

Gridley City Council – Regular Meeting Agenda

Monday, April 3, 2023; 6:00 pm

Gridley City Hall, 685 Kentucky Street, Gridley, CA 95948

“Our purpose is to continuously enhance our community’s vitality and overall quality of life. We are committed to providing high quality, cost-effective municipal services and forming productive partnerships with our residents and regional organizations. We collectively develop, share, and are guided by a clear vision, values, and meaningful objectives.”

The Public is encouraged to attend and participate in person. Comments from the public on agenda items will be accepted until 4 pm on April 3rd, 2023, via email to csantana@gridley.ca.us or via the payment/document drop box at Gridley City Hall and will be conveyed to the Council for consideration.

You may view using the following link, ID, and passcode:

<https://us06web.zoom.us/j/85734746008?pwd=WVVDWlJXeUFEZlITUGQzWWJNMThyZz09>

Webinar ID: 857 3474 6008

Passcode: 486169

CALL TO ORDER - Mayor Farr

ROLL CALL

PLEDGE OF ALLEGIANCE – Councilmember Calderon

INVOCATION – None

PROCLAMATION – None

INTRODUCTION OF NEW OR PROMOTED EMPLOYEES - None

COMMUNITY PARTICIPATION FORUM - *Members of the public may address the City Council on matters not listed on the agenda. The City Council may not discuss nor take action on any community participation item brought forward by a member of the community. Comments are requested to be limited to three (3) minutes.*

CONSENT AGENDA

1. City Council Minutes Dated March 20th, 2023
2. Lion’s Club Easter Egg Hunt Use of Park Request

ITEMS FOR CONSIDERATION

3. Resolution No. 2023-R-010: Approval of NCPA Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC
4. California Family Rights Act and Family and Medical Leave Act Policy

CITY STAFF AND COUNCIL COMMITTEE REPORTS - Brief updates from City staff and brief reports on conferences, seminars, and meetings attended by the Mayor and City Council members, if any.

CITY ADMINISTRATOR REPORTS - Brief updates and reports on conferences, seminars, and meetings attended by the City Administrator, if any.

POTENTIAL FUTURE CITY COUNCIL ITEMS - (Appearing on the Agenda within 30-90 days):

SBFCA Development Fee	4/17/2023
Request for Proposal for Audit Services	4/17/2023
Butte Region MOU Implementing SB 1383 Edible Food Recovery Requirements	4/17/2023
Finance Policies	4/17/2023
Broadband Feasibility Study Proposal	4/17/2023
General Plan, Sphere of Influence Amendment Contract Award	5/15/2023
Industrial Park Final Map	5/15/2023

CLOSED SESSION – None

ADJOURNMENT – adjourning to a Regular meeting on April 17th, 2023.

NOTE 1: POSTING OF AGENDA- This agenda was posted on the public bulletin board at City Hall at or before 6:00 p.m., March 31st, 2023. This agenda along with all attachments is available for public viewing online at www.gridley.ca.us and at the Administration Counter in City Hall, 685 Kentucky Street, Gridley, CA.

NOTE 2: REGARDING UNSCHEDULED MATTERS – In accordance with state law, it shall be the policy of this Council that no action shall be taken on any item presented during the public forum or on unscheduled matters unless the Council, by majority vote, determines that an emergency situation exists, or, unless the Council by a two-thirds vote finds that the need to take action arose subsequent to the posting of this agenda.

Gridley City Council – Regular Meeting Minutes

Monday, March 20, 2023; 6:00 pm
Gridley City Hall, 685 Kentucky Street, Gridley, CA 95948

“Our purpose is to continuously enhance our community’s vitality and overall quality of life. We are committed to providing high quality, cost-effective municipal services and forming productive partnerships with our residents and regional organizations. We collectively develop, share, and are guided by a clear vision, values, and meaningful objectives.”

CALL TO ORDER

Mayor Farr called the meeting to order at 6:00 pm.

ROLL CALL

Councilmembers

Present: Farr, Johnson, Calderon, Roberts, Sanchez
Absent: None
Arriving after roll call: None

Staff Present: Cliff Wagner, City Administrator
Rodney Harr, Chief of Police
Tony Galyean, City Attorney
Ross Pippitt, Public Works Director
Elisa Arteaga, Finance Director
Jake Carter, Utilities Director
Ashley Ayala, Recreation Coordinator

PLEDGE OF ALLEGIANCE

Councilmember Sanchez led the Pledge of Allegiance.

INVOCATION – None

PROCLAMATION – None

INTRODUCTION OF NEW OR PROMOTED EMPLOYEES - None

COMMUNITY PARTICIPATION FORUM

The public forum was opened, and seeing no one was present to speak, was closed.

CONSENT AGENDA

1. City Council Minutes Dated March 6th, 2023
2. Ordinance 844-2023 Second Reading and Adoption by Title Only: An Ordinance to Pre-Zone Approximately 736-Acres Reflecting the Approved General Plan Land Uses within the Sphere

of Influence Adopted by the 2030 General Plan Located in the Unincorporated Area of Butte County, Contiguous to the City Boundary

3. Ordinance 845-2023 Second Reading and adoption by Title Only: A Zoning Code Amendment to Title 17, Chapter 17.22, "R-1 Single-Family Residential District" of the Gridley Municipal Code (Citywide)
4. Resolution No. 2023-R-009: Approval of the Kiwi Vineyard Estates Final Map and Authorization Granted to the City Clerk to Accept Offers of Dedication on Behalf of the City of Gridley

Motion to approve consent agenda was made by Vice Mayor Johnson, seconded by Councilmember Roberts.

ROLL CALL VOTE

**Ayes: Farr, Johnson, Roberts, Calderon, Sanchez
Motion passed, 5-0**

ITEMS FOR CONSIDERATION

5. Award of Contract for 57 East Gridley Road Fencing

Utility Director, Jake Carter, recommended that Council award the fencing contract to the lowest bidder, Bills Quality Fencing, to better secure 57 E. Gridley Rd for the future use of equipment storage. Carter also explained the award of contract will be reflected in the upcoming FY 23/24 CIP budget.

Motion to approve was made by Vice Mayor Johnson, seconded by Councilmember Calderon.

ROLL CALL VOTE

**Ayes: Farr, Johnson, Roberts, Calderon, Sanchez
Motion passed, 5-0**

6. Re-Investing of Four CDs Reaching Maturity into Another Federally Insured CDs

Finance Director, Elisa Arteaga, requested guidance from Council on reinvestment of the City's four maturing CDs. After brief discussion, Councilmember Calderon made the recommendation to reinvest for 1 year and reevaluate in December when another CD will be maturing.

Motion to approve recommendation was made by Councilmember Roberts, seconded by Councilmember Sanchez.

ROLL CALL VOTE

**Ayes: Farr, Johnson, Roberts, Calderon, Sanchez
Motion passed, 5-0**

7. Consideration of Proposed Professional Services Agreement from Utility Financial Services (UFS) for development of an Update Electrical Services Maintenance Agreement between Gridley and Biggs

City Administrator, Cliff Wagner, requested Council review and approve the Proposed Professional Services Agreement from Utility Financial Services (UFS) for development of an Updated Electrical Services Maintenance Agreement between the City of Gridley and the City of Biggs. The current maintenance agreement will expire September 2023.

After Council discussion, motion to approve the service agreement was made by Councilmember Roberts, seconded by Councilmember Sanchez.

ROLL CALL VOTE

**Ayes: Farr, Johnson, Roberts, Calderon, Sanchez
Motion passed, 5-0**

CITY STAFF AND COUNCIL COMMITTEE REPORTS

Vice Mayor Johnson reported on his attendance at the Sutter Butte Flood Control Agency and the Mosquito and Vector Control District meetings.

CITY ADMINISTRATOR REPORTS

City Administrator Wagner reported on Administrative Assistant, Carmen Santana's, attendance at CMC training.

POTENTIAL FUTURE CITY COUNCIL ITEMS - (Appearing on the Agenda within 30-90 days):

SBFCA Development Fee	4/3/2023
Request for Proposal for Audit Services	4/17/2023
Finance Policies	4/17/2023
Broadband Feasibility Study Proposal	4/17/2023
General Plan, Sphere of Influence Amendment Contract Award	5/15/2023
Industrial Park Final Map	5/15/2023

CLOSED SESSION - None

ADJOURNMENT

With no further items left to discuss, Mayor Farr adjourned to the next regular meeting on April 3rd, 2023.

Cliff Wagner, City Administrator

March 21, 2023

Gridley City Council

685 Kentucky Street
Gridley, CA 95948

Dear Members of the Council,

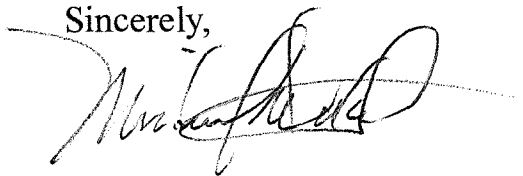
Once again the Gridley Lions Club request your permission for the use of the Vierra City Park for the annual Lions Easter Egg Hunt.

The hunt will be held on Saturday, April the 8th, at 11:00 a.m. We will require the full use of the park and the baseball play areas from 9:00 in the morning until 12:00 p.m. This will be the 46th annual Easter Egg Hunt of the Gridley Lions.

We would also appreciate the park maintenance crew to not mow the lawn areas in the park from March 21st until the day of the hunt. However, the mowing strip that is usually put down the middle of the north area is still necessary a few days before the hunt. The hunt is open to all ages of children up to and including age nine. Prizes will be offered for prize eggs.

We thank the Council for their continuing support of this community event by allowing the use of the park.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Dahl", written over a horizontal line.

Michael Dahl
Gridley Lions Club

City Council Agenda Item #3
Staff Report

Date: April 3, 2023

To: Mayor and City Council

From: Cliff Wagner, City Administrator, Jake Cater, Utility Director

Subject: Resolution No. 2023-R-010: Approval of NCPA Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC

X	Regular
	Special
	Closed
	Emergency

Recommendation

City staff respectfully recommends that the City Council approve Resolution No. 2023-R-010 approving the Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC, and authorize the City Administrator, acting on behalf of the City of Gridley, to enter into the Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC, including any non-substantive modifications to the Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC recommended and approved by the Gridley City Council.

Background

On March 25, 2020, Northern California Power Agency (“NCPA”), acting on behalf of its Members, including the City of Gridley, issued a Request for Proposals for Renewable Energy Resources, Carbon Free Energy Resources, and Energy Storage Solutions (the “RFP”), as subsequently amended on April 1, 2022, to solicit competitive proposals for renewable energy projects and products consistent with the California Renewables Portfolio Standard Program (Public Resources Code sec. 25740 et seq.) and the California Renewables Portfolio Standard Program (Public Utilities Code sec. 399.11 et seq.), including amendments enacted by passage of SB 100 (De Leon 2018), and carbon free energy resources. Through the RFP, NCPA is seeking cost effective resources to support its Members’ Renewable Portfolio Standard and carbon free objectives.

In response to the RFP, NCPA received multiple proposals for the supply of renewable energy sourced from different technologies, including a proposal from Calpine Energy Services, L.P., (“Calpine” or Geysers Power Company, LLC”) submitted on May 6, 2020, to sell output produced from multiple geothermal power plants located in Sonoma and Lake Counties, California. The proposal included the sale and delivery of renewable energy and resource adequacy capacity to NCPA for the benefit of its Members. Based on NCPA’s review of the proposal details, and involving direct coordination with Members who expressed an interest in purchasing output from the multiple geothermal power plants offered in the Geysers Power Company, LLC proposal, it was determined that the offer was competitive and met the needs and requirements of the interested Members, including the City of Gridley.

As such, NCPA, acting on behalf of certain Members who expressed an interest in purchasing output from the geothermal power plants, including the City of Gridley (the “Participants”) , engaged in active negotiations with Geysers Power Company, LLC, to develop certain

agreements through which NCPA could purchase output from the geothermal power plants, LLC, acting on behalf of the Participants. As a result of such effort, NCPA, in coordination with the Participants, has developed two agreements with Geysers Power Company, LLC to purchase resource adequacy capacity and renewable energy products, being (i) a Western Systems Power Pool Agreement Confirmation between NCPA and Geysers Power Company, LLC, to purchase electric capacity (individually, "RA Agreement"), and (ii) a Western Systems Power Pool Agreement Confirmation between NCPA and Geysers Power Company, LLC, to purchase renewable energy (individually, "RPS Agreement") (collectively the "Purchase Agreements"). Pursuant to the Purchase Agreements, NCPA will purchase resource adequacy products and renewable energy products from Geysers Power Company, LLC, on behalf of the Participants, to be delivered to and received by the Participants.

As set forth in the Purchase Agreements, NCPA will purchase, on behalf of the Participants, resource adequacy capacity and renewable energy products from Geysers Power Company, LLC, produced and delivered from one or more geothermal power plants located in Lake and Sonoma Counties, California (the "Project") beginning on January 1, 2025, and continuing through December 31, 2036. During the period of January 1, 2025 through December 31, 2026 the Purchase Agreements contract quantity is 50.00 MW delivered on a 7X24 basis, and during the period of January 1, 2027 through December 31, 2036, the Purchase Agreements contract quantity is 100.00 MW delivered on a 7X24 basis. Each Project is required to (i) be certified by the CEC as an Eligible Renewable Energy Resource, and (ii) satisfy the requirements of Section 399.16(b)(1)(A) of the California Public Utilities Code by having a first point of interconnection with the CAISO Balancing Authority. The resource adequacy capacity purchased and delivered in accordance with the Purchase Agreements, will be delivered to the Participants and can be used by the Participants to satisfy their resource adequacy requirements.

A copy of the Purchase Agreements is attached to the Third Phase Agreement as Exhibit B.

To enable NCPA to enter into the Purchase Agreements on behalf of the Participants, including the City of Gridley, pursuant to the terms and conditions of the Amended and Restated Facilities Agreement, NCPA and the Participants shall enter into the Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC (the "Third Phase Agreement") to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the Purchase Agreements, and to enable and obligate the Participants to take delivery of and pay for such electric capacity and energy and to pay NCPA for all costs it incurs for undertaking the foregoing activities. Upon full execution of the Third Phase Agreement, NCPA will enter into the Purchase Agreements on behalf of the Participants, and such Purchase Agreements shall be deemed a NCPA Project by the Commission.

As further described in Exhibit A of the Third Phase Agreement, on the effective date of the Third Phase Agreement the Initial Participant (the City of Santa Clara) will hold the full Project Participation Percentage share of the project, but prior to the Transfer Completion Deadline, certain Members who are listed in Table 2 of Exhibit A of the Third Phase Agreement, including the City of Gridley, may exercise a right to accept a transfer of a portion of the Initial Project Participation Percentage of the Initial Participant, in an amount no greater than the amount set forth in Table 2 of Exhibit A of the Third Phase Agreement, by providing written notice of its intent to accept the transfer and by executing the Third Phase Agreement, and therefore

becoming a Participant. After the Transfer Completion Deadline, NCPA shall prepare a Table 3 to be included in Exhibit A of the Third Phase Agreement, to account for the Final Project Participation Percentages of each Participant, including any amount of the Initial Project Participation Percentage that is retained by the Initial Participant due to a Member listed in Table 2 of Exhibit A not exercising its right to accept a transfer by the Transfer Completion Deadline. Once the City of Gridley exercises its right to accept a transfer of a Project Participation Percentage of [state percentage] by executing the Third Phase Agreement, the City of Gridley will assume all rights and obligations set forth in the Third Phase Agreement for the portion of the Project Participation Percentage share of the Project received by the City of Gridley.

A copy of the Third Phase Agreement is attached to this staff report for your reference.

Fiscal Impact

Pursuant to the terms and conditions of the Third Phase Agreement, each Participant, including the City of Gridley, acknowledges and agrees to be bound by the terms and conditions of the Third Phase Agreement, and that the Third Phase Agreement is written as a “take-or-pay” agreement, and any resource adequacy capacity and renewable energy products delivered to NCPA under the Purchase Agreements shall be delivered to each Participant in proportion to such Participant’s Project Participation Percentage as set forth in Exhibit A of the Third Phase Agreement, and each Participant shall accept and pay for its respective percentage of such resource adequacy capacity and renewable energy products.

Environmental 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 of the California Environmental Quality Act. No environmental review is necessary.

Compliance with City Council Strategic Plan or Budget Goals

This proposal is consistent with the City Council’s strategic goals to provide cost-effective, reliable electric utility services to city residents and meet its resource adequacy, and renewable portfolio standards into the future.

Attachments

1. Resolution No. 2023-R-010
2. Third Phase Agreement

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRIDLEY
APPROVAL OF THE THIRD PHASE AGREEMENT FOR PURCHASE AGREEMENTS WITH GEYSERS
POWER COMPANY, LLC**

WHEREAS, on March 25, 2020, Northern California Power Agency (NCPA), acting on behalf of its Members, including the City of Gridley, issued a Request for Proposals for Renewable Energy Resources, Carbon Free Energy Resources, and Energy Storage Solutions (the “RFP”), as subsequently amended on April 1, 2022, to solicit competitive proposals for renewable energy projects and products consistent with the California Renewables Portfolio Standard Program (Public Resources Code sec. 25740 *et seq.*) and the California Renewables Portfolio Standard Program (Public Utilities Code sec. 399.11 *et seq.*), including amendments enacted by passage of SB 100 (De Leon 2018), and carbon free energy resources¹; and

WHEREAS, through the RFP, NCPA is seeking cost effective resources to support its Members’ Renewable Portfolio Standard and carbon free objectives; and

WHEREAS, in response to the RFP, NCPA received multiple proposals for the supply of renewable energy sourced from different technologies, including a proposal from Calpine Energy Services, L.P., (“Calpine” or Geysers Power Company, LLC”) submitted on May 6, 2020, to sell output produced from multiple geothermal power plants located in Sonoma and Lake Counties, California; and the proposal included the sale and delivery of renewable energy and resource adequacy capacity products to NCPA for the benefit of its Members; and

WHEREAS, based on NCPA’s review of the proposal details, and involving direct coordination with Members who expressed an interest in purchasing output from the multiple geothermal power plants offered in the Geysers Power Company, LLC proposal, it was determined that the offer was competitive and met the needs and requirements of the interested Members, including the City of Gridley; and

WHEREAS, NCPA then, acting on behalf of certain Members who expressed an interest in purchasing output from the geothermal power plants, including the City of Gridley (the “Participants”)², engaged in active negotiations with Geysers Power Company, LLC, to develop certain agreements through which NCPA could purchase output from the geothermal power plants, LLC, acting on behalf of the Participants; and

WHEREAS, as a result of such effort, NCPA, in coordination with the Participants, has developed two agreements with Geysers Power Company, LLC to purchase resource adequacy capacity and renewable energy products, being (i) a Western Systems Power Pool Agreement Confirmation between NCPA and Geysers Power Company, LLC, to purchase electric capacity (individually, “RA Agreement”), and (ii) a Western Systems Power Pool Agreement Confirmation between NCPA and Geysers Power Company, LLC, to purchase renewable energy (individually, “RPS Agreement”) (collectively the “Purchase Agreements”); and

¹ The RFP was publicly noticed and made available to the public on NCPA’s website.

² Subject to the completion of the Project Participation Percentage transfer process described in Exhibit A of the Third Phase Agreement, the Participants may include the following Members: Cities of Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Santa Clara, and the Port of Oakland.

WHEREAS, as set forth in the Purchase Agreements, NCPA will purchase, on behalf of the Participants, resource adequacy capacity and renewable energy products from Geysers Power Company, LLC, produced and delivered from one or more geothermal power plants located in Lake and Sonoma Counties, California (the “Project”) beginning on January 1, 2025, and continuing through December 31, 2036; and

WHEREAS, each Project is required to (i) be certified by the CEC as an Eligible Renewable Energy Resource, and (ii) satisfy the requirements of Section 399.16(b)(1)(A) of the California Public Utilities Code by having a first point of interconnection with the CAISO Balancing Authority, and the resource adequacy capacity purchased and delivered in accordance with the Purchase Agreements will be delivered to the Participants and can be used by the Participants to satisfy their resource adequacy requirements; and

WHEREAS, to enable NCPA to enter into the Purchase Agreements on behalf of the Participants, including the City of Gridley, pursuant to the terms and conditions of the Amended and Restated Facilities Agreement, NCPA and the Participants shall enter into the Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC (the “Third Phase Agreement”) to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the Purchase Agreements, and to enable and obligate the Participants to take delivery of and pay for such electric capacity and energy and to pay NCPA for all costs it incurs for undertaking the foregoing activities; and

WHEREAS, upon full execution of the Third Phase Agreement, NCPA will enter into the Purchase Agreements on behalf of the Participants, and such Purchase Agreements shall be deemed a NCPA Project by the Commission; and

WHEREAS, as further described in Exhibit A of the Third Phase Agreement, on the effective date of the Third Phase Agreement the Initial Participant (the City of Santa Clara) will hold the full Project Participation Percentage share of the project, but prior to the Transfer Completion Deadline, certain Members who are listed in Table 2 of Exhibit A of the Third Phase Agreement, including the City of Gridley, may exercise a right to accept a transfer of a portion of the Initial Project Participation Percentage of the Initial Participant, in an amount no greater than the amount set forth in Table 2 of Exhibit A of the Third Phase Agreement, by providing written notice of its intent to accept the transfer and by executing the Third Phase Agreement, and therefore becoming a Participant; and

WHEREAS, after the Transfer Completion Deadline, NCPA shall prepare a Table 3 to be included in Exhibit A of the Third Phase Agreement, to account for the Final Project Participation Percentages of each Participant, including any amount of the Initial Project Participation Percentage that is retained by the Initial Participant due to a Member listed in Table 2 of Exhibit A not exercising its right to accept a transfer by the Transfer Completion Deadline; and

WHEREAS, once the City of Gridley exercises its right to accept a transfer of a Project Participation Percentage of 0.600% by executing the Third Phase Agreement, the City of Gridley will assume all rights and obligations set forth in the Third Phase Agreement for the portion of the Project Participation Percentage share of the Project received by the City of Gridley, and

WHEREAS, pursuant to the terms and conditions of the Third Phase Agreement, each Participant acknowledges and agrees to be bound by the terms and conditions of the Third Phase Agreement, and that the Third Phase Agreement is written as a “take-or-pay” agreement, and any resource adequacy capacity and renewable energy products delivered to NCPA under the Purchase Agreements shall be delivered to each Participant in proportion to such Participant’s Project Participation Percentage as set forth in Exhibit A of the Third Phase Agreement, and each Participant shall accept and pay for its respective percentage of such resource adequacy capacity and renewable energy products; and

WHEREAS, 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 of the California Environmental Quality Act. No environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Gridley City Council approves the Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC, and authorizes the City Administrator, acting on behalf of the City of Gridley, to enter into the Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC, including any modifications to the recommended and approved by the Gridley City Council.

I HEREBY CERTIFY that the foregoing resolution was introduced, passed, and adopted by the City Council of the City of Gridley at a regular meeting held on the 3rd day of April, 2023 by the following vote:

AYES:	AGENCY MEMBERS	_____
NOES:	AGENCY MEMBERS	_____
ABSTAIN:	AGENCY MEMBERS	_____
ABSENT:	AGENCY MEMBERS	_____

ATTEST:	APPROVE:
_____	_____
Cliff Wagner, City Clerk	Michael W. Farr, Mayor

**THIRD PHASE AGREEMENT
FOR
PURCHASE AGREEMENTS
WITH
GEYSERS POWER COMPANY, LLC**

TABLE OF CONTENTS

Section 1. Definitions	3
Section 2. Purpose	9
Section 3. Sale and Purchase of Product	9
Section 4. Billing and Payments	10
Section 5. Security Deposit Administration.....	13
Section 6. Cooperation and Further Assurances.....	18
Section 7. Participant Covenants and Defaults	19
Section 8. Administration of Agreement	22
Section 9. Transfer of Rights by Participants.....	23
Section 10. Term and Termination.....	24
Section 11. Withdrawal of Participants	25
Section 12. Settlement of Disputes and Arbitration	25
Section 13. Miscellaneous	25
EXHIBIT A. Project Participation Percenages	38
EXHIBIT B. PPA.....	40

This THIRD PHASE AGREEMENT (“this Agreement”) is dated as of December 22, 2022 by and among the Northern California Power Agency, a joint powers agency of the State of California (“NCPA”), and the signatories to this Agreement other than NCPA (“Participants”). NCPA and the Participants are referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

A. NCPA has heretofore been duly established as a public agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities, and improvements for the generation and transmission of electric capacity and energy for resale.

B. Each of the Participants is a signatory to the Joint Powers Agreement which created NCPA and therefore is a Member.

C. Each of the Participants to this Agreement have executed the Amended and Restated Facilities Agreement, dated October 1, 2014, which establishes the framework under which Project Agreements are created for the development, design, financing, construction, and operation of specific NCPA Projects.

D. The Participants desire NCPA to enter into the following two agreements with Geysers Power Company, LLC (“Seller”) for the benefit of the Participants’

customers: (1) Western Systems Power Pool Agreement Confirmation between Northern California Power Agency and Geysers Power Company, LLC, to purchase electric capacity (individually, "RA Agreement"); and (2) Western Systems Power Pool Agreement Confirmation between Geysers Power Company, LLC and Northern California Power Agency, to purchase renewable energy (individually, "RPS Agreement"). The RA Agreement and the RPS Agreement are collectively referred herein as the Purchase Agreements, attached hereto as Exhibit B.

E. Each Participant is authorized by its Constitutive Documents to obtain electric capacity and energy for its present or future requirements, through contracts with NCPA or otherwise.

F. To enable NCPA to enter into the Purchase Agreements on behalf of the Participants, pursuant to the terms and conditions of the Amended and Restated Facilities Agreement, NCPA and the Participants wish to enter into this Agreement to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the Purchase Agreements, and to enable and obligate the Participants to take delivery of and pay for such electric capacity and energy and to pay NCPA for all costs it incurs for undertaking the foregoing activities.

G. Upon full execution of this Agreement, NCPA will enter into the Purchase Agreements on behalf of the Participants, and such Purchase Agreements shall be deemed a NCPA Project by the Commission.

H. Each of the Parties intends to observe the provisions of this Agreement in good faith and shall cooperate with all other Parties in order to achieve the full benefits of joint action.

I. The Parties desire to equitably allocate costs of NCPA's provision of services under this Agreement among the Participants.

J. The Participants further desire, insofar as possible, to insulate other Members who are not Participants, from risks inherent in the services and transactions undertaken on behalf of the Participants pursuant to this Agreement.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Definitions.

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 1 of this Agreement shall have the meaning indicated in Section 1 of the Power Management and Administrative Services Agreement, dated October 1, 2014:

1.1.1 "Administrative Services Costs" means that portion of the NCPA administrative, general and occupancy costs and expenses, including those costs and expenses associated with the operations, direction and supervision of the general affairs and activities of NCPA, general management, treasury operations, accounting, budgeting, payroll, human resources, information technology, facilities management,

salaries and wages (including retirement benefits) of employees, facility operation and maintenance costs, taxes and payments in lieu of taxes (if any), insurance premiums, fees for legal, engineering, financial and other services, power management services, general settlement and billing services and general risk management costs, that are charged directly or apportioned to the provision of services under this Agreement. Administrative Services Costs as separately defined herein and used in the context of this Agreement is different and distinct from the term Administrative Services Costs as defined in Section 1 of the Power Management and Administrative Services Agreement.

1.1.2 "Agreement" means this Third Phase Agreement, including all Exhibits attached hereto.

1.1.3 "All Resources Bill" has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.4 "CAISO" means the California Independent System Operator Corporation, or its functional successor.

1.1.5 "CAISO Tariff" means the duly authorized tariff, rules, protocols and other requirements of the CAISO, as amended from time to time.

1.1.6 "Commission" has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.7 “Constitutive Documents” means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder with respect to the governance of NCPA, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts, or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its city charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant’s governing body.

1.1.8 “Defaulting Participant” has the meaning set forth in Section 7.2.

1.1.9 “Electric System” has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.10 “Event of Default” has the meaning set forth in Section 7.2.

1.1.11 “General Operating Reserve” means the NCPA General Operating Reserve created through resolution of the Commission, as the same may be amended from time to time.

1.1.12 “NCPA” has the meaning set forth in the Recitals hereto.

1.1.13 “Participant” has the meaning set forth in the Recitals of this Agreement.

1.1.14 “Power Management and Administrative Services Agreement” means the NCPA Power Management and Administrative Services Agreement, dated

as of October 1, 2014 between NCPA and the Members who are signatories to that agreement by which NCPA provides Power Management and Administrative Services.

1.1.15 "Products" means collectively the RA Product and the Renewable Product.

1.1.16 "Purchase Agreements" have the meaning set forth in Recital D of this Agreement. Upon final execution of the Purchase Agreements, the Purchase Agreements shall be deemed a NCPA Project in accordance with the Amended and Restated Facilities Agreement, and therefore be referred to herein as the "Project".

1.1.17 "Project Costs" means all costs charged to and paid by NCPA pursuant to the Purchase Agreements.

1.1.18 "Project Participation Percentage" has the meaning set forth in the Power Management and Administrative Services Agreement, and are set forth in Exhibit A of this Agreement.

1.1.19 "Party" or "Parties" has the meaning set forth in the preamble hereto; provided that "Third Parties" are entities that are not Party to this Agreement.

1.1.20 "RA Product" means the resource adequacy capacity products described in Article 3 of the RA Agreement.

1.1.21 "Renewable Product" means renewable energy product and associated attributes which are defined as "Product" in the RPS Agreement.

1.1.22 "Revenue" means , with respect to each Participant, all income, rents, rates, fees, charges, and other moneys derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System; (c) the proceeds derived by the Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System; and (d) the proceeds derived by Participant directly or indirectly from the consignment and sale of freely allocated greenhouse gas compliance instruments into periodic auctions administered by the State of California under the California Cap-and-Trade Program, provided that such proceeds are a permitted use of auction proceeds, but the term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Participant or (ii) contributions from customers for the payment of costs of construction of facilities to serve them.

1.1.23 "Scheduling Protocols" means the applicable provisions of the Amended and Restated Scheduling Coordination Program Agreement, and any other

contractual or other arrangements between NCPA and the Participants concerning the scheduling, delivery and metering of the Purchase Agreements.

1.1.24 "Security Deposit" means the account established by NCPA and funded by the Participants in accordance with Section 5, the funds of which are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.25 "Seller" means Geysers Power Company, LLC, as set forth in Recital D of this Agreement, or as otherwise set forth in the Purchase Agreements.

1.1.26 "Term" has the meaning set forth in Section 10.

1.1.27 "Third Party" means an entity (including a Member) that is not Party to this Agreement.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," "Appendix", "Schedule", or "Exhibit" shall mean a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law, regulation or ordinance shall be a reference to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended

from time to time, or its successor. A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. A reference to a “day” shall mean a Calendar Day unless otherwise specified. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

Section 2. Purpose. The purpose of this Agreement is to: (i) set forth the terms and conditions under which NCPA shall enter into the Purchase Agreements on behalf of the Participants, (ii) authorize NCPA, acting on behalf of the Participants, to engage in all activities related to that basic purpose, and (iii) specify the rights and obligations of NCPA and the Participants with respect to the Purchase Agreements.

Section 3. Sale and Purchase of Products. By executing this Agreement, each Participant acknowledges and agrees to be bound by the terms and conditions of the Agreement, and that the Agreement is written as a “take-or-pay” agreement. Any Products delivered to NCPA under the Purchase Agreements shall be delivered to each Participant in proportion to such Participant’s Project Participation Percentage as set forth in Exhibit A, and each Participant shall accept and pay for its respective percentage of such Products. To the extent a Participant is unable to accept such deliveries in full, NCPA shall dispose of such surplus in its sole discretion, in such a manner to attempt to maximize Participant value and that Participant shall reimburse to NCPA any costs

incurred by NCPA in doing so. Notwithstanding the above, NCPA may allocate Products procured through the Purchase Agreements among the Participants in such percentages as NCPA may, in its reasonable discretion, determine are necessary, desirable, or appropriate, in order to accommodate Participant transfer rights pursuant to Section 9.

3.1 Scheduling. Products delivered from Seller shall be scheduled for and to the Participants in accordance with Scheduling Protocols, and the terms and conditions of the Purchase Agreements.

Section 4. Billing and Payments

4.1 Participant Payment Obligations. Each Participant agrees to pay to NCPA each month its respective portion of the Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement and the Amended and Restated Facilities Agreement. In addition to the aforementioned monthly payment obligations, each Participant is obligated to fund: (i) any and all required Security Deposits calculated in accordance with Section 5, and (ii) any working capital requirements for the Project maintained by NCPA as determined, collected and set forth in the Annual Budget.

4.2 Invoices. NCPA will issue an invoice to each Participant for its share of Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement and the Amended and Restated Facilities Agreement. Such invoice may be either the All Resources Bill or

separate special invoice, as determined by NCPA. At NCPA's discretion, invoices may be issued to Participants using electronic media or physical distribution.

4.3 Payment of Invoices. All invoices delivered by NCPA (including the All Resources Bill) are due and payable thirty (30) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day.

4.4 Late Payments. Any amount due and not paid by a Participant in accordance with Section 4.3 shall be considered late and bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

4.5 Billing Disputes. A Participant may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days after the date of such invoice; nonetheless the Participant shall pay the full amount billed when due. If a Participant does not timely question or dispute the accuracy of any invoice in writing, then the invoice shall be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, then NCPA shall issue a corrected invoice and refund any amounts that may be due to the Participant. If NCPA and the Participant fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after the Participant has disputed it, then the General Manager shall promptly submit the dispute to the Commission for resolution. If the Commission

and the Participant fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days after its submission to the Commission, then the dispute may then be resolved under the mediation and arbitration procedures set forth in Section 12 of this Agreement; provided, however, that prior to resorting to either mediation or arbitration proceedings, the full amount of the disputed invoice must be paid by the Participant.

4.6 Billing/Settlement Data and Examination of Books and Records.

4.6.1 Settlement Data. NCPA shall make billing and settlement data available to the Participants in the All Resources Bill, or other invoice, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Participants using electronic media (e.g. electronic data portal).

Procedures and formats for the provision of such electronic data submission may be established by the Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require the Participants to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

4.6.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

Section 5. Security Deposit Administration

5.1 Security Deposit Requirements. Each Participant agrees that any funds deposited at NCPA to satisfy Participant's Security Deposit requirements pursuant to this Agreement shall be irrevocably committed and held by NCPA in the General Operating Reserve, and that such funds may be used by NCPA in accordance with Section 5.1.3. Each Participant's Security Deposit will be accounted separately from and in addition to any other security accounts or deposits maintained pursuant to any other agreement between NCPA and the Participant, or any other such security account or deposits required of Members. In connection with fulfilling the Security Deposit requirements of this Agreement, Participant may elect to use its uncommitted funds held in the General Operating Reserve to satisfy in whole or in part its Security Deposit required under Section 5. If Participant chooses to satisfy in whole or in part its security requirements using its uncommitted funds held in the General Operating Reserve, then Participant is required to execute and deliver to NCPA an Irrevocable Letter of Direction, directing NCPA to utilize Participant's uncommitted General Operating Reserve funds for such purposes, and the designated funds will thereafter be irrevocably committed and held by NCPA to satisfy the requirements of this Agreement.

5.1.1 Initial Amounts. No later than November 1, 2024, each Participant shall ensure that sufficient Security Deposit funds have been deposited with and are held by NCPA in an amount equal to the highest three (3) months of estimated Project

Costs for the initial term from January 2025 through December 2026, as estimated by NCPA.¹ No later than November 1, 2026, each Participant shall adjust the Security Deposit to an amount equal to the highest three (3) months of estimated Project Costs for the period January 2027 through December 2036, as estimated by NCPA.² Such Security Deposit requirement may be satisfied by Participant in whole or part either in cash, through irrevocable commitment of its uncommitted funds held in the General Operating Reserve in accordance with Section 5.1, or through a clean, irrevocable letter of credit satisfactory to NCPA's General Manager.

5.1.2 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of Project Costs for which Participant shall be obligated to pay under this Agreement. Following such review, NCPA shall determine whether each Participant has a sufficient Security Deposit balance at NCPA. To the extent that any Participant's Security Deposit balance is greater than one hundred and ten percent (110%) of the amount required herein, NCPA shall credit such amount as soon as practicable to the Participant's next following All Resources Bill, or by separate special invoice. To the extent that any Participant's Security Deposit balance is less than ninety percent (90%) of the amount required herein, NCPA shall add such amount

¹ The Security Deposit fund requirement for the initial term is structured to avoid a Downgrade Event to Buyer as such terms are defined in RPS Agreement.

² The Security Deposit fund requirement is increased in November of 2026 to reflect the increased contract quantity beginning on January 1, 2027, and is structured to avoid a Downgrade Event to Buyer as such terms are defined in RPS Agreement.

as soon as practicable to such Participant's next All Resources Bill, or as necessary, to a special invoice to be paid by Participant upon receipt. Credits or additions shall not be made to Participants who satisfy these Security Deposit requirements in whole through the use of a letter of credit; provided, that the amount of the letter of credit shall be adjusted, as required from time to time, in a like manner to assure an amount not to exceed the highest three (3) months of estimated Project Costs is available to NCPA, as determined by NCPA.

5.1.3 Use of Security Deposit Funds. NCPA may use any and all Security Deposit funds held by NCPA (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder, including making payments to Seller, without regard to any individual Participant's Security Deposit balance or proportionate share of Project Costs, and irrespective of whether NCPA has issued an All Resources Bill or special invoice for such costs to the Participants or whether a Participant has made timely payments of All Resources Bills or special invoices. Should Participant have satisfied its Security Deposit requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy Participant's obligations hereunder at NCPA's sole discretion. Notwithstanding the foregoing, if any Participant fails to pay any costs incurred by NCPA pursuant to this Agreement, NCPA shall first use that non-paying Participant's Security Deposit and

shall not use any other Participants' Security Deposit until such non-paying Participant's Security Deposit has been exhausted.

5.1.4 Accounting. If Security Deposit funds or a letter of credit are used by NCPA to pay any costs it incurs hereunder as described in Section 5.1.3, then NCPA will maintain a detailed accounting of each Participant's shares of funds withdrawn, and upon the collection of all or a part of such withdrawn funds, NCPA will credit back to each non-defaulting Participant the funds collected in proportion to such non-defaulting Participant's share of funds initially withdrawn.

5.1.5 Emergency Additions. In the event that funds are withdrawn pursuant to Section 5.1.3, or if the Security Deposit held by NCPA is otherwise insufficient to allow for NCPA to pay any invoice, demand, request for further assurances by Seller, or claims, NCPA shall notify all Participants of the deficiency. In conjunction with such notice, NCPA shall send a special or emergency assessment invoice to the Participant or Participants that caused or are otherwise responsible for the deficiency. Each Participant of such an invoice shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit Participant has established for such purposes. In the event that the Participant or Participants that caused or are otherwise responsible for the deficiency cannot, does not or will not pay to NCPA the special or emergency assessment within two (2)

Business Days after the invoice date, NCPA shall immediately submit a special or emergency invoice to all remaining Participants, and such remaining Participants shall pay to NCPA such assessment within two (2) Business Days after the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit that Participant has established for such purposes.

5.1.6 Security Deposit Interest. NCPA shall maintain a detailed accounting of each Participant's Security Deposits, and withdrawals of such funds, held by NCPA. Security Deposits held by NCPA shall be invested by NCPA in accordance with the General Operating Reserve policies and investment policies adopted by the NCPA Commission. Interest earned on the Security Deposit funds shall be proportionately credited to the Participants in accordance with their weighted average balances held therein. Any Security Deposit losses caused by early termination of investments shall be allocated among the Participants in accordance with the General Operating Reserve provisions and guidelines approved by the Commission, as the same may be amended from time to time; provided, however, to the extent that either the General Operating Reserve provisions and guidelines do not apply or the Security Deposit is not adequate to cover the losses, then such losses shall be allocated among the Participants in accordance with their proportionate Security Deposit balances.

5.1.7 Return of Funds. Upon termination or a permitted withdrawal of a Participant in accordance with this Agreement, the affected Participant may apply to NCPA for the return of their share of Security Deposit funds ninety (90) days after the effective date of such termination or withdrawal. However, NCPA shall, in its sole but reasonable discretion, as determined by the NCPA General Manager, estimate the then outstanding liabilities of the Participant, including any estimated contingent liabilities and shall retain all such funds, if any, until all such liabilities have been fully paid or otherwise satisfied in full. After all such liabilities have been satisfied in full, as determined by NCPA's General Manager, any remaining balance of the Participant's share of the Security Deposit will be refunded to the Participant within sixty (60) days thereafter.

Section 6. Cooperation and Further Assurances. Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

Section 7. Participant Covenants and Defaults

7.1 Each Participant covenants and agrees: (i) to make payments to NCPA, from its Electric System Revenues, of its obligations under this Agreement as an operating expense of its Electric System; (ii) to fix the rates and charges for services provided by its Electric System, so that it will at all times have sufficient Revenues to meet the obligations of this Agreement, including the payment obligations; (iii) to make all such payments due NCPA under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any reasonable dispute exists; and (iv) to operate its Electric System, and the business in connection therewith, in accordance with Good Utility Practices.

7.2 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Participant (the “Defaulting Participant”):

(i) the failure of any Participant to make any payment in full to NCPA when due;

(ii) the failure of a Participant to perform any covenant or obligation of this Agreement where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure; provided, that this subsection shall not apply to any failure to make payments specified by subsection 7.2 (i));

(iii) if any representation or warranty of a Participant material to the services provided hereunder shall prove to have been incorrect in any material respect when made and the Participant does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days after the date of receipt of notice from NCPA demanding cure; or

(iv) if a Participant is in default or in breach of any of its covenants or obligations under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement.

7.3 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces; provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager using telephone communication within two (2) Business Days after the onset of the Uncontrollable Force, and provide subsequent written notice to the General Manager and all other Parties within ten (10) Business Days after the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch; provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

7.4 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 7.2 above, as may be applicable, provided, however, upon request of the Defaulting Participant the Commission may waive the default at its sole discretion, where such waiver shall not be unreasonably withheld.

7.5 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 7.2, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Participant, NCPA may take any or all of the following actions:

(i) suspend the provision of services under this Agreement to such Defaulting Participant; or

(ii) demand that the Defaulting Participant provide further assurances to guarantee the correction of the default, including the collection of a surcharge or increase

in electric rates, or such other actions as may be necessary to produce necessary Revenues to correct the default.

7.6 Effect of Suspension.

7.6.1 Generally. The suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

7.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with subsection 7.5(i), then such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney's fees, the fees and expenses of other experts, including auditors and accountants, or other reasonable and necessary costs associated with such suspension and any portion of the Project Costs, scheduling and dispatch costs, and Administrative Services Costs that were not recovered from such Participant as a result of such suspension.

Section 8. Administration of Agreement

8.1 Commission. The Commission is responsible for the administration of this Agreement. Each Participant shall be represented by its Commissioner or their designated alternate Commissioner ("Alternate") pursuant to the Joint Powers Agreement. Each

Commissioner shall have authority to act for the Participant represented with respect to matters pertaining to this Agreement.

8.2 Forum. Whenever any action anticipated by this Agreement is required to be jointly taken by the Participants, such action shall be taken at regular or special meetings of the NCPA Commission.

8.3 Quorum. For purposes of acting upon matters that relate to administration of this Agreement, a quorum of the Participants shall consist of those Commissioners, or their designated Alternate, representing a numerical majority of the Participants.

8.4 Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement. A unanimous vote of all Participants shall be required for action regarding: (i) any transfer of rights to a Third Party as described in Section 9 of this Agreement; and (ii) for matters related to any of the following actions as provided for in the Purchase Agreements: (a) exercising any early termination provisions as set forth in the Purchase Agreements, and (b) exercising any assignment rights as set forth in the Purchase Agreements. For all other matters pertaining to this Agreement, a majority vote of the Participants shall be required for action.

Section 9. Transfer of Rights by Participants

9.1 A Participant has the right to make transfers, sales, assignments and exchanges (collectively “transfers(s)”) of any portion of its Project Participation Percentage and rights thereto, subject to the approval provisions in Section 8.4 of this Agreement,

provided that the transferee satisfies all applicable criterion in the Purchase Agreements. If a Participant desires to transfer a portion or its entire share of the Project for a specific time interval, or permanently, then NCPA will, if requested by such Participant, use its best efforts to transfer that portion of the Participant's share of the Project.

9.2 Unless otherwise set forth in this Agreement, before a Participant may transfer an excess Project share pursuant to Section 9.1 to any person or entity other than a Participant, it shall give all other Participants the right to purchase the share on the same terms and conditions. Before a Participant may transfer an excess Project share pursuant to section 9.1 to any person or entity other than a Member, it shall give all Members the right to purchase the share on the same terms and conditions. Such right shall be exercised within thirty (30) days of receipt of notice of said right.

No transfer shall relieve a Participant of any of its obligations under this Agreement except to the extent that NCPA receives payment of these obligations from a transferee.

9.3 The provisions of this Section 9 do not apply to the Exhibit A, unless expressly set forth therein.

Section 10. Term and Termination. This Agreement shall become effective when it has been duly executed by all Participants, and delivered to and executed by NCPA (the "Effective Date"). NCPA shall notify all Participants in writing of the Effective Date. The Term of this Agreement shall be coterminous with the Purchase Agreements, and shall

commence on the Effective Date, and shall continue through the term of the Purchase Agreements.

Section 11. Withdrawal of Participants. No Participant may withdraw from this Agreement except as otherwise provided for herein.

Section 12. Settlement of Disputes and Arbitration. The Parties agree to make best efforts to settle all disputes among themselves connected with this Agreement as a matter of normal business under this Agreement. The procedures set forth in Section 10 of the Power Management and Administrative Services Agreement shall apply to all disputes that cannot be settled by the Participants themselves; provided, that the provisions of Section 4.5 shall first apply to all disputes involving invoices prepared by NCPA.

Section 13. Miscellaneous

13.1 **Confidentiality.** The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. Confidential or trade secret information shall be marked or expressly identified as such.

If a Party (“Receiving Party”) receives a request from a Third Party for access to, or inspection, disclosure or copying of, any other Party’s (the “Supplying Party”) confidential data or information, which the Receiving Party has possession of (“Disclosure Request”), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days after receipt of the Disclosure Request.

Within three (3) Business Days after receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party's costs reasonably incurred with respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, and the Receiving Party's attorney's fees; or

(ii) that the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

13.2 Indemnification and Hold Harmless. Subject to the provisions of Section 13.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing boards, officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of

contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

13.3 Several Liabilities. No Participant shall, in the first instance, be liable under this Agreement for the obligations of any other Participant or for the obligations of NCPA incurred on behalf of other Participants. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of each Participant under this Agreement is, in the first instance, a several obligation and not a joint obligation with those of the other Participants.

Notwithstanding the foregoing, the Participants acknowledge that any debts or obligations incurred by NCPA under this Agreement on behalf of any of them shall be borne solely by such Participants in proportion to their respective Project Participation Percentages, and not by non-Participant Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

In the event that a Participant should fail to pay its share of the debts or obligations incurred by NCPA as required by this Agreement, the remaining Participants shall, in proportion to their Project Participation Percentages, pay such unpaid amounts and shall be reimbursed by the Participant failing to make such payments.

13.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE, OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must

have materially affected his or her settlement with the debtor.” The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

13.5 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the Commission or the governing body of a Participant, as applicable. Any such waiver by the Commission in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

13.6 Amendments. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

13.7 Assignment of Agreement.

13.7.1 Binding Upon Successors. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

13.7.2 No Assignment. Neither this Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, which consent shall not be unreasonably withheld.

13.8 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

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

13.10 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

13.11 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered to a Participant's Commissioner or Alternate, and to the General Manager, or shall be transmitted to the Participant and the General Manager at the addresses shown on the signature pages hereof. The designation of such addresses may be changed at any time by written notice given to the General Manager who shall thereupon give written notice of such change to each Participant. All such notices shall be deemed delivered when personally delivered, two (2) Business Days after deposit in the United States mail

first class postage prepaid, or on the first Business Day following delivery through electronic communication.

13.12 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement.

13.13 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

13.14 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

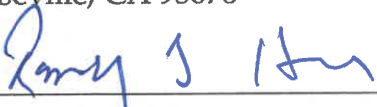
13.15 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, then each Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

13.16 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 13.2 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

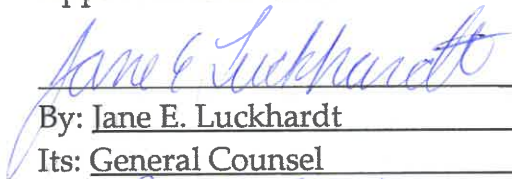
13.17 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

IN WITNESS WHEREOF, NCPA and each Participant have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.


NORTHERN CALIFORNIA
POWER AGENCY
651 Commerce Drive
Roseville, CA 95678


By: Randy S. Howard
Title: General Manager
Date: 12/23/22


Approved as to form:


By: Jane E. Luckhardt
Its: General Counsel
Date: Dec 23, 2022


Attestation (if applicable):


By: TRISHA ZIMMER
Its: ASST. SECRETARY OF COMMISSION
Date: 12-23-2022


CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, CA 95050


By: Manuel Pineda
Title: Assistant City Manager
Date: Dec 22, 2022

Approved as to form:


By: Daniel Ballin
Its: City Attorney
Date: Dec 22, 2022

Attestation (if applicable):


By: NORA PIMENTEL
Its: ASST. CITY CLERK
Date: 12-22-2022

CITY OF ALAMEDA
2000 Grand Street
Alameda, CA 94501

CITY OF BIGGS
465 C Street
Biggs, CA 95917

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: City Attorney
Date: _____

By: _____
Its: City Attorney
Date: _____

Attestation (if applicable)

Attestation (if applicable)

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

CITY OF GRIDLEY
685 Kentucky Street
Gridley, CA 95948

CITY OF LODI
221 W. Pine Street
Lodi, CA 95240

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: City Attorney
Date: _____

By: _____
Its: City Attorney
Date: _____

Attestation (if applicable)

Attestation (if applicable)

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

CITY OF LOMPOC
100 Civic Center Plaza
Lompoc, CA 93436

CITY OF PALO ALTO
160 Palo Alto Avenue
Palo Alto, CA 94301

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: City Attorney
Date: _____

By: _____
Its: City Attorney
Date: _____

Attestation (if applicable)

Attestation (if applicable)

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

CITY OF OAKLAND, acting
by and through its
Board of Port Commissioners
530 Water Street
Oakland, CA 94607

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: City Attorney
Date: _____

Attestation (if applicable)

By: _____
Its: _____
Date: _____

EXHIBIT A
PROJECT PARTICIPATION PERCENTAGES

On the Effective Date of the Agreement the initial Participant (“Initial Participant”) who is signatory to this Agreement, and its respective initial Project Participation Percentage share of the Project is set forth in Table 1 of this Exhibit A (“Initial Project Participation Percentage”). The process set forth below is not subject to the requirements of Section 9 of this Agreement, except as set forth below.

Table 1
Initial Project Participation Percentages

Member	Project Participation Percentages	Project	Project
		Participation MW (2025 - 2026)	Participation MW (2027 - 2037)
City of Santa Clara	100.0%	50.00	100.00
Total:	100.0%	50.00	100.00

Thereafter, a Member who is not a Participant may exercise a right to accept a transfer of a portion of the Initial Project Participation Percentage of the Initial Participant in an amount no greater than the amount set forth in Table 2 of this Exhibit A, no later than April 30, 2023 (the “Transfer Completion Deadline”), unless the Initial Participant otherwise agrees in writing to extend the Transfer Completion Deadline. The right to transfer described in this Exhibit A shall be exercised in writing (1) addressed to NCPA and the Initial Participant, and (2) by a Member’s execution of this Agreement by the Transfer Completion Deadline. For purposes of this Exhibit A only, that Member who becomes a Participant shall be referred to as a “Table 2 Participant.” Notwithstanding the foregoing,

the Transfer Completion Deadline applies only to the intended assumption of the Project Participation Percentage described in Table 2 of this Exhibit A, and shall not limit or reduce a Participant’s rights set forth in Section 9 of this Agreement. Upon written notice and execution of this Agreement , the Table 2 Participant will assume all rights and obligations set forth in this Agreement for the portion of the Project Participation Percentage share of the Project as set forth in Table 2 of this Exhibit A. If any Members exercise their right to accept a transfer of a share of the Project Participation Percentage, the Parties shall add to this Exhibit A by preparing a Table 3 to reflect the Final Project Participation Percentage shares of the Project. NCPA shall prepare Table 3 after the Transfer Completion Deadline to reflect the Final Project Participation Percentages of each Participant, and such Table 3 will be added to this Exhibit A as an amendment to this Agreement once adopted by the Commission. In the event an intended Table 2 Participant does not become a Table 2 Participant by the Transfer Completion Deadline, the Initial Participant shall retain the Project Participation Percentage of the intended Table 2 Participant as described in Table 2 of this Exhibit A, and such will be reflected in Table 3.

Table 2
Draft Final Project Participation Percentages

Member	Project Participation Percentages	Project	Project
		Participation MW (2025 - 2026)	Participation MW (2027 - 2037)
City of Alameda	5.0%	2.50	5.00
City of Biggs	0.4%	0.20	0.40
City of Gridley	0.6%	0.30	0.60
City of Lodi	10.0%	5.00	10.00
City of Lompoc	1.7%	0.85	1.70
City of Palo Alto	10.0%	5.00	10.00
Port of Oakland	2.3%	1.15	2.30
City of Santa Clara	70.0%	35.00	70.00
Total:	100.0%	50.00	100.00

EXHIBIT B

Purchase Agreements

Western Systems Power Pool Agreement Confirmation between Northern California Power Agency and Geysers Power Company, LLC , to purchase electric capacity attached to this Exhibit B.

Western Systems Power Pool Agreement Confirmation between Geysers Power Company, LLC and Northern California Power Agency, to purchase renewable energy attached to this Exhibit B.

City Council Item #4
Staff Report

Date: April 3rd, 2023
To: Mayor and City Council
From: Cliff Wagner, Administrator/Personnel Director
Subject: California Family Rights Act and Family and Medical Leave Act Policy

X	Regular
	Special
	Closed
	Emergency

Recommendation

City staff respectfully recommends that the City Council approve the attached California Family Rights Act (CFRA) and Family and Medical Leave Act (FMLA) Policy.

Background

The California Family Rights Act and the Family and Medical Leave Act are State and Federal mandates requiring certain employers to provide eligible employees the opportunity to take unpaid, job-protected leave for certain medical and nonmedical needs for themselves and family members. The FMLA also provides leave for qualifying military exigencies and leave for families of covered military members. This provides qualifying City employees with a balance between the demands of the workplace and the needs of families.

In the world of Human Resources, multiple laws can be applied to the same situation making compliance a paperwork nightmare, leaving employees confused and employers at risk. Policies provide structured processes, clarity, and guidance to employees and to employers enforcing them. They also help to ensure the City is in compliance with State and Federal laws and they assist with fair treatment of all employees, providing them with their protected rights.

Financial Impact

None

Compliance with City Council Strategic Plan or Budget Goals

The City Council and City staff are committed to providing quality benefits and fair and equal treatment by way of policies that are clear and informative.

Attachments

CFRA/FMLA Policy

**City of Gridley
CFRA/FMLA Leave Policy**

Purpose/Objective

The federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) provide eligible employees the opportunity to take unpaid, job-protected leave for certain medical and nonmedical needs for themselves and family members. Each of these leaves is explained below. The maximum amount of leave available under this policy is twelve (12) weeks of CFRA leave in a 12-month period and twenty-six (26) weeks of FMLA leave (where military caregiver leave applies) in a 12-month period, some, or all of which may run concurrently.

Eligibility

FMLA regulations allow an employer to condition FMLA-protected leave on the employee's compliance with other company policies and such is the intent of the City. To be eligible for leave under this policy, employees must meet all the following requirements:

1. Have worked at least twelve (12) months for City of Gridley in the preceding seven (7) years (exceptions apply to the seven-year requirement).
2. Have worked at least 1,250 hours for City of Gridley over the twelve (12) months preceding the date the leave would commence.
3. FMLA only: Currently work at a location where there are at least fifty (50) employees within seventy-five (75) miles.

All periods of absence from work due to or necessitated by service in the uniformed services are counted as hours worked in determining eligibility.

Conditions Triggering Leave

The FMLA and CFRA have differing definitions of “family member,” and only the FMLA allows employees to take up to twenty-six (26) weeks of leave to provide care for an injured military family member. Because of this, FMLA and CFRA leaves may not always run concurrently. In general, CFRA/FMLA leave may be taken for any of the following reasons:

Reasons for Leave (See related definitions at the end of the policy.)	CFRA	FMLA	Both
To care for or bond with:	An employee’s newborn child or newly placed foster or adopted child.		X
	A domestic partner’s newborn child or newly placed foster or adopted child.	X	
To care for a family member with a serious health condition who is the employee’s:	Spouse, parent or child under age 18, or age 18 or older who is incapable of self-care.		X
	Spouse, domestic partner, child or registered domestic partner’s child of any age, parent, parent-in-law, sibling, grandparent, or grandchild.	X	

The employee's own serious health condition that makes the employee unable to perform his or her job, excluding leave for the medical disability related to pregnancy and birth.			X
The employee's own medical disability related to pregnancy and birth.		X	
A qualifying military exigency related to the covered active duty or call to covered active duty of an employee's spouse, parent or child in the United States armed forces.			X
Military caregiver leave for a service member with a serious health condition (defined under "Definitions") who is the employee's spouse, domestic partner, child, parent or next of kin.*		X	

*CFRA leave will run concurrently when the family member, regardless of military status and with the exception of next of kin, meets the standard criteria for a serious health condition.

The 12-Month Measurement Period

City of Gridley measures the period of twelve (12) months in which leave is taken using the rolling method. Using this method, the City will look back over the last 12 months from the date of the request, add all FMLA time the employee has used during the previous 12 months and subtract that total from the employee's 12-week leave allotment. For military caregiver leave, an eligible employee may take up to twenty-six (26) workweeks of leave in a single 12-month period. The single 12-month period begins on the first day leave is taken to care for a covered service member and ends twelve (12) months thereafter, regardless of the method used to determine leave availability for other CFRA/FMLA-qualifying reasons.

Intermittent and Reduced-Schedule Leave

Eligible employees may take leave in a single block of time, intermittently (in separate blocks of time) or by reducing the normal work schedule. Employees who require intermittent or reduced-schedule leave must try to schedule their leave so that it will not unduly disrupt City of Gridley's operations. Intermittent leave is permitted in the same increments as provided in City of Gridley's vacation, sick or paid-time-off leave policy.

Interaction with Paid Leave

Depending on the purpose of the leave request, employees may choose (or City of Gridley may require employees) to use accrued paid leave (such as sick leave, vacation or paid time off) concurrently with some or all of the leave taken under this policy. To use paid leave for FMLA/CFRA leave, eligible employees must comply with City of Gridley's normal procedures (e.g., call-in procedures, advance notice) for the applicable paid-leave policy.

Employee paid-leave accruals (paid time off, vacation, sick leave) will continue while paid leave is being used during periods of FMLA/CFRA absence and in accordance with those individual policies. Employee paid-leave accruals will not continue during unpaid periods of FMLA/CFRA absence or when only disability payments are being received.

Maintenance of Health Benefits

If employees and/or their families participate in City of Gridley's group health plan, City of Gridley will maintain coverage during FMLA/CFRA leave on the same terms as if employees had continued to work. If applicable, employees must make arrangements to pay their share of health plan premiums while on

leave. In some instances, City of Gridley may recover the premiums it paid to maintain health coverage or other benefits for employees and/or their families while employees were absent. Use of FMLA/CFRA leave will not result in the loss of any employment benefit that accrued prior to the start of leave under this policy. Employees should consult the applicable benefit plan document for information regarding eligibility, coverage and benefits.

Procedures

When seeking leave under this policy, employees must provide the following to Human Resources:

1. Thirty (30) days' notice of the need to take FMLA/CFRA leave if the need for leave is foreseeable. In the case of unforeseeable leave, notice must be provided as soon as practicable and in compliance with City of Gridley's normal call-in procedures, absent unusual circumstances.
2. Medical certification supporting the need for leave due to a serious health condition affecting the requesting employee or a covered family member or service member within fifteen (15) calendar days of City of Gridley's request for the certification (additional time may be permitted in some circumstances). Second or third medical opinions may also be required when allowed.
3. For qualifying exigency leave: Within fifteen (15) days of the request, an employee requesting qualifying exigency leave may be required to provide appropriate supporting documentation in the form of a copy of the covered military member's active duty orders or other military documentation indicating the appropriate military status and the dates of active duty status, along with a statement setting forth the nature and details of the specific exigency, the amount of leave needed and the employee's relationship to the military member.
4. An employee must provide periodic reports as deemed appropriate during the leave regarding the employee's status and intent to return to work.
5. A return-to-work release before returning to work if the leave was due to the employee's serious health condition.

Failure to comply with these requirements may result in delay or denial of leave or disciplinary action, up to and including termination. Leave under this policy will be governed by and handled in accordance with CFRA- and FMLA-applicable regulations, and nothing within this policy should be construed to be inconsistent with those regulations.

Employer Responsibilities

To the extent required by law, City of Gridley will inform employees whether they are eligible for leave under the FMLA/CFRA. Should employees be eligible for FMLA/CFRA leave, City of Gridley will provide eligible employees with a notice that specifies any additional information required, as well as their rights and responsibilities. City of Gridley will also inform employees if leave will be designated as FMLA/CFRA-protected and, to the extent possible, note the amount of leave counted against employees' leave entitlement. If employees are not eligible for FMLA/CFRA leave, City of Gridley will provide a reason for the ineligibility.

Job Restoration

Upon returning from FMLA/CFRA leave, employees will typically be restored to their original position or to an equivalent position with equivalent pay, benefits and other employment terms and conditions.

Failure to Return After Leave

If an employee fails to return to work as scheduled after FMLA/CFRA leave or if an employee exceeds the authorized FMLA/CFRA entitlement, the employee will be subject to City of Gridley's other applicable leave of absence, accommodation and attendance policies. This may result in termination if the employee has no other City of Gridley-provided leave available to her or him that applies to the continued absence. Likewise, following the conclusion of the FMLA/CFRA leave, City of Gridley's obligation to maintain the employee's group health plan benefits ends (subject to any applicable COBRA rights).

Military Caregiver Leave

Military caregiver leave is designed to allow eligible employees to care for certain family members who have sustained serious injuries or illness while on active duty. Within the single 12-month period described above, an eligible employee may take a total of twenty-six (26) weeks of CFRA/FMLA leave, including up to twelve (12) weeks of leave for any other CFRA/FMLA-qualifying reason (i.e., birth or adoption of a child, serious health condition of the employee or close family member, or a qualifying exigency). For example, during the single 12-month period, an eligible employee may take up to sixteen (16) weeks of CFRA/FMLA leave to care for a covered service member when combined with up to ten (10) weeks of CFRA/FMLA leave to care for a newborn child.

Military caregiver leave applies on a per-injury basis for each service member. Consequently, an eligible employee may take separate periods of caregiver leave for each covered service member and/or for each serious injury or illness of the same covered service member. A total of no more than twenty-six (26) workweeks of military caregiver leave, however, may be taken within any single 12-month period.

Qualifying Exigency Leave

Employees who meet the eligibility standards set forth above are eligible to request qualifying exigency leave. Although qualifying exigency leave may be combined with leave for other FMLA-qualifying reasons, under no circumstances may the total leave exceed twelve (12) weeks in any 12-month period (with the exception of military caregiver leave as set forth above).

Eligible employees may take unpaid qualifying exigency leave to tend to certain exigencies arising out of the duty under a call or order to active duty of a covered military member (i.e., the employee's spouse, child, or parent). Up to twelve (12) weeks of qualifying exigency leave is available in any twelve (12) month period, as measured by the same method that governs measurement of other forms of leave within this policy, with the exception of military caregiver leave, which is subject to a maximum of twenty-six (26) weeks of leave in a single 12-month period. The maximum amount of qualifying exigency leave an employee may use to bond with a military member on short-term, temporary rest and recuperation during deployment is fifteen (15) days.

Persons who can be ordered to active duty include active and retired members of the armed forces, certain members of the retired Reserve and various other Reserve members, including in the Ready Reserve, Selected Reserve, Individual Ready Reserve, National Guard, state military, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve and Coast Guard Reserve.

A call to active duty refers to a federal call to active duty, and state calls to active duty are not covered unless under order of the president of the United States pursuant to certain laws.

Qualifying exigency leave is available under the following circumstances:

1. **Short-notice deployment:** To address any issue that arises out of short notice (within seven (7) days or less) of an impending call or order to active duty.
2. **Military events and related activities:** To attend any official military ceremony, program or event related to active duty or a call to active-duty status, or to attend certain family-support or assistance programs and informational briefings.
3. **Childcare and school activities:** To arrange for alternative childcare; to provide childcare on an urgent, immediate-need basis; to enroll a child in or transfer a child to a new school or day care facility; or to attend meetings with staff at a school or day care facility.
4. **Financial and legal arrangements:** To make or update various financial or legal arrangements or to act as the covered military member's representative before a federal, state or local agency in connection with service benefits.
5. **Counseling:** To attend counseling (provided by someone other than a health care provider) for the employee, the covered military member, or a child or dependent, when necessary, as a result of duty under a call or order to active duty.
6. **Temporary rest and recuperation:** To spend time with a covered military member who is on short-term, temporary rest and recuperation leave during the period of deployment. Eligible employees may take up to fifteen (15) days of leave for each instance of rest and recuperation.
7. **Post-deployment activities:** To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of up to ninety (90) days following termination of the covered military member's active-duty status. This also encompasses leave to address issues that arise from the death of a covered military member while on active-duty status.
8. **Mutually agreed leave:** Other events that arise from the close family member's call or order to active duty, provided that City of Gridley and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

Definitions

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider, and either prevents the employee from performing the functions of his or her job or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing-treatment requirement includes an incapacity of more than three (3) full calendar days and two (2) visits to a health care provider, or one (1) visit to a health care provider and a continuing regimen of care; an incapacity caused by a chronic condition or permanent or long-term conditions; or absences due to multiple treatments. Other situations may also meet the definition of "continuing treatment."

Qualifying exigencies include activities such as short-notice deployment, military events, arranging alternative childcare, making financial and legal arrangements related to deployment, rest and recuperation, counseling, parental care, and post-deployment debriefings.

A covered service member is either 1) a current service member of the armed forces, including a member of the National Guard or Reserves, with a serious injury or illness incurred in the line of duty for which the service member is undergoing medical treatment, recuperation or therapy;

otherwise in outpatient status; or otherwise on the temporary disability retired list; or 2) a covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness.

A *covered veteran* is an individual who was discharged under conditions other than dishonorable during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. The period between October 28, 2009, and March 8, 2013, is excluded in determining this five-year period.

Next of kin means the nearest blood relative of the service member, other than the service member's spouse, domestic partner, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave.

The definition of "serious injury or illness" for current service members and veterans is distinct from the definition of "serious health condition" for CFRA/FMLA leave. For purposes of this policy, "serious injury or illness" means an injury or illness incurred by the service member in the line of duty while on active duty in the armed forces that may render the service member medically unfit to perform the duties of the service member's office, grade, rank or rating or that existed before the beginning of active duty and was aggravated by service while on active duty.

With regard to covered veterans, the serious injury or illness may manifest itself before or after the individual assumed veteran status and is 1) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the armed forces and rendered the service member unable to perform the duties of the service member's office, grade, rank or rating; 2) a physical or mental condition for which the covered veteran has received a VA service-related disability rating of 50 percent or greater, and such rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; 3) a physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would absent treatment; or 4) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.