

AMENDMENT
TO
~~JOINT POWERS AGREEMENT~~
UTICA POWER AUTHORITY

THIS AGREEMENT made and entered into this ~~Sunday~~ Friday of July, 1996, pursuant to Section 7.1 of the Utica Power Authority (Authority) Joint Powers Agreement (JPA) dated December 20, 1995, is for the purpose of amending Sections 4.5.a. and 4.6 of the Authority's JPA.

RECITALS

WHEREAS, the Authority's JPA under Section 7.1 provides for the amendment of the Joint Powers Agreement.

WHEREAS, Section 5.2.a. states the Joint Powers Agreement may be amended at such time as the details of any change in the Project and its financing and the allocation of costs and benefits becomes sufficiently known to permit them to be described in such an amendment.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Section 4.5.a and Section 4.6 are hereby amended per the attached.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

CALAVERAS COUNTY WATER DISTRICT

ATTEST:

W. Blooley
President

Mona Wacker 7/15/96
Assistant Secretary Dated:

CITY OF ANGELES

ATTEST:

Harold Foland
Mayor

Debra King 7-15-96
Deputy City Clerk Dated:

UNION PUBLIC UTILITY DISTRICT

ATTEST:

William J. Riedel
President

Marion Redding 7/15/96
Secretary Dated:

Section 4.5. Contributions for Authority Operating Expenses.

a. ~~CCWD shall provide the initial commitment of funds of \$500,000 for expenses of administration and operation and to further the purposes of the Authority set forth in this Agreement. This amount includes legal, engineering and financial consultant expenses incurred by CCWD before the date of this Agreement towards the acquisition of the Projects. This initial commitment of funds is an equal obligation of the Member Entities to this Agreement and Member Entities other than CCWD shall repay their share of this amount to CCWD with interest at the rate of 8.5% per annum, prior to receiving any share of Project revenues.~~ CCWD's commitment of funds for acquisition and startup activities and for equity ownership in the Project shall be repaid according to the Agreement to Terms of Grant/Loan between Calaveras County Water District and the Utica Power Authority dated June 25, 1996. If additional funds are needed in the future to cover expenses, each of the Member Entities shall equally pay such expenses upon request from the Board of Directors as the expenses are incurred. The Authority shall send each Member Entity a statement for its share of operating expenses which is to be paid by the Member Entity. Any party which does not transmit its contributions within 30 days after receipt of a statement from the Authority shall be sent a follow-up notice demanding its payment within 10 days from its receipt of the notice. If the Member Entity does not make adequate arrangements with the Authority to make such payment, that Member Entity shall be deemed to have withdrawn as a Member Entity and cease to be a party to this Agreement. No refund or repayment of any portion of the initial commitment of funds described in this section that has theretofore been encumbered by the Authority shall be made to a Member Entity ceasing to be a party to this Agreement whether pursuant to this Section or any other Section of this Agreement. The refunds or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made.

Alternative 1
Amendments to Section 4.6
UPA Joint Powers Agreement

Section 4.6. Sharing of Project Capital Costs, Operating Costs and Liabilities, and Net Revenues

- a. As between each other, CCWD, ANGELS and UPUD shall each be financially obligated for one-third (1/3) of the purchase price under the CCWD/PG&E Purchase Agreement, other than that portion which is to be paid by NCPA pursuant to the NCPA Agreement, with a right of contribution in each Member Entity from each other Member Entity in the event the first Member Entity should pay more than its one-third (1/3) share, such that the total amount paid is borne equally by all three Member Entities.
- b. Notwithstanding the foregoing, with respect to that certain Loan Agreement dated as of July _____, 1996 (the "Loan Agreement") by and between LaSalle National Bank (together with its assigns under the Loan Agreement, "LNB") and the Authority, LNB shall be entitled to proceed against CCWD directly for the full amount owed in the event of default under the Loan Agreement as CCWD hereby agrees that it is liable for the prompt payment and performance by the Authority of all of its obligations under the Loan Agreement.
- c. In the event that, as a result of a default by the Authority under the Loan Agreement and the liability of CCWD, CCWD pays more than another Member Entity, CCWD shall have the right to seek contribution and reimbursement from such Member Entity such that the total amount paid is borne equally by all three Member Entities.
- d. CCWD, ANGELS, and UPUD shall share on an annual basis in proportion to each of their one-third (1/3) Project participations, the net revenues from the sale of the Project's electric energy, and the net revenues from the sale of Project water sold to generate electrical energy at the Collierville power plant, available after payment of debt service under the Loan Agreement, all required annual payments of capital costs and all other operation, maintenance and replacement costs of the Project, accumulation of an Operations and Capital Reserve Fund, and full repayment of any loans or advances of funds made by any Member Entity to another Member Entity.
- e. As between each other, CCWD, ANGELS, and UPUD shall each be financially obligated for one-third (1/3) of all operation, maintenance, and replacement costs of the Project, all costs of maintaining the Project in compliance with requirements of the FERC or other regulatory authority, and any other expenses of the Authority, with a right of contribution in each Member Entity from each other Member Entity in the event the first Member Entity should pay more than its one-third (1/3) share, such that the total amount paid is borne equally by all three Member Entities.
- f. In the event of the withdrawal of a Member Entity as set forth in Section 4.5 or 6.4, such withdrawing entity shall remain obligated and liable to the Authority, and the remaining Member Entities, for its one-third (1/3) share of the capital costs of the Project, and, for the life of any obligation incurred by the Authority to finance the purchase of the Project, shall remain liable to perform the obligations described in Section 4.6(a) of this Agreement. If CCWD withdraws, it shall remain liable to LNB under the Agreement as provided in Section 4.6(b) and to CCWD under Section 4.6(c). The withdrawing Member Entity shall also be liable to the Authority for one-third (1/3) of any accumulated operating deficits and liabilities incurred by the Authority up until the effective date of the withdrawal. The withdrawing party shall not be entitled to any Project revenues received by the Authority after its withdrawal, except that the withdrawing Member Entity will be entitled to repayment, without interest, of its contributions made under Section 4.5

out of the first twenty-five percent (25%) of net revenues each year, after payment of any loans or advances the Authority has received from other Member Entities.

- g. The withdrawal of any Member Entity does not terminate this Agreement, and in the event of withdrawal of any Member Entity as set forth in Sections 4.5 or 6.4, and subject to the obligations set forth in subsection "f," the remaining Member Entities shall assume and be equally, jointly and severally liable for the withdrawing Member's Project liabilities to third parties.
- h. CCWD's liabilities hereunder, including without limitation, the CCWD liability to LNB for the full amount owed under the Loan Agreement in the event of default thereunder, shall be subordinated to all existing obligations of CCWD and shall not restrict, in any manner, the ability of CCWD to incur additional obligations which are senior to the obligations created hereunder, so long as LNB shall have been given not less than 30 days prior written notice of incurrence of the additional obligations by CCWD, which notice is accompanied with a certificate of an authorized representative of CCWD to the effect that CCWD's net revenues (which shall include for this purpose all revenues, including, without limitation, investment income, of CCWD less operation and maintenance expenses, and projected net revenues from any capital facilities to be financed with such obligations) for the most recent fiscal year for which audited financial statements are available were equal to 1.10 times the total of maximum scheduled annual debt service on (i) CCWD's outstanding debt; (ii) the debt service on the additional obligations proposed to be incurred; and (iii) the Loan Agreement less the Authority's net revenues for such period (including contributions to the Authority by other Member Entities). If such certificate conforms hereto in form and substance, LNB's prior consent shall not be required for any such issuance of obligations.
- i. The obligations of CCWD in favor of LNB under this Section 4.6 shall be (i) irrevocable, (ii) absolute and unconditional in all events, (iii) direct, immediate and primary, and (iv) one of payment and not just collection. In the event of default under the Loan Agreement, LNB shall be under no obligation to pursue its rights against the Authority or any of the collateral of the Authority before pursuing LNB's rights against CCWD. CCWD hereby assents to any and all amendments, waivers, modifications, and releases of or under the Loan Agreement. CCWD hereby acknowledges and agrees that LNB is an express third party beneficiary of CCWD's agreements contained herein and that LNB may enforce any such agreement against CCWD without notice in the event of default under the Loan Agreement and that LNB's rights are assignable. CCWD shall not assert any claim, counterclaim, right of setoff or recoupment in a suit by LNB.
- j. CCWD shall have full discretion to make payments hereunder from whatever source is legally available for the purpose, including without limitation, investments, grants, gifts, tax revenues, enterprise revenues, General or other Funds, or any other legally available source of any kind whatsoever; *provided*, that if CCWD does not make full payment from such sources, CCWD will fix, prescribe and collect rates, fees and charges for water furnished, made available or sold by CCWD to produce revenue ("Water System Revenue") that, together with any other legally available funds of CCWD, will be sufficient to pay in each fiscal year (i) CCWD's obligations hereunder (but only to the extent that the Authority's net revenues are insufficient to pay the expenditures to which such obligations relate) and (ii) any debt service or payments due under other obligations of CCWD having a right to payment from Water System Revenue senior to or on parity with the obligations of CCWD created under this Section 4.6. Unrestricted investments, cash and amounts available in reserve accounts or General or other Funds maintained by CCWD shall be counted as available funds for this purpose. CCWD's Water System Revenue is hereby pledged to the punctual payment of its obligations hereunder.
- k. So long as any installment payments remain outstanding under the Loan Agreement, unless the written consent of LNB is obtained, CCWD agrees as follows:

- i. to maintain its existence as a political subdivision or municipal corporation under the laws of the State of California, and shall not voluntarily merge into or consolidate with any other entity;
 - ii. to keep, and observe and perform all valid and lawful obligations or orders or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board or commission having jurisdiction or control over it as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by it including its right to exist and carry on business, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired; provided, however, that it shall not be required to comply with any such orders so long as the validity of application thereof shall be contested in good faith; and
 - iii. to at all times maintain and keep, or cause to be maintained or kept, proper books or records and accounts in which there shall be made full and correct entries of all transactions relating to the financial obligations under this Agreement and its financial affairs generally. In the event so requested in writing, such books or records shall be made available to the Authority.
- I. This Section 4.6 cannot be amended without the prior written consent of LNB, so long as the Loan Agreement is outstanding.

Alternative 2
Section 4.6 ~~Consolidation~~ Amendments to Section 4.6
UPA Joint Powers Agreement

Section 4.6. Sharing of Project Capital Costs, Operating Costs and Liabilities, and Net Revenues

- a. As between each other, CCWD, ANGELS and UPUD shall each be financially obligated for one-third (1/3) of the purchase price under the CCWD/PG&E Purchase Agreement, other than that portion which is to be paid by NCPA pursuant to the NCPA Agreement, with a right of contribution in each Member Entity from each other Member Entity in the event the first Member Entity should pay more than its one-third (1/3) share, such that the total amount paid is borne equally by all three Member Entities.
- b. Notwithstanding the foregoing, with respect to that certain Loan Agreement dated as of July 18, 1996 (the "Loan Agreement"), by and between LaSalle National Bank (together with its assigns under the Loan Agreement, "LNB") and the Authority, LNB shall be entitled to proceed against each Member Entity jointly and severally directly for the full amount owed in the event of default under the Loan Agreement, as each Member Entity hereby agrees that it is jointly and severally liable for the prompt payment and performance by the Authority of all of its obligations under the Loan Agreement.
- c. In the event that, as a result of a default by the Authority under the Loan Agreement and the joint and several liability of each Member Entity, any Member Entity pays more than another Member Entity, the first Member Entity shall have the right to seek contribution and reimbursement from such other Member Entity, such that the total amount paid is borne equally by all three Member Entities.
- d. CCWD, ANGELS, and UPUD shall share on an annual basis in proportion to each of their one-third (1/3) Project participations, the net revenues from the sale of the Project's electric energy, and the net revenues from the sale of Project water sold to generate electrical energy at the Collierville power plant, available after payment of debt service under the Loan Agreement, all required annual payments of capital costs and all other operation, maintenance and replacement costs of the Project, accumulation of an Operations and Capital Reserve Fund, and full repayment of any loans or advances of funds made by any Member Entity to another Member Entity.
- e. As between each other, CCWD, ANGELS, and UPUD shall each be financially obligated for one-third (1/3) of all operation, maintenance, and replacement costs of the Project, all costs of maintaining the Project in compliance with requirements of the FERC or other regulatory authority, and any other expenses of the Authority, with a right of contribution in each Member Entity from each other Member Entity in the event the first Member Entity should pay more than its one-third (1/3) share, such that the total amount paid is borne equally by all three Member Entities.
- f. In the event of the withdrawal of a Member Entity as set forth in Section 4.5 or 6.4, such withdrawing entity shall remain obligated and liable to the Authority, and the remaining Member Entities, for its one-third (1/3) share of the capital costs of the Project, and, for the life of any obligation incurred by the Authority to finance the purchase of the Project, shall remain liable to perform the obligations described in Section 4.6(a) of this Agreement. If any Member Entity withdraws, it shall remain jointly and severally liable to LNB under the Loan Agreement as provided in Section 4.6(b) and to other Member Entities under Section 4.6(c). The withdrawing Member Entity shall also be liable to the Authority for one-third (1/3) of any accumulated operating deficits and liabilities incurred by the Authority up until the effective date of the withdrawal. The withdrawing party shall not be entitled to any Project revenues received by the Authority after its withdrawal, except that the withdrawing Member Entity will be entitled to repayment, without interest, of its contributions made under Section 4.5 out of the first twenty-five

percent (25%) of net revenues each year, after payment of any loans or advances the Authority has received from other Member Entities.

- g. The withdrawal of any Member Entity does not terminate this Agreement, and in the event of withdrawal of any Member Entity as set forth in Sections 4.5 or 6.4, and subject to the obligations set forth in subsection "f," the remaining Member Entities shall assume and be equally, jointly and severally liable for the withdrawing Member's Project liabilities to third parties.
- h. Each Member Entity's liabilities hereunder, including without limitation, the Member Entity's joint and several liability to LNB for the full amount owed under the Loan Agreement in the event of default thereunder, shall be subordinated to all existing obligations of the Member Entity and shall not restrict, in any manner, the ability of the Member Entity to incur additional obligations which are senior to the obligations created hereunder, so long as LNB shall have been given not less than 30 days prior written notice of incurrence of the additional obligations by the Member Entity, which notice is accompanied with a certificate of an authorized representative of the Member Entity to the effect that the Member Entity's net revenues (which shall include for this purpose all revenues, including, without limitation, investment income, of the Member Entity less operation and maintenance expenses, and projected net revenues from any capital facilities to be financed with such obligations) for the most recent fiscal year for which audited financial statements are available were equal to 1.10 times the total of maximum scheduled annual debt service on (i) the Member Entity's outstanding debt; (ii) the debt service on the additional obligations proposed to be incurred; and (iii) the Loan Agreement less the Authority's net revenues for such period (including contributions to the Authority by other Member Entities). If such certificate conforms hereto in form and substance, LNB's prior consent shall not be required for any such issuance of obligations.
- i. The obligations of each Member Entity in favor of LNB under this Section 4.6 shall be (i) irrevocable, (ii) absolute and unconditional in all events, (iii) direct, immediate and primary, and (iv) one of payment and not just collection. In the event of default under the Loan Agreement, LNB shall be under no obligation to pursue its rights against the Authority or any of the collateral of the Authority before pursuing LNB's rights against any Member Entity. Each Member Entity hereby assents to any and all amendments, waivers, modifications, and releases of or under the Loan Agreement. Each Member Entity hereby acknowledges and agrees that LNB is an express third party beneficiary of the Member Entity's agreements contained herein and that LNB may enforce any such agreement against the Member Entity without notice in the event of default under the Loan Agreement and that LNB's rights are assignable. No Member Entity shall assert any claim, counterclaim, right of setoff or recoupment in a suit by LNB.
- j. Each Member Entity shall have full discretion to make payments hereunder from whatever source is legally available for the purpose, including without limitation, investments, grants, gifts, tax revenues, enterprise revenues, General or other Funds, or any other legally available source of any kind whatsoever: *provided*, that if any Member Entity does not make full payment from such sources, such Member Entity will fix, prescribe and collect rates, fees and charges for water furnished, made available or sold by the Member Entity to produce revenue ("Water System Revenue") that, together with any other legally available funds of the Member Entity, will be sufficient to pay in each fiscal year (i) the Member Entity's obligations hereunder (but only to the extent that the Authority's net revenues are insufficient to pay the expenditures to which such obligations relate) and (ii) any debt service or payments due under other obligations of the Member Entity having a right to payment from Water System Revenue senior to or on parity with the obligations of the Member Entity created under this Section 4.6. Unrestricted investments, cash and amounts available in reserve accounts or General or other Funds maintained by a Member Entity shall be counted as available funds for this purpose. Each Member Entity's Water System Revenue is hereby pledged to the punctual payment of its obligations hereunder.

k. So long as any installment payments remain outstanding under the Loan Agreement, unless the written consent of LNB is obtained, each Member Entity agrees as follows:

i. to maintain its existence as a political subdivision or municipal corporation under the laws of the State of California, and shall not voluntarily merge into or consolidate with any other entity;

ii. to keep, and observe and perform all valid and lawful obligations or orders or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board or commission having jurisdiction or control over it as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by it including its right to exist and carry on business, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired; *provided*, however, that it shall not be required to comply with any such orders so long as the validity of application thereof shall be contested in good faith; and

iii. to at all times maintain and keep, or cause to be maintained or kept, proper books or records and accounts, in which there shall be made full and correct entries of all transactions relating to the financial obligations under this Agreement and its financial affairs generally. In the event so requested in writing, such books or records shall be made available to the Authority.

l. This Section 4.6 cannot be amended without the prior written consent of LNB, so long as the Loan Agreement is outstanding.

RESOLUTION NO. 96-93

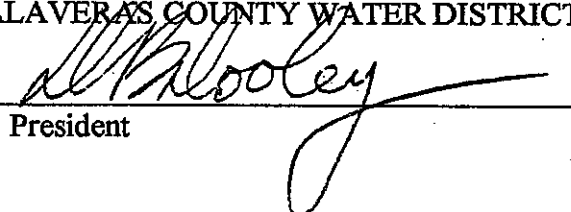
BE IT RESOLVED that the Board of Directors of CALAVERAS COUNTY WATER DISTRICT does hereby authorize the execution of an Amendment to Joint Powers Agreement with UNION PUBLIC UTILITY DISTRICT and the CITY OF ANGELS with regard to the formation of the UTICA POWER AUTHORITY and the purchase and relicensing of the PG&E Utica and Angels Hydroelectric Projects, said terms more particularly set forth in Agreement attached hereto and made a part hereof.

FURTHER RESOLVED that the President is hereby authorized to execute said agreement.

PASSED AND ADOPTED this 8th day of July, 1996 by the following vote:

AYES: Directors Dooley, Geiszler, Weinkle and Dunn
NOES: Director Meyers
ABSENT: None

CALAVERAS COUNTY WATER DISTRICT



President

ATTEST:



Secretary

AmendUPA.doc