3. A grievance shall be considered null and void if not brought to the
attention of the Employer(s) within five (5) working days after the incident that
initiated the alleged grievance occurred or was discovered, whichever is later. The
term "working days" as used in this Article shall exclude Saturdays, Sundays or
holidays regardless of whether any work is actually performed on such days.
8.4. Grievances shall be settled according to the following procedure, except that grievances that do not involve an individual grievant shall be discussed by the Primary Employer, State Council and Local Council and then, if not resolved within five (5) working days of written notice unless extended by mutual consent, commence at Step 4:

Step 1
The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the Grievance has been brought to the attention of the Employer.

Step 2
In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager(s) of the Union(s) affected and the site construction manager or Labor Relations representative of the Employer(s) for discussion and resolution. A copy of the written grievance shall also be mailed, faxed or emailed to the Primary Employer.

Step 3
In the event the matter remains unresolved in Step 2 above within five (5) working days, within five (5) working days thereafter, the grievance may be referred in writing to the Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative and the Primary Employer for discussion and resolution.

Step 4
If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Primary Employer. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the
list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. Primary Employer shall keep a record of the sequence and shall notify the parties to the grievance as to which party has the right to strike a name first.

8.5. The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.

8.6. Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the Primary Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator’s decision shall be final and binding as to all parties signatory to this Agreement.

8.7. The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.

8.8. The Arbitrator’s decision shall be confined to the issue(s) posed by the grievance and, except as provided in Section 14.1.1 below, the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.

8.9. Any party to a grievance may invite the Primary Employer to participate in resolution of a grievance. The Primary Employer may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.

8.10. In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered
timely if it is personally delivered, sent by overnight mail or faxed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance, and any written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or faxed during the extended time period.

9. JURISDICTIONAL DISPUTES

9.1. The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) or any successor Plan.

9.2. All jurisdictional disputes on this Project between or among the Building and Construction Trades Unions and their employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

9.3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

9.4. Each Employer will conduct a pre-job conference with the Local Council prior to commencing Covered Work. The Owner will be advised in advance of all such conferences and may participate if it wishes.

10. JOINT LABOR/MANAGEMENT MEETINGS

10.1. During the period of any Covered Work performed under this Agreement, a joint Labor/Management meeting will be held on an approximately
monthly basis or as otherwise agreed between the Primary Employer, the other Employers, the Local Council and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the craft workers and contractors performing work at the Project. These periodic meetings will also include discussion of safety, craft resource requirements, scheduling and productivity of work performed at the Project.

10.2. A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each Employer’s contract. When a contract has been let to an Employer(s) covered by this Agreement, a Pre-Job Conference and/or Mark-Up Meeting shall be required upon request of any Union, Employer or the Primary Employer.

10.3. The Primary Employer will schedule and attend all Pre-Job Conferences and Mark-Up Meetings.

11. SUCCESSORSHIP AND SURVIVABILITY

11.1. This Agreement is and shall be binding and legally effective upon (i) any successor to Primary Employer, whether by merger, consolidation, acquisition or otherwise, and (ii) any person or entity that acquires all or any portion of Primary Employer’s right, title or interest in the Project whether by sale, lease, or other transfer, or contribution to partnership, joint venture or other entity. Any agreement for a sale, lease, contribution or other transfer of the Project by the Primary Employer, or an agreement for a merger or acquisition including ownership or control of Primary Employer, shall include an express assumption of the obligations and undertakings of Primary Employer under this Agreement, including this successorship provision. Within ten (10) business days following the close of any sale, acquisition, merger, lease or other transfer covered by this Section 11.1, Primary Employer shall provide the State Council and the Local Council with written notice thereof and an original, executed assumption of this Agreement. Any
sham transfer is a breach of this clause and shall not release Primary Employer from any of its obligations or undertakings under this Agreement.

11.2. This Article 11 shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure of Article 8.

12. MANAGEMENT RIGHTS

12.1. Primary Employer, and each other Employer, retain full and exclusive authority for the management of their work forces for all work performed under this Agreement. This authority includes, but is not limited to, the right to:

12.1.1. Plan, direct and control the operation of all the work.
12.1.2. Decide the number and types of employees required for the work in accordance with the Master Agreement.
12.1.3. Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required, and to select and hire directly all supervisory personnel above the classification of general foreman it considers necessary and desirable, without such persons being referred by the Union(s).
12.1.4. Primary Employer, and each other Employer, have the right to implement reasonable Project rules, security, and environmental and safety regulations consistent with the provisions of this Agreement, to implement Conditions of Certification imposed by the California Energy Commission, and to require all employees to observe said Project rules/regulations and Conditions of Certification. These rules/regulations and Conditions of Certification shall be supplied to the Unions, to all employees, and posted on the job site. A violation of the Project rules/regulations or Conditions of Certification is just cause for disciplinary action up to and including termination, subject to the applicable grievance procedure of this Agreement.
12.1.5. Determine the work methods and procedures.
12.1.6. Determine the competency of all employees.
12.1.7. Discharge, suspend or discipline employees for just cause. If an employee is discharged for chronic absenteeism, then said employee shall not be eligible for rehire on the same project for a period of not less than ninety (90) days.

12.1.8. Assign and schedule work and work shifts at its sole discretion, and determine when overtime will be worked. There shall be no refusal by a craft to perform work or work shifts assigned, including overtime work.

12.1.9. Utilize any work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designer (subject to Article 2), and to assign, subcontract (subject to Article 3) and schedule work at its discretion.

12.1.10. The Unions understand the extreme importance of maintaining construction quality and maintaining the construction schedule. The Unions also understand that construction errors or delays in construction result in the loss of production, which creates a great loss to Primary Employer. Therefore, the Unions will encourage and advise the employees to exhaust every effort, ways and means to perform work of good quality and quantity. The parties recognize the necessity for eliminating restrictions and promoting efficiency and agree that no rules, customs or practices, other than those provided in the Master Agreement, shall be permitted that limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an employee shall perform, nor shall there be any restrictions against the use of any kinds of machinery, tools or labor-saving devices. No rule or regulation shall be adopted that compromises employee safety. Nothing in this Agreement shall require any employee to engage in an unsafe work practice. Each Employer may utilize the most efficient methods or techniques of construction, tools or other labor saving devices to accomplish the work.

12.2. The controlled substance policy to be utilized on this Project shall be negotiated in good faith with the Local Council.
12.3. Primary Employer shall have the right to delineate the boundaries of the Project job site, including the designated location(s) of ingress and egress, parking lots and lay down areas. Primary Employer shall also have the right to implement a card swipe system (or other form of accountability) for all employees working on the Project site.

12.4. The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically set forth herein. Primary Employer, and each other Employer, shall at all times retain all management rights which may exist at law or by custom and which are not specifically limited or prohibited by the terms of this Agreement.

13. LABOR MANAGEMENT COOPERATION TRUST

13.1. Within ten (10) business days of the first hour of Covered Work being performed on the Project, Primary Employer shall contribute the sum of $150,000 to the California Construction Industry Labor-Management Cooperation Trust or its designee. After such payment is made, there shall be no further obligation by the Primary Employer or any other Employer(s) to make any contribution to the Trust.

14. GENERAL PROVISIONS

14.1. If any article or provision of this Agreement shall become invalid, inoperative and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or state government, the Employers and the State Council shall suspend the operation of such article or provision during the period of its invalidity, and the Primary Employer and the State Council shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision
negotiated by the Primary Employer and the State Council shall be binding on all parties signatory to this Agreement.

14.1.1. If the Primary Employer and the State Council are unable within thirty (30) calendar days to negotiate a substitute article or provision, either of them may at any time thereafter submit the matter directly to interest arbitration pursuant to the procedures set forth in Section 8.4, Step 4, and Sections 8.5 through 8.7. The Arbitrator shall have the authority to modify, amend and alter the Agreement by providing a substitute article or provision to replace the one(s) that have become invalid, inoperative or unenforceable. The Arbitrator's decision, and the new article or provision, shall be final and binding on all parties signatory to the Agreement.

14.2. If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

14.3. Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement of the Union having traditional and customary jurisdiction over the Covered Work shall apply.

14.4. The provisions of this Agreement shall take precedence over conflicting provisions of any Master Agreement or any other national, area or local collective bargaining agreement except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement and the National Cooling Tower Agreement; all instrument calibration work and loop checking Covered Work shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians and work within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreements of the International Union of Elevator Constructors; provided that Articles 6, 8 and 9 of this Agreement shall apply to all Covered Work.
14.5. Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

14.6. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.

14.7. To the fullest extent consistent with the applicable Master Agreement and trust agreement, it is agreed that any liability under this Agreement by Primary Employer, the State Council, the Local Council, a Union, or any other Employer shall be several and not joint. Any alleged breach of this Agreement by a party shall not affect the rights, liabilities, obligations, and duties among the other parties or between that party and any other party.

14.8. Any notices required under this Agreement shall be given as follows:

To Primary Employer:

Ed Warner, Project Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
Telephone: (209) 333-6370 ext. 100

With a copy to:

Scott W. Blek
Galati Blek LLP
100 N. Brand Blvd., Suite 618
Glendale, CA 91203
Telephone: (818) 476-0063

To the State Council:

Robert L. Balgenorth, President
State Building and Construction Trades Council of California
1225-8th Street, Suite 375
Sacramento, CA 95814
Telephone: 916-443-3302

To the Local Council:

Dave Thomas
Building and Construction Trades Council of San Joaquin, Calaveras, and Alpine Counties
P.O. Box 5306
Stockton, CA 95205
Telephone: (209) 467-1849
With a copy to:

Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
Telephone: 650-589-1660

Either party may notify the other in writing if its person designated to receive notice is changed.

15. HELMETS TO HARDHATS

15.1. The Employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (the “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and metering, support network, employment opportunities and other needs as identified by the parties.

15.2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

16. ANTI-DISCRIMINATION

16.1. During the performance of this Agreement, the Employers and the Unions shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious
creed, national origin, physical disability (including HIV and AIDS), mental
disability, medical condition (cancer), age (over 40), marital status, and denial of
family care leave. The Employers and the Unions shall insure that the evaluation
and treatment of their employees and applicants for employment are free from such
discrimination and harassment.

17. WAIVER

17.1. The parties hereby acknowledge that this Agreement is a lawful pre-
hire agreement within the meaning of Section 8(f) of the National Labor Relations
Act; and the Primary Employer and each other Employer hereby expressly waives
its right to contest, challenge, repudiate or void (hereinafter collectively “challenge”)
this Agreement, directly or indirectly, on any basis, in any proceeding before any
federal, state or local court, agency or other tribunal, including the National Labor
Relations Board, or before any arbitrator or hearing officer, including any challenge
to the validity of this Agreement that is raised as a defense to any action or claim
brought by the Unions. This Agreement shall be a complete defense to any such
challenge.

17.2. Primary Employer and each Employer further agrees that it shall not
solicit, finance or participate in any challenge to this Agreement by any other
person or entity. Payment of regular annual dues to an organization or association
does not constitute “solicitation,” “financing” or “participation in” a challenge as
those terms are used in this Agreement.

17.3. This Article shall be enforced pursuant to Article 8 of this Agreement
and any grievance shall commence at Step 3 of Section 8.4. The parties agree that
the economic damages to the Unions from a breach of this Article include the
reasonable fees and costs of defense.
18. TERM OF AGREEMENT

18.1. The term of this Agreement shall commence on the date indicated below as the date of execution, and shall continue in effect until completion of all Covered Work pursuant to Article 2.

18.2. In the event that the Application for Certification submitted to the California Energy Commission for the Project is withdrawn and the Application proceeding is terminated pursuant to 20 CCR § 1709.8, or the Application is denied by the California Energy Commission and the time periods for reconsideration under Public Resources Code § 25530 and appeal of the denial under Public Resources Code § 25531 have expired with no reconsideration granted or appeal sought, Primary Employer may notify the State Building Trades Council and the Local Building Trades Council and terminate this Agreement.

18.3. In the event construction of the Project is not commenced prior to the final deadline, without right of extension, for the commencement of construction established by the California Energy Commission, and prior to final expiration, without right to renew, of the authority to construct permit from the San Joaquin Valley Air Pollution Control District, Primary Employer may notify the State Building Trades Council and the Local Building Trades Council and terminate this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of ________________, 2009.

NORTHERN CALIFORNIA POWER AGENCY, Primary Employer: STATE BUILDING & CONSTRUCTION TRADES COUNCIL OF CALIFORNIA

By: Jim Pope, General Manager By: Robert L. Balgenorth, President

BUILDING & CONSTRUCTION TRADES COUNCIL OF SAN JOAQUIN,
CALAVERAS, AND ALPINE COUNTIES

By: Dave Thomas
ATTACHMENT A
AGREEMENT TO BE BOUND
PROJECT LABOR AGREEMENT
LODI ENERGY CENTER PROJECT

The undersigned hereby certifies and agrees that:

1.) It is an Employer as that term is defined in Section 1.4 of the Lodi Energy Center Project Labor Agreement ("Agreement") because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Sections 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.

3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.

4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.

5.) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Employer(s) at any tier with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: ___________  Name of Employer  ________________________________

(Authorized Officer & Title)  

(Address)  

2262-006a
The undersigned hereby adopt the Trust Agreement known as the California Construction Industry Labor-Management Cooperation Trust Agreement, hereinafter referred to as "Trust," and agree to be bound by the terms thereof. The undersigned employer Subscriber and Union hereby grant Powers of Attorney to the st as representatives of the employer and Union respectively, with full power and Board of Trustees now holding office, or to the successors, to administer the Tru authority to act for the employer and Union in all matters of administration of the Trust. In no event shall the Union or employer be responsible for any act or omission of the Trustees nor shall the Union or employer have any liability for any debt or liability of the Trust or its Trustees.

The employer Subscriber shall pay to the Trust the amount specified by the Agreement at the time specified by the Agreement. The undersigned employer Subscriber acknowledges that the failure by the employer to timely remit required contributions will result in liquidated damages being payable under the Trust Agreement to which the employer Subscriber is hereby bound.

The undersigned represent and warrant that they are authorized to execute this Agreement on behalf of their respective organizations and that by their respective execution of this Subscriber Agreement their respective organizations are fully bound hereto and the provisions of the Trust Agreement.

By: ____________________________  ____________________________
    Northern California Power Agency  Date

By: ____________________________  ____________________________
    State Building & Construction  Date
    Trades Council
MAINTENANCE LABOR AGREEMENT

FOR

THE LODI ENERGY CENTER PROJECT

LODI, CALIFORNIA
1. INITIAL PROVISIONS

1.1. This Maintenance Labor Agreement ("Agreement") is entered into by the Northern California Power Agency ("Primary Employer"), the State Building and Construction Trades Council of California ("State Council") and the Building and Construction Trades Council of San Joaquin, Calaveras, and Alpine Counties ("Local Council") and the local unions who have executed this Agreement, all of whom are referred to collectively as the "Unions."

1.2. The Lodi Energy Center Project (the "Project") is an approximately 255 MW power plant located in the City of Lodi, San Joaquin County, California. The Project is owned by the Northern California Power Agency ("Owner"). It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project and that this Agreement applies to the Project as it is finally approved by such entities and agencies.

1.3. The Primary Employer is a California Joint Power Agency. It is an employer in the construction industry. Its employees currently perform construction work and will perform construction work on the Project. It has a collective bargaining relationship with the International Brotherhood of Electrical Workers and Operating Engineers.

1.4. As provided below, all project managers, construction managers, contractors, subcontractors or other persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2), or authorizing another party to assign, award or subcontract Covered Work or performing Covered Work will be subject to this Agreement by executing Attachment A, the Employer Agreement to be Bound (all of whom, including the Primary Employer, are individually and collectively referred to as "Employer" or "Employers").

1.5. The Unions are labor organizations whose members are construction industry employees who generally work in close proximity to one another at
construction job sites and whose jobs are closely related and coordinated. Each of
the Unions is a party to a multi-employer collective bargaining agreement ("Master
Agreement") that covers the geographic area of the Project. Where the term Master
Agreement is used, it means the existing Master Agreement currently in effect as to
each of the Unions.

1.6. The Project will be a large, complex construction project that will
require periodic maintenance by skilled craft workers. A large pool of skilled labor
represented by the Unions will be required to execute the work involved in
maintaining the Project. Employers wish and it is the purpose of this Agreement to
ensure that a sufficient supply of skilled craft workers are available at the Project,
that all maintenance work and related work performed by the members of the
Unions on this Project shall proceed continuously, without interruption, in a safe
and efficient manner, economically with due consideration for the protection of labor
standards, wages and working conditions. In furtherance of these purposes and to
secure optimum productivity, harmonious relations between the parties and the
orderly performance of the work, the parties to this Agreement agree to establish
adequate and fair wage levels and working conditions.

1.7. It is a central purpose of the parties in executing this Agreement to
protect the Project against the jobsite friction that could arise at a common-situs
jobsite if union employees had to work alongside non-union employees in their own
craft or in those other crafts with which they generally work in close proximity
performing work that is closely related and coordinated. This Agreement
accomplishes this purpose by ensuring that all Covered Work will be performed by
workers who are union members. In the event that any construction work falls
outside the scope of this Agreement, the Primary Employer further protects itself
from the natural result of jobsite friction by prohibiting all strikes, picketing or
similar activity for any reason whatsoever, and by imposing severe penalties on any
Union that violates this prohibition.
1.8. In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with the management of the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement.

2. SCOPE OF AGREEMENT

2.1. This Agreement applies to the Project and includes all planned outage maintenance, major overhauls, and other maintenance work performed on the Project that is contracted out to a contractor in the construction industry. All work within the scope of this Agreement is referred to as "Covered Work."

2.2. The following work is excluded from the scope of this Agreement:

2.2.1. Work which is performed by an Original Equipment Manufacturer's ("OEM") labor forces for warranty, repair or maintenance on the vendor's equipment if required by the OEM's warranty agreement between the OEM and the Owner.

2.2.2. Construction or repair work performed by the Primary Employer's general or EPC contractor under a Project Labor Agreement approved by the Councils and the Owner.

2.2.3. Work performed by technical representatives or technicians performing specialized work on equipment where such employees have special or unique skills or experience on that equipment which employees represented by the Unions do not possess.

2.2.4. Work performed by non-construction craft employees.

2.2.5. Work performed by Primary Employer's regular workforce.

2.2.6. Work performed by Pacific Gas & Electric or another utility or local water purveyor.

2.2.7. Work performed on the existing 49.9 MW steam injected gas turbine adjacent to the Project site.
2.2.8. Worked that is performed in the existing 230 KV Switchyard.

2.2.9. Work performed on the existing waste water treatment plant adjacent to the Project site.

2.2.10. Work that is immediately necessary to repair a unit or piece of equipment as the result of an emergency, act of God or other sudden unexpected events outside of the control of the Primary Employer.

2.2.11. Work if, at the time the work is to be performed, union signatory contractors are not reasonably available to bid the work.

3. **SUBCONTRACTING**

3.1. Primary Employer and each other Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract is executed, has become a party to this Agreement by executing Attachment A, the Employer Agreement to be Bound.

3.2. Primary Employer and each other Employer agree that they will subcontract Covered Work only to a person, firm, corporation or other entity who is or becomes party to this Agreement and who is or becomes signatory to either a local, area or regional Master Agreement with the craft Union having traditional and customary building trades craft jurisdiction over the work or, only in the case of a national contractor, a national agreement with the International Union(s) of the craft Union(s) having traditional and customary jurisdiction over the work. Any Employer (including Primary Employer) performing Covered Work on the Project shall, as a condition to working on the Project, perform all work under the terms of this Agreement and the applicable Master Agreement, and, except for a contractor signatory to a national agreement, become signatory to the applicable Master Agreement. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing
Attachment A, the Employer Agreement to be Bound. Every Employer shall notify the Local Council and the State Council in writing within five business days after it has subcontracted work, and shall at the same time provide to the Local Council and the State Council a copy of the executed Employer Agreement to be Bound.

3.3. Notwithstanding Section 3.2, any Employer not already bound to a Master Agreement, who signs and becomes bound to a Master Agreement to participate on this Project, shall not be required to apply the terms of that Master Agreement to any other construction project in which that Employer is already engaged or which that Employer has already been contractually bound to perform.

3.4. Nothing in this Agreement shall in any manner whatsoever limit the rights of the Primary Employer, or any other Employer, to subcontract Covered Work or to select its contractors or subcontractors; provided, however, that all Employers, at all tiers, assigning, awarding, contracting or performing, or authorizing another to assign, award, contract or perform Covered Work shall be required to comply with the provisions of this Agreement. Primary Employer and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement and the Master Agreement. Any Employer that fails to provide the Local Council and State Council with the Employer Agreement to be Bound executed by its contractor or subcontractor shall be liable for any failure of that contractor or subcontractor, or any contractor or subcontractor at a lower tier, to comply with the provisions of this Agreement, including any contributions to any trust funds that the contractor or subcontractor, or any subcontractor to that subcontractor, fails to make.

4. WAGES AND BENEFITS
4.1. All employees covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages, other compensation including but not limited to travel, subsistence, and shift premium pay, and contributions made on their behalf to multi-employer trust funds, all in accordance with the then current multi-employer Master Agreement of the applicable Union.

4.2. Any special interest bargaining which establishes wage rates, classifications, zones, or wage escalations which apply exclusively to the Project will not be recognized. In addition, there shall be no redlining of the Project in any future multi-employer collective bargaining agreements by singling out, either by name or by effect, the Project or the Employers for less favorable wages, benefits or working conditions than are generally accorded other industrial projects in the same general geographic area.

5. UNION RECOGNITION

5.1. The Employers recognize the Unions signatory to this Agreement as the sole and exclusive collective bargaining agents for their respective construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of each Union.

5.2. All employees performing Covered Work shall be or shall become and then remain members in good standing of the appropriate Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.

5.3. The Unions shall be the source of all craft employees for Covered Work for the Project. Employers agree to be bound by the hiring and layoff practices of the respective Union, including hiring of apprentices, and to utilize its registration facilities and referral systems.

5.4. In the event the referral facilities maintained by the Unions do not refer the employees as requested by the Employer within a forty-eight (48) hour
period after such requisition is made by the Employer (Saturdays, Sundays and holidays excepted), the Employer may employ applicants from any source.

5.5. Each Union shall have the right to designate one working journeyperson per shift as a steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. Each steward shall be concerned with the employees of the steward’s Employer and not with the employees of any other Employer. A steward at the appropriate time of day shall be allowed sufficient time to perform his duties. This provision shall not be abused.

6. WORK STOPPAGES AND LOCKOUTS

6.1. During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, interference with the work or other disruptive activity for any reason by the Union or by any employee, and there shall be no lockout by any Employer. Failure of any Union or employee to cross any picket line established at the Employer’s project site is a violation of this Article.

6.2. The Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and, if justifiably discharged for the above reasons, shall not be eligible for rehire on the same project for a period of not less than ninety (90) days.

6.3. The Union shall not be liable for acts of employees for which it has no responsibility. The principal officer or officers of a Union will immediately instruct, order and use the best efforts of his office to cause the employees the Union represents to cease any violations of the Article. A Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The
failure of the Employer to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

6.4. The Union(s) agrees that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal and refuse to honor such picket line or work stoppage.

6.5. In the event of any work stoppage, strike, sympathy strike, picketing interference with the work or other disruptive activity in violation of this Article, the Employer may suspend all or any portion of the Project work affected by such activity at the Employer’s discretion and without penalty.

6.5.1. Any Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another Union which is in violation of this Article agrees, as a remedy for said violation, to pay liquidated damages in accordance with Section 6.6.8 of this Article.

6.6. In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union(s) and/or local union(s) has been notified of the fact.

6.6.1. The party invoking this procedure shall notify Norman Brand or Joe Grodin who the parties to this agreement agree shall be the permanent Arbitrators under this procedure. In the event that either of the permanent Arbitrators is unavailable at any time, the American Arbitration Association shall select an alternative arbitrator within twenty-four (24) hours of notice. Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means to the party alleged to be in violation and the involved International Union President and or local union.

6.6.2. Upon receipt of said notice, the Arbitrators named above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists.
6.6.3. The Arbitrator shall notify the parties by fax or electronic means or any other effective written means of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

6.6.4. The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article by the Union, and such Award shall be served on all parties by hand or registered mail upon issuance.

6.6.5. Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinafore in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator’s Award as issued under Section 6.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party’s right to participate in a hearing for a final order of enforcement. The Court’s order or orders enforcing the Arbitrator’s Award shall be served on all parties by hand or by delivery to their last known address or by registered mail.

6.6.6. Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

6.6.7. The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.
6.6.8. If the Arbitrator determines that a violation has occurred in accordance with Section 6.6.4 above, the party or parties found to be in violation shall pay as liquidated damages the following amounts: for the first shift in which the violation occurred, $20,000; for the second shift, $25,000; for the third shift, $30,000; for each shift thereafter on which the craft has not returned to work, $30,000 per shift. The Arbitrator shall retain jurisdiction to determine compliance with this section and this Article.

6.7. The procedures contained in Section 6.6 shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article 8.

6.8. Notwithstanding the provisions of Section 6.1 above, it is agreed that with twenty-four (24) hour prior notice to the Primary Employer, a Union retains the right to withhold the services of its members from a particular contractor or subcontractor who fails to make timely payments to the Union's benefit plans or fails to timely pay its weekly payroll in accordance with its agreements with the Union; provided, however, that in the event the Union or any of its members withhold their services from such contractor or subcontractor, Primary Employer shall have the right to replace such contractor or subcontractor with any other contractor or subcontractor who executes the Agreement to be Bound.

6.9. It will not be a violation of this Agreement when the Employer considers it necessary to shut down to avoid the possible loss of human life because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Employer requests employees to wait in a designated area available for work, the employees will be compensated for the waiting time.
6.10. In the event that any applicable labor agreement expires and the parties to that agreement fail to reach agreement on a new contract by the date of expiration, a Union shall continue to provide employees to the Employers working on the Project under all the terms of the expired agreement until a new agreement is negotiated, at which time all terms and conditions of that new agreement shall be applied to Covered Work at the Project, except to the extent they conflict with any provision of this Agreement. In addition, if the new labor agreement provides for wage or benefit increases, then any Employer shall pay to its employees who performed Covered Work at the Project during the hiatus between the effective dates of such labor agreements, an amount equal to any such wage and benefit increases established by the new labor agreement for such work performed.

7. HOURS OF WORK AND HOLIDAYS

7.1. The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for lunch. Common start times may be established by the Employer during this window period. Proposed modifications to the standard work day may be submitted by an Employer to the Local Council for approval. This approval shall not be unreasonably withheld. The standard work week shall be five (5) consecutive days of work commencing on Monday. Proposed modifications to the standard work week may be submitted by an Employer to the Local Council for approval. The Local Council shall respond within five (5) working days and bargain in good faith over any such proposed modification. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.

7.2. Common shifts may be established when considered necessary by the Employer. The Employer shall provide at least one week notice to the Local Council prior to any change in shift time. Any shifts established shall continue for the established work week.
7.3. Recognized holidays shall be as follows: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day. No other holidays or black-out dates will be recognized. In the event a holiday falls on Saturday, the previous day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate rate; but in no case shall such overtime rate be more than double the straight time rate.

8. GRIEVANCE PROCEDURE

8.1. It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than jurisdictional disputes or successorship) shall be considered a grievance. Questions between or among parties signatory to a Master Agreement arising out of or involving the interpretation of a Master Agreement shall be resolved under the grievance procedure provided in that Master Agreement.

8.2. The Primary Employer and other Employers, as well as the Unions, may bring forth grievances under this Article.

8.3. A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or was discovered, whichever is later. The term “working days” as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.

8.4. Grievances shall be settled according to the following procedure, except that grievances that do not involve an individual grievant shall be discussed by the Primary Employer, State Council and Local Council and then, if not resolved within five (5) working days of written notice unless extended by mutual consent, commence at Step 4:
Step 1
The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the Grievance has been brought to the attention of the Employer.

Step 2
In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager(s) of the Union(s) affected and the site construction manager or Labor Relations representative of the Employer(s) for discussion and resolution. A copy of the written grievance shall also be mailed, faxed, or emailed to the Primary Employer.

Step 3
In the event the matter remains unresolved in Step 2 above within five (5) working days, within five (5) working days thereafter, the grievance may be referred in writing to the Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative and the Primary Employer for discussion and resolution.

Step 4
If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Primary Employer. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. Primary Employer shall keep a record of the sequence and
shall notify the parties to the grievance as to which party has the right to strike a name first.

8.5. The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.

8.6. Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the Primary Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.

8.7. The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.

8.8. The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and, except as provided in Section 13.1.1, the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.

8.9. Any party to a grievance may invite the Primary Employer to participate in resolution of a grievance. The Primary Employer may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.

8.10. In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or faxed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance, and any
written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or faxed during the extended time period.

9. **JURISDICTIONAL DISPUTES**

9.1. The assignment of work will be solely the responsibility of the Employer performing the work involved, and shall be made in accordance with traditional and customary building trades craft jurisdiction. All jurisdictional disputes between or among the Unions and their employees, parties to this Agreement, shall be settled and adjusted according to the plan described in this Article 9. Decisions rendered shall be final, binding and conclusive on the Employers involved and the Unions that are parties to this Agreement. Provisions of Section 6.1 apply to any issues associated with jurisdictional disputes.

9.2. A party challenging an assignment shall notify all affected Unions, the Employer and the Local Council, by facsimile, within two (2) days of the time that a dispute occurs. All disputes involving craft work assignments shall be referred to the Local Council which shall convene a meeting with the affected Unions and Employer within two (2) days. Should the Local Council, the affected Unions and the Employer fail to resolve the dispute within five (5) working days from the date they were notified of the dispute, then the matter shall be immediately referred to the affected International Unions with which the local unions are affiliated and they and the Employer shall have the opportunity to resolve the dispute.

9.3. Should the International Unions and the Employer fail to resolve the dispute within five (5) work days from the date they were notified of the dispute, then the matter shall be referred by facsimile by any International Union or Employer directly involved in the dispute for arbitration to the arbitrator chosen by the International Unions from among Gerald McKay, Thomas Angelo, William Riker and Emily Maloney, to resolve jurisdictional disputes under this procedure. If none of these arbitrators is available, an arbitrator shall be selected as provided in Section 8.4, Step 4.
9.4. The arbitrator will set and hold a hearing within seven (7) days of the referral to him or her. The arbitrator shall notify the Employer and the appropriate International Unions by facsimile of the place and time chosen for the hearing. A failure of any party or parties to attend said hearing without good cause, as determined by the arbitrator, shall not delay the hearing of evidence or issuance of a decision by the arbitrator. The time period set forth herein can be extended by mutual agreement of the parties in writing.

9.5. The arbitrator shall issue a decision within three (3) days after the case has been closed. The decision of the arbitrator shall be final and binding on all parties to the dispute. This action of the arbitrator shall be predicated upon the particular facts and evidence presented regarding this dispute and shall be effective only on this particular job.

9.6. In rendering the decision, the arbitrator shall determine first whether a previous decision or agreement of record between the parties to the dispute governs. If the arbitrator finds that the dispute is not covered by an appropriate or applicable decision or agreement of record, the arbitrator shall then consider whether there is an applicable agreement between the crafts governing the case. If no such agreement is in effect, the arbitrator shall then consider the established trade practice and prevailing practice in the locality.

9.7. The arbitrator is not authorized to award back pay or any damages for a mis-assignment of work, except for a willful violation of a well established jurisdiction. Nor may any party to this procedure bring an independent action for back pay or any other damages based upon a decision of the arbitrator.

9.8. Each party to the arbitration shall bear its own expense for the arbitration. The fees and expenses of the arbitrator will be shared equally by the affected International Unions and the Employer.

9.9. The Employer shall not be subject to disputes regarding work assignments made by its subcontractors. However, the Employer must ensure that its subcontractors performing work under the terms and conditions of this
Agreement follow the procedures of this Article.

10. JOINT LABOR/MANAGEMENT MEETINGS

10.1. During the period of any Covered Work performed under this Agreement, an initial joint Labor/Management meeting will be held before the particular work commences, and thereafter joint meetings will be held as needed between the Primary Employer, the other Employers, the Local Council and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the craft workers and contractors performing work at the Project. These meetings will also include discussion of safety, craft resource requirements, scheduling and productivity of work performed at the Project.

10.2. A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each Employer's contract. When a contract has been let to an Employer(s) covered by this Agreement, a Pre-Job Conference and/or Mark-Up Meeting shall be required upon request of any Union, Employer or the Primary Employer.

11. SUCCESSORSHIP AND SURVIVABILITY

11.1. This Agreement is and shall be binding and legally effective upon (i) any successor to Primary Employer, whether by merger, consolidation, acquisition or otherwise, and (ii) any person or entity that acquires all or any portion of Primary Employer's right, title or interest in the Project whether by sale, lease, or other transfer, or contribution to partnership, joint venture or other entity. Any agreement for a sale, lease, contribution or other transfer of the Project by the Primary Employer, or an agreement for a merger or acquisition including ownership or control of Primary Employer, shall include an express assumption of the obligations and undertakings of Primary Employer under this Agreement, including this successorship provision. Within ten (10) days following the close of any sale,
acquisition, merger, lease or other transfer covered by this Section 11.1, Primary Employer shall provide the State Council and the Local Council with written notice thereof and an original, executed assumption of this Agreement. Any sham transfer is a breach of this clause and shall not release Primary Employer from any of its obligations or undertakings under this Agreement.

11.2. This Article 11 shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure of Article 8.

12. LABOR MANAGEMENT COOPERATION TRUST

12.1. Each Employer at every tier who performs work within the scope of this Agreement shall contribute the sum of twenty five cents ($0.25) per hour for each hour paid for or worked by employees, and shall remit that sum by payment postmarked no later than the 15th of the month following the month in which those hours were paid for or worked, directly to the California Construction Industry Labor-Management Cooperation Trust or its designee. Each Employer shall execute a Subscriber Agreement covering these contributions, a copy of which is attached as Attachment B.

13. GENERAL PROVISIONS

13.1. If any article or provision of this Agreement shall become invalid, inoperative and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or state government, the Employers and the State Council shall suspend the operation of such article or provision during the period of its invalidity, and the Primary Employer and the State Council shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision
negotiated by the Primary Employer and the State Council shall be binding on all parties signatory to this Agreement.

13.1.1. If the Primary Employer and the State Council are unable within thirty (30) calendar days to negotiate a substitute article or provision, either of them may at any time thereafter submit the matter directly to interest arbitration pursuant to the procedures set forth in Section 8.4, Step 4, and Sections 8.5 through 8.7. The Arbitrator shall have the authority to modify, amend and alter the Agreement by providing a substitute article or provision to replace the one(s) that have become invalid, inoperative or unenforceable. The Arbitrator's decision, and the new article or provision, shall be final and binding on all parties signatory to the Agreement.

13.2. If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

13.3. Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement of the Union having traditional and customary jurisdiction over the Covered Work shall apply.

13.4. The provisions of this Agreement shall take precedence over conflicting provisions of any Master Agreement or any other collective bargaining agreement.

13.5. Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

13.6. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.
13.7. To the fullest extent consistent with the applicable Master Agreement and trust agreement, it is agreed that any liability under this Agreement by Primary Employer, the State Council, the Local Council, a Union, or any other Employer shall be several and not joint. Any alleged breach of this Agreement by a party shall not affect the rights, liabilities, obligations, and duties among the other parties or between that party and any other party.

13.8. Any notices required under this Agreement shall be given as follows:

To Primary Employer:

Ed Warner, Project Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
Telephone: (209) 333-6370 ext. 100

To the State Council:

Robert L. Balgenorth, President
State Building and Construction Trades Council of California
1225-8th Street, Suite 375
Sacramento, CA 95814
Telephone: 916-443-3302

With a copy to:

Scott W. Blek
Galati Blek LLP
100 N. Brand Blvd., Suite 618
Glendale, CA 91203
Telephone: (818) 476-0063

To the Local Council:

Building and Construction Trades Council of San Joaquin, Calaveras, and Alpine Counties
P.O. Box 5306
Stockton, CA 95205
Telephone: (209) 467-1849
With a copy to:

Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
Telephone: 650-589-1660

Either party may notify the other in writing if its person designated to receive notice is changed.

14. ANTI-DISCRIMINATION
14.1. During the performance of this Agreement, the Employers and the Unions shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Employers and the Unions shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

15. WAIVER

15.1. The parties hereby acknowledge that this Agreement is a lawful pre-hire agreement within the meaning of Section 8(f) of the National Labor Relations Act; and the Primary Employer and each other Employer hereby expressly waives its right to contest, challenge, repudiate or void (hereinafter collectively “challenge”) this Agreement, directly or indirectly, on any basis, in any proceeding before any federal, state or local court, agency or other tribunal, including the National Labor Relations Board, or before any arbitrator or hearing officer, including any challenge to the validity of this Agreement that is raised as a defense to any action or claim brought by the Unions. This Agreement shall be a complete defense to any such challenge.

15.2. Primary Employer and each Employer further agrees that it shall not solicit, finance or participate in any challenge to this Agreement by any other person or entity. Payment of regular annual dues to an organization or association does not constitute “solicitation,” “financing” or “participation in” a challenge as those terms are used in this Agreement.

15.3. This Article shall be enforced pursuant to Article 8 of this Agreement and any grievance shall commence at Step 3 of Section 8.4. The parties agree that the economic damages to the Unions from a breach of this Article include the reasonable fees and costs of defense.
16. TERM OF AGREEMENT

16.1. This Agreement shall be effective upon commencement of commercial operation of the Project, and shall continue for thirty (30) years thereafter (the "Term"). This Agreement will be reviewed and revised if necessary by the State Council, Local Council and Primary Employer every ten (10) years during the Term. Any revisions, deletions or additions at that time will be agreed to by all three parties.

16.2. In the event that the Application for Certification submitted to the California Energy Commission for the Project is withdrawn and the Application proceeding is terminated pursuant to 20 CCR § 1709.8, or the Application is denied by the California Energy Commission and the time periods for reconsideration under Public Resources Code § 25530 and appeal of the denial under Public Resources Code § 25531 have expired with no reconsideration granted or appeal sought, Primary Employer may notify the State Building Trades Council and the Local Building Trades Council and terminate this Agreement.

16.3. In the event construction of the Project is not commenced prior to the final deadline, without right of extension, for the commencement of construction established by the California Energy Commission, and prior to final expiration, without right to renew, of the authority to construct permit from the San Joaquin Valley Air Pollution Control District, Primary Employer may notify the State Building Trades Council and the Local Building Trades Council and terminate this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of ______________________, 2009.

NORTHERN CALIFORNIA POWER AUTHORITY, Primary Employer: STATE BUILDING & CONSTRUCTION TRADES COUNCIL OF CALIFORNIA
By: Jim Pope, General Manager

By: Robert L. Balgenorth, President

BUILDING & CONSTRUCTION TRADES COUNCIL OF SAN JOAQUIN, CALAVERAS, AND ALPINE COUNTIES

By: Dave Thomas
ATTACHMENT A
AGREEMENT TO BE BOUND

MAINTENANCE LABOR AGREEMENT
LODI ENERGY CENTER PROJECT

The undersigned hereby certifies and agrees that:

1.) It is an Employer as that term is defined in Section 1.4 of the Lodi Energy Center Project Maintenance Labor Agreement ("Agreement") because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Sections 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.

3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.

4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.

5.) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: ___________ Name of Employer

________________________________________
(Authorized Officer & Title)

________________________________________
(Address)
ATTACHMENT B
SUBSCRIBER AGREEMENT

The undersigned hereby adopt the Trust Agreement known as the California Construction Industry Labor-Management Cooperation Trust Agreement, hereinafter referred to as "Trust," and agree to be bound by the terms thereof. The undersigned employer Subscriber and Union hereby grant Powers of Attorney to the Board of Trustees now holding office, or to the successors, to administer the Trust as representatives of the employer and Union respectively, with full power and authority to act for the employer and Union in all matters of administration of the Trust. In no event shall the Union or employer be responsible for any act or omission of the Trustees nor shall the Union or employer have any liability for any debt or liability of the Trust or its Trustees.

Commencing on the first day of work under the attached Agreement, and payable not later than the 15th day of each month thereafter, the employer Subscriber shall pay to the Trust the amount specified by the Agreement for all hours worked under the Agreement by the employees of the employer Subscriber for which contributions to the Trust are required by the Agreement. The undersigned employer Subscriber acknowledges that the failure by the employer to timely remit required contributions will result in liquidated damages being payable under the Trust Agreement to which the employer Subscriber is hereby bound.

The undersigned represent and warrant that they are authorized to execute this Agreement on behalf of their respective organizations and that by their respective execution of this Subscriber Agreement their respective organizations are fully bound hereto and the provisions of the Trust Agreement.

By: ____________________________  ____________________________
    Employer/Subscriber                Date

By: ____________________________  ____________________________
    State Building & Construction    Date
    Trades Council

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