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Agenda – Legal Committee Meeting

Meeting Date: March 3, 2022 Legal Committee Meeting

Location: Meeting is being held via Teleconference

Time: 8:30 a.m. PT

This meeting is being held in accordance with the Brown Act, Governor Gavin Newsom's Emergency Declaration related to COVID-19 adopted pursuant to the California Emergency Services Act, and Assembly Bill 361, that allow attendance by Committee members, staff, and the public to participate and conduct the meeting by teleconference.

You may participate in the meeting via teleconference by:

Zoom Link: <https://us06web.zoom.us/j/85435812386>

Meeting ID: 854 3581 2386

Dial: 1-669-900-6833

Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916-781-3636 in advance of the meeting to arrange for such accommodations.

The Committee may act on any of the items listed on this Agenda regardless of whether an item is described as an Action item, a Report, or an Informational or Discussion item. This Agenda may be supplemented by Staff Reports which are available to the public upon request. Pursuant to California Government Code Section 54957.5, the following is the location at which the public can view Agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or www.ncpa.com.

- **Review Safety Procedures – NCPA Headquarters Facility**

- 1. CALL MEETING TO ORDER AND ROLL CALL**

- 2. PUBLIC COMMENT**

Any member of the public who desires to address the NCPA Legal Committee on any item considered by the Legal Committee at this meeting, before or during the Committee's consideration of that item, shall so advise the Chair and shall thereupon be given an opportunity to do so. Any member of the public who desires to address the NCPA Legal Committee on any item within the jurisdiction of the Legal Committee and not listed on the Agenda may do so at this time.

- 3. MEETING MINUTES** – The Legal Committee did not establish a quorum for its noticed meeting on January 6, 2022. (*Informational Item*)

CLOSED SESSION

4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1) - Existing Litigation, two (2) cases:

- A.** Case Name: *Northern California Power Agency, City of Redding, City of Roseville, and City of Santa Clara v. the United States, United States Court of Federal Claims No. 14-817-C.*
- B.** Case Name: *Voluntary Petitions for Filing of Chapter 11 Bankruptcy, PG&E Corporation, Debtor, and Pacific Gas and Electric Company, Debtor, United States Bankruptcy Court, Northern District of California, San Francisco Division, jointly administered under No. 19-30088*

OPEN SESSION

5. REPORT FROM CLOSED SESSION

- 6. 2025 WESTERN BASE RESOURCE CONTRACT – ASSIGNMENT ADMINISTRATION AGREEMENT (AAA)** - In conjunction with NCPA’s anticipated execution of the 2025 Base Resource contract with the United States Department of Energy Western Area Power Administration which will enable NCPA to receive Member assignments, staff will provide an update regarding the final version of the 2025 Assignment Administration Agreement (AAA). The AAA was approved by the NCPA Commission on January 20, 2022. NCPA Members who elect to assign their 2025 Base Resource Percentage to NCPA for joint administration are required to sign the AAA and a Request for Assignment document. (*Discussion Item*)
- 7. NCPA UPDATE OF VENDOR AGREEMENT TEMPLATES** – Consistent with NCPA’s Strategic Plan, NCPA General Counsel plans to update the Agency’s agreement forms and templates. She will seek input from the Committee. (*Discussion Item*)

8. GENERAL COUNSEL UPDATES

NCPA’s General Counsel will update the Committee on miscellaneous business matters of interest.

9. ADJOURNMENT

ASSIGNMENT ADMINISTRATION AGREEMENT

FOR

**WESTERN AREA POWER ADMINISTRATION BASE RESOURCE
PERCENTAGE**

BETWEEN

NORTHERN CALIFORNIA POWER AGENCY

AND

ASSIGNOR: _____

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This ASSIGNMENT ADMINISTRATION AGREEMENT (“Agreement”) is dated as of _____, 20__ by and among the Northern California Power Agency, a joint powers agency of the State of California (“NCPA”), and _____ (“Assignor”). NCPA and Assignor 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. Assignor is a signatory to the Joint Powers Agreement which created NCPA and therefore is a Member.

C. As a Member, Assignor entered into Contract _____ (“Assignment Contract”), dated _____, 20__ whereby Assignor assigned its Base Resource Percentage under this Agreement to NCPA in order for NCPA to create a power resource portfolio for the mutual benefit of participating Members (collectively referred to as “Assignors”) beginning January 1, 2025.

D. NCPA has agreed to accept assignment of Assignor's Base Resource Percentage, and will administer the Assignment Contract for the benefit of Assignor according to the terms and conditions of this Agreement.

E. It is intended Assignor will receive an economic benefit from assigning its Base Resource Percentage to NCPA, with such benefit being equal to or greater than the benefit Assignor would have derived had Assignor's Base Resource Percentage been scheduled solely to service its own use.

F. NCPA anticipates taking assignment of additional Base Resource Percentages from other Assignors to likewise supply Joint Assignment Administration Services, and will strive to create benefits equal to or greater than those benefits individual Assignors would have derived had their Base Resource Percentage been scheduled solely for their own uses.

G. NCPA Members and other qualified entities assigning their respective Base Resource Percentages to NCPA expect to gain economies of scale and avoid certain costs associated with Base Resource Percentage delivery that would otherwise accrue if each Assignor's Base Resource Percentage had been scheduled separately and solely for each Assignor's own use.

H. NCPA will strive to equitably allocate a portion of the common savings generated, if any, associated with Joint Assignment Administration Services to Assignor in accordance with this Agreement.

I. Assignor desires NCPA to establish facilities, staff and the capability to enable NCPA to provide Joint Assignment Administration Services to Assignor.

J. NCPA has established facilities, staff and the capability for the provision of Joint Assignment Administration Services to Assignor.

K. This Agreement is an Operating Services Agreement; therefore, this Agreement shall be considered to be a Services Agreement pursuant to the Power Management and Administrative Services Agreement.

L. Assignor agrees to pay its allocated share of costs for Joint Assignment Administration Services pursuant to this Agreement and the Power Management and Administrative Services Agreement.

M. Assignor further desires, insofar as possible, to insulate itself and each other Member, whether or not such Member is also an Assignor, from risks inherent in the services and activities undertaken on behalf of any given Assignor or Assignors.

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:

1.1.1 "Agreement" means this Assignment Administration Agreement, including all Appendices attached hereto.

1.1.2 "Assignment Contract" means the contract between NCPA and Assignor and approved by the Western Area Power Administration, providing for the assignment of Assignor's Base Resource Percentage to NCPA.

1.1.3 "Assignor" is a party to an Assignment Contract assigning its Base Resource Percentage to NCPA. Assignor is also a Member, a signatory to the Power Management and Administrative Services Agreement, and a signatory to this Agreement.

1.1.4 "Base Resource Percentage" means Assignor's percentage share of Western Area Power Administration Base Resource under its Base Resource Contract _____, prior to assigning the Base Resource Percentage to NCPA. Base Resource Percentage may be modified by Western Area Power Administration from time to time as contemplated in Base Resource Contract _____.

1.1.5 "Base Resource" means the energy, capacity and associated products made available from the Western Area Power Administration on a daily basis as a result of Assignor's Base Resource Percentage.

1.1.6 "Base Resource Energy" means the associated electrical energy and capacity made available from the Western Area Power Administration on a daily, monthly or annual basis as a result of Assignor's Base Resource Percentage.

1.1.7 "Joint Assignment Administration Services" has the meaning set forth in the Section 3.2 of this Agreement.

1.1.8 "NCPA" has the meaning set forth in the recitals hereto.

1.1.9 "NCPA Base Resource Contract" means Contract 21-SNR-02661, dated as of November 12, 2021 between NCPA and the Department of Energy Western Area Power Administration Sierra Nevada Region.

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

1.1.11 "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.

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

1.2 Rules of Interpretation. All words and references as used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise, shall be interpreted pursuant to Section 1.2 of the Power Management and Administrative Services Agreement.

Section 2. Purpose. The purpose of this Agreement is to set forth the terms and conditions under which NCPA will supply efficient and cost effective Joint Assignment Administration Services for Assignors Base Resource Percentages assigned to NCPA.

Section 3. Duties and Authorities.

3.1 Commission Duties. The Commission's duties and authorities include, but are not limited to, the following:

3.1.1 Act on behalf of NCPA in carrying out any action properly taken pursuant to the provisions of this Agreement. The Commission, or its designee, shall have the authority on behalf of all NCPA to execute any contract, lease or other instrument which has been properly authorized pursuant to this Agreement including documents supplementing this Agreement, contracts with Third Parties, contracts relating Base Resource and related items.

3.1.2 Establish standards, in addition to the authority provided in other sections of this Agreement, with respect to any aspect of arrangements between NCPA and Assignors, which it determines may adversely affect the

administration of the Base Resource Percentage assigned to NCPA, and to review such arrangements to determine compliance with such standards.

3.1.3 In addition, the Commission shall have such further powers and duties as are conferred or imposed upon it by other sections of this Agreement.

3.2 General Manager Duties. The General Manager, or his or her designee, shall have the duties and authorities as necessary to provide for the day-to-day administration of this Agreement, which include, but are not limited to, the following actions (collectively referred to herein as “Joint Assignment Administration Services”):

3.2.1 Carry out directions of the Commission with respect to matters related to this Agreement.

3.2.2 Coordinate interchange accounting and maintain records pertaining to the administration of the Base Resource Percentage assigned to NCPA, including determination of the volume of power delivered to each Assignor for each calendar month.

3.2.3 Supply certain Power Management and Administrative Services to Assignor, including, but not limited to, scheduling and settlement of Base Resource Energy in accordance with the terms and conditions of the Amended and Restated Scheduling Coordination Program Agreement and this Agreement.

3.2.4 Prepare and submit a proposed budget for assignment-related expenditures for the ensuing fiscal year to appropriate committees and the

Commission, on such schedule as established by the Commission or consistent with the NCPA annual budget process.

3.2.5 Furnish such information and reporting as are required to keep this Assignor informed of the outlook for, the functioning of, and results achieved with regard to the Base Resource Percentage assigned to NCPA.

3.2.6 Implement operating principles, practices and procedures as they relate to the economy of operation of the Base Resource Percentages assigned to NCPA.

3.2.7 Calculate costs for the Base Resource Percentage assignment transactions among Assignors.

3.2.8 Develop a billing system for Base Resource Percentage transactions pursuant to this Agreement, including criteria, rules, and standards thereto.

3.2.9 Issue an invoice to Assignor for Base Resource Percentage related costs.

3.2.10 Assist Assignor in making sales and purchases of generation and transmission capacity related to their Base Resource Percentage assigned to NCPA.

3.2.11 Initiate and make long and short-range planning studies with respect to the Base Resource Percentage assigned to NCPA. These studies shall be updated annually, or at such other times as the Commission may direct.

3.2.12 Develop any needed generation and transmission resource plans related to the Base Resource Percentage assigned to NCPA, in consultation with Assignor.

3.2.13 Act on behalf of Assignor, as directed in writing by Assignor, and in accordance with Assignor's power purchasing statutes, regulations, rules, ordinances, and charter, as they may apply, to subscribe to additional Western Area Power Administration products other than Base Resources, that Western Area Power Administration chooses to market in proportion to each of its customers' Base Resource Percentage, including taking delivery of environmental attributes for compliance purposes.

3.3 Assignor Duties. Assignor's duties and authorities include, but are not limited to the following:

3.3.1 Assignor shall cooperate with NCPA in providing its relevant load and resource data to NCPA in a timely fashion to insure NCPA can satisfy NCPA Base Resource Contract requirements, and that is required to enable NCPA to supply Joint Assignment Administration Services on behalf of Assignor.

3.3.2 Assignor shall indemnify NCPA in regard to Joint Assignment Administration Services provided by NCPA in accordance with this Agreement.

3.3.3 Assignor shall pay for all costs and charges incurred by NCPA under this Agreement, including, but not limited to, Base Resource costs, Administrative Services Costs and Power Management Services Costs.

Section 4. Allocations.

4.1 Western Allocations Excluded From this Agreement.

4.1.1 All benefits, costs, and energy schedules associated with the CVP Corporation's Energy Exchange Arrangements for Project Use and First Preference Support program shall not be subject to this Agreement. This exclusion applies to all Bank Energy and Bank Return Energy schedules allocated by the CVP Corporation.

4.1.2 Base Resource Percentage that is not assigned to NCPA will not be subject to this Agreement, and will be scheduled only for the benefit of the Member receiving the allocation.

4.1.3 A Member who does not assign its Base Resource Percentage to NCPA shall not be subject to this Agreement.

4.2 Determination of Benefits. In order to determine the benefits of assigning each Member's Base Resource Percentage to NCPA for joint administration, NCPA staff will first estimate the value of the Base Resource Percentage as if no assignment has

been executed, then compare this value with the value obtained through NCPA's joint administration of all Base Resource Percentages assigned to NCPA. The computational algorithm for this comparison is contained in Appendix A of this Agreement; however, such algorithm, as it may be refined from time to time by the Commission, shall be consistent with the following policy goals agreed to by each Assignor, namely (i) Base Resource Energy shall be fully utilized to the maximum extent possible, (ii) subject to (i) above, Base Resource Energy shall be scheduled during those time periods that maximize its value; and (iii) consistent with scheduling Base Resource Energy to maximize its overall net value, NCPA will also seek to reasonably minimize associated transmission-related and other applicable costs. NCPA staff shall monitor the results of the algorithm contained in Appendix A and recommend corrective action be taken if and when application of this procedure results in allocations of benefits and costs to Assignor that is inconsistent with the policy goals and allocation parameters described in this Section 4.

4.3 Allocation of Benefits.

4.3.1 For each monthly accounting period, all benefits attained through NCPA's joint administration of Base Resource Percentages assigned to NCPA shall be allocated to Assignor proportionately to (i) the number of days this Agreement is in force that month, i.e., the fraction of the month this Agreement is in force, and (ii) the amount of Base Resource Energy attributed to Assignor hereunder.

4.3.2 One-half of any benefits shall be allocated to that group of Assignors providing Base Resource Energy in excess of their own load, and the remaining one-half of benefits shall be allocated to that group of Assignors whose load exceeds the Base Resource Energy they have assigned.

4.3.3 Each individual Assignor within either group shall receive a share of the group's benefit proportional to its contribution to the group's excess energy or excess load respectively, as further set forth in Appendix A.

Section 5. Resource Planning.

5.1 NCPA staff, in consultation with Assignor's staff, shall perform necessary forecasts, studies and resource planning related to maximizing the overall value of the integrated Base Resource Percentage assigned to NCPA. NCPA staff shall perform member-specific forecasts, studies and resource plans for the benefit of the individual Assignor so requesting only upon receiving a detailed written request from Assignor particularly describing the task requested to be performed as part of a duly authorized Services Agreement between the individual Assignor and NCPA.

Section 6. Resource Sale and Purchase.

6.1 Sales and Transfers to Third Parties. Sales and transfers of Base Resource Energy to entities that have not assigned a Base Resource Percentage to NCPA, under the authorization of the Western Area Power Administration, are strictly prohibited without the express written consent of the Western Area Power Administration.

6.2 Penalties. Any penalties incurred for violation of Section 6.1 shall be the sole responsibility of Assignor found to be in noncompliance with Section 6.1.

Section 7. O&M Funding and Restoration Costs.

7.1 NCPA shall pass through to Assignor on an as-billed basis any and all charges or credits related to the Western Area Power Administration Agreement for the Funding of Operations and Maintenance for Central Valley Project Power Facilities (“O&M Funding”) and the Central Valley Project Improvement Act Restoration Funding, as part of the normal billing procedure described in Section 9 of this Agreement.

Section 8. Central Dispatch and Scheduling Services.

8.1 Central Dispatch. Each Assignor shall, to the fullest extent practicable, subject its Base Resource Percentage to the central dispatch of NCPA. The objective of the central dispatch with respect to the Base Resource Percentage is to supply energy and capacity requirements of the combined Assignors at the lowest practicable costs, and in a reliable and safe manner.

8.2 Base Resource Scheduling. Base Resource Energy shall be scheduled in accordance with the terms and conditions of the Amended and Restated Scheduling Coordination Agreement, this Agreement and other applicable requirements. NCPA and Assignor shall cooperate to meet each applicable scheduling timeline and protocol

to maximize the value of the Base Resource Percentage assigned to NCPA, and correspondingly minimize related transmission costs.

Section 9. Billing and Payments.

9.1 Invoices. NCPA will issue an invoice to Assignor for its share of estimated and actual costs associated with NCPA's provision of Joint Assignment Administration Services, including Base Resource costs, Administrative Services Costs, Power Management Services Costs, O&M Funding costs, Central Valley Project Improvement Act Restoration Funding costs, and all other costs for services provided in accordance with this Agreement. Such invoice may be either the All Resources Bill or separate special invoice, as determined by NCPA. Such invoices will be made pursuant to the requirements and procedures provided for in this Agreement and all other applicable agreements. At NCPA's discretion, invoices may be issued to Assignor using electronic media or physical distribution.

9.2 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.

9.3 Late Payments. Any amount due and not paid by Assignor in accordance with Sections 9 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.

9.4 Billing Disputes. Assignor 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 Assignor shall pay the full amount billed when due. If Assignor 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, NCPA shall issue a corrected invoice and refund any amounts that may be due to Assignor. If NCPA and Assignor fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after Assignor has disputed it, then the General Manager shall promptly, but no later than the second Commission meeting after the failure to agree, submit the dispute to the Commission for resolution. If the Commission and Assignor 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 16 of this Agreement; provided, however, that prior to resorting to either mediation or arbitration proceedings, the full amount of the disputed invoice must have been paid.

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

9.5.1 Billing/Settlement Data. NCPA shall make billing and settlement data available to Assignor 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 Assignor using electronic media (e.g. electronic data portal). Procedures and formats for the provision of such electronic data submission may be as established by the Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require Assignor to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

9.5.2 Examination of Books and Records. Assignor 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 10. 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.

Section 11. Assignor Covenants and Defaults.

11.1 Assignor 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 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 dispute exists; subject to Section 9.4 and (iv) to operate its Electric System, and the business in connection therewith, in accordance with Good Utility Practice.

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

(i) the failure of Assignor to make any payment in full to NCPA when due, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure;

(ii) the failure of Assignor 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 11.2 (i));

(iii) if any representation or warranty of Assignor material to the services provided hereunder shall prove to have been incorrect in any material respect when made and Assignor 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 of the date of receipt of notice from NCPA demanding cure; or

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

11.3 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 subsequently provide written notice to the General Manager 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.

11.4 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 11.2 above, as may be applicable, provided, however, upon request of the Defaulting Assignor the Commission may waive the default at its sole discretion, where such waiver shall not be unreasonably withheld.

11.5 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 11.2, 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 Assignor, NCPA may take any or all of the following actions:

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

(ii) demand that the Defaulting Assignor 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;

(iii) terminate this Agreement as to the Defaulting Assignor, on ten (10) Calendar Days prior written notice to the Defaulting Assignor; or

(iv) enforce all other rights or remedies available to it under any other agreement in which the Defaulting Assignor is a signatory.

11.6 Effect of Termination or Suspension.

11.6.1 Generally. The termination or 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.

11.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA with respect to Assignor in accordance with subsection 11.5(i), then such Assignor shall pay any and all reasonable costs incurred by NCPA as a result of such suspension including reasonable attorney 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 costs associated with NCPA's provision of Joint Assignment Administration

Services, including Administrative Services Costs, that were not recovered from Assignor as a result of such suspension.

11.6.3 Termination. If this Agreement is terminated by NCPA with respect to Assignor in accordance with Section 11.5(iii), then such Assignor shall pay any and all costs incurred by NCPA as a result of such termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of costs associated with NCPA's provision of Joint Assignment Administration Services that were not, or will not be, recovered from Assignor as a result of such termination.

Section 12. NCPA Administrative Costs.

12.1 Cost of Services. All costs associated with NCPA's provision of Joint Assignment Administration Services to Assignor, including, but not limited to, Administrative Services Costs and Power Management Services Costs, shall be allocated to Assignor in accordance with this Agreement and the Power Management and Administrative Services Agreement.

12.2 Base Resource and Associated Costs. Assigner agrees to and acknowledges its mandatory obligation to pay its allocated share of costs associated with its Base Resource Percentage, including, but not limited to, Base Resource costs,

O&M Funding costs and Central Valley Project Improvement Act Restoration Funding costs, as invoiced in its All Resources Bill.

Section 13. Administration of Agreement.

13.1 General. The Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with the Joint Powers Agreement, the NCPA Commission Bylaws and Section 13.2 of this Agreement.

13.2 Action by Commission.

13.2.1 Forum. Whenever any action anticipated by or related to this Agreement is to be taken by Assignors, such actions shall be taken at a regular or special meeting of the Commission, but shall be participated in only by those Commissioners, or their designated alternates (“Alternate”), who represent Assignors.

13.2.2 Quorum. A quorum of the Commission, for purposes of acting upon matters relating to this Agreement, shall consist of those Commissioners, or their Alternate, representing each and every Assignor.

13.2.3 Voting. Each Assignor shall have the right to cast one vote with respect to matters pertaining to this Agreement. Actions of the Commission with

regard to this Agreement shall be effective upon the unanimous affirmative vote of all Assignors.

13.3 Adoption and Amendment of Annual Budget. Annually, the Commission shall adopt an Annual Budget, which includes, but is not limited to, all costs attributed to services provided under this Agreement, for at least the next succeeding Fiscal Year in accordance with the Joint Powers Agreement and this Agreement; provided, however, that the Commission may in its discretion adopt a two-year budget if permitted to do so by the NCPA Commission Bylaws or the Joint Powers Agreement.

13.4 Facilities Committee. The Facilities Committee has been established pursuant to the Amended and Restated Facilities Agreement to act as an advisory committee to the Commission. The Commission may, in coordination with the General Manager, refer matters pertaining to the administration of this Agreement to the Facilities Committee for review and recommendation, including, but not limited to, proposed amendments to this Agreement and to the Appendices. If the Commission or General Manager refers matters pertaining to the administration of this Agreement to the Facilities Committee, then NCPA will provide a copy of the public notice of the Facilities Committee meeting at which the matter will be discussed to Assignors. The Facilities Committee may act upon such matters referred to it by the Commission in accordance with the procedures, including the general administration quorum and voting procedures, set forth in the Amended and Restated Facilities Agreement. Any

recommendations of the Facilities Committee shall be made to the Commission and others, as appropriate, in coordination with the General Manager.

Section 14. Term and Termination.

14.1 Effective Date. This Agreement shall become effective on the date this Agreement has been duly executed by Assignor and NCPA (the “Effective Date”).

NCPA shall notify all Assignors in writing of the Effective Date.

14.2 Term and Termination. Of necessity, the term of this Agreement must coincide with the term of the underlying Assignor’s Assignment Contract. More specifically, this Agreement shall terminate automatically upon the termination of the Assignment Contract.

14.3 No Effect on Prior Liabilities. Termination of this Agreement will not terminate any ongoing or un-discharged liabilities, credits or obligations, including any contingent liabilities, credits or obligations, resulting from this Agreement until they are satisfied in full.

Assignor shall not be obligated to compensate the remaining Assignors for loss of any benefits that would have accrued to the remaining Assignors if this Agreement was not terminated. Nor shall the remaining Assignors be obligated to compensate Assignor for any benefits that accrue to the remaining Assignors because of the termination.

Section 15. Other Agreements.

15.1 Precedence of Agreement. This Agreement complements the Joint Powers Agreement. It extends the responsibility and authorities assigned to the Commission and to the General Manager under the terms of the Joint Powers Agreement.

15.2 Pooling Agreement. This Agreement supersedes the Second Amended and Restated Pooling Agreement, and takes precedence with respect to issues addressed in this Agreement to the receipt, delivery, scheduling, accounting and billing for all Base Resource Percentage assigned to NCPA to which Assignor is entitled for as long as this Agreement is in effect.

15.3 Other Agreements. With the exception of the Power Management and Administrative Services Agreement and Amended and Restated Scheduling Coordination Program Agreement, this Agreement shall upon the Effective Date, take precedence with respect to issues addressed in this Agreement and also addressed in any other agreement between Assignor and NCPA. With respect to issues common to the Power Management and Administrative Services Agreement and Amended and Restated Scheduling Coordinator Program Agreement, the Power Management and Administrative Services Agreement and Amended and Restated Scheduling Coordinator Program Agreement shall take precedence over this Agreement.

Section 16. 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 Parties; provided, that the provisions of Section 9.4 shall first apply to all disputes involving invoices prepared by NCPA.

Section 17. Reports and Records.

17.1 Reports. Assignor and NCPA shall each prepare and make available to the other all data necessary for each to (i) perform all duties required under this Agreement, and (ii) verify the accuracy of all amounts due and payable under this Agreement. Examples of data to be made available by NCPA at Assignor's request includes, but are not limited to:

17.1.1 All load data relevant to Assignor's Base Resource Percentage assigned to NCPA.

17.1.2 All CAISO or other cost information relevant to determining the cost savings obtained by Assignor due to the Base Resource Percentage assigned to NCPA.

17.1.3 Such additional reports and records as are reasonably requested in writing; provided, however, that Assignor so requesting shall reimburse NCPA for costs associated with producing reports that are not essentially completed or kept in the ordinary course of business.

17.2 Reports to Other Agencies. NCPA will submit such reports and records which are required or may be required by Western Area Power Administration, or

other local, state or referral agencies, as such reports and records are required for NCPA to fulfill its obligations under this Agreement.

Section 18. Miscellaneous.

18.1 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 Brown Act and 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 of the other Party's (the "Supplying Party") confidential data or information ("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) 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) the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

18.2 Indemnification and Hold Harmless. Subject to the provisions of Section 18.4, Assignor 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 (the "Damages"), to the extent caused by any act, omission, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of Assignor, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

18.3 Several Liabilities. No Assignor shall be liable under this Agreement for the obligations of any other Assignor, and each Assignor shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise

provided for herein, and the obligation of each Assignor under this Agreement is a several obligation and not a joint obligation with those of the other Assignors.

18.4 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 ASSIGNOR 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 ASSIGNOR 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.

18.5 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. 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.

18.6 Amendments.

18.6.1 Amendments in General. 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.

18.6.2 Approval and Amendment to Appendices. Notwithstanding Section 18.6.1, any addition to, amendment to or removal of the Appendices of this Agreement shall take effect after being approved by the Commission in a manner

consistent with the voting procedures set forth in Section 12 without the requirement of an approval of Assignor's governing bodies.

18.7 Assignment of Agreement.

18.7.1 Binding Upon Successors. This Agreement, including the Appendices attached hereto, shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

18.7.2 No Assignment. 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, where such consent shall not be unreasonably withheld.

Without limiting the foregoing, this Agreement shall not be assigned by Plumas-Sierra Rural Electric Cooperative without the approval in writing of the Administrator of the Rural Electrification Administration Utilities Service.

18.8 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.

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

18.10 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.

18.11 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 Assignor's Commissioner or Alternate, and to the General Manager, or shall be transmitted to Assignor 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. 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.

18.12 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, Assignor shall deliver to NCPA a resolution of the governing body of Assignor evidencing approval of and authority to enter into this Agreement.

18.13 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.

18.14 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.

18.15 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, each Party shall bear its own fees and costs, including reasonable attorneys' fees, associated with the action.

18.16 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 18.15 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.

18.17 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 Assignor 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

ASSIGNOR NAME

ADDRESS

CITY, STATE, ZIP

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____

Its: General Counsel

Date: _____

By: _____

Its: General Counsel

Date: _____

APPENDIX A
BENEFITS SHARING ALLOCATION ALGORITHM

Updated: November 29, 2017

Introduction

Steps 1-9 determine each Assignor’s monthly percentage allocator that will be used to distribute the benefits resulting from assigning the Base Resource to NCPA. Step 10 uses that percentage allocator to distribute the benefits.

All computational steps in this allocation algorithm will be implemented in a manner that is consistent with NCPA staff’s goal of scheduling the assigned Base Resource (BR) to maximize the economic market value of the BR.

Step 1: Constrained Own-Load Optimal Dispatch

NCPA staff shall perform after the fact monthly “own-load” optimal dispatch of each Assignor’s BR to establish the value of the individual BR allocation to each Assignor pre-assignments. The own-load dispatch shall be constrained by hourly loads equal to each Assignor’s gross hourly loads such that BR energy schedules cannot exceed 100 percent of load in any hour. In addition, revenues Assignor would have received from Western Area Power Administration (Western) through the re-marketing of its “standard” energy allocations (the portion of monthly energy allocations that cannot be utilized by Assignor) will be added to this value.

$$ValueOL_i = OLDDispatch_i \times LMP + RemarketingRevenues_i \quad (1)$$

Where

- OLDDispatch* = Assignor i hourly own-load constrained optimized BR dispatch
- ValueOL* = Assignor i gross market value of *OLDDispatch*
- LMP* = Hourly MEEA prices
- RemarketingRevenues* = Estimated Western energy re-marketing revenue.

Step 2: Net Value of Own-Load Constrained Dispatch

All Western costs will be deducted from the values computed in Step 1.

$$AvgCostBR_m = \frac{BR_Cost_m}{\sum_{d=1}^d \sum_{h=1}^{24} BR_Schedule_{d,h}} \quad (2)$$

$$OL_Const_Cost_i = OL_Dispatch_i \times AvgCostBR_m \quad (3)$$

$$NetValueOL_i = ValueOL_i - OLDispatch_i \times AvgCostBR_m \quad (4)$$

Where

- AvgCostBR* = Average cost of the Base Resource in month m
- d* = Number of days in a month
- BR_Schedule* = NCPA's BR Schedule in month m
- BR_Cost* = All Base Resource costs
- OL_Const_Cost* = Cost of Assignor i *OLDispatch*
- NetValueOL* = Net market value of Assignor i *OLDispatch*

Step 3: Unconstrained Own-Load Optimal Dispatch

Perform individual optimal dispatches without load constraints. The difference in net value between this un-constrained net value and the net value of each Assignor's own-load constrained dispatch (NetValueOL) of Step 2 shall be the allocation determinant for 50% of the assignment benefit computed in Step 7.

$$NetBenOL_i = UnconstDisp_i \times LMP - UnconstDisp_i \times AvgCostBR_m - NetValueOL_i \quad (5)$$

$$AllocatorE_i = \frac{NetBenOL_i}{\sum_{i=1}^n NetBenOL_i} \quad (6)$$

Where

- NetBenOL* = Net value increase when the load constraint is removed
- UnconstDisp* = Optimized BR schedule without load constraint
- AllocatorE* = Energy provider BR value allocator used in step 7.

Step 4: Daily Head-Room Value

Compute the value of load “head-room” provided by each Assignor during the day. Head-room value is a function of each Assignor’s net load (net of constrained own-load BR schedules) in each time-step when NCPA’s actual BR schedule exceeds the sum of Assignors’ own-load BR energy schedule.

$$HR_MW_{h,i} = \text{Max}(0, \text{Load}_{h,i} - \text{OL_Dispatch}_{h,i}) \quad (7)$$

$$HR_Need_h = \sum_{i=1}^n \text{Max}(0, \text{BR_Schedule}_{h,i} - \text{Load}_{h,i}) \quad (8)$$

$$HR_Share_{h,i} = \frac{HR_MW_{h,i}}{\sum_{i=1}^n HR_MW_{i,h}} \quad (9)$$

$$HR_Value_i = \sum_{h=1}^{24} (HR_Need_h \times LMP_{MEEA,h} \times HR_Share_{h,i}) \quad (10)$$

$$HR_Value_i = \begin{cases} \sum_{h=1}^{24} (HR_Need_h \times LMP_{MEEA,h} \times HR_Share_{h,i}), & \text{if } \text{BR_Schedule}_h - \sum_{i=1}^n \text{OL}_{i,h} > 0 \\ 0, & \text{otherwise} \end{cases}$$

Where:

- HR_MW = Quantity of Headroom available in hour h from Assignor i
- HR_Need = Total quantity of Headroom needed by all the Assignors in hour h
- HR_Share = Percentage share of the Headroom made available in each hour by each Assignor
- $BR_Schedule$ = Actual schedule of Western BR
- HR_Value = Daily value of Headroom provided by each assignor.

Step 5: Allocation of Headroom Provider

Compute the allocation determinant of 50% of the pooling benefit computed in Step 7 on the basis of the Headroom value for the month.

$$\text{Allocator } L_i = \frac{HR_Value_i}{\sum_{i=1}^n HR_Value_i} \quad (11)$$

Step 6: Net Daily Benefit of BR Assignment

Compute the daily net benefit of BR assignments to NCPA as the difference between the net market value of NCPA’s actual BR schedule and the net market value of the sum of Assignors’ own-load constrained daily dispatches. If the result is positive, then proceed to Step 7. If the result is negative proceed to Step 8.

$$NetValueBR = BR_Schedule_h \times (LMP_h - AvgCostBR_m) \quad (12)$$

$$NetBenefit = NetValueBR - \sum_{i=1}^n NetValueOL_i \quad (13)$$

Where

NetValueBR = Daily net market value of *BR_Schedule*

NetBenefit = The increase (or decrease) in **daily** BR value due to assignments

Step 7: Allocate Positive Daily Net Benefit (Only if the Net Daily Benefit is Positive)

Allocate one-half of the daily Net Benefit using AllocatorE and one-half using AllocatorL. Proceed to Step 9.

$$AssignorBen_{i,d} = NetBenefit_d \times \frac{1}{2} \times (AllocatorE_{i,d} + AllocatorL_{i,d}) \quad (14)$$

Where

AssignorBen_i = Benefit of assignment allocated to Assignor i.

Step 8: (Only if Daily Net Benefit is Negative); Zero Benefit from Assignment

Set value of zero for each Assignor.

$$AssignorBen_i = 0 \text{ for all } i \quad (15)$$

Step 9: Assign Constant Adjusted BR Percentage Shares for the Month

Determine each Assignor’s monthly percentage share of NCPA’s BR by normalizing the sum of each Assignor’s daily Assignor Benefit and Net Value of Own-Load constrained dispatch. Each Assignor’s share of NCPA’s BR schedules in each time-step during the month shall be equal to the percentage computed in this step. For example, if a Member’s share in a given month is calculated as 15% in this step, that Member is assigned 15% of actual Western schedules each time-step during that month.

$$BRPct_i = \frac{\sum_{day=1}^d (AssignorBen_{i,day} + NetValueOL_{i,day})}{\sum_{day=1}^d \sum_{i=1}^n (AssignorBen_{i,day} + NetValueOL_{i,day})} \quad (16)$$

Where

BRPct = Optimized BR Percentage Shares. Assignor i share of BR Schedule and associated benefits.

Step 10: Assign Base Resource Costs

Assign any difference between NCPA’s actual BR costs and the sum of the Own-Load constrained monthly costs. Positive or negative differences will be distributed to each assignor using the optimized BR shares calculated in step 9. Each assignor’s Western BR costs for the month (to be billed by NCPA) will equal the respective Own-Load constrained costs adjusted by this step added to Assignor’s Base Resource share.

$$BRCost_i = OLConstCost_i - BRPct_i \times (BRCost_m - \sum_{i=1}^n OLConstCost_i) \quad (17)$$

NCPA staff shall regularly monitor the results of this procedure and recommend corrective action to be taken if and when the application of this procedure results in counter-intuitive and/or unfair allocations of benefits and costs to Assignors.



SAMPLE

**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND**

[REDACTED]

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and [REDACTED], a [REDACTED] [sole proprietorship, partnership, corporation] with its office located at [REDACTED] ("Consultant") (together sometimes referred to as the "Parties") as of [REDACTED], 20 [REDACTED] ("Effective Date") in Roseville, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified therein.

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) year from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services, or does not respond within the seven day

period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** [REDACTED] dollars (\$ [REDACTED]) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Services performed;
- The Purchase Order number authorizing the Services;
- At Agency's option, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder; and
- At Agency's option, when the Consultant's Scope of Work identifies tasks, for each work item in each task, a copy of the applicable time entries showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable
AcctsPayable@ncpa.com

2.2 Monthly Payment. Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.4 Authorization to Perform Services. The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.

2.5 Timing for Submittal of Final Invoice. Consultant shall have ninety (90) days after completion of its Services to submit its final invoice for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

4.1 Workers' Compensation. If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial General Insurance. Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$2,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

4.2.2 Automobile Liability. Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$2,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and

mobile equipment to the extent coverage may be excluded from general liability insurance.

4.2.3 General Liability/Umbrella Insurance. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

4.3 Professional Liability Insurance. (Required for all Consultants providing engineering, architectural, design, and similar services requiring special licensing from the State of California.) Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

4.4 All Policies Requirements.

4.4.1 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

4.4.2 Notice of Reduction in or Cancellation of Coverage. Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

4.4.3 Higher Limits. If Consultant maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Consultant.

4.4.4 Additional Certificates and Endorsements. If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

4.4.5 Waiver of Subrogation. Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

4.5 Consultant's Obligation. Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 Effect of Insurance. Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

[Use the following in all agreements, except as noted below.]

5.2 Scope. Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Consultant, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

[Use the following solely in agreements with “design professionals”, defined as (1) licensed architects, (2), licensed engineers, (3) licensed landscape architects, and (4) licensed land surveyors.]

5.2 **Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant in its performance of Services under this Agreement. Consultant shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they arise out of, pertain to, or relate to such claims, whether directly or indirectly (“Liabilities”). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of,

pertain to, or relate to such claims, whether directly or indirectly, due to Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Consultant agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Consultant.

6.2 Consultant Not Agent. Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

6.3 Assignment and Subcontracting. This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

6.4 Certification as to California Energy Commission. If requested by the Agency, Consultant shall, at the same time it executes this Agreement, execute Exhibit C.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant.

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

- 8.2 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.

- 8.3 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

- 8.4 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

- 8.4.1 Immediately terminate the Agreement;
- 8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or
- 8.4.4 Charge Consultant the difference between the costs to complete the Services that is unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans,

studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.

9.2 Consultant's Books and Records. Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confident; and (b) shall take all reasonable steps to prevent any

unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

9.4.3.1 Disclosure to employees, agents, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

9.4.3.2 Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

9.4.3.3 Disclosure by Agency in response to a request pursuant to the California Public Records Act.

9.4.4 Handling of Confidential Information. Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 Venue.** In the event that either party brings any action against the other 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.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 10.7 Contract Administrator.** This Agreement shall be administered by _____, **Assistant General Manager**, or his/her designee, who shall act as the Agency’s representative. All correspondence shall be directed to or through the representative.

- 10.8 Notices.** Any written notice to Consultant shall be sent to:

[CONSULTANT’S NAME, ADDRESS]

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt
General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

- 10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute

resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

- 10.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.
- 10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 10.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 10.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide Services to an Agency member, SCCPA and/or a SCPPA member (collectively for the purposes of this section only "Member") pursuant to section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

CONSULTANT

Date _____

Date _____

[NAME, TITLE]

[NAME, TITLE]

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF SERVICES

[ATTACH OR INSERT SCOPE OF SERVICES HERE]

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed _____. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

[Insert breakdown here]

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested.

NOTE: As a public agency, NCPA shall not reimburse Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I, _____
(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.



SAMPLE

**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and [REDACTED], a [REDACTED] [sole proprietorship, partnership, corporation] with its office located at [REDACTED] ("Contractor") (together sometimes referred to as the "Parties") as of [REDACTED], 20 [REDACTED] ("Effective Date") in Roseville, California.

Section 1. SCOPE OF WORK. Subject to the terms and conditions set forth in this Agreement, Contractor is willing to provide to Agency the range of services and/or goods described in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Contractor completes the Work, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Contractor shall perform the Work in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged and for which Contractor is providing the Work. Contractor represents that it is licensed, qualified and experienced to provide the Work set forth herein.
- 1.3 Assignment of Personnel.** Contractor shall assign only competent personnel to perform the Work. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Contractor shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Work Provided.** Work provided under this Agreement by Contractor may include Work directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Work to be Performed.** At such time that Agency determines to have Contractor perform Work under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Work to be performed ("Requested Work"), may include a not-to-exceed cap on monetary cap on Requested Work and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Work shall be completed. Contractor shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Contractor chooses not to perform the Requested Work. If Contractor agrees to perform the Requested Work, begins to perform the Requested Work, or does not respond within the seven day period specified, then Contractor will have

agreed to perform the Requested Work on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** [REDACTED] dollars (\$ [REDACTED]) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

2.1 Invoices. Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Work performed;
- The Purchase Order number authorizing the Requested Work;
- At Agency's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction;
- At Agency's option, the total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing work hereunder.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable
AcctsPayable@ncpa.com

2.2 Monthly Payment. Agency shall make monthly payments, based on invoices received, for Work satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

2.3 Payment of Taxes. Contractor is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.4 Authorization to Perform Work. The Contractor is not authorized to perform any Work or incur any costs whatsoever under the terms of this Agreement until receipt of a Purchase Order from the Contract Administrator.

- 2.5 **Timing for Submittal of Final Invoice.** Contractor shall have ninety (90) days after completion of the Requested Work to submit its final invoice for the Requested Work. In the event Contractor fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Contractor is deemed to have waived its right to collect its final payment for the Requested Work from Agency.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Work.

Section 4. INSURANCE REQUIREMENTS. Before beginning any Work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

- 4.1 **Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than one million dollars (\$1,000,000.00) per accident.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **Commercial General Insurance.** Contractor shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$2,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

4.2.2 **Automobile Liability.** Contractor shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Contractor, on or off Agency premises. The policy shall provide a minimum limit of \$2,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

4.2.3 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

4.3 Professional Liability Insurance. (Required for all Contractors providing engineering, architectural, design, and similar services requiring special licensing from the State of California.) Contractor shall maintain professional liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Contractor's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

[Use the following Section 4.4 if Contractor will be providing chemicals, fuel, or other substances which may be toxic, hazardous, or of a similar nature. Section 5.3 will also be included.]

4.4 Pollution Insurance. If Contractor's Work involves its transporting hazardous materials, then Contractor shall obtain and maintain Contractors' Pollution Liability Insurance of not less than two million dollars (\$2,000,000) for any one occurrence and not less than four million dollars (\$4,000,000) aggregate. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim. Such insurance shall be on "an occurrence" basis. In addition, Contractor shall ensure that such insurance complies with any applicable requirements of the California Department of Toxic Substances Control and California regulations relating to the transport of hazardous materials (Health & Safety Code sections 25160 *et seq.*).

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed, or controlled pursuant to any national, state, or local law, statute, ordinance, directive, regulation, or other legal requirement of the United States.

4.5 All Policies Requirements.

4.5.1 Verification of coverage. Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the

Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

4.5.2 Notice of Reduction in or Cancellation of Coverage. Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

4.5.3 Higher Limits. If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.

4.5.4 Additional Certificates and Endorsements. If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Contractor shall provide the certificates of insurance and policy endorsements, as referenced in Section 4.5.1, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.

4.5.5 Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.

4.6 Contractor's Obligation. Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

5.1 Effect of Insurance. Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

[Use the following in all agreements, except as noted below.]

5.2 Scope. Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

[Use the following solely in agreements with "design professionals", defined as (1) licensed architects, (2) licensed engineers, (3) licensed landscape architects, and (4) licensed land surveyors.]

5.2 Scope. Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Contractor in its performance of Work under this Agreement. Contractor shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency.

[Use the following Section 5.3 if Contractor will be providing chemicals, fuel, or other substances which may be toxic, hazardous, or of a similar nature.]

5.3 Transfer of Title. If Contractor's Work involves its transporting hazardous materials, Contractor shall be deemed to be in exclusive possession and control of such materials and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of such materials, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Contractor or its agents complete transfer of such materials into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Contractor shall be responsible for all such notifications. Should Contractor be required to remedy or remove such materials as a result of a leak, spill, release or discharge of such materials into the environment at Agency's Site or elsewhere, Contractor agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

Section 6. STATUS OF CONTRACTOR.

6.1 Independent Contractor. Contractor is an independent contractor and not an employee of Agency. Agency shall have the right to control Contractor only insofar as the results of Contractor's Work and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Contractor accomplishes Work rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

Contractor shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Contractor's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Contractor agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Contractor shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Contractor.

6.2 Contractor Not Agent. Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

6.3 Assignment and Subcontracting. This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor

may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

- 6.4 **Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 **Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 **Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 **Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 **Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.

7.6 Prevailing Wage Rates. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

Additionally, in accordance with the California Administrative Code, Title 8, Group 3, Article 2, Section 16000, Publication of Prevailing Wage Rates by Awarding Bodies, copies of the applicable determination of the Director can be found on the web at: <http://www.dir.ca.gov/DLSR/PWD/> and may be reviewed at any time.

Contractor shall provide a certified copy of its payroll, on forms to be determined by the Agency and consistent with the Labor Code, within ten (10) days of the Contractor's receipt of Agency's written request therefor. Contractor's failure to timely comply with this provision may subject the Contractor to penalties pursuant to state law.

Contractor shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Contractor shall forfeit as a penalty to Agency \$200.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Contractor or by any subcontractor under Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Contractor.

In the event of termination, Contractor shall be entitled to compensation for Work satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Contractor delivering to Agency any or all records or documents (as referenced in Section 9.1 hereof).

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Contractor shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1** Immediately terminate the Agreement;
 - 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
 - 8.4.3** Retain a different Contractor to complete the Work not finished by Contractor; and/or
 - 8.4.4** Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement

for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

9.4.3.1 Disclosure to employees, agents, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

9.4.3.2 Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

9.4.3.3 Disclosure by Agency in response to a request pursuant to the California Public Records Act.

9.4.4 **Handling of Confidential Information**. Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

10.1 **Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.

10.2 **Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by

Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.

- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

Section 12. HEALTH AND SAFETY PROGRAMS. The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4.

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.

- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 Venue.** In the event that either party brings any action against the other 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.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 13.7 Contract Administrator.** This Agreement shall be administered by [REDACTED], Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 13.8 Notices.** Any written notice to Contractor shall be sent to:

[CONTRACTOR'S NAME, ADDRESS]

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt
General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as

mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

13.11.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

13.11.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

13.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

13.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

13.14 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

13.15 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

CONTRACTOR

Date _____

Date _____

[NAME, TITLE]

[NAME, TITLE]

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

[ATTACH OR INSERT SCOPE OF WORK HERE]

Insert as needed: No project under this Agreement shall include Work that would qualify as a Public Works Project under the California Public Contract Code.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all work, including hourly fees and expenses, shall not exceed the amount set forth in Section 2 hereof. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

[Insert breakdown here]

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested.

NOTE: As a public agency, NCPA shall not reimburse Contractor for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

EXHIBIT D
CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

do hereby certify that the below-named company has prepared and implemented security plans in conformity with 49 CFR 172, subpart I and has conducted employee background investigations in conformity with 49 CFR 172.802(a), as the same may be amended from time to time,

(Company name)

for hazardous materials delivery to:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 __.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

EXHIBIT E

**ATTACHMENT A [from MLA]
AGREEMENT TO BE BOUND**

**MAINTENANCE LABOR AGREEMENT ATTACHMENT
LODI ENERGY CENTER PROJECT**

The undersigned hereby certifies and agrees that:

- 1) It is an Employer as that term is defined in Section 1.4 of the Lodi Energy Center Project Maintenance Labor Agreement (“Agreement” solely for the purposes of this Exhibit E) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Section 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and condition of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5) It will secure a duly executed Agreement to be Bound, in form identical to this documents, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)
