



City of Grand Island

Tuesday, November 14, 2006

Council Session

Item F3

#9089 - Consideration of Amended and Restated Participation Agreement for the Public Power Generation Agency Project

Staff Contact: David Springer

Council Agenda Memo

From: Dave Springer, Finance Director

Meeting: November 14, 2006

Subject: Approval of Ordinance Authorizing Amended and Restated Participation Agreement with Public Power Generating Agency

Item #'s: F-3

Presenter(s): Dave Springer, Finance Director
Gary R. Mader, Utilities Director

Background

On August 9, 2005 by Resolution 2005-224, Council approved an inter-local agreement, participation agreement and bylaws governing the City of Grand Island's participation in the construction and operation of a new 220 MW coal fired power plant, Whelan Energy Center Unit 2, to be built adjacent to the existing Hastings plant. The governing agency, Public Power Generating Agency (PPGA), is a body made up of representatives from each of the project participants.

Discussion

In the course of preparing for a February 2007 bond issue, PPGA's bond counsel, Hawkins, Delafield & Wood and their underwriters, Bear, Stearns & Co. have advised that certain changes to wording and connotations in the Participation Agreement would be seen in a more favorable light by the rating agencies who judge the credit worthiness of PPGA and it's participants. This in turn, helps establish the interest rates on the bonds, and ultimately, the cost of the debt to PPGA. Some of the statements stressed are:

- PPGA pledges it's revenues as security for the indebtedness and no member has the right to mortgage or grant a security interest in it's share of the project.
- The participants will set rates sufficient to meet all obligations.
- That the participant's obligation to make payment under the agreement is limited to electric system revenues.

The revisions to the Participation Agreement with PPGA have been reviewed by the City's bond attorney at Baird Holm, and deemed satisfactory. Attached is a letter from Richard Petersen to that effect.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the revisions to the PPGA Participation Agreement.
2. Disapprove the revised agreement.
3. Refer the issue to a Committee
4. Take no action on the issue.

Recommendation

City Administration recommends that the Council authorize the Mayor to execute the revised Participation Agreement.

Sample Motion

Motion to approve the ordinance authorizing amended and restated Participation Agreement with Public Power Generation Agency.

PUBLIC POWER GENERATION AGENCY

PARTICIPATION AGREEMENT

Approved: September 1, 2005
Amended: October 5, 1006

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AMENDED AND RESTATED
PARTICIPATION AGREEMENT

BETWEEN

GRAND ISLAND UTILITIES

AND

PUBLIC POWER GENERATION AGENCY

This Amended and Restated Participation Agreement (Agreement) is made and entered into this 5th day of October, 2006, by and between Grand Island Utilities, acting for and on behalf of the City of Grand Island, Nebraska, and the Public Power Generation Agency (PPGA), a non-profit joint entity authorized by the State of Nebraska, pursuant to Section 18 of Article XV of the Constitution of the State of Nebraska and the Interlocal Cooperation Act of the State of Nebraska §§13-801 et seq., R.R.S. Nebraska, 1997, as amended (the "Interlocal Cooperation Act").

PREAMBLE

This Agreement represents the joint efforts of the public power entities (Members), as shown in Exhibit A, attached hereto, that formed PPGA. The purpose of this Preamble is to explain, in summary form, how this Agreement came about and the intentions of the Members so that the balance of this Agreement may be better understood and interpreted in light of the understandings of the Members.

Each of the Members either owns or operates electric generation, transmission and transformation facilities, or is obligated to provide electric capacity and related energy for its customers or its member systems. The Members have determined that it is in their mutual best interest to join together in the construction of Whelan Energy Center Unit 2 (WEC 2), and to share the costs and benefits to be realized from this Project.

At the outset, the Members considered the question of whether this Agreement should be drafted so as to encompass each and every conceivable situation and make provisions therefor or, on the other hand, to vest in the PPGA Board of Directors the ultimate responsibility for WEC 2, with the Project Construction Manager to have responsibility for construction of WEC 2 and the Project Operating Agent to thereafter have responsibility to operate WEC 2. It was also contemplated by the Members that committees would be created from time to time, either by appropriate resolution of the PPGA Board of Directors or by the various agreements that are contemplated. The Members determined they would prefer to have the PPGA Board of Directors retain ultimate responsibility, except as otherwise delegated to the Project Construction Manager, the Project Operating Agent, and such committees and task forces as might be created, and for that reason they determined that this Agreement should not encompass each and every conceivable situation. Therefore, if the Agreement fails to spell out in detail a particular item, it is not because the Members did not consider the matter, but, rather, because they felt they could

better determine the solution to a particular problem as the problem arose and as the PPGA Board of Directors then determined how and in what manner it should be handled. The broad, general principles and the relationships between the Members are covered by this Agreement and are intended to establish the general principles by which a particular situation is to be resolved.

This entire Agreement should, therefore, be interpreted in light of a broad, general principle which prevails throughout, namely, that each of the Members has entered into this Agreement in the utmost of good faith and with the intention that each of the Members shall mutually share in the costs and benefits arising by reason of this Project as their interests appear. Ambiguity should be resolved in such manner as to provide the greatest benefit to each of the Members while imposing the least detriment upon any individual Member. Moreover, this Agreement should be further interpreted in light of the further principle that each of the Members has entered into this Project with the understanding and belief that no one individual Member is to profit or gain at the expense or detriment of any other Member except as may otherwise be specifically provided for in this Agreement or hereafter agreed to by the various Members.

PPGA has selected Hastings Utilities as the Project Construction Manager and Project Operating Agent for the reason that PPGA believes that Hastings Utilities is qualified and possesses the greatest amount of local resources to act as the Project Construction Manager and Project Operating Agent. It should, however, be kept in mind that Hastings Utilities will serve as the Project Construction Manager and Project Operating Agent until such time as Hastings Utilities resigns or is removed by the PPGA Board of Directors, as outlined in this Agreement. It should also be noted that Hastings Utilities is not being compensated over and above costs of services rendered by it for performing such duties and should, therefore, be viewed as one of the Members that has agreed, for and on behalf of PPGA and its Members, to perform a further duty. It is understood among the Members that Hastings Utilities, acting as either Project Construction Manager or Project Operating Agent, is to be responsive to the directions of the PPGA Board of Directors and does not have the right to act unilaterally under this Agreement except to the extent and for the specific purposes which are provided for in this Agreement and other Project Agreements or which may be delegated to it by the PPGA Board of Directors from time to time. The Members further contemplated that additional agreements may be necessary to carry out the intent of this Agreement, and unless otherwise specifically provided for, such additional agreements should be interpreted in light of this Preamble and the provisions of this Agreement.

SECTION 1: MEMBERS

1.01 Members to this Agreement are shown in Exhibit A, attached hereto.

SECTION 2: RECITALS

2.01 PPGA is authorized and empowered under the Interlocal Cooperation Act to purchase or lease or build any plant, works, systems, facilities, and real and personal property for any public purpose, together with all parts thereof and appurtenances thereto, used or useful in the finance, generation, production, transmission, conservation, transformation, distribution, purchase or sale of electric capacity and energy, or any interest therein or right to capacity thereof, and to purchase electric capacity and energy from any source located within and without the State of Nebraska.

2.02 PPGA intends to construct a coal-fired electric generating facility and associated transmission facilities known as the Whelan Energy Center 2 (WEC 2). PPGA shall be required to certify, after performance tests, the net output of WEC 2. WEC 2 is intended to be no less than 220 net megawatts (220 MW) under specified operating conditions. The PPGA Board of Directors shall be responsible for accrediting the Project Output with the Mid-Continent Area Power Pool (MAPP) or successor organization.

2.03 PPGA is comprised of the public power entities as shown in Exhibit A, attached hereto, and as may be modified from time to time by the PPGA Board of Directors.

2.04 As the owner of the Project, PPGA shall issue revenue bonds to finance the entire construction and related start up costs of the Project.

2.05 The Member desires to enter into a Participation Agreement that is mutually beneficial.

SECTION 3: DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

3.01 "*Accounting Practice*" shall mean accounting principles, methods and terminology followed and construed, as nearly as practicable, in conformity with the pronouncements of the Financial Accounting Standards Board, the Governmental Accounting Standards Board, and the Federal Energy Regulatory Commission Uniform System of Accounts for Class A and Class B public utilities.

3.02 "*Bond Document*" shall mean, collectively, all resolutions and indentures of PPGA authorizing and providing with respect to debt issued by PPGA to finance the Project.

3.03 "*Bond-Related Costs*" shall mean all costs payable by PPGA under, pursuant to or through the Bond Document, or otherwise directly or indirectly related to the financing of the Project, or any deposits required to be made under the Bond Document.

3.04 "*Capacity*" shall mean the electrical ratings expressed in net megawatts (MW) and megavolt-amperes (MVA).

3.05 "*Commercial Operation Date*" means 12:01 a.m. on the first day of the month following the day when WEC 2 is ready to deliver Project Output, and the same has been tested and is ready to be placed in continuous normal operation. The Project Construction Manager and Project Operating Agent will notify PPGA and its Members when the Commercial Operation Date of WEC 2 has been determined.

3.06 "*Energy*" shall mean electric energy measured in kilowatt-hours (kWh) or megawatt-hours (MWh).

3.07 "*Energy-Related Costs*" shall mean those costs directly relating or proportional to the production of energy as defined in Exhibit B of this Agreement.

3.08 “*Entitlement*” shall mean each Member’s share of the output of WEC 2, expressed in terms of Capacity, and determined by multiplying the Net Effective Generating Capability of the Unit by such Member’s Entitlement Share, together with the Energy associated with such Capacity.

3.09 “*Entitlement Share*” shall mean the percentage of undivided interest of each Member in the Project as reflected in the then current version of Exhibit A.

3.10 “*Member(s)*” shall mean an entity that is a signatory of the Interlocal Agreement of Public Power Generation Agency, a non-profit joint entity created pursuant to and in accordance with the Interlocal Cooperation Act of the State of Nebraska §§ 13-801 et seq., R.R.S. Nebraska, 1997, as amended, and a signatory of this Participation Agreement.

3.11 “*Minimum Net Generation*” shall mean the minimum level of Project Output expressed in net kWh at which the Unit may be operated at any time as determined by the Project Operating Agent.

3.12 “*Net Effective Generating Capability*” shall mean the maximum continuous ability of the Unit to produce Project Output which is available to the Members at the high voltage terminals of the generator step-up transformers, at any given time, less any remaining auxiliary requirements, defined as Project Station Power.

3.13 “*Net Energy Generation*” shall mean the total energy scheduled by and delivered at any hour to the Members from WEC 2.

3.14 “*Non-Member*” shall mean any entity that has **not** executed the PPGA Interlocal Agreement, but has entered into a Purchase Power Agreement, and is listed on Exhibit A of this Agreement.

3.15 “*Point of Delivery*” shall mean the transmission lines connected to the Project Substation at which the Members are to receive delivery of Project Output under normal operating conditions as generally described in Exhibit C.

3.16 “*Project*” shall mean the WEC 2 Unit, the Point of Delivery, the WEC site, and all property, facilities, structures, land, water, fuel, and any rights or interests therein, which are generally described in Exhibit D attached hereto, together with any other property, facilities, structures, land, water, fuel, and any rights or interests related to or in the furtherance of the foregoing, whenever acquired.

3.17 “*Project Agreements*” shall include, but not be limited to, this Agreement, the Interlocal Agreement and related Bylaws, Project Construction Manager agreement, Project Operating Agent agreement, Purchase Power Agreement, Bond Document and any other agreement in furtherance of and not inconsistent with this Agreement and as may be adopted or amended from time to time by the PPGA Board of Directors.

3.18 “*Project Construction Manager*” shall mean the entity designated herein to be responsible for the construction and completion, but not the operation and maintenance, of the Project in accordance with the Agreement.

3.19 “*Project Operating Agent*” shall mean the entity designated herein to be responsible for the operation and maintenance, but not the construction and completion, of the Project in accordance with this Agreement.

3.20 “*Project Output*” shall mean the Capacity and related Energy of the Unit which, at any time, can be delivered and made available to the Point of Delivery less any auxiliary requirements defined as Project Station Power.

3.21 “*Project Station Power*” shall mean the Capacity and related Energy required to operate all of the auxiliary equipment, such as pumps and motors, that is required to generate the net output of the Project. Some Capacity and Energy consumption necessary to provide Project Station Power may require an allocation between the Project and WEC 1, as determined by the PPGA Board of Directors, in coordination with Hastings Utilities and Exhibit E of this Agreement.

3.22 “*Project Substation*” shall mean the 115 kV substation to which the high-voltage terminal of the Unit’s step-up transformer is connected.

3.23 “*Project Work*” shall mean engineering, design, contract preparation, purchasing, construction, supervision, expediting, inspection, legal services, accounting, testing, protection, operation, repair, maintenance, replacement, reconstruction, or use of and for the Project, and any other work as approved by the PPGA Board of Directors.

3.24 “*Prudent Utility Practice*” shall mean any of the practices, methods and acts which, in the exercise of reasonable judgment, in the light of the facts, including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. In applying the standard of Prudent Utility Practice to any matter under this Agreement, equitable consideration should be given to the circumstances, requirements and obligations of each of the parties. It is recognized that Prudent Utility Practice is not intended to be limited to the optimum practice, method or act at the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

3.25 “*Purchase Power Agreement*” shall mean a contract between PPGA and a Non-Member for the purchase of Project Output. Terms and conditions of the purchase of output by a Non-Member must be unanimously approved by the PPGA Board of Directors. All Purchase Power Agreements that are unanimously approved by the PPGA Board of Directors shall be listed on Exhibit A of this Agreement.

3.26 “*Shared Facilities*” shall mean plant or facilities which are used in connection with the construction or operation of WEC 2 and which are constructed, acquired or otherwise owned or used as part of the existing WEC 1, or otherwise constructed on or near the site of WEC 1 or WEC 2 for the benefit of WEC 2, together with real property and easements and other rights therein used in connection with the construction or operation of WEC 2. Shared Facilities shall specifically include, without limitation, the property delineated in Exhibit E attached hereto.

3.27 “*Unit*” shall mean the nominally rated 220 MW coal-fired electric generating facility and the associated auxiliary and accessory systems and equipment required for the production of electrical energy at WEC 2 as defined below.

3.28 “*WEC*” shall mean Whelan Energy Center, 4520 East South Street, Hastings, Adams County, Nebraska.

3.29 “*WEC 1*” shall mean the existing coal-fired electric generating facility and associated transmission facility located at Whelan Energy Center, 4520 East South Street, Hastings, Adams County, Nebraska.

3.30 “*WEC 2*” shall mean the nominally rated 220 MW coal-fired electric generating facility and associated substation facilities located at Whelan Energy Center, 4520 East South Street, Hastings, Adams County, Nebraska, and relates to the acquisition, development, construction, finance, management, distribution and sale of energy by the most cost-effective and reliable means available.

3.31 “*Willful Action*” shall mean an act or omission of a party by an officer, director, employee, and agent and is knowingly or intentionally done with conscious indifference or with the expectation that injury could reasonably result and, also for material default of any Project Agreement which has not been cured or continues beyond a reasonable time.

SECTION 4: OWNERSHIP OF PROJECT

4.01 The Members agree that PPGA will own or have the right to use and will control the Project. Any and all costs of the Project, including Bond-Related Costs and capital improvements, as approved by the PPGA Board of Directors, shall be paid by the Members in accordance with provisions set forth in this Agreement. Prior to the Commercial Operation Date, such costs shall be included in the Project Construction Manager’s budgets and be payable through the Project Construction Manager agreement, and thereafter such costs shall be included in the Project Operating Agent’s budgets and be payable through the Project Operating Agent agreement.

4.02 Each Member waives any right to partition the Project or any component thereof, whether by partition in kind or by sale and division of the proceeds. Each Member further waives any right which it may have to resort to any action in law or equity to partition the Project, and further waives the benefits of all laws that may now or hereafter authorize such partition until such time as this Agreement is terminated.

4.03 No Member shall have the right at any time to mortgage, create or provide for a security interest in, or convey in trust all or any part of its Entitlement Share in the Project, unless such right is specifically granted by the PPGA Board of Directors.

SECTION 5: ADMINISTRATION

5.01 Except as otherwise provided in this Agreement and in any other Project Agreements, the financing, administration, construction, completion, and operation and maintenance of the Project shall be the responsibility of the PPGA Board of Directors, which shall be governed by the PPGA Interlocal Agreement and Bylaws.

5.02 The PPGA Board of Directors may delegate its authority in writing to the Project Construction Manager, the Project Operating Agent, or any committee or persons, specifically or generally, as the PPGA Board of Directors may from time to time deem appropriate.

5.03 The Project Construction Manager and the Project Operating Agent shall be Hastings Utilities until such time the Project is decommissioned or Hastings Utilities resigns or is removed, as outlined in Section 20 of this Agreement. The Project shall be constructed in accordance with the Project Construction Manager agreement and operated in accordance with the Project Operating Agent agreement to be entered into by the PPGA Board of Directors. The Project Construction Manager agreement generally shall: specify that the Project shall be designed and constructed in a manner that minimizes total life cycle costs to the Participants, while ensuring that the Project performance meets or exceeds the specifications for unit performance, heat rate, net plant output, and environmental compliance; specify a bidding and procurement procedure that is consistent with Section 18 of Article XV of the Constitution of the State of Nebraska and the Interlocal Cooperation Act of the State of Nebraska §§13-801 et seq., R.R.S. Nebraska, 1997, as amended (the "Interlocal Cooperation Act"); specify that the Project Construction Manager shall implement the approach to engineering, procurement and construction contracting methods as directed by the PPGA Board; set forth procedures to be followed during the start-up period; and include such other matters as the PPGA Board of Directors deem appropriate for inclusion in such agreement. The Project Operating Agent agreement generally shall: specify that the Project Operating Agent will operate and maintain the Project in a manner that, consistent with Prudent Utility Practice, minimizes the total life cycle costs to the Participants; specify that the Project Operating Agent will work to ensure higher unit availability than other similar generating units, provided that it does not degrade the long-term reliability of the Project; specify that the Project Operating Agent will operate the plant in a manner consistent with Federal, state and local laws, including operating the plant within the environmental emissions limits established in the Unit's Prevention of Significant Deterioration permit; describe the manner in which Project Output shall be scheduled by Members in accordance with this Agreement; set forth the procedures to be followed in the event of an operating emergency; and include such other matters as the PPGA Board of Directors deem appropriate for inclusion in such agreement.

5.04 All actions or determinations made by the PPGA Board of Directors shall be reduced to writing.

5.05 None of the committees or task forces established shall have authority to modify any of the terms, covenants or conditions of the Project Agreements.

5.06 Whenever any act is required to be performed under the terms of this Agreement and the manner in which such act is to be performed is not otherwise specifically detailed, such act shall be performed in accordance with Prudent Utility Practice.

SECTION 6: DISPOSITION OF PROJECT OUTPUT

6.01 Each Member shall be entitled to schedule Project Output from the Unit and shall be entitled to receive such Project Output as scheduled at its designated Point of Delivery, subject to the provisions of this Agreement, up to the amount of its Entitlement in the Project, such being its share of the output of the Unit available at any given time, as defined in Exhibit A. Each Member shall be responsible for any and all transmission arrangements necessary to deliver Project Output to its respective load obligations, including but not limited to any arrangements and obligations of the Nebraska Public Power District control area and any North American Electric Reliability Council (NERC) region or its successor.

6.02 During the Project testing and start up phase only, the Project Construction Manager agrees to re-market the Energy associated with the tests to Members and other regional utilities to obtain the maximum possible revenues. Said revenues will be used to offset the final costs of start up for PPGA and its Members.

6.03 Except as outlined in Section 6.02 above, at no time shall any Member schedule from the Unit an amount of Capacity in excess of its Entitlement. Each Member further agrees that at such times the Unit is available to provide Project Output, the Project Operating Agent shall have the right but not the obligation to require each Member to schedule and take minimum delivery in proportion to its Entitlement Share as necessary to meet Minimum Net Generation.

6.04 Operation of the Unit by the Project Operating Agent and a Member's right to receive the output thereof shall be subject to scheduled outages or curtailments, operating emergencies, and unscheduled outages or curtailments of the Unit.

6.05 No Member is entitled to receive delivery of its Entitlement at points other than the designated Point of Delivery, except pursuant to Section 7 of this Agreement.

6.06 All Members are entitled to utilize the Project Output, in proportion to their Entitlement Shares, in providing ancillary transmission services as may be required to meet their control area obligations from the Project within operating limits of the Unit, as reviewed and recommended by the Project Operating Agent and approved by the PPGA Board of Directors.

SECTION 7: POINT OF DELIVERY

7.01 The Point of Delivery shall be designed, constructed or otherwise acquired and operated with the objective of permitting each Member to receive under normal operating conditions its Entitlement from the Unit at the designated Point of Delivery as noted in Exhibit C of this Agreement.

7.02 The Project Output shall be deemed delivered from the Project at the Point of Delivery as noted in Exhibit C of this Agreement, which may be modified from time to time by the PPGA Board of Directors.

7.03 Each Member shall have the right to use the Point of Delivery to receive Project Output under normal operating conditions in an amount equivalent to its Entitlement in the Unit or to utilize the Point of Delivery for such use without regard to the origin, source, ownership or type of generation used to produce such Project Output. The Project Operating Agent shall utilize the unused capacity in the Point of Delivery for the period of such replacement for the benefit of the Project at no added cost to any Member.

7.04 To the extent that it may be able to do so, each Member shall be entitled to interconnect its transmission system or arrange for the interconnection of the transmission system of a third party with the designated Point of Delivery, and the costs of such interconnection shall be paid by such Member; provided, however, that inability to interconnect shall not relieve such Member from paying for its share of the cost of the Point of Delivery or other Project costs agreed to by the PPGA Board of Directors.

7.05 As part of the Project Construction, certain 115 kV transmission improvements are planned, both external and internal to Hastings Utilities. Although the Point of Delivery is defined as the Project Substation, parallel paths exist to interconnected utilities. In the event of an outage or curtailment of any circuit or element associated with the Point of Delivery, Hastings Utilities shall make every reasonable effort to furnish temporary alternate service through other circuits or elements of Hastings Utilities' 115 kV transmission system. In the event of an outage or curtailment, the Project Operating Agent shall make every reasonable effort to furnish alternate service to all Members over any available parallel transmission path, system, or facility. There will be no separate charge from Hastings Utilities to any Member for service provided pursuant to this Section 7.05, except for compensation in Energy for additional losses that may be incurred as a result of providing such alternate service. The cost of obtaining such alternate transmission service shall be paid by the Member or Members receiving the alternate service. These costs shall be invoiced, proportional to use, as a separate charge only for those Members that utilize the alternate service.

7.06 Upon approval of the PPGA Board of Directors, a Member may, at its own expense, make interconnections to the Point of Delivery at points other than the then current Point of Delivery as noted in Exhibit C. Such agreement shall specify the terms and conditions under which such interconnections may be made and the charges to the interconnecting Member, if any. Such interconnections will not negatively affect any of the Members' ability to transfer Project Capacity from the Point of Delivery.

SECTION 8: CONSTRUCTION SCHEDULES

8.01 The Project Construction Manager shall proceed with construction of the Project with the objective of having each component completed and available for start-up operation and energization for test date and for Date of Commercial Operation as specified in Exhibit F.

SECTION 9: CONSTRUCTION COSTS AND FINANCING METHOD

9.01 Construction costs of the Project shall include all payments made and obligations incurred or as otherwise authorized by the PPGA Board of Directors or its designee or designees for or in connection with the construction and start up of the Project including but not limited to those costs specified in Exhibit G hereto.

9.02 The construction costs of the Project shall be shared and paid for by the Members in proportion to their Entitlement Shares. As the owner of the Project, it is the intent of this Agreement that PPGA may use short-term financing prior to the issuance of revenue bonds to finance the entire construction and related start up costs of the Project. It is also the intent of this Agreement that PPGA shall secure such long-term financing no later than the date the contract for the boiler system is awarded or when construction and related costs and operation and maintenance costs exceed six million dollars (\$6,000,000), whichever occurs first, as reflected by the PPGA Board's approval for expenses relating to this Agreement.

9.03 Until such time as PPGA issues debt for the Project, each Member shall advance its share of construction costs when due so that the Project Construction Manager in its capacity as such shall not have to advance any funds on behalf of any Member. After the Commercial Operation Date, set forth in Exhibit F, each Member shall pay expenses when due in accordance with Section 11.05 of this Agreement and Exhibit B. In any event, each Member shall pay Bond-Related Costs when due in accordance with Sections 11.04 and 11.05 of this Agreement.

9.04 It is the intent of this Agreement that when PPGA issues financing for the Project, all PPGA Board approved expenses paid by each Member as part of this Agreement shall be included in the long-term debt financing. It is also the intent that once PPGA issues long-term debt financing for the Project that each Member shall be reimbursed for all PPGA Board approved expenses paid as part of this Agreement that were paid prior to PPGA's long-term debt financing.

SECTION 10: OPERATION AND MAINTENANCE COSTS

10.01 Operation and maintenance costs shall include all payments made and obligations incurred pursuant to Exhibit B or as otherwise authorized by the PPGA Board of Directors or its designee or designees for or in connection with the operation and maintenance of the Unit or component of the Point of Delivery subsequent to the Commercial Operation Date thereof, as specified in Exhibit F, but excluding Energy-Related Costs, and shall be shared by the Members in proportion to their Entitlement Shares. The amount of fuel required for active storage and the initial emergency fuel storage, the rate of fuel consumption for Project Station Power operation and the costs of start-up shall be determined in accordance with procedures to be established by the PPGA Board of Directors.

SECTION 11: PAYMENT OF EXPENSES

11.01 Each Member agrees that all invoices issued by the Project Construction Manager or the Project Operating Agent, on behalf of PPGA, shall at all times be deemed to be ordinary and necessary costs of the Member. Each Member agrees that it will fix, charge and collect

rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its electric utility system at least sufficient, together with other available moneys, to provide revenues adequate to meet its obligations under this Agreement and to pay any and all other amounts payable from such revenues, including, but not limited to, amounts sufficient to pay the principal of and interest on all debt heretofore or hereafter issued by the Member to finance its electric utility system and payable from such system revenues and all costs of operation and maintenance of such system. The Members shall be obligated to make all payments under this Agreement irrespective of whether Project Output is provided or produced or delivered to any Member or whether the Project is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the Project Output or other output or services of the Project. Uncontrollable forces, as defined in Section 23.01 hereof, shall not excuse any payment by Members required by this Agreement.

11.02 Once PPGA has secured financing for the construction of the Project, the Project Construction Manager and Project Operating Agent shall, upon approval of the PPGA Board of Directors, be authorized to transfer the PPGA financing proceeds to pay invoices and shall notify each Member monthly of all approved invoices that have been paid.

11.03 The Project Construction Manager and the Project Operating Agent shall prepare annual budgets for the succeeding calendar year on or before October 1 of each year and submit the same to the PPGA Board of Directors for approval. The Project budget shall be for the calendar year schedule. The budget of the Project Construction Manager shall set forth anticipated construction costs and Bond-Related Costs, to the extent not capitalized, and a schedule as to when it is anticipated that funds to pay such costs will be required by the Project Construction Manager from the Members or PPGA financing proceeds. The budget of the Project Operating Agent shall set forth PPGA's anticipated Bond-Related Costs, capital requirements, operating and maintenance costs, and decommissioning costs, as well as anticipated Energy-Related Costs, and such budget shall also set forth a schedule as to when it is anticipated that funds to pay such costs will be required by the Project Operating Agent from the Members. Upon approval by the PPGA Board of Directors, such budgets shall constitute the basis for the Project Construction Manager's and Project Operating Agent's determinations of funds due under Sections 11.04 and 11.05 of this Agreement; provided, however, that if the PPGA Board of Directors fail to approve a budget within ninety (90) days from original budget submission, the Project Construction Manager or Project Operating Agent may proceed to notify PPGA and its Members of sums it deems due pursuant to Sections 11.04 and 11.05 of this Agreement and collect the same.

11.04 No later than December 1 of each year, prior to the effective date of the Project Construction Manager's proposed annual budget which shall start January 1 prior to the Commercial Operation Date, the Project Construction Manager shall notify PPGA and its Members of the estimated monthly expenditures for the succeeding month. Until such time as PPGA secures financing for the Project, as outlined in Section 9 above, and thereafter with respect to Bond-Related Costs until the Commercial Operation Date, the Project Construction Manager shall issue monthly invoices, based on the estimated monthly expenditures for the succeeding month, to each Member and each Member shall pay to the Project Construction

Manager within thirty (30) days of such monthly invoice, or within such longer or shorter period as may be approved by the PPGA Board of Directors, its share of such expense. If at any time it is determined that a Member has made advances which are greater or less than its share of the estimated expenditures, the difference shall be paid, refunded, or credited as determined by the Project Construction Manager within a reasonable time after such determination.

11.05 Effective immediately upon the Commercial Operation Date, and each month thereafter, the Project Operating Agent shall invoice each Member for the actual monthly expenditures for the Project for the prior month to the extent not payable pursuant to Section 11.04 of this Agreement, and each Member shall pay to the Project Operating Agent, within thirty (30) days of such monthly invoice, its share of such expense; provided, however, that Bond-Related Costs may be invoiced and shall be payable in advance as required. Expenses reimbursed by the Member for Energy-Related Costs will be adjusted, if required, pursuant to Exhibit B, by the Project Operating Agent in the next monthly billing, and expenses reimbursed by the Member for Bond-Related Costs and operating and maintenance costs, other than Energy-Related Costs, will be adjusted, if required, by the Project Operating Agent no later than February 28 following each year. No later than March 31 following each year, the Project Operating Agent shall submit to PPGA and its Members an accounting for such year showing all amounts received and expended for Bond-Related Costs and operating and maintenance costs. Adjustments shall be made among the Members, if required, pursuant to Exhibit B or with respect to Bond-Related Costs, so that all costs incurred for such purposes will have been shared by each Member in accordance with this Agreement. Notwithstanding the foregoing, the PPGA Board of Directors may require invoices and payments on a different basis or bases, or at a different time or times, as it deems necessary or advisable, but only after written notice to each Member.

11.06 Funds received hereunder by the Project Construction Manager and the Project Operating Agent from the Members will be held in a separate account in PPGA's name and expended on PPGA's behalf in accordance with the Project Agreements. Such funds will be deposited in working capital accounts, and the Project Construction Manager and the Project Operating Agent will use their best reasonable efforts to lawfully invest such funds as are not immediately needed pending future use of such funds in direct general obligations of or obligations unconditionally guaranteed by the United States of America or obligations of any agency of the United States of America or certificates of deposit of any national or state bank or trust company to the extent that such deposits are insured by the Federal Deposit Insurance Corporation or issued by a state-owned bank or other financial instrument as approved by the PPGA Board of Directors. All accounts with balances exceeding the limits of coverage provided by the Federal Deposit Insurance Corporation shall be secured by direct obligations of or obligations unconditionally guaranteed by the United States of America or obligations of any agency of the United States of America or by surety bond or insurance approved by the PPGA Board of Directors. The Project Construction Manager and the Project Operating Agent shall account at least annually to PPGA and its Members. Any interest on funds held in PPGA's name shall be applied as a credit to each Member's future expense obligation.

11.07 The Project Construction Manager shall promptly inform PPGA and its Members in writing of the Commercial Operation Date of the Unit. Within ninety (90) days thereafter, the

Project Construction Manager shall furnish the PPGA Board of Directors with a detailed description of the Unit, a complete summary of all construction costs incurred in connection with such Unit, a summary of PPGA's and each Member's advanced funding toward such costs, a statement as to the additional funding which was paid back to or collected from each Member, and a summary as to the manner in which such funding was paid back or collected in accordance with the provisions in Section 9.02 of this Agreement. The PPGA Board of Directors shall thereupon determine the additional funding to be paid back to or collected from each Member, and the manner in which such funding shall be paid back or collected. Any such funding shall be paid back to or collected from the Members so that all construction costs shall be ultimately paid by PPGA and the long-term obligation is shared by each Member on the basis of its Entitlement Share. Once PPGA secures its debt, as referenced in Section 9.02 of this Agreement, the Project Construction Manager shall pay back to each Member any difference between total advances made by it and its share of the total construction costs of such Unit, in accordance with Section 9.04 of this Agreement. Within six (6) months after the Commercial Operation Date of the Unit, PPGA shall complete Exhibit D to this Agreement, in recordable form, which exhibit shall describe with particularity and detail the facilities and other property then constituting the Project not specifically described at the effective date of this Agreement in the exhibits hereto. Whenever additional facilities or other property, exceeding an amount as established by the Board of Directors, are acquired for the Project, which are not already specifically described in this Agreement or exhibits hereto, PPGA shall update Exhibit D to this Agreement, in recordable form, which exhibit shall describe with particularity and detail the facilities and other property then constituting the Project not specifically described at the effective date of this Agreement in the exhibits hereto.

SECTION 12: TAXES

12.01 If any taxes or assessments are levied or assessed on the Project, it shall be the responsibility of the PPGA Board of Directors to establish equitable practices and procedures for the apportionment among the Members of such taxes and assessments and the payment thereof.

SECTION 13: RIGHT OF FIRST REFUSAL

13.01 Should any Member desire to transfer its Entitlement Share in the Project or any part thereof to any entity, each remaining Member shall have the Right of First Refusal to purchase such Entitlement Share by matching the terms and conditions of a written offer to purchase such Entitlement Share from that Member's Entitlement Share.

13.02 A written offer shall consist of the exact payment terms for transfer of said Entitlement Share in the Project, written verification that the Entitlement Share will transfer to an entity that is eligible to join PPGA as a Member, and verification that the proposed new Member has indicated in writing its willingness to accept all current and future obligations, including decommissioning, on behalf of the existing Member.

13.03 Such written offer shall be confirmed in writing by the Member desiring to transfer such Entitlement Share and such Member shall notify PPGA in writing for PPGA's consideration as provided hereafter.

13.04 At least one (1) year prior to the date when the intended transfer is to be consummated under Section 13, the Member desiring to transfer shall serve written notice of its intention to do so upon PPGA. Such notice shall contain the proposed date of transfer, the terms and conditions of the transfer including the name and written offer of the proposed transferee, and all other information required by Section 13.02 hereof.

13.05 Each Member shall have the option to purchase all or any part of the Entitlement Share to be transferred and shall exercise said option by serving written notice of its intention upon PPGA and all other Members within six (6) months after service of the written notice of intention to transfer given pursuant to Section 13.04 hereof.

13.06 If more than one Member desires to purchase such Entitlement Share, unless otherwise agreed to by the Members desiring to purchase, such Entitlement Share shall be transferred in the ratio that the Entitlement Share of each such Member desiring to purchase bears to the total Entitlement Shares of those Members desiring to purchase.

13.07 The Members which exercised their option to purchase less than the entire Entitlement Share to be transferred shall have the option to purchase the remaining Entitlement Share to be transferred in the ratio of their Entitlement Shares, which such option shall be exercised by serving written notice of such election upon the Member desiring to transfer, within thirty (30) days after the receipt of the notice given pursuant to Section 13.05 hereof.

13.08 Any transfer of a Member's Entitlement Share or any portion thereof must receive unanimous approval of the PPGA Board of Directors.

13.09 Any transfer of less than a Member's entire Entitlement Share, which would have the effect of increasing the number of Members in the Project after the transfer is completed, must receive unanimous approval of the PPGA Board of Directors.

13.10 The purchase of the Entitlement Share by the Members having elected to purchase the same shall be fully consummated within one (1) year following the date upon which the initial notice was given under Section 13.04 hereof, unless the Members are then diligently pursuing applications for required authorizations or approvals to effect such transfer or are then diligently pursuing or defending appeals from orders entered or authorizations issued in connection with such applications, in which event the transfer shall be consummated and the buyer shall tender payment within six (6) months following the date upon which the final order is entered or authorization issued in connection with such applications.

13.11 If the Members individually or collectively fail to exercise their option to purchase the entire Entitlement Share to be transferred, then the Member desiring to transfer shall serve written notice of this fact upon PPGA within ten (10) days after its receipt of the last of the written notices given pursuant to Section 13.07 hereof, or after the expiration of the six (6) month period referred to in Section 13.05 hereof, whichever is later.

13.12 If the Members fail to exercise their options to purchase all of the Entitlement Share to be transferred, the Member desiring to transfer such Entitlement Share shall be free to transfer the remainder of its Entitlement Share for which Members failed to exercise their

options to purchase to the entity that made the original offer to purchase, referred to in Section 13.04. Said offer to purchase shall be on the terms and conditions set forth in the written offer, with a prorated reduction considering the percentage of Entitlement Share transferred to Members pursuant to exercise of options to purchase. If such transfers are not consummated by the proposed date of transfer, as noted in Section 13.11, the Member desiring to transfer said Entitlement Share may complete such transfer without again giving notice pursuant to the provisions of Section 13.04.

13.13 To the extent a Member's Entitlement Share is transferred pursuant to this Section 13, such Member shall not be liable or obligated for the performance of the terms and conditions of the Project Agreements related to such Entitlement Share arising from events occurring subsequent to the time of transfer.

13.14 Notwithstanding any other provision of this Agreement, but subject to Section 17 of this Agreement, any entity acquiring or succeeding to an Entitlement Share of a Member shall take or acquire such Entitlement Share subject to all the terms and conditions of the Project Agreements, and shall assume and be responsible for all the outstanding obligations of the predecessor's Entitlement Share, and shall also acquire all the rights of its predecessor's Entitlement Share under said Agreements. Each such transferee shall make, execute and deliver any and all documents reasonably required by PPGA to implement such transfer, this subsection and the other provisions of this Agreement.

13.15 The amount of private activity allowed under the U.S. Internal Revenue Code for tax-exempt debt issued by PPGA shall be allocated among the Members as determined by the PPGA Board of Directors; provided, however, that Members may reallocate or arrange among themselves such private activity allocations with prior written notice to PPGA, all subject to Section 13.16 of this Agreement.

13.16 No Member shall engage in any transactions that might jeopardize the then current tax-exempt status of PPGA's debt obligation; provided, however, that if any such transactions are engaged in, the defaulting Member shall take such curative action as may be directed by the PPGA Board of Directors and any curative actions otherwise taken by the Member shall be subject to the prior approval of the PPGA Board of Directors consistent with any tax covenants contained in the Bond Document.

13.17 No Member shall transfer any portion of its Entitlement Share of Project Output for any period without the prior approval of the PPGA Board of Directors. Upon PPGA Board of Director approval of any and all transfers, Exhibit A of this Agreement shall be modified to reflect such change in Entitlement Shares.

13.18 No Member shall be relieved of any of its obligations under the Project Agreements by transfer under this Section 13 without the express prior written consent of the PPGA Board of Directors.

SECTION 14: INSURANCE

14.01 Unless otherwise specified by the PPGA Board of Directors, during the construction stage PPGA shall procure or cause to be procured and maintain in force policies of comprehensive bodily injury and property damage liability insurance, all-risk builder's risk insurance, contractor's equipment all-risk floater insurance, employees' dishonesty bond, automobile liability insurance, workers' compensation insurance covering employees of the Project Construction Manager engaged in the performance of its responsibilities under the Project Agreements at the job site, and such other policies of insurance as are normally carried by utilities constructing facilities similar to the Project, on behalf of and in the name of PPGA and as approved by the PPGA Board of Directors.

14.02 Unless otherwise specified by the PPGA Board of Directors, during the operating stage PPGA shall procure or cause to be procured and maintain in force broad form steam insurance including reasonable expediting expenses, broad form boiler and pressure vessel insurance including expediting expenses, workers' compensation insurance covering employees of the Project Operating Agent engaged in the performance of its responsibilities under the Project Agreements at the job site, physical damage insurance, comprehensive bodily injury and property damage liability insurance, employees' dishonesty bond, automobile, liability insurance, and such other policies of insurance as are normally carried by utilities operating facilities similar to the Project on behalf of and in the name of PPGA or as approved by the PPGA Board of Directors.

14.03 PPGA shall be the named insured with the Members being named as additional insureds as their Entitlement Shares appear on all insurance and, when appropriate, the insurance shall carry cross-liability endorsements.

14.04 The insurable values, limits, deductibles, retentions and other special terms of Project insurance shall be determined by the PPGA Board of Directors prior to the placement of such Project insurance. The Project will be insured at full replacement value, unless and until the PPGA Board of Directors determines otherwise.

14.05 PPGA and its Members shall be furnished with a copy of certificates of insurance describing the insurance details of the Project, or a renewal thereof, together with a line sheet therefor (and any subsequent amendments) naming the insurers and underwriters and the extent of their participation.

14.06 Each of the Project insurance policies shall be endorsed so as to provide that all additional named insureds shall be given the same advance notice of cancellation or material change as that required to be given to the party having procured the policy.

SECTION 15: DESTRUCTION

15.01 If the Project should be destroyed or substantially damaged, the PPGA Board of Directors shall decide whether or not it desires to decommission the Project.

SECTION 16: LIABILITY, INDEMNIFICATION, AND CONTRIBUTION

16.01 Each Member shall be responsible for the consequences of its own Willful Action under this Agreement, and shall indemnify and hold harmless PPGA and its Members from the consequences thereof.

16.02 Any Member liable for damages resulting from its own Willful Action under this Agreement shall not be entitled to contribution or indemnification from PPGA or its Members and shall be solely liable for such damages to any other party suffering such damages including any Member herein.

16.03 Except for the liability resulting from Willful Action under this Agreement, the cost of discharging liability including defense costs imposed upon PPGA and/or one or more of the Members for which payment is not made by Project insurance shall be paid by the Members in proportion to their Entitlement Shares.

16.04 The provisions of this Section 16 shall not be construed to relieve any insurer of its obligation to pay insurance proceeds in accordance with the terms and conditions of valid and collectible Project insurance.

16.05 Except for any liability resulting from Willful Action under this Agreement, a Member shall have no liability to another Member or PPGA, and PPGA shall have no liability to any Member for any consequential, indirect, or special damages including loss of use or lost revenues.

SECTION 17: COVENANTS REGARDING PROJECT AGREEMENTS AND DEFAULTS

17.01 In the event a Member or its successor is no longer a public agency, as defined in the Interlocal Cooperation Act, such Member's participation in PPGA is terminated immediately and the change from public agency status shall constitute a default. Upon such default, such Member shall be responsible for the costs of any necessary actions to preserve the tax exempt status of PPGA's debt obligations to the extent attributable to such default.

17.02 Each Member covenants to pay all monies and to perform all other obligations agreed to be paid or performed under the Project Agreements; provided, however, that monies due for such payment or performance shall be derived solely from the revenues of each Member's electric system and shall not constitute a general obligation of any Member.

17.03 Upon failure of a Member to make any payment when due or to perform any other obligation under the Project Agreements, the PPGA Board of Directors shall make written demand upon such Member to pay or otherwise perform. If the failure is not cured (a) within fifteen (15) days from the date of receipt of demand for payment in the case of failure to make payment to the Project Construction Manager or the Project Operating Agent under the Project Agreements, or (b) within forty-five (45) days from the date of receipt of demand for performance in the case of failure to perform any obligation other than pay money to the Project

Construction Manager or the Project Operating Agent under the Project Agreements, the failure shall constitute a default as of the expiration of the fifteen (15) or forty-five (45) day period.

17.04 If a Member disputes the existence or extent of any failure to make a payment to the Project Construction Manager or the Project Operating Agent under the Project Agreements, it shall nevertheless make such payment within the fifteen (15) day period provided in Section 17.03 under written protest directed to the PPGA Board of Directors. Such payments of a Member not made when due shall bear interest at such rate as shall be determined by the PPGA Board of Directors, but in no event in excess of the maximum legal rate of interest applicable to the defaulting Member.

17.05 This Section 17.05 shall apply only prior to the Commercial Operation Date. A Member in default for failure to make payment for more than one hundred twenty (120) days shall lose that portion of its Entitlement Share in the Project which shall equal 1.25 times the total costs unpaid by the defaulting Member divided by the total costs paid by all Members. The defaulting Member's Entitlement Share lost by operation of this Section 17 shall inure to and all costs associated therewith shall be borne by the non-defaulting Members in the ratio each such non-defaulting Member's Entitlement Share bears to the total of all non-defaulting Members' Entitlement Shares; provided, however, that the sum of such increases in Entitlement Share for any non-defaulting Member pursuant to this subsection shall not exceed, without the consent of the non-defaulting Member, an accumulated maximum of thirty percent (30%) of the non-defaulting Member's Entitlement Share prior to any such increases.

17.06 A Member in default for failure to make any payment to the Project Operating Agent under the Project Operating Agent Agreement shall have no right to any Project Output. Upon the failure of any Member to make any payment which failure constitutes a default under this Agreement, and except as transfers are made pursuant to Section 13 of this Agreement, the Entitlement Share of each non-defaulting Member shall be automatically increased for the remaining term of this Agreement *pro rata* (based on the Entitlement Shares of all non-defaulting Members) with those of the other non-defaulting Members and the defaulting Member's Entitlement Share shall be reduced correspondingly; provided, however, that the sum of such increases for any non-defaulting Member pursuant to this subsection, together with any increases for such non-defaulting Member pursuant to Section 17.05 of this Agreement, shall not exceed, without the consent of the non-defaulting Member, an accumulated maximum of thirty percent (30%) of the non-defaulting Member's Entitlement Share prior to any such increases. The date of default shall be established pursuant to Section 17.03. All or any portion of the Project Output associated with an Entitlement Share not transferred to non-defaulting Members pursuant to this subsection may be sold by PPGA to a Member or any other entity for any period(s), at any price(s) and on a short-term or long-term basis.

17.07 Nothing in this Section 17 shall be construed to relieve a defaulting Member of any liability for its default, except that its obligation to make payments associated with any lost Entitlement Share shall be discharged to the extent that other Members or other entities have made such payments.

17.08 In addition to the rights granted in this Section 17, PPGA and/or any Member may take any action in law or equity, including an action for specific performance, to enforce the Project Agreements in accordance with the terms thereof.

17.09 Notwithstanding any other provisions of this Section 17, if Hastings Utilities is the Member in default, Hastings Utilities shall continue to perform its duties as Project Construction Manager and Project Operating Agent in accordance with the Project Agreements until removed pursuant to Section 20.

SECTION 18: RESOLUTION OF DISPUTES

18.01 Other than disputes to be resolved as outlined in Section 17, any dispute, including but not limited to votes taken by the PPGA Board of Directors with which a Member does not agree, arising under the Project Agreements between or among any of the Members shall first be submitted to the PPGA Board of Directors for mediation by giving notice in writing to all Members describing the dispute, the issue or issues to be resolved and any special time restrictions of resolution of the dispute. Fifty (50) days after the PPGA Board of Directors has received notice of the dispute in writing, and whether or not the PPGA Board of Directors or its designee has mediated said dispute, PPGA or any of its Members shall have the right to bring suit in a court of law or equity of the dispute, provided, however, that if some legal requirement necessitates earlier resolution of the dispute, the fifty-day (50) day time period for mediation by the PPGA Board of Directors or its designee shall be shortened accordingly.

18.02 The rights and remedies of PPGA and its Members as set forth in this Agreement shall not be exclusive, except where otherwise indicated, and shall be in addition to all other rights of PPGA and its Members either at law or in equity.

SECTION 19: PENDING RESOLUTION OF DISPUTES

19.01 Irrespective of the pendency of any dispute, the Project Construction Manager or Project Operating Agent shall proceed with Project Work in accordance with the Project Agreements and the Members shall advance the funds required to perform such Project Work in accordance with the applicable provisions of the Project Agreements.

19.02 In the event it is determined by mediation or otherwise that a protesting Member is entitled to a refund of all or any portion of a disputed payment or payments with interest if applicable or is entitled to the payment of actual damages incurred in connection with a non-monetary default, then, upon such determination being made, PPGA shall pay such amount to the protesting Member.

SECTION 20: RESIGNATION OR REMOVAL OF PROJECT CONSTRUCTION MANAGER OR PROJECT OPERATING AGENT

20.01 Hastings Utilities shall serve as the Project Construction Manager and Project Operating Agent during the term of and pursuant to this Agreement unless Hastings Utilities resigns by giving written notice to the PPGA Board of Directors at least one (1) year in advance of the date of resignation, or until receipt by Hastings Utilities of the notice of its removal

following the issuance by the PPGA Board of Directors of the notice provided for in Section 20.02 hereof.

20.02 In the event the Project Construction Manager or Project Operating Agent fails to remedy any act of default within a reasonable time following a final decision or order made in accordance with the provisions of this Agreement that the Project Construction Manager or Project Operating Agent is in default, the PPGA Board of Directors may cause the Project Construction Manager or Project Operating Agent to be removed by serving written notice of removal upon the Project Construction Manager or the Project Operating Agent as the case may be.

20.03 Prior to the acceptance of a resignation submitted by the Project Construction Manager or Project Operating Agent, or prior to the removal of Hastings Utilities, the PPGA Board of Directors shall by written agreement designate a new Project Construction Manager or Project Operating Agent, as the case may be. In the event Hastings Utilities is no longer the Project Construction Manager or Project Operating Agent, Hastings Utilities agrees to allow reasonable access to WEC 2 and Shared Facilities, and work with the new Project Construction Manager or Project Operating Agent to jointly construct or operate, as the case may be, the Shared Facilities as outlined in Exhibit E. Acceptance by the new Project Construction Manager or Project Operating Agent of its appointment as such shall constitute its agreement to perform the obligations of said position pursuant to this Agreement.

20.04 If Hastings Utilities or any successor is replaced in its capacity as Project Construction Manager or Project Operating Agent, any succeeding Project Construction Manager or Project Operating Agent shall be subject to the provisions of Sections 20.02 and 20.03 above.

SECTION 21: RELATIONSHIP OF MEMBERS

21.01 No Member shall be the agent of or have a right or power to bind any other Member without said other Member's express written consent.

SECTION 22: CONTRACTOR COMPLIANCE

22.01 During the term of this Agreement PPGA agrees to comply with all local, state and federal laws, rules and regulations with regard to employment practices and discrimination policies as may be amended by all responsible governmental entities and can be modified from time to time by the PPGA Board of Directors.

SECTION 23: UNCONTROLLABLE FORCES

23.01 PPGA and its Members as well as the Project Construction Manager or Project Operating Agent shall not be considered to be in default in the performance of any obligations under the Project Agreements (other than obligations to pay monies under the Project Agreements) when a failure of performance shall be due to uncontrollable forces; however, no Member shall be allowed to act or refuse to act if that official action would trigger an uncontrollable force event to the benefit of that Member. The term "uncontrollable forces" shall

be any cause beyond the control of PPGA and its Members affected, including but not restricted to an act of God, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, shortage of railroad cars, sabotage, pestilence, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental authority, which by exercise of due diligence PPGA and its Members could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require PPGA and its Members to settle any strike or labor dispute in which it may be involved. If PPGA or its Members are rendered unable to fulfill any of their obligations under the Project Agreements by reason of uncontrollable forces, PPGA or any Member shall give prompt written notice of such fact to the PPGA Board of Directors and shall exercise due diligence to remove such inability with reasonable dispatch.

SECTION 24: GOVERNING LAW

24.01 Except as otherwise required by law, this Agreement shall be governed by the laws of the State of Nebraska.

SECTION 25: BINDING OBLIGATIONS

25.01 All of the obligations set forth in the Project Agreements shall bind PPGA and its Members and their successors and assigns, and such obligations shall run with PPGA and its Members' rights, titles, and interests in the Project and with all of the interests of PPGA and its Members in the Project Agreements; provided that any mortgagee, trustee, or secured party shall not be obligated for obligations arising prior to taking of possession or the initiation of remedial proceedings, whichever occurs first, other than obligations to the Members under this Agreement.

SECTION 26: PROJECT AGREEMENTS

26.01 PPGA and its Members agree to negotiate in good faith and to proceed with diligence to enter into all of the Project Agreements to the extent the same constitute agreements to which they are or are proposed to be a party.

26.02 The Public Power Generation Agency Interlocal Agreement is the primary controlling document. The Bylaws of the Public Power Generation Agency is the secondary controlling document. This Participation Agreement is a controlling document, subject only to the Public Power Generation Agency Interlocal Agreement and the Bylaws of the Public Power Generation Agency.

SECTION 27: EFFECTIVE DATE, TERM AND RIGHTS OF MEMBERS UPON TERMINATION

27.01 This Agreement shall become effective September 1, 2005. This Agreement remains in effect for the life of the Project through decommissioning or, if later, the date as of which all debt issued by PPGA to finance the Project no longer is outstanding under the Bond

Document, all Bond-Related Costs incurred have been paid, and all accrued liabilities under this Agreement have been paid.

27.02 Upon termination of this Agreement the facilities comprising the Project and any remaining assets or liabilities shall be disposed of in a manner consistent with the Entitlement Shares as outlined in the then current Exhibit A.

SECTION 28: NOTICES

28.01 Any notice, demand, or request provided for in the Project Agreements shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified in Exhibit H.

28.02 Informal communications of a routine nature involving committee matters shall be given in such manner as the committee shall arrange.

28.03 Any Member may, at any time, by written notice to the PPGA Board of Directors, designate different or additional persons of different addresses for the giving of notices hereunder.

28.04 The Project Construction Manager or the Project Operating Agent shall provide to PPGA and its Members a copy of any notice, demand, or request given or received by it in connection with any of the Project Agreements.

SECTION 29: ENVIRONMENTAL PROTECTION

29.01 PPGA shall be responsible for compliance with all applicable federal, state, and local laws, orders, and regulations relating to environmental protection and shall fully comply in the construction and operation of the Project as set forth in this Agreement. Any costs associated with compliance shall be shared in accordance with Exhibit B of this Agreement.

SECTION 30: MISCELLANEOUS PROVISIONS

30.01 No Member shall be required as a condition of this Agreement to maintain any specific financial reserves to support its Entitlement, but it may maintain such financial reserves as it deems appropriate or necessary. The consequences of a Member's failure to provide adequate financial reserves shall be borne by such Member and shall not result in Project Liability.

30.02 Each Member agrees, upon request by the PPGA Board of Directors or Project Construction Manager or Project Operating Agent, to make, execute and deliver any and all documents reasonably required to implement the Project Agreements.

30.03 Each Member agrees to furnish financial information and operating data required to be disclosed by Securities and Exchange Commission Rule 15c2-12 or otherwise required to be disclosed or produced by PPGA, at the times required by PPGA to comply with its secondary market disclosure obligations under Rule 15c2-12 or other obligations.

30.04 Each Member agrees that all Bond-Related Costs payable by it hereunder and under the Project Agreements, and all other costs payable by it under the Project Operating Agreements, pursuant to this Agreement shall constitute an operating expense of its electric utility system prior to the payment by the Member of debt service on debt payable from its electric utility system, unless and then only to the extent prohibited by law, by contract (including but not limited to bond resolution, ordinance or indenture) adopted or entered into as of the date of this Agreement, or by generally accepted accounting principles. Any obligation evidencing debt issued by any Member pursuant to a resolution, ordinance or indenture heretofore executed or adopted to refund or refinance debt may have the same status as the debt refunded or refinanced with respect to the payments by such Member for Bond-Related Costs.

30.05 The captions and headings appearing in the Project Agreements are inserted merely to facilitate reference and shall have no bearing upon the interpretation thereof.

30.06 Each term, covenant, and condition of the Project Agreements is deemed to be an independent term, covenant, and condition, and the obligation of any Member to perform all of the terms, covenants, and conditions to be kept and performed by it is not dependent on the performance by the other Members of any or all of the terms, covenants, and conditions to be kept and performed by them.

30.07 In the event that any of the terms, covenants, or conditions of any of the Project Agreements, or the application of any of such terms, covenants, or conditions, shall be held invalid as to any person or circumstances by any court having jurisdiction in the premises, the remainder of such Project Agreement, and the application of its terms, covenants, or conditions to such persons or circumstances shall not be affected thereby.

30.08 The Project Agreements shall be subject to the authority of any regulatory agency having jurisdiction thereover and to approval by the PPGA Board of Directors.

30.09 Any waiver at any time by PPGA and its Members of their rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

30.10 Each Member shall be responsible for obtaining, at its own expense, its required authorizations and approvals, if any, relating to its participation in the ownership, construction, reconstruction, operation, maintenance or use of the Project and to its performance of the provisions of this Participation Agreement, from federal, state, or local regulatory authorities having jurisdiction to issue such authorizations and approvals, and each Member shall keep the Project Construction Manager or Project Operating Agent, as the case may be, informed of its applications therefor and authorizations issued in connection therewith. All costs of PPGA in securing appropriate permits for the Project as a whole, including but not limited to site permits, regulatory agency permits, water permits, and environmental permits, shall be considered Project costs and shall be shared by the Members in the ratio of their respective Entitlement Shares.

30.11 PPGA, the Project Construction Manager and the Project Operating Agent will keep their books and records insofar as the Project is concerned, in accordance with Accounting Practice.

30.12 Exhibits A, B, C, D, E, F, G, and H are attached hereto and made a part of this Agreement. Any changes to this Agreement, with the exception of Exhibits A, B, C, D, E, F, G and H which may be modified from time to time by the PPGA Board of Directors, must be approved by the all Members, as evidenced by resolution of the governing body of each Member.

30.13 Separate copies of this Agreement are executed by Members with the understanding that, when each of the said Members has executed a copy, its separately executed copy will be joined together with all other similarly executed copies and one conformed master copy of said Agreement shall be prepared, which shall bind all of the Members to the same extent and purpose as if all of said Members had joined in the execution of said master copy.

30.14 This Agreement amends, restates and supercedes the Participation Agreement dated September 1, 2005, by and between the same parties.

IN WITNESS WHEREOF, the Members hereto have caused this Agreement to be executed by its duly authorized officer.

PUBLIC POWER GENERATION AGENCY

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

MUNICIPAL ENERGY AGENCY OF NEBRASKA

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

HEARTLAND CONSUMERS POWER DISTRICT

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

HASTINGS UTILITIES, ACTING FOR
AND ON BEHALF OF THE CITY OF
HASTINGS, NEBRASKA

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

GRAND ISLAND UTILITIES, ACTING
FOR AND ON BEHALF OF THE CITY OF
GRAND ISLAND, NEBRASKA

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

NEBRASKA CITY UTILITIES,
ACTING FOR AND ON BEHALF OF THE
CITY OF NEBRASKA CITY, NEBRASKA

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

EXHIBIT A*

PUBLIC POWER GENERATION AGENCY
ENTITLEMENT SHARES

As of February 15, 2006

<u>Members</u>	<u>Net MW¹</u>	<u>Output Percentage²</u>	<u>Voting Percentage³</u>
1. Municipal Energy Agency of Nebraska, Lincoln, NE	80 MW	36.36%	36.36%
2. Heartland Consumers Power District, Madison, SD	80 MW	36.36%	36.36%
3. Hastings Utilities, acting for and on behalf of the City of Hastings, NE	35 MW	15.91%	15.91%
4. Grand Island Utilities, acting for and on behalf of the City of Grand Island, NE	15 MW	6.82%	6.82%
5. Nebraska City Utilities, acting for and on behalf of the City of Nebraska City, NE	10 MW	4.55%	4.55%
TOTAL	220 MW	100%	100%
<u>Non-Members</u>	<u>Net MW¹</u>	<u>Output Percentage²</u>	<u>Voting Percentage³</u>
	0 MW	0%	0%

1 – See Section 3.10 – Net Effective Generating Capability

2 – The Output Percentage shall be calculated using the equation of each Member's Entitlement Share and/or Non-Member's contracted output multiplied by the approved maximum Project Output, as determined in Section 2.02 of this Agreement and approved by the PPGA Board of Directors. Percentages shown in this Exhibit A have been rounded for convenience.

3 – The Voting Percentage shall be calculated using each Member's Entitlement Share multiplied by the maximum Project Output as determined in Section 2.02 of this Agreement and approved by the PPGA Board of Directors. The Voting Percentage shall not include any Non-Members contracted output rights as Non-Members shall have no voting rights in PPGA. Percentages shown in this Exhibit A have been rounded for convenience.

* As approved by the PPGA Board of Directors on February 15, 2006.

EXHIBIT B

OPERATION AND MAINTENANCE COSTS

Operation and Maintenance (O&M) costs of the Project provided for in Section 10.01 of this Agreement shall be those costs set forth in this Exhibit B.

SECTION B.1: VARIABLE COSTS

Energy-Related Costs shall be shared by each Member in the ratio that such Member's monthly Net Energy Generation scheduled and produced from the Unit bears to the total monthly Net Energy Generation scheduled and produced from the Unit. Energy-Related Costs shall include but not be limited to:

B1.01 All costs of fuel, including any fuel taxes, consumed in the production of Energy at the Unit.

B1.02 All costs of supervising the purchasing and handling of fuel, including routine fuel analyses, unloading from shipping facilities and putting in storage, moving from storage to hopper or first bunker of boiler-house structure, operation of mechanical equipment utilized in the handling of fuel, all materials, tools, lubricants and other supplies for fuel handling equipment, and all stores expenses in connection with handling of fuel.

B1.03 All operating, maintenance and ad valorem taxes on fuel handling or transportation equipment.

B1.04 All costs, including taxes, of fuel transportation (other than fixed fuel transportation costs), ash disposal, and disposal of other residues of operation of the Project, including chemicals, and all other substances directly relating to the production of Energy. Any revenues gained by the sale of ash or other residues of operations shall be treated as a reduction of said disposal cost.

B1.05 All variable costs, including taxes on said costs, related to the operation of environmental control equipment and all variable environmental compliance costs, including but not limited to environmental allowances, emissions, and permit fees.

B1.06 Any and all variable costs related to the production of Energy as approved and amended from time to time by the PPGA Board of Directors.

SECTION B2: OTHER PROJECT COSTS

B2.01 All other Project related costs, as approved by the PPGA Board of Directors, shall be shared based on Entitlement Share.

SECTION B3: SYSTEM OF ACCOUNTS

B3.01 The Project Operating Agent shall use FERC Accounts, as modified by the bulletins and directives of FERC, with appropriate sub accounts, to account for all operation and maintenance costs of the Project.

SECTION B4: NO ADDITIONAL COMPENSATION FOR OPERATING AGENT OR OTHER MEMBERS

B4.01 The Project Operating Agent and other Members shall not be entitled to a fee, price, percentage, or other compensation, over and above the costs of services rendered by them in the performance of operation and maintenance of the Project.

EXHIBIT C

POINT OF DELIVERY SKETCH

For purposes of this Agreement, the Point of Delivery is where the 115 kV bus(s) of the WEC Substation is metered at the 115 kV side of the Unit's step-up transformer.

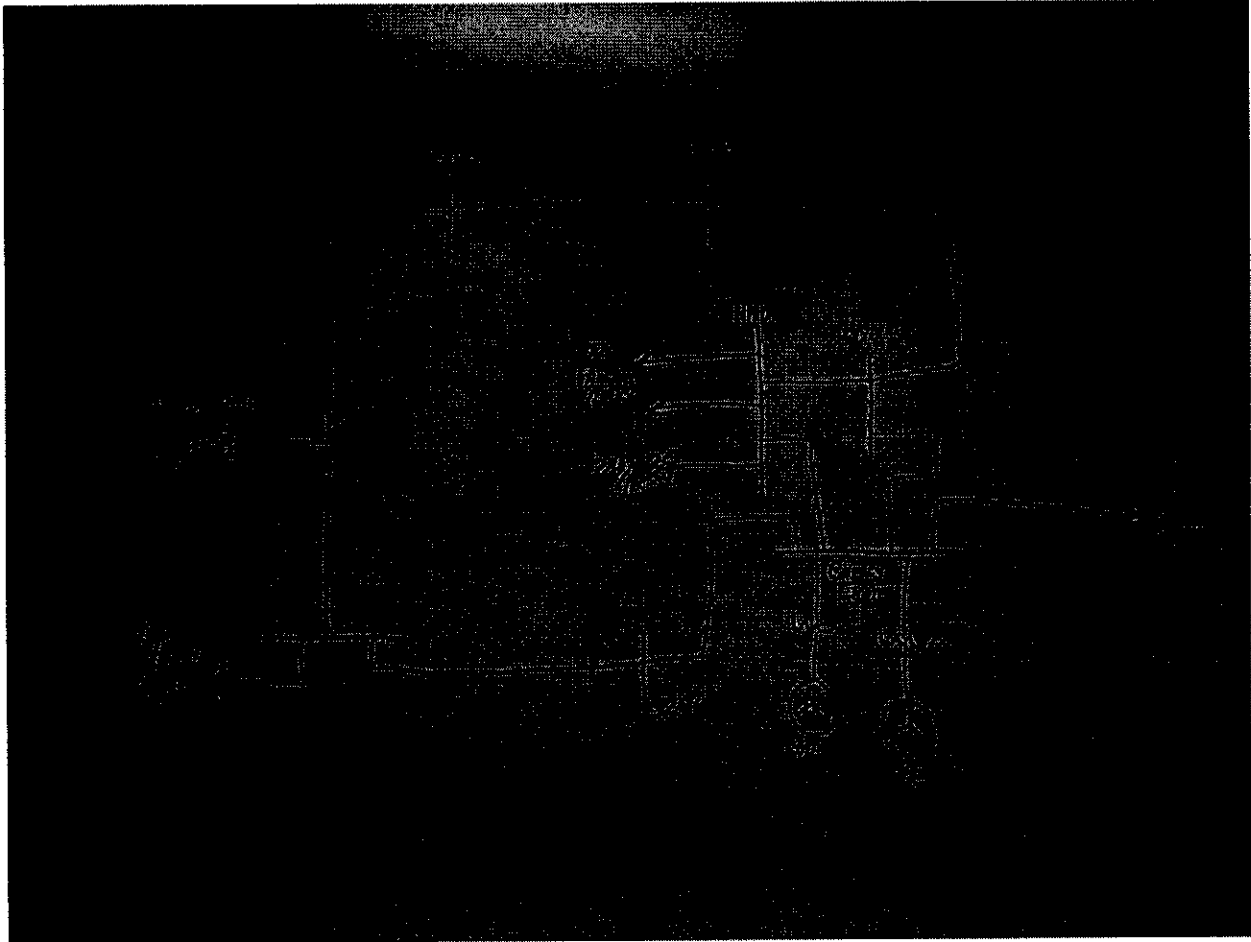


EXHIBIT D

PROJECT DESCRIPTION

[INTENTIONALLY LEFT BLANK]

EXHIBIT E

SHARED FACILITIES

[INTENTIONALLY LEFT BLANK]

EXHIBIT F

COMMERCIAL OPERATION DATE

[INTENTIONALLY LEFT BLANK]

EXHIBIT G

CONSTRUCTION COST

[INTENTIONALLY LEFT BLANK]

EXHIBIT H

NOTICES

[INTENTIONALLY LEFT BLANK]

ORDINANCE NO. 9089

An ordinance to authorize and Amended and Restated Participation Agreement with Public Power Generation Agency; to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

WHEREAS, the City Council of the City of Grand Island (the "City") heretofore approved a Participation Agreement with the Public Power Generation Agency relating to Whelan Energy Center Unit 2; and

WHEREAS, it is necessary and desirable that the Participation Agreement be amended and restated; and

WHEREAS, a form of an Amended and Restated Participation Agreement has been presented to the City Council.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. The execution and delivery of an Amended and Restated Participation Agreement by the Mayor of the City of Grand Island is hereby authorized in substantially the form presented, with such changes as such signatory approves, execution and delivery to be conclusive evidence of such approval.

SECTION 2. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: November 14, 2006.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 9, 2006	☐ City Attorney