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Minutes - DRAFT

Date: February 22, 2018
To: NCPA Commission
From: Cary A. Padgett, Assistant Secretary to the Commission
Subject: NCPA Commission Meeting

Item #1 – Call Meeting to Order and Introductions

Chair Bob Lingl called the meeting to order at 9:40 am at NCPA's Roseville Office, 651 Commerce Drive, California. A quorum was present. Introductions were made. Those in attendance are shown on the attached attendance list.

Item #2 – Approve Minutes of the January 18, 2018, Regular Commission Meeting

Motion: A motion was made by Teresa O'Neill and seconded by Bonnie Gore to approve the Minutes of the January 18, 2018, Regular Commission Meeting. The motion carried unanimously on a voice vote of those members present.

PUBLIC FORUM

No comments from the public.

REPORTS AND COMMITTEE UPDATES

Item #3 – General Manager's Business Progress Report and Update

- Gave an update on the discussion at the NCPA Legislative & Regulatory Affairs Committee that met on February 21.
- Provided a brochure that outlines this year's NCPA Internship program for Members. Members that are interested, please contact NCPA's Human Resources Manager.
- Gave an update on NCPA's Support and Shared Services Agreement and provided a copy of the monthly status report.
- Hometown Connections Update. Participants are working through the draft agreements and Bylaws. Plan to take the proposal to the Commission for approval in March or April at the latest.

- Gave an overview on the Agency’s facilities. Assistant General Manager Ken Speer gave a presentation on the hydro outlook.
- NCPA’s 50th Anniversary Celebration Update. An internal team is working on events that will be scheduled throughout the year in celebration of NCPA’s 50 years of public power. NCPA will also have a panel of past key players at the Annual Conference in September that will share the history to present on NCPA and its Members.
- Participating in the Sacramento Regional Science Bowl hosted by Western Area Power Administration on February 24.
- Vice Chair Roger Frith shared an overview of NCPA’s history to kick off NCPA’s 50th Anniversary celebration. Every month the Commission will be presented with a commemorative pin that represents a piece of NCPA’s history.

Item #4 – Executive Committee

Committee Chair Bob Lingl reported that the Committee met once since the last Commission meeting. The Committee heard reports from the General Manager and General Counsel, received an updated copy of General Counsel’s Goals for 2018, and discussed future locations of the Agency’s Annual Conferences. The Committee also met in closed session. No reportable action was taken on the closed session item.

Item #5 – Facilities Committee

Assistant General Manager Dave Dockham reported the Committee met twice since the last Commission meeting. The Committee met and discussed item 14 on today’s Agenda. A quorum of the Committee was not established for this item, but the Members in attendance supported staff’s recommendation. The Committee also discussed item 15 on today’s Agenda. A quorum of the Committee was established and supported staff’s recommendation. The Committee met under a Special Agenda to discuss the Administrative Services, Power Management and Generation Services proposed FY18-19 program budgets.

Item #6 – Finance Committee

Assistant General Manager/CFO Monty Hanks reported that the Committee met once since the last Commission meeting. The Committee discussed and recommended approval of items 13 and 16 on today’s Agenda. The Committee also received a report on the current conditions of the financial markets from PFM, was provided a presentation regarding a review of NCPA’s Investment Strategy Plan, “aka The Playbook,” and discussed the Long-Term Funding Plan for the NCPA’s Pension Program. The next Committee meeting is scheduled on May 8.

Item #7 – Legal Committee

General Counsel Jane Luckhardt reported that the Committee did not meet since the last Commission meeting.

Item #8 – Legislative & Regulatory Affairs Committee

Committee Chair Teresa O’Neill reported the Committee met once since the last Commission meeting. The Committee reviewed and approved staff’s proposed Legislative

& Regulatory Affairs FY18-19 Budget. A small delegation of NCPA Members and staff will be attending APPA's Legislative Rally and Winter Workshop in Washington, D.C. February 25-28. Registration for the 2018 NCPA/NWPA Federal Policy Conference being held in Washington, D.C., on April 15-19 is open. NCPA will pay for one elected/appointed Member to attend. For more information, please contact NCPA L&R staff. The next Committee meeting is scheduled on May 23.

Item #9 – Members' Announcements & Meeting Reporting

Bob Lingl, **Lompoc**, announced the City Manager resigned and the position is open.

CONSENT CALENDAR

Prior to the roll call vote to approve the Consent Calendar, the Commissioners were polled to determine if any member wished to pull an item or abstain from one or more items on the Consent Calendar. No items were pulled for discussion.

Motion: A motion was made by Mark Chandler and seconded by Teresa O'Neill to approve the Consent Calendar consisting of items 10, 11, 12, 13, and 14. The motion carried by a majority of those members present on a roll call vote. No abstentions were made. San Francisco BART, Truckee Donner and Plumas Sierra were absent.

Item #10 – NCPA's Financials for the Month Ended January 31, 2018 – approval by all members.

Item #11 – Treasurer's Report for the Month Ended January 31, 2018 – accept by all members.

Item #12 – Sale or Disposal of Surplus Property – note and file by all members the disposal of 2 Solid State Inverters, Cummins Propane Generator, and an Alfa Laval Centrifuge Oil Separator.

Fiscal Impact: This report has no direct fiscal impact to the Agency.

Item #13 – December 31, 2017, Debt and Interest Rate Management Report – receive and file report by all members the December 31, 2017, Debt and Interest Rate Management Report.

Fiscal Impact: The total projected savings over the life of the interest rate swaps was \$13.9 million at the inception of these agreements. Total projected savings through December 31, 2017 was \$5.6 million with actual results at \$9.6 million. The difference between expected savings and actual savings is due to "basis risk", or the difference between what NCPA pays on the variable rate bonds and the index rate used in the swap transaction. Total basis risk to date is positive, resulting in additional savings over those expected of \$4.0 million. Staff continues to monitor the potential for refinancing these bonds and terminating the swaps, however, with rates still near historical lows, this is causing a large mark-to-market payment due to Citibank, N.A. of over \$16.995 million (net) making a potential refund not a feasible option at this time.

Item #14 – Resolution 18-10, Updates and Modifications to the Nexant Cost Allocation Model for FY2019 – adopt resolution by all members approving the modifications to the Nexant Model as proposed by staff in order to allocate budgeted costs to members for Fiscal Year 2019.

Fiscal Impact: The recommended adjustments will result in a change to all members' allocated share of Power Management costs by varying amounts. Table 2 of Appendix A provides indicative changes in allocated Nexant Power Management costs to members based on current Fiscal Year 2018 budget related to items 1 and 2 as presented at the January 31, 2018 Facilities Committee meeting. Many of the Information Services software enhancements to the dispatch operations and associated scheduling and settlements applications have led to improved efficiencies throughout the Agency, which has essentially increased workload capacity. This has allowed Power Management to expand scheduling coordinator services to new customers, generating new revenue, to offset the members' Nexant-related costs without adding new staff.

DISCUSSION / ACTION ITEMS

Item #15 – Resolution 18-07, Approval of the Second Phase Agreement between NCPA and Member Participants for NCPA Solar Project 1 – adopt resolution by all members approving the Second Phase Agreement for the NCPA Solar Project 1; and authorizing the NCPA General Manager to execute the Second Phase Agreement for the Solar Project 1 on behalf of NCPA, including any non-substantive modifications approved by NCPA's General Counsel.

Fiscal Impact: Total cost of Phase 2 of the project will be dependent upon the number of Member Participants, planned capacity, and location. Some sites may not be deemed feasible and may not progress through the entirety of Phase 2. Hence for each potential site, the not-to-exceed cost per Member Participant is \$60,000 to perform the site selection and screening (See, Phases 2A/2B in the Second Phase Agreement). In addition, for sites deemed feasible, an additional not-to-exceed cost of \$320,000 per Member Participant would be incurred to complete due diligence, preparation (including compliance with CEQA and to gain site control), and PPA solicitation (See, Phases 2C/2D in the Second Phase Agreement). Cost allocation will be based on site-specific costs and a division of general costs based on a site's capacity rating relative to the aggregate capacity of the project.

Assistant General Manager Ken Speer gave a presentation on the Second Phase Agreement between NCPA and Member Participants for the NCPA Solar Project 1.

Motion: A motion was made by Dan Beans and seconded by Terry Crowley approving the resolution for the Second Phase Agreement for the NCPA Solar Project 1; and authorizing the NCPA General Manager to execute the Second Phase Agreement for the Solar Project 1 on behalf of NCPA, including any non-substantive modifications approved by NCPA's General Counsel. Motion carried by majority on a roll call vote of those members present. *San Francisco BART, Plumas-Sierra and Truckee Donner were absent.*

Item #16 – Resolution 18-08, Authorizing and Approving the Issuance of up to \$80 Million Hydroelectric Project Number One Revenue Bonds, 2018 Refunding Series A (tax-exempt) and \$4 Million Hydroelectric Project Number One Revenue Bonds, 2018 Taxable Refunding Series B – adopt resolution by all members authorizing and approving the issuance of up to \$80 million of fixed rate Hydroelectric Project Number One Revenue Bonds, 2018 Refunding Series A (tax-exempt) and up to \$4 million fixed rate Hydroelectric Project Number One Revenue Bonds, 2018 Refunding Series B (taxable) and delegates the General Manager

and other NCPA officials the authority to execute related legal documents needed to issue these bonds.

Fiscal Impact: With the passage of SB450, the following details of the refunding must be disclosed prior to authorization of the bonds. The numbers reflect rates as of January 31, 2018.

Estimated Amount of Proceeds:	\$79,243,180
Estimated True Interest Cost:	2.064%
Estimated Cost of Issuance:	\$425,259
Estimated Sum of Debt Service Payments:	\$85,193,345

Estimated NPV savings over the current debt service is approximately \$7.4 million or 9.64% of refunded bonds through final maturity in 2024. The estimated average annual debt service savings for a full bond year is over \$1.28 million.

Assistant General Manager Monty Hanks gave a presentation on the issuance of up to \$80 million of fixed rate Hydroelectric Project Number One Revenue Bonds, 2018 Refunding Series A (tax-exempt) and up to \$4 million fixed rate Hydroelectric Project Number One Revenue Bonds, 2018 Refunding Series B and discussed the schedule of transition. John Wawg, Orrick Herrington, attended and was available to answer questions if needed.

Motion: A motion was made by Madeline Deaton and seconded by Bonnie Gore to approve the resolution authorizing the issuance of up to \$80 million of fixed rate Hydroelectric Project Number One Revenue Bonds, 2018 Refunding Series A (tax-exempt) and up to \$4 million fixed rate Hydroelectric Project Number One Revenue Bonds, 2018 Refunding Series B. Motion carried by a majority roll call vote of those hydroelectric project members present. *Port of Oakland, Redding and Shasta Lake abstained. San Francisco BART, Plumas-Sierra and Truckee Donner were absent.*

Item #17 – Resolution 18-11, Approval of Amendment to the Joint Operating Agreement for the Southeast Geysers Effluent Pipeline (SEGEP) Project – adopt resolution by all members approving an Amendment to the Joint Operating Agreement for the Southeast Geysers Effluent Pipeline Project (SEGEP), requiring NCPA to provide the entire power supply for the Bear Canyon Pump Stations except in outage situations, and stating that Calpine will compensate NCPA for its relative share of such electricity costs at an agreed-upon index price.

Fiscal Impact: Approval of this Amendment to the SEGEP Joint Operating Agreement will result in approximately \$90,000 per year in revenue to NCPA.

Assistant General Manager Ken Speer gave a presentation on the amendment of the Joint Operating Agreement for the Southeast Geysers Effluent Pipeline Project.

Motion: A motion was made by Greg Scharff and seconded by Roger Frith to approve the resolution approving an Amendment to the Joint Operating Agreement for the Southeast Geysers Effluent Pipeline Project (SEGEP), requiring NCPA to provide the entire power supply for the Bear Canyon Pump Stations except in outage situations, and stating that Calpine will compensate NCPA for its relative share of such electricity costs at an agreed-upon index price. Motion carried by majority on a roll call vote of those members present. *Port of Oakland, Redding and Shasta Lake abstained. San Francisco BART, Plumas-Sierra and Truckee Donner were absent.*

CLOSED SESSION

Non-essential Members and staff left the meeting for the closed session discussion.

Item #18 – Conference with Legal Counsel – Existing litigation pursuant to Government Code Section 54956.9(d)(1): Name of case: *Northern California Power Agency, City of Redding, City of Roseville, and City of Santa Clara v. the United States*, Court of Federal Claims no. 14-817C.

RECONVENED TO OPEN SESSION

All meeting attendees rejoined the meeting.

REPORT FROM CLOSED SESSION

Closed Session Disclosure: General Counsel Jane Luckhardt reported there was no reportable action on Closed Session Item 18.

NEW BUSINESS

Chair Lingl recognized those Members and staff that have February birthdays.

ADJOURNMENT

The February 22, 2018, Commission meeting was adjourned at 11:16 am.

Respectfully submitted,

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CARY A. PADGETT

Assistant Secretary to the Commission

Attachments

**Northern California Power Agency
 Commission Meeting of February 22, 2018
 COMMISSIONER
 Attendance List**

NCPA Commissioners are requested to sign, but signature by members of the public is voluntary.

MEMBER	NAME
ALAMEDA	<i>Madelene Adams</i>
BIGGS	<i>Ryan I. [Signature]</i>
GRIDLEY	<i>PAUL ECKERT</i>
HEALDSBURG	<i>Tracy</i>
LODI	<i>Mark Chandler</i>
LOMPOC	<i>Bblj</i>
PALO ALTO	<i>H. [Signature]</i>
PORT OF OAKLAND	<i>Prasit Wong</i>
PLUMAS-SIERRA REC	
REDDING	<i>D. [Signature]</i> Dan Bears
ROSEVILLE	<i>Bonnie Gere</i>
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART)	
SANTA CLARA	<i>Teresa O'Neill</i>
SHASTA LAKE	<i>Samey Taketava</i>
TRUCKEE DONNER	
UKIAH	<i>Mel Gaerde</i>



CONSENT CALENDAR

All items on the Consent Calendar are considered routine and will be approved without discussion by a single-roll call vote. Any Commissioner or member of the public may remove any item from the Consent Calendar. If an item is removed, it will be discussed separately following approval of the remainder of the Consent Calendar.

Prior to the roll call vote to approve the Consent Calendar, the Commissioners will be polled to determine if any Member wishes to abstain from one or more items on the Consent Calendar.

CONSENT CALENDAR ROLL-CALL APPROVAL

Commission Meeting Date: 2/22/18

Consent Items Listed on the Agenda: # 10 to # 14

Consent Items Removed from the Agenda and Approved Separately:

0

ROLL-CALL VOTE BY MEMBERS: LODI/SVP

Member	Item Numbers Abstained	Vote	Absent
Alameda		✓	
BART			✓
Biggs		✓	
Gridley		✓	
Healdsburg		✓	
Lodi		✓	
Lompoc		✓	
Palo Alto		✓	
Port of Oakland		✓	
Redding		✓	
Roseville		✓	
Santa Clara		✓	
Shasta Lake		✓	
Truckee Donner			✓
Ukiah		✓	
Plumas-Sierra			✓

ATTEST: Cary A. Padgett
 Cary A. Padgett
 Assistant Secretary to the Commission

**Northern California Power Agency
ROLL CALL VOTE**

Topic: Resolution 18-07

	<u>VOTE</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Alameda	Y		
BART			X
Biggs	Y		
Gridley	Y		
Healdsburg	Y		
Lodi	Y		
Lompoc	Y		
Palo Alto	Y		
Plumas-Sierra			X
Port of Oakland	Y		
Redding	Y		
Roseville	Y		
Santa Clara	Y		
Shasta Lake	Y		
Truckee Donner			X
Ukiah	Y		

Passed and adopted this 22nd day of February 2018, by the above vote on roll call.



 BOB LINGL
 Commission Chair

ATTEST: 

 CARY A. PADGETT
 Assistant Secretary

**Northern California Power Agency
ROLL CALL VOTE**

Topic: Resolution 18-08

	<u>VOTE</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Alameda	Y		
BART			X
Biggs	Y		
Gridley	Y		
Healdsburg	Y		
Lodi	Y		
Lompoc	Y		
Palo Alto	Y		X
Plumas-Sierra			X
Port of Oakland		X	
Redding		Y	
Roseville	Y		
Santa Clara	Y		
Shasta Lake		X	
Truckee Donner			X
Ukiah	Y		

Passed and adopted this 22nd day of February 2018, by the above vote on roll call.



 BOB LINGL
 Commission Chair

ATTEST: 

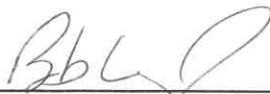
 CARY A. PADGETT
 Assistant Secretary

**Northern California Power Agency
ROLL CALL VOTE**

Topic: Resolution 18-11

	<u>VOTE</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Alameda	Y		
BART			X
Biggs	Y		
Gridley	Y		
Healdsburg	Y		
Lodi	Y		
Lompoc	X		
Palo Alto	Y		
Plumas-Sierra			X
Port of Oakland		X	
Redding		X	
Roseville	Y		
Santa Clara	Y		
Shasta Lake		X	
Truckee Donner			X
Ukiah	Y		

Passed and adopted this 22nd day of February 2018, by the above vote on roll call.



 BOB LINGL
 Commission Chair

ATTEST: 

 CARY A. PADGETT
 Assistant Secretary



Commission Staff Report

March 14, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: February 2018 Financial Report (Unaudited)

AGENDA CATEGORY: Consent

FROM:	Sondra Ainsworth <i>[Signature]</i>	METHOD OF SELECTION:
	Treasurer-Controller	N/A
Division:	Administrative Services	
Department:	Accounting & Finance	

IMPACTED MEMBERS:		
All Members	<input checked="" type="checkbox"/>	
Alameda Municipal Power	<input type="checkbox"/>	
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	
City of Biggs	<input type="checkbox"/>	
City of Gridley	<input type="checkbox"/>	
City of Healdsburg	<input type="checkbox"/>	
City of Lodi	<input type="checkbox"/>	
City of Lompoc	<input type="checkbox"/>	
City of Palo Alto	<input type="checkbox"/>	
City of Redding	<input type="checkbox"/>	
City of Roseville	<input type="checkbox"/>	
City of Santa Clara	<input type="checkbox"/>	
City of Shasta Lake	<input type="checkbox"/>	
City of Ukiah	<input type="checkbox"/>	
Plumas-Sierra REC	<input type="checkbox"/>	
Port of Oakland	<input type="checkbox"/>	
Truckee Donner PUD	<input type="checkbox"/>	
Other	<input type="checkbox"/>	
<i>If other, please specify</i>		

RECOMMENDATION:

Approval by all members

NOTICE:

The disbursements of the Northern California Power Agency for the month reported herein, will be approved at the March 22, 2018 meeting of the NCPA Commission. The following page is a summary of those disbursements.

Prior to the Chairman's call to order, the Assistant Secretary to the Commission will, upon request, make available for review the detailed listing of those disbursements.

The report of budget vs. actual costs and the unaudited February 2018 financial reports are also included.

FISCAL IMPACT:

This report has no direct budget impact to the Agency.

ENVIRONMENTAL ANALYSIS:

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

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments: (1)

**NORTHERN CALIFORNIA POWER AGENCY
and ASSOCIATED POWER CORPORATIONS**

**Schedule of Disbursements
(Unaudited)**

For the Month of February 2018

Operations:

Geothermal	\$	1,641,117
Hydroelectric		4,013,367
CT#1 Combustion Turbines		139,188
CT#2 STIG		487,389
Lodi Energy Center		6,255,823
NCPA Operating		24,032,588
Total	\$	<u>36,569,472</u>

NORTHERN CALIFORNIA POWER AGENCY
 REPORT OF BUDGET VS. ACTUAL COST
 FOR THE PERIOD ENDED FEBRUARY 28, 2018

PERCENT OF YEAR ELAPSED 67%

	This Month	Actual Year To-Date	FY 2018 Budget	% Used	
GENERATION RESOURCES					
NCPA Plants					
Hydroelectric					
Other Plant Cost	\$ 1,015,473	\$ 12,641,153	\$ 15,603,994	81%	(a)
Debt Service (Net)	3,188,179	25,505,433	38,258,150	67%	
Annual Budget Cost	4,203,652	38,146,586	53,862,144	71%	
Geothermal					
Other Plant Cost	1,923,417	15,409,304	27,184,263	57%	
Debt Service (Net)	411,312	3,290,495	4,935,743	67%	
Annual Budget Cost	2,334,729	18,699,799	32,120,006	58%	
Combustion Turbine No. 1	293,692	3,020,247	3,198,552	94%	(b)
Combustion Turbine No. 2 (Stig)					
Fuel and Pipeline Transport Charges	61,784	819,019	834,641	98%	(c)
Other Plant Cost	64,605	1,498,659	2,095,083	72%	(c)
Debt Service (Net)	474,410	3,795,281	5,692,922	67%	
Annual Budget Cost	600,799	6,112,959	8,622,646	71%	
Lodi Energy Center					
Fuel	2,526,275	22,200,023	14,877,170	149%	(d)
Other Plant Cost	1,974,700	15,841,471	19,794,554	80%	(d)
Debt Service (Net)	2,181,150	17,570,620	26,416,640	67%	
Annual Budget Cost	6,682,125	55,612,114	61,088,364	91%	
Member Resources - Energy	4,479,400	35,034,023	53,389,034	66%	
Member Resources - Natural Gas	254,352	2,343,893	3,457,156	68%	
Western Resources	849,514	13,096,224	30,119,880	43%	
Market Power Purchases	5,418,375	21,294,690	19,318,025	110%	(e)
Load Aggregation Costs - CAISO	16,050,229	139,037,928	233,822,294	59%	
Net GHG Obligations	320,540	839,320	445,917	188%	(f)
	41,487,407	333,237,783	499,444,018	67%	
TRANSMISSION					
Independent System Operator					
Grid Management Charge	361,675	2,650,902	2,466,609	107%	(g)
Wheeling Access Charge	6,455,423	66,683,319	96,760,295	69%	
Ancillary Services	200,041	2,489,820	2,639,380	94%	(h)
Other Charges	1,989,317	10,618,402	1,058,438	1003%	(i)
	9,006,456	82,442,443	102,924,722	80%	
MANAGEMENT SERVICES					
Legislative & Regulatory					
Legislative Representation	117,831	1,066,589	1,976,008	54%	
Regulatory Representation	39,773	413,924	837,639	49%	
Western Representation	41,282	330,142	829,636	40%	
Member Services	27,882	232,682	436,078	53%	
Judicial Action	-	544,058	625,000	87%	(j)

**NORTHERN CALIFORNIA POWER AGENCY
REPORT OF BUDGET VS. ACTUAL COST
FOR THE PERIOD ENDED FEBRUARY 28, 2018**

PERCENT OF YEAR ELAPSED
67%

	This Month	Actual Year To-Date	FY 2018 Budget	% Used	
Power Management					
System Control & Load Dispatch	423,800	3,487,974	5,864,452	59%	
Forecasting, Planning, Prescheduling & Trading	189,144	1,516,866	2,647,017	57%	
Industry Restructuring & Regulatory Affairs	22,392	196,595	424,174	46%	
Contract Admin, Interconnection Svcs & External Affairs	58,079	547,231	1,151,828	48%	
Green Power Project	196	1,437	17,746	8%	
Gas Purchase Program	5,051	39,356	88,131	45%	
Market Purchase Project	7,978	57,270	130,141	44%	
Energy Risk Management	65,904	135,415	206,836	65%	
Settlements	47,742	362,863	774,377	47%	
Integrated Systems Support	6,642	63,267	318,562	20%	
Participant Pass Through Costs	144,661	747,925	1,525,907	49%	
Support Services	45,533	129,078	-	N/A	
	1,243,890	9,872,672	17,853,532	55%	
TOTAL ANNUAL BUDGET COST	51,737,753	425,552,898	620,222,272	69%	
LESS: THIRD PARTY REVENUE					
Plant ISO Energy Sales	7,721,781	81,020,527	70,367,243	115%	(k)
Load Aggregation Energy Sales	11,695,797	73,195,587	151,018,772	48%	
Ancillary Services Sales	519,235	3,541,280	2,731,442	130%	(l)
Western Resource Energy Sales	827,400	17,258,989	18,026,100	96%	(m)
Other ISO Revenue	1,405,710	11,305,750	-	N/A	
Transmission Sales	9,198	73,584	110,376	67%	
Western Credits, Interest and Other Income	936,246	8,275,657	15,712,788	53%	
	23,115,367	194,671,374	257,966,721	75%	
NET ANNUAL BUDGET COST TO PARTICIPANTS	\$ 28,622,386	\$ 230,881,524	\$ 362,255,551	64%	

- (a) Increase in costs due to unbudgeted outside services related to the dredging of the Beaver Creek reservoir. It is anticipated that costs will be offset by insurance and FEMA proceeds.
- (b) Increase in costs due to greater than projected MWhs of generation. CT1 is at 718% of budgeted MWhs at 2/28/18. Fuel costs, CA ISO charges, and other variable costs have all increased as a result of increased generation.
- (c) Increase in costs due to greater than projected MWhs of generation. CT2 is at 676% of budgeted MWhs at 2/28/18. Fuel costs and CA ISO charges have increased as a result of increased generation.
- (d) Increase in costs due to greater than projected MWhs of generation. LEC is at 237% of budgeted MWhs at 2/28/18. Fuel costs and CA ISO charges have increased as a result of increased generation.
- (e) Increase due to unbudgeted market purchases and NCPA contracts. Unbudgeted contracts include Gridley PV, Bart PV, as well as deals made after the FY18 budget including certain Powerex, Shell, and EDF deals.
- (f) Purchases made several months in advance. Increase primarily due to greater than anticipated GHG allowances purchased at auction for the City of Lodi.
- (g) Increase due to greater than projected MWhs of generation. See notes (b), (c), and (d).
- (h) Increase due to greater than projected MWhs of generation. See notes (b), (c), and (d) and corresponding increase in ancillary services sales.
- (i) The large budget to actual variance is caused by unbudgeted CAISO costs including imbalance costs, neutrality allocations, congestion offsets, and other cost allocations. These costs are not budgeted due to their unpredictable nature.
- (j) Variance due to unbudgeted legal costs.
- (k) Variance due to higher than anticipated ISO energy sales for the Lodi Energy Center (LEC), CT1, CT2, and Hydro.
- (l) Increase due to greater than projected MWhs of generation. See notes (b), (c), (d), and (h) and corresponding increase in ancillary services costs.
- (m) Variance due primarily to \$1.27 million in unbudgeted displacement revenue.

COMBINED STATEMENTS OF NET POSITION

**NORTHERN CALIFORNIA POWER AGENCY
AND ASSOCIATED POWER CORPORATIONS**

UNAUDITED

	February 28,	
	2018	2017
	(in thousands)	
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	\$ 20,100	\$ 40,305
Investments	44,275	30,043
Accounts receivable		
Participants	24	10
Other	3,978	2,002
Interest receivable	181	139
Inventory and supplies	9,899	9,596
Prepaid expenses	2,044	1,898
TOTAL CURRENT ASSETS	80,501	83,993
RESTRICTED ASSETS		
Cash and cash equivalents	40,260	51,813
Investments	181,307	164,151
Interest receivable	485	368
TOTAL RESTRICTED ASSETS	222,052	216,332
ELECTRIC PLANT		
Electric plant in service	1,504,142	1,501,543
Less: accumulated depreciation	(963,369)	(932,471)
	540,773	569,072
Construction work-in-progress	185	307
TOTAL ELECTRIC PLANT	540,958	569,379
OTHER ASSETS		
Regulatory assets	233,372	240,508
Other deposits and prepaids	67	125
TOTAL ASSETS	1,076,950	1,110,337
DEFERRED OUTFLOWS OF RESOURCES		
Excess cost on refunding of debt	41,540	51,019
Pension deferrals	13,506	9,093
TOTAL DEFERRED OUTFLOWS OF RESOURCES	55,046	60,112
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	\$ 1,131,996	\$ 1,170,449

COMBINED STATEMENTS OF NET POSITION

**NORTHERN CALIFORNIA POWER AGENCY
AND ASSOCIATED POWER CORPORATIONS**

UNAUDITED

	February 28,	
	2018	2017
	(in thousands)	
LIABILITIES		
CURRENT LIABILITIES		
Accounts payable and accrued expenses	\$ 25,760	\$ 19,187
Member advances	1,068	993
Operating reserves	21,394	19,913
Current portion of long-term debt	41,210	39,090
Accrued interest payable	6,901	7,572
TOTAL CURRENT LIABILITIES	96,333	86,755
NON-CURRENT LIABILITIES		
Net pension liability	64,589	57,774
Operating reserves and other deposits	142,049	140,377
Interest rate swap liability	15,930	17,490
Long-term debt, net	704,815	748,116
TOTAL NON-CURRENT LIABILITIES	927,383	963,757
TOTAL LIABILITIES	1,023,716	1,050,512
DEFERRED INFLOWS OF RESOURCES		
Regulatory credits	71,976	72,366
Pension deferrals	4,460	6,599
TOTAL DEFERRED INFLOWS OF RESOURCES	76,436	78,965
NET POSITION		
Net investment in capital assets	(60,143)	(59,500)
Restricted	59,150	56,206
Unrestricted	32,837	44,266
TOTAL NET POSITION	31,844	40,972
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION	\$ 1,131,996	\$ 1,170,449

**COMBINED STATEMENTS OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION**

**NORTHERN CALIFORNIA POWER AGENCY
AND ASSOCIATED POWER CORPORATIONS**

UNAUDITED

	Eight Months Ended February 28,	
	2018	2017
	(in thousands)	
OPERATING REVENUES		
Participants	\$ 236,280	\$ 232,357
Other Third-Party	147,018	87,680
TOTAL OPERATING REVENUES	<u>383,298</u>	<u>320,037</u>
OPERATING EXPENSES		
Purchased power	161,400	135,211
Operations	51,980	35,549
Transmission	89,679	66,020
Depreciation	20,656	20,507
Maintenance	13,523	9,628
Administrative and general	12,769	12,358
TOTAL OPERATING EXPENSES	<u>350,007</u>	<u>279,273</u>
NET OPERATING REVENUES	<u>33,291</u>	<u>40,764</u>
NON OPERATING (EXPENSES) REVENUES		
Interest expense	(28,526)	(23,235)
Interest income	3,918	557
Other	3,101	10,844
TOTAL NON OPERATING EXPENSES	<u>(21,507)</u>	<u>(11,834)</u>
FUTURE RECOVERABLE AMOUNTS	(2,873)	(9,012)
REFUNDS TO PARTICIPANTS	<u>(11,127)</u>	<u>(6,909)</u>
INCREASE (DECREASE) IN NET POSITION	(2,216)	13,009
NET POSITION, Beginning of year	<u>34,060</u>	<u>27,963</u>
NET POSITION, Period ended	<u>\$ 31,844</u>	<u>\$ 40,972</u>

OTHER FINANCIAL INFORMATION
COMBINING STATEMENT OF NET POSITION
NORTHERN CALIFORNIA POWER AGENCY
AND ASSOCIATED POWER CORPORATIONS
(000's omitted)

February 28, 2018

	GENERATING & TRANSMISSION RESOURCES										Other Agency	Combined
	Geothermal	Hydroelectric	Multiple Capital Facilities	CT No. One	Lodi Energy Center	Transmission No. One	Purchased Power & Transmission	Associated Member Services				
ASSETS												
CURRENT ASSETS												
Cash and cash equivalents	\$ 17,717	\$ 6,501	\$ 2,295	\$ 573	\$ 20,569	\$ 7,722	\$ 13,310	\$ 13,349	\$ 4,405	\$ 20,004	\$ 20,100	\$ 44,275
Investments	-	-	-	-	-	-	-	-	-	-	-	-
Accounts receivable	-	-	-	-	-	-	-	-	-	-	-	-
Participants	-	-	-	-	-	-	-	-	-	-	24	24
Other	-	-	-	3	-	-	-	-	-	3,066	3,978	3,978
Interest receivable	-	-	-	-	-	-	-	-	-	75	106	181
Inventory and supplies	4,663	1,079	642	1,405	2,110	-	-	-	-	-	9,899	9,899
Prepaid expenses	-	-	-	-	314	-	-	-	-	1,712	-	2,044
Due from Agency and other programs*	17,717	6,501	2,295	(836)	18,073	-	-	-	-	(64,782)	-	-
TOTAL CURRENT ASSETS	22,381	7,580	2,938	573	20,569	8,706	13,349	13,349	4,405	20,004	20,100	44,275
RESTRICTED ASSETS												
Cash and cash equivalents	6,030	4,209	2	-	1,718	9,828	-	-	-	18,473	40,260	181,307
Investments	21,213	46,631	4,098	-	33,521	18,674	-	-	-	57,170	181,307	485
Interest receivable	103	67	5	-	79	-	-	-	-	231	-	-
TOTAL RESTRICTED ASSETS	27,346	50,907	4,105	-	35,318	28,502	-	28,502	-	75,874	222,052	-
ELECTRIC PLANT												
Electric plant in service	570,171	394,744	64,842	36,499	423,794	7,736	663	663	-	5,693	1,504,142	(963,369)
Less: accumulated depreciation	(534,518)	(259,048)	(47,629)	(34,417)	(76,683)	(7,736)	(386)	(386)	-	(2,952)	540,773	185
Construction work-in-progress	35,653	135,696	17,213	2,082	347,111	-	-	277	-	2,741	-	-
TOTAL ELECTRIC PLANT	35,653	135,696	17,213	2,082	347,218	-	277	277	-	2,819	540,958	-
OTHER ASSETS												
Regulatory assets	479	142,311	11,238	-	22,966	-	-	-	-	56,378	233,372	67
Other deposits and prepaids	14	-	-	-	-	-	-	42	-	11	-	-
TOTAL ASSETS	85,873	336,494	35,494	2,655	426,071	-	37,208	13,668	139,487	1,076,950	1,076,950	-
DEFERRED OUTFLOWS OF RESOURCES												
Excess cost on refunding of debt	1,831	38,772	937	-	-	-	-	-	-	-	41,540	-
Pension deferrals	-	-	-	-	-	-	-	-	-	13,506	13,506	-
TOTAL DEFERRED OUTFLOWS OF RESOURCES	1,831	38,772	937	-	-	-	-	-	-	13,506	55,046	-
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	\$ 87,704	\$ 375,266	\$ 36,431	\$ 2,655	\$ 426,071	\$ -	\$ 37,208	\$ 13,668	\$ 152,993	\$ 1,131,996	\$ 1,131,996	\$ -

* Eliminated in Combination

OTHER FINANCIAL INFORMATION

COMBINING STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

**NORTHERN CALIFORNIA POWER AGENCY
AND ASSOCIATED POWER CORPORATIONS
(000's omitted)**

For the Eight Months Ended February 28, 2018

	GENERATING & TRANSMISSION RESOURCES									
	Geothermal	Hydroelectric	Multiple Capital Facilities	CT No. One	Lodi Energy Center	Transmission	Purchased Power & Transmission	Associated Member Services	Other Agency	Combined
OPERATING REVENUES										
Participants	\$ 1,139	\$ 9,764	\$ 4,055	\$ 592	\$ 20,754	\$ -	\$ 186,814	\$ 12,904	\$ 258	\$ 236,280
Other Third-Party	20,357	18,858	1,139	1,832	42,719	-	54,023	8,090	-	147,018
TOTAL OPERATING REVENUES	21,496	28,622	5,194	2,424	63,473	-	240,837	20,994	258	383,298
OPERATING EXPENSES										
Purchased power	198	1,445	327	278	3,664	-	155,488	-	-	161,400
Operations	9,667	2,501	1,250	1,223	28,953	-	2,344	6,042	-	51,980
Transmission	163	(18)	(10)	15	696	-	88,830	3	-	89,679
Depreciation	2,599	6,486	1,472	123	9,741	-	-	28	207	20,656
Maintenance	2,907	6,560	358	1,056	2,605	-	-	37	-	13,523
Administrative and general	3,403	2,253	465	512	2,808	-	-	4,593	(1,265)	12,769
Intercompany (sales) purchases, net*	(420)	171	41	71	(184)	-	-	(47)	-	-
TOTAL OPERATING EXPENSES	18,517	19,398	3,903	3,278	48,651	-	246,662	10,656	(1,058)	350,007
NET OPERATING REVENUES	2,979	9,224	1,291	(854)	14,822	-	(5,825)	10,338	1,316	33,291
NON OPERATING (EXPENSES) REVENUES										
Interest expense	(468)	(15,687)	(2,139)	-	(10,232)	-	-	-	-	(28,526)
Interest income	657	520	(2)	-	508	-	542	32	1,661	3,918
Other	1	64	990	-	1,706	-	-	44	296	3,101
TOTAL NON OPERATING (EXPENSES) REVENUES	190	(15,103)	(1,151)	-	(8,018)	-	542	76	1,957	(21,507)
FUTURE RECOVERABLE AMOUNTS										
REFUNDS TO PARTICIPANTS	(256)	(3,698)	(233)	-	1,314	249	-	-	(249)	(2,873)
INCREASE (DECREASE) IN NET POSITION	(3,027)	(1,032)	(151)	428	(2,481)	249	(1,260)	(2,175)	(1,429)	(11,127)
NET POSITION, Beginning of year	(114)	(10,609)	(244)	(426)	5,637	(249)	(6,543)	8,239	1,595	(2,216)
NET POSITION, Period ended	13,073	13,797	765	100	6,208	(249)	(3,768)	4,492	(358)	34,060
NET POSITION, Period ended	\$ 12,959	\$ 3,188	\$ 521	\$ (326)	\$ 11,845	\$ -	\$ (10,311)	\$ 12,731	\$ 1,237	\$ 31,844

* Eliminated in Combination

NORTHERN CALIFORNIA POWER AGENCY & ASSOCIATED POWER CORPORATIONS
AGED ACCOUNTS RECEIVABLE
February 28, 2018

<u>Status</u>	<u>Participant / Customer</u>	<u>Description</u>	<u>Amount</u>
CURRENT			\$ 4,001,900
PAST DUE:			
1 - 30			
31 - 60			
61 - 90			
91 - 120			
Over 120 Days			
PARTICIPANT and OTHER RECEIVABLES (net)			<u>\$ 4,001,900</u>

**NOTE: All amounts invoiced or credited to members and others are project/program specific.
NCPA does not apply any credits issued to outstanding invoices unless directed.**

**NORTHERN CALIFORNIA POWER AGENCY
and ASSOCIATED POWER CORPORATIONS**

**Schedule of Disbursements
(Unaudited)**

For the Month of February 2018

Operations:

Geothermal	\$	1,641,117
Hydroelectric		4,013,367
CT#1 Combustion Turbines		139,188
CT#2 STIG		487,389
Lodi Energy Center		6,255,823
NCPA Operating		<u>24,032,588</u>
Total	\$	<u><u>36,569,472</u></u>



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Commission Staff Report

March 14, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Treasurer's Report for Month Ended February 28, 2018

AGENDA CATEGORY: Consent

FROM: Sondra Ainsworth 	METHOD OF SELECTION:
Treasurer-Controller	N/A
Division: Administrative Services	
Department: Accounting & Finance	

IMPACTED MEMBERS:

All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>

If other, please specify

RECOMMENDATION:

Approval by all members.

BACKGROUND:

In compliance with Agency policy and State of California Government Code Sections 53601 and 53646(b), the following monthly report is submitted for your information and acceptance.

Cash - At month end cash totaled \$3,156,868 of which approximately \$16,258 was applicable to Special and Reserve Fund Deposits, \$2,512 to Debt Service and \$3,138,098 to Operations and other.

The cash balance held at U.S. Bank includes outstanding checks that have not yet cleared. This cash balance is invested nightly in a fully collateralized (U.S. Government Securities) repurchase agreement.

Investments - The carrying value of NCPA's investment portfolio totaled \$282,807,925 at month end. The current market value of the portfolio totaled \$285,964,793.

The overall portfolio had a combined weighted average interest rate of 1.384% with a bond equivalent yield (yield to maturity) of 1.403%. Investments with a maturity greater than one year totaled \$143,825,000. February maturities totaled \$42 million and monthly receipts totaled \$30 million. During the month \$41 million was invested.

Funds not required to meet annual cash flow are reinvested and separately reported as they occur.

Interest Rates - During the month, rates on 90 day T-Bills increased 21 basis points (from 1.43% to 1.64%) and rates on one year T-Bills increased 23 basis points (from 1.79% to 2.02%).

To the best of my knowledge and belief, all securities held by NCPA as of February 28, 2018 are in compliance with the Agency's investment policy. There are adequate cash flow and investment maturities to meet next month's cash requirements.

FISCAL IMPACT:

This report has no direct budget impact to the Agency.

ENVIRONMENTAL ANALYSIS:

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

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachment

SR: 130:18

NORTHERN CALIFORNIA POWER AGENCY

TREASURER'S REPORT

FEBRUARY 28, 2018

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DETAIL REPORT OF INVESTMENTS	APPENDIX

**Northern California Power Agency
Treasurer's Report
Cash & Investment Balance
February 28, 2018**

	CASH	INVESTMENTS	TOTAL	PERCENT
NCPA FUNDS				
Operating	\$ 1,719,858	\$ 89,784,139	\$ 91,503,997	32.00%
Special Deposits	\$ 1,417,370	-	\$ 1,417,370	0.50%
Construction	\$ 870	\$ 4,968,880	\$ 4,969,750	1.74%
Debt Service	\$ 2,512	\$ 34,449,543	\$ 34,452,055	12.05%
Special & Reserve	\$ 16,258	\$ 153,605,363	\$ 153,621,621	53.72%
	<u>\$ 3,156,868</u>	<u>\$ 282,807,925</u>	<u>\$ 285,964,793</u>	<u>100.00%</u>

Portfolio Investments at Market Value \$ 279,042,150

NOTE A -Investment amounts shown at book carrying value.

**Northern California Power Agency
Treasurer's Report
Cash Activity Summary
February 28, 2018**

	RECEIPTS			EXPENDITURES			CASH
	OPS/CONSTR	INTEREST (NOTE B)	INVESTMENTS (NOTE A)	OPS/CONSTR	INVESTMENTS (NOTE B)	INTER-COMPANY/ FUND TRANSFERS	INCREASE / (DECREASE)
NCPA FUNDS							
Operating	\$ 29,331,370	\$ 42,420	\$ 31,247,721	\$ (19,993,430)	\$ (24,349,334)	\$ (16,318,805)	\$ (40,058)
Special Deposits	62,351	7	-	(10,559,733)	-	10,496,504	(871)
Construction	-	-	-	-	(15,868)	-	(15,868)
Debt Service	-	257	982,214	(852,238)	(6,998,747)	6,008,478	(860,036)
Special & Reserve	-	83,966	9,877,363	-	(9,846,365)	(186,177)	(71,213)
	\$ 29,393,721	\$ 126,650	\$ 42,107,298	\$ (31,405,401)	\$ (41,210,314)	\$ -	\$ (988,046)

NOTE A -Investment amounts shown at book carrying value.

NOTE B -Net of accrued interest purchased on investments.

**Northern California Power Agency
Treasurer's Report
Investment Activity Summary
February 28, 2018**

	PURCHASED	SOLD OR MATURED	(NON-CASH)	(NON-CASH)	INVESTMENTS	
			DISC/(PREM) AMORT	GAIN/(LOSS) ON SALE	TRANSFERS	INCREASE / (DECREASE)
NCPA FUNDS						
Operating	\$ 24,349,334	\$ (31,247,721)	\$ (1,492)	\$ -	\$ -	\$ (6,899,879)
Special Deposits	-	-	-	-	-	-
Construction	15,868	-	496	-	-	16,364
Debt Service	6,998,747	(982,214)	31,961	-	-	6,048,494
Special & Reserve	9,846,365	(9,877,363)	(11,440)	-	-	(42,438)
	<u>\$ 41,210,314</u>	<u>\$ (42,107,298)</u>	<u>\$ 19,525</u>	<u>\$ -</u>	<u>\$ -</u>	<u>(877,459)</u>

Less Non- Cash Activity

Disc/(Prem) Amortization & Gain/(Loss) on Sale (19,525)

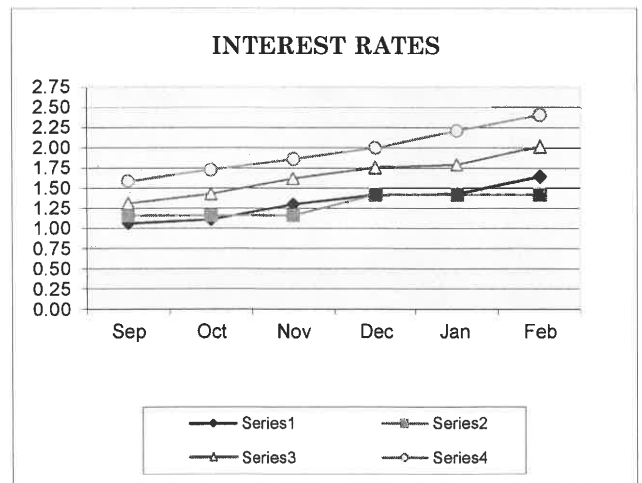
Net Change in Investment --Before Non-Cash Activity \$ (896,984)

NOTE A -Investment amounts shown at book carrying value.

**Northern California Power Agency
Interest Rate/Yield Analysis
February 28, 2018**

	<u>WEIGHTED AVERAGE INTEREST RATE</u>	<u>BOND EQUIVALENT YIELD</u>
OVERALL COMBINED	<u><u>1.384%</u></u>	<u><u>1.403%</u></u>
<u>OPERATING FUNDS:</u>	1.388%	1.339%
<u>PROJECTS:</u>		
Geothermal	1.435%	1.453%
Capital Facilities	1.911%	1.921%
Hydroelectric	1.496%	1.477%
Lodi Energy Center	1.775%	1.485%

<u>KEY INTEREST RATES</u>		
	<u>CURRENT</u>	<u>PRIOR YEAR</u>
Fed Fds (Overnight)	1.42%	0.66%
T-Bills (90da.)	1.64%	0.52%
Agency Disc (90da.)	1.64%	0.70%
T-Bills (1yr.)	2.02%	0.82%
Agency Disc (1yr.)	2.01%	0.98%
T-Notes (3yr.)	2.41%	1.45%



**Northern California Power Agency
Total Portfolio
Investment Maturities Analysis
February 28, 2018**

Type	0-7 Days	8-90 Days	91-180 Days	181-270 Days	271-365 Days	1-5 Years	6-10 Years	Total	Percent
US Government Agencies	\$ -	\$ 12,036	\$14,317	\$ 9,847	\$ 16,831	\$ 137,532	\$ -	\$ 190,563	67.02%
Corporate Bonds (MTN)	-	-	-	-	-	6,010	-	6,010	2.11%
US Bank Trust Money Market	3	-	-	-	-	-	-	3	0.00%
Commercial Paper	11,793	-	-	-	-	-	-	11,793	4.15%
Investment Trusts (LAIF)	52,357	-	-	-	-	-	-	52,357	18.41%
U.S.Treasury Market Acct. *	5,300	-	-	-	-	-	-	5,300	1.86%
U.S.Treasury Bill/Note	-	-	17,827	-	197	283	-	18,307	6.44%
Certificates of Deposit	-	10	-	-	-	-	-	10	0.00%
Total Dollars	\$ 69,453	\$12,046	\$32,144	\$9,847	\$17,028	\$143,825	\$0	\$ 284,343	100.00%
Total Percents	24.43%	4.24%	11.30%	3.46%	5.99%	50.58%	0.00%	100.00%	

Investments are shown at Face Value, in thousands.

* The cash balance held at US Bank includes outstanding checks that have not yet cleared. This cash balance is invested nightly in a fully collateralized (U.S. Government Securities) repurchase agreement. Cash held by Union Bank of California is invested nightly in fully collateralized U.S. Treasury Securities.

NORTHERN CALIFORNIA POWER AGENCY

Detail Report Of Investments

APPENDIX

**Note: This appendix has been prepared to comply with
Government Code section 53646.**



Northern California Power Agency
Treasurer's Report
02/28/2018

Operating

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
US Bank, N.A.	USB	10,538,900	0.850	11/26/2014	10,538,900		1	0.850	10,538,900	SYS70101	70101	10,538,900
Local Agency Investm	LAIF	14,084,726	1.204	07/01/2013	14,084,726		1	1.204	14,084,726	SYS70000	70000	14,084,726
Union Bank of Calif	UBOC	2,918,250	0.002	07/01/2013	2,918,250		1	0.002	2,918,250	SYS70014	70014	2,918,250
US Bank	USB	1,719,856	0.001	06/30/2013	1,719,856		1	0.001	1,719,856	SYS70050	70050	1,719,856
US Bank	USB	1,254,493	0.600	08/24/2017	1,254,493		1	0.600	1,254,493	SYS70056	70056	1,254,493
US Bank	USB	10,000	0.050	01/07/2018	10,000		37	0.050	10,000	SYS30306	30306	10,000
Federal Farm Credit	UBOC	3,626,000	1.290	12/21/2015	3,624,948		263	1.300	3,607,145	3133EFPJ0	26280	3,625,741
Federal Home Loan Mt	UBOC	9,870,000	1.750	06/09/2015	9,983,900		455	1.450	9,818,380	3137EADG1	26231	9,905,738
Federal Home Loan Ba	UBOC	4,975,000	1.600	08/28/2017	4,990,373		869	1.490	4,885,893	3130ABTW6	26466	4,987,655
Federal Home Loan Ba	UBOC	7,785,000	1.400	07/19/2016	7,781,108		1,055	1.411	7,553,085	3130ABRP80	26355	7,782,506
Federal Farm Credit	UBOC	2,602,000	1.720	08/28/2017	2,611,784		1,243	1.620	2,533,750	3133EHSR5	26465	2,610,512
Federal Home Loan Mt	UBOC	3,500,000	1.500	11/23/2016	3,500,000		1,271	1.500	3,354,680	3134GAVH4	26385	3,500,000
Federal Home Loan Mt	UBOC	202,000	2.200	01/30/2017	202,000		1,427	2.200	196,326	3134GAV92	26403	202,000
Apple Inc.	UBOC	1,123,337	2.300	02/01/2018	1,121,966		1,532	2.329	1,091,681	037893CQ1	26525	1,121,992
Fund Total and Average		\$ 64,209,562	1.250		\$ 64,342,304		432	1.194	\$ 63,568,165			\$ 64,262,379
MPP GHG Auction Acct												
Local Agency Investm		20,826	1.204	07/01/2013	20,826		1	1.204	20,826	SYS70045	70045	20,826
Fund Total and Average		\$ 20,826	1.205		\$ 20,826		1	1.205	\$ 20,826			\$ 20,826
SCPA Balancing Account												
Local Agency Investm	LAIF	8,439,851	1.204	07/01/2013	8,439,851		1	1.204	8,439,851	SYS70022	70022	8,439,851
Union Bank of Calif	UBOC	34,442	0.002	07/01/2013	34,442		1	0.002	34,442	SYS70023	70023	34,442
Federal Home Loan Ba	UBOC	4,510,000	1.000	04/27/2015	4,510,000		57	1.000	4,505,535	3130A5T2	26223	4,510,000
Federal National Mtg	UBOC	3,962,000	1.625	12/18/2014	4,000,630		271	1.369	3,949,520	3135GOYT4	26187	3,969,241
Federal National Mtg	UBOC	5,098,000	1.350	04/28/2016	5,098,000		606	1.350	5,012,914	3135GOJ95	26330	5,098,000
Federal National Mtg	UBOC	5,097,000	1.350	07/28/2016	5,097,000		890	1.350	4,903,212	3136G3T39	26357	5,097,000
Fund Total and Average		\$ 27,141,293	1.285		\$ 27,179,923		328	1.248	\$ 26,846,474			\$ 27,148,534
General Operating Reserve												
Local Agency Investm	LAIF	18,473,220	1.204	07/01/2013	18,473,220		1	1.204	18,473,220	SYS70000	70002	18,473,220
Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYS70019	70019	0
US Bank	USB	0	0.000	07/01/2013	0		1	0.000	0	SYS70051	70051	0
Federal National Mtg	UBOC	5,970,000	1.625	12/23/2014	6,009,701		271	1.450	5,951,195	3135GOYT4	26188	5,977,468



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General Operating Reserve

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Federal National Mtg	UBOC	4,982,000	1.750	08/28/2015	5,047,364	11/28/2019	635	1.430	4,938,906	3135G0ZY2	26246	5,008,736
Federal Farm Credit	UBOC	4,285,000	1.440	07/20/2016	4,280,715	01/19/2021	1,055	1.463	4,148,608	3133EGMP7	26356	4,282,253
Federal Home Loan Ba	UBOC	16,720,000	1.400	07/19/2016	16,711,640	01/19/2021	1,055	1.411	16,221,911	3130A8PP0	26354	16,714,643
Federal National Mtg	UBOC	5,162,000	1.625	05/25/2016	5,162,000	05/25/2021	1,181	1.625	5,003,681	3136G3NL5	26332	5,162,000
Federal National Mtg	UBOC	1,300,000	1.500	08/30/2016	1,300,000	05/28/2021	1,184	1.500	1,256,970	3136G3W3	26368	1,300,000
Federal Farm Credit	UBOC	10,629,000	1.690	06/02/2016	10,629,000	06/02/2021	1,189	1.690	10,321,078	3133EGDH5	26335	10,629,000
Federal Home Loan Mt	UBOC	467,000	2.200	01/30/2017	467,000	01/28/2022	1,427	2.200	453,882	3134GAV92	26402	467,000
Apple Inc.	UBOC	4,025,452	2.300	02/01/2018	4,020,538	05/11/2022	1,532	2.329	3,912,015	037833C01	26524	4,020,633
Federal Home Loan Ba	UBOC	3,575,000	2.125	08/28/2017	3,634,560	06/10/2022	1,562	1.760	3,508,255	313379Q69	26467	3,628,230
Fund Total and Average		\$ 75,588,672	1.541		\$ 75,735,738		790	1.494	\$ 74,189,721			\$ 75,663,183
GRAND TOTALS:		\$ 166,960,353	1.388		\$ 167,278,791		577	1.339	\$ 164,624,186.			\$ 167,094,922

*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.

Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 02/28/2018

- Investment #26330 FNMA Callable quarterly
- Investment #26332 FNMA Callable quarterly
- Investment #26335 FFCB Callable anytime
- Investment #26354 FHLB Callable anytime
- Investment #26355 FHLB Callable anytime
- Investment #26356 FFCB Callable anytime
- Investment #26357 FNMA Callable quarterly
- Investment #26358 FNMA Callable quarterly
- Investment #26385 FHLMC Callable quarterly
- Investment #26402 FHLMC Callable quarterly
- Investment #26403 FHLMC Callable quarterly



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GEO 2012 Construction Fund

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Federal Home Loan Ba	USB	888,000	1.420	12/06/2017	881,450	06/11/2018	102	1.450	883,649	313385XY7A	26502	884,427
Fund Total and Average		\$ 888,000	1.420		\$ 881,450		102	1.450	\$ 883,649			\$ 884,427

Geothermal Debt Service

U.S. Treasury	USBT	1,056,000	1.499	01/03/2018	1,048,256	06/28/2018	119	1.532	1,050,224	912796PM5	26510	1,050,764
U.S. Treasury	USBT	235,000	1.510	01/31/2018	233,541	06/28/2018	119	1.540	233,715	912796PM5	26522	233,827
Federal Home Loan Ba	USBT	235,000	1.420	12/28/2017	233,276	07/02/2018	123	1.450	233,413	313385V2	26509	233,860
Federal Home Loan Ba	USBT	235,000	1.679	02/27/2018	233,629	07/02/2018	123	1.713	233,413	313385V2	26533	233,651
Fund Total and Average		\$ 1,761,000	1.515		\$ 1,748,702		120	1.546	\$ 1,750,765			\$ 1,752,102

Geo 2012A Debt Service

U.S. Treasury	USBT	128,000	1.510	01/31/2018	127,205	06/28/2018	119	1.540	127,300	912796PM5	26519	127,361
Federal Home Loan Ba	USBT	124,000	1.679	02/27/2018	123,277	07/02/2018	123	1.713	123,163	313385V2	26532	123,288
Fund Total and Average		\$ 252,000	1.594		\$ 250,482		121	1.626	\$ 250,463			\$ 250,649

Geo 2016A Debt Service

U.S. Treasury	USBT	187,000	1.499	01/03/2018	185,629	06/28/2018	119	1.532	185,977	912796PM5	26512	186,073
U.S. Treasury	USBT	56,000	1.510	01/31/2018	55,652	06/28/2018	119	1.540	55,694	912796PM5	26517	55,720
U.S. Treasury	USBT	55,000	1.575	02/27/2018	54,709	06/28/2018	119	1.606	54,699	912796PM5	26530	54,713
Fund Total and Average		\$ 298,000	1.516		\$ 295,990		119	1.547	\$ 296,370			\$ 296,506

Geothermal Special Reserve

Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYS70015	70015	0
Federal Home Loan Mt	UBOC	1,500,000	1.150	02/26/2016	1,500,000	11/28/2018	270	1.150	1,491,450	3134GBRKO	26302	1,500,000
Fund Total and Average		\$ 1,500,000	1.150		\$ 1,500,000		270	1.150	\$ 1,491,450			\$ 1,500,000

Geo Decommissioning Reserve

Local Agency Investm	LAFI	5,529,339	1.204	07/01/2013	5,529,339		1	1.204	5,529,339	SYS70027	70027	5,529,339
Union Bank of Calif	UBOC	497,732	0.002	07/01/2013	497,732		1	0.002	497,732	SYS70034	70034	497,732
Federal National Mtg	UBOC	9,700,000	1.500	08/30/2016	9,700,000	05/28/2021	1,184	1.500	9,378,930	3136G33W3	26369	9,700,000
Federal Home Loan Mt	UBOC	941,000	2.200	01/30/2017	941,000	01/28/2022	1,427	2.200	914,567	3134GAV92	26404	941,000



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Geo Decommisioning Reserve

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Apple Inc.	UBOC	861,211	2.300	11/29/2017	860,117	05/11/2022	1,532	2.330	836,942	037833CQ1	26499	860,180
Fund Total and Average		\$ 17,529,282	1.441		\$ 17,528,188		807	1.443	\$ 17,157,510			\$ 17,528,251

GEO Debt Service Reserve Acct

U.S. Treasury	USB	56,000	1.823	02/27/2018	55,041	01/31/2019	336	1.872	54,975	912796FP8	26536	55,047
Federal Home Loan Mt	USBT	907,000	1.750	06/02/2015	920,886	05/30/2019	455	1.354	902,256	3137EADG1	26228	911,336
Federal Home Loan Mt	USBT	2,515,000	1.250	02/27/2015	2,483,839	10/02/2019	580	1.530	2,476,168	3137EADM8	26197	2,504,249
Fund Total and Average		\$ 3,478,000	1.390		\$ 3,459,766		543	1.490	\$ 3,433,399			\$ 3,470,632

Geo 2012A DSR Account

U.S. Treasury	USB	41,000	1.555	01/03/2018	40,403	12/06/2018	280	1.594	40,416	912796FE3	26511	40,504
Federal National Mtg	USBT	1,517,000	1.625	05/25/2016	1,517,000	05/25/2021	1,181	1.625	1,470,474	3136G3NL5	26333	1,517,000
Fund Total and Average		\$ 1,558,000	1.623		\$ 1,557,403		1,461	1.624	\$ 1,510,890			\$ 1,557,504
GRAND TOTALS:		\$ 27,264,282	1.435		\$ 27,221,981		683	1.453	\$ 26,774,496.			\$ 27,240,071

*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.

Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 02/28/2018

- Investment #26302 FHLMIC Callable quarterly
- Investment #26333 FNMA Callable quarterly
- Investment #26369 FNMA Callable quarterly
- Investment #26404 FHLMIC Callable quarterly
- Investment #26499 Apple Inc. Callable anytime



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Cap Facilities Debt Service

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
U.S. Treasury	USBT	1,085,000	1.559	01/31/2018	1,076,725	07/28/2018	147	1.593	1,077,199	912796PR4	26521	1,078,089
Federal Home Loan Ba	USBT	1,462,000	1.740	02/27/2018	1,451,047	08/01/2018	153	1.777	1,450,450	313386FA30A	26542	1,451,189
Fund Total and Average		\$ 2,547,000	1.663		\$ 2,527,772		150	1.699	\$ 2,527,649			\$ 2,529,278

Cap. Fac. Debt Svc Reserve

U.S. Treasury	USB	17,000	1.680	02/27/2018	16,860	08/29/2018	175	1.717	16,850	912796PV5	26541	16,861
U.S. Treasury	USB	37,000	1.554	01/03/2018	36,461	12/06/2018	280	1.594	36,473	912796PE3	26514	36,553
Federal National Mtg	USB	71,000	1.530	07/28/2016	71,000	07/28/2021	1,245	1.530	67,934	3136G3S97	26358	71,000
Federal Home Loan Mt	USB	1,443,000	2.375	02/13/2012	1,447,430	01/13/2022	1,414	2.340	1,430,547	3137EADB2	25845	1,444,727
Fund Total and Average		\$ 1,568,000	2.310		\$ 1,571,751		1367	2.279	\$ 1,551,804			\$ 1,569,141
GRAND TOTALS:		\$ 4,115,000	1.911		\$ 4,099,523		616	1.921	\$ 4,079,453.			\$ 4,098,419

*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.

Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 02/28/2018

Investment #26358 FNMA Callable quarterly



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Capital Dev. Reserve Hydro

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Local Agency Investm	LAIF	4,139,223	1.204	07/01/2013	4,139,223		1	1.204	4,139,223	SYST0028	70028	4,139,223
Union Bank of Calif	UBOC	54,921	0.002	07/01/2013	54,921		1	0.002	54,921	SYST0031	70031	54,921
Federal Home Loan Mt	UBOC	3,993,000	0.950	06/29/2016	3,993,000	06/29/2018	120	0.950	3,982,618	3134G9A80	26339	3,993,000
Federal Home Loan Mt	UBOC	3,221,000	1.150	02/29/2016	3,221,000	11/28/2018	270	1.150	3,202,640	3134G8K0	26304	3,221,000
Federal National Mtg	UBOC	5,320,000	1.350	06/30/2016	5,320,000	12/30/2019	669	1.350	5,225,199	3138G3VH5	26340	5,320,000
Fund Total and Average		\$ 16,728,144	1.176		\$ 16,728,144		294	1.176	\$ 16,604,600			\$ 16,728,144

Hydro Initial Facilities

U.S. Treasury	USB	97,000	1.435	12/07/2017	96,296	06/07/2018	98	1.465	96,575	912796PJ2	26503	96,621
U.S. Treasury	USB	16,000	1.680	02/27/2018	15,868	08/23/2018	175	1.717	15,859	912796PV5	26540	15,859
Federal National Mtg	USB	1,529,000	1.625	12/12/2014	1,539,244	11/27/2018	271	1.450	1,524,184	3135G0TT4	26189	1,530,912
Federal Farm Credit	USB	2,437,000	1.250	02/02/2016	2,450,501	01/22/2019	327	1.060	2,420,891	3133EFVQ7	26300	2,441,050
Fund Total and Average		\$ 4,079,000	1.397		\$ 4,101,909		300	1.218	\$ 4,057,509			\$ 4,084,452

Hydro Debt Service

U.S. Treasury	USBT	11,923,000	1.500	01/03/2018	11,835,565	06/28/2018	119	1.532	11,857,781	912796PM5	26513	11,863,882
U.S. Treasury	USBT	2,972,000	1.510	01/31/2018	2,953,550	06/28/2018	119	1.540	2,955,743	912796PM5	26515	2,957,166
Federal Home Loan Ba	USBT	2,971,000	1.680	02/27/2018	2,953,669	07/02/2018	123	1.713	2,950,937	313385VW2	26531	2,953,946
Fund Total and Average		\$ 17,866,000	1.532		\$ 17,742,784		120	1.564	\$ 17,764,461			\$ 17,774,994

Hydro Debt Service Resrv 2010A

U.S. Treasury	USB	50,000	1.159	08/29/2017	49,568	05/24/2018	84	1.183	49,814	912796MB2	26473	49,855
U.S. Treasury	USB	52,000	1.625	02/27/2018	51,780	06/30/2019	486	1.945	51,632	912828WS5	26537	51,781
Federal Home Loan Ba	USB	135,000	4.375	07/28/2017	142,601	07/01/2019	487	1.400	138,781	3133XUJG6	26451	140,264
Federal Farm Credit	USB	5,528,000	1.750	08/28/2015	5,546,187	08/04/2020	887	1.680	5,446,738	3133EEZ9	26243	5,536,940
Fund Total and Average		\$ 5,765,000	1.807		\$ 5,790,136		867	1.671	\$ 5,686,965			\$ 5,778,850

Hydro 2012A Rebate Account

Federal Home Loan Mt	USB	689,000	1.875	04/28/2017	691,391	08/09/2021	1,257	1.790	673,263	3134G93A3	26432	690,921
Fund Total and Average		\$ 689,000	1.875		\$ 691,391		1257	1.790	\$ 673,263			\$ 690,921



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Hydro Special Reserve

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Local Agency Investm	LAI	0	0.377	07/01/2013	0		1	0.377	0	SVS70000	70003	0
Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SVS70016	70016	0
Federal Home Loan Mt	UBOC	1,500,000	1.150	02/26/2016	1,500,000	11/26/2018	270	1.150	1,491,450	3134G8KVO	26303	1,500,000
Fund Total and Average		\$ 1,500,000	1.150		\$ 1,500,000		270	1.150	\$ 1,491,450			\$ 1,500,000

Hydro 2012 Cost of Issuance

US Bank	USB	0	0.040	07/01/2013	0		1	0.040	0	SVS79061	79061	0
Fund Total and Average		\$ 0	*** ***		\$ 0		***	*** ***	\$ 0			\$ 0

Hydro 2012 DSRA

Federal Farm Credit	USB	100,000	1.750	08/28/2015	100,329	08/04/2020	867	1.660	98,530	3133EESZ9	26244	100,162
U.S. Treasury	USB	146,000	2.250	02/27/2018	145,992	02/15/2021	1,082	2.251	145,299	9128283X6	26539	145,992
Federal National Mtg	USB	94,000	1.530	07/28/2016	94,000	07/28/2021	1,245	1.530	89,941	3136G3S97	26359	94,000
Federal Home Loan Mt	USB	3,928,000	2.375	02/09/2012	3,926,232	01/13/2022	1,414	2.380	3,894,101	3137EADB2	25852	3,927,312
Fund Total and Average		\$ 4,268,000	2.337		\$ 4,266,553		1387	2.340	\$ 4,227,871			\$ 4,267,466

GRAND TOTALS: \$ 50,895,144 1.496 \$ 50,820,917 403 1.477 \$ 50,506,119. \$ 50,824,827

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Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 02/28/2018
 Investment #26303 FHLMC Callable quarterly
 Investment #26339 FHLMC Callable quarterly
 Investment #26340 FNMA Callable quarterly
 Investment #26359 FNMA Callable quarterly



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LEC GHG Auction Acct

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Local Agency Investm		72,256	1.204	07/01/2013	72,256		1	1.204	72,256	SYST0046	70046	72,256
Fund Total and Average		\$ 72,256	1.205		\$ 72,256		1	1.205	\$ 72,256			\$ 72,256

LEC Issue#1 2010A DS Fund

US Bank Trust	USB	882	0.600	07/01/2013	882		1	0.600	882	SYST9003	79003	882
Federal Home Loan Ba	USBT	3,542,000	1.350	12/28/2017	3,522,342	05/25/2018	85	1.376	3,528,045	313385XF8	26505	3,530,710
Federal Home Loan Ba	USBT	698,000	1.474	01/31/2018	694,568	05/31/2018	91	1.502	695,054	313385XM3	26520	695,398
Federal Home Loan Ba	USBT	489,000	1.640	02/27/2018	486,906	06/01/2018	92	1.669	486,839	313385XN1A	26529	486,951
Fund Total and Average		\$ 4,729,882	1.398		\$ 4,704,698		87	1.425	\$ 4,710,820			\$ 4,713,941

LEC Issue #1 2010B DS Fund

US Bank Trust	USB	382	0.600	07/01/2013	382		1	0.600	382	SYST9004	79004	382
Federal Home Loan Ba	USBT	735,000	1.350	12/28/2017	730,921	05/25/2018	85	1.376	732,104	313385XF8	26506	732,657
Federal Home Loan Ba	USBT	729,000	1.475	01/31/2018	725,416	05/31/2018	91	1.502	725,924	313385XM3	26518	726,282
Federal Home Loan Ba	USBT	729,000	1.640	02/27/2018	725,878	06/01/2018	92	1.669	725,778	313385XN1A	26528	725,945
Fund Total and Average		\$ 2,193,382	1.488		\$ 2,182,597		89	1.516	\$ 2,184,188			\$ 2,185,266

LEC Issue #2 2010A DS Fund

US Bank Trust	USB	474	0.600	07/01/2013	474		1	0.600	474	SYST9011	79011	474
Federal Home Loan Ba	USBT	2,844,000	1.350	12/28/2017	2,828,216	05/25/2018	85	1.376	2,832,795	313385XF8	26507	2,834,955
Federal Home Loan Ba	USBT	441,000	1.475	01/31/2018	438,832	05/31/2018	91	1.502	439,139	313385XM3	26516	439,356
Federal Home Loan Ba	USBT	439,000	1.640	02/27/2018	437,120	06/01/2018	92	1.669	437,060	313385XN1A	26527	437,160
Fund Total and Average		\$ 3,724,474	1.399		\$ 3,704,642		87	1.426	\$ 3,709,468			\$ 3,711,925

LEC Issue #2 2010B DS Fund

US Bank Trust	USB	130	0.600	07/01/2013	130		1	0.600	130	SYST9012	79012	130
Federal Home Loan Ba	USBT	355,000	1.350	12/28/2017	353,030	05/25/2018	85	1.376	353,601	313385XF8	26508	353,868
Federal Home Loan Ba	USBT	350,000	1.474	01/31/2018	348,279	05/31/2018	91	1.502	348,523	313385XM3	26523	348,695
Federal Home Loan Ba	USBT	351,000	1.640	02/27/2018	349,497	06/01/2018	92	1.669	349,449	313385XN1A	26526	349,529
Fund Total and Average		\$ 1,056,130	1.488		\$ 1,050,936		89	1.516	\$ 1,051,703			\$ 1,052,222



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LEC Issue#1 2017A DS Fund

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond- Equip Yield	Market Value	CUSIP	Investment #	Carrying Value
US Bank Trust	USBT	428	0.600	02/23/2018	428		1	0.600	428	SVST9016	79016	428
Federal Home Loan Ba	USBT	183,000	1.640	02/28/2018	182,225	06/01/2018	92	1.669	182,191	313385XN1A	26543	182,233
Fund Total and Average		\$ 183,428	1.638		\$ 182,653		92	1.667	\$ 182,619			\$ 182,661

LEC Issue #1 2010 DSR Fund

US Bank Trust	USB	146	0.600	07/01/2013	146		1	0.600	146	SVST9005	79005	146
U.S. Treasury	USB	85,000	1.625	02/27/2018	84,641	06/30/2019	486	1.945	84,399	912828WVS	26538	84,642
Federal Farm Credit	USB	4,360,000	1.660	06/08/2016	4,360,000	05/25/2021	1,181	1.659	4,234,301	3133EGBZ7	26337	4,360,000
Federal Home Loan Mt	USB	150,000	1.125	07/28/2017	146,648	08/12/2021	1,260	1.699	143,006	3137EAC9	26454	147,139
Federal Home Loan Ba	USB	4,100,000	2.125	08/28/2017	4,168,306	06/10/2022	1,562	1.760	4,023,453	313379069	26463	4,161,047
Fund Total and Average		\$ 8,695,146	1.872		\$ 8,759,741		1357	1.711	\$ 8,485,305			\$ 8,752,974

LEC Iss#1 2010B BABS Subs Resv

US Bank Trust	USB	377	0.600	07/01/2013	377		1	0.600	377	SVST9006	79006	377
U.S. Treasury	USB	38,000	1.823	02/27/2018	37,349	01/31/2019	336	1.872	37,305	912796PP8	26534	37,353
Federal Home Loan Ba	USB	2,145,000	3.375	07/28/2017	2,255,146	06/12/2020	834	1.540	2,192,490	313370E38	26455	2,232,456
Fund Total and Average		\$ 2,183,377	3.349		\$ 2,292,872		826	1.545	\$ 2,230,172			\$ 2,270,186

LEC Issue #2 2010B DSR BABS

US Bank Trust	USB	610	0.600	07/01/2013	610		1	0.600	610	SVST9013	79013	610
U.S. Treasury	USB	25,000	1.823	02/27/2018	24,572	01/31/2019	336	1.872	24,543	912796PP8	26535	24,575
Federal Home Loan Ba	USB	1,025,000	4.375	07/28/2017	1,082,708	07/01/2019	487	1.400	1,053,710	3133XU3G6	26456	1,064,971
Fund Total and Average		\$ 1,050,610	4.315		\$ 1,107,890		483	1.410	\$ 1,076,863			\$ 1,090,156

LEC O & M Reserve

Local Agency Investm		1,597,756	1.204	07/01/2013	1,597,756		1	1.204	1,597,756	SVST0047	70047	1,597,756
Union Bank of Calif	UBOC	74,886	0.002	07/18/2013	74,886		1	0.002	74,886	SVST0041	70041	74,886
Federal National Mtg	UBOC	2,993,000	1.875	08/28/2015	2,998,142	02/19/2019	355	1.220	2,926,166	3135G0Z44	26248	2,951,121
Federal Home Loan Ba	USB	3,615,000	1.540	06/30/2017	3,613,952	06/05/2020	827	1.550	3,546,423	3130ABJQ0	26440	3,614,191
Federal National Mtg	UBOC	3,000,000	1.300	06/30/2016	3,000,000	06/30/2020	852	1.300	2,927,130	3136G3UJ2	26341	3,000,000
Fund Total and Average		\$ 11,220,642	1.506		\$ 11,284,736		587	1.337	\$ 11,072,361			\$ 11,237,954

GRAND TOTALS: \$ 35,109,327 1,775 \$ 35,343,021 621 1,485 \$ 34,777,755. \$ 35,269,541

*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.

Current Market Value is based on prices from Trustee/Custodian Statements or bid prices from the Wall Street Journal as of 02/28/2018
Investment #26337 FCCB Callable anytime



Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Andritz Hydro – Five Year Field Services Agreement for engineering and field services associated with Collierville Hydroelectric Powerhouse; Applicable to the following projects: NCPA Hydroelectric Facilities

AGENDA CATEGORY: Consent

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Hydroelectric	

IMPACTED MEMBERS:		
All Members	<input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>
Alameda Municipal Power	<input checked="" type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Palo Alto <input checked="" type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Healdsburg	<input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>
		City of Santa Clara <input checked="" type="checkbox"/>
		City of Ukiah <input checked="" type="checkbox"/>
		Plumas-Sierra REC <input checked="" type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Approve Resolution 18-13 authorizing the General Manager or his designee to enter into a multiple year Amended Terms and Conditions Agreement with Andritz Hydro for engineering and field services as needed at the NCPA Hydroelectric Facility, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$10,000,000 over five years for use at the hydroelectric facilities owned and/or operated by NCPA.

BACKGROUND:

Andritz Hydro is the original equipment designer, manufacturer, and supplier (OEM) for the major electromechanical components of the Collierville powerhouse. OEM equipment supply (spare and replacement parts) and consulting services (design review, root cause investigation, troubleshooting, upgrade integration) are routinely needed at the hydroelectric facilities in order to maintain the reliability of the facilities. Terms and Conditions for Field Services Advisory supersedes prior amended terms and conditions agreement signed January 10, 2013.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$10,000,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place other enabling agreements for similar services and routinely seeks bids from multiple qualified providers. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on March 13, 2018 and was recommended for Commission approval on Consent Calendar.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy S. Howard".

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Andritz Hydro Multi-Year Field Services Terms and Conditions with Amendment

RESOLUTION 18-13

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A FIELD SERVICES AGREEMENT WITH ANDRITZ HYDRO**

(reference Staff Report #120:18)

WHEREAS, the Northern California Power Agency (NCPA) requires periodic field services and engineering support for the electromechanical equipment components on the NCPA Hydro Project in order to maintain the reliability of the facilities; and

WHEREAS, Andritz Hydro is the original designer and manufacturer of the equipment at Collierville Powerhouse; and

WHEREAS, NCPA seeks to enter into a Multi-Year Field Services Terms and Conditions Agreement with Andritz Hydro to provide such services as needed at the NCPA Hydroelectric facility in an amount not to exceed \$10,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Year Field Services Terms and Conditions Agreement with Andritz Hydro, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$10,000,000 over five years for field services and maintenance for use at the NCPA Hydroelectric Facilities.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY

FIELD SERVICES ADVISORY AGREEMENT

This Agreement with attached Amendment is made as of _____, between

ANDRITZ HYDRO:

and the Client:

ANDRITZ HYDRO Corp.
10735 David Taylor
Drive Suite 500
Charlotte, NC 28262

Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

in relation to the following Facility: **Collierville Powerhouse**

ANDRITZ HYDRO and the Client agree as follows.

ARTICLE 1 SCOPE AND DURATION OF SERVICES

- 1.1 Scope of Services.** ANDRITZ HYDRO will provide the following Services: Engineering and Field Services associated with Collierville Hydroelectric Power Station per individual purchase orders.
- 1.2 Duration of Services.** The Parties expect the Services to be completed within five (5) years.

ARTICLE 2 ANDRITZ HYDRO'S RESPONSIBILITIES

- 2.1 Commencement of Services.** ANDRITZ HYDRO will not be obligated to commence the Services until after the Client signs this Agreement without modification and returns it to ANDRITZ HYDRO. No modification of this Agreement will be binding upon ANDRITZ HYDRO unless specifically accepted in writing by an authorized representative of ANDRITZ HYDRO. No field personnel of ANDRITZ HYDRO are authorized to accept any modifications of this Agreement. If ANDRITZ HYDRO commences Services before the Client returns the signed Agreement, the terms set forth in this Agreement will govern all aspects of the resulting relationship between the Parties.
- 2.2 Additional Services.** The Parties acknowledge that the nature of consulting services is such that changes in scope often occur. ANDRITZ HYDRO will undertake additional services within the general scope of the Services, but reserves the right to require the Client to confirm in writing any extension of the Services originally ordered. ANDRITZ HYDRO may rely upon oral orders, including instructions of the Client's representative at the Facility.
- 2.3 Absolute Exclusions.** Under no circumstances will ANDRITZ HYDRO (1) have control over or charge of the Client or (2) train any personnel in the performance of any craft. Under no circumstances will ANDRITZ HYDRO be responsible for (1) any acts, omissions, faults, negligence, or workmanship of the Client or for the Client's failure to follow the advice of ANDRITZ HYDRO, (2) the operation of any equipment, or (3) except as set forth in Paragraph 2.4, any safety programs or precautions in connection with the Services.
- 2.4 Safety.** ANDRITZ HYDRO will comply with the Client's rules for visitors pertaining to safety, plant protection, and the operation and parking of vehicles. **The Client must make ANDRITZ HYDRO personnel aware of and provide any training needed to comply with such rules.**

ARTICLE 3 CLIENT'S RESPONSIBILITIES

- 3.1 Information.** If at any time ANDRITZ HYDRO needs information from the Client in order to perform the Services, the Client must provide such information to ANDRITZ HYDRO promptly upon request. ANDRITZ HYDRO is

entitled to rely upon all Client approvals and the accuracy and completeness of all Client-provided information.

- 3.2 Labor, Materials, Tools, and Equipment.** Unless otherwise specifically set forth in Paragraph 1.1, the Client must furnish at its own expense all cranes, rigging, tools, facilities and equipment, material and repair or replacement parts, and sufficient skilled and common labor and foremen, supervisors, and all fuel, lubricating oil, water, electric power, and other supplies and utilities that may be required in connection with the Services.
- 3.3 Client's Representative.** The Client must designate a representative authorized to act on the Client's behalf with respect to all matters related to this Agreement. The Client's representative is responsible for coordinating all work related to the Services and is in charge of all Client-provided labor, materials, supplies, tools, and facilities. The Client's representative shall inspect and accept all details of the Services as completed.
- 3.4 Safety.** The Client must furnish to ANDRITZ HYDRO a safe and healthy place to work at the Facility, including first-aid, wash-up, and toilet facilities. ANDRITZ HYDRO may suspend the Services and leave the Facility if, in the sole opinion of ANDRITZ HYDRO, (1) the Client fails to comply with the foregoing safety provisions or (2) the health or safety of ANDRITZ HYDRO personnel is or would be jeopardized by the continued performance of the Services. In such event, ANDRITZ HYDRO will not resume the Services or return to the Facility until the Client cures the related deficiency. The Client must pay ANDRITZ HYDRO all costs and expenses that ANDRITZ HYDRO incurs on account of such demobilization and remobilization.
- 3.5 Administrative Services.** The Client must make arrangements for and provide reliable telephone, mail, FAX, copier services, and other facility administrative improvements at the Facility for ANDRITZ HYDRO's use.

ARTICLE 4 COMPENSATION AND PAYMENTS

- 4.1 Basis of Compensation.** In consideration of ANDRITZ HYDRO's performance of the Services, the Client must pay to ANDRITZ HYDRO a fee based upon the Services performed by ANDRITZ HYDRO and upon the Rate Schedule attached hereto as **Exhibit A** as applied to the time

charges described in **Paragraph 4.2**, plus Reimbursable Expenses as described in **Paragraph 4.4**. ANDRITZ HYDRO will be entitled to revise the Rate Schedule in the event that (1) the Client significantly changes the scope of the Services, or (2) the Services are not completed within one year from the date of this Agreement. The Client must compensate ANDRITZ HYDRO for additional services at the rates set forth in the Rate Schedule current as of the performance of the additional services.

- 4.2 Time Charges.** Time for Services performed away from ANDRITZ HYDRO's home office, including Stand-by and Travel time, will be charged on a per-day basis for each full day and any part thereof, with a minimum charge of one day; provided, however, that Overtime will be charged on a per-hour basis for each full hour and any part thereof, with a minimum charge of one hour. Time for Services performed at ANDRITZ HYDRO's home office will be charged on a per-hour basis for each full hour and any part thereof, with a minimum charge of one hour.
- 4.3 Time Definitions.** Hours of work for Services performed away from ANDRITZ HYDRO's home office will be by mutual agreement of the parties. "Overtime" is time, during the course of ANDRITZ HYDRO's Services away from ANDRITZ HYDRO's home office, when ANDRITZ HYDRO personnel work, are traveling, are on stand-by, or any combination of the three (1) in excess of eight hours in any calendar day Monday through Friday or (2) on a Saturday, Sunday, or holiday. "Stand-by time" is time, during the course of ANDRITZ HYDRO's Services away from ANDRITZ HYDRO's home office, when ANDRITZ HYDRO personnel are available for work but are not working due to circumstances beyond ANDRITZ HYDRO's control. "Travel time" is time spent by ANDRITZ HYDRO personnel to travel to and from the Facility or in furtherance of the Services and includes any travel delays.
- 4.4 Reimbursable Expenses.** Reimbursable Expenses are in addition to the fees described in **Paragraph 4.1**, will be billed at the cost incurred by ANDRITZ HYDRO plus the Administrative Mark-up identified in the Rate Schedule, and may include, but are not limited to:
- .1 travel expenses incurred in furtherance of the Services including, but not limited to, the rate-per-mile set forth in the Rate Schedule for and on account of the use of privately owned vehicles; cost of air or rail transportation; local bus and taxi fares; automobile rental costs; road tolls; and transportation of tools and equipment owned by ANDRITZ HYDRO;
 - .2 living and incidental expenses, including, but not limited to, lodging, meals and other expenses incidental to the assignment such as telephone, postage, freight charges, etc., while ANDRITZ HYDRO is at the Facility, and while traveling to the Facility and returning;
 - .3 home-office incidental expenses such as long-distance telephone calls, postage, freight charges, office supplies, copying, etc.;
 - .4 rental expenses of tools, devices, or equipment supplied by ANDRITZ HYDRO, whether owned by ANDRITZ HYDRO or not;
 - .5 communications expenses such as fax and telephone service unless the Client makes its fax and telephone systems available for the use of ANDRITZ HYDRO; and
 - .6 general expenses including, but not limited to, incidental expenses, printing, photography, and other expenses incurred by ANDRITZ HYDRO in the performance of the Services.

4.5 Invoice and Pay Procedure. ANDRITZ HYDRO will invoice the Client every two weeks on a net-cash basis; provided, however, that upon completion of the Services or termination of the Agreement, ANDRITZ HYDRO may submit an invoice immediately. The Client must pay ANDRITZ HYDRO the entire amount of each invoice in U.S. Dollars within 14 calendar days of the date of the invoice; provided, however, that if the Client objects to any portion of an invoice, the Client must (1) give ANDRITZ HYDRO written notice of the objection within 7 calendar days of the date of the invoice, and (2) pay the remaining portion of the invoice when due.

4.6 Interest on Late Payments. Any invoice not paid within 14 calendar days from the date of the invoice will accrue interest at the rate of 1.5% per month until paid in full.

4.7 Verification of Time and Expenses. If the Client requests, ANDRITZ HYDRO will present copies of its regular time and expense reports. If ANDRITZ HYDRO requests, the Client must indicate its approval of such reports by signing and returning them to ANDRITZ HYDRO.

ARTICLE 5 GENERAL PROVISIONS

5.1 ANDRITZ HYDRO. The term "ANDRITZ HYDRO" includes ANDRITZ HYDRO and its consultants (regardless of tier), agents, officers, employees, successors, assigns, and designated representatives.

5.2 Client. The Client is the entity designated as such in this Agreement. The term "Client" includes the Client and the Client's agents, officers, employees, successors, assigns, and designated representatives; and, regardless of tier, the Client's consultants, contractors, subcontractors, and suppliers; but does not include ANDRITZ HYDRO.

5.3 Replacement of ANDRITZ HYDRO Personnel. ANDRITZ HYDRO may exchange its personnel at the Facility at any time and without prior notice to the Client. If the replaced personnel have been assigned to the Facility for more than 30 days, the Client will be responsible for the Travel Time and Expenses associated with the exchange.

5.4 Ownership of Instruments of Service. All reports, drawings, specifications, field data, and other documents, including those in electronic form, that ANDRITZ HYDRO prepares are Instruments of Service for use solely with respect to the Services. ANDRITZ HYDRO is the author and owner of the Instruments of Service and will retain all common law, statutory, and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to perform the Services or to meet official regulatory requirements or for similar purposes in connection with the Services is not to be construed as publication in derogation of ANDRITZ HYDRO's reserved rights. The Client must not copy, otherwise reproduce, or disclose the Instruments of Service to any third party without first obtaining ANDRITZ HYDRO's written consent. Immediately upon termination of this Agreement, the Client must deliver to ANDRITZ HYDRO all Instruments of Service and copies and reproductions of them that are under the Client's control.

5.5 Labor Permits. The Client must, at its own expense, secure any work permit, labor permit, tax-exemption certificate, or any other authorization, which may be required to permit ANDRITZ HYDRO to perform the Services. If ANDRITZ HYDRO obtains special certifications, pre-qualifications, or other examinations in furtherance of the Services, the Client must reimburse the related costs. The Client must pay as Stand-by time any time lost by ANDRITZ HYDRO in the

performance of the Services due to the procurement of any such permits, authorizations, certifications, or examinations.

- 5.6 Taxes.** The prices quoted for Services do not include any sales, privilege, use, turnover, excise, or other similar tax. The Client must reimburse ANDRITZ HYDRO the amount of any such tax, which ANDRITZ HYDRO pays on account of the Services, upon presentation of an invoice therefor.
- 5.7 Governing Law; Jurisdiction; Venue; Mediation; Joinder; Limitations Period.** This Agreement shall be governed by the substantive laws of the state of North Carolina, USA, without reference to such state's choice-of-law rules. All litigation arising out of or relating to this Agreement must be brought and held only in the United States District Court for the Western District of North Carolina, Charlotte Division, or the Superior Court of the 26th Judicial District of North Carolina; and ANDRITZ HYDRO and the Client consent to the exclusive jurisdiction of and venue in those courts. However, prior to the initiation of any legal proceeding by either party, ANDRITZ HYDRO, in its sole discretion, may elect that any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof, shall be first submitted to mediation after written notice of the dispute by the disputing party. If ANDRITZ HYDRO elects in its sole discretion, to submit the matter to mediation then both parties agree to select a neutral mediator who is a licensed attorney and conduct said mediation promptly. The costs of the mediation, including the compensation of the mediator and all other fees and expenses, shall be borne equally by the parties. The mediation shall be conducted in Charlotte, NC or any other mutually agreed upon venue. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof not resolved through mediation OR any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof that ANDRITZ HYDRO elected not to submit to mediation shall be settled through Litigation per this paragraph. Except with ANDRITZ HYDRO's prior written consent, no litigation arising out of or relating to this Agreement will include, by consolidation or joinder or in any other manner, any entities other than the Client and ANDRITZ HYDRO. Causes of action between the Parties will have accrued and the applicable statute of limitations will commence to run not later than the earlier of the date the Services are substantially complete, this Agreement is breached, or this Agreement is terminated.
- 5.8 Waiver of Subrogation.** To the extent damages are covered by property insurance, the Client and ANDRITZ HYDRO waive all rights against each other for damages, except such right as they may have to the proceeds of such insurance.
- 5.9 Extent of Contract.** ANDRITZ HYDRO is an independent contractor of the Client and nothing contained in this Agreement shall be construed as creating any other relationship between ANDRITZ HYDRO and the Client. Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of any third party against either the Client or ANDRITZ HYDRO.
- 5.10 Survivability.** The terms and conditions of this Agreement will survive the completion of the Services and the payment of the compensation provided herein.
- 5.11 Waiver.** The failure of either Party to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Agreement or to exercise any right herein contained or provided by law is not to be construed as a waiver or relinquishment of such provision or

right or of the right to subsequently demand such strict performance or exercise such right, and the rights will continue unchanged and remain in full force and effect.

- 5.12 Captions.** The captions of this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope, meaning, or intent of this Agreement.
- 5.13 Severability.** The invalidity of any provision or provisions of this Agreement will not affect the other provisions, and this Agreement will be construed in all respects as if any invalid provisions were omitted.
- 5.14 Successors and Assigns.** Each Party, respectively, binds itself, its partners, successors, assigns, and legal representatives to the other Party, and to the partners, successors, assigns, and legal representatives of the other Party with respect to all covenants of this Agreement. Neither Party may assign or transfer any interest in this Agreement without the written consent of the other.
- 5.15 Integration.** This Agreement constitutes the entire agreement between the Parties and there exist no other agreements, oral or written, between them relating to any matters covered by this Agreement or relating to any other matter whatsoever, whether or not within the knowledge or contemplation of either of them at the time of execution of this Agreement.
- 5.16 Equal Employment Opportunity.** This Agreement incorporates by reference applicable provisions and requirements of Executive Order 11246 and the Federal Acquisition Regulations including FAR § 52.222-26 (covering race, color, religion, sex and national origin); the Vietnam Era Veterans Readjustment Assistance Act of 1974 and FAR § 52.222-35 (covering special disabled and Vietnam era veterans) and; the Rehabilitation Act of 1973 and FAR § 52.222-36 (covering handicapped individuals). The Client certifies that it does not and will not maintain any facilities in a segregated manner, or permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Client further certifies that appropriate physical facilities are maintained for both sexes. The Client must obtain a similar certificate prior to award of any nonexempt lower-tier subcontracts.
- 5.17 Indemnification.** To the maximum extent permitted by law, the Client must indemnify and hold harmless ANDRITZ HYDRO from and against all claims, damages, losses, and expenses, including, but not limited to, attorneys and consultant fees, arising out of or related to the performance of the Services, including, but not limited to, any claims for bodily injury, sickness, disease, or death, or to injuries or claims related to the removal, handling, or use of any hazardous materials; except to the extent that such claims, damages, losses, and expenses are the result of ANDRITZ HYDRO's sole negligence.
- 5.18 Limited Warranty.** ANDRITZ HYDRO warrants that it will perform the Services consistent with (1) recognized and sound industry practices, procedures, and techniques; (2) applicable laws and regulations; and (3) the standard of care exercised by other hydropower firms which regularly perform similar services. **The foregoing warranty is exclusive and in lieu of all other warranties.** ANDRITZ HYDRO assumes no responsibility with respect to the suitability of the Client's equipment or with respect to any latent defects in it.
- 5.19 Limitation of Liability.** ANDRITZ HYDRO shall not be liable, whether in contract or in tort, or under any other legal theory, for loss of use, revenue, or profit, or for cost of capital or of substitute use or performance or for any other incidental, indirect, special or consequential damages, or for any other

loss or cost of similar type, or for claims by Client for damages to Client's customers. To the maximum extent permitted by law, the aggregate liability of ANDRITZ HYDRO to the Client for any and all damages arising or

allegedly arising out of or relating to the negligence of ANDRITZ HYDRO or a breach of this Agreement is limited to the total fees paid by the Client to ANDRITZ HYDRO for performance of the Services.

This Agreement is entered into as of the date first written above.

ANDRITZ HYDRO Corp.

Name: Darren A. Houghton

Title: Vice President – Sales and Marketing USA

Signature: _____

CLIENT:

Northern California Power Agency

Name: Randy S. Howard

Title: General Manager

Signature: _____

EXHIBIT A

FIELD SERVICE RATE SCHEDULE (EFFECTIVE FOR 2017)

Outlined below are the terms and conditions applicable to charges for the Services of ANDRITZ HYDRO Corporation representatives.

1. **DAILY RATES:** The daily rates for ANDRITZ HYDRO field service personnel are based upon an eight hour day for each day away from ANDRITZ HYDRO's home office (Up to 40 Hours in a week), not including Sunday, or holiday work. The daily rates are:

Installation and Erection Advisor.....	\$ 1,989.00
Gov/Excitation and/or Controls Technician.....	\$ 2,164.00
Engineer	\$ 2,387.00

Depending on circumstances, a higher rate may apply for specialists from Europe.

2. **OVERTIME:** The charges for time, during the course of ANDRITZ HYDRO's Services away from ANDRITZ HYDRO's home office, when ANDRITZ HYDRO personnel work, are traveling, are on stand-by, or any combination of the three (1) in excess of eight hours in any calendar day Monday through Saturday or over 40 hours per week are:

Installation and Erection Advisor.....	\$ 372.00/hour
Gov/Excitation and/or Controls Technician.....	\$ 406.00/hour
Engineer	\$ 447.00/hour

or (2) all hours on a Sunday or holiday are:

Installation and Erection Advisor.....	\$ 495.00/hour
Gov/Excitation and/or Controls Technician.....	\$ 540.00/hour
Engineer	\$ 595.00/hour

Depending on circumstances, a higher rate may apply for specialists from Europe.

3. **HOURLY RATES;** The hourly rates for Services performed at ANDRITZ HYDRO's home office are:

Project Management.....	\$ 233.00/hour
Gov/Excitation and/or Controls Technician.....	\$ 256.00/hour
Engineer	\$ 281.00/hour

Depending on circumstances, a higher rate may apply for specialists from Europe.

4. **GENERAL PROVISIONS:**

- 4.1 **Administrative Mark-up.** Reimbursable Expenses as defined in the Agreement will be billed at 1.20 times the cost incurred.
- 4.2 **Mileage.** ANDRITZ HYDRO will charge IRS rate per mile for and on account of the use of privately owned vehicles in furtherance of the Services.
- 4.3 **Subcontractor cost and Materials Mark-up.** ANDRITZ HYDRO Corp. will bill actual subcontractor invoice cost, and any materials supplied by ANDRITZ HYDRO Corp. or subcontractor at 1.30 times the cost incurred.

**Amendment to
Terms and Conditions for
Field Services Advisory Agreement dated _____
For Collierville Power House
Between Andritz Hydro Corp. and Northern California Power Agency**

This Amendment is entered into by and between Andritz Hydro Corp. ("Andritz Hydro") and Northern California Power Agency ("NCPA" or "Client"), to amend the Andritz Hydro Field Services Advisory Agreement dated _____ ("Base Contract"), to which this Amendment is attached. Andritz Hydro and NCPA agree as follows:

1. Duration of Agreement.

The Base Contract and this Amendment (collectively, "the Amended Contract") shall begin on the Effective Date of _____ and shall end five (5) years from the date indicated in the paragraph above, unless the term of the Amended Contract is otherwise terminated or modified in writing, as provided for herein, notwithstanding Section 1.2 of the Base Contract.

2. Applicability.

Notwithstanding any other provisions of the Base Contract, in the case of any conflict or inconsistency between this Amendment and the Base Contract, the terms and conditions of this Amendment shall control.

3. Compensation.

Client hereby agrees to pay Andritz Hydro for the Services under the Amended Contract, whether by fixed price, hourly rates subject to a fixed rate schedule with a not to exceed amount, or other basis as may be described in the applicable Base Contract. Total compensation for Services provided, including equipment and supplies, costs and any other expenses under this Amended Contract, **NOT TO EXCEED TEN MILLION DOLLARS (\$10,000,000)**. The compensation amount set forth is not a guarantee that Client will pay the full amount to Andritz Hydro but, instead, a limitation of the total expenditures authorized by this Amended Contract.

4. Written Authorizations from Client.

- A. Section 2.2 of the Base Agreement is modified to reference that Andritz Hydro may rely solely upon written, not oral, orders and/or instructions of Client.
- B. Section 3.1 of the Base Agreement is modified to reference that Andritz Hydro may rely solely upon Client's written approvals and/or written Client-provided information.

5. Safety.

Section 3.4 is amended to read: The Client must furnish to Andritz Hydro a safe and healthy place to work at the Facility, including first-aid, wash-up, and toilet facilities. Andritz Hydro may suspend the Services and relocate to a safe working environment if, in the sole opinion of Andritz Hydro, (1) the Client fails to comply with the foregoing safety provisions or (2) the health or safety of Andritz Hydro personnel is or would be jeopardized by the continued performance of the Services. In such event, Andritz Hydro will not resume the Services until the Client cures the related deficiency. The Client must pay Andritz Hydro the reasonable costs and expenses that Andritz Hydro incurs on account of such suspension of services.

6. Time Charges.

Sections 4.2 and 4.3 are modified to specify that Stand-by time and Travel time shall be charged on an hourly basis, with a minimum charge of one day. Overtime and other time for services shall be charged in increments of one-quarter hour, with a minimum charge of one hour.

7. Invoice and Pay Procedure.

The references to a fourteen day period in Sections 4.5 and 4.6 are changed to reference thirty (30) days.

8. Replacement of Andritz Hydro Personnel.

Should Andritz Hydro determine to replace personnel pursuant to Section 5.3, Andritz Hydro shall be responsible for all costs thereof, including Travel Time and Expenses of the party being replaced and his/her replacement.

9. Instruments of Service.

Section 5.4 is modified to add that any reports, drawings, specifications, filed date and other documents, including those in electronic form prepared and/or submitted by Andritz Hydro to Client ("Instruments of Service") on which Andritz Hydro wishes to maintain confidentiality or otherwise restrict Client's ability to copy, reproduce or disclose to third parties shall be marked as Confidential by Andritz Hydro prior to Andritz Hydro providing such Instruments of Service to Client. Client shall endeavor to maintain the confidentiality of such duly marked Instruments of Service consistent with applicable law. Client can retain any Instruments of Service after this Agreement is terminated solely for Client's use at Client's facilities.

10. Dispute Resolution, Mediation, Governing-Law, Jurisdiction, Venue, Limitations Period.

Notwithstanding, Section 5.7, the following shall control: In the event of any Dispute, the Parties shall attempt in the first instance to resolve such Dispute through good faith negotiations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after written notice of a Dispute is delivered by either Party, then the parties agree that all claims properly raised be submitted to Mediation. The parties will select an impartial Mediator together who is a licensed attorney. This Mediation is to be held at a neutral site and the costs of the Mediator and Mediation shared equally by the parties. The Mediation shall be conducted within forty-five (45) days after written demand by one of the parties. Only after an impasse is reached at mediation is either party entitled to initiate an action to enforce this Amended Contract as provided below. The Parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner. The Base Contract and this Amendment shall be governed by the laws, substantive and procedural, of the State of California. Exclusive jurisdiction and venue for any litigation or other disputes shall lie in Placer County Superior Court and/or in the United States District Court, Eastern District of California or such state and federal court in which Client's facility is located. Any causes of action between the Parties will have accrued and the applicable statute of limitations will commence to run not later than the earliest of (1) the date the Services are substantially complete; (2) the date on which the Base Contract and/or this Amendment is breached; or (3) the date on which the Amended Contract is terminated.

11. Indemnification.

- A. Client shall indemnify and hold harmless Andritz Hydro from any and all third party claims, damages, losses and expenses (including attorneys' and consultants' fees) to the extent caused by Client's negligence and arising out of or related to the Services, including but not limited to any claims for bodily injury, or death, or tangible property damage, except to the extent that such claims, damages, losses or expenses are caused by Andritz Hydro's sole or gross negligence.
- B. Andritz Hydro shall indemnify and hold harmless Client from any and all third party claims, damages, losses and expenses (including attorneys' and consultants' fees) to the extent caused by Andritz Hydro's negligence and arising out of or related to the Services for bodily injury, or death, or tangible property damage, except to the extent that such claims, damages, losses or expenses are caused by Client's sole or gross negligence.

12. Insurance.

Andritz Hydro shall maintain commercial general liability insurance for the term of the Base Contract and Amendment, including products liability, covering any loss or liability, including the cost of defense of any action for bodily injury, death, personal injury and property damage which may arise out of the performance of the underlying Purchase Order. The policy shall provide coverage of \$1,000,000 per occurrence/\$2,000,000 aggregate and add the Agency as an additional insured and declare such insurance primary in regard to work performed pursuant to this Agreement.

13. Monitoring by DIR.

The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

14. Registration with DIR.

During the term of this Agreement, Andritz Hydro warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.

15. 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; Client 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 NCPA and will be made available on request. Throughout the performance of the Work, Andritz Hydro must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Andritz Hydro assumes all responsibility for such payments and shall defend, indemnify and hold Client 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.

Andritz Hydro shall be required to submit to Client during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

Andritz Hydro shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Andritz Hydro shall pay the State of California a penalty 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 Andritz Hydro or by any subcontractor under Andritz Hydro 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 Andritz Hydro.

NORTHERN CALIFORNIA POWER AGENCY

ANDRITZ HYDRO CORP.

Date: _____

Date: _____

RANDY S. HOWARD, General Manager

DARREN A. HOUGHTON, Vice President – Sales and Marketing USA

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel



Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Bay Cities Fire Protection, Inc – Five Year Multi-Task General Services Agreement for maintenance, inspection, testing and other necessary services of fire sprinkler systems; Applicable to the following projects: All NCPA Facility Locations, Members, SCPPA, and SCPPA Members

AGENDA CATEGORY: Consent

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Geothermal	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Approval of Resolution 18-14 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Bay Cities Fire Protection, Inc. for maintenance, inspection, testing and other necessary services on fire sprinkler systems, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

BACKGROUND:

Fire sprinkler systems maintenance, inspection, testing and other necessary services are required from time to time at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

FISCAL IMPACT:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place other agreements with similar service providers including Northern Industrial Construction, and Fire Safety Supply Company. NCPA seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

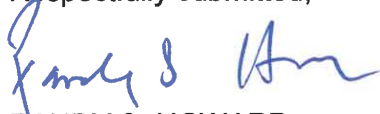
This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a “project” for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on February 28, 2018, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on March 12, 2018, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments: (2)

- Resolution
- Multi-Task General Services Agreement with Bay Cities Fire Protection, Inc.

RESOLUTION 18-14

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH BAY CITIES FIRE
PROTECTION, INC.**

(reference Staff Report #121:18)

WHEREAS, maintenance, inspection, testing and other necessary services on fire sprinkler systems are periodically required at the facilities owned and/or operated by Northern California Power Agency (NCPA), its Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, Bay Cities Fire Protection, Inc. is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with Bay Cities Fire Protection, Inc. to provide such services as needed at all NCPA, Member, SCPPA, and SCPPA Member facilities in an amount not to exceed \$500,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with Bay Cities Fire Protection, Inc. with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for maintenance, inspection, testing and other necessary services on fire sprinkler systems, for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
BAY CITIES FIRE PROTECTION, INC.**

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 Bay Cities Fire Protection, Inc., a corporation with its office located at 51 Foley Street, Santa Rosa, CA 95401 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2018 ("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** FIVE HUNDRED THOUSAND dollars (\$500,000) 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 \$1,000,000 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 \$1,000,000 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.** 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 (\$1,000,000.00) 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.
- 4.4 Pollution Insurance.** Not Applicable
- 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, Agency shall have the right to require Contractor to provide the certificates of insurance and/or 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.
- 4.6 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. 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.

- 4.7 **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.
- 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.
- 5.3 **Transfer of Title.** Intentionally Omitted

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 be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

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 \$50.00 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 Ken Speer, 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:

John Hess
President
Bay Cities Fire Protection, Inc.
51 Foley Street
Santa Rosa, CA 95401

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:

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.

SIGNATURES ON FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

BAY CITIES FIRE PROTECTION, INC

Date _____

Date _____

RANDY S. HOWARD, General Manager

JOHN HESS, President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Bay Cities Fire Protection, Inc. ("Contractor") shall provide maintenance, inspection, testing and other necessary services on fire sprinkler system as requested by Northern California Power Agency ("Agency") at any facilities owned and/or operated by Agency, its Members, Southern California Public Power Authority ("SCPPA") or SCPPA members.

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:

Labor	\$200.00 per hour
Material	Cost + 15% markup

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 – Not Applicable

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 – Not Applicable

**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)



Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Delegate to the General Manager authority to enter into one or more agreements and to issue purchase orders, with a total not-to-exceed amount of \$550,000 for maintaining and upgrading crane equipment prior to the generator rewind at Collierville Powerhouse on the NCPA Hydroelectric Project

AGENDA CATEGORY: Consent

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	<i>Competitive Pricing Process</i>
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Hydroelectric	

IMPACTED MEMBERS:

All Members	<input type="checkbox"/>	City of Lodi	<input checked="" type="checkbox"/>	City of Shasta Lake	<input type="checkbox"/>
Alameda Municipal Power	<input checked="" type="checkbox"/>	City of Lompoc	<input checked="" type="checkbox"/>	City of Ukiah	<input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Palo Alto	<input checked="" type="checkbox"/>	Plumas-Sierra REC	<input checked="" type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Redding	<input type="checkbox"/>	Port of Oakland	<input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Roseville	<input checked="" type="checkbox"/>	Truckee Donner PUD	<input type="checkbox"/>
City of Healdsburg	<input checked="" type="checkbox"/>	City of Santa Clara	<input checked="" type="checkbox"/>	Other	<input type="checkbox"/>

If other, please specify

RECOMMENDATION:

Authorize the General Manager to enter into one or more agreements and to issue purchase orders, with a total not-to-exceed amount of \$550,000, for maintaining and upgrading the gantry crane at Collierville powerhouse in advance of the stator winding replacement.

BACKGROUND:

Original construction of the Collierville Powerhouse in 1987 included a gantry crane used primarily for critical repair and maintenance related lifts of powerhouse equipment. A fundamental lift required of the crane is placing the generator stator on the top deck of the powerhouse for service when necessary. This particular lift nears the full capacity of the crane. The rewind of the Collierville Generator Stator Unit 2 is scheduled for Fall 2018, and it is highly recommended that the crane be in perfect working order before a lift of this importance. Due to the age of the crane, the 175 metric ton main and auxiliary hoist controls are obsolete, and replacement parts are no longer available.

The crane is over 30 years old and has been kept in working order by the ingenuity of the Hydro staff working around parts that are no longer available. Maintaining and upgrading the crane controls and motors will bring the Collierville crane in line with modern industry standards and help to ensure the safety of upcoming critical lifts like the stator rewinds. An upgrade of this nature is similar to those completed at the Geothermal Facility prior to their last major plant overhaul several years ago.

FISCAL IMPACT:

Based on preliminary budget quotes, the total cost of needed maintenance and upgrades is anticipated to be approximately \$500,000. A contingency of 10% is recommended, resulting in a total project authorization of up to \$550,000.

SELECTION PROCESS:

A competitive pricing process is being used to select a vendor to upgrade the crane. Due to the time constraints of this project which must happen prior to the Collierville generator rewind in September 2018, a Request for Proposal package was sent to three (3) pre-vetted vendors on February 28, 2018. Bids will be evaluated on experience, ability to perform the work on schedule, and cost.

ENVIRONMENTAL ANALYSIS:

CEQA Guidelines section 15301 states that a project is categorically exempt from CEQA review when the project "consists of the operation, repair, maintenance ... or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." There is no reasonable possibility that upgrading the existing Collierville Crane

control panels will result in a significant impact on the environment. A Notice of Exemption for this type of work was approved by the NCPA Commission and filed with Calaveras County on March 27, 2014.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on March 13, 2018, and recommended for Commission approval on Consent Calendar.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (1):

- Resolution

RESOLUTION 18-15

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
DELEGATING AUTHORITY TO THE GENERAL MANAGER TO ENTER INTO ONE OR
MORE AGREEMENTS AND TO ISSUE PURCHASE ORDERS NOT TO EXCEED \$550,000
FOR COLLIERVILLE POWERHOUSE GANTRY CRANE MAINTENANCE AND UPGRADES
AT THE NCPA HYDROELECTRIC PROJECT

(reference Staff Report #122:18)

WHEREAS, the Northern California Power Agency (NCPA) operates and maintains the Collierville Powerhouse on behalf of the project participants in the North Fork Stanislaus River Hydroelectric Development Project; and

WHEREAS, in September 2018 the Hydroelectric Facility's Collierville Powerhouse Unit 2 generator will be rewound requiring a critical, near-capacity crane lift to facilitate the unit repairs; and

WHEREAS, the Collierville crane's 175M ton main and auxiliary hoist controls are currently obsolete and replacement parts are no longer available for purchase; and

WHEREAS, refurbishment is highly recommended prior to the Collierville rewind critical lifts; and

WHEREAS, replacing controls will bring the Collierville crane up to modern industry standard; and

WHEREAS, this Project is exempt from CEQA under Regulation 15301 and a Notice of Exemption was filed with Calaveras County on March 27, 2014; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager to enter into one or more agreements and to issue purchase orders, with a total not-to-exceed amount of \$550,000 for maintenance and upgrading the Collierville gantry crane prior to the Fall 2018 generator rewind on the NCPA Hydroelectric Project.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Dow Chemical Company – Five Year Sales Contract for Iron Chelate; Applicable to the following projects: Geysers Geothermal Facility.

AGENDA CATEGORY: Consent

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	<i>Sole Source</i>
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Geothermal	

IMPACTED MEMBERS:		
All Members	<input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>
Alameda Municipal Power	<input checked="" type="checkbox"/>	City of Shasta Lake <input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>
City of Biggs	<input checked="" type="checkbox"/>	City of Palo Alto <input type="checkbox"/>
City of Gridley	<input checked="" type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Healdsburg	<input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>
		City of Santa Clara <input checked="" type="checkbox"/>
		Plumas-Sierra REC <input type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input type="checkbox"/>
	<i>If other, please specify</i>	TID

RECOMMENDATION:

Approval of Resolution 18-16 authorizing the General Manager or his designee to enter into a Sales Contract with Dow Chemical Company for Iron Chelate, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years for use at the Geysers Geothermal Facility.

BACKGROUND:

Purchase of Iron Chelate is required from time to time for Plants 1 and 2 at the Geysers Geothermal Facility.

FISCAL IMPACT:

Staff has contacted a number of different chemical suppliers, Calpine Geysers, and refineries that use the Stretford process for H₂S abatement, to find other chemical providers to supply the needed Iron Chelate for the Stretford process. Dow Chemical is the only company providing this chemical on the west coast. As a result, staff recommends approval of a sole source purchase agreement with Dow Chemical Company for Iron Chelate, which is required for use at Plants 1 and 2 of the Geysers Geothermal Facility. NCPA will issue purchase orders based on cost and availability of the product needed at the time the product is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on February 28, 2018, and was recommended for Commission approval on Consent Calendar.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments: (2)

- Resolution
- Sales Contract with Dow Chemical Company

RESOLUTION 18-16

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A SALES CONTRACT WITH DOW CHEMICAL COMPANY**

(Reference Staff Report #123: 18)

WHEREAS, purchase of Iron Chelate is required from time to time for Plants 1 and 2 at the Geysers Geothermal Facility; and

WHEREAS, Dow Chemical Company is the sole source provider of this product; and

WHEREAS, NCPA seeks to enter into a Sales Contract with Dow Chemical Company to provide Iron Chelate as needed at the Geysers Geothermal Facility in an amount not to exceed \$1,500,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter the Sales Contract with Dow Chemical Company with any non-substantial changes as approved by the NCPA General Counsel, which shall no exceed \$1,500,000 over five years for supplying Iron Chelate for the Geysers Geothermal Facility.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



SALES CONTRACT

THE DOW CHEMICAL COMPANY, Midland, MI 48674 (“Dow”), agrees to sell to Northern California Power Agency, 651 Commerce Drive, Roseville, CA 95678 (“Customer”), and Customer agrees to buy from Dow, solely for Customer’s consumption or use, the Product listed below in accordance with this Sales Contract, including all attachments (“Contract”).

CONTRACT TERM (“Term”)

Effective Date:

April 1, 2018

Termination Date:

March 31, 2023

Termination:

Either party may terminate this contract with thirty (30) days’ advance written notice.

PRODUCT(S) (“Product”):

Any Product sales specifications attached to this Contract are current as of the Effective Date.

- VERSENOL™ Iron Chelate (40427)
- DOW™ Iron Chelate (40424)

Product sales specifications are set forth in Attachment A.

MINIMUM QUANTITY CUSTOMER to BUY (“Minimum Purchase Obligation”):

- VERSENOL™ Iron Chelate to Plant #1 estimated to be 94,000 pounds annually
- DOW™ Iron Chelate to Plant #2 estimated to be 94,000 pounds annually

MAXIMUM QUANTITY DOW to SELL (“Maximum Sales Obligation”):

Quantity for both Products combined not to exceed 300,000 pounds annually without Dow’s written approval.

PRODUCT PRICE (“Price”):

- \$0.98 per pound for VERSENOL™ Iron Chelate
- \$0.98 per pound for DOW™ Iron Chelate

Product pricing will remain firm for a period of (6) six months after execution of this contract, then any price changes shall be governed by Paragraph 4 of the Contract.

DELIVERY TERMS / TITLE AND RISK OF LOSS: Terms for exported Product are specified in Section 12.

Product delivered, and title and risk of loss pass, to Customer F.O.B. Dow’s Shipping Facility. Dow selects carrier and Customer pays freight.

DOW’S SHIPPING FACILITY(S) (“Shipping Facility”):

Long Beach, CA or Freeport, TX

CUSTOMER’S RECEIVING LOCATION(S) (“Receiving Location”):

Northern California Power Agency
12000 Ridge Rd, Middleton, CA 95461

PAYMENT TERMS:

Receipt by Dow net thirty (30) days from invoice date. Total Customer payments to DOW shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000) under this Contract.

NOTICES:

Notices under this Contract shall be given in writing to the following contacts. Either party may unilaterally modify or supplement its contact information at any time by written notice provided hereunder.

Customer: Name: A Marty Lebrett, Plant Manager
Address: 12000 Socrates Mine Rd, Middletown, CA 95461
Email: marty.lebrett@ncpa.com

With copy to: Name: Ken Speer, NCPA Assistant General Manager
Address: 651 Commerce Drive, Roseville, CA 95678
Email: Ken.speer@ncpa.com

Name: Jane E. Luckhardt, NCPA General Counsel
Address: 651 Commerce Drive, Roseville, CA 95678
Email: Jane.Luckhardt@ncpa.com

Dow: Name: Jim Hill
Account Manager
Address: 7416 S Settlers Dr, Morrison, CO 80465
Email: jmhill2@dow.com

With a copy to: Name: Janaki Catanzarite, Dow Oil & Gas
Address: 400 Arcola Road
Collegeville, PA 19426

OTHER: Transactional Service Standards are set forth in Attachment B.

Deliveries to Customer:
Monday – Thursday between hours of 0800 and 1400.
Carrier instruction: 20 feet of 2 inch hose with Air
Compressor and 2 inch camlock fittings.

ADDITIONAL TERMS AND CONDITIONS

1. DOW'S COMMITMENTS

- a) Product Warranties. i) The Product when shipped will meet Dow's then current Product sales specifications ("Specifications"); and ii) Dow will convey the Product with good title, free from any lawful lien or encumbrance.
- b) Specifications. Dow will provide thirty (30) days' advance written notice to Customer if the Specifications are changed.
- c) SDS. Dow will supply Customer with current material safety data sheets ("SDS").

2. CUSTOMER'S COMMITMENTS

- a) Taxes. Customer will pay all taxes and duties, except income taxes, that are increased or levied, now or in the future, in connection with the manufacture, sale, transportation, use or disposal of the Product.
- b) Payments/Credit. Customer will pay for the Product on the agreed terms. If (i) Customer does not pay on time or (ii) Customer's financial responsibility becomes unsatisfactory and Dow deems itself insecure, then, in addition to any other rights Dow has under this Contract, Dow may defer shipments, accelerate the due date on all amounts owed Dow, require cash payments or other security, and/or terminate this Contract without liability and without waiving any other remedies Dow may have against Customer. Customer agrees to pay all of Dow's collection costs including reasonable legal fees and costs. Dow may charge Customer the maximum interest allowed by law on all overdue amounts.
- c) Responsible Practices. Customer will (i) be solely responsible for determining the suitability of Product in Customer's formulations and applications prior to use, (ii) familiarize itself with any product literature or information Dow provides under Dow's product stewardship program, including the SDS for each Product; (iii) adopt and follow safe and appropriate handling, storage, transportation, use, treatment and disposal practices with respect to the Product, and the containers thereof, including such special care and practices as Customer's use of the Product requires including, without limitation, all such practices required by federal, state and local government statutes, rules, regulations or ordinances; (iv) provide

appropriate warnings to, and instruct, its employees, independent contractors, agents and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use, treatment, transportation and disposal of the Product, and the containers thereof, including without limitation information contained in Dow's most current SDS; and (v) comply with applicable health, safety, security and environmental laws and take action necessary to avoid spills or other dangers to persons, property or the environment. Dow may immediately suspend Product shipments and/or terminate this Contract on fifteen (15) days' notice if Customer fails to comply with any of its commitments under this subsection.

- d) **Inspection.** Customer shall promptly, and in any event prior to use and/or commingling, inspect Product shipments for any damage to packaging, shortage or non-conformance to this Contract. All claims for damage to packaging, shortage or non-conformance which could reasonably be discoverable in the course of such investigation shall be waived unless Customer notifies Dow in accordance with Section 9.
- e) **Indemnity.** Customer will indemnify and hold Dow harmless for all claims, damages and related costs, including reasonable legal fees and costs, directly caused by Customer's noncompliance with any of its commitments under subsections c) and d) above.

3. QUANTITY

Customer will give Dow reasonable notice concerning shipments and take deliveries in approximately equal monthly installments. Dow is only obligated to sell in any one month 1/10 of its Maximum Sales Obligation. On ten (10) days' written notice, Dow may limit its maximum monthly supply obligation to the average of Customer's monthly purchases for the three-month period before the notice or 1/12 of Dow's Maximum Sales Obligation, whichever is less, unless Customer has seasonal requirements. If Customer fails to purchase the Minimum Purchase Obligation, Dow may terminate this Contract with immediate effect upon written notice to Customer without waiving any other remedies Dow may have against Customer.

4. CHANGES TO TERMS

Dow may increase Price, change transportation terms, and/or change payment terms, by giving Customer at least fifteen (15) days prior written notice. These changes will be deemed accepted unless Customer objects in writing within fifteen (15) days of the date of Dow's notice of change. Dow shall advise Customer within fifteen (15) days from receipt of timely written objection from Customer whether Dow shall:

- a) continue to supply Product on terms and conditions in effect prior to the announced change;
- b) enter into negotiations with Customer; or
- c) delete affected Product from this Contract.

If Dow elects to enter into negotiations as allowed under b) above, and if, within thirty (30) days following the effective date of Dow's change, a written agreement between the parties has not been reached and Dow has not agreed to continue to supply on the terms and conditions in effect prior to the announced change, then either party may, upon written notice to the other party, terminate the negotiations and delete the affected Product from this Contract. Unless otherwise agreed in writing as part of the negotiations, price and other terms applicable during the negotiating period shall be those which Dow implemented by its initial notice.

A Temporary Voluntary Allowance discounting from the current Price of any Product may be instituted, changed, or withdrawn by Dow at any time, with or without notice, and shall not be deemed a change of Price.

5. COMPETITIVE OFFERS

Customer may request Dow to meet competitive offers, with respect to any Product, by providing Dow satisfactory evidence (including all relevant terms), in writing if requested, that Customer has received a firm commitment from a non-affiliated North American producer to sell for money (not other goods or services) like kind, grade and quality goods, for like use at a lower delivered net price under equivalent terms, for all of the quantity of such Product remaining under this Contract. Within thirty (30) days after receipt of the evidence, Dow will notify Customer (a) that Dow will meet the offer on future orders, or (b) that the Contract with respect to that Product is terminated effective thirty (30) days from Customer's receipt of the notice from Dow.

6. FORCE MAJEURE / EXCUSED PERFORMANCE

Performance is excused when (a) there is any contingency beyond the reasonable control of Dow or Customer including, for example, war or hostilities, acts of God, accident, fire, explosion, public protest, breakage of equipment, pandemic, acts of terrorism, activity of a governmental authority (including, for example, the passage of legislation or the failure to grant an export license), or labor difficulties which interferes with Dow's or Customer's production, supply, transportation or consumption practice; or (b) Dow is unable to obtain raw materials, power or energy on terms Dow deems commercially acceptable. During times when performance is excused, all quantities of affected Product will be eliminated from this Contract without liability and Dow will allocate its supplies of raw materials and Product among their various uses in any manner that Dow determines is fair and reasonable, but this Contract will otherwise remain in effect. Dow will not be obligated to obtain raw materials, intermediates, or Product from other sources, or to allocate raw materials, intermediates, or Product from Dow's

internal use. The foregoing provisions shall in no event relieve Customer of its obligation to timely pay in full any invoice with respect to Product received by Customer.

7. EXCLUSION OF ALL OTHER WARRANTIES

THE WARRANTIES IN SECTION 1.a) ABOVE ARE DOW'S SOLE WARRANTIES RESPECTING PRODUCT INCLUDING WITHOUT LIMITATION PRODUCT QUALITY AND PERFORMANCE, AND ARE MADE EXPRESSLY IN LIEU OF AND EXCLUDE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES PROVIDED BY STATUTE, COMMON LAW OR OTHERWISE.

8. LIMITATION OF LIABILITIES

- a) NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS.**
- b) CUSTOMER'S EXCLUSIVE REMEDY, AND DOW'S TOTAL LIABILITY, FOR ALL CLAIMS ARISING OUT OF THIS CONTRACT (INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY AND TORT) ARE LIMITED TO CUSTOMER HAVING THE OPTION OF REPLACEMENT OR REPAYMENT OF THE PURCHASE PRICE PAID FOR THE PRODUCT WHICH IS THE SUBJECT OF THE CLAIM(S).**
- c) CUSTOMER ASSUMES ALL RISKS AND LIABILITIES RESULTING FROM THE USE OF THE PRODUCT SUPPLIED UNDER THIS CONTRACT.**

9. NOTICE OF CLAIMS

WITHIN SIXTY (60) DAYS AFTER CUSTOMER LEARNS, OR SHOULD REASONABLY HAVE LEARNED, OF ANY CLAIM WITH RESPECT TO PRODUCT, CUSTOMER WILL INFORM DOW IN WRITING OF THE CLAIM OR THE CLAIM IS WAIVED.

10. TRANSPORTATION EQUIPMENT

Customer will unload and return all transportation equipment to carrier promptly and in no event later than the carrier's rules tariff or contracted period, free of detention charges. Dow may collect its standard detention charge for its equipment if held beyond Dow's allowable time. Carrier or Dow may collect carrier's standard detention charge from Customer for carrier equipment if held beyond carrier's allowable time.

11. ASSIGNMENT

- a) This Contract is not transferable, delegable, or assignable by either party without prior written consent of the non-assigning party except that Customer hereby consents, without further notice from Dow, that Dow may assign or delegate all or a portion of this Contract to (i) any purchaser of all or substantially all of the assets in the line of business of Dow to which this Contract pertains or (ii) any entity that is an Affiliate of DowDuPont, Inc., including any subsidiary of DowDuPont, Inc. that is formed to conduct, or conducts, all or a portion of the line of business of DowDuPont, Inc. to which this Contract pertains, which, for the avoidance of doubt, may ultimately be separated from DowDuPont, Inc. in connection with the publicly announced intended separation of DowDuPont, Inc. into independent, public companies. Upon any such assignment referred to above, (x) the rights and obligations under this Contract shall be binding upon and inure to the benefit of said purchaser, successor in interest or other assignee and (y) in the case of clause (i) above, after any such purchase and, in the case of clause (ii) above, after any business separation, neither Dow nor any of its Affiliates (to the extent such parties are not included in the sale of the such business line, in the case of clause (i), or separation of the specified business, in the case of clause (ii)), shall have, and Dow and such Affiliates shall be released from, all duties, obligations and liabilities to Customer under or in connection with this Contract. For clarification and avoidance of doubt, the foregoing permits Dow to delegate some or all of Dow's obligations hereunder to any Affiliate without further notice to Customer, in which case the Affiliate may discharge such obligations, including, but not limited to, manufacturing the Product, effecting delivery of the Product, and invoicing Customer directly.**
- b) "Affiliate" means with respect to any entity, any other entity directly or indirectly owning, owned by, or under common ownership with, such entity; for purposes of this definition, "owning", "owned" and "ownership" shall mean the possession, directly or indirectly, of an ownership interest, directly or indirectly through one or more intermediaries, of at least fifty percent (50%) as a result of ownership of stock or other voting securities, contractual relationship or otherwise.**
- c) If this Contract is assigned in accordance with subsections a) or b) above, all terms and conditions of the Contract shall remain in full force and effect.**

12. EXPORTED PRODUCT

Not applicable.

13. GENERAL

- a) This document, together with its attachments and addenda, constitutes the complete and final agreement between Customer and Dow regarding Product, and supersedes all prior understandings and agreements, whether written or oral, as to the subject matter herein. Any additional or different terms provided by either party in subsequent purchase orders, other documents (electronic or hardcopy) or on Dow’s, Customer’s or third party Internet sites shall not be binding. This document may be modified only by a written amendment, expressly stated as such, signed by both parties.
- b) The rights and obligations under Sections 1, 2, 7, 8, 9, 10 and 13 will survive the cancellation, termination or expiration of this Contract.
- c) The failure of a party to exercise its rights on one occasion, including the obligation to supply Product, shall not be deemed to be a waiver of the right to exercise those rights in the future.
- d) If any provision of this Contract is declared invalid by any court or government agency, all other provisions shall remain in full force and effect.
- e) Each party represents and warrants that it understands and shall comply with the requirements of the U.S. Foreign Corrupt Practices Act and all other applicable anti-bribery and anti-corruption laws of the jurisdictions under which each party is or may be acting hereunder.
- f) This Contract will be governed by Delaware law without reference to its principles of conflict of laws. Additionally, Dow and Customer hereby submit to the exclusive jurisdiction, for any lawsuit arising out of this Contract, in any State or Federal court in the state of Delaware.
- g) Customer agrees to comply with all export laws of the United States and of any country having jurisdiction over Customer or the transactions contemplated by this Contract.
- h) This Contract may be executed in any number of counterparts, each of which when so executed shall constitute an original, and all of which when taken together shall constitute one and the same original document.
- i) The terms set forth in this document are not binding until signed below by each party’s authorized representatives.

NORTHERN CALIFORNIA POWER AGENCY

THE DOW CHEMICAL COMPANY

Signature

Print Name

Print Title

Date

Signature

Print Name

Print Title

Date

NOTE: This document is not binding on Dow unless an original, signed by both Dow and Customer, is received by Dow no later than 30 days after the date signed by Dow.

ATTEST:

Assistant Secretary of the Commission

APPROVED AS TO FORM:

Jane E. Luckhardt, General Counsel

**ATTACHMENT A
Product Sales Specification**

PAGE 1



THE DOW CHEMICAL COMPANY
SALES SPECIFICATION

Date Printed: 2017-11-29

Effective Date: 2010-12-20

Supersedes Date: 2004-02-09

Name: VERSENOL™ Iron Chelate

Specification Number: 00000090975

Previous Specified Material: 00090975

Additional Product Information:
A DARK RED-BROWN LIQUID.

Final Testing Requirements

Test and Test Condition	Limit	Unit	Method	Note
Iron	4.5 Min	WT%	In Development	
Sp. Grav. @ 25/25degC	1.350 — 1.420		ASTM D4052	
Weight per Gallon	11.24 — 11.82	lb/gal	Calculation	

READ PRECAUTIONARY INFORMATION AND MATERIAL SAFETY SHEETS. THIS PRODUCT IS SHIPPED IN COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS REGARDING CLASSIFICATION, PACKAGING, SHIPPING AND LABELING.

LAST PAGE

™ Trademark of The Dow Chemical Company ("Dow") or an affiliated company of Dow



THE DOW CHEMICAL COMPANY
SALES SPECIFICATION

Date Printed: 2017-11-29

Effective Date: 2010-10-22

Supersedes Date: 2003-09-11

Name: DOW™ IRON CHELATE

Specification Number: 000000012299

Previous Specified Material: 00012299

Final Testing Requirements				
Test and Test Condition	Limit	Unit	Method	Note
Iron	4.4 Min	WT%	DOWM TBD	
pH, straight solution	5.0 — 7.0		ASTM E70	

READ PRECAUTIONARY INFORMATION AND MATERIAL SAFETY SHEETS. THIS PRODUCT IS SHIPPED IN COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS REGARDING CLASSIFICATION, PACKAGING, SHIPPING AND LABELING.

LAST PAGE

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ATTACHMENT B
Transactional Service Standards

“FVL” means full vehicle load, which equals the maximum load capacity of the vehicle, as allowed by laws and regulations.
 “CTT” means compartmentalized tank truck.
 “LTL” means any load less than FVL.

Lead time will be as notified separately by Dow to Customer from time to time per Product. Transit time is not included in lead time.

The following applies only to Dow equipment or Dow-arranged, third-party equipment, unless otherwise noted.

	RAILCAR	TANK TRUCK	PACKAGED TRUCK
Minimum Order Quantities	FVL, except as otherwise made available by Dow.	Minimum order quantity is 43,000 lbs. CTT shipments minimum 1,000 gallons per Product. Where Customer arranges transportation not involving Dow-arranged equipment (e.g., “Customer pick-up”), Tank Truck minimum is 20,000 lbs.	FVL is 80 liquid drums with a minimum order quantity of 20 liquid drums.
LTL Charges	Not available.	Buyer absorbs freight.	Buyer absorbs freight.
Detention Charges	Customer will be charged for hopper cars held longer than 21 days and tank cars held longer than 9 days as follows: <ul style="list-style-type: none"> • USD \$150 /day up to 30 days • USD \$500 /day for 31-89 days • USD \$1,000 /day for 90+ days 	2 hours at the Customer’s site. Customer-caused detention beyond 2 hours will be charged at Dow or carrier’s rate, as applicable.	2 hours at the Customer’s site. Customer-caused detention beyond 2 hours will be charged to the Customer at Dow or carrier’s rate, as applicable.
Liquid Drum Charges	Not applicable.	Not applicable.	80 Drums: Add \$0.10/lb. 79 – 36 Drums: Add \$0.15/lb. 35 – 20 Drums: Add \$0.20/lb.
Rush Orders (Applies to all orders placed outside of lead time regardless of equipment used.)	\$500	\$500. Customer will also be charged for the additional freight costs incurred (if any) with Seller Absorbs Freight terms.	\$500. Customer will also be charged for the additional freight costs incurred (if any) with Seller Absorbs Freight terms.
Split Bulk Orders for CTT	Not applicable.	\$0.05 per lb.	Not applicable.
Truck Delivery Fee	Not applicable.	\$350 per truck if Seller Absorbs Freight terms.	\$350 per truck if Seller Absorbs Freight terms.



Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: HRST, Inc. – Five Year Multi-Task General Services Agreement for inspection services; Applicable to the following projects: All NCPA Facility Locations, Members, SCPPA, and SCPPA Members

AGENDA CATEGORY: Consent

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Approval of Resolution 18-17 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with HRST, Inc. for inspection services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA Members.

BACKGROUND:

Inspection services are required from time to time related to project support at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA Members.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place a number of other agreements with similar service providers, including Tetra Engineering Group, Inc., Firecode Safety Equipment, Inc. and Performance Mechanical, Inc. NCPA seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on March 13, 2018, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on March 12, 2018, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with HRST, Inc.

RESOLUTION 18-17

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH HRST, INC.**

(reference Staff Report #124:18)

WHEREAS, inspection related services are periodically required at the facilities owned and/or operated by Northern California Power Agency (NCPA), its Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, HRST, Inc. is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with HRST, Inc. to provide such services as needed at all NCPA Generation facility locations, Member, SCPPA, and SCPPA Member facilities, in an amount not to exceed \$1,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with HRST, Inc. with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for inspection services for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
HRST, INC.**

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 HRST Inc., a corporation with its office located at 6557 City West Parkway, Eden Prairie, MN 55344 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2018 ("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 ONE MILLION** dollars (\$1,000,000.00) 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) 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 \$1,000,000 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 \$1,000,000 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.** 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 one million dollars (\$1,000,000) aggregate covering the Contractor's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) 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 Pollution Insurance.** Not Applicable.
- 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, Agency shall have the right to require Contractor to provide the certificates of insurance and/or 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.
- 4.6 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. 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.

- 4.7 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.
- 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 which are attributable to personal injury or death or physical damage to tangible property that 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 that 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 sole negligence, active negligence, or willful misconduct of the Agency. Anything in this Agreement to the contrary notwithstanding, Contractor shall not be liable to Agency for any special, indirect, incidental or consequential damages (whether in contract, in tort or otherwise, including negligence and product liability) including but not limited to damages for loss of anticipated profits, loss of use, loss of revenue generated or loss of good will, by reason of anything done or omitted to be done by Contractor in connection with the performance of its obligations under this Agreement. Anything in this Agreement to the contrary notwithstanding, Contractor's total liability to Agency for breaches of this Agreement, other than any liability resulting from a willful or grossly negligent refusal by Contractor to perform its obligations hereunder, shall in no event exceed the greater of the amounts of insurance required by this Agreement or the amount specified in Section 2 of this Agreement.

5.3 **Transfer of Title.** Not Applicable.

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 be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

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 \$50.00 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 engineering and other technical services with the usual professional standard of care and in accordance with generally accepted practices in effect at the time the services are rendered and 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 Ken Speer, 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:

HRST, Inc.
Attention: Sheila Schwarz
6557 City West Parkway
Eden Prairie, MN 55344

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:

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

HRST, INC.

Date _____

Date _____

RANDY S. HOWARD,
General Manager

ANDREW KUBLY,
Chief Financial Officer

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

EXHIBIT A
SCOPE OF WORK

HRST, Inc. ("Contractor") shall provide inspection services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

Services to include, but not be limited to the following:

- Heat Recovery Steam Generator Warranty Inspections
- Heat Recovery Steam Generator Consulting Engineering
- Power Piping Inspections
- Power Piping Design Engineering
- Steam Plant Condition Assessments and Fitness-for-Service Evaluations
- Root Cause Failure Assessments

Contractor may provide services at all Project Site Locations.

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

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 are as follows:

2018 SERVICE RATES

Effective January 1, 2018 to December 31, 2018

Services Provided Under Time and Expense Contracts with HRST, Inc:

Rates:

The following hourly rates shall apply for services, including inspections, meetings, analysis and generation of reports. Minimum charge for field hours is 4 hours per day. All rates and contract prices are in US dollars. For countries that do not have a tax treaty with USA and require non-resident withholdings tax, the rates shown are net (after the withholdings).

Engineering / Consulting / Advisor Services	\$ 195.00
Standby ¹ / Travel Time ²	\$ 105.00

¹ Standby time will be charged at a maximum of 8 hours per day when an HRST employee must remain in close proximity to the jobsite in order to provide additional service, for example, when Sunday is not a workday at the jobsite and travelling home is not viable for the HRST employee. The Purchaser shall remain responsible for expenses incurred while on standby.

² Travel time will be charged at a maximum of 8 hours per day for projects in the continental US. When travel and services occur in the same day, actual service time will be charged at the service rate and actual travel time will be charged at the travel rate.

Overtime/Weekend/Holiday/Emergency Rate: A 40% premium shall apply to all rates. Overtime rates apply when more than 10 hours per day are worked on weekdays and apply to any hours worked on a weekend or holiday, or if the nature of the work is supported by HRST's Emergency Engineer or Technical Advisor.

Expenses:

Travel and consumable expenses will be billed at cost plus 10%. Typical expenses include:

- Transportation (airfare, rental car/fuel/tolls, taxi, parking, etc.)
- Lodging
- Meals & Incidental Expenses (M&IE)³
- Shipping charges

³ Meals and incidental expenses shall be based on the current local M&IE rate: GSA (CONUS), DOD (AK/HI) or USDOS (non-USA).

Equipment Rental & Subcontract Professional Service Rates:

Equipment rental required to support HRST Service in North America will be billed per the pricing below. Minimum rental of 2 days applies, which covers all shipping time and the day equipment arrives onsite. Shipping charges not included.

- Borescope with 25 foot probe: \$650/day
- FLIR Thermal Imaging Camera: \$250/day
- Positive Material Identification Analyzer: \$400/day
- Thermocouple DataLogger: \$150/week
- Acoustic Leak Detection Probe: \$250/day
- Thermocouple Welder: \$250/week
- Pick-up Truck: \$100/day plus fuel
- Equipment rented by HRST: Cost plus 20%

Professional Service subcontracted by HRST and approved by client will be invoiced at cost plus 15%. Examples include: metallurgical lab analysis, chemistry specialist, engineering, NDE technicians and design/drafting.

Pricing for services to be performed at NCPA Member or SCPA 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

HRST, Inc.

(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.

NOT APPLICABLE

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.

NOT APPLICABLE

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)



Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Industrial Air Flow Dynamics, Inc. – First Amendment to General Services Agreement for roof seal replacement services; Applicable to the following projects: Lodi Energy Center

AGENDA CATEGORY: Consent

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

IMPACTED MEMBERS:		
All Members	<input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>
Alameda Municipal Power	<input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>
City of Biggs	<input checked="" type="checkbox"/>	City of Palo Alto <input type="checkbox"/>
City of Gridley	<input checked="" type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Healdsburg	<input checked="" type="checkbox"/>	City of Roseville <input type="checkbox"/>
		City of Santa Clara <input checked="" type="checkbox"/>
		City of Ukiah <input checked="" type="checkbox"/>
		Plumas-Sierra REC <input checked="" type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input checked="" type="checkbox"/>
	<i>If other, please specify</i>	City of Azusa; CDWR; MID; PWRPA

RECOMMENDATION:

Approval of Resolution 18-19 authorizing the General Manager or his designee to enter into a First Amendment to General Services Agreement with Industrial Air Flow Dynamics, Inc. for roof seal replacement services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$300,000 for use at the Lodi Energy Center facility.

BACKGROUND:

NCPA entered into a General Services Agreement with Industrial Air Flow Dynamics, Inc., effective March 2, 2018, for an amount not to exceed \$245,000. It has been determined that additional roof seals need to be replaced. This First Amendment will increase the not to exceed amount from \$245,000 to \$300,000. This Agreement will be for use at the Lodi Energy Center.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$300,000 to be used out of the NCPA Lodi Energy Center approved budget. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This vendor was selected as a result of Bidding done in accordance with NCPA's procurement policies and procedures. The RFP was sent to Dekomte de Temple, HRST, and Industrial Air Flow Dynamics. All three bidders responded with quotes. Dekomte de Temple is not registered with the CA DIR and HRST only supplied a quote for materials, not labor. It was determined that Industrial Air Flow Dynamics, Inc. should perform this work because they can provide the highest quality work and product to the Agency.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on March 12, 2018, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- General Services Agreement with Industrial Air Flow Dynamics, Inc.
- First Amendment to General Services Agreement with Industrial Air Flow Dynamics, Inc.

RESOLUTION 18-19

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A FIRST AMENDMENT TO GENERAL SERVICES AGREEMENT WITH
INDUSTRIAL AIR FLOW DYNAMICS, INC.**

(reference Staff Report #126:18)

WHEREAS, roof seal replacement related services are required at the Lodi Energy Center facility; and

WHEREAS, Industrial Air Flow Dynamics, Inc. is a provider of these services; and

WHEREAS, NCPA and Industrial Air Flow Dynamics, Inc. entered into a General Services Agreement effective March 2, 2018; and

WHEREAS, NCPA seeks to increase the not to exceed amount from \$245,000 to \$300,000; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a First Amendment to General Services Agreement with Industrial Air Flow Dynamics, Inc. with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$300,000 for roof seal replacement services for use at the Lodi Energy Center facility.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY



**GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
INDUSTRIAL AIR FLOW DYNAMICS, INC.**

[Single Task]

This 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 Industrial Air Flow Dynamics Inc, a corporation with its office located at 734 Hebron Avenue, Glastonbury, CT 06033 ("Contractor") (together sometimes referred to as the "Parties") as of March 3rd, 2018 ("Effective Date") in Roseville, California.

Section 1. SCOPE OF WORK. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to Agency the services and/or goods described in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work"), 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 Contractor completes the Work, or no later than May 31, 2018, 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 **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.

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED TWO HUNDRED FORTY FIVE THOUSAND** dollars (\$245,000.00) 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 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; and
- 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 written authorization from the Contract Administrator.
- 2.5 Timing for Submittal of Final Invoice.** Contractor shall have ninety (90) days after completion of its Work to submit its final invoice. 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 from Agency.
- 2.6 Liquidated Damages.** Contractor hereby agrees to initiate Work no later than April 3, 2018, and to diligently prosecute the same to completion within **nineteen (19)** consecutive calendar days commencing after the date of Agency's

authorization to proceed. Contractor shall complete its Work no later than April 22, 2018, except as adjusted by any subsequent change order. Time is of the essence in this Agreement.

This Agreement is being issued to Contractor in reliance upon the completion date set forth in the Agreement. Agency will hold the Contractor responsible and accountable for all damages suffered by Agency as a consequence of the Contractor's failure to meet the schedule dates, or to complete the work at the time specified herein.

It is agreed by the parties to this Agreement that if Contractor does not complete its Work in the time specified herein, plus any extensions granted by Agency in writing, damages will be sustained by Agency and it is and will be impractical and extremely difficult to ascertain the actual damages which Agency will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor shall pay to Agency the sums stipulated for delays in finishing its Work beyond the times of completion specified; and the Contractor agrees to pay these liquidated damages, and further agrees that Agency may deduct the amount thereof from any moneys due or that may become due the Contractor under this Agreement. If such moneys are insufficient, Contractor or its surety or sureties shall pay to Agency any deficiency within thirty (30) days of invoice submittal by Agency.

Liquidated damages in the amount of \$250.00 per day for each day of delay shall be imposed on Contractor.

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 \$1,000,000 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 \$1,000,000 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. Not Applicable.

4.4 All Policies Requirements.

4.4.1 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, 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. 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.

4.4.3 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 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. 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.

4.7 **Pollution Insurance.** Not Applicable.

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.

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.

5.3 **Transfer of Title.** Not Applicable.

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 the Maintenance Labor Agreement, which is applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E.

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.** This 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 be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

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 \$50.00 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 and Change Orders.** The Parties may amend this Agreement only by a writing signed by all the Parties. The Parties may agree to a change order, modifying the duration of the Agreement or the not-to-exceed compensation referenced in Section 2 hereof, by a writing signed by the Contractor and the Contract Administrator.

- 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, Contractors, 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 Agency's operations and the operations of 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. Agency will not 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. Agency may assume that anything left on the Project site an unreasonable length of time after the Work is completed has been abandoned. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall have no 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 Agency owned equipment and property provided by Agency 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 three (3) 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 Agency site programs.

- 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 to include diesel fuel used for trucks owned or leased by the Contractor.

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 Ken Speer, Assistant General Counsel, 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:

Industrial Air Flow Dynamics, Inc.
Attention: Jason Talbot, CFO
734 Hebron Avenue
Glastonbury, CT 06033

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:

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, and Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's Proposal, the Exhibits 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.

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

NORTHERN CALIFORNIA POWER AGENCY

Date 3/2/18



RANDY S. HOWARD,
General Manager

Attest:



Assistant Secretary of the Commission

Approved as to Form:



General Counsel

INDUSTRIAL AIR FLOW DYNAMICS, INC.

Date 2/14/18



JASON TALBOT,
Chief Financial Officer

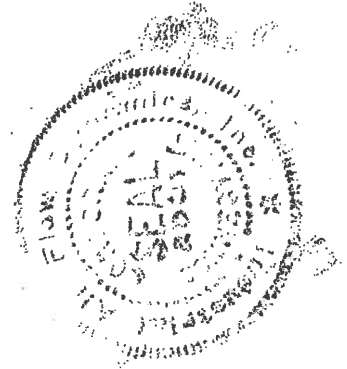


EXHIBIT A
SCOPE OF WORK

Industrial Air Flow Dynamics, Inc. ("Contractor") shall provide roof seal replacement services at the Lodi Energy Center facility as requested by the Northern California Power Agency ("Agency").

Agency will provide Lagging / Insulation Services and Scaffolding as needed.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$241,310.00 as set forth in Contractor's Quotation #18063CA dated January 23, 2018 and Quotation #18147CA dated February 22, 2018. Should additional services be requested by the Agency, the total amount expended under this Agreement shall not exceed the amount set forth in Section 2, Compensation, of this Agreement.

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, Jason Talbot CFO

(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
Industrial Air Flow Dynamics, Inc.

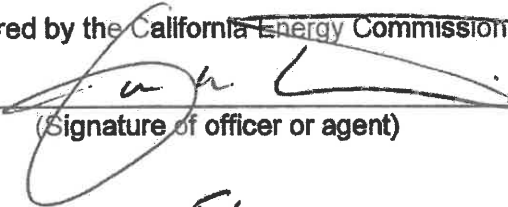
(Company name)

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 14 day of February, 20 18.

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.

NOT APPLICABLE

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.

NOT APPLICABLE

EXHIBIT E

MAINTENANCE LABOR AGREEMENT ATTACHMENT [LEC ONLY]

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

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 establishes 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)



**FIRST AMENDMENT TO GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND INDUSTRIAL AIR FLOW DYNAMICS,
INC.**

This First Amendment (“Amendment”) to General Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Industrial Air Flow Dynamics, Inc. (“Contractor”) (collectively referred to as “the Parties”) as of _____, 2018.

WHEREAS, the Parties entered into a General Services Agreement dated effective March 3, 2018, (the “Agreement”) for Contractor to provide roof seal replacement services at the Lodi Energy Center; and

WHEREAS, the Agency now desires to amend the Agreement to increase the total compensation authorized by the Agreement from a “NOT TO EXCEED” amount of \$245,000.00 to a ‘NOT TO EXCEED amount of \$300,000.00; and

WHEREAS, the Agency now desires to amend the Compensation Schedule and Hourly Fees set forth in Exhibit B to the Agreement; and

WHEREAS, the Parties have agreed to modify the Agreement as set forth above; and

WHEREAS, in accordance with Section 8.2 all changes to the Agreement must be in writing and signed by all the Parties; and

NOW, THEREFORE, the Parties agree as follows:

1. **Section 2—Compensation** of the Agreement is amended and restated to read as follows:

Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED THREE HUNDRED THOUSAND** dollars (\$300,000.00) 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.

The remainder of Section 2 of the Agreement is unchanged.

2. **Exhibit B – COMPENSATION SCHEDULE** is amended and restated to read in full as set forth in the Attached Exhibit B.
3. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

Date: _____

NORTHERN CALIFORNIA POWER AGENCY

RANDY S. HOWARD, General Manager

Date: _____

INDUSTRIAL AIR FLOW DYNAMICS, INC.

JASON TALBOT, Chief Financial Officer

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane Luckhardt, NCPA General Counsel

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$273,300.00 as set forth in Contractor's Revised Quotation #18063CA dated January 23, 2018. Should additional services be requested by the Agency, the total amount expended under this Agreement shall not exceed the amount set forth in Section 2, Compensation, of this Agreement.

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.



Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Nor-Cal Battery Company – Five Year Multi-Task General Services Agreement for battery maintenance services; Applicable to the following projects: All NCPA Facility Locations, Members, SCPPA, and SCPPA Members

AGENDA CATEGORY: Consent

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Approval of Resolution 18-20 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Nor-Cal Battery Company for battery maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$250,000 over five years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA Members.

BACKGROUND:

Battery maintenance services are required from time to time at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA Members.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not-to-exceed \$250,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has one additional agreement in place for similar services with American Power Systems. NCPA seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on February 28, 2018, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on March 12, 2018, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments:

- Resolution
- Multi-Task General Services Agreement with Nor-Cal Battery Company

RESOLUTION 18-20

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH NOR-CAL
BATTERY COMPANY**

(reference Staff Report #127:18)

WHEREAS, battery maintenance services are periodically required at facilities owned and/or operated by Northern California Power Agency (NCPA), its Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, Nor-Cal Battery Company is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with Nor-Cal Battery Company to provide such services as needed at all NCPA Generation facility locations, Member, SCPPA, and SCPPA Member facilities in an amount not to exceed \$250,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with Nor-Cal Battery Company with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$250,000 over five years for battery maintenance services for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
NOR-CAL BATTERY COMPANY**

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 Nor-Cal Battery Company, a C-corporation with its office located at 3432 Cherokee Road, Suite D, Stockton, CA 95205 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2018 ("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 TWO HUNDRED FIFTY THOUSAND** dollars (\$250,000.00) 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 \$1,000,000 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 \$1,000,000 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.** 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 (\$1,000,000.00) 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.
- 4.4 Pollution Insurance.** Not applicable.
- 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, Agency shall have the right to require Contractor to provide the certificates of insurance and/or 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.

- 4.6 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. 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.
- 4.7 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.
- 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 that 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 that 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 sole negligence, active negligence, or willful misconduct of the Agency.
- 5.3 Transfer of Title.** Not applicable.

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 be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

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 \$50.00 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 Ken Speer, 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:
- Nor-Cal Battery Company
Attention: Chuck Jeter
3432 Cherokee Road, Suite D
Stockton, CA 95205

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:

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

NOR-CAL BATTERY COMPANY

Date _____

Date _____

RANDY S. HOWARD,
 General Manager

RICKIE McROBERTS,
 Manager of Operations

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

EXHIBIT A

SCOPE OF WORK

Nor-Cal Battery Company ("Contractor") shall provide battery maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

Services to include, but not be limited to the following:

- Battery Testing - IEEE Capacity, Internal Resistance Capacity
- Battery Maintenance - Preventive, Basic, Extended, Customized
- Battery Installation
- Battery Monitoring - Central Office, Cell Sites, UPS, Remote, VRLA, Flooded
- Temporary Battery Systems - Hot Cuts, Rentals, Emergencies
- Engineering - Designs, Layouts, Material, Logistics
- Project Management – Installation and Multi-Site Scheduling
- Installation and Removal -Telecom, UPS, System Upgrades, Central Office, Cell Site, Substation, Remote Sites, Power Plants, Distribution, Batteries, Grounding, Cabling, Iron Work, Buss Work
- Site Audits - Power, Grounding, Infrastructure
- Spill Containment - Telecom, UPS, Utility, VRLA, Flooded
- Logistical Support - Labor, Material Procurement, Site Delivery, Warehousing
- Certified Battery Disposal - Removal and Recycling / Disposal of Lead Acid Batteries
- Training - System Design, Batteries, Power, Applications, Sizing, Safety, Maintenance

Contractor may provide services at all Project Site Locations.

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

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:

Normal Business Hours: \$105.00/hour
After Hours, Weekends & Holidays: \$155.00/hour

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, Rickie McRoberts, Manager of Operations

(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

Nor-Cal Battery Company
(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.

NOT APPLICABLE

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)



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Commission Staff Report

Date March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Public Works Agreement for the Geothermal Plant 2 Sulfur Platform Project;
Applicable to the following project: Geothermal Plant 2

AGENDA CATEGORY: Consent

FROM: Ken Speer <i>KS</i> Assistant General Manager	METHOD OF SELECTION: <i>Public Works Bid</i>
Division: Generation Services	<i>If other, please describe:</i>
Department: Geothermal	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>	City of Ukiah <input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input checked="" type="checkbox"/>
City of Biggs <input checked="" type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>	Other <input checked="" type="checkbox"/>
<i>If other, please specify</i>		
<hr/> TID <hr/>		

RECOMMENDATION:

Approval of Resolution 18-21 increasing the not to exceed amount for the Sulfur Platform Public Works Project at NCPA Geothermal Plant #2 from \$731,944 to \$803,910, to cover the increase in material and labor costs, and delegating authority to the General Manager to issue purchase orders and change orders for the updated not to exceed amount.

BACKGROUND:

On June 29, 2017, the NCPA Commission approved Resolution 17-54 to allow NCPA to enter into a Public Works Agreement with Brian Davis dba Northern Industrial Construction for the Geothermal Plant #2 Sulfur Platform Project (GEO338), with a bid of \$679,645.60 and an additional \$52,298.40 to cover possible change orders and contingencies, for a total project cost of not to exceed \$731,944.

This project was delayed due to CEC license requirements concerning the engineering drawings and specifications, coupled with the CEC finding a new Delegate Chief Building Official (DCBO) to oversee the project at hand.

These delays have affected the overall project costs for the contractor due to material and subcontractor price increases. These price increases are attributed to the limited supply of qualified contractors as a result of the extensive construction and rebuilding work in the surrounding areas impacted by last year's fires.

FISCAL IMPACT:

Total cost of the project is \$730,910.18, as specified in the contractor's revised pricing. Contingency funds of \$72,999.82 (approximately 10%) are further requested to cover possible change orders, for a revised total project cost not to exceed \$803,910. Purchase orders referencing the terms and conditions of the agreement will be issued consistent with NCPA procurement policies and procedures.

ENVIRONMENTAL ANALYSIS:

This activity is exempt from the California Environmental Quality act as a Class I Existing Facilities exemption (CEQA Regulation section 15301 (b), (c), (d) and (e)). A Notice of Exemption has been filed.

COMMITTEE REVIEW:

The resolution above was reviewed by the Facilities Committee on February 28, 2018, and was recommended for Commission approval on Consent Calendar.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy S. Howard".

RANDY S. HOWARD

General Manager

Attachments: (1)

- Resolution

RESOLUTION 18-21

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
PUBLIC WORKS AGREEMENT GEOTHERMAL PLANT 2 SULFUR PLATFORM PROJECT**

(reference Staff Report #128:18)

WHEREAS, the Northern California Power Agency (NCPA) operates and maintains the Geothermal Plant 2 on behalf of the project owners of the Geothermal Facilities; and

WHEREAS, on June 29, 2017, the NCPA Commission approved Resolution 17-54 allowing NCPA to enter into a public works agreement with Brian Davis dba Northern Industrial Construction with a bid amount of \$679,645.60; and

WHEREAS, project delays have resulted in materials and labor cost increases, and

WHEREAS, Brian Davis dba Northern Industrial Construction revised project cost for the public works Geothermal Plant 2 Sulfur Platform Project (GEO338) increased to \$730,910.18; and

WHEREAS, an additional \$72,999.82 is requested to cover possible change orders and contingencies, for a total project cost of not to exceed \$803,910; and

WHEREAS, this activity is exempt from the California Environmental Quality act as a Class I Existing Facilities exemption (CEQA Regulation section 15301 (b), (c), (d) and (e)). A Notice of Exemption has been filed; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency approves increasing the not to exceed amount for the Sulfur Platform Public Works Project (GEO338) to \$803,910 to cover increased materials and labor costs, and authorizes the General Manager to issue purchase orders and change orders for the updated not to exceed amount.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: T.A. Krause, Inc. dba T.A. Krause Construction and Custom Painting – Five Year Multi-Task General Services Agreement for preventive roofing and siding maintenance; Applicable to the following projects: All NCPA Facility Locations, Members, SCPPA, and SCPPA Members

AGENDA CATEGORY: Consent

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Geothermal	

IMPACTED MEMBERS:		
All Members	<input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>
Alameda Municipal Power	<input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Lompoc <input type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Healdsburg	<input type="checkbox"/>	City of Roseville <input type="checkbox"/>
		City of Santa Clara <input type="checkbox"/>
		Plumas-Sierra REC <input type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Approval of Resolution 18-22 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with T.A. Krause, Inc. dba T.A. Krause Construction and Custom Painting for preventive roofing and siding maintenance, including application of sealant, primer, and coating, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA Members.

BACKGROUND:

Preventive roofing and siding maintenance, including application of sealant, primer, and coating is required from time to time at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA Members.

FISCAL IMPACT:

This enabling agreement does not commit NCPA to any expenditure of funds. NCPA currently has in place other agreements with similar service providers, including Hug’s Painting, Inc. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on February 28, 2018, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on March 12, 2018, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments: (2)

- Resolution
- Multi-Task General Services Agreement with T.A. Krause, Inc. dba T.A. Krause Construction and Custom Painting

RESOLUTION 18-22

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH T.A. KRAUSE,
INC. DBA T.A. KRAUSE CONSTRUCTION AND CUSTOM PAINTING**

(reference Staff Report #129:18)

WHEREAS, preventive roofing and siding maintenance, including application of sealant, primer, and coating services are periodically required at the facilities owned and/or operated by Northern California Power Agency (NCPA), its Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, T.A. Krause, Inc. dba T.A. Krause Construction and Custom Painting is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with T.A. Krause, Inc. dba T.A. Krause Construction and Custom Painting to provide such services as needed at all NCPA Generation facility locations, Member, SCPPA, and SCPPA Member facilities in an amount not to exceed \$1,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with T.A. Krause, Inc. dba T.A. Krause Construction and Custom Painting with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for preventive roofing and siding maintenance for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
T.A. KRAUSE, INC. DBA T.A. KRAUSE CONSTRUCTION AND CUSTOM PAINTING**

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 T.A. Krause, Inc. dba T.A. Krause Construction and Custom Painting, a corporation with its office located at 1551 E. 8 Mile Road, Lodi, CA 95242 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2018 ("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 ONE MILLION** dollars (\$1,000,000) 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 \$1,000,000 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 \$1,000,000 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. Not Applicable

4.4 Pollution Insurance. Not Applicable

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, Agency shall have the right to require Contractor to provide the certificates of insurance and/or 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.

4.6 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. 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.

4.7 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.
- 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.

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 be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

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 \$50.00 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 Ken Speer, 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:

Troy A. Krause
Vice President
1551 E. 8 Mile Road
Lodi, CA 95242

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:

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

T.A. Krause, Inc. dba T.A. Krause
Construction and Custom Painting

Date _____

Date _____

RANDY S. HOWARD, General Manager

TROY A. KRAUSE, Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

T.A. Krause, Inc. dba T.A. Krause Construction and Custom Painting ("Contractor") shall provide preventive roofing and siding maintenance, including application of sealant, primer, and coating, as requested by Agency at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority ("SCPPA"), or SCPPA Members.

The Scope of Work under this Agreement does not include work that would qualify as a Public Project under the California Public Contract Code and guidelines established by the State of California.

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:

2018 Labor & Material Rates

Labor \$115.00 per man-hour

Materials Actual Cost plus 15% markup

Prices are subject to change with the giving of 30 days' advance written notice to Agency.

Pricing for services to be performed at NCPA Member or SCPA 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)



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Commission Staff Report

Date: March 13, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Insurance Reimbursements for Adit 4 Spoils Facility Repair and Beaver Creek Cleanout Projects.

AGENDA CATEGORY: Discussion/Action

FROM:	Ken Speer <i>KS</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Hydroelectric	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Ukiah <input checked="" type="checkbox"/>
Alameda Municipal Power <input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>	Plumas-Sierra REC <input checked="" type="checkbox"/>
Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Biggs <input checked="" type="checkbox"/>	City of Redding <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Gridley <input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>	Other <input type="checkbox"/>
City of Healdsburg <input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>	<i>If other, please specify.</i>

RECOMMENDATION:

Approval of Resolution 18-18, authorizing the General Manager to execute Proof of Loss forms for \$1,770,036 (gross) for the Beaver Creek Reservoir Storm Damage Claim and \$2,600,000 (gross) for the Adit 4 Landslide Claim to settle and close both claims at the NCPA Hydroelectric Project.

BACKGROUND:

Adit 4:

The Adit 4 Tunnel Spoils (Spoils) are located approximately 1 ½ miles up canyon from the Collierville Powerhouse in Calaveras County. The Spoils incurred water-related damage in December 2015 and required remediation to stabilize the facility and prevent further erosion to Clark Creek. The Project was effectively completed in February 2018.

NCPA operates the North Fork Stanislaus Hydroelectric Project (FERC Project No. 2409), which was constructed from 1986 to 1989. One of the project features is an 8.5 mile long pressurized water conveyance tunnel between the McKays Point Diversion Dam and the Collierville Power House. The tunnel has two (2) access adits. At one of these adits (Adit No. 4), tunnel rock cuttings Spoils were permanently stockpiled immediately below in a natural drainage in compliance with the Revised Spoils Disposal Plan dated April 1987 under a Right-of-Way Grant (CA 8281) from the United States Department of the Interior, Bureau of Land Management.

Beaver Creek:

Beaver Creek Diversion provides water diversion to McKays Point Reservoir and ultimately generation at the Collierville powerhouse, resulting in an average annual gross generation amount of approximately \$1.6M. The January 2017- February 2017 storms deposited massive amounts of silt/debris and forced the facility off-line. Water diversion re-started in November 2017 after debris removal was completed.

ENVIRONMENTAL ANALYSIS:

There are no environmental aspects related to the insurance reimbursement claims.

FISCAL IMPACT:

Adit 4:

In 2016, the Insurer originally determined that the Adit 4 Spoils Facility was not a named facility under the insurance policy. However, after staff met with the underwriters and presented a case for coverage, the underwriters reversed their position and determined that the Adit 4 Spoils Facility was a covered asset within the Collierville Power Tunnel Complex. Initial proposed reimbursement values were significantly less than those eventually reached and presented herein. Staff subsequently submitted a targeted

supplemental engineering analysis, which supported the case for greater reimbursement, resulting in a final uplift in the reimbursement.

On February 28, 2018, NCPA staff and the Hydroelectric Project Insurance Underwriters (Insurer) reached a negotiated tentative reimbursement settlement of \$2.6M of the total Commission authorized cost of \$3.25M. The total net reimbursement, minus the \$500,000 deductible, is \$2.1M. The policy exclusions applied were:

- Maintenance and betterment related work
- Salaried NCPA staff time

Staff believes that the proposed reimbursement is reasonable based upon maintenance/betterment policy exclusions in conjunction both with extensive interaction with Insurer, since early 2016, and their multiple/extensive increases in proposed reimbursements

Staff recommends the settlement for the following reasons:

- The amount is reasonable based upon already anticipated maintenance and betterment exclusions
- This is the most that could reasonably be expected based upon the extensive increases in proposed reimbursement by the Insurer
- Further negotiations could potentially have negative impacts
- Further negotiations will extend the reimbursement timelines

Beaver Creek:

From January 2017-February 2017, flooding filled Beaver Creek Reservoir with over 11,000 cubic yards of sediment and debris that forced the Beaver Creek Diversion off-line until removal could be accomplished. NCPA was able to piggyback the baseline emergency project and remove an additional 5,000 cubic yards of pre-2017 storm deposits. Adding this work to the Project minimized the extraction cost by amending the emergency dredging permits and leveraging the already mobilized contractor. The total Project costs came in at \$2,200,641. On February 28, 2018, NCPA staff and the Insurers reached a negotiated tentative reimbursement settlement amount of \$1,770,036. The total net reimbursement, minus the \$500,000 deductible, is \$1,270,036. The policy exclusions applied were:

- Debris removal for debris deposited prior to the 2017 storm
- Salaried NCPA staff time

Staff believes that the proposed reimbursement is straightforward and reasonable.

Staff anticipates that a significant portion of the \$500,000 deductible will be reimbursed by Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (OES). The best-case FEMA/OES reimbursement rate would be at 94%.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on March 13, 2018, and was recommended for Commission approval as a Discussion/Action Item.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachment (1):

- Resolution

RESOLUTION 18-18

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
AUTHORIZING THE GENERAL MANAGER TO EXECUTE PROOF OF LOSS FORMS FOR
THE BEAVER CREEK RESERVOIR STORM DAMAGE AND ADIT 4 LANDSLIDE INSURANCE
CLAIMS**

(reference Staff Report #125:18)

WHEREAS, the Northern California Power Agency (NCPA) operates and maintains on behalf of the project owners Hydroelectric Facilities; and

WHEREAS, the Hydroelectric Facilities incurred substantial storm damage at the Adit 4 Spoils and Beaver Creek Diversion Reservoir Facilities, and

WHEREAS, the design and public construction bidding for the repairs are effectively complete; and

WHEREAS, Insurance Claims were filed seeking reimbursement for repair costs at both Facilities; and

WHEREAS, NCPA Staff has been in discussion and negotiation with the Insurance Adjuster and Underwriters, regarding the substantial storm damage at the Adit 4 Spoils and Beaver Creek Diversion Reservoir Facilities; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorize the General Manager to execute Proof of Loss forms for \$1,770,036 (gross) for the Beaver Creek Reservoir Storm Damage Claim and \$2,600,000 (gross) for the Adit 4 Landslide Claim to settle and close both claims.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST: CARY A. PADGETT
ASSISTANT SECRETARY




Commission Staff Report

March 15, 2018

COMMISSION MEETING DATE: March 22, 2018

SUBJECT: Provision of Services to San Jose Clean Energy

AGENDA CATEGORY: Discussion/Action

FROM:	David Dockham 	METHOD OF SELECTION:
	AGM, Power Management	N/A
Division:	Power Management	<i>If other, please describe:</i>
Department:	Industry Restructuring	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

NCPA staff recommends that the Commission approve the Services Agreement with San Jose Clean Energy, under which NCPA will supply certain scheduling and portfolio management services to San Jose Clean Energy, including any non-substantive modifications to the Services Agreement approved by NCPA's General Counsel. NCPA staff also recommends that the Commission authorize NCPA's General Manager, or the General Manager's designee, to execute the Services Agreement on behalf of NCPA.

BACKGROUND:

The City of San Jose, a municipal corporation, has formed a community choice aggregation program named San Jose Clean Energy (SJCE). SJCE contacted Northern California Power Agency (NCPA) expressing an interest in receiving a variety of wholesale energy services from NCPA. In response to SJCE's expressed interest, NCPA submitted an offer to supply a variety of wholesale energy services to SJCE. Upon review of NCPA's offer to provide services, SJCE has expressed an interest in entering into a services agreement pursuant to which NCPA may supply services to SJCE.

DISCUSSION:

NCPA staff, in coordination with SJCE, has developed a Services Agreement under which NCPA may supply certain scheduling and portfolio management services to SJCE. The key provisions contained in the Services Agreement include: (i) a defined scope of services, terms for compensation, language to limit and protect NCPA's liability, various collateral and security requirements, and an initial term of two (2) years. The scope of services includes: scheduling services, control center services, and portfolio management and optimization services. The Services Agreement also enables NCPA to act as SJCE's Scheduling Coordinator during a defined period of time, during which time SJCE will work to register and establish its own Scheduling Coordinator. At the point SJCE has completed its Scheduling Coordinator registration process, the content of SJCE's power portfolio then currently being scheduled by NCPA will be transferred to the SJCE Scheduling Coordinator, and if such is not completed by March 31, 2019, NCPA retains the right to terminate the Services Agreement.

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

FISCAL IMPACT:

In consideration for NCPA's provision of services, for the first one (1) year period in which NCPA is supplying services to SJCE, SJCE shall pay NCPA an amount equal to Twenty Five Thousand Dollars (\$25,000) per month during the period of September 1, 2018 through the date on which SJCE implements Phase 2 of its program, and Fifty Two Thousand Five Hundred Dollars (\$52,500) per month for the period beginning on the date SJCE implements Phase 2 of its program through August 31, 2019. For each subsequent one (1) year period of the term of this Agreement, SJCE shall pay NCPA an amount equal to the sum of the annual amount charged to SJCE during the prior year escalated at a rate of two percent (2%) per year; provided, however, for the one (1) year period immediately following the first one (1) year period, the amount of compensation used to perform the calculation described herein shall be

\$630,000.00. Such annual amounts shall be billed to SJCE in twelve (12) equal monthly installments.

In addition to the primary scope of services NCPA shall supply to SJCE, NCPA may also provide certain Supplemental Services to SJCE, as described in the Services Agreement. In consideration for all Supplemental Services, SJCE shall compensate NCPA on a time and materials basis, in accordance with the applicable supplemental services wage schedule contained in the Services Agreement.

NCPA's administrative costs for development of the Services Agreement with SJCE will be allocated to members in accordance with approved cost allocation methodologies as described in the NCPA annual budget.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation provided herein was reviewed by the Facilities Committee on March 13, 2018 and March 16, 2018. No formal action was taken due to the lack of a quorum, but the Facilities Committee representatives present at the meetings voiced their support for the recommendation provided herein and no other meeting attendees had any objections.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments: 2

- Resolution #18-23
- Services Agreement between Northern California Power Agency and San Jose Clean Energy

RESOLUTION 18-23

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY PROVISION OF SERVICES TO SAN JOSE CLEAN ENERGY

(reference Staff Report #132:18)

WHEREAS, the City of San Jose, a municipal corporation, has formed a community choice aggregation program named San Jose Clean Energy (SJCE); and

WHEREAS, SJCE contacted Northern California Power Agency (NCPA) expressing an interest in receiving a variety of wholesale energy services from NCPA, and in response to SJCE's expressed interest, NCPA submitted an offer to supply a variety of wholesale energy services to SJCE; and

WHEREAS, upon review of NCPA's offer to provide services, SJCE has expressed an interest in entering into a services agreement pursuant to which NCPA may supply services to SJCE; and

WHEREAS, NCPA staff, in coordination with SJCE, has developed a Services Agreement under which NCPA may supply certain scheduling and portfolio management services to SJCE; and

WHEREAS, the key provisions contained in the Services Agreement include: (i) a defined scope of services, terms for compensation, language to limit and protect NCPA's liability, various collateral and security requirements, and an initial term of two (2) years; and

WHEREAS, the Services Agreement also enables NCPA to act as SJCE's Scheduling Coordinator during a defined period of time, during which time SJCE will work to register and establish its own Scheduling Coordinator, and at the point SJCE has completed its Scheduling Coordinator registration process, the content of SJCE's power portfolio then currently being scheduled by NCPA will be transferred to the SJCE Scheduling Coordinator, and if such is not completed by March 31, 2019, NCPA retains the right to terminate the Services Agreement; and

WHEREAS, in consideration for NCPA's provision of services, for the first one (1) year period in which NCPA is supplying services to SJCE, SJCE shall pay NCPA an amount equal to Twenty Five Thousand Dollars (\$25,000) per month during the period of September 1, 2018 through the date on which SJCE implements Phase 2 of its program, and Fifty Two Thousand Five Hundred Dollars (\$52,500) per month for the period beginning on the date SJCE implements Phase 2 of its program through August 31, 2019; and

WHEREAS, for each subsequent one (1) year period of the term of this Agreement, SJCE shall pay NCPA an amount equal to the sum of the annual amount charged to SJCE during the prior year escalated at a rate of two percent (2%) per year; provided, however, for the one (1) year period immediately following the first one (1) year period, the amount of compensation used to perform the calculation described herein shall be \$630,000.00. Such annual amounts shall be billed to SJCE in twelve (12) equal monthly installments; and

WHEREAS, in addition to the primary scope of services NCPA shall supply to SJCE, NCPA may also provide certain Supplemental Services to SJCE, as described in the Services Agreement, and in consideration for all Supplemental Services, SJCE shall compensate NCPA on a time and materials basis, in accordance with the applicable supplemental services wage schedule contained in the Services Agreement; and

WHEREAS, NCPA's administrative costs for development of the Services Agreement with SJCE will be allocated to members in accordance with approved cost allocation methodologies as described in the NCPA annual budget; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency adopts and approves the Services Agreement with San Jose Clean Energy, under which NCPA will supply certain scheduling and portfolio management services to San Jose Clean Energy, including any non-substantive modifications to the Services Agreement approved by NCPA's General Counsel. The Commission of the Northern California Power Agency further authorizes NCPA's General Manager, or the General Manager's designee, to execute the Services Agreement on behalf of NCPA.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2018 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY

SERVICES AGREEMENT
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
SAN JOSE CLEAN ENERGY

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This SERVICES AGREEMENT (“Agreement”) is made by and between the Northern California Power Agency, a joint powers agency of the State of California (“NCPA”), and the City of San Jose, a municipal corporation, (“Customer”) for the purposes of providing certain wholesale energy services to San Jose Clean Energy. NCPA and Customer are together sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

This Agreement is made as of _____, 20__ (the “Effective Date”).

Section 1. RECITALS

This Agreement is entered into based on the following facts, among others:

1.1 NCPA has heretofore been duly established as a joint powers 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.

1.2 Customer has chosen to aggregate the electric load for San Jose residents and businesses through a community choice aggregation program, which has been named San Jose Clean Energy (“SJCE”).

1.3 NCPA is a certified Scheduling Coordinator in accordance with the CAISO Tariff.

1.4 NCPA has established facilities, staff and the capability for the provision of Services to Customer.

1.5 Customer desires NCPA to provide Services to Customer.

1.6 NCPA is willing to provide Customer with Services pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the amount and sufficiency of which are hereby acknowledged, NCPA and Customer agree as follows:

Section 2. DEFINITIONS

2.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms will have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 2 of this Agreement will have the meaning indicated in Appendix A Master Definition Supplement of the CAISO Tariff:

2.1.1 “Agreement” means this Services Agreement, including all Appendices, attached hereto.

2.1.2 “Balance of Month Transaction” means a purchase or sale of electric energy, capacity and/or other related attribute for a term not greater than one calendar month to be performed or delivered within the current or next succeeding calendar month.

2.1.3 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and close at 5:00 p.m. local time.

2.1.4 “Calendar Day” means all days, including Saturdays, Sundays or Federal Reserve Bank holidays.

2.1.5 “California Independent System Operator Corporation” or “CAISO” means the non-profit public benefit corporation responsible for the provision of fair and open transmission access, and maintaining reliable and efficient operation of that portion of the electric grid contained within its defined balancing authority area, pursuant to the California Public Utilities Code, or its successor entity.

2.1.6 “CAISO Tariff” means the CAISO FERC Electric Tariff.

2.1.7 “Commission” means the NCPA Commission established by the Joint Powers Agreement.

2.1.8 “Customer” has the meaning set forth in the preamble hereto.

2.1.9 “Director” means the City of San Jose’s Director of Community Energy or his/her designee, which designation may be withdrawn or amended from time to time.

2.1.10 "Effective Date" has the meaning set forth in the preamble hereto.

2.1.11 "Electric System" means all properties and assets, real and personal, tangible and intangible, of the Customer now or hereafter existing, used or pertaining to the generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Customer is not the sole owner of an asset or property or to the extent that an asset or property is used in part for generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, only the Customer's ownership interest in such asset or property or only the part of the asset or property used for electric purposes will be considered to be part of its Electric System.

2.1.12 "Event of Default" has the meaning set forth in Section 10.1 of this Agreement.

2.1.13 "FERC" means the Federal Energy Regulatory Commission, or its regulatory successor.

2.1.14 "General Manager" means the General Manager of NCPA.

2.1.15 "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry within the United States of America during the relevant time period, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with NERC or WECC approved business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the electric utility industry within the United States of America.

2.1.16 "Joint Powers Agreement" means the Amended and Restated Northern California Power Agency Joint Exercise of Powers Agreement dated as of January 31, 2008.

2.1.17 "Material Adverse Effect" means an error, penalty, unexpected charge, event, circumstance or condition with a detrimental cost of One Hundred Thousand Dollars (\$100,000.00) or more to Customer that is not due to Uncontrolled Forces.

2.1.18 "Member" means any member of NCPA or associate member of NCPA who is a signatory to the Joint Powers Agreement.

2.1.19 "NCPA" has the meaning set forth in the preamble hereto.

2.1.20 "NERC" means the North American Electric Reliability Corporation, or its successor.

2.1.21 "Operating Entity" means an entity that determines the use of and coordinates scheduling of their load, resources, imports and exports, trades, ancillary services or other CAISO products, in accordance with established scheduling requirements, including those requirements determined by NCPA.

2.1.22 "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.

2.1.23 "Phase 1" means the period of time Customer will commence providing service to customers within its service area, where such customers will primarily consist of the City of San Jose municipal accounts, as further described in Customer's Community Choice Aggregation Implementation Plan and Statement of Intent dated August 17, 2017.

2.1.24 "Phase 2" means the period of time Customer will commence providing services to additional customers within its service area, where such customers will include Phase 1 customers and additional customers, including, but not limited to, residential and small commercial customers, as further described in Customer's Community Choice Aggregation Implementation Plan and Statement of Intent dated August 17, 2017.

2.1.25 "Records" shall have the meaning set forth in Section 8.6 of this Agreement.

2.1.26 “Reliability Standards” means requirements approved by FERC under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system.

2.1.27 “Scheduling Agent” means an entity authorized to act as agent on behalf of a Scheduling Coordinator, and that performs certain Scheduling Coordinator duties and requirements on behalf of a Scheduling Coordinator.

2.1.28 “Scheduling Coordinator” means an entity certified by the CAISO for the purposes of undertaking the functions of a Scheduling Coordinator specified in the CAISO Tariff, including, but not limited to, submitting and settling bids, self-schedules, and trades in the CAISO markets.

2.1.29 “Security Account” means an account established at NCPA pursuant to this Agreement. The Security Account is established to: (1) make timely payments to the CAISO under the CAISO Tariff, (2) provide working capital for NCPA’s provision of Services and to bridge timing differences between the receipt of payments from Customer and the date payments are due to the CAISO, (3) satisfy CAISO security deposit requirements, if any, and (4) protect NCPA from potential Customer default by providing funds and time to cure.

2.1.30 “Services” have the meaning as set forth in Section 4.1 of this Agreement.

2.1.31 “Significant Operational Change” has the meaning as set forth in Section 15.18 of this Agreement.

2.1.32 “Significant Regulatory Change” has the meaning as set forth in Section 15.18 of this Agreement.

2.1.33 “Services Fee” means the amount Customer shall pay NCPA, as set forth in Section 7.1 of this Agreement, in consideration for NCPA’s provision of all Services, other than Supplemental Services, to Customer, in accordance with the terms and conditions of this Agreement.

2.1.34 “Supplemental Services” shall have the meaning as set forth in Appendix A of this Agreement.

2.1.35 "Third Party" means an entity that is not a Party to this Agreement.

2.1.36 "Uncontrollable Forces" means storm, flood, lightning, earthquake, tsunami, fire, explosion, failure of facilities not due to lack of proper care or maintenance, civil disturbance, industry wide labor dispute, sabotage, war, national emergency, restraint by court or public authority, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or other causes beyond the control of the affected Party which such Party could not reasonably have been expected to avoid by exercise of Good Utility Practice, due diligence and foresight.

2.1.37 "WECC" means the Western Electricity Coordinating Council, or its successor(s).

2.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," "Appendix", "Schedule", or "Exhibit" means a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law, regulation or ordinance are references to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended from time to time, or its successor. A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. A reference to a "day" means a Calendar Day unless otherwise specified. The singular includes the plural and the masculine includes the feminine, and vice versa.

Section 3. PURPOSE OF AGREEMENT

The purpose of this Agreement is to set forth the terms and conditions under which NCPA will supply Customer with Services.

Section 4. SERVICES TO BE PROVIDED AND STANDARDS OF PERFORMANCE

4.1 NCPA Duties. The duties of NCPA under this Agreement are to provide services to Customer as fully described in Appendix A hereto (“Services”).

4.2 Customer Duties. The duties of the Customer under this Agreement are to:

4.2.1 Timely provide certain information to NCPA that is required for NCPA to perform Services, as fully described in Appendix A hereto.

4.2.2 Make timely payments to NCPA for all CAISO charges and credits for services invoiced by NCPA to Customer in accordance with Section 8 of this Agreement.

4.2.3 Provide staff and other assistance as may be required from time to time to the extent necessary for NCPA to fulfill its duties as described in Section 4.1 of this Agreement.

4.2.4 Comply with all requirements of the CAISO Tariff, as applicable, with respect to the operation and maintenance of its Electric System and other facilities covered under this Agreement.

4.2.5 Provide security or other deposits required by the CAISO, if any, to NCPA in accordance with Section 11 of this Agreement.

4.2.6 Initially fund and maintain sufficient deposits in its Security Account in accordance with Section 12 of this Agreement.

4.2.7 Make timely payment of all costs associated with NCPA’s provision of Services, as set forth in this Agreement.

4.2.8 Defend and indemnify NCPA in regard to Services provided to Customer by NCPA.

4.2.9 Customer shall register as a Scheduling Coordinator and establish a Scheduling Coordinator account (commonly referred to as “SCID”) to which the content of Customer’s portfolio (including, but not limited to, loads, generation, trades, and/or other scheduled CAISO products) shall be transferred and/or migrated on or prior to March 31,

2019, whereby upon completing such transfer and/or migration Customer shall act as its own Scheduling Coordinator, and shall assign certain scheduling and settlement duties and responsibilities to NCPA, acting as Customer's Scheduling Agent.

4.3 Standard of Performance. NCPA will perform Services using the level of skill and attention reasonably required to complete the Services in a competent and timely manner, in accordance with Good Utility Practices. NCPA shall perform all Services in accordance with the CAISO Tariff, and in accordance with the rules and requirements as may be adopted, approved and enforced by the California Energy Commission and the California Public Utilities Commission, as such rules and requirements may be applicable to the Services provided hereunder.

4.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement.

4.5 Time. NCPA shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 4.3, and to satisfy NCPA's obligations hereunder.

Section 5. TERM AND TERMINATION

5.1 Term. The initial term of this Agreement will begin on the Effective Date and will continue uninterrupted through August 31, 2020 (the "Initial Term"). At the end of the initial term of this Agreement, or any subsequent term of this Agreement, the term of this Agreement may be extended by Customer for an additional two (2) year period, or an alternative period of time as agreed to by the Parties, unless a Party provides written Notice of Termination pursuant to Section 5.2, of its election not to extend the term of the Agreement.

5.2 Termination. This Agreement may be terminated by Customer on or subsequent to the first anniversary of service by providing written notice to NCPA at least ninety (90) Calendar Days prior to the date on which service under this Agreement shall be terminated. For the purpose of clarity, the first anniversary of service provided under this agreement shall be August 31, 2019. This Agreement may be terminated by NCPA at the end of the Initial Term, or at the end of any subsequent term, by providing written notice to Customer at least one

hundred and eighty (180) Calendar Days prior to the end of the current term of the Agreement. A written notice of termination (“Notice of Termination”) provided by either Party shall be provided to the other Party in accordance with Section 15.10 of this Agreement. Upon termination of this Agreement, NCPA shall return all Records to Customer within a reasonable period of time, and without any additional costs.

5.3 No Effect on Prior Liabilities. Termination of this Agreement will not terminate any ongoing or un-discharged liabilities, credits or obligations of the Parties, including any contingent liabilities, credits or obligations, resulting from this Agreement until they are satisfied in full, or for which the Parties have provided a mechanism acceptable to the other Party, for the satisfaction in full thereof.

Section 6. INDEMNITY

6.1 Limitation of Liability. Neither NCPA nor Customer shall at any time be liable for any injury or damage occurring to the other, or any third person or property, from any cause whatsoever arising out of this Agreement. Each Party agrees to indemnify, defend and hold harmless the other Party, including their respective governing boards, officials, agents and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys’ fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Party, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

6.2 Notice. The Parties agree to give each other prompt notice of the making of any claim or the commencement of any action, suit or proceeding covered by the provisions of this Section 6.

6.3 Notice of Tender. Each Party will provide the other Party prompt notice of any claim or liability that would trigger the obligation to indemnify and defend the other Party under Section 6.1. Any such notice must be in writing and delivered consistent with the notice provisions in Section 15.10.

Section 7. COMPENSATION

7.1 Compensation for Services. Customer shall pay NCPA the amounts set forth in Appendix B for NCPA's provision of Services to Customer in accordance with the terms and conditions of this Agreement. Such amount shall be billed to Customer in accordance with Section 8 of this Agreement.

7.2 CAISO Charges and Credits. All charges and credits invoiced by the CAISO to NCPA associated with Services provided under this Agreement will be charged or credited to Customer, without markup or deduction, and shall be paid to NCPA by Customer in addition to the compensation stated in Section 7.1. Such CAISO charges and credits will be billed to Customer in accordance with Section 8 of this Agreement.

Section 8. BILLING AND PAYMENT

8.1 Invoices. NCPA will issue a monthly invoice to Customer for estimated and actual CAISO charges and credits, costs associated with NCPA's provision of Services, and all other costs for Services (e.g., power supply costs) with no markup provided in accordance with this Agreement. Such invoices will be made pursuant to the requirements and procedures provided for in this Agreement. At NCPA's discretion, invoices may be issued to Customer using electronic media or physical distribution.

8.2 Payment of Invoices. All non-emergency invoices delivered by NCPA to Customer are due and payable forty-five (45) 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 next following Business Day. NCPA may apply Customer's Security Account to the payment of all or any portion of an invoice to Customer, provided that application of such funds from the Security Account will not relieve Customer from any late payment charges pursuant to Section 8.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by Customer, NCPA shall deposit

the relevant portion of the payment into the Security Account and credit such deposit to Customer. Emergency invoices delivered by NCPA shall be due and payable on the date indicated on such invoice, or as indicated in Section 12.5.

8.3 Late Payments. Any amount due and not paid by Customer in accordance with Sections 8.2, Section 11 and Section 12 will be considered late and will 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 N.A. then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

8.4 Billing Disputes. Customer 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 of the date of such invoice; nonetheless Customer agrees to pay the full amount billed when due for all costs other than amounts invoiced for the Services Fee, and Customer agrees to pay the full undisputed amount billed when due for the Services Fee. If Customer does not timely question or dispute the accuracy of any invoice in writing, or if NCPA does not identify a discrepancy in the invoice that requires a correction, the invoice will be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, NCPA will issue a corrected invoice and refund any amounts that may be due to Customer. If NCPA and Customer fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after Customer has disputed it, the General Manager will promptly submit the dispute to the Commission for resolution. If the Commission and Customer fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days of its submission to the Commission, the dispute may then be resolved under the dispute resolution procedures set forth in Section 13 of this Agreement. Provided, however, that prior to resorting to alternative dispute resolution procedures, the full amount of the disputed invoice for all costs other than amounts invoiced for the Services Fee must have been paid.

8.5 Billing/Settlement Data. NCPA must make billing and settlement data available to Customer as part of all invoices delivered by NCPA, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Customer 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 NCPA Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require Customer to execute a reasonable non-disclosure agreement prior to providing access to the NCPA electronic data portal for the purpose of protecting confidential information, consistent with the provisions contained in Section 15.1 of this Agreement.

8.6 Examination of Books and Records.

All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files or other documents or material, in electronic or any other form (collectively "Records"), that NCPA prepares or obtains pursuant to this Agreement and that relate to the Services provided hereunder, shall be stored and maintained by NCPA in accordance with NCPA's records retention policies and procedures, as such may be modified from time to time; provided that NCPA shall retain the records relating to this Agreement for a minimum of three (3) years from the date of Customer's final payment to NCPA under this Agreement, or for any longer period required by law.

At any time during the term of this Agreement, or during the period of time that NCPA is required to retain Records under this Agreement, as set forth in Section 8.6, Customer may request, in writing, production of all or a portion of the Records. NCPA shall produce the Records within a reasonable amount of time at no additional cost to Customer.

Section 9. 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 the other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

Section 10. DEFAULTS

10.1 Events of Default. An Event of Default under this Agreement exists upon the occurrence of any one or more of the following by a Party (the “Defaulting Party”):

(i) the failure of Customer to make any payment (other than an emergency addition to the Security Account pursuant to Section 12.5) 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 Customer to make any payment of an emergency addition to the Security Account when due pursuant to Section 12.5;

(iii) the failure of a Party to perform any covenant or obligation of this Agreement, including the requirements of each Party set forth in Section 4, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from the other Party demanding cure. Provided, that this subsection shall not apply to any failure to make payments specified by subsection 10.1 (i) or (ii);

(iv) if any representation or warranty of a Party material to the Services provided hereunder shall prove to have been incorrect in any material respect when made and the Party 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 a Party demanding cure; or

(v) the occurrence of at least two (2) events that constitute a Material Adverse Effect.

10.2 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, or in the case of Customer, to the representative selected by Customer, using telephone communication within one (1)

Business Day of the onset of the Uncontrollable Force, and subsequently provide written notice to the Party's representative within ten (10) Business Days of 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.

10.3 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 10.1 above, as may be applicable.

10.4 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 10.1, 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 a non-defaulting Party may have against the defaulting Party, a non-defaulting Party may take any or all of the following actions:

(i) NCPA may suspend the provision of Services under this Agreement to Customer;

(ii) NCPA may demand that Customer provide further assurances to guarantee the correction of the default;

(iii) The non-defaulting Party may terminate this Agreement as to the defaulting Party, on ten (10) Calendar Days prior written notice to the Defaulting Party; or

(iv) NCPA may utilize the funds available in Customer's Security Account to cure and default under Section 10.1(i) and thereafter demand replenishment of the Security Account.

10.5 Special Covenants Regarding Security Account. In the event that Customer's Security Account is insufficient to cover all invoices for costs incurred under this Agreement delivered to Customer, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, Customer agrees to cooperate in good faith with NCPA and will work to cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary to replenish its Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default with all due haste.

10.6 Effect of Termination or Suspension.

10.6.1 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.

10.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA in accordance with Section 10.4 (i), Customer shall pay all reasonable and necessary costs incurred by NCPA as a result of such suspension.

10.6.3 Termination. If this Agreement is terminated by a Party in accordance with Section 10.4 (iii), the Defaulting Party shall pay all reasonable and necessary costs incurred by the other Party as a result of such termination.

Section 11. CAISO SECURITY DEPOSIT AND CREDIT REQUIREMENTS

Any credit requirements, including, but not limited to, security, collateral, unsecured credit, or other deposits required by the CAISO, shall be provided by Customer prior to NCPA providing Services under this Agreement, and shall be maintained as may be required thereafter pursuant to the CAISO Tariff. Failure to maintain sufficient credit, security, collateral, unsecured credit, or other deposits may impact NCPA's ability to perform certain Services under this agreement. NCPA shall maintain a detailed accounting of Customer's credit, security, collateral, unsecured credit or other deposits. Any changes in credit, security, unsecured credit or other deposits required by the CAISO Tariff may be provided by NCPA from

Customer's Security Account, and NCPA shall invoice Customer within two (2) Business Days for such required amounts, and will use the funds collected from Customer to fund the Security Account.

Section 12. SECURITY ACCOUNT

Any Customer deposits into the Security Account pursuant to this Agreement must be separate from and in addition to any security accounts maintained pursuant to any other agreements between NCPA and the Customer, NCPA and any Third Person, or any other such security account required of Customer.

12.1 Applicability. The requirement for Customer to initially deposit and maintain a Security Account pursuant to Section 12.2 and Section 12.3 is only applicable if NCPA, acting for or on behalf of Customer, is directly responsible for making payments to the CAISO and processing charges and credits invoiced by the CAISO to NCPA, associated with Services provided under this Agreement, including all charges and credits associated with security deposits as may be required pursuant to the CAISO Tariff. For the purpose of clarity, when NCPA provides Services as Customer's Scheduling Coordinator, Section 12.2 and Section 12.3 shall apply; provided, however, when NCPA provides Services as Customer's Scheduling Agent, Customer shall not be required to initially deposit and maintain a Security Account pursuant to Section 12.2 and Section 12.3 if Customer retains the direct responsibility for making payments to the CAISO and processing charges and credits invoiced by the CAISO to Customer, associated with Services provided under this Agreement, including all charges and credits associated with security deposits as may be required pursuant to the CAISO Tariff.

12.2 Initial Amounts. Prior to NCPA providing Services, Customer must deposit into a Security Account held by NCPA an amount equal to the highest three (3) months of estimated CAISO invoices (including, but not limited to, costs such as energy costs, Grid Management Charge fees, operating reserves costs, and regulation capacity costs) for the succeeding twelve (12) months; provided, however, that such deposit may be satisfied in whole or in part either in cash or through a clean, irrevocable letter of credit satisfactory to the General Manager. NCPA must maintain a detailed accounting of Customer's deposit in the Security Account. For the

purpose of clarity, the estimated CAISO invoice amount, as referred to herein, must be equal to Customer's Estimated Aggregate Liability (EAL).

12.3 Subsequent Deposits. Periodically, and at least quarterly, NCPA will review and revise its estimate of all costs Customer will be obligated to pay under this Agreement. Following such review, NCPA shall determine whether Customer has a sufficient balance in the Security Account. To the extent that Customer's balance in the Security Account is greater than one hundred and ten percent (110%) of the amount required by Section 12.2, NCPA will credit such amount as soon as practicable to Customer's next monthly invoice. To the extent that Customer's balance in the Security Account is less than ninety percent (90%) of the amount required by Section 12.2, NCPA shall add such amount as soon as practicable to Customer's next monthly invoice, or as necessary, to a special invoice to Customer. Credits or additions shall not be made if Customer satisfies these Security Account requirements in whole through the use of a letter of credit, provided that the amount of the letter of credit is adjusted by Customer as necessary in a like manner to assure an amount equal to the highest three (3) months of CAISO invoices is available to NCPA.

12.4 Use of Security Account Funds.

12.4.1 NCPA may use any and all funds deposited into the Security Account (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder, irrespective of whether NCPA has issued an invoice for such costs to Customer or whether Customer has made timely payments of invoices. Should Customer satisfy its Security Account requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy obligations hereunder.

12.4.2 If funds deposited into the Security Account, or provided through a letter of credit, are used by NCPA to pay any costs it incurs hereunder, NCPA, pursuant to Section 8.5, will maintain a detailed accounting of Customer's shares of funds withdrawn from the Security Account or letter of credit.

12.5 Emergency Additions. In the event that the funds are withdrawn pursuant to Section 12.4 of this Agreement, or if the Security Account is insufficient to allow payment of a

CAISO invoice, NCPA shall notify Customer and then prepare and send a special or emergency assessment to Customer. Customer shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment or consent to and direct NCPA to draw on any existing letter of credit Customer has established for such purposes.

12.6 Accounting and Interest. NCPA must maintain a detailed accounting of Customer's deposits into and withdrawals from the Security Account. Interest, if any, earned on the Security Account shall be credited to Customer's Security Account. NCPA makes no representation that the Security Account will earn any particular amount of interest or any interest.

12.7 Return of Funds. On the termination of this Agreement Customer's Security Account funds shall be paid to Customer thirty (30) Calendar Days after the effective date of such termination. NCPA will, in its reasonable discretion, as determined by the General Manager, estimate the then outstanding liabilities of Customer, including any estimated contingent liabilities, and will retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. After such determination by the General Manager, the balance of Customer's Security Account will be refunded to Customer within thirty (30) Calendar Days.

Section 13. SETTLEMENT OF DISPUTES

13.1 Settlement of Disputes. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Customer and NCPA agree to resolve the dispute in accordance with the following:

13.1.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute.

13.1.2 The representative shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

13.1.3 If the issue remains unresolved after sixty (60) Calendar Days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

13.1.4 This informal resolution process is not intended to nor shall be construed to change the time periods for failing a claim or action specified by Government Code § 900, *et seq.* for any claims that may be subject to the California Tort Claims Act.

Section 14. STATUS OF NCPA

At all times during the term of this Agreement, NCPA will be an independent contractor and will not be an employee of Customer. Customer will have the right to control NCPA only insofar as the results of NCPA's Services rendered pursuant to this Agreement; however, otherwise Customer will have no right to control the means by which NCPA accomplishes Services rendered under this Agreement. Notwithstanding any other agency, state, local or federal policy, rule, regulation, law, or ordinance to the contrary, NCPA and any of its employees, agents, and subcontractors providing Services under this Agreement will 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 Customer, including but not limited to Customer's retirement benefits or workers compensation benefits.

Section 15. MISCELLANEOUS

15.1 Confidentiality. To the maximum extent allowed by law, including the Public Records Act, the Parties agree to keep confidential all confidential or trade secret information made available to them in connection with this Agreement. Confidential or trade secret information must 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 of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request and will seek a protective order or other judicial determination to protect the confidential information. In such case, the Supplying Party will cover all of its own costs and further agrees to indemnify and pay any and all costs incurred by Receiving Party as a result of the Supplying Party's attempts to protect from disclosure the information; or

(ii) that the Receiving Party may disclose the information.

15.2 Survival of Obligations. The defense and indemnity obligations of Section 6 shall survive the termination of this Agreement.

15.3 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 A PARTY 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 EACH PARTY HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

15.4 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 will be effective unless given by the other Party. Any such waiver by the other Party in any particular instance will not be deemed a waiver with respect to any subsequent performance, default or matter.

15.5 Amendments. Unless otherwise provided for in this Agreement, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.5.1 Amendments of Appendices. The Appendices that are attached to and made part of this Agreement include detailed principles, descriptions and procedures for NCPA's provision of Services to Customer. Upon mutual written consent of the Designated Representative of each Party, the Appendices of this Agreement may be amended from time to time, without the requirement of an approval as required pursuant to Section 15.5; provided, however, Appendix A and Appendix B may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.6 Assignment of Agreement.

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

15.6.2 No Assignment. This Agreement, nor any interest herein, may 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.

15.7 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, are 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 will not be affected thereby, but will remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

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

15.9 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.

15.10 Notices. Any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered to the person specified below (the "Designated Representative"):

NCPA:
David Dockham
Assistant General Manager, Power Management
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
E-mail: dave.dockham@ncpa.com

Customer: City of San Jose
Name: Lori Mitchell
Title: Director
Address: 200 East Santa Clara Street, 14th Floor
San Jose, CA 95013
E-mail: Lori. Mitchell@Sanjoseca.gov

All notices shall be deemed delivered when personally delivered, three (3) Business Days after deposit in the United States mail first class postage prepaid, or on the first Business Day following delivery through electronic communication. A Party may change its Designated Representative by providing notice to the other Party, and such change shall not constitute an amendment to this Agreement.

15.11 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.

15.12 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 Santa Clara or in the United States District Court for the Northern District of California.

15.13 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 will be responsible for its own fees and costs, including attorneys' fees, associated with the action.

15.14 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 6 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.

15.15 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor will 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 will 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.

15.16 Integration; Incorporation. This Agreement, including all the appendices attached hereto, represents the entire and integrated agreement between Customer and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral. All appendixes attached hereto are incorporated by reference into this Agreement.

15.17 Reliability Requirements. Unless otherwise specifically provided for herein, the Parties acknowledge that Customer and NCPA may be both individually responsible for compliance with the WECC and NERC Reliability Standards and criteria applicable to the functions for which each Party are respectively registered with NERC. The references to WECC

and NERC Reliability Standards, if any, throughout this Agreement do not make any alteration or enlargement of the requirements or standards applicable to each Party beyond their individual registrations with NERC.

15.18 Significant Regulatory Change or Operational Change.

15.18.1 A “Significant Regulatory Change” will be deemed to occur if FERC, the CPUC, the CAISO or any other court, public authority, governmental, or other lawfully established civilian authorities having jurisdiction, issues an order or decision or adopts or modifies a tariff or filed contract, or enacts a law that materially interferes with the ability of either Party to perform any of its obligations under this Agreement.

15.18.2 A “Significant Operational Change” will be deemed to occur due to (i) material amendments or revisions to any tariffs, contracts or other applicable documents referenced in this Agreement that directly affect a Party’s obligations under this Agreement, (ii) an action taken by the Balancing Authority that may have a material detrimental impact on the way a Party operates or must operate its Electric System, or that directly affects a Party’s obligations under this Agreement, or (iii) a significant change in Customer’s supply and demand portfolio that may result in material increase in the scale and scope of services contemplated at the Effective Date of this Agreement (e.g., Customer’s load increased more than fifteen (15) percent).

15.18.3 Notification of Significant Regulatory Change or Operational Change. At any time during the term of this Agreement, if any Party anticipates the occurrence of a Significant Regulatory Change or Significant Operational Change that may reasonably be expected to materially interfere with the ability of any Party to perform any of its obligations under this Agreement, or such Significant Regulatory Change or Significant Operational Change occurs, such Party will provide written notice to the other Party as soon as practicable. The notice must contain a description of the Significant Regulatory Change or Significant Operational Change, including expected time schedules, and of the effect of the significant change to the Parties. If the Party giving notice believes that it will be necessary to amend this Agreement to address the anticipated change or change when it

has occurred, then the notice to the other Party may include a proposal that the Parties meet to negotiate an appropriate amendment to this Agreement. The Parties agree to promptly enter into good faith negotiations and attempt to achieve a mutually agreeable modification to this Agreement to address any such Significant Regulatory Change or Significant Operational Change.

15.18.4 Amendment of Agreement. If the Parties agree that an amendment to this Agreement is necessary to address a Significant Regulatory Change or Significant Operational Change, the Parties will proceed to negotiate such amendment in good faith. If the Parties have not reached agreement within one hundred and twenty (120) Calendar Days of the date of the first meeting, either Party may terminate this Agreement upon one hundred and eighty (180) Calendar Days prior written notice provided to the other Party.

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

Northern California Power Agency

City of San Jose

RANDY S. HOWARD, General Manager

TONI TABER
City Clerk

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Approved as to Form:

General Counsel

APPENDIX A

SCOPE OF SERVICES

All services provided by NCPA to Customer pursuant to this Agreement are described in this Appendix A (collectively referred to herein as "Services").

Section 1. SCHEDULING SERVICES

As of the Effective Date of this Agreement, NCPA shall act as Customer's Scheduling Coordinator until the earlier of either: (i) the date on which Customer has completed the process of transferring and/or migrating the content of its portfolio (including, but not limited to, loads, generation, trades, and/or other scheduled CAISO products) from a Scheduling Coordinator account (commonly referred to as "SCID") registered by NCPA, to a Scheduling Coordinator account registered by Customer, or (ii) March 31, 2019. At such time, Customer shall then act as its own Scheduling Coordinator, and shall assign certain scheduling and settlement duties and responsibilities to NCPA, acting as Customer's Scheduling Agent, as further described in Appendix A hereto; provided, however, if Customer has not completed the process of transferring and/or migrating the content of its portfolio to a Scheduling Coordinator account registered by Customer on or prior to March 31, 2019, NCPA shall have the right, but not the obligation, to terminate this Agreement, as set forth in Section 5.2 of this Agreement.

1.1 Description of Service. NCPA shall provide scheduling services ("Scheduling Services") to Customer, acting as Customer's Scheduling Coordinator or Scheduling Agent, as further set forth herein, in accordance with this Agreement, the CAISO Tariff, and other rules and requirements, as applicable. Scheduling Services include the following duties, and are furthermore described in Appendix C of this Agreement:

1.1.1 NCPA, in coordination with Customer, will facilitate Customer's Scheduling Coordinator registration with the CAISO. NCPA will assist Customer with managing the various steps that are required to complete all of the Scheduling Coordinator certification requirements set forth in the CAISO Tariff and Business Practice Manuals.

1.1.2 NCPA will assist Customer with the process of transferring Customer's resources from the Scheduling Coordinator account in which they currently reside, if any, to either NCPA's Scheduling Coordinator account, or Customer's Scheduling Coordinator account.

1.1.3 Development and submission of schedules and Bids for Customer's loads, resources, trades, ancillary services and/or other CAISO products in the CAISO energy and ancillary services markets, or other markets, as applicable. All schedules and Bids will be made and submitted to the CAISO in accordance with Appendix C and the CAISO Tariff, or other balancing authority areas in accordance with the applicable rules and requirements. Customer's owned and operated generation facilities, if any, for which NCPA supplies Scheduling Services on behalf of are listed in Appendix E.

1.1.4 NCPA shall perform outage coordination and management for Customer's generating resource planned and unplanned outages in accordance with applicable rules and requirements, including, but not limited to, the CAISO Tariff and associated operational procedures.

1.1.5 Obtain and maintain settlement quality meter data in accordance with the CAISO Tariff, the MSA CAISO ME or MSA SC, as applicable, to be used for multiple purposes, including, but not limited to forecasting and settlement validation. For the purpose of clarity, Customer intends to acquire, or has acquired, the services of a Third Party supplier to provide and/or perform meter data management services on behalf of Customer. Meter data management services include, but are not limited to, collection of meter data, validation of meter data, profiling and formatting of meter data, and development and submission of Settlement Quality Meter Data to the CAISO in accordance with the requirements of the CAISO Tariff. Metering services provided by NCPA, as contemplated herein, are limited to collecting the processed Settlement Quality Meter Data from and/or through applicable access, as provided by the CAISO (e.g., querying data from the CAISO MRI-S software application), storing such data, and using the data for the

purpose of forecasting and validating CAISO settlement charges and credits attributed to Customer's activities.

1.1.6 Submit regulatory data to appropriate Balancing Authorities by defined deadlines, including Resource Adequacy supply plans and compliance filings.

1.1.7 Develop, submit and management of E-Tags for Customer interchange transactions.

1.1.8 Review, validate, and reconcile CAISO settlement charges and credits for services, file timely disputes and pursuant dispute resolution.

Section 2. CONTROL CENTER SERVICES

2.1 Description of Service. NCPA shall provide control center services ("Control Center Services") for Customer's owned and operated generation facilities (if any) for which NCPA supplies Scheduling Coordination Services. Such duties shall include the following, and are furthermore described in Appendix D of this Agreement:

2.1.1 Monitoring and dispatching of Customer generation facilities.

2.1.2 Management of unplanned outages and system emergencies.

2.1.3 Monitor real time telemetry, data flow and manage system data.

2.1.4 Call-out field and emergency service personnel in response to certain operational conditions.

2.1.5 Operational coordination, communication, monitoring and equipment clearance and switching with Customer's generation facility personnel and Third Parties.

2.1.6 Monitor alarms and operate Customer generation facilities in accordance with any applicable Operating Procedures and requirements, as may be set forth in Appendix D, including regulatory and/or environmental requirements.

2.1.7 Comply with the Customer Emergency Action Plan ("EAP"), and initiating the EAP as required.

Section 3. PORTFOLIO MANAGEMENT AND OPTIMIZATION SERVICES

3.1 Description of Services. NCPA shall provide portfolio management and optimization services (“Portfolio Management and Optimization Services”) to Customer pursuant to this Agreement. Portfolio Management and Optimization Services include the following duties:

3.1.1 Acting as an Operating Entity on behalf of Customer.

3.1.2 Providing pre-scheduling and real-time optimization services (including development of bidding strategies) for Customer’s loads and resources.

3.1.3 Performing long term, medium term and short term resource planning and optimization on behalf of Customer.

3.1.4 Development and management of load and resource balance information; providing transactional recommendations in coordination with planning and risk management strategies adopted by Customer.

3.1.5 Focused industry restructuring and advocacy support within the CAISO stakeholder initiative process, in support of Customer’s planning and optimization activities; provided, however, NCPA is not authorized to directly advocate and/or assume policy positions, on behalf of Customer, that are inconsistent with and/or in conflict with policy positions and/or objectives of NCPA’s Members.

3.1.6 Entering into Balance of Month Transactions for purchasing and selling energy, capacity, transmission capacity, and other related services and products on behalf of Customer.

3.1.7 Monitor and analyze contract requirements, and provide recommendations and other advice to Customer regarding strategies for maximizing the benefits of such contracts.

3.1.8 Provide support with development of master agreements and other transacting instruments.

3.1.9 Coordination of daily and intra-daily operational communications with Customer's operational counterparts, including coordination with Customer's meter data management agent.

3.1.10 Performing transactional and bilateral checkouts and settlements for physical and financial energy, and energy related product transactions, and initiating and processing related disputes.

3.1.11 Perform load forecasting and provide accurate real time, hour ahead, day ahead, week ahead, and month ahead load forecasts to Customer.

3.1.12 Provide monthly forecast reconciliation reports comparing forecast to actual electric usage, and update forecasting models, as required, to reduce systematic forecasting errors.

3.1.13 Submit Congestion Revenue Rights nominations and bids, acting as Customer's agent, and provide quarterly effectiveness reports.

3.1.14 Develop and provide performance reports and operational reports to Customer, and provision of interval and summary data through use of web based portal interface.

3.1.15 Develop and provide risk management services, including development of risk management policies and regulations, strategies, and reporting tools.

Section 4. INFORMATION REQUIREMENTS

4.1 Information Requirements. To enable NCPA to perform the duties associated with Services provided to Customer in accordance with this Agreement, Customer shall timely provide the following information, instructions, and communications to NCPA (as applicable):

4.1.1 Meter Data. Customer shall provide NCPA access to settlement quality meter data from loads and resources scheduled and Bid by NCPA for Customer under this Agreement, and to maintain such meters and metering equipment in accordance with the standards and requirements as set forth in the CAISO Tariff.

4.1.2 Operational Data. Customer shall provide NCPA access to certain real-time operational systems and information (as mutually determined by NCPA and Customer) including, but is not limited to: (i) Supervisory Control and Data Acquisition (“SCADA”) systems, (ii) Programmable Logic Controllers (“PLC”), and (iii) Real-time telemetry and recording devices.

4.1.3 Scheduling and Operating Procedures. NCPA shall prepare, and Customer shall approve, written scheduling procedures (“Scheduling Procedures”) and operating procedures (“Operating Procedures”) related to Customer loads and generation resources that convey Customer’s guidelines for how NCPA is to perform certain Scheduling Services and Control Center Services under this Agreement, and included at such time as Appendix C and Appendix D, respectively. Such Scheduling Procedures and Operating Procedures shall be agreed to sufficiently in advance of their application so as to reasonably enable NCPA to perform such activities.

Section 5. SUPPLEMENTAL SERVICES IN ACCORDANCE WITH TASK ORDER PROCESS

5.1 Description of Service. NCPA may, at its sole discretion, provide certain technical support services, or other advisory services, to Customer upon mutual written agreement between the Parties (“Supplemental Services”). All requests for Supplemental Services shall be submitted by Customer to NCPA in accordance with the task order process described in Appendix F (“Task Order Process”).

5.2 Compensation for Supplemental Services. Costs for NCPA’s provision of Supplemental Services shall be charged to Customer on a time and materials basis. Pursuant to Section 7.1 of this Agreement, in consideration of NCPA’s provision of Supplemental Services, Customer shall pay NCPA the sum of: (i) an amount equal to the number of hours required to complete each respective task, multiplied by the applicable hourly rate listed in the Supplemental Services Rate Schedule contained in Appendix B, and (ii) out of pocket expenses and the cost of materials. The scope of each Supplemental Service shall be specified in each respective task order (“Task Order Request”) developed by the Parties pursuant to the Task Order Process.

Section 6. SERVICE TRANSITION

The Parties acknowledge that prior to the date on which specific Services shall be supplied by NCPA for a specific Customer load and/or generating resource, the Parties may be required perform certain work and other activities to establish and enable the systems and processes that are required to perform Services as of the date on which Services for a specific Customer load and/or generating resource is to commence. Such activities may include establishing common business practices, developing business requirements, establishing connectivity of systems and equipment, coordinated training of staff, and other activities that may be required to enable NCPA to provide, and Customer to receive, Services. During this transition period (the "Transition Period"), the Parties agree to cooperate in good faith to establish and enable the systems and processes that are required to perform Services. All activities to be performed by NCPA during the Transition Period are included as part of the comprehensive Services provided to Customer, pursuant to this Agreement, even though such work and activities may be performed by NCPA prior to the date on which specific Services shall be supplied by NCPA for a specific Customer generating resource.

APPENDIX B

COMPENSATION SCHEDULE

Pursuant to Section 7.1 of this Agreement, Customer shall pay NCPA the amounts listed in this Appendix B (the "Compensation Schedule") in consideration for Services provided under this Agreement.

Section 1. COMPENSATION SCHEDULE

1.1 In consideration for NCPA's provision of all Services, except Supplemental Services, Customer shall pay NCPA the amount set forth in Section 1.1 of this Appendix B for Services rendered during the first one (1) year period in which NCPA is supplying Services to Customer. For the purpose of clarity, the first one (1) year period shall begin on September 1, 2018, and shall continue through August 31, 2019.

1.1.1 During the first one (1) year period of this Agreement, for the period beginning on September 1, 2018, and continuing through the date on which Customer implements Phase 2 of its implementation plan (the "Phase 1 Period"), Customer shall pay NCPA an amount equal to Twenty Five Thousand Dollars (\$25,000.00) for Services rendered during each month of the Phase 1 period; and

1.1.2 During the first one (1) year period of this Agreement, for the period beginning on the date on which Customer implements Phase 2 of its implementation plan through August 31, 2019 (the "Phase 2 Period"), Customer shall pay NCPA an amount equal to Fifty Two Thousand Five Hundred Dollars (\$52,500.00) for Services Rendered during each month of the Phase 2 period.

If the date on which NCPA begins supplying Scheduling Services to Customer occurs after September 1, 2018, the compensation schedule listed herein for the first one (1) year period shall be adjusted based on the actual date on which NCPA begins supplying Scheduling Services to Customer. For example, if NCPA begins supplying Scheduling Services to Customer of October 1, 2018, the period associated with the Phase 1 Period will be adjusted according.

1.2 For each subsequent one (1) year period of the term of this Agreement, Customer shall pay NCPA an amount equal to: (i) the sum of the annual amount charged to Customer during the prior year escalated at a rate of two percent (2%) per year; provided, however, for the one (1) year period immediately following the first one (1) year period, the amount of compensation used to perform the calculation described in Section 1.2 of Appendix B shall be \$630,000.00, even if such amount is prorated during the first one (1) year period, as further described in Section 1.1 of Appendix B.

1.3 Unless otherwise provided herein, such annual amounts shall be billed to Customer in twelve (12) equal monthly installments, in accordance with Section 8 of this Agreement.

Section 2. SUPPLEMENTAL SERVICES

2.1 Pursuant to Section 5 of Appendix A, NCPA may provide Supplemental Services to Customer. All costs charged to Customer for Supplemental Services are separate from and in addition to the compensation paid for all other Services, as set forth in Section 1 of this Appendix B. The following is the hourly rate schedule applicable to Supplemental Services (“Supplemental Services Rate Schedule”):

SUPPLEMENTAL SERVICES RATE SCHEDULE

Job Classification	CY 2017 Hourly Rate (\$/Hr.)
Accountant/Analyst I-III	\$ 150.00
Administrative Assistant I-III	\$ 90.00
Assistant General Manager	\$ 300.00
Computer Tech Analyst I-IV	\$ 170.00
Sr. Computer Tech Analyst	\$ 180.00
Risk Manager	\$ 180.00
Compliance Manager	\$ 230.00
Engineer/Energy Resource Analyst I-IV	\$ 180.00
Mgr. Information Svcs. and Power Settlements	\$ 240.00
Power Settlements Analyst	\$ 160.00
Power Settlements Manager	\$ 210.00
Scheduler/Planner	\$ 180.00
Supervisor I-III	\$ 230.00

This rate schedule may be amended from time to time, but in no event more than one time annually, by NCPA as its costs of labor increase, and may add, subtract or amend job classification titles (and their respective hourly rates) as its job classification schedule is amended. NCPA shall provide written notice to Customer of any such amendment prior to charging any increased rate.

APPENDIX C

SCHEDULING PROCEDURES

The Scheduling Procedures are separately attached to this Agreement as Appendix C.

SJCE-PM-401 – Scheduling and Bidding

APPENDIX D

OPERATING PROCEDURES

The Operating Procedures are separately attached to this Agreement as Appendix D.

RESERVED

APPENDIX E

CUSTOMER RESOURCES

The following is a list of Customer's resource for which NCPA provides Services pursuant to this Agreement.

RESERVED

APPENDIX F

TASK ORDER PROCESS

Pursuant to Section 5 of Appendix A, NCPA may, at its sole discretion, provide certain Supplemental Services to Customer. All requests for Supplemental Services shall be submitted by Customer to NCPA in accordance with the Task Order Process described in this Appendix F.

Section 1. Task Order Process

1.1 Submission of a Task Order. Customer may submit a Task Order Request for Supplemental Services to NCPA in accordance with the terms and conditions of this Agreement. All Supplemental Services requests shall be submitted to NCPA in writing using the task order request form attached to this Appendix F ("Task Order Request Form"). In the Task Order Request Form, Customer shall provide a description of the desired Supplemental Services, a time frame on which Customer is seeking such Supplemental Services to be completed, and all other relevant details that may assist NCPA's review and consideration of the Task Order Request.

1.2 Review of Task Order Request. Once NCPA receives a Task Order Request from Customer, NCPA will review the Customer's request to determine if NCPA can perform the desired work. Once NCPA has completed its review of the Task Order Request, NCPA will provide a written response to Customer to confirm that NCPA is either: (i) able and willing to perform the Supplemental Services as requested, or (ii) not able or not willing to perform the Supplement Services as requested. If NCPA is able and willing to perform the Supplemental Services as requested, NCPA will provide a written proposal for NCPA's provision of the requested Supplemental Services to Customer, including a detailed project scope and estimated cost for performing the desired work ("Supplemental Services Task Order").

1.3 Task Order Confirmation. Upon receipt of the Supplemental Services Task Order, if any, Customer may agree to accept or not accept NCPA's proposal to supply Supplemental Services. If Customer agrees to accept NCPA's proposal to supply Supplemental Services, upon mutual written consent of the Designated Representatives of each Party, the Parties shall

confirm the terms and conditions of the Supplemental Services by executing the Supplemental Services Task Order. NCPA shall invoice Customer for the full estimated cost of the Supplemental Services, as set forth in the Supplemental Services Task Order, prior to NCPA's provision of the Supplemental Services to Customer. Such amounts shall be billed to Customer in accordance with Section 8 of this Agreement.

1.4 Billing Adjustments. Upon completion of the Supplemental Services, NCPA shall provide a final written accounting for all actual costs associated with NCPA's provision of the Supplemental Services to Customer, and shall either: (i) refund any positive difference between estimated costs and actual costs, or (ii) invoice Customer for the amount of actual costs that are greater than the amount of estimated costs collected from Customer ("Adjustment Amount"). Any Adjustment Amount shall be billed to Customer in accordance with Section 8 of this Agreement.

1.5 Disputes. Any disputes associated with NCPA's provision of Supplemental Services to Customer shall be resolved under the dispute resolution procedures set forth in Section 13 of this Agreement.

NCPA Commission Meeting Agenda

No Staff Report included for Item 23 – staff will provide an oral report.

New Hometown Connections, Inc., – Northern California Power Agency membership in a new nonprofit corporation, new Hometown Connections, Inc., that will provide advanced metering systems and data management services to public power entities. The corporation may also provide access to reduced cost vendor services, and public power management and strategic consulting.