

651 Commerce Drive  
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# Minutes - DRAFT

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**To:** NCPA Commission  
**From:** Cary A. Padgett, Assistant Secretary to the Commission  
**Subject:** January 21, 2016, NCPA Commission Meeting

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## ***Item #1 – Call Meeting to Order and Introductions***

Chairperson Carol Garcia called the meeting to order at 9:00 am at Citizen Hotel 926 J Street, Sacramento, California. A quorum was present. Introductions were made. Those in attendance are shown on the attached attendance list.

## ***Item #2 – Approve Minutes of the December 3, 2015, Regular Commission Meeting, and the December 17, 2015, Special Commission Meeting***

Motion: A motion was made by Gary Plass and seconded by Mark Chandler to approve the Minutes of the December 3, 2015, Regular Commission Meeting, and the December 17, 2015, Special Commission Meeting. The motion carried unanimously on a voice vote of those members present.

## **PUBLIC FORUM**

Chairperson Carol Garcia asked if any members of the public were present or at any of the other noticed meeting locations who would like to address the Commission on the agenda item. No members of the public were present.

Member of Month was NCPA Assistant General Manager Ken Speer.

## **REPORTS AND COMMITTEE UPDATES**

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

- Thanked the NCPA Legislative and Regulatory Affairs and IT staff for their efforts and hard work in putting together a successful NCPA Strategic Issues Conference.
- Provided a brief update on NCPA's power plants.
- Gave an update on the retirement pension issue with regards to concerns in the market place.
- Update on the draft Support Services Agreement. Plan to vet the draft agreement through the Facilities Committee and the Utility Director Group and then seek

- Commission approval at the February Commission meeting. Spoke at APPA's Joint Action Workshop regarding joint services.
- Update on the draft New Member Policy. Provided final draft to the Executive Committee for their review and comments. Executive Committee unanimously supported the policy. Will vet the policy through the Facilities Committee and the Utility Director Group and then seek Commission approval at the February Commission meeting.
  - Met with CAISO staff. Will continue to meet and work with them on transmission issues, as well as in other areas. Provided an update on the CAISO Nominating Committee activities.
  - NCPA will be a cosponsor to this year's Western Public Power Congressional Reception during the upcoming APPA Legislative Rally in Washington, D.C.
  - Provided an update on mutual aid activities.
  - CVPIA update and status report: Continuing discussions with Western and the Bureau on CVP Restoration Funds.

#### ***Item #4 – Executive Committee***

Chairperson Carol Garcia reported that the Committee met on January 21, 2016. Heard a report from the General Manager, discussed the draft New Member Policy, briefly reviewed NCPA's Draft 2016-2019 Strategic Plan, and approved the General Manager's 2016 Performance Plan and a Letter Amendment to the General Manager's Employment Agreement. The Committee supported the New Member Policy. Thanked Gary Plass and Mark Chandler for their efforts and work on the Policy.

#### ***Item #5 – Facilities Committee***

Assistant General Manager Dave Dockham reported the Committee met on January 6<sup>th</sup> and discussed Items 16, 17, 18, 19, and 22 on today's agenda. A quorum of the Committee was present for these items. The Committee recommended Commission approval of all items. In addition, provided a brief update on the Cost Allocation Methodology Working Group activities.

#### ***Item #6 – Finance Committee***

Committee Chair Gary Plass reported the Committee did not meet. The next Committee meeting is scheduled for February 10, 2016, at 10 am.

#### ***Item #7 – Legal Committee***

General Counsel Michael Dean reported the Committee did not meet.

#### ***Item #8 – Legislative & Regulatory Affairs Committee***

Committee Chair Bob Lingl reported the Committee did not meet, but provided a report on legislative activities. NCPA is working with APPA to gather signatures of public power utility governing board members and utility directors for a letter to Congress on behalf of protecting tax exempt financing. Capitol Day is scheduled for Monday, February 1, 2016. The Committee Budget Workshop is scheduled for February 24, 2016, at 12:00 pm at NCPA's Roseville Office. Mark your calendar for the NCPA/NWPPA Federal Policy Conference in Washington, D.C., that will be held on April 24-27.

### ***Item #9 – Members’ Announcements & Meeting Reporting***

No member announcements or reporting.

### **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 Gary Plass to approve the Consent Calendar consisting of Items 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, and 23. The motion carried by a majority of those members present on a roll call vote with the abstentions noted below for each item.

*BART and Gridley were absent.*

***Item #10 – NCPA’s Financials for the Month Ended November 30, 2015*** – approval by all members.

***Item #11 – NCPA’s Financials for the Month Ended December 31, 2015*** – approval by all members.

***Item #12 – Treasurer’s Report for the Month Ended November 30, 2015*** – accept by all members.

***Item #13 – Treasurer’s Report for the Month Ended December 31, 2015*** – accept by all members.

***Item #14 – Sale or Disposal of Surplus Property*** – note and file report by all members the disposal of a CVPH Alcad batter chargers, Ewaste, scrap metal, and a kettle boiler. **Fiscal Impact:** none.

***Item #15 – NCPA Major Insurance Renewals Update*** – accept and file by all members the Insurance Summaries detailing the status of insurance coverage being maintained by the Agency. **Fiscal Impact:** to-date, insurance renewals have been accomplished within the Insurance Program budget. The program saving over FY 2016 approved budget is \$740,501 or 22.05%.

***Item #17 – Resolution, 16-02, Approving a Multi-Task General Services Agreement with KM Industrial, Inc.; Applicable to the following projects: all NCPA locations, Members, SCPPA, and SCPPA Members*** – adopt resolution by all members authorizing the General Manager or his designee to enter into a five year Multi-Task General Services Agreement with KM Industrial Inc., with any non-substantial changes recommended and approved by the NCPA General Counsel, with a not to exceed amount of \$500,000 for services as needed at all facilities owned and/or operated by NCPA, its members, SCPPA, or by SCPPA members. **Fiscal Impact:** total cost of the agreement will not exceed \$500,000 over the five year term 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.  
*Redding abstained.*

**Item #18 – Resolution, 16-03, Approving a Multi-Task Agreement for the Purchase of Equipment, Materials and Supplies with Pacific Star Chemical, LLC Dba Northstar Chemical; Applicable to the following projects: all Generation Services Plant Locations** – adopt resolution by all members General Manager or his designee to enter into a Multi-Task Agreement for the Purchase of Equipment, Materials and Supplies with Pacific Star Chemical, LLC dba Northstar Chemical, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years and to issue purchase orders in any amount associated with the contract. **Fiscal Impact:** total cost of the agreement is not-to-exceed \$1,500,000 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. The annual cost of these chemicals exceeds the General Manager's authority of \$250,000. It is recommended that the General Manager be authorized to approve the issuance of purchase orders in any amount as needed pursuant to this contract.  
*Port of Oakland, Redding and Truckee Donner abstained.*

**Item #19 – Resolution 16-04, Approving a First Amendment to the Multi-Task Consulting Services Agreement with Worley Parsons Group, Inc.; Applicable to the following projects: All Generation Services Plant Locations** – adopt resolution by all members authorizing the General Manager or his designee to enter into a First Amendment to the existing five year Multi-Task Consulting Services Agreement with Worley Parsons Group, Inc., increasing the not exceed amount from \$225,000 to \$1,000,000 for consulting services related to project support and plant operations as needed at all facilities owned and/or operated by NCPA, its members, SCPA, or by SCPA members, with any non-substantial changes recommended and approved by the NCPA General Counsel. **Fiscal Impact:** upon execution, the total cost of the agreement will be 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.  
*Port of Oakland, Redding and Truckee Donner abstained.*

**Item #20 – Resolution 16-05, Adopting the Marsh Risk and Insurance Services Client Service Agreement Third Amendment** – adopt resolution by all members approving the attached amendment to the CSA with Marsh Risk Consulting, and authorizes the Agency's General Manager to execute the amendment on behalf of the Agency.  
*Redding and Truckee Donner abstained.*

**Fiscal Impact:** LEC insurance program premiums are allocated by generation entitlement share to project participants. NCPA program premiums are budgeted as part of the aggregate Property, Liability, and Workers Compensation Insurance cost estimates, which are charged off proportionately at approximately 80% for Property Insurance and 20% for Liability Insurance based on total premiums paid. Property Insurance is directly allocated to NCPA Projects based on proportionate shares of insurable values. The Liability Insurance cost is allocated as part of the Administrative and General budget and classified as a "General" cost which means 50% is allocated based on labor and 50% based on total adjusted budget cost by project/program. Workers Compensation Liability Insurance is allocated proportionately based on actual labor cost charged. The aforementioned annual fees are within the Commission approved FY 2015-16 annual budget for those items.



**Item #21 – Resolution 16-06, Adopt, Authorize and Approve FY 2014-2015 Annual Billing Settlements** – adopt resolution by all members approving the FY 2014-2015 Annual Billing Settlements. **Fiscal Impact:** upon approval by Agency Commission, the amount of \$6,306,183 will be distributed to participants. NCPA will provide a 13<sup>th</sup> period All Resources Bill to participants within a few business days of that approval. Amounts due from participants will be due within 30 days of billing. NCPA member refund amounts will be deposited into their respective General Operating Reserve accounts.

**Item #22 – Resolution 16-08, Amendment to Appendix E of the Amended and Restated Scheduling Coordination Program Agreement** – adopt resolution by all members approving an amendment to Appendix E of the Amended and Restated Scheduling Coordination Program Agreement, to add the following two (2) generating resources to the list of resources that take Scheduling Coordination Services from NCPA: (i) EE Kettleman Solar (Resource ID: EEKTMN\_6\_SOLAR1), and (ii) Hayworth Solar Farm (Resource ID: LAMONT\_1\_SOLAR4). **Fiscal Impact:** costs associated with administering the SCPA, including amending the appendices of the agreement, are including in the FY 2016 annual budget. All costs associated with NCPA's provision of Scheduling Coordination Services to the two (2) new resources are determined and allocated through the annual budget process.  
*Redding and Truckee Donner abstained.*

**Item #23 – Resolution 16-09, Approve Vacation Accrual Cap Increase and Change to NCPA Personnel Policy and Procedure Manual Section 406.3 Vacation Leave** – adopt by all member approving the proposed changes to the language in Section 406.3 of NCPA's Personnel Policies and Procedures Manual. In addition, staff requests that the Commission authorize an increase in the vacation accrual cap for Unrepresented employees to two and one-half times the annual accrual level. **Fiscal Impact:** there is no fiscal impact associated with this change as NCPA is not proposing to modify the rate at which employees earn vacation time. However, employees may as a result delay when they choose to use their earned vacation.

## **DISCUSSION / ACTION ITEMS**

**Item #16 – Resolution, 16-01, Authorizing the Geothermal Plant 2, Unit 4 Turbine Overhaul Maintenance Project and Authorizing the General Manager to Award Bids And Execute Contracts and Purchase Orders For Such Project at a Total Cost of Not to Exceed \$1,871,000; Applicable to the following projects: Geothermal Plant 2, Unit 4** – adopt resolution by all members authorizing the General Manager or his designee to award bids and execute agreements and purchase orders for work related to the Geothermal Plant 2, Unit 4 Turbine Overhaul, for a total cost not to exceed \$1,871,000, and report back to the Commission upon completion of the project.

**Fiscal Impact:**

The budgetary estimates of the cost to complete the overhaul of Plant 2, Unit 4 are categorized as follows:

Overhaul Work	Anticipated Cost
Overhaul of the main steam turbine and generator(with 30% contingency)	\$900,000
Overhaul of the electrical breakers	\$75,000
Upgrade of the T-3000 Control System by Siemens (previously approved by the Commission)	\$406,000
Installation of a new Partial Discharge Analyzer on the generation to monitor the condition of the generator while in service	\$20,000
Inspection of the unit relays	\$20,000
Overhaul of the large pumps and motors	\$165,000
Modification to the gas removal piping to prevent tripping of the unit in the event of a vacuum pump trip	\$100,000
Modification to the treated Stretford gas piping in the cooling tower to reduce chemical usage in the cooling tower	\$75,000
Cleaning of the condenser tubes and Cooling Tower	\$90,000
All required WECC and NERC testing	\$20,000
<b>Total Cost</b>	<b>\$1,871,000</b>

Assistant General Manager Ken Speer provided a brief background and presentation.

**Motion:** A motion was made by Gary Plass and seconded by Roger Frith to authorize the General Manager or his designee to award bids and execute agreements and purchase orders for work related to the Geothermal Plant 2, Unit 4 Turbine Overhaul, for a total cost not to exceed \$1,871,000, and report back to the Commission upon completion of the project. The motion carried by a unanimous roll call vote on those members present.

*Port of Oakland, Redding and Truckee Donner abstained. BART and Gridley were absent.*

**Item #24 – Resolution 16-07, Approving the General Manager’s 2016 Performance Plan and a Letter Amendment to the General Manager’s Employment Agreement** – adopt resolution by all members approving the General Manager’s 2016 performance goals. In addition, the Executive Committee recommends that the Commission adopt a resolution authorizing the Chair of the Commission to provide the General Manager a letter granting forty (40) hours of additional paid administrative leave that may not be cashed out for use in 2016. **Fiscal Impact:** there is no fiscal impact due to the change in the General Manager’s additional hours of paid time off in 2016. The costs associated with the additional paid time off are included in the budget for the current fiscal year.

General Manager Randy Howard stepped out of the meeting during the discussion and vote of this item. Human Resources Manager Vicki Cichocki mentioned that rather than a salary adjustment for the General Manager, the Executive Committee recommended forty (40) hours of administrative leave. Commissioner Scharff asked for clarification on the thinking behind the 40 hours of administrative leave rather than a salary adjustment. It was explained that the Executive Committee appreciates Mr. Howard’s efforts and is happy with what he has done at NCPA and wants to provide him more time off for his efforts. Ms. Cichocki explained that due to CalPERS limitations, a cash bonus is not an option.

Motion: A motion was made by Mark Chandler and seconded by Bob Lingl to approve the General Manager's 2016 Performance Goals. In addition, the Executive Committee recommended that the Commission adopt a resolution authorizing the Chair of the Commission to provide the General Manager a letter granting forty (40) hours of additional paid administrative leave that may not be cashed out and will be forfeited if not used in 2016. A correction was made in the resolution to change "used" to "unused." The motion carried by a unanimous roll call vote on those members present.

*BART and Gridley were absent.*

### **INFORMATIONAL ITEMS**

***Item #25 – Hydrology Report*** – Assistant General Manager Ken Speer provided an update and presentation on water issues at the hydroelectric project. A land slide occurred near Collierville Powerhouse – no damage to the plant. Snow Pack is good – no survey at this point. Staff will continue to provide the Commission update at each meeting.

### **CLOSED SESSION**

***Item #26 – 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.

### **REPORT FROM CLOSED SESSION**

Upon return to open session, General Counsel Michael Dean reported there was no reportable action on Closed Session Item 26.

### **ADJOURNMENT**

The January 21, 2016, Commission meeting was adjourned at 11:02 am.

Respectfully submitted,

CARY A. PADGETT  
Assistant Secretary to the Commission

Northern California Power Agency  
 Commission Meeting of January 21, 2016  
**COMMISSIONER**  
 Attendance List

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

MEMBER	NAME
ALAMEDA	<i>Madeloni Acator</i>
BIGGS	<i>Roy I. Lumb</i>
GRIDLEY	
HEALDSBURG	<i>M. A.</i>
LODI	<i>Mark Chandler</i>
LOMPOC	<i>Paul J.</i>
PALO ALTO	<i>H. W.</i>
PORT OF OAKLAND	<i>K. Dru</i>
PLUMAS-SIERRA REC	<i>Michael Braz</i>
REDDING	<i>[Signature]</i>
ROSEVILLE	<i>Carol Garcia</i>
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT	
SANTA CLARA	<i>Teresa Drnell</i>
TRUCKEE DONNER	<i>Stephen Hallsberg</i>
UKIAH	<i>Donald E. Crane</i>

**Northern California Power Agency  
Commission Meeting of January 21, 2016  
Attendance List**

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

NAME	AFFILIATION
WZ KIRKLEY	LOD 1
Michael Brozo	PSREC
Wesley Gray	PSREC
Vicki Cehocki	NCPA
John Roarkney	<del>NCPA</del> Santa Clara
Monica Padilla	Paris ALO
ED SHIKADA	" "
Barry Tippin	Redding
Jay Ditt	ARPA
Ann Hatcher	SVP / Santa Clara
ALAN KUROTORI	SANTA CLARA
Joyce Kinnead	Santa Clara
Mel Gaxadi	UKIAH
Michelle Bertolino	Roseville
Ruthann Zeyler	NCPA, asst general counsel
Dennis Sismaet	NCPA
Basil Wong	Port
Dave Daddam	NCPA
Larry Bean	LOM POC
Bob Ling /	Lompro
Mike DeBortoli	NCPA
Bob Young	NCPA
Mey	Henderson

**Northern California Power Agency  
Commission Meeting of January 21, 2016  
Attendance List**

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

NAME	AFFILIATION
TERRY CROWLEY	HEALDSBURG
Gloria Steger	Alameda
Mary Sutter	Alameda
BARRY LESKA	ALAMEDA
Donna Stevener	NCPA
Roger Frith	Biggs
Ken Speer	NCPA
Jane Cirrincione	NCPA
Cory Padgett	NCPA



# 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: 11/21/10

Consent Items Listed on the Agenda: # 10 to # 23


Consent Items Removed from the Agenda and Approved Separately:

# 0

ROLL-CALL VOTE BY MEMBERS: LODI / HEA

Member	Item Numbers Abstained	Vote	Absent
Alameda		Y	
BART			X
Biggs		Y	
Gridley			X
Healdsburg		Y	
Lodi		Y	
Lompoc		Y	
Palo Alto		Y	
Port of Oakland	18, 19	Y	
Redding	17, 18, 19, 20, 22	Y	
Roseville		Y	
Santa Clara		Y	
Truckee Donner	18, 19, 20, 22	Y	
Ukiah		Y	
Plumas-Sierra		Y	

ATTEST:

  
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Cary A. Padgett  
 Assistant Secretary to the Commission

**Northern California Power Agency  
ROLL CALL VOTE**

Topic: item 16 - Resolution 16-01

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

Passed and adopted this 21<sup>st</sup> day of January 2016, by the above vote on roll call.

  
 CAROL GARCIA  
 Chairperson

ATTEST:   
 CARY A. PADGETT  
 Assistant Secretary



Northern California Power Agency  
ROLL CALL VOTE

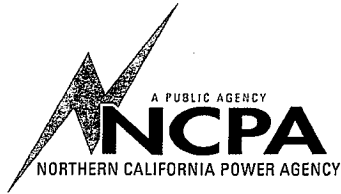
Topic: item 24 - Resolution 16-07

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

Passed and adopted this 21<sup>st</sup> day of January 2016, by the above vote on roll call.

Carol Garcia  
CAROL GARCIA  
Chairperson

ATTEST: Cary A. Radgett  
CARY A. RADGETT  
Assistant Secretary



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# Special Meeting Minutes - DRAFT

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**To:** NCPA Commission  
**From:** Cary A. Padgett, Assistant Secretary to the Commission  
**Subject:** February 8, 2016, NCPA Special Commission Meeting/Teleconference

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## ***Item #1 – Call Meeting to Order and Introductions***

Chairperson Carol Garcia called the meeting to order at 2:03 pm at NCPA's Roseville Office, 651 Commerce Drive, California. A quorum was present. Introductions were made. Those in attendance are shown below: *BART, Gridley, Redding, Truckee Donner, and Ukiah were absent.*

### Member Commissioners attending via teleconference:

Alameda – Madeline Deaton  
Biggs – Mark Sorensen  
Healdsburg – Terry Crowley  
Lodi – Mark Chandler  
Lompoc – Bob Lingl  
Palo Alto – Jane Ratchye  
Plumas-Sierra – Mike Brozo  
Port of Oakland – Basil Wong  
Santa Clara – Teresa O'Neill

### Member Commissioners attending at NCPA's Roseville Office:

Roseville – Carol Garcia

### Members attending via teleconference:

Lodi – Liz Kirkley  
Santa Clara – John Roukema

### NCPA Staff in attendance and via teleconference:

General Counsel Michael Dean  
Assistant General Counsel Ruthann Ziegler  
Randy Howard  
Ken Speer  
Donna Stevener

## PUBLIC FORUM

Chairperson Carol Garcia asked if any members of the public were present or at any of the other noticed meeting locations who would like to address the Commission on the agenda item. No members of the public were present.

## DISCUSSION / ACTION ITEMS

**Item #2 – Resolution No. 16-10, Gas Turbine Issue at LEC Necessitating Outage and Work To Restore Services and Operations** – staff to present information regarding the problem with the gas turbine and adopt resolution by all members authorizing the NCPA General Manager to enter into agreements and issue purchase orders for the restoration of services and operations at the Lodi Energy Center (LEC); authorizing the use of Operating Reserve Funds for the full amount of this work; and delegation to the General Manager the authority to issue purchase orders in any amount to complete this work.

Assistant General Manager Ken Speer opened the meeting with a brief background on the Gas Turbine issue at the LEC. LEC Plant Manager Mike DeBortoli provided a presentation and explained, in detail, the issues surrounding the belly band that failed and needs replacement. Two options were presented for consideration: **Option 1)** perform only work necessary to correct problem, and continue with May outage as planned, or **Option 2)** accelerate Hot Gas Path work scheduled for May and perform abbreviated outage in May (2 weeks). A Special meeting was held on February 8, 2016, of the LEC Project Participation Committee and approved proceeding with the LEC Hot Gas outage, previously scheduled for May 2016, during the February forced outage, replace the failed belly band, and also replace the two non-failed belly bands at an incremental cost of not-to-exceed \$1,100,000.

Motion: A motion was made by Mark Chandler and seconded by Bob Lingl to adopt the resolution approving proceeding with the LEC Hot Gas outage, previously scheduled for May 2016, during the February forced outage, replace the failed belly band, and also replace the two non-failed belly bands at an incremental cost of not-to-exceed \$1,100,000. The motion carried by a unanimous roll call vote of those members present. Alameda, Palo Alto and Port of Oakland abstained. BART, Gridley, Redding, Truckee Donner, and Ukiah were absent.

## ADJOURNMENT

The February 8, 2016, Commission meeting was adjourned at 2:24 pm.

Respectfully submitted,

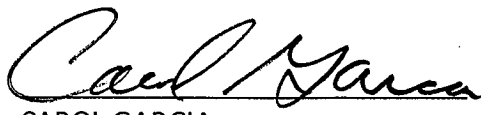
CARY A. PADGETT  
Assistant Secretary to the Commission

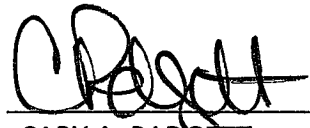
**Northern California Power Agency  
ROLL CALL VOTE**

Topic: Resolution 16-10

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

Passed and adopted this 8<sup>th</sup> day of February 2016, by the above vote on roll call.

  
 CAROL GARCIA  
 Chairperson

ATTEST:   
 CARY A. PADGETT  
 Assistant Secretary



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# Commission Staff Report

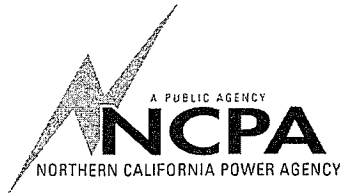
AGENDA ITEM NO.: 5

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** February 3, 2016 Facilities Committee Meeting Minutes

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The attached Draft Minutes are being provided for information and to augment the oral Committee report.



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# Minutes

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**To:** NCPA Facilities Committee  
**From:** Trisha Hubbard  
**Subject:** February 3, 2016 Facilities Committee Meeting Minutes

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- 1. Call meeting to order & Roll Call** - The meeting was called to order by Committee Chair Alan Hanger at 9:03am. A sign-in sheet was passed around. Attending via teleconference and/or on-line presentation were Monica Padilla and Chris Hutchinson (Palo Alto), Debbie Whiteman (Alameda), Kathleen Hughes and Steve Hance (SVP), Mark Sorensen (Biggs), and Mike Whitney (NCPA). Those attending in person are listed on the attached Attendee Sign-in Sheet. Committee Representatives from BART, Gridley, Healdsburg, and Ukiah were absent. A quorum of the Committee was established.

## PUBLIC FORUM

No public comment.

- 2. Approve minutes from the January 6, 2016 Facilities Committee meeting** – Motion: A motion was made by Melissa Cadek and seconded by Steve Hance recommending approval of the January 6<sup>th</sup> Facilities Committee meeting minutes. A vote was taken by roll call: YES = Alameda, Biggs, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Roseville, and Santa Clara. The motion passed.
- 3. Geothermal Facility Plant 2 – Public Works Contract with Northern Industrial Construction for Unit 4 Main Steam Pipeline Project** – Staff provided information regarding the recommendation for Commission approval authorizing the General Manager to enter into a Public Works agreement with Northern Industrial Construction which shall not exceed \$950,000 to construct a new 48" diameter pipeline to the Unit 4 main steam turbine. This project was originally budgeted for \$300,000 for FY2016 to minimize pressure drops and eliminate unnecessary piping. Staff is now proposing to re-route the pipeline. Staff expects a 15 year life of this project with a projected benefit of a 1MW gain in generation and a three-year payback. If approved the staff will begin with Phase 1 of the project; establishing a roadside tie-in during the April 2016 outage. Phase 2 is scheduled to begin during the summer.

Motion: A motion was made by Shannon McCann and seconded by Ron Stassi recommending Commission approval of the public works agreement with Northern Industrial Construction, Inc. which shall not exceed \$950,000 to construct a new 48" diameter pipeline to the Geothermal Plant 2, Unit 4 steam turbine. A vote was taken by roll call: YES = Alameda, Biggs, Lodi, Lompoc, Plumas-Sierra, Roseville, Santa Clara, and TID. ABSTAIN = Palo Alto and Port of Oakland. The motion passed.

- 4. All NCPA Generation Services Facilities, Members and SCPA – Compliance Services, Inc.** – Staff provided information regarding the recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Compliance Services, Inc. in an amount not to exceed \$1,500,000 for operations and maintenance services for use at all facilities owned and/or operated by NCPA, its members and SCPA or SCPA's members; and authorize the general manager to approve purchase orders pursuant to the agreement totaling \$493,000 over five years for compliance with mandated Department of Transportation regulations at the Alameda CT1 project. Staff reviewed the procurement process and the scope of work related to the Alameda CT1 Natural Gas Supply Pipeline Project. The existing 2011 agreement is expiring soon.

Motion: A motion was made by Melissa Cadek and seconded by Shannon McCann recommending Commission approval of the five-year Multi-Task General Services Agreement with Compliance Services, Inc. in an amount not to exceed \$1,500,000 for operations and maintenance services for use at all facilities owned and/or operated by NCPA, by its members, by SCPA, or by SCPA members; and authorize the General Manager to approve purchase orders pursuant to the Agreement totaling \$493,000 over five years for compliance with mandated DOT regulations at the Alameda CT1 project. A vote was taken by roll call: YES = Alameda, Biggs, Lodi, Lompoc, Plumas-Sierra, Roseville, and Santa Clara. ABSTAIN = Palo Alto, Port of Oakland and TID. The motion passed.

- 5. Hydroelectric Facility – Adit 4 Stockpile Erosion** – Staff explained that the Adit 4 is part of the power tunnel connecting McKays Point Reservoir to Collierville Powerhouse, following tunneling in 1986, approximately 240,000 cubic yards of rock cutting spoils were loosely placed at a disposal site. Erosion of approximately 2000 – 4000 cubic yards of spoils have recently been discovered. Staff believes the failure likely occurred on December 22<sup>nd</sup>. California Department of Fish and Wildlife and Federal Bureau of Land Management have been notified. Staff's initial assessment of the failure is water intrusion into the spoils from perforations or plugging of water conveyance features. Detailed illustrations were presented.

Interim water bypass measures are underway to reduce the scope of damages and environmental impacts. Staff plans to begin a 2 phase project: 1) Interim site stabilization which includes investigation of a potential insurance claim; and 2) – Design and construct permanent repairs which includes a necessary Basis of Design Analysis (BODR) and development of a safe and cost effective design. The BODR is expected by May or June.

Staff will continue with erosion control, address insurance and resource agency questions, and provide the Committee with updates as the project progresses.

- 6. NCPA Support Services Agreement** – Staff provided information regarding the recommendation for Commission approval of the Support Service Program Agreement. This Agreement is scheduled for Legal Committee review on February 12, 2016. This Agreement may include purchasing, engineering services, transmission and distribution planning, power marketing and analysis, employee training, human relations assistance, customer services and billing, power plant operations and professional services relating to the operation of a publicly owned electric utility. NCPA self-provided services under this agreement are limited to training, human resources assistance, assistance with NERC or other regulatory compliance and assistance in the form of student interns.

Items specifically excluded from the agreement are the procurement of either energy or the attributes of energy, procurement of natural gas, services provided by NCPA pursuant to the Third Phase Agreements, and any on-going services which are provided by NCPA to its members through program agreements.

Staff explained the process for using this agreement as well the costs and payments associated with use of this agreement.

This agreement would not have an expiration date. The Commission may cancel with six months written notice to the members. A member may withdraw with 2 years written notice.

If this agreement is approved, approximately 56 existing agreements will need to be amended to allow those agreements to be used by members.

Motion: a motion was made by Ron Stassi and seconded by Mike Brozo to recommend Commission approval of the Support Services Agreement and delegate the authority to the General Manager to amend 56 existing services agreement so those agreements may be used by member under the Support Services Program Agreement –subject to Legal Committee review and approval. A vote was taken by roll call: YES = Alameda, Biggs, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Roseville, and Santa Clara. ABSTAIN = TID. The motion passed.

7. **NCPA New Member Policy** – Staff provided information regarding the recommendation for Commission approval of the proposed New Member Policy. The New Member Committee has completed development of this policy. The policy has been reviewed by the Executive Committee and they are recommending approval. Staff reviewed the policy guidelines: identification of potential new members, requirements for application and screening process. The Executive Committee recommends no minimum buy-in be required. Potential new members require unanimous approval amongst existing members.

The Committee discussed the importance of proper screening of potential new members because once an entity is brought in as a new member, they cannot be forced to leave the agency.

Committee members' questions and comments for staff to consider:

- In regards to Generation Services, why is this limited to only Renewable Project Development.
- Minimum Screening Criteria – is this actually a list of minimum requirements? All or nothing? May need to clarify this.
- Request to acquire potential members positions on certain key agency topics during the interview process.
- Need to make sure Jane Ratchye's comments and suggestions are incorporated in to final draft (regarding program participation analysis and schedule).

Motion: a motion was made by Shannon McCann and seconded by Ron Stassi recommending they provide the Committee's comments regarding "minimum" screening criteria, provision for Policy positions stated by potential members, incorporate Jane Ratchye's comments and suggestions, and clarify Western language. The Committee supports the policy. A vote was taken by roll call. YES = Alameda, Biggs, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Roseville, and Santa Clara. ABSTAIN = TID. The motion passed.

8. **Natural Gas Pipeline Acquisition and Management Advisory Services Project** – Consultant, Roth Energy, currently working on Task Order Number 1, to identify alternatives to the annual renewals of the NOVA and Foothills Pipelines. A draft of the final work product will be provided by Roth Energy for staff comment by March 16, 2016. The final work product will be provided by March 31<sup>st</sup>.



**9. Nexant Cost Allocation Model Billing Determinants** – The purpose of today's presentation is to review current year Nexant Cost allocation model results with updated Calendar Year 2015 data, identify and review source and magnitude of changes to members' costs that result from a change in the determinants. Today's review does not include FY2017 budget amounts or anticipated changes to the Nexant Model allocators. Staff reviewed the Nexant Cost Allocation formula. The focus of this discussion is the resource determinant percentages. Staff provided a number of slides explaining the cost drivers for the changes in allocated amounts. The illustrations included: initial FY17 Nexant Cost Allocation model updated with CY2015 determinants, costs by member showing the magnitude of changes due to updated determinants, operating entity cost drivers, power pool cost drivers.

Issues that staff observed following the data input included high schedule counts identified with variable energy resources associated with PIRP.

Staff presented a preliminary FY2017 Nexant Cost Allocation. Following group questions and discussion, staff will review the data inputs further and bring their findings back for Committee review. Due to time constraints, a Special Facilities Committee meeting will be scheduled to discuss and review this matter further.

**10. Marin Clean Energy Request for Offer** – Staff updated the Committee on the status of the Marin Clean Energy (MCE) Service Proposal. The Agency will be submitting their Statement of Qualifications by the end of today. By February 10<sup>th</sup>, MCE will identify qualified respondents. Staff plans to present the Agency's preliminary offer and terms at the February 11<sup>th</sup> Utility Director meeting. Staff will seek Commission approval of the Agency's offer if ready by the February 25<sup>th</sup> meeting. A Special Commission meeting may be necessary as the final offer is due to MCE by March 9<sup>th</sup>.

**11. Power Management and Administrative Services Cost Allocation Study** – due to a time constraint, this topic was not discussed. A Special Facilities Committee meeting will be scheduled within the week.

**12. Schedule next meeting date** – the next regular Facilities Committee meeting is scheduled for March 2<sup>nd</sup>.


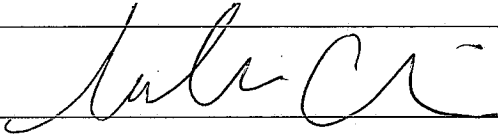
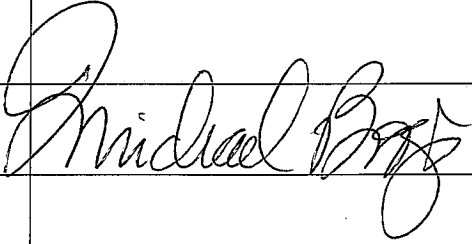

#### **ADJOURNMENT**

The meeting was adjourned at 11:55am.



**Northern California Power Agency**  
**Facilities Committee Special Meeting of February 3, 2016**  
**Facilities Committee**  
**Attendance List**

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

MEMBER	NAME
ALAMEDA	
BART	
BIGGS	
GRIDLEY	
HEALDSBURG	
LODI	
LOMPOC	RON STASSI
PALO ALTO	
PLUMAS-SIERRA REC	
PORT OF OAKLAND	
ROSEVILLE	
SANTA CLARA	
TID	
UKIAH	



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# Commission Staff Report

AGENDA ITEM NO.: 6

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** February 10, 2016 Draft Finance Committee Meeting Minutes

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The attached February 10<sup>th</sup> draft meeting minutes are being provided for information and to augment the oral Committee report.



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TO: NCPA Finance Committee  
FROM: Donna Stevener, AGM Finance/Administrative Services  
SUBJECT: NCPA Finance Committee Meeting Minutes of February 10, 2016

**Finance Committee Attendees:**

**Committee**

**Members:**

Gary Plass	Healdsburg
Bob Orbeta	Alameda
Jordan Ayers	Lodi
Monty Hanks	Roseville
Jan Pepper	Santa Clara

**Attended:**

Call-in  
Call-in  
Absent  
Call-in  
Call-in

**Consultants:**

Mike Berwanger	PFM
Rian Irani	PFM
Harry Kightlinger	PFM
Gene Carron	Orrick

**NCPA Staff:**

Donna Stevener  
Randy Howard  
Sondra Ainsworth

**Member Staff:**

Tarun Narayan Palo Alto

**1. & 2. Call Meeting to Order and Roll Call**

Chairman Gary Plass called the meeting to order at 10:02 a.m. and roll call was conducted as listed above.

**3. Approve Minutes of November 10, 2015**

Minutes for the November 10, 2015 meeting were approved as presented.

1<sup>st</sup> Bob Orbeta

2<sup>nd</sup> Gary Plass

<i>Representative</i>	<i>Member Org</i>	<i>Vote</i>
Gary Plass, Chairman	Healdsburg	Yes
Bob Orbeta	Alameda	Yes
Jordan Ayers	Lodi	Absent
Monty Hanks	Roseville	Yes
Jan Pepper	Santa Clara	Yes

Voting Results: 4 Ayes, 0 Noes, 0 Abstain, 1 Absent

**PUBLIC FORUM**

Mr. Plass asked if anyone wished to address the Committee on matters within the jurisdiction of the Committee. No one from the public was present at the site or at any of the teleconference locations.

**REPORTS AND COMMITTEE ACTION ITEMS**

**4. Review of December 31, 2015 Debt & Interest Rate Management Report**

Ms. Stevener reviewed the Debt & Interest Rate Management Report for December 31, 2015. Key highlights included:

- No new debt was issued and the mark to market value of the swaps remains negative.
- The IRS continues to sequester Build America Bond (BABs) subsidies, although the reduction went from 7.2% to only 6.8% for the December 1, 2015 debt payment. Impact to the LEC participants was \$227,000 higher interest during the last six months. Mr. Berwanger discussed what some other clients are doing regarding refinancing the BAB's, although due to a really high "make whole" call cost, the economics don't work for NCPA.
- Only one counterparty remains since most of the interest rate swaps were refinanced, and Citi's credit rating was upgraded from A to A+ by Fitch.
- The interest rate swaps continue to perform well, with savings much higher than projected. Estimated savings through December 31, 2015 was \$4.2 million with actual savings \$3.1 million higher at \$7.4 million.
- Variable rates continue to be at near all-time lows. The tax exempt rates remain at only 1 basis point. The taxable rates saw an increase in December due to the rate hike by the Feds. The taxable rates went from 15 to 16 basis points to 40 basis points.

Motion: Recommend that the NCPA Commission approve the December 31, 2015 Debt and Interest Rate Management Report as presented.

1<sup>st</sup> Gary Plass

2<sup>nd</sup> Monty Hanks

<i>Representative</i>	<i>Member Org</i>	<i>Vote</i>
Gary Plass, Chairman	Healdsburg	Yes
Bob Orbeta	Alameda	Yes
Jordan Ayers	Lodi	Absent
Monty Hanks	Roseville	Yes
Jan Pepper	Santa Clara	Yes

Voting Results: 4 Ayes, 0 Noes, 0 Abstain, 1 Absent

## **5. Review and Discussion of June 30, 2015 Post Employment Benefits Other than Pensions Long-term Funding Plan**

Mr. Howard explained the need to consider a long-term funding plan for the OPEB (Retiree Medical Plan) obligation. As discussed at the last meeting, we need to get our financial house in order, especially with the possibility of new members and end of life decisions upcoming for certain power plants. Ms. Stevener reviewed a PowerPoint presentation showing the increase in Unfunded Actuarial Liability from \$5.0 million to \$14.4 million, a decrease of funding level of 78% to 60.7%. PFM did a review for NCPA and found specific guidance from Standard & Poor's saying less than an 80% funding level is a concern that could negatively affect a credit rating. Ms. Stevener laid out a proposed strategy which included negotiation of a cap on health care premiums which the unions agreed to consider and to look at a shorter amortization period for the unfunded liability; similar to refinancing your mortgage from 30 years to 15 years. As requested by the Finance Committee last meeting, scenarios were expanded to look at the annual funding impact of 5, 8 10, 15 and 20 year funding scenarios. Annual impact ranged from \$173,000 (20 years) to \$2.3 million (5 years) additional annual contributions. Ms. Stevener then presented the estimated impact for each member/participant for each of the scenarios.

The staff recommendation was to:

- Establish a formal plan for approval by the NCPA Commission to address the issue
- Negotiate health care premiums to cap the exposure
- Shorten the amortization period to 8 years beginning with FY 2017 budget
- Use new services revenues to offset a portion of the additional required funding to mitigate member cost impact
- Update actuarial calculations in 2017 and update the plan accordingly

Extensive discussion occurred regarding the recommended proposal. Highlights include:

- Mr. Hanks (Roseville) – expressed concerned about timing of the plan; their retail rate case is already in place for three years; also expressed concerned about what will happen if the updated 2017 report is worse.
- Mr. Orbeta (Alameda) – Alameda is in a unique situation with declining load forecast for retail customers; they are losing revenue; can NCPA cut internal costs to make up some of the extra funding?
- Ms. Pepper (Santa Clara) – the 8 year number is a lot of money for Santa Clara.
- Mr. Hanks (Roseville) – understands the need to have a plan; recommends that we negotiate with unions first.
- Mr. Hanks (Roseville) - has concerns with 3<sup>rd</sup> bullet (accelerated amortization), but okay with rest of the proposal. Roseville needs at least 2 years notice of a major change in funding requirements in order to put the additional money in their retail rate plan.
- Ms. Pepper (Santa Clara) - suggested NCPA matching additional funding via budget cuts.

Overall, the Committee supported the concept of a plan and supported all the components except for the accelerated amortization. Ms. Pepper didn't receive the presentation prior to the meeting and requested a new copy be sent. The Committee agreed that they would like more time to review the scenarios and talk to the Utility Directors (UD's) at their cities for guidance. Mr. Howard suggested that NCPA present the issue to the UD's at their next meeting. Ms. Stevener suggested a special Finance Committee meeting be held in a few weeks to continue discussion on the issue and the Committee agreed to look at dates in 3 weeks' time.

## **6. Report on Current Financial Market Conditions or Issues**

Mr. Berwanger reported that 2016 has been a wild ride in the markets so far. NASDAQ is down 12%; Standard & Poor's 500 index is down 8%. Meanwhile, unemployment rates are down and interest rates are still very low. The Fed raised rates in December, with expectations to raise rates every quarter in 2016. Now, new expectations are maybe only 2 increases will happen in 2016, maybe none. Short-term rates are up and the longer-end of yield curve is down. This situation may open up refunding opportunities for NCPA. The AAA 30 year rate for municipals is only 2.7%. While the Treasury rate increased in the short-end of the curve, tax exempt rates didn't follow and remain at almost the lowest levels ever in all portions of the yield curve.

Mr. Plass left the meeting at 10:58 a.m.

NCPA's Variable Rate bonds have reset at 1 basis point (bp) for the last 3 months and remain at that level. As Ms. Stevener mentioned during her report, taxable variable rate debt popped up with the increase in the Fed rate to 40 bp.

Volume in the municipal market is down in 2016. There is a large demand for municipal bonds, but little offerings, driving the rates down. The NCPA Hydro Interest Rate Swap has performed very well in this market with gap between SIFMA & LIBOR indices. The structure is making money in this environment. PFM performed some refunding screens on NCPA debt and found a few possible opportunities for the Geothermal bonds and the Hydroelectric bonds. Dollar savings are very small and the Committee didn't want to pursue the opportunities unless the savings were much larger.

## **7. Discuss Financial Advisory Services Contract**

PFM staff left the call during the following discussion. In addition, several members of the Committee had to leave the call and there was no longer a quorum to discuss this item.

## **8. Discussion and Possible Action Regarding Selection of Auditors to Perform FY 2016-17 Financial Audit**

This item was not discussed due to lack of a quorum.

## **NEW BUSINESS**

### **9. Other Items of Interest to the Finance Committee**

No items were discussed.

### **10. Next Finance Committee Meeting**

The next regularly scheduled meeting is May 11, 2016 at 10:00 a.m.

A special meeting will be scheduled in 3 weeks to continue discussion the items 5, 7 & 8. Those present suggested March 7<sup>th</sup> or 9<sup>th</sup> at 10:00 a.m. NCPA will contact the Committee to confirm the best date/time for the special meeting.

## **ADJOURNMENT**

Meeting was adjourned at approximately 11:23 am.





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# Financial Report

AGENDA ITEM NO.: 10

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** January 2016 Financial Report (Unaudited)

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## Notice

The disbursements of the Northern California Power Agency for the month reported herein, will be approved at the February 25, 2016 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 January 2015 financial reports are also included.

## Environmental Analysis

The Financial Report will 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

Prepared by:

SONDRA AINSWORTH  
Treasurer - Controller

SA/dec  
Attachments

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

**Schedule of Disbursements  
(Unaudited)**

**For the Month of January 2016**

**Operations:**

<b>Geothermal</b>	<b>\$ 1,276,671</b>
<b>Hydroelectric</b>	<b>4,616,889</b>
<b>CT#1 Combustion Turbines</b>	<b>51,593</b>
<b>CT#2 STIG</b>	<b>547,969</b>
<b>Lodi Energy Center</b>	<b>4,831,791</b>
<b>NCPA Operating</b>	<b><u>17,259,932</u></b>
<b>Total</b>	<b><u>\$ 28,584,845</u></b>

NORTHERN CALIFORNIA POWER AGENCY  
 REPORT OF BUDGET VS. ACTUAL COST  
 FOR THE PERIOD ENDED JANUARY 2016

PERCENT OF YEAR ELAPSED 58%
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	This Month	Actual Year To-Date	FY 2016 Budget	% Used	
<b>GENERATION RESOURCES</b>					
<b>NCPA Plants</b>					
Hydroelectric					
Other Plant Cost	\$ 1,730,922	\$ 7,141,697	\$ 13,204,025	54%	
Debt Service (Net)	3,161,221	22,128,548	37,934,653	58%	
Annual Budget Cost	4,892,143	29,270,245	51,138,678	57%	
Geothermal					
Other Plant Cost	3,030,116	14,691,378	27,393,698	54%	
Debt Service (Net)	425,744	2,980,209	5,108,929	58%	
Annual Budget Cost	3,455,860	17,671,587	32,502,627	54%	
Combustion Turbine No. 1	251,253	1,541,853	2,877,315	54%	
Combustion Turbine No. 2 (Stig)					
Fuel and Pipeline Transport Charges	60,443	457,722	953,150	48%	
Other Plant Cost	237,159	1,132,830	1,798,534	63%	(d)
Debt Service (Net)	473,293	3,313,050	5,679,515	58%	
Annual Budget Cost	770,895	4,903,602	8,431,199	58%	
Lodi Energy Center					
Fuel	2,048,625	18,906,285	49,851,536	38%	
Other Plant Cost	3,141,490	14,357,755	19,739,576	73%	(c)
Debt Service (Net)	2,203,974	15,427,816	26,440,994	58%	
Annual Budget Cost	7,394,089	48,691,856	96,032,106	51%	
Member Resources - Energy	2,706,141	22,918,774	39,011,876	59%	
Member Resources - Natural Gas	609,445	3,761,836	5,748,516	65%	(b)
Western Resources	1,627,348	13,809,037	29,537,384	47%	
Market Power Purchases	3,459,898	19,552,725	42,915,828	46%	
Load Aggregation Costs - ISO	14,473,588	120,884,442	238,603,172	51%	
Net GHG Obligations	-	1,919,190	3,029,825	63%	(a)
	39,640,660	284,925,147	549,828,526	52%	
<b>TRANSMISSION</b>					
<b>Independent System Operator</b>					
Grid Management Charge	490,400	2,023,530	3,393,692	60%	
Wheeling Access Charge	5,922,563	43,097,831	70,278,323	61%	
Ancillary Services	126,485	913,855	1,419,670	64%	(e)
Other Charges	(274,985)	(1,656,094)	920,067	-180%	
	6,264,463	44,379,122	76,011,752	58%	

NORTHERN CALIFORNIA POWER AGENCY  
 REPORT OF BUDGET VS. ACTUAL COST  
 FOR THE PERIOD ENDED JANUARY 2016

PERCENT OF YEAR ELAPSED 58%
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	This Month	Actual Year To-Date	FY 2016 Budget	% Used
<b>MANAGEMENT SERVICES</b>				
<b>Legislative &amp; Regulatory</b>				
Legislative Representation	115,787	917,648	1,821,212	50%
Regulatory Representation	80,106	382,783	767,394	50%
Western Representation	42,567	288,355	792,956	36%
Member Support Services	32,112	207,220	459,903	45%
Judicial Action	52,546	329,935	625,000	53%
<b>Power Management</b>				
System Control & Load Dispatch	426,864	2,691,500	5,585,170	48%
Forecasting, Planning, Prescheduling & Trading	194,949	1,170,530	2,478,635	47%
Industry Restructuring & Regulatory Affairs	26,809	160,182	403,758	40%
Contract Admin, Interconnection Svcs & External Affairs	75,138	468,752	1,052,202	45%
Green Power Project	905	4,093	36,418	11%
Gas Purchase Program	4,516	30,315	69,182	44%
Market Purchase Project	7,908	46,914	114,093	41%
<b>Energy Risk Management</b>				
Settlements	16,586	73,510	204,512	36%
Integrated Systems Support	51,854	300,426	667,611	45%
Participant Pass Through Costs	7,561	94,298	532,705	18%
Shared Services Pass Through	28,127	848,488	1,444,264	59%
	-	16,387	-	N/A
	<b>1,164,335</b>	<b>8,031,336</b>	<b>17,055,015</b>	<b>47%</b>
<b>TOTAL ANNUAL BUDGET COST</b>	<b>47,069,458</b>	<b>337,335,605</b>	<b>642,895,293</b>	<b>52%</b>
<b>LESS: THIRD PARTY REVENUE</b>				
Plant ISO Energy Sales	5,839,025	52,571,968	118,904,279	44%
Load Aggregation Energy Sales	8,996,299	90,786,166	178,771,257	51%
Ancillary Services Sales	460,975	3,360,394	4,078,239	82%
Transmission Sales	9,198	64,386	110,376	58%
Western Credits, Interest and Other Income	971,696	7,951,056	16,003,668	50%
	<b>16,277,193</b>	<b>154,733,970</b>	<b>317,867,819</b>	<b>49%</b>
<b>NET ANNUAL BUDGET COST TO PARTICIPANTS</b>	<b>\$ 30,792,265</b>	<b>\$ 182,601,635</b>	<b>\$ 325,027,474</b>	<b>56%</b>

(a) Purchases made several months in advance. Costs are expected to level off throughout the year.

(b) Cost per MWh higher than budgeted.

(c) Variance due to unbudgeted CA ISO energy purchases.

(d) Variance due to greater than anticipated CA ISO Wheeling Charges (variable). The increase in CA ISO Wheeling Charges (variable) is due to a forced outage on 10/12/15 and other costs attributable to Uninstructed Imbalance Energy due to the unit not generating to its Dispatch Operating Target.

(e) Variance due to greater than anticipated ISO A/S Charges. See NCPA Annual budget, FY 2016, Section E for the underlying budget assumptions.

COMBINED STATEMENTS OF NET POSITION

NORTHERN CALIFORNIA POWER AGENCY  
AND ASSOCIATED POWER CORPORATIONS

UNAUDITED

	January 31,	
	2016	2015
ASSETS	(in thousands)	
CURRENT ASSETS		
Cash and cash equivalents	\$ 38,955	\$ 30,066
Investments	29,545	46,976
Accounts receivable		
Participants	644	-
Other	674	1,466
Interest receivable	210	54
Inventory and supplies - at average cost	8,452	7,883
Prepaid expenses	3,969	1
TOTAL CURRENT ASSETS	<u>82,449</u>	<u>86,446</u>
RESTRICTED ASSETS		
Cash and cash equivalents	51,705	58,354
Investments	153,286	138,433
Interest receivable	344	214
TOTAL RESTRICTED ASSETS	<u>205,335</u>	<u>197,001</u>
ELECTRIC PLANT		
Electric plant in service	1,500,991	1,499,314
Less: accumulated depreciation	(899,299)	(868,753)
	<u>601,692</u>	<u>630,561</u>
Construction work-in-progress	100	231
TOTAL ELECTRIC PLANT	<u>601,792</u>	<u>630,792</u>
OTHER ASSETS		
Regulatory assets	<u>249,611</u>	<u>197,328</u>
TOTAL ASSETS	<u>1,139,187</u>	<u>1,111,567</u>
DEFERRED OUTFLOWS OF RESOURCES		
Excess cost on refunding of debt	57,584	65,227
Pension contribution	5,310	-
TOTAL DEFERRED OUTFLOWS OF RESOURCES	<u>62,894</u>	<u>65,227</u>
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	<u>\$ 1,202,081</u>	<u>\$ 1,176,794</u>

COMBINED STATEMENTS OF NET POSITION

NORTHERN CALIFORNIA POWER AGENCY  
AND ASSOCIATED POWER CORPORATIONS

UNAUDITED

	January 31,	
	2016	2015
LIABILITIES	(in thousands)	
CURRENT LIABILITIES		
Accounts payable	\$ 24,179	\$ 22,328
Member advances	993	993
Operating reserves	23,308	19,622
Current portion of long-term debt	36,730	35,160
Accrued interest payable	5,794	5,954
TOTAL CURRENT LIABILITIES	91,004	84,057
NON-CURRENT LIABILITIES		
Net pension liability	57,260	-
Operating reserves and other deposits	136,452	125,809
Interest rate swap liability	19,654	19,788
Long-term debt, net	788,109	827,715
TOTAL NON-CURRENT LIABILITIES	1,001,475	973,312
TOTAL LIABILITIES	1,092,479	1,057,369
DEFERRED INFLOWS OF RESOURCES		
Regulatory credits	74,763	78,762
Pension earnings	4,947	-
TOTAL DEFERRED INFLOWS OF RESOURCES	79,710	78,762
NET POSITION		
Net investment in capital assets	(56,744)	(56,182)
Restricted	63,324	63,893
Unrestricted	23,312	32,952
TOTAL NET POSITION	29,892	40,663
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION	\$ 1,202,081	\$ 1,176,794

COMBINED STATEMENTS OF REVENUES, EXPENSES  
AND CHANGES IN NET POSITION

NORTHERN CALIFORNIA POWER AGENCY  
AND ASSOCIATED POWER CORPORATIONS

UNAUDITED

	Seven Months Ended January 31,	
	2016	2015
	(in thousands)	
SALES FOR RESALE		
Participants	\$ 196,012	\$ 167,005
Other Third-Party	89,188	83,988
TOTAL SALES FOR RESALE	<u>285,200</u>	<u>250,993</u>
OPERATING EXPENSES		
Purchased power	121,585	83,652
Operations	43,893	52,182
Transmission	46,855	35,005
Depreciation	17,916	18,481
Maintenance expenses	12,284	10,217
Administrative and general	12,206	13,530
TOTAL OPERATING EXPENSES	<u>254,739</u>	<u>213,067</u>
NET OPERATING REVENUES	<u>30,461</u>	<u>37,926</u>
OTHER (EXPENSES) REVENUES		
Interest expense	(28,454)	(30,339)
Interest income	1,256	836
Other	3,795	2,867
TOTAL OTHER EXPENSES	<u>(23,403)</u>	<u>(26,636)</u>
FUTURE RECOVERABLE AMOUNTS	(48)	2,410
REFUNDS TO PARTICIPANTS	<u>(7,108)</u>	<u>(5,270)</u>
INCREASE (DECREASE) IN NET POSITION	(98)	8,430
NET POSITION, Beginning of year	<u>29,990</u>	<u>32,233</u>
NET POSITION, Period ended	<u>\$ 29,892</u>	<u>\$ 40,663</u>

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

January 31, 2016

	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				
<b>CURRENT ASSETS</b>												
Cash and cash equivalents	\$ 16,171	\$ 9,421	\$ 2,508	\$ 479	\$ 20,855	\$ 17,959	\$ -	\$ 923	\$ -	\$ 37,958	\$ 29,545	\$ 38,955
Investments	-	-	-	-	-	-	-	-	-	-	-	29,545
Accounts receivable	-	-	-	-	-	-	-	-	-	-	-	-
Participants	-	-	-	-	-	-	-	-	-	-	-	644
Others	-	-	-	3	-	-	-	-	-	658	-	674
Interest receivable	-	-	-	-	60	-	-	-	-	53	-	97
Inventory and supplies - at average cost	3,743	1,079	642	1,402	1,586	-	-	-	-	-	-	8,452
Prepaid expenses	-	14	-	-	-	-	-	-	-	-	-	3,969
Due from Agency and other programs*	12,427	8,328	1,865	(927)	19,138	17,248	-	4,556	-	(62,635)	-	-
<b>TOTAL CURRENT ASSETS</b>	<b>16,171</b>	<b>9,421</b>	<b>2,508</b>	<b>479</b>	<b>20,855</b>	<b>17,959</b>	<b>-</b>	<b>5,479</b>	<b>-</b>	<b>9,577</b>	<b>-</b>	<b>82,449</b>
<b>RESTRICTED ASSETS</b>												
Cash and cash equivalents	2,845	4,484	2,090	-	11,854	2,213	-	-	-	28,219	-	51,705
Investments	19,549	38,695	2,391	-	21,978	18,645	-	-	-	52,028	-	153,286
Interest receivable	87	94	2	-	30	131	-	-	-	-	-	344
<b>TOTAL RESTRICTED ASSETS</b>	<b>22,481</b>	<b>43,273</b>	<b>4,483</b>	<b>-</b>	<b>33,862</b>	<b>20,858</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>80,378</b>	<b>-</b>	<b>205,335</b>
<b>ELECTRIC PLANT</b>												
Electric plant in service	569,056	393,977	64,826	36,245	423,412	7,736	-	508	-	5,231	-	1,500,991
Less: accumulated depreciation	(526,511)	(239,118)	(43,022)	(34,042)	(46,251)	(7,724)	-	(304)	-	(2,327)	-	(899,299)
	42,545	154,859	21,804	2,203	377,161	12	-	204	-	2,904	-	601,692
Construction work-in-progress	-	-	-	-	95	-	-	-	-	-	-	100
<b>TOTAL ELECTRIC PLANT</b>	<b>42,545</b>	<b>154,859</b>	<b>21,804</b>	<b>2,203</b>	<b>377,256</b>	<b>12</b>	<b>-</b>	<b>204</b>	<b>-</b>	<b>2,909</b>	<b>-</b>	<b>601,792</b>
<b>OTHER ASSETS</b>												
Regulatory assets	2,443	158,558	13,719	-	18,005	(12)	-	-	-	56,898	-	249,611
<b>DEFERRED OUTFLOWS OF RESOURCES</b>												
Excess cost on refunding of debt	-	55,244	2,340	-	-	-	-	-	-	-	-	57,584
Pension contribution	-	-	-	-	-	-	-	-	-	5,310	-	5,310
<b>TOTAL DEFERRED OUTFLOWS OF RESOURCES</b>	<b>-</b>	<b>55,244</b>	<b>2,340</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5,310</b>	<b>-</b>	<b>62,894</b>
<b>TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES</b>	<b>\$ 83,640</b>	<b>\$ 421,355</b>	<b>\$ 44,854</b>	<b>\$ 2,682</b>	<b>\$ 449,978</b>	<b>\$ 38,817</b>	<b>\$ -</b>	<b>\$ 5,683</b>	<b>\$ -</b>	<b>\$ 155,072</b>	<b>\$ -</b>	<b>\$ 1,202,081</b>

\* Eliminated in Combination



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

January 31, 2016

**GENERATING & TRANSMISSION RESOURCES**

	Geothermal	Hydroelectric	Multiple Capital Facilities	CT No. One	Lodi Energy Center	Transmission	Purchased Power & Transmission	Associated Member Services	Other Agency	Combined
\$	137	263	1	2	2,075	-	12,193	-	9,508	24,179
Accounts payable	791	-	-	-	-	-	-	202	-	993
Member advances	7,499	250	513	250	14,796	-	-	-	-	23,308
Operating reserves	3,550	20,050	3,670	-	9,480	-	-	-	-	36,730
Current portion of long-term debt	125	1,848	1,000	-	2,821	-	-	-	-	5,794
Accrued interest payable	-	-	-	-	-	-	-	-	-	-
<b>TOTAL CURRENT LIABILITIES</b>	<b>12,082</b>	<b>22,411</b>	<b>5,184</b>	<b>252</b>	<b>29,172</b>	<b>-</b>	<b>12,193</b>	<b>202</b>	<b>9,508</b>	<b>91,004</b>
<b>NON-CURRENT LIABILITIES</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Net pension liability	14,863	14,096	-	-	5,491	-	20,911	923	57,260	136,452
Operating reserves and other deposits	-	19,654	-	-	-	-	-	-	80,168	19,654
Interest rate swap liability	31,089	356,547	38,444	-	362,029	-	-	-	-	788,109
Long-term debt, net	-	-	-	-	-	-	-	-	-	-
<b>TOTAL NON-CURRENT LIABILITIES</b>	<b>45,952</b>	<b>390,297</b>	<b>38,444</b>	<b>-</b>	<b>367,520</b>	<b>-</b>	<b>20,911</b>	<b>923</b>	<b>137,428</b>	<b>1,001,475</b>
<b>TOTAL LIABILITIES</b>	<b>58,034</b>	<b>412,708</b>	<b>43,628</b>	<b>252</b>	<b>396,692</b>	<b>-</b>	<b>33,104</b>	<b>1,125</b>	<b>146,936</b>	<b>1,092,479</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>	<b>20,566</b>	<b>3,944</b>	<b>1,081</b>	<b>2,329</b>	<b>43,602</b>	<b>-</b>	<b>-</b>	<b>204</b>	<b>3,037</b>	<b>74,763</b>
Regulatory credits	-	-	-	-	-	-	-	-	4,947	4,947
Pension earnings	20,566	3,944	1,081	2,329	43,602	-	-	204	3,037	74,763
<b>TOTAL DEFERRED INFLOWS OF RESOURCES</b>	<b>20,566</b>	<b>3,944</b>	<b>1,081</b>	<b>2,329</b>	<b>43,602</b>	<b>-</b>	<b>-</b>	<b>204</b>	<b>7,984</b>	<b>79,710</b>
<b>NET POSITION</b>	<b>(5,581)</b>	<b>(26,009)</b>	<b>(5,313)</b>	<b>-</b>	<b>(19,841)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(56,744)</b>
Net investment in capital assets	6,620	37,431	3,484	-	14,259	-	-	1,313	217	63,324
Restricted	4,001	(6,719)	1,974	101	15,266	-	5,713	3,041	(65)	23,312
Unrestricted	5,040	4,703	145	101	9,684	-	5,713	4,354	152	29,892
<b>TOTAL NET POSITION</b>	<b>83,640</b>	<b>421,355</b>	<b>44,854</b>	<b>2,682</b>	<b>449,978</b>	<b>-</b>	<b>38,817</b>	<b>5,683</b>	<b>155,072</b>	<b>1,202,081</b>
<b>TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION</b>	<b>83,640</b>	<b>421,355</b>	<b>44,854</b>	<b>2,682</b>	<b>449,978</b>	<b>-</b>	<b>38,817</b>	<b>5,683</b>	<b>155,072</b>	<b>1,202,081</b>

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 Seven Months Ended January 31, 2016

	GENERATING & TRANSMISSION RESOURCES										Other Agency	Combined	
	Geothermal	Hydroelectric	Multiple Capital Facilities	CT No. One	Lodi Energy Center	Transmission	Purchased Power & Transmission	Associated Member Services					
SALES FOR RESALE													
Participants	\$ 3,268	\$ 23,970	\$ 4,301	\$ 1,486	\$ 19,488	\$ -	\$ -	\$ 11,912	\$ 11,912	\$ 75	\$ -	\$ 196,012	
Other third-party	17,341	6,001	302	535	31,624	-	-	33,385	-	-	-	89,188	
TOTAL SALES FOR RESALE	20,609	29,971	4,603	2,021	51,112	-	-	164,897	11,912	75	-	285,200	
OPERATING EXPENSES													
Purchased power	-	-	-	-	3,899	-	-	117,686	-	-	-	121,585	
Operations	7,873	2,228	690	626	22,599	-	-	3,762	6,115	-	-	43,893	
Transmission	658	266	48	(39)	389	-	-	45,531	2	-	-	46,855	
Depreciation	2,298	5,500	1,291	104	8,517	9	-	-	28	169	-	17,916	
Maintenance expenses	4,441	2,489	534	591	4,204	-	-	-	25	-	-	12,284	
Administrative and general	3,037	1,941	363	457	3,013	-	-	-	3,695	(300)	-	12,206	
Intercorpany (sales) purchases, net*	(284)	89	38	62	129	-	-	-	(34)	-	-	-	
TOTAL OPERATING EXPENSES	18,023	12,513	2,964	1,801	42,750	9	9	166,979	9,831	(131)	-	254,739	
NET OPERATING REVENUES	2,586	17,458	1,639	220	8,362	(9)	(9)	(2,082)	2,081	206	-	30,461	
OTHER (EXPENSES) REVENUES													
Interest expense	(863)	(16,950)	(1,169)	-	(9,472)	-	-	-	-	-	-	(28,454)	
Interest income	165	172	13	-	201	-	-	230	19	456	-	1,256	
Other	46	3	391	-	3,032	-	-	-	137	186	-	3,795	
TOTAL OTHER (EXPENSES) REVENUES	(652)	(16,775)	(765)	-	(6,239)	-	-	230	156	642	-	(23,402)	
FUTURE RECOVERABLE AMOUNTS	(561)	171	(899)	-	1,614	9	9	-	-	(382)	-	(48)	
REFUNDS TO PARTICIPANTS	(1,941)	(3,246)	8	340	1,415	-	-	(216)	(3,074)	(394)	-	(7,108)	
INCREASE (DECREASE) IN NET POSITION	(568)	(2,392)	(17)	560	5,152	-	-	(2,068)	(837)	72	-	(98)	
NET POSITION, Beginning of year	5,608	7,095	162	(459)	4,532	-	-	7,781	5,191	80	-	29,990	
NET POSITION, Period ended	\$ 5,040	\$ 4,703	\$ 145	\$ 101	\$ 9,684	\$ -	\$ -	\$ 5,713	\$ 4,354	\$ 152	\$ -	\$ 29,892	

\* Eliminated in Combination

NORTHERN CALIFORNIA POWER AGENCY & ASSOCIATED POWER CORPORATIONS  
 AGED ACCOUNTS RECEIVABLE  
 January 31, 2016

Status	Participant / Customer	Description	Amount
CURRENT			\$ 1,317,995
PAST DUE:			
1 - 30			
31 - 60			
61 - 90			
91 - 120			
Over 120 Days			
PARTICIPANT and OTHER RECEIVABLES (net)			<u>\$ 1,317,995</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.



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# Commission Staff Report

AGENDA ITEM NO.: 11

**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** Treasurer's Report for the Month Ended January 31, 2016

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 \$32,315,942 of which approximately \$165,558 was applicable to Special and Reserve Fund Deposits, \$2,036,468 to Debt Service and \$30,113,916 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 \$241,171,137 at month end. The current market value of the portfolio totaled \$241,809,863.

The overall portfolio had a combined weighted average interest rate of 0.897% with a bond equivalent yield (yield to maturity) of 0.910%. Investments with a maturity greater than one year totaled \$146,313,000. January maturities totaled \$12 million and monthly receipts totaled \$30 million. During the month \$23 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 11 basis points (from 0.21% to 0.32%) and rates on one year T-Bills decreased 19 basis points (from 0.66% to 0.47%).

To the best of my knowledge and belief, all securities held by NCPA as of January 31, 2016 are in compliance with the Agency's investment policy. There are adequate cash flow and investment maturities to meet next month's cash requirements.

## Environmental Analysis

The Treasurer's report will 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

Prepared by:

SONDRA AINSWORTH  
Treasurer-Controller

Attachments

SR: 114:16

# NORTHERN CALIFORNIA POWER AGENCY

## TREASURER'S REPORT

JANUARY 31, 2016

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DETAIL REPORT OF INVESTMENTS	APPENDIX

**Northern California Power Agency**  
**Treasurer's Report**  
**Cash & Investment Balance**  
**January 31, 2016**

	CASH	INVESTMENTS	TOTAL	PERCENT
<b>NCPA FUNDS</b>				
Operating	\$ 25,549,915	\$ 63,085,987	88,635,902	32.41%
Special Deposits	2,110,604	1	2,110,605	0.77%
Construction	2,453,397	2,408,607	4,862,004	1.78%
Debt Service	2,036,468	25,110,890	27,147,358	9.93%
Special & Reserve	165,558	150,565,652	150,731,210	55.11%
	<u>\$ 32,315,942</u>	<u>\$ 241,171,137</u>	<u>\$ 273,487,079</u>	<u>100.00%</u>

Portfolio Investments at Market Value

\$ 241,809,862

NOTE A -Investment amounts shown at book carrying value.

Northern California Power Agency  
Treasurer's Report  
Cash Activity Summary  
January 31, 2016

	RECEIPTS			EXPENDITURES			CASH INCREASE / (DECREASE)
	OPS/CONSTR	INTEREST (NOTE B)	INVESTMENTS (NOTE A)	OPS/CONSTR	INVESTMENTS (NOTE B)	INTER-COMPANY/ FUND TRANSFERS	
<b>NCPA FUNDS</b>							
Operating	\$ 29,879,234	\$ 20,590	\$ 7,924,635	\$ (17,169,223)	\$ (575,693)	\$ (18,393,196)	\$ 1,686,347
Special Deposits	391,298	23	-	(5,412,352)	-	5,012,307	(8,724)
Construction	-	18,172	2,391,000	-	-	-	2,409,172
Debt Service	-	4	2,074,641	(8,472,860)	(15,514,571)	6,011,997	(15,900,789)
Special & Reserve	-	90,232	-	-	(7,395,344)	7,368,892	63,780
	<u>\$ 30,270,532</u>	<u>\$ 129,021</u>	<u>\$ 12,390,276</u>	<u>\$ (31,054,435)</u>	<u>\$ (23,485,608)</u>	<u>\$ -</u>	<u>\$ (11,750,214)</u>

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  
January 31, 2016**

	PURCHASED	SOLD OR MATURED	(NON-CASH) DISC/(PREM) AMORT	(NON-CASH) GAIN/(LOSS) ON SALE	INVESTMENTS		INCREASE / (DECREASE)
					TRANSFERS		
<b>NCPA FUNDS</b>							
Operating	\$ 575,693	\$ (7,924,635)	\$ (3,174)	\$ -	\$ -	\$ -	\$ (7,352,116)
Special Deposits		-	-	-	-	-	-
Construction	-	(2,391,000)	(28)	-	-	-	(2,391,028)
Debt Service	15,514,571	(2,074,641)	4,040	-	-	-	13,443,970
Special & Reserve	7,395,344		(4,051)	-	-	-	7,391,293
	<u>\$ 23,485,608</u>	<u>\$ (12,390,276)</u>	<u>\$ (3,213)</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>11,092,119</u>
<b>Less Non- Cash Activity</b>							
Disc/(Prem) Amortization & Gain/(Loss) on Sale							<u>3,213</u>
<b>Net Change in Investment --Before Non-Cash Activity</b>							<u><u>\$ 11,095,332</u></u>

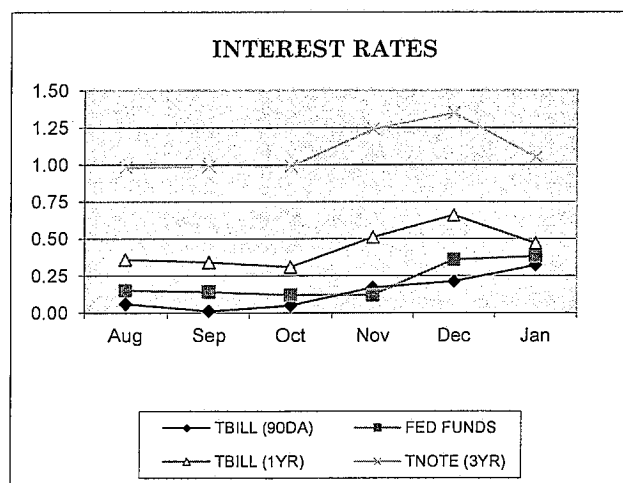
NOTE A -Investment amounts shown at book carrying value.



**Northern California Power Agency  
Interest Rate/Yield Analysis  
January 31, 2016**

	<u>WEIGHTED AVERAGE INTEREST RATE</u>	<u>BOND EQUIVALENT YIELD</u>
<b>OVERALL COMBINED</b>	<u>0.897%</u>	<u>0.910%</u>
<b><u>OPERATING FUNDS:</u></b>	0.862%	0.823%
<b><u>PROJECTS:</u></b>		
Geothermal	1.104%	1.107%
Capital Facilities	1.544%	1.524%
Hydroelectric	1.113%	1.098%
Lodi Energy Center	0.984%	0.938%

<b>KEY INTEREST RATES</b>		
	<u>CURRENT</u>	<u>PRIOR YEAR</u>
Fed Fds (Ovrnight)	0.38%	0.12%
T-Bills (90da.)	0.32%	0.02%
Agency Disc (90da.)	0.39%	0.06%
T-Bills (1yr.)	0.47%	0.17%
Agency Disc (1yr.)	0.54%	0.24%
T-Notes (3yr.)	1.05%	0.84%



**Northern California Power Agency  
Total Portfolio  
Investment Maturities Analysis  
January 31, 2016**

Type	0-7 Days	8-90 Days	91-180 Days	181-270 Days	271-360 Days	1-5 Years	5-10 Years	Total	Percent
US Government Agencies	\$473	\$0	\$30,540	\$4,128	\$865	\$140,942	\$5,371	\$182,319	68.42%
US Bank Trust Money Market	3,409							3,409	1.28%
Commercial Paper	5,000							5,000	1.88%
Investment Trusts (LAIF)	50,046							50,046	18.78%
U.S.Treasury Market Acct. *	25,680							25,680	9.64%
U.S.Treasury Bill								0	0.00%
Certificates of Deposit		10						10	0.00%
<b>Total Dollars</b>	<b>\$84,608</b>	<b>\$10</b>	<b>\$30,540</b>	<b>\$4,128</b>	<b>\$865</b>	<b>\$140,942</b>	<b>\$5,371</b>	<b>\$266,464</b>	<b>100.00%</b>
<b>Total Percents</b>	<b>31.75%</b>	<b>0.00%</b>	<b>11.46%</b>	<b>1.55%</b>	<b>0.32%</b>	<b>52.89%</b>	<b>2.02%</b>	<b>100.00%</b>	

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

01/31/2016

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	5,000,000	0.100	11/26/2014	5,000,000		1	0.100	5,000,000	SYS70101	70101	5,000,000
Local Agency Investm	LAIF	12,299,117	0.367	07/01/2013	12,299,117		1	0.367	12,299,117	SYS70000	70000	12,299,117
Union Bank of Calif	UBOC	83,045	0.002	07/01/2013	83,045		1	0.002	83,045	SYS70014	70014	83,045
US Bank	USB	25,549,914	0.001	06/30/2013	25,549,914		1	0.001	25,549,914	SYS70050	70050	25,549,914
US Bank	USB	10,000	0.050	01/07/2016	10,000	04/07/2016	66	0.050	10,000	SYS30298	30298	10,000
Federal Farm Credit	UBOC	3,626,000	1.290	12/21/2015	3,624,948	11/19/2018	1,022	1.300	3,653,050	3133EFPJ0	26280	3,624,989
Federal Home Loan Mt	UBOC	9,870,000	1.750	06/09/2015	9,983,900	05/30/2019	1,214	1.450	10,053,582	3137EADG1	26231	9,965,434
Federal Home Loan Mt	UBOC	7,750,000	1.625	09/30/2015	7,750,000	03/30/2020	1,519	1.625	7,753,488	3134G7G88	26259	7,750,000
Federal National Mtg	UBOC	3,205,000	1.600	04/29/2015	3,205,000	04/29/2020	1,549	1.600	3,211,057	3136G2GH4	26224	3,205,000
<b>Fund Total and Average</b>		<b>\$ 67,393,076</b>	<b>0.665</b>		<b>\$ 67,505,924</b>		<b>483</b>	<b>0.622</b>	<b>\$ 67,613,253</b>			<b>\$ 67,487,499</b>

MPP GHG Auction Acct

Local Agency Investm		923,338	0.367	07/01/2013	923,338		1	0.367	923,338	SYS70045	70045	923,338
<b>Fund Total and Average</b>		<b>\$ 923,338</b>	<b>0.367</b>		<b>\$ 923,338</b>		<b>1</b>	<b>0.367</b>	<b>\$ 923,338</b>			<b>\$ 923,338</b>

SCPA Balancing Account

Local Agency Investm	LAIF	1,504,767	0.367	07/01/2013	1,504,767		1	0.367	1,504,767	SYS70022	70022	1,504,767
Union Bank of Calif	UBOC	4,506	0.005	07/01/2013	4,506		1	0.005	4,506	SYS70023	70023	4,506
US Bank	USB	0	0.000	07/01/2013	0		1	0.000	0	SYS70058	70058	0
Federal Home Loan Ba	UBOC	4,510,000	1.000	04/27/2015	4,510,000	04/27/2018	816	1.000	4,505,716	3130A55T2	26223	4,510,000
Federal National Mtg	UBOC	3,962,000	1.625	12/18/2014	4,000,630	11/27/2018	1,030	1.369	4,030,780	3135GOYT4	26187	3,989,659
Federal Home Loan Ba	UBOC	5,070,000	1.625	12/28/2015	5,070,000	06/28/2019	1,243	1.625	5,071,876	3130A6VN4	26281	5,070,000
Federal Home Loan Mt	UBOC	5,075,000	1.700	10/28/2015	5,075,000	10/28/2020	1,731	1.700	5,075,152	3134G73K5	26271	5,075,000
<b>Fund Total and Average</b>		<b>\$ 20,126,273</b>	<b>1.410</b>		<b>\$ 20,164,903</b>		<b>1135</b>	<b>1.359</b>	<b>\$ 20,192,797</b>			<b>\$ 20,153,932</b>

General Operating Reserve

Local Agency Investm	LAIF	28,180,305	0.367	07/01/2013	28,180,305		1	0.367	28,180,305	SYS70000	70002	28,180,305
Union Bank of Calif	UBOC	40,159	0.002	07/01/2013	40,159		1	0.002	40,159	SYS70019	70019	40,159
US Bank	USB	0	0.000	07/01/2013	0		1	0.000	0	SYS70051	70051	0
Federal Home Loan Mt	UBOC	4,995,000	0.500	01/24/2014	4,994,251	05/13/2016	102	0.506	4,996,049	3137EADQ9	26085	4,994,908
Federal National Mtg	UBOC	3,263,000	0.750	12/16/2014	3,261,466	04/20/2017	444	0.770	3,263,979	3135GOZB2	26186	3,262,202
Federal Farm Credit	UBOC	7,305,000	0.770	12/05/2012	7,305,000	06/05/2017	490	0.770	7,305,292	3133EC5L4	25942	7,305,000
Federal National Mtg	UBOC	10,490,000	0.900	11/27/2012	10,490,000	11/27/2017	665	0.900	10,478,251	3136G07M7	25934	10,490,000
Federal National Mtg	UBOC	5,970,000	1.625	12/23/2014	6,009,701	11/27/2018	1,030	1.450	6,073,639	3135GOYT4	26188	5,998,526



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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 Farm Credit	UBOC	9,376,000	1.420	10/22/2015	9,376,000	10/22/2019	1,359	1.420	9,376,000	3133EFLB1	26270	9,376,000
Federal National Mtg	UBOC	4,982,000	1.750	08/28/2015	5,047,364	11/26/2019	1,394	1.430	5,073,719	3135G0ZY2	26246	5,040,819
Federal Farm Credit	UBOC	1,301,000	1.850	06/08/2015	1,301,000	06/08/2020	1,589	1.850	1,301,885	3133EEU65	26229	1,301,000
Federal Farm Credit	UBOC	4,260,000	1.680	10/29/2015	4,260,000	10/29/2020	1,732	1.680	4,260,043	3133EFMG9	26272	4,260,000
Fund Total and Average		\$ 80,162,464	0.895		\$ 80,265,246		597	0.863	\$ 80,349,321			\$ 80,248,919
GRAND TOTALS:		\$ 168,605,151	0.862		\$ 168,859,411		612	0.823	\$ 169,078,709			\$ 168,813,688

\*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 01/31/2016

Investment #25934 - FNMA - Callable quarterly.  
 Investment #25942 - FFCEB - Callable anytime.  
 Investment #26223 - FHLMC - Callable on 4/27/2017 Only.  
 Investment #26224 - FHLMC - Callable on 4/29/2016 Only.  
 Investment #26259 - FHLMC - Callable quarterly.  
 Investment #26270 - FFCEB - Callable anytime.  
 Investment #26271 - FHLMC - Callable quarterly.  
 Investment #26272 - FFCEB - Callable anytime.  
 Investment #26281 - FHLB - Callable 3/28/16, then anytime.



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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 Mt	USBT	873,000	0.250	06/02/2015	870,824	05/26/2016	115	0.253	871,874	313396XH1	26226	872,303
<b>Fund Total and Average</b>		<b>\$ 873,000</b>	<b>0.250</b>		<b>\$ 870,824</b>		<b>115</b>	<b>0.254</b>	<b>\$ 871,874</b>			<b>\$ 872,303</b>

Geothermal Debt Service

Federal Home Loan Mt	USBT	242,000	0.490	12/28/2015	241,391	06/30/2016	150	0.498	241,586	313396YU1	26284	241,506
Federal National Mtg	USBT	992,000	0.390	01/27/2016	990,324	07/01/2016	151	0.396	990,214	313588YV1	26293	990,377
<b>Fund Total and Average</b>		<b>\$ 1,234,000</b>	<b>0.410</b>		<b>\$ 1,231,715</b>		<b>151</b>	<b>0.416</b>	<b>\$ 1,231,800</b>			<b>\$ 1,231,883</b>

Geo 2012A Debt Service

Federal Home Loan Mt	USBT	262,000	0.490	12/28/2015	261,340	06/30/2016	150	0.498	261,552	313396YU1	26285	261,465
Federal National Mtg	USBT	79,000	0.390	01/27/2016	78,866	07/01/2016	151	0.396	78,858	313588YV1	26292	78,871
<b>Fund Total and Average</b>		<b>\$ 341,000</b>	<b>0.467</b>		<b>\$ 340,206</b>		<b>150</b>	<b>0.474</b>	<b>\$ 340,410</b>			<b>\$ 340,336</b>

Geothermal Special Reserve

Local Agency Investm	LAIF	0	0.356	07/01/2013	0		1	0.356	0	SYS70032	70032	0
Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYS70015	70015	0
US Bank	USB	0	0.000	07/01/2013	0		1	0.000	0	SYS70063	70063	0
Federal Home Loan Mt	UBOC	1,500,000	1.000	08/31/2015	1,500,000	02/26/2018	756	1.000	1,500,570	3134G7UW9	26249	1,500,000
<b>Fund Total and Average</b>		<b>\$ 1,500,000</b>	<b>1.000</b>		<b>\$ 1,500,000</b>		<b>756</b>	<b>1.000</b>	<b>\$ 1,500,570</b>			<b>\$ 1,500,000</b>

Geo Decommissioning Reserve

Local Agency Investm	LAIF	2,811,536	0.367	07/01/2013	2,811,536		1	0.367	2,811,536	SYS70027	70027	2,811,536
Union Bank of Calif	UBOC	2,703	0.002	07/01/2013	2,703		1	0.002	2,703	SYS70034	70034	2,703
US Bank	USB	0	0.000	07/01/2013	0		1	0.000	0	SYS70059	70059	0
Federal National Mtg	UBOC	4,128,000	0.625	01/24/2014	4,129,569	08/26/2016	207	0.635	4,129,238	3135G0YE7	26084	4,128,345
Federal Home Loan Mt	UBOC	865,000	0.625	12/20/2012	865,000	12/05/2016	308	0.624	864,862	3134G3Z37	25946	865,000
Federal Farm Credit	UBOC	5,488,000	1.900	08/28/2015	5,488,976	08/24/2020	1,666	1.857	5,513,574	3133EFAR8	26247	5,498,041
<b>Fund Total and Average</b>		<b>\$ 13,295,239</b>	<b>1.097</b>		<b>\$ 13,307,784</b>		<b>773</b>	<b>1.083</b>	<b>\$ 13,321,913</b>			<b>\$ 13,305,625</b>

GEO Debt Service Reserve Acct

Federal Home Loan Mt	USBT	1,109,000	1.750	06/02/2015	1,125,979	05/30/2019	1,214	1.354	1,129,627	3137EADG1	26228	1,123,157
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GEO Debt Service Reserve 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
Federal Home Loan ML	USBT	2,515,000	1.250	02/27/2015	2,483,839	10/02/2019	1,339	1.530	2,517,188	3137EADM8	26197	2,490,128
Fund Total and Average		\$ 3,624,000	1.405		\$ 3,609,818		1300	1.476	\$ 3,646,815			\$ 3,613,285

Geo 2012A DSR Account

Federal Home Loan Ba	USB	1,500,000	1.750	09/29/2015	1,500,000	09/29/2020	1,702	1.750	1,500,015	3130A6HQ3	26261	1,500,000
Fund Total and Average		\$ 1,500,000	1.750		\$ 1,500,000		1702	1.750	\$ 1,500,015			\$ 1,500,000
GRAND TOTALS:		\$ 22,367,239	1.104		\$ 22,360,347		850	1.107	\$ 22,413,397.			\$ 22,363,432

\*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 01/31/2016  
 Investment #26247 - FHLLB - Callable 8/24/16, then any time  
 Investment #26249 - FHLMC - Callable 2/26/16 only  
 Investment #26261 - FHLLB - Callable any time



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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
Federal Home Loan Ba	USBT	473,000	0.095	10/23/2015	472,874	02/01/2016	0	0.096	473,000	313384SN0	26265	473,000
Federal Home Loan Mt	USBT	473,000	0.450	01/27/2016	471,912	07/29/2016	179	0.457	471,988	313396ZZ9	26295	471,942
<b>Fund Total and Average</b>		<b>\$ 946,000</b>	<b>0.272</b>		<b>\$ 944,785</b>		<b>89</b>	<b>0.277</b>	<b>\$ 944,988</b>			<b>\$ 944,942</b>
<b>Cap. Fac. Debt Svc Reserve</b>												
Federal Home Loan Mt	USB	1,443,000	2.375	02/13/2012	1,447,430	01/13/2022	2,173	2.340	1,500,619	3137EADB2	25845	1,445,658
<b>Fund Total and Average</b>		<b>\$ 1,443,000</b>	<b>2.375</b>		<b>\$ 1,447,430</b>		<b>2173</b>	<b>2.340</b>	<b>\$ 1,500,619</b>			<b>\$ 1,445,658</b>
<b>GRAND TOTALS:</b>		<b>\$ 2,389,000</b>	<b>1.544</b>		<b>\$ 2,392,216</b>		<b>1349</b>	<b>1.524</b>	<b>\$ 2,445,607.</b>			<b>\$ 2,390,600</b>

\*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 01/31/2016





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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	1,948,753	0.367	07/01/2013	1,948,753		1	0.367	1,948,753	SYS70028	70028	1,948,753
Union Bank of Calif	UBOC	11	0.002	07/01/2013	11		1	0.002	11	SYS70031	70031	11
US Bank	USB	0	0.000	07/01/2013	0		1	0.000	0	SYS70052	70052	0
Federal Home Loan Ba	UBOC	3,575,000	1.100	12/29/2015	3,575,000	12/29/2017	697	1.100	3,578,003	3130A6UA3	26283	3,575,000
Federal Home Loan Ba	UBOC	5,320,000	1.350	12/29/2015	5,320,000	06/29/2018	879	1.350	5,328,565	3130A6XM4	26282	5,320,000
Federal Home Loan Mt	UBOC	3,222,000	1.300	08/28/2015	3,224,255	08/27/2018	938	1.276	3,222,193	3134G7SN2	26245	3,223,936
<b>Fund Total and Average</b>		<b>\$ 14,065,764</b>	<b>1.139</b>		<b>\$ 14,068,019</b>		<b>725</b>	<b>1.133</b>	<b>\$ 14,077,525</b>			<b>\$ 14,067,700</b>

**Hydro Initial Facilities**

Federal National Mtg	USB	1,529,000	1.625	12/12/2014	1,539,244	11/27/2018	1,030	1.450	1,555,543	3135GOYT4	26189	1,536,304
<b>Fund Total and Average</b>		<b>\$ 1,529,000</b>	<b>1.625</b>		<b>\$ 1,539,244</b>		<b>1030</b>	<b>1.450</b>	<b>\$ 1,555,543</b>			<b>\$ 1,536,304</b>

**Hydro Debt Service**

Federal Home Loan Mt	USBT	1,590,000	0.490	12/28/2015	1,585,996	06/30/2016	150	0.498	1,587,281	313399YU1	26286	1,586,754
Federal National Mtg	USBT	11,750,000	0.390	01/27/2016	11,730,143	07/01/2016	151	0.396	11,728,850	313588YV1	26294	11,730,779
<b>Fund Total and Average</b>		<b>\$ 13,340,000</b>	<b>0.402</b>		<b>\$ 13,316,139</b>		<b>151</b>	<b>0.408</b>	<b>\$ 13,316,131</b>			<b>\$ 13,317,533</b>

**Hydro Debt Service Resrv 2010A**

Federal Farm Credit	USB	5,528,000	1.750	08/28/2015	5,546,187	08/04/2020	1,646	1.680	5,606,774	3133EE5Z9	26243	5,544,620
<b>Fund Total and Average</b>		<b>\$ 5,528,000</b>	<b>1.750</b>		<b>\$ 5,546,187</b>		<b>1646</b>	<b>1.680</b>	<b>\$ 5,606,774</b>			<b>\$ 5,544,620</b>

**Hydro 2012A Rebate Account**

Federal Home Loan Mt	USB	651,000	1.000	02/09/2012	649,392	03/08/2017	401	1.050	652,784	3137EADC0	25853	650,651
<b>Fund Total and Average</b>		<b>\$ 651,000</b>	<b>1.000</b>		<b>\$ 649,392</b>		<b>401</b>	<b>1.050</b>	<b>\$ 652,784</b>			<b>\$ 650,651</b>

**Hydro Special Reserve**

Local Agency Investm	LAIF	0	0.377	07/01/2013	0		1	0.377	0	SYS70000	70003	0
Local Agency Investm	LAIF	0	0.356	07/01/2013	0		1	0.356	0	SYS70033	70033	0
Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYS70016	70016	0
US Bank	USB	0	0.000	07/01/2013	0		1	0.000	0	SYS70064	70064	0
Federal Home Loan Mt	UBOC	1,500,000	1.000	08/31/2015	1,500,000	02/26/2018	756	1.000	1,500,570	3134G7UW9	26250	1,500,000

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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
<b>Fund Total and Average</b>		\$ 1,500,000	1.000		\$ 1,500,000	756		1.000	\$ 1,500,570			\$ 1,500,000
Federal Farm Credit	USB	100,000	1.750	08/28/2015	100,329	08/04/2020	1,646	1.680	101,425	31833EE529	26244	100,301
Federal Home Loan Mt	USB	3,928,000	2.375	02/09/2012	3,926,232	01/13/2022	2,173	2.380	4,084,845	3137EADB2	25652	3,926,941
<b>Fund Total and Average</b>		\$ 4,028,000	2.359		\$ 4,026,561	2160		2.363	\$ 4,186,270			\$ 4,027,242
<b>GRAND TOTALS:</b>		\$ 40,641,764	1.113		\$ 40,645,542	812		1.098	\$ 40,895,597.			\$ 40,644,050

\*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 01/31/2016  
 Investment # 26245 - FHLMC - Callable Quarterly.  
 Investment # 26250 - FHLMC - Callable on 2/26/16 Only.  
 Investment #26282 - FHLB - Callable 6/29/16, then anytime.  
 Investment #26283 - FHLB - Callable quarterly.



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LEC GHG Auction Acct

Issuer	Trustees / 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		71,132	0.367	07/01/2013	71,132		1	0.367	71,132	SYS70046	70046	71,132
<b>Fund Total and Average</b>		<b>\$ 71,132</b>	<b>0.367</b>		<b>\$ 71,132</b>		<b>1</b>	<b>0.367</b>	<b>\$ 71,132</b>			<b>\$ 71,132</b>

LEC Construction Revolving

Local Agency Investm		1	0.254	07/01/2013		1	1	0.254		1	SYS70040	70040	1
<b>Fund Total and Average</b>		<b>\$ 1</b>	<b>0.254</b>		<b>\$ 1</b>		<b>1</b>	<b>0.254</b>	<b>\$ 1</b>			<b>\$ 1</b>	

LEC Issue#1 2010A DS Fund

US Bank Trust	USB	935	0.100	07/01/2013	935		1	0.100	935	SYS79003	79003	935
Federal Home Loan Ba	USBT	695,000	0.520	12/24/2015	693,474	05/24/2016	113	0.528	694,124	313384XF1	26288	693,866
Federal Home Loan Ba	USBT	2,560,000	0.240	12/02/2015	2,556,979	05/27/2016	116	0.243	2,556,672	313384XJ3	26278	2,558,020
Federal National Mig	USBT	694,000	0.360	01/27/2016	693,126	06/01/2016	121	0.365	693,042	313588XP5	26296	693,160
<b>Fund Total and Average</b>		<b>\$ 3,949,935</b>	<b>0.310</b>		<b>\$ 3,944,514</b>		<b>116</b>	<b>0.315</b>	<b>\$ 3,944,773</b>			<b>\$ 3,945,981</b>

LEC Issue #1 2010B DS Fund

US Bank Trust	USB	391	0.100	07/01/2013	391		1	0.100	391	SYS79004	79004	391
Federal Home Loan Ba	USBT	811,000	0.520	12/24/2015	809,219	05/24/2016	113	0.528	809,978	313384XF1	26289	809,676
Federal National Mig	USBT	727,000	0.360	01/27/2016	726,084	06/01/2016	121	0.365	725,997	313588XP5	26298	726,120
<b>Fund Total and Average</b>		<b>\$ 1,538,391</b>	<b>0.444</b>		<b>\$ 1,535,694</b>		<b>117</b>	<b>0.451</b>	<b>\$ 1,536,366</b>			<b>\$ 1,536,187</b>

LEC Issue #2 2010A DS Fund

US Bank Trust	USB	804	0.100	07/01/2013	804		1	0.100	804	SYS79011	79011	804
Federal Home Loan Ba	USBT	436,000	0.519	12/24/2015	435,043	05/24/2016	113	0.528	435,451	313384XF1	26290	435,288
Federal Home Loan Ba	USBT	2,188,000	0.240	12/02/2015	2,185,418	05/27/2016	116	0.243	2,185,156	313384XJ3	26279	2,186,308
Federal National Mig	USBT	434,000	0.360	01/27/2016	433,453	06/01/2016	121	0.365	433,401	313588XP5	26297	433,475
<b>Fund Total and Average</b>		<b>\$ 3,058,804</b>	<b>0.297</b>		<b>\$ 3,054,718</b>		<b>116</b>	<b>0.301</b>	<b>\$ 3,054,812</b>			<b>\$ 3,055,875</b>

LEC Issue #2 2010B DS Fund

US Bank Trust	USB	195	0.100	07/01/2013	195		1	0.100	195	SYS79012	79012	195
Federal Home Loan Ba	USBT	349,000	0.520	12/24/2015	348,234	05/24/2016	113	0.528	348,560	313384XF1	26291	348,430
Federal National Mig	USBT	390,000	0.360	01/27/2016	389,509	06/01/2016	121	0.365	389,462	313588XP5	26299	389,528



Northern California Power Agency  
Treasurer's Report  
01/31/2016

LEC Issue #2 2010B DS 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
<b>Fund Total and Average</b>		\$ 739,195	0.435		\$ 737,938		117	0.442	\$ 738,217			\$ 738,153
<b>LEC Issue #1 2010 DSR Fund</b>												
US Bank Trust	USB	58,509	0.100	07/01/2013	58,509		1	0.100	58,509	SYST9005	79005	58,509
Federal National Mfg	USB	4,170,000	0.875	05/30/2014	4,171,960	08/28/2017	574	0.977	4,175,963	3135GOMZ3	26136	4,170,951
Federal Farm Credit	USBT	4,287,000	1.850	06/08/2015	4,287,000	06/08/2020	1,589	1.850	4,289,915	3133EEU65	26230	4,287,000
<b>Fund Total and Average</b>		\$ 8,515,509	1.360		\$ 8,517,469		1081	1.411	\$ 8,524,387			\$ 8,516,460

LEC Iss#1 2010B BABS Subs Resv

US Bank Trust	USB	2,261,352	0.100	07/01/2013	2,261,352		1	0.100	2,261,352	SYST9006	79006	2,261,352
<b>Fund Total and Average</b>		\$ 2,261,352	0.100		\$ 2,261,352		1	0.100	\$ 2,261,352			\$ 2,261,352

LEC Issue #2 2010B DSR BABS

US Bank Trust	USB	1,086,633	0.100	07/01/2013	1,086,633		1	0.100	1,086,633	SYST9013	79013	1,086,633
<b>Fund Total and Average</b>		\$ 1,086,633	0.100		\$ 1,086,633		1	0.100	\$ 1,086,633			\$ 1,086,633

LEC O & M Reserve

Local Agency Investim	UBOC	2,307,335	0.367	07/01/2013	2,307,335		1	0.367	2,307,335	SYST0047	70047	2,307,335
Union Bank of Califo	UBOC	0	0.002	07/18/2013	0		1	0.002	0	SYST0041	70041	0
Federal National Mfg	UBOC	2,933,000	1.875	08/28/2015	2,998,142	02/19/2019	1,114	1.220	2,999,960	3135GOZAA	26248	2,990,175
Federal Farm Credit	UBOC	6,000,000	1.740	09/30/2015	6,000,000	09/30/2020	1,703	1.740	6,001,500	3133EFFZ5	26260	6,000,000
<b>Fund Total and Average</b>		\$ 11,240,335	1.495		\$ 11,305,477		1199	1.322	\$ 11,308,795			\$ 11,297,510

<b>GRAND TOTALS:</b>		\$ 32,461,287	0.984		\$ 32,514,928		733	0.938	\$ 32,526,468			\$ 32,509,284
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\*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 01/31/2016  
Investment # 26230 - FFEB - Callable on 6/8/16, then any time.  
Investment # 26260 - FFEB - Callable on 3/30/16, then any time.



651 Commerce Drive  
Roseville, CA 95678

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# Commission Staff Report

AGENDA ITEM NO.: 12

**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** Sale or Disposal of Surplus Property

The NCPA Policy for the Disposal or Destruction of Surplus Supplies, Materials, or Equipment requires that such disposal or destruction be reported to the NCPA Commission within 60 days of such action.

In accordance with that policy, the following disposal or destruction is hereby reported:

<u>Property Description</u>	<u>Quantity</u>	<u>*Method of Disposal</u>	<u>Net Proceeds From Sale</u>	
Kidde Gemini fire System control panel	1	S	\$	0.00
2002 Ford expedition – trade-in value of \$1,500	1	P		1,500.00
Disposal of Scrap metal	1	S		15.25
		Total	\$	1,515.25

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

Prepared by:

SONDRA AINSWORTH  
Treasurer-Controller

Attachment

\* Note: Public Sale (PS); Private Sale (P), Disposal – Net Scrap Value (S)



Date: 9/1/2015

**DECLARATION OF SURPLUS  
SUPPLIES, MATERIALS & EQUIPMENT**

QTY	U/M*	DESCRIPTION (Including All Applicable Model #'s, LCNs & VINs)	COND**	ESTIMATED VALUE		NCPA Property or Project #	SITE LOCATION
				UNIT	TOTAL		
1.	ea	Kidde Gemini Fire System Control Panel Fire System and Spare parts	Good		\$500		Murphys
3.							
4.							
5.							
6.							
7.							
8.							

**JUSTIFICATION FOR SURPLUS/DISPOSAL:** NCPA Hydroelectric upgraded their late 1980's Kidde Gemini Fire Control System Panel to a Honeywell System in 2013. As well, Hydro has removed all spares associated with the panel from inventory stock. Hydro proposes to sell the equipment to a vendor specializing in this equipment.

**RECOMMENDED DISPOSITION:**  
 NEGOTIATED (Private) SALE XX  
 PUBLIC SALE: SEALED BIDS AUCTION  
 DISPOSAL: SCRAP/RECYCLE VALUE NO VALUE - TRASH/JUNK  
**DISPOSITION JUSTIFICATION:**  
 Equipment upgraded and pulled out of service at Hydro.

PREPARED BY: Tracy Kves 9-1-15  
 APPROVED BY: [Signature] 9/1/15  
 AUTHORIZATION [Signature] (ASST. GEN. MANAGER)  
 TO PROCEED: [Signature] DATE: 9/21/15  
 (GENERAL MANAGER)

\*\* CONDITION: EXCELLENT (E), GOOD (G), AVERAGE (A), POOR (P), SCRAP (S)

ORIGINAL TO TREASURER-CONTROLLER

ATTACHMENT 1



Date: 4/23/15

DECLARATION OF SURPLUS  
SUPPLIES, MATERIALS & EQUIPMENT

QTY	U/M*	DESCRIPTION (Including All Applicable Model #'s, LCNs & VINs)	COND**	ESTIMATED VALUE		NCPA Property or Project #	SITE LOCATION
				UNIT	TOTAL		
1.	ea	2002 Ford Expedition	P			593	Murphys
2.							
3.							
4.							
5.							
6.							
7.							
8.							

JUSTIFICATION FOR SURPLUS/DISPOSAL:

This NCPA vehicle has 123,000+ miles on it and is in poor condition. The vehicle has been retired from the Hydro fleet and replaced with a new vehicle.  
VIN: 1FMPU14L42L435051 Platc: 1107058 van593

PREPARED BY: Tracy Kyes *[Signature]*  
 4/23/15 Ken Spier *[Signature]* ORG. CODE:  
 APPROVED BY: *[Signature]* (ASST. GEN. MANAGER)  
 AUTHORIZATION TO PROCEED: *[Signature]* DATE: 4/23/15  
 (GENERAL MANAGER)

RECOMMENDED DISPOSITION:  
 \* NEGOTIATED (Private) SALE X  
 PUBLIC SALE: XX SEALED BIDS \_\_\_\_\_ AUCTION \_\_\_\_\_  
 DISPOSAL: \_\_\_\_\_ SCRAP/RECYCLE VALUE \_\_\_\_\_ NO VALUE - TRASH/JUNK \_\_\_\_\_  
 DISPOSITION JUSTIFICATION:

\*\* CONDITION: EXCELLENT (E), GOOD (G), AVERAGE (A), POOR (P), SCRAP (S)

ORIGINAL TO TREASURER-CONTROLLER

\* decision made to use vehicle as trade-in towards a new vehicle ATTACHMENT 1



NORTHERN CALIFORNIA POWER AGENCY  
DECLARATION OF EXCESS

Date: 2/3/16

QTY	U/M*	DESCRIPTION (Including All Applicable Model #s, LCNs & VINs)	COND**	ESTIMATED VALUE		NCPA Property# / Stock # / Fleet # or Project #	SITE LOCATION
				UNIT	TOTAL		
1.	1	Scrap Metal	S				LEC
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							

JUSTIFICATION FOR EXCESS/DISPOSAL: SCRAP METAL

RECOMMENDED DISPOSITION: DISPOSAL

PREPARED BY: Melissa Philipoff / Michael DeBortoli *Michael DeBortoli*  
 ORG. 248116 *248116*  
 APPROVED BY: *Lu Speer* (ASST. GEN. MANAGER) CODE: \_\_\_\_\_  
 AUTHORIZATION *Ray S* (GENERAL MANAGER) DATE: *2/9/16*  
 TO PROCEED: \_\_\_\_\_

\_\_\_\_\_ PUBLIC SALE \_\_\_\_\_ PRIVATE SALE  
 X \_\_\_\_\_ DISPOSAL - NO NET SCRAP VALUE  
 \*U/M = UNIT OF MEASURE  
 \*\* CONDITION: EXCELLENT (E), GOOD (G), AVERAGE  
 POOR (P), SCRAP (S)

ORIGINAL TO TREASURER-CONTROLLER





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web www.ncpa.com

# Commission Staff Report

AGENDA ITEM NO.: 13

---

**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** December 31, 2015 Debt & Interest Rate Management Report

---

## Background

In accordance with the "Debt and Interest Rate Management Policy" approved by the Commission in May 2015, the following semi-annual report is submitted for your information and acceptance.

Fixed Rate Debt - No new fixed rate debt was issued and no fixed rate refunding occurred during the last six months. Due to the sequestration of federal budget dollars, the Build America Bond (BAB) Subsidies related to the Lodi Energy Center (LEC) BAB issues were reduced by 6.8% or \$227,505 for the December 1, 2015 debt service payments. This amount was billed to the LEC participants. Other highlights are included in the attached report, page i.

Interest Rate Swaps – As of December 31, 2015, NCPA had \$86.7 million of outstanding interest rate swaps, all related to the Hydroelectric Project bonds. The fair value of these interest rate swaps on the same date was a negative \$21.0 million. This amount has changed from the June 30, 2015 fair value, which was a negative \$19.5 million. Details of the swap agreements are provided in the attached report. No new swaps or defaults have occurred in the last six months. Interest rate swaps now make up approximately 24% of the outstanding Hydroelectric Project debt portfolio.

Counterparties – Subsequent to the July 9, 2008 termination of most of the swaps in the portfolio, only two swaps and one counterparty remain. Citi's (swap counterparty) credit ratings were upgraded by Fitch from A to A+. They remain highly rated with all other rating agencies and no collateral calls were required under the swap terms.

Fiscal Impact/Projected Savings – Total projected savings over the life of the related bonds (23 years) was \$13.9 million at the inception of these agreements. Total savings projected to occur through December 31, 2015 was \$4,277,007 with actual results at \$7,398,206. The difference between expected savings and actual savings is due to "basis risk", or the difference between what NCPA pays for underlying variable rate bonds and the index rate used in the swap transaction. Negative results in prior reports were directly attributable to the meltdown in the variable rate bond market in 2008. For a short period of time in December 2007 and January 2008, NCPA had "bank bonds", which are variable rate bonds that are not able to be remarketed. These bonds bore interest rates at 12% for the short time they were not

remarketed, diluting the actual savings expected from these swap transactions by almost \$200,000. On a positive note, the market stabilized in early 2009 and the swaps accrued positive basis differential until approximately May 2011. A downgrade by the rating agencies of the liquidity provider for our variable rate program, Dexia, increased the weekly reset rates from approximately 30 basis points, to a high of 300 basis points. In September 2011, Citibank NA replaced Dexia as the liquidity provider. Prior to the replacement, from May to September, the Agency again experienced negative basis on these swap transactions. After replacement of Dexia, the rates again improved greatly and at the current time and on a cumulative basis, savings from the swap transactions have exceeded expected savings by over \$3.1 million. Staff continues to monitor the potential for refinancing these bonds and terminating the swaps, however, with current low treasury rates causing a large mark to market payment due to Citigroup of over \$21.0 million, refunding is not feasible at this time.

#### 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.

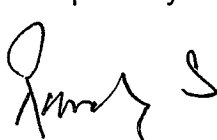
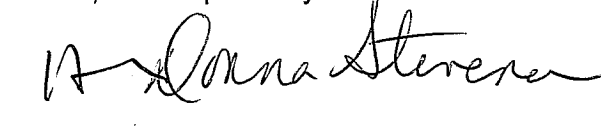
#### Committee Review

This report was reviewed by the Finance Committee on February 10, 2016 and with 4 members present it was their unanimous recommendation to accept this report as filed.

#### Recommendation

NCPA staff and the Finance Committee recommend that the Commission accept and file the December 31, 2015 Debt and Interest Rate Management Report.

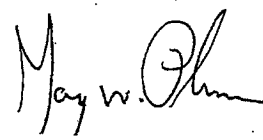
Respectfully submitted,      Prepared by:

RANDY S. HOWARD  
General Manager

DONNA STEVENER  
Assistant General Manager/CFO  
Administration Services/Finance

Concurs with,



GARY W. PLASS  
Chair, Finance Committee

Attachments: December 31, 2015 Debt and Interest Rate Management Report



# **Debt and Interest Rate Management Report**

**As of December 31, 2015**

# NCPA Debt and Interest Rate Management Report

December 31, 2015

## Highlights

- No new debt or any new swap agreements were entered into during the last six months and no new issues are planned.
- No fixed or variable rate debt or interest rate swaps were refinanced or terminated in the last six months.
- No material changes to any fixed rate debt, variable rate debt or outstanding swap agreements occurred during the last six months.
- The last six months included a reduction in the amount of reimbursement received from the Federal government for Build America Bond (BAB) subsidies related to the Lodi Energy Center BAB issues. Total reduction for the December 1, 2015 debt service payment was 6.8% or \$227,505 due to sequestration of federal budget dollars.
- Notices were filed with the bond reporting depository (EMMA) as required for annual filing of continuing disclosure documents by NCPA
- No changes in bond ratings occurred during the last six months. Moody's affirmed current ratings for all the projects.
- Fees paid to Citi for remarketing the Variable Rate bonds remained the same. Fees paid to the provider of the letter of credit support (Bank of Montreal) remained the same.
- Citigroup, our swap counterparty was granted an upgrade in credit rating to A+ by Fitch Ratings during the last six months; no collateral posting was required by any counterparty during the last six months.
- No defaults under any swap agreements have occurred during the last six months.
- Fair value on remaining outstanding swaps changed from a negative value of \$19.5 million on June 30, 2015 to a negative \$21.0 million on December 31, 2015.
- Interest rate swaps continue to perform better than expected and variable rates remain very low and in line with the market. As expected, in December the Fed ended the "zero" rate era and raised rates for the first time in almost a decade. The impact to date is a flattening of the yield curve as short term rates increased and long-term rates fell due to global economics. Short-term taxable rates increased to their highest level since 2009 due to the 25 basis point (bps) Fed rate hike. NCPA short-term tax-exempt debt stayed the same at 1 bp, while the variable taxable debt increased from around 20 bps to 42 bps. Further gradual increases are expected in 2016.
- Upcoming events:
  - Nothing to report



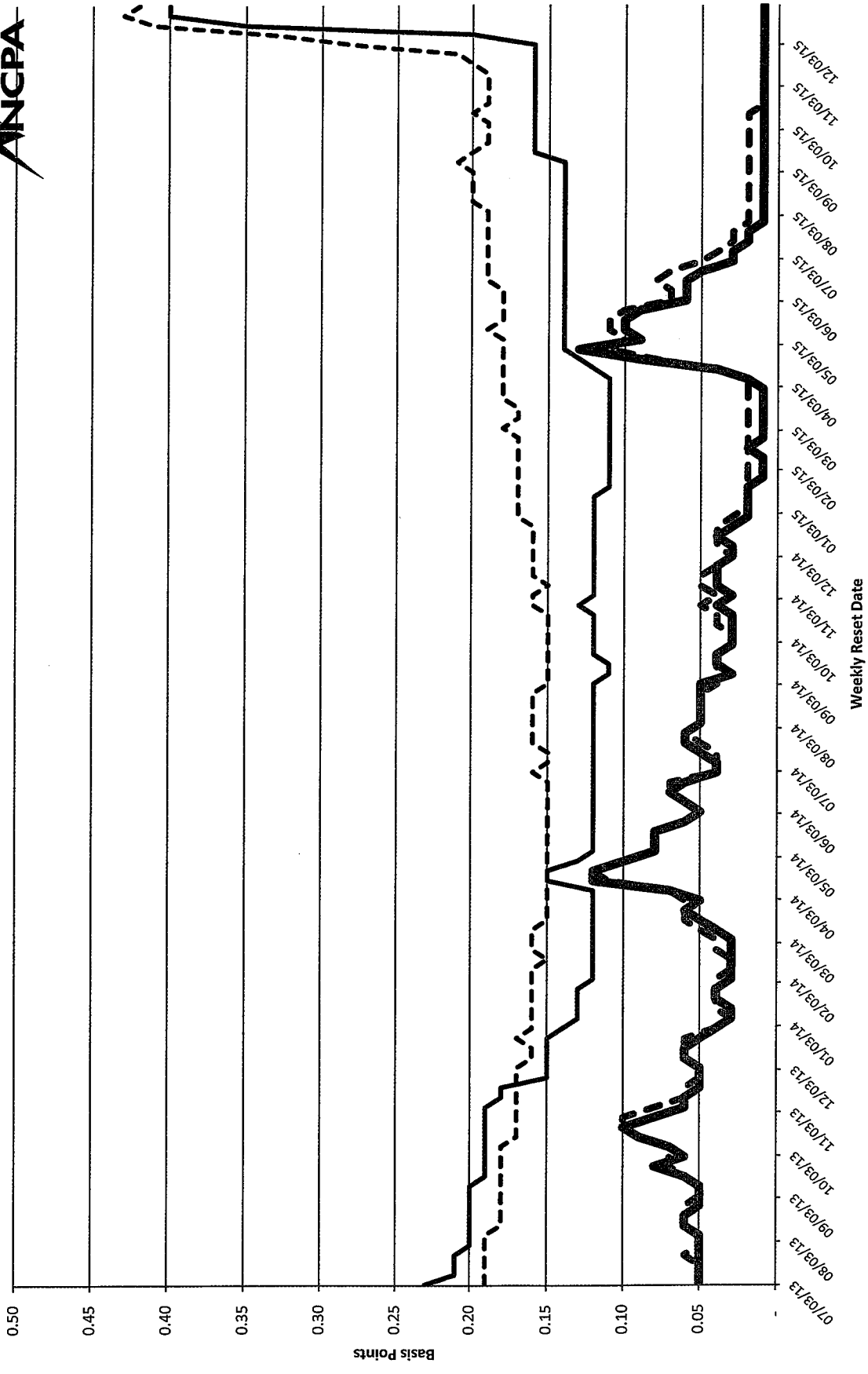


## Northern California Power Agency Hydroelectric Project VRDO Bonds and Related Interest Rate Swaps

	Hydro 2008A	Hydro 2008B
<b>Variable Rate Debt Amount Priced Payment</b>	\$85,160,000 Weekly Monthly	\$1,574,000 Weekly Monthly
<b>Swap Counter-party:</b>	Citigroup	Citigroup
<b>Payments</b>	2 components Fixed @ 3.819%	2 components Fixed @ 5.291%
<b>Counterparty</b>	NCPA	
<b>Payment terms:</b>	Floating rate (based on 54% of monthly Libor+.54%)	Floating rate (based on monthly Libor)
<b>Payment terms:</b>	NCPA Counterparty	Semi-Annual (net) Semi-Annual (net)
<b>Liquidity/Letter of Credit Provider<sup>1</sup></b>	Bank of Montreal	Bank of Montreal
<b>Annual Fee</b>	39.0 bp	39.0 bp
<b>Expiration Date</b>	9/9/2019	9/9/2019
<b>Credit Ratings</b>	Aa3/A+/AA-	Aa3/A+/AA-
<b>Bond Insurer</b>	None, Option with MBIA N/A	None, Option with MBIA N/A
<b>Credit Ratings</b>	None, Option with MBIA N/A	None, Option with MBIA N/A

<sup>1</sup> Effective 9/10/14 Citibank N.A. was replaced as the LOC provider with Bank of Montreal.

# NCPA Variable Rate Debt Performance Versus Indices



Hydroelectric 2008A Tax Exempt Variable Rate
  SIFMA index (tax-exempt)
  Hydroelectric 2008B Taxable Variable Rate
  LIBOR Index (taxable)



# Northern California Power Agency Hydroelectric Project Swaps Performance to Date

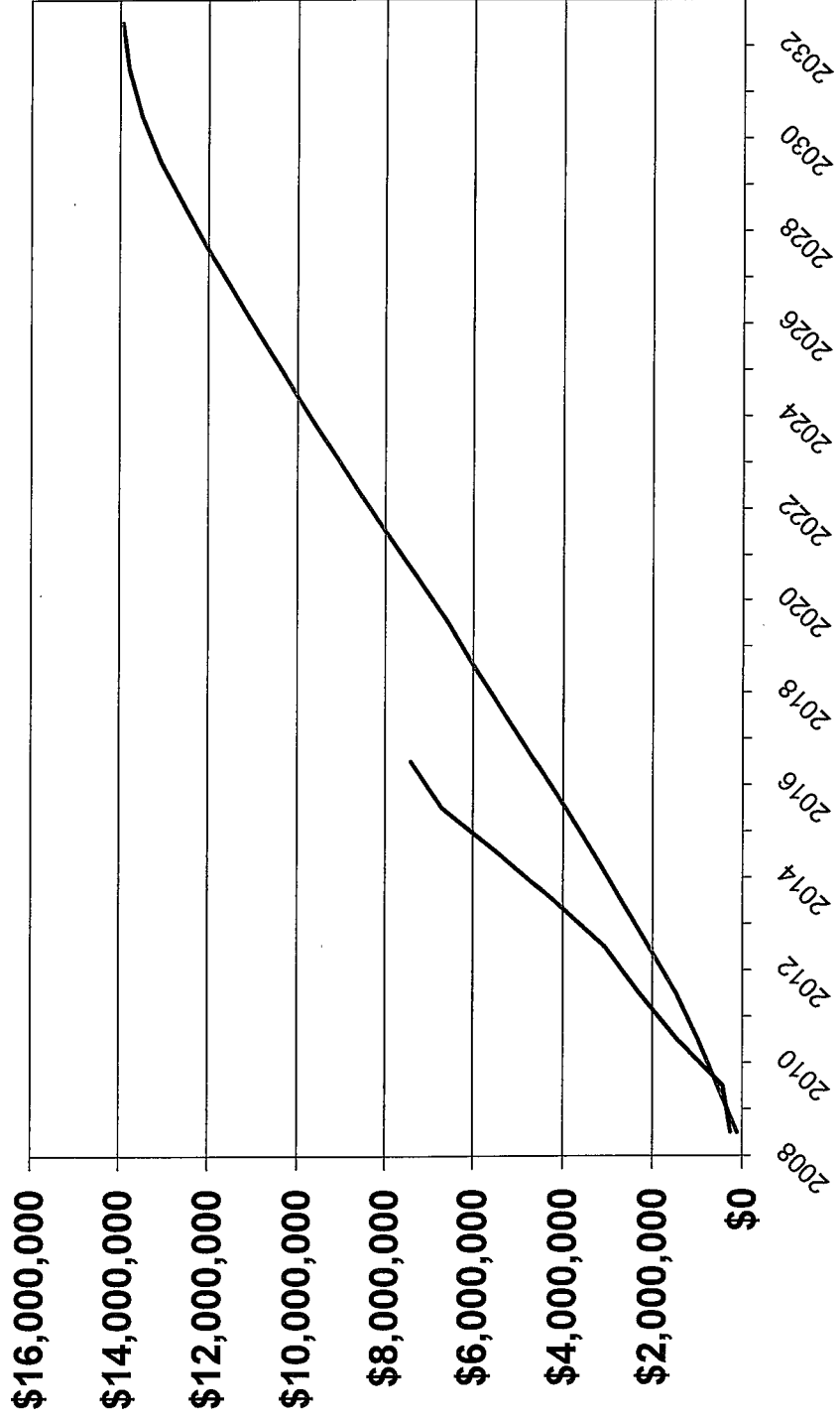
December 31, 2015

Total Projected Savings over life of bonds: \$13.9 million

Total Projected Savings to date: \$4,277,000

Actual Savings to date: \$7,398,000

Basis risk incurred (93 months) positive \$3,121,000



— 2008 A & B Planned Savings — 2008 A & B Actual Savings



**The PFM Group**  
Public Financial  
Management, Inc.  
PFM Asset Management



**Northern California Power Agency**  
Valuation Report as of 12/31/2015

Transaction Type	Project	Associated Bonds	NCPA Pays	NCPA Receives	Trade Date	Effective Date	Maturity Date	Remaining Life	Initial Notional	Bank Counterparty	Moody's	S&P	Fitch	Weighted Avg Life	Fair Value @ 12/31/2015	Impact on Value of 50 bp swing
Swap	Hydro	Series 2008A	3.8190%	54% of USD-LIBOR + .54%	11/24/2004	11/24/2004	7/1/2032	16.5	\$85,160,000	Citibank, N.A., New York	A1	A	A+	13.40	(\$21,284,634)	\$3,184,503
Swap	Hydro	Series 2008B	USD-LIBOR	5.2910%	11/24/2004	11/24/2004	7/1/2032	16.5	\$1,574,000	Citibank, N.A., New York	A1	A	A+	8.00	\$316,312	(\$48,119)
Total all swaps																
\$86,734,000																
(\$20,968,322) \$3,136,384																

**Highlights:**

- No material changes to any outstanding swap agreements or any new swap agreements were entered into during the last six months
- Counterparty ratings were upgraded by Fitch Ratings to A+; no collateral posting by any counterparty has been required and they remain highly rated
- No defaults under the above swap agreements have occurred
- No planned swap transactions at this time
- Fair value on remaining outstanding swaps changed from a negative value of \$19.5 million on June 30, 2015 to a negative value of \$21.3 million on December 31, 2015.

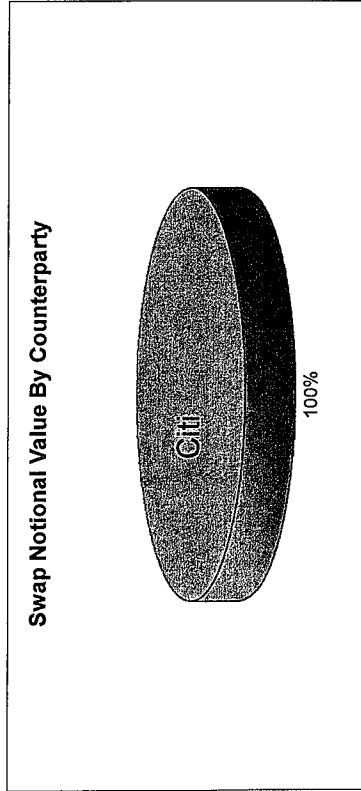
The valuations of derivatives transactions provided by PFM are indicative values based on mid-market levels as of the close of business on the date they are provided. These valuations are provided for information purposes only and are intended solely for internal use. These valuations do not represent the actual terms at which new transactions could be entered into or the actual terms at which existing transactions could be liquidated. The valuations provided are derived from proprietary models based upon well-recognized financial principles and reasonable estimates about relevant future market conditions. Valuations based on other models or different assumptions may yield different results. PFM believes its valuation methodology to be consistent with accepted practice in the market for interest rate swaps. Additional information is available on request. Information herein is believed to be reliable, but PFM does not warrant its completeness or accuracy. PFM does not hold a position or act as a market maker in the financial instruments of any issuer discussed herein.



Northern California Power Agency  
Counterparty Report as of 12/31/2015

Transaction Type	Project	Associated Bonds	Initial Notional	Bank Counterparty	Last ratings as of 12/31/2014			Current ratings as of 12/31/2015				
					Moody's	S&P	Fitch	Moody's	S&P	Fitch		
Swap	Hydro	Series 2008A	\$85,160,000	Citibank, N.A., New York	A2	A	A	A1	A	A+ ↑		
	Hydro	Series 2008B	\$1,574,000	Citibank, N.A., New York	A2	A	A	A1	A	A+ ↑		
			<u>\$86,734,000</u>									
			<u>\$86,734,000</u>							Fitch upgraded Citibank rating from A to A+		

Due to termination of all other swaps on 7/9/08, Citibank is now the only swap provider with which NCPA has outstanding transactions.





Northern California Power Agency  
 Valuation Report as of  
 12/31/2015  
 By Participant

Fair Value at 12/31/2015

Transaction Type	Project	Associated Bonds	Maturity Date	Initial Notional	Bank Counterparty	Fair Value @ 12/31/15	Alameda	Healdsburg	Lodi	Lompoc	Palo Alto	Plumas-Sierra	Roseville	Santa Clara	Ukiah
Swap	Hydro	Series 2008A	7/1/2032	\$85,160,000.00	Citibank, N.A., New York	(\$21,284,634.00)	(\$2,128,463)	(\$353,325)	(\$2,207,217)	(\$489,546.58)	(\$4,878,438.11)	(\$359,710.31)	(\$2,554,156.08)	(\$7,879,571.51)	(\$434,206.53)
Swap	Hydro	Series 2008B	7/1/2032	\$1,574,000.00	Citibank, N.A., New York	\$316,312.00	\$31,631	\$5,251	\$32,802	\$7,275.18	\$72,498.71	\$5,345.67	\$37,957.44	\$117,098.70	\$6,452.76
Total all swaps															

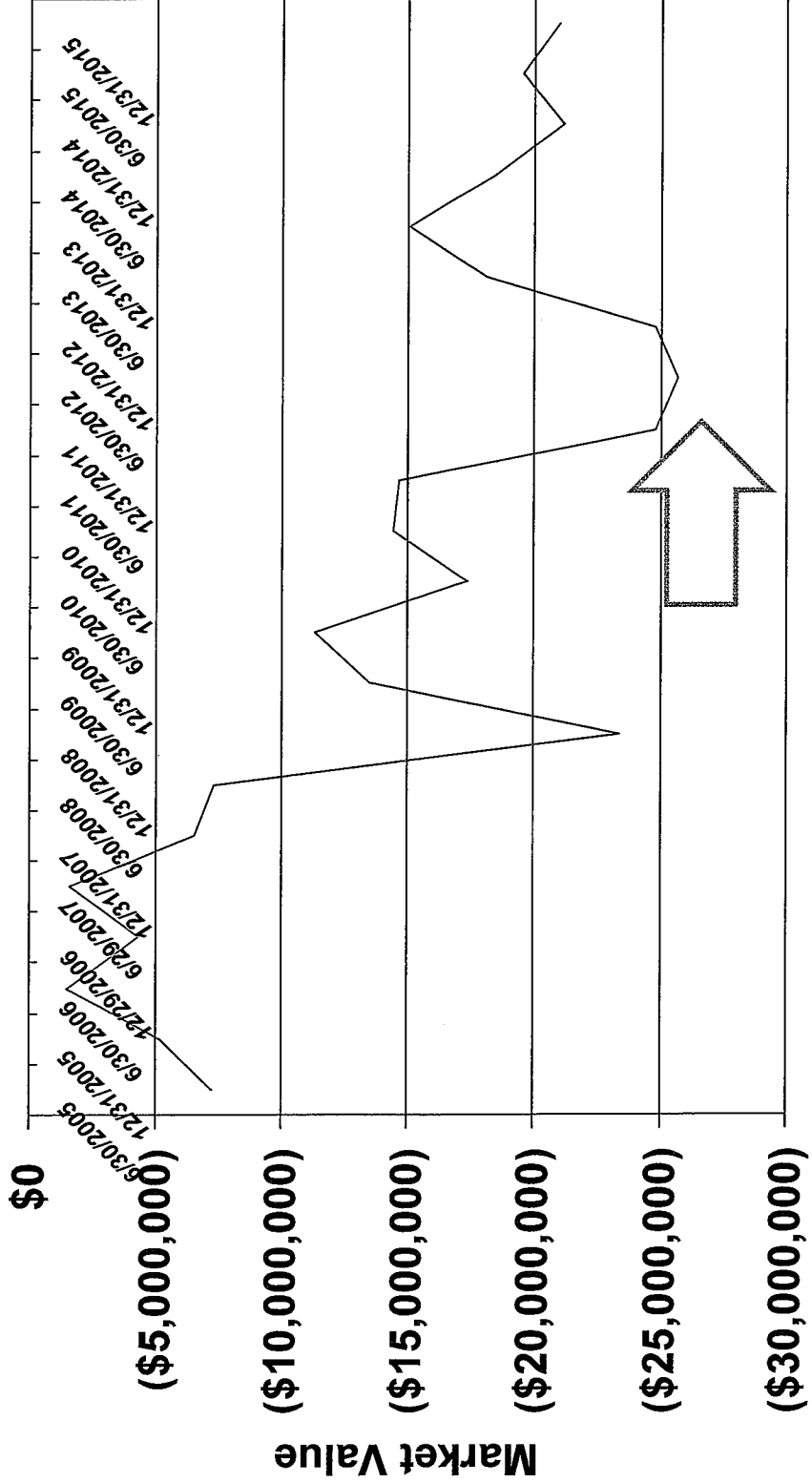
Impact on Value of 50 BP Swing in swap rates

Transaction Type	Project	Associated Bonds	Maturity Date	Initial Notional	Bank Counterparty	Impact on Value of 50 bp swing	Alameda	Healdsburg	Lodi	Lompoc	Palo Alto	Plumas-Sierra	Roseville	Santa Clara	Ukiah
Swap	Hydro	Series 2008A	7/1/2032	\$85,160,000.00	Citibank, N.A., New York	\$3,184,503	\$318,450	\$52,863	\$330,233	\$73,244	\$729,888	\$53,818	\$382,140	\$1,178,903	\$64,964
Swap	Hydro	Series 2008B	7/1/2032	\$1,574,000.00	Citibank, N.A., New York	(\$48,119)	(\$4,812)	(\$799)	(\$4,900)	(\$1,106.73)	(\$11,028.76)	(\$813.20)	(\$5,774.22)	(\$17,813.47)	(\$981.62)
Total all swaps															

# Northern California Power Agency Hydroelectric Project Swaps Value Trend



Extreme market volatility and low treasury rates have greatly impacted the mark to market value of the swaps over the last several years, Rates have decreased slightly over the last six months increasing the negative mark to market value.



— 2008 A & B



Northern California Power Agency  
 Hydroelectric Project No. One 2008 A & B Variable Rate Debt Obligation  
 Comparison of Actual vs Planned Interest Rate Swaps Savings (Cost)  
 As of December 31, 2015

	Planned Savings (Cost)		Actual Savings (Cost)	
	Annual	Cumulative	Annual	Cumulative
FY2008	\$ 117,580	\$ 117,580	\$ 254,188	\$ 254,188
FY2009	438,768	556,348	189,800	443,988
FY2010	443,387	999,735	1,005,458	1,449,446
FY2011	484,319	1,484,054	849,010	2,298,456
FY2012	596,774	2,080,828	775,362	3,073,818
FY2013	609,640	2,690,469	1,146,750	4,220,568
FY2014	623,059	3,313,528	1,200,879	5,421,447
FY2015	637,299	3,950,827	1,297,694	6,719,140
FY2016 - Six Months Ending 12/31/15	326,180	4,277,007	679,065	7,398,206
<b>Cumulative through 12/31/15</b>	<b>4,277,007</b>		<b>7,398,206</b>	
FY2016 - Six Months Ending 6/30/16	326,180	4,603,187		
FY2017	668,244	5,271,431		
FY2018	684,949	5,956,380		
FY2019	605,117	6,561,497		
FY2020	710,041	7,271,538		
FY2021	710,434	7,981,972		
FY2022	699,418	8,681,390		
FY2023	686,782	9,368,172		
FY2024	671,372	10,039,544		
FY2025	651,414	10,690,959		
FY2026	630,888	11,321,846		
FY2027	607,900	11,929,746		
FY2028	582,392	12,512,138		
FY2029	554,257	13,066,395		
FY2030	432,154	13,498,548		
FY2031	298,202	13,796,750		
FY2032	150,869	13,947,620		
<b>Total</b>	<b>\$ 13,947,620</b>		<b>\$ 7,398,206</b>	

Cumulative Additional Savings through 12/31/15  
 Projected Savings \$ 17,068,818 Revised Savings  
 122.38%



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Roseville, CA 95678

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# Commission Staff Report

AGENDA ITEM NO.: 14

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** Adoption of Revised Money Purchase Plan and Trust Agreement for 401(a) Plan Document through ICMA

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## Background

In June 2014, NCPA established a Money Purchase Plan, also known as a 401(a) retirement plan for employees hired after January 1, 2013, who are also known as "new" members in regards to the CalPERS retirement system under the Public Employees' Pension Reform Act of 2013 (PEPRA). The 401(a) plan is administered by the ICMA Retirement Corporation and the model plan documents are also maintained and updated by ICMA as required under Internal Revenue Service (IRS) regulations. In 2012, the plan document underwent a review by the IRS under a six year review schedule. The revised plan was approved by the IRS in late 2014 and provided to NCPA in late 2015. The approved plan document incorporates amendments for legislative and regulatory changes enacted since the prior restatement of the document in 2006 and includes changes through 2012. The IRS requires that the new plan document (attached) be approved by the NCPA Commission, executed and submitted to ICMA by April 15, 2016 to ensure the plan is updated in accordance with current IRS regulations and not at risk of losing its qualified status. The changes to the plan all relate to legislative and regulatory changes or minor administrative changes. No economic changes or other changes to benefits are included in the restated plan.

The revised version of the Money Purchase Plan Adoption Agreement and the ICMA-RC Governmental Money Purchase Plan and Trust Basic Document are attached for your consideration.

## Fiscal Impact

There is no fiscal impact to this action. IRS Regulations require formal adoption of revised documents to keep up with legislative and regulatory changes and to maintain the qualified status of the 401(a) plan.

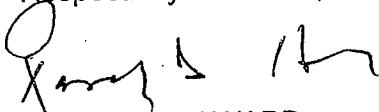
## Environmental Analysis

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.

Recommendation

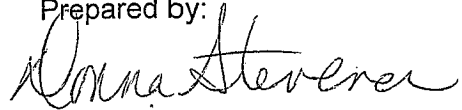
That the NCPA Commission approve Resolution 16-11 adopting the amended and restated 401(a) qualified money purchase retirement plan as attached and authorize execution by the Chief Financial Officer, the designated Plan Coordinator with ICMA.

Respectfully submitted,



RANDY S. HOWARD  
General Manager

Prepared by:



DONNA I STEVENER  
Assistant General Manager/CFO  
Administrative Services/Finance

Attachments (3)

- Resolution 16-11
- ICMA Retirement Corporation "Governmental Money Purchase Plan & Trust Adoption Agreement for Plan 107909"
- ICMA Retirement Corporation "Governmental Money Purchase Plan & Trust"

## RESOLUTION 16-11

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY ADOPTION OF AMENDED AND RESTATED MONEY PURCHASE PLAN AND TRUST AGREEMENT FOR 401(A) RETIREMENT PLAN NO. 107909

(reference Staff Report #117:16)

WHEREAS, effective June 29, 2014, the Northern California Power Agency (NCPA) established a money purchase retirement plan, also known as the "401(a)" retirement plan, for employees who are "new" CalPERS members under the Public Employees' Pension Reform Act of 2013 (PEPRA); and

WHEREAS, said 401(a) retirement plan is administered by the ICMA Retirement Corporation (ICMA-RC) who maintains the plan documents and updates the documents in accordance with Internal Revenue Service (IRS) Regulations; and

WHEREAS, a review of the documents by the IRS required certain amendments and restatements to the plan documents due to updates to legislation and regulations over the years, which require formal approval by the NCPA Commission; 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 hereby amends and restates the qualified retirement plan known as the NCPA 401(a) Plan in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan & Trust; and

BE IT FURTHER RESOLVED that the assets of the Plan shall be held in trust, with NCPA serving as trustee (Trustee) for the exclusive benefit of the Plan participants and their beneficiaries, and the assets shall not be diverted to any other purpose. The Trustee's beneficial ownership of Plan assets held in VantageTrust shall be held for the further exclusive benefit of the Plan participants and their beneficiaries; and

BE IT FURTHER RESOLVED that NCPA hereby agrees to serve as Trustee under the Plan; and

BE IT FURTHER RESOLVED that the NCPA Commission authorizes the Chief Financial Officer to execute the ICMA Retirement Corporation Governmental Money Purchase Plan & Trust Adoption Agreement and all necessary documents with ICMA Retirement Corporation incidental to the administration of the Plan.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2016 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	_____	_____	_____

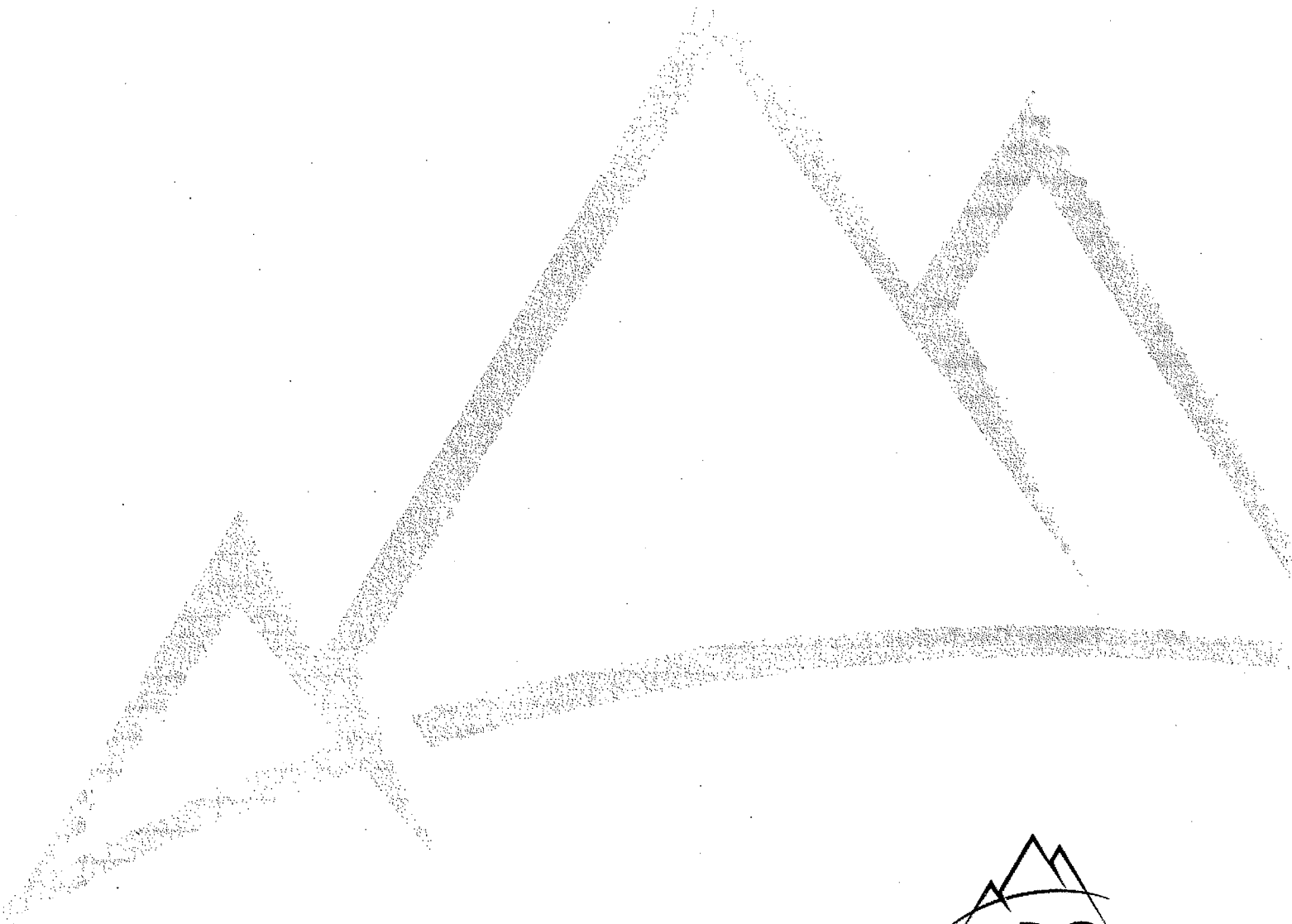
\_\_\_\_\_  
BOB LINGL  
VICE CHAIR

\_\_\_\_\_  
ATTEST: CARY A. PADGETT  
ASSISTANT SECRETARY



**ICMA RETIREMENT CORPORATION**

**GOVERNMENTAL MONEY PURCHASE PLAN & TRUST**



**ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST**

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# ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST

## I. PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.13 and 14.03, no part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

## II. DEFINITIONS

- 2.01 Account.** A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.
- 2.02 Accounting Date.** Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Adoption Agreement.** The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.
- 2.04 Beneficiary.** The person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.
- Notwithstanding the foregoing, the Beneficiary designation is subject to the requirements of Article XII unless the Employer elects otherwise in the Adoption Agreement. Notwithstanding the foregoing, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the Beneficiary designation is subject to the requirements of Article XVII. Notwithstanding the foregoing, to the extent permitted by the Employer, a Beneficiary receiving required minimum distributions in accordance with Article X and not in a benefit form elected under Article XI or XII, may designate a Beneficiary to receive the required minimum distributions that would have otherwise been payable to the initial Beneficiary but for his or her death.
- 2.05 Break in Service.** A Period of Severance of at least twelve (12) consecutive months. In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.
- 2.06 Code.** The Internal Revenue Code of 1986, as amended from time to time.
- 2.07 Covered Employment Classification.** The group or groups of Employees eligible to make and/or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.

**2.08 Disability.** A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.

**2.09 Earnings.**

(a) **General Rule.** Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.

(b) **Limitation on Earnings.** For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

(c) **Limitations for Governmental Plans.** In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.

(d) **Earnings Paid After Severance from Employment.** Earnings for purposes of allocations under the Plan shall not include amounts paid after a Participant's severance from Employment with the Employer except as provided in this Section 2.09(d).

(1) **Leave Cashouts.** Earnings shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (i) the Participant would have been able to use the leave if employment had continued, and (ii) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

(2) **Regular Pay.** Earnings shall include regular pay after severance from employment if:

- (a) The payment is included in the Participant's W-2 earnings;
- (b) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
- (c) Such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

Notwithstanding anything to the contrary in this subsection (b), unless the Employer has specifically elected to include overtime compensation and bonuses in Earnings, Earnings shall exclude overtime compensation and bonuses paid after severance from employment.

(3) **Effective Date.** This Section 2.09(d) is effective for Plan Years beginning on or after January 1, 2009. For Plan Years beginning before January 1, 2009, the amounts specified in subsections (a) and (b) must be paid within 2½ months after severance from employment with the Employer maintaining the Plan.

**2.10 Effective Date.** The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.

**2.11 Employee.** Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other non-employee classification.

**2.12 Employer.** The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.

**2.13 Hour of Service.** Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.

**2.14 Nonforfeitable Interest.** The nonforfeitable interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance, which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Participant Contribution, Rollover, and Voluntary Contribution Accounts.

**2.15 Normal Retirement Age.** The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

**2.16 Participant.** An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-3(a).



**2.17 Period of Service.** For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).

**2.18 Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

**2.19 Plan.** This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement.

**2.20 Plan Administrator.** The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator. Unless otherwise provided in the Plan, the Plan Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction.

**2.21 Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.

**2.22 Trust.** The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

### III. ELIGIBILITY

**3.01 Service.** Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

**3.02 Age.** The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.

**3.03 Return to Covered Employment Classification.** In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

- 3.04 **Service Before a Break in Service.** All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

#### IV. CONTRIBUTIONS

- 4.01 **Employer Contributions.** For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.03 or 4.04 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.
- 4.02 **Forfeitures.** All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be used no later than the end of the next Plan Year. Forfeitures will be used to reduce dollar for dollar Employer Contributions otherwise required under the Plan. Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions.
- 4.03 **Mandatory Participant Contributions.** If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a rate prescribed by the Employer or at any of a range of specified rates, as set forth by the Employer in the Adoption Agreement, as a requirement for his/her participation (1) in the Plan or (2) in this portion of the Plan. Once an eligible Employee becomes a Participant and makes an election hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution picked-up under this Section shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

To constitute a Pick-Up Contribution, (1) the Employer must specify in a contemporaneous written document by a person duly authorized by the Employer that the contributions are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the Plan.

- 4.04 **Employer Matching Contributions of Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Voluntary Participant Contributions for that Plan Year. The rate of Employer Contributions shall, to the extent specified in the Adoption Agreement, be based upon the rate at which Voluntary Participant Contributions are made for that Plan Year. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.
- 4.05 **Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, an eligible Employee may make after-tax voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to twenty-five percent (25%) of his/her Earnings for such Plan Year. Matched and unmatched contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

- 4.06 Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant. No part of the deductible voluntary contribution account will be used to purchase life insurance.
- 4.07 Final Pay Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. This election may be made even if the Employer does not elect to make contributions under Section 4.01.
- 4.08 Accrued Leave Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. This election may be made even if the Employer does not elect to make contributions under Section 4.01.
- 4.09 Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments shall be suspended under the Plan as permitted under section 414(u)(4) of the Code.

- 4.10 Accrual of Additional Benefits for Qualified Military Service.**
- (a) **Death Benefits with Respect to Qualified Military Service.** In the case of a Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer, his/her Beneficiary shall have a Nonforfeitable Interest in the Participant's entire Employer Contribution Account to the extent that he/she would have had had the Participant resumed and then terminated employment on account of death.
  - (b) **Benefit Accruals with Respect to Differential Wage Payments.** If the Employer so elects in the Adoption Agreement, effective as elected by the Employer but no earlier than January 1, 2009, Plan contributions shall be made based on differential wage payments (as such term is defined in Code section 3401(h)(2)). Solely for purposes of applying the limits of Code section 415, differential wage payments shall be treated as compensation.
  - (c) **Benefit Accruals with Respect to Qualified Military Service.** Notwithstanding any provision of the Plan to the contrary, effective as elected by the Employer but no earlier than January 1, 2007, if the Employer so elects in the Adoption Agreement, Participants who die or become Disabled while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code section 414(u)(9).
- 4.11 Changes in Participant Election.** A Participant may elect to change his/her rate of Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.

#### 4.12 Portability of Benefits.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant (which shall include, for purposes of this subsection, an Employee within the Covered Employment Classification whether or not he/she has satisfied the minimum age and service requirements of Article III) rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans:
- (1) A qualified plan described in Section 401(a) or 403(a) of the Code;
  - (2) An annuity contract described in Section 403(b) of the Code;
  - (3) An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and
  - (4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after two years of participating in the SIMPLE IRA).
- (b) Notwithstanding the foregoing, the Employer may reject the rollover contribution if it determines, in its discretion, that the form and nature of the distribution from the other plan does not satisfy the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Participant;
- (c) For indirect rollover contributions, the amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after the distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.
- (d) The amount transferred shall be deposited in the Trust and shall be credited to a Rollover Account. Such Account shall be one hundred percent (100%) vested in the Participant.
- (e) The Plan will accept accumulated deductible employee contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contributions Account. Such Account shall be one-hundred percent (100%) vested in the Participant.
- (f) A Participant may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.

**4.13 Return of Employer Contributions.** Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

## V. LIMITATION ON ALLOCATIONS

### 5.01 Participants Only in This Plan.

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

### 5.02 Participants in Another Defined Contribution Plan.

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.01(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,
  - (1) The total Excess Amount allocated as of such date, multiplied by
  - (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified prototype defined contribution plans.

**5.03 Definitions.** For the purposes of this Article, the following definitions shall apply:

- (a) Annual Additions. The sum of the following amounts credited to a Participant's account for the Limitation Year:
  - (1) Employer Contributions (including contributions "picked up" by the Employer under Section 4.03);
  - (2) Forfeitures;
  - (3) Employee contributions (including after-tax Voluntary Contributions under Section 4.05 and Mandatory Participant Contributions under Section 4.03 not "picked up" by the Employer); and
  - (4) Allocations under a simplified employee pension. Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.
  - (5) Notwithstanding the above, the term Annual Additions does not include the following:
    - (a) Restorative Payments. Annual Additions for purposes of Code section 415 shall not include restorative payments. For this purpose, restorative payments are payments made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments to a defined contribution plan are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to a plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that give rise to Annual Additions.

- (b) Other Amounts. Annual Additions for purposes of Code section 415 shall not include (i) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) rollover contributions (as described in Code sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) repayments of loans made to a Participant from the Plan; (iv) repayments of amounts described in Code section 411(a)(7)(B) (in accordance with Code sections 411(a)(7)(C) and 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code section 414(d)) as described in Code section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments; (v) Employee Contributions to a qualified cost of living arrangement within the meaning of Code section 415(k)(2)(B); (vi) catch-up contributions made in accordance with section 414(v) and §1.414(v)-1 and (vii) excess deferrals that are distributed in accordance with §1.402(g)-1(e)(2) or (3).
- (c) Date of Employer Contributions. Notwithstanding anything in the Plan to the contrary, Employer Contributions are treated as credited to a Participant's account for a particular Limitation Year only if the contributions are actually made to the plan no later than the 15<sup>th</sup> day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.
- (b) Compensation. Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. section 1.62-2(c).
- (1) Notwithstanding the foregoing, Compensation does not include:
- (i) Contributions (other than elective contributions described in Code section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered as Compensation for Code section 415 purposes, regardless of whether such amounts are includible in the gross income of the Participant when distributed; and
- (ii) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code section 125).
- (iii) Other items of remuneration that are similar to the items listed in subparagraph (i) or (ii) of this subsection (b).
- (2) Compensation Paid After Severance or Deemed Severance from Employment. Compensation shall be adjusted as set forth herein for the following types of compensation paid after a Participant's severance from employment (as determined under section 415 of the Code and the regulations thereunder) with the Employer. Any payment that is not described in subsection (i), (ii), (iii), or (iv) of this Section is not considered Compensation within the meaning of section 415 of the Code if paid after severance from employment with the Employer.

(i) Regular Pay.

- (A) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;
- (B) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
- (C) Such amounts are paid:
  - 1. for Limitation Years beginning before January 1, 2009, within 2½ months after severance from employment with the Employer maintaining the Plan; and
  - 2. for Limitation Years beginning on or after January 1, 2009, by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.
- (D) The date January 1, 2009 in subsections (b)(2)(i)(C)(1) and (2) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(ii) Leave Cashouts.

- (A) For Limitation Years beginning before January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid within 2½ months after severance from employment with the Employer maintaining the Plan, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.
- (B) For Limitation Years beginning on or after January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.
- (C) The date January 1, 2009 in subsections (b)(2)(ii)(A) and (B) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(iii) Salary Continuation Payments for Military Service Participants.

- (A) Compensation includes payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u) (1)) to the extent:
  - 1. Those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; and



2. Those payments would be included in Compensation if the individual had continued to perform services for the Employer rather than entering qualified military service.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)).

(iv) Salary Continuation Payments for Disabled Participants.

(A) Compensation includes amounts paid to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)) to the extent:

1. Salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period or the Participant was not a highly compensated employee (as defined in Code section 414(q)) immediately before becoming disabled.
2. Those amounts would be included in Compensation if the Participant had continued to perform services for the Employer.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)).

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year. Compensation for a Limitation Year shall not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates.

(c) Defined Contribution Dollar Limitation: \$40,000, as adjusted for increases in the cost of-living in accordance with section 415(d) of the Code.

(d) Employer: The Employer that adopts this Plan.

(e) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount. Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

(f) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in section IX. 2 of the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. The Limitation Year may only be changed by Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year and the maximum permissible amount shall be prorated for the resulting short Limitation Year.

(g) Maximum Permissible Amount: The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

- (1) The Defined Contribution Dollar Limitation, or
- (2) One hundred percent (100%) of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

Number of months in the short Limitation Year

12

#### 5.04 **Aggregation and Disaggregation of Plans.**

(a) Generally. For purposes of applying the limitations of Code section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the Participant receives Annual Additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and any other entity which the Employer determines, based on a reasonable, good faith interpretation of existing law in accordance with Notice 89-23, 1989-1 C.B. 654, as modified by Notice 96-64, 1996-2 C.B. 229, should be aggregated for purposes of applying the limitations of Code section 415. For purposes of this Section:

- (1) A former employer is a "predecessor employer" with respect to a Participant if the Employer maintains a plan under which the Participant had accrued a benefit while performing services for the former employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Treas. Reg. section 1.415(f)-1(b)(2) apply as if the Employer and predecessor employer constituted a single employer under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.
- (2) With respect to an Employer, a former entity that antedates the Employer is a "predecessor employer" with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) Midyear Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code section 415(f) and the Treasury Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code section 415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no Annual Additions are credited to the Participant's account after the date on which the plans are required to be aggregated.

5.05 **Effective Date**. Except as otherwise provided in Section 5.03(b)(2), this Article shall apply to limitation years beginning on or after July 1, 2007. The Employer may elect a delayed effective date for this Article in Section IX.3 of the Adoption Agreement, however, such effective date must apply to limitation years that begin on or after the date that is 90 days after the close of the first legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.

## VI. TRUST AND INVESTMENT OF ACCOUNTS

- 6.01 Trust.** A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.
- 6.02 Investment Powers.** The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Sections 6.05 and 13.03.
- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
  - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
  - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
  - (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
  - (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
  - (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any

claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

**6.03 Taxes and Expenses.** All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

**6.04 Payment of Benefits.** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person, or the Employer if directing such person, decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

**6.05 Investment Funds.** In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.

**6.06 Valuation of Accounts.** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances, as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

**6.07 Participant Loan Accounts.** Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

**6.08 Deemed IRAs.** If deemed IRAs are available pursuant to section 408(q) of the Code, the assets of such deemed IRAs may be commingled with the Plan assets for investment purposes but, if held in the same trust, the trustee shall maintain a separate account for each deemed IRA.

## VII. VESTING

**7.01 Vesting Schedule.** The portion of a Participant's Account attributable to Mandatory Participant Contributions and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.04, 18.02(a) and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

**7.02 Crediting Periods of Service.** Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an Hour of Service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

**7.03 Service After Break in Service.** In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

**7.04 Vesting Upon Normal Retirement Age.** Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

**7.05 Vesting Upon Death or Disability.** Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.

**7.06 Forfeitures.** Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account. No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions. Forfeitures shall be allocated in the manner described in Section 4.02.

**7.07 Reinstatement of Forfeitures.** If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

### VIII. BENEFITS CLAIM

**8.01 Claim of Benefits.** A Participant or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant or Beneficiary.

**8.02 Appeal Procedure.** If any claim for benefits is initially denied by the Plan Administrator, the claimant shall file the appeal with the Employer, whose decision shall be final, to the extent provided by Section 15.07.

### IX. COMMENCEMENT OF BENEFITS

**9.01 Normal and Elective Commencement of Benefits.** A Participant who retires, becomes Disabled or incurs a severance from employment for any other reason may elect by written notice to the Plan Administrator to have his or her vested Account balance benefits commence on any date, provided that such distribution complies with Section 9.02. Such election must be made in writing during the one-hundred eighty (180) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

The failure of a Participant to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

**9.02 Restrictions on Immediate Distributions.** Notwithstanding anything to the contrary contained in Section 9.01 of the Plan, if the value of a Participant's vested Account balance is at least \$1,000, and the Account balance is immediately distributable, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the one-hundred eighty (180) day period (ninety (90) day period for Plan Years beginning before January 1, 2007) ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

The Plan Administrator shall notify the Participant of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available

under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.05(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

### **9.03 Transfer to Another Plan.**

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the Plan Administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.10.
- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:
  - (1) Eligible Rollover Distribution. Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:
    - (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;

- (ii) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and
- (iii) the portion of any other distribution(s) that is not includible in gross income.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or, for distributions occurring after December 31, 2007, to a Roth IRA described in § 408A of the Code, or to a qualified defined contribution plan described in section 401(a) or a qualified annuity contract described in section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible Retirement Plan.

- (i) an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (collectively, an "IRA");
- (ii) an annuity plan described in section 403(a) of the Code;
- (iii) an annuity contract described in section 403(b) of the Code;
- (iv) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan;
- (v) a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution; or
- (vi) for distributions occurring after December 31, 2007, a Roth IRA described in Code section 408A. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code.

(3) Distributee. Participant; in addition, the Participant's surviving spouse and the spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006 (unless a later date is elected by the Employer pursuant to subsection (d)(1) below, but no later than Plan Years beginning after December 31, 2009), a distributee includes the Employee's or former Employee's nonspouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated Beneficiary for the purpose of receiving the distribution.

(4) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(d) Rollover by a Non-Spouse Designated Beneficiary.

- (1) Unless otherwise elected by the Employer in the Adoption Agreement, for distributions beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan



that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

- (2) Notwithstanding paragraph (1), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.
- (3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).
- (e) Rollover by a Surviving Spouse Distributee. If any distribution attributable to a Participant is paid to the Participant's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the Participant. However, a qualified plan (as defined in Treasury Regulation section 1.402(c)-2 Q&A-2) is not treated as an eligible retirement plan with respect to a surviving spouse. Only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

**9.04 De Minimis Accounts.** Notwithstanding the foregoing provisions of this Article, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than \$1,000, the Participant's benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under section 411(a)(11) (A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

**9.05 Withdrawal of Voluntary Contributions.** A Participant may upon written request withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

**9.06 Withdrawal of Deductible Employee Contributions.** A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

**9.07 In-Service Distribution from Rollover Account.** Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

**9.08 In-Service Distributions.**

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70½ regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts.

- (b) If elected by the Employer, in-service distributions may be made beginning after June 1, 2009 to a Participant who has attained Normal Retirement Age or an alternate age (after Normal Retirement Age) elected by the Employer, and who has not yet incurred a severance from employment.
- (c) A Participant's benefit under the Plan may not be distributed before the Participant attains age 62 or, if earlier, the Participant separates from employment (or has a deemed separation), attains Normal Retirement Age under the plan, dies, or becomes disabled, or upon termination of the Plan.
- (d) Distributions under Section 9.08 may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

**9.09 Latest Commencement of Benefits.** Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 10.05, or as otherwise provided in Section 10.04.

**9.10 Spousal Consent.** Notwithstanding the foregoing, if the Employer elected the QJSA Election in the Adoption Agreement, a married Participant must first obtain his or her spouse's notarized consent to request a distribution (other than a Qualified Joint and Survivor Annuity), withdrawal, or rollover under this Article IX.

**9.11 Deemed Severance from Employment.**

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, effective January 1, 2009, a Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than 30 days.
- (b) If a Participant receives a distribution pursuant to subsection (a), then the Participant shall not be permitted to make an after-tax voluntary contribution during the six-month period beginning on the date of the distribution.
- (c) If a Participant receives a distribution which could be attributable to:
  - (i) a deemed severance from employment described in subsection (a); or
  - (ii) another distribution event under the Plan,

then the distribution shall be considered made pursuant to the distribution event referenced in paragraph (ii), and the Participant shall not be subject to the limitation on after-tax voluntary contributions set forth in subsection (b).

**9.12 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.**

- (a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to \$3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.
- (b) The term "Eligible Retired Public Safety Officer" means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer who maintains the eligible retirement plan from which distributions pursuant to this Section are made. The term "Public Safety Officer" has the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.

- (c) The term "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

## X. DISTRIBUTION REQUIREMENTS

### 10.01 General Rules.

- (a) Generally. Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002. With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.
- (b) Distributions in Accordance with 401(a)(9). All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:
- (1) The life of the Participant,
  - (2) The joint lives of the Participant and a designated Beneficiary,
  - (3) A period certain not extending beyond the life expectancy of the Participant, or
  - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article X, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.
- (e) EESA Provisions. The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in section 702 of the Emergency Economic Stabilization Act of 2008 ("EESA") shall apply to the Plan.
- (f) KETRA and GOZA Provisions. The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 ("KETRA") and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

## 10.02 Time and Manner of Distribution

- (a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
  - (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.02(b), other than Section 10.02(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.02(b) and Section 10.04, unless Section 10.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 10.03 and 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

## 10.03 Required Minimum Distributions During Participant's Lifetime

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Section 1.401(a)(9)-9, Q&A-2, of the Final Income Tax Regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or

- (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

#### 10.04 Required Minimum Distributions After Participant's Death

(a) Death On or After Date Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Required Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).

- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.02(b)(1), this Section 10.04(b) will apply as if the surviving spouse were the Participant.

## 10.05 Definitions

- (a) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the regulations.
- (b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.
- (d) Participant's Account Balance. The Account Balance as of the last Accounting Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (e) Required Beginning Date. The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½), or the calendar year in which the Participant retires.

**10.06 Application of Minimum Distribution Requirements.** The minimum distribution requirements of section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year. Pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), required minimum distributions were suspended for 2009.

**10.07 Special Rule for Scheduled Installment Payments.** All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 10.07, the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

## XI. MODES OF DISTRIBUTION OF BENEFITS

**11.01 Normal Mode of Distribution.** Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment.

Notwithstanding the foregoing, where the Employer made the "QJSA Election" in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

**11.02 Elective Mode of Distribution.** Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.
- (c) Other. Any other sequence of payments requested by the Participant.
- (d) Lump Sum. Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

**11.03 Election of Mode.** A Participant's election of a payment option must be made in writing between thirty (30) and one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the payment of benefits is to commence.

**11.04 Death Benefits.** Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/ her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant's surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.
- (b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

## XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

**12.01 Application.** Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the "Beneficiary Spousal Consent Election," shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

## 12.02 Spousal Death Benefit.

- (a) On the death of a Participant, the Participant's Vested Account Balance will be paid to the Participant's Surviving Spouse. If there is no Surviving Spouse, or if the Participant has waived the spousal death benefit, as provided in Section 12.03, such Vested Account Balance will be paid to the Participant's designated Beneficiary.
- (b) The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the one-hundred eighty (180) day period following the date of the Participant's death, or as otherwise provided under Section 11.04. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

## 12.03 Waiver of Spousal Death Benefit.

The Participant may waive the spousal death benefit described in Section 12.02 at any time; provided that no such waiver shall be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed to meet the requirements of this Section.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

## 12.04 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (b) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.



### XIII. LOANS TO PARTICIPANTS

#### 13.01 Availability of Loans to Participants.

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

#### 13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) Availability. Loans shall be made available to all Participants who are active Employees on a reasonably equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.
- (b) Nondiscrimination. Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (d) Loan Limit. No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.
- (g) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the lesser of:
  - (1) \$50,000, reduced by the excess (if any) of
    - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
    - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or

(2) One-half (½) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan (or \$10,000, if greater, for loans prior to January 1, 2006).

For the purpose of the above limitation, all loans from all qualified employer plans of the Employer, including 457(b) plans, under Code section 72(p)(4) are aggregated.

- (h) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (i) Length of Loan. The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly (except as otherwise provided in Treasury Regulation section 1.72(p)-1, Q&A-9 for certain leave of absence and military leave), over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (i), with a revised payment schedule (within such term) instituted at the end of such period of suspension. If the Participant fails to make any installment payment, the Plan Administrator may, according to Treasury Regulation 1.72(p)-1, allow a cure period, which cure period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.
- (j) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (k) Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer. Unless waived by a Participant, any plan loan that is outstanding on the date that active duty military service begins will accrue interest at a rate of no more than 6% during the period of military service in accordance with the provisions of the Servicemembers Civil Relief Act (SCRA), 50 USC App. § 526 and subject to the notice requirements contained therein. This limitation applies even if loan payments are suspended during the period of military service as permitted under the Plan and Treasury regulations.
- (l) Security. The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Rollover Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (m) Assignment or Pledge. For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (n) Spousal Consent. If the Employer elected the QJSA Election in the Adoption Agreement, the Participant must first obtain his or her spouse's notarized consent to the loan. Spousal consent shall be obtained no earlier than the beginning of the one-hundred eighty (180) day period (ninety (90) day period for plan years beginning before January 1, 2007) that ends on the date on which the loan is to be so secured. The consent

must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan.

- (o) Other Terms and Conditions. The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:
- (1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect to loans issued after December 31, 2012, that the loan program shall not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;
  - (2) rules relating to reamortization of loans; and
  - (3) rules relating to refinance of loans.

### **13.03 Participant Loan Accounts.**

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account. A payment intended to be a Prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

## **XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS**

**14.01 Amendment by Employer.** The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(d)(2) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, (3) amend administrative provisions of the trust or custodial document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan such as the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate, (4) add certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments which specifically provide that their adoption will not cause the plan to be treated as individually designed, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions. An Employer that amends the Plan for any other reason will be considered to have an individually designed plan.

**14.02 Amendment of Vesting Schedule.** If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

**14.03 Termination by Employer.** The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

**14.04 Discontinuance of Contributions.** A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.

**14.05 Amendment by Plan Administrator.** The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations, revenue rulings, other statements published by the Internal Revenue Service (including model and sample amendments that specifically provide that their adoption will not cause such Plan to be individually designed), or corrections of prior approved Plans may be applied to all Employers who have adopted the Plan. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

For purposes of reliance on the advisory letter, the Plan Administrator shall no longer have authority to amend the Plan on behalf of the Employer as of the date of the adoption of an Employer amendment to the Plan to incorporate a type of plan not allowable in the volume submitter program described in section 16.03 of Revenue Procedure 2011-49 (or successor guidance) or as of the date the Internal Revenue Service notifies the Plan Administrator that the Plan is being treated as an individually designed plan pursuant to section 24.03 of Revenue Procedure 2011-49 (or successor guidance).

**14.06 Optional Provisions.** Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.

**14.07 Failure of Qualification.** If the Employer's plan fails to attain or retain qualification, such plan will no longer participate in this Plan and will be considered an individually designed plan.

## XV. ADMINISTRATION

**15.01 Powers of the Employer.** The Employer shall have the following powers and duties:

- (a) To appoint and remove, with or without cause, the Plan Administrator;
- (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;

- (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;
- (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;
- (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;
- (f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and
- (g) To notify the Plan Administrator in writing of the termination of the Plan.

**15.02 Duties of the Plan Administrator.** The Plan Administrator shall have the following powers and duties, subject to the oversight by the Employer:

- (a) To construe and interpret the provisions of the Plan;
- (b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
- (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (d) To determine the amount, manner, and time of payment of benefits hereunder;
- (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;
- (g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and
- (h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by the Code.

**15.03 Protection of the Employer.** The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.

**15.04 Protection of the Plan Administrator.** The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.

**15.05 Resignation or Removal of Plan Administrator.** The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the

Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.

- 15.06 No Termination Penalty.** The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.
- 15.07 Decisions of the Plan Administrator.** All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

## XVI. MISCELLANEOUS

- 16.01 Nonguarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.
- 16.02 Rights to Trust Assets.** No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.
- 16.03 Nonalienation of Benefits.** Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.
- 16.04 Qualified Domestic Relations Order.** Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.
- 16.05 Nonforfeitability of Benefits.** Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/ she becomes entitled in accordance with the provisions of the Plan.
- 16.06 Incompetency of Payee.** In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

- (a) The parent of such person;
- (b) The guardian, committee, or other legal representative, wherever appointed, of such person;
- (c) The person with whom such person resides;
- (d) Any person having the care and control of such person; or
- (e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

- 16.07 Inability to Locate Payee.** Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.
- 16.08 Mergers, Consolidations, and Transfer of Assets.** The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).
- 16.09 Employer Records.** Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.
- 16.10 Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.
- 16.11 Applicable Law.** The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.
- In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401(a) and 414(d) of the Code.
- 16.12 Electronic Communication and Consent.** Unless expressly provided otherwise, where this Plan provides that a document, election, notification, direction, signature, or consent will be in writing, such writing may occur through an electronic medium, including but not limited to electronic mail, intranet or internet web posting and online account access, to the fullest extent permitted by applicable law.



## XVII. SPOUSAL BENEFIT REQUIREMENTS

- 17.01 Application.** Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.06.
- 17.02 Qualified Joint and Survivor Annuity.** Unless an optional form of benefit is selected pursuant to a Qualified Election within the one-hundred eighty (180) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.
- 17.03 Qualified Optional Survivor Annuity.** For plan years beginning after December 31, 2007, if a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period, provided, however, that this Section shall apply only to the extent the Plan makes another survivor annuity available.
- 17.04 Qualified Preretirement Survivor Annuity.** If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.
- 17.05 Notice Requirements.**
- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than one-hundred eighty (180) days (or ninety (90) days for notices given in Plan Years before January 1, 2007) prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than thirty (30) days after the written explanation was provided to the Participant, provided that the following requirements are met:
- (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least thirty (30) days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;

- (2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;
  - (3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
  - (4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (b) In the case of a Qualified Preretirement Survivor Annuity as described in Section 17.04, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last:

- (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);
- (ii) a reasonable period ending after the individual becomes a Participant;
- (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant;
- (iv) a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan "fully subsidizes" the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

**17.06 Definitions.** For the purposes of this Section, the following definitions shall apply:

- (a) Annuity Starting Date. The first day of the first period for which an amount is paid as an annuity or any other form.

- (b) Election Period. The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation. Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.05(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.
- (c) Earliest Retirement Age. The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- (d) Qualified Election. A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.05.

- (e) Qualified Joint and Survivor Annuity. An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.
- (f) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) Straight Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

(h) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

**17.07 Annuity Contracts.** Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

### XVIII. FINAL PAY CONTRIBUTIONS

**18.01 Eligibility.** Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Final Pay Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid final pay, as defined in the Adoption Agreement ("Final Pay"), shall be contributed to the Plan. Eligibility for Final Pay Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

**18.02 Contribution Amount.** At the election of the Employer in the Adoption Agreement, the Final Pay Contributions may be made as either (a) Employer Final Pay Contributions, or (b) Employee Designated Final Pay Contributions, as described below.

(a) Employer Final Pay Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid final pay upon termination of employment of the Participant, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Final Pay Contributions shall be accounted for in the Employer Contribution Account.

(b) Employee Designated Final Pay Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Final Pay, as elected by the Participant. The Employer may limit the amount of Final Pay to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Final Pay Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Final Pay Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Final Pay Contribution.

**18.03 Equivalencies.** The Final Pay Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

**18.04 Excess Contributions.** Final Pay Contributions are limited to the extent of applicable law and any Code limitation. No Final Pay Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

## XIX. ACCRUED LEAVE CONTRIBUTIONS

- 19.01 Eligibility.** Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement ("Accrued Leave"), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.
- 19.02 Contribution Amount.** At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a) Employer Accrued Leave Contributions, or (b) Employee Designated Accrued Leave Contributions, as described below.
- (a) Employer Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid leave each year, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Accrued Leave Contributions shall be accounted for in the Employer Contribution Account.
- (b) Employee Designated Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Accrued Leave, as elected by the Participant. The Employer may limit the amount of Accrued Leave to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Accrued Leave Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Accrued Leave Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Accrued Leave Contribution.

- 19.03 Equivalencies.** The Accrued Leave Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.
- 19.04 Excess Contributions.** Accrued Leave Contributions are limited to the extent of applicable law and any Code limitation. No Accrued Leave Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

## DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

(a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

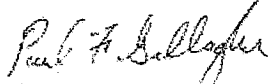
1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
  2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
  2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.

3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
  4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By:



Name:

Paul F. Gallagher

Title:

Assistant Secretary



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Plan Description: Volume Submitter Money Purchase Pension Plan  
FFN: 315D0880003-001 Case: 201200590 EIN: 23-7268394  
Letter Serial No: J593644a  
Date of Submission: 04/02/2012

ICMA RETIREMENT CORP  
777 NORTH CAPITOL ST. NE, SUITE 600  
WASHINGTON, DC 20002

Contact Person:  
Janell Hayes  
Telephone Number:  
513-263-3602  
In Reference To: TEGE:EP:7521  
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to adopting employers if the practitioner is authorized to amend the plan on their behalf, to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the practitioner on behalf of employers must provide the date of adoption by the practitioner.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a), as provided for in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, and outlined below. The terms of the plan must be followed in operation.

Except as provided below, our opinion does not apply with respect to the requirements of Code sections 401(a)(4), 401(l), 410(b), and 414(s). Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

Letter 4333



This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

This letter is not a ruling with respect to the tax treatment to be accorded contributions which are picked up by the governmental employing unit within the meaning of section 414(h)(2) of the Internal Revenue Code.

Our opinion applies with respect to the requirements of Code section 410(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an advisory letter with respect to the nondiscriminatory amounts requirement under section 401(a)(4). If this plan includes a CODA or otherwise provides for contributions subject to sections 401(k) and/or 401(m), the advisory letter can be relied on with respect to the form of the nondiscrimination tests of 401(k)(3) and 401(m)(2) if the employer uses a safe harbor compensation definition. In the case of plans described in section 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may also rely on the advisory letter with respect to whether the form of the plan satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan.


The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, with regard to item (1) above, and Form 5300, for items (2), (3), (4) and (5), without restating for the Cumulative List in effect when the application is filed.

If you, the volume submitter practitioner, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the practitioner. Individual participants and/or adopting employers with questions concerning the plan should contact the volume submitter practitioner. The plan's adoption agreement, if applicable, must include the practitioner's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,



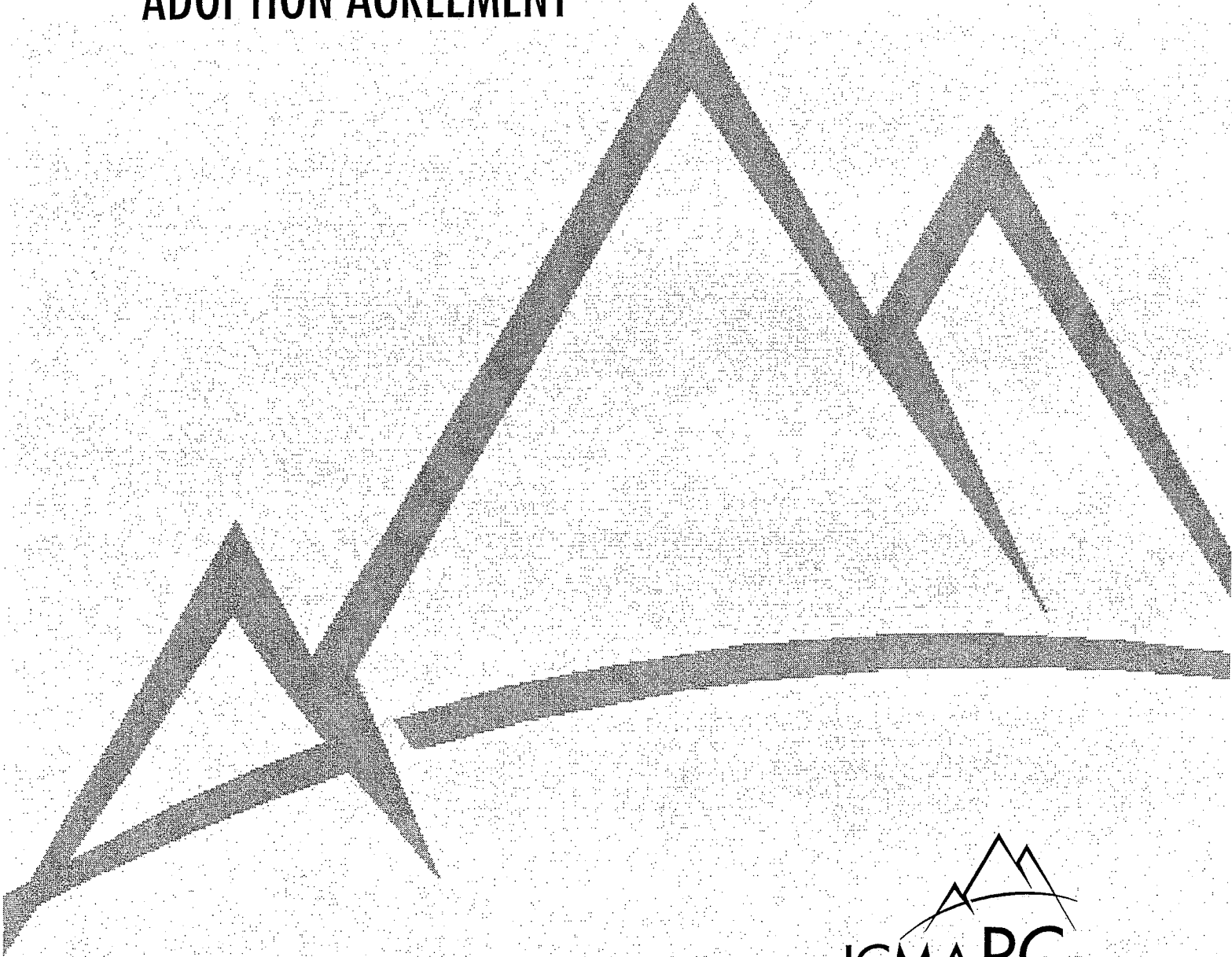
Andrew E. Zuckerman  
Director, Employee Plans Rulings and Agreements



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REV 3/2015

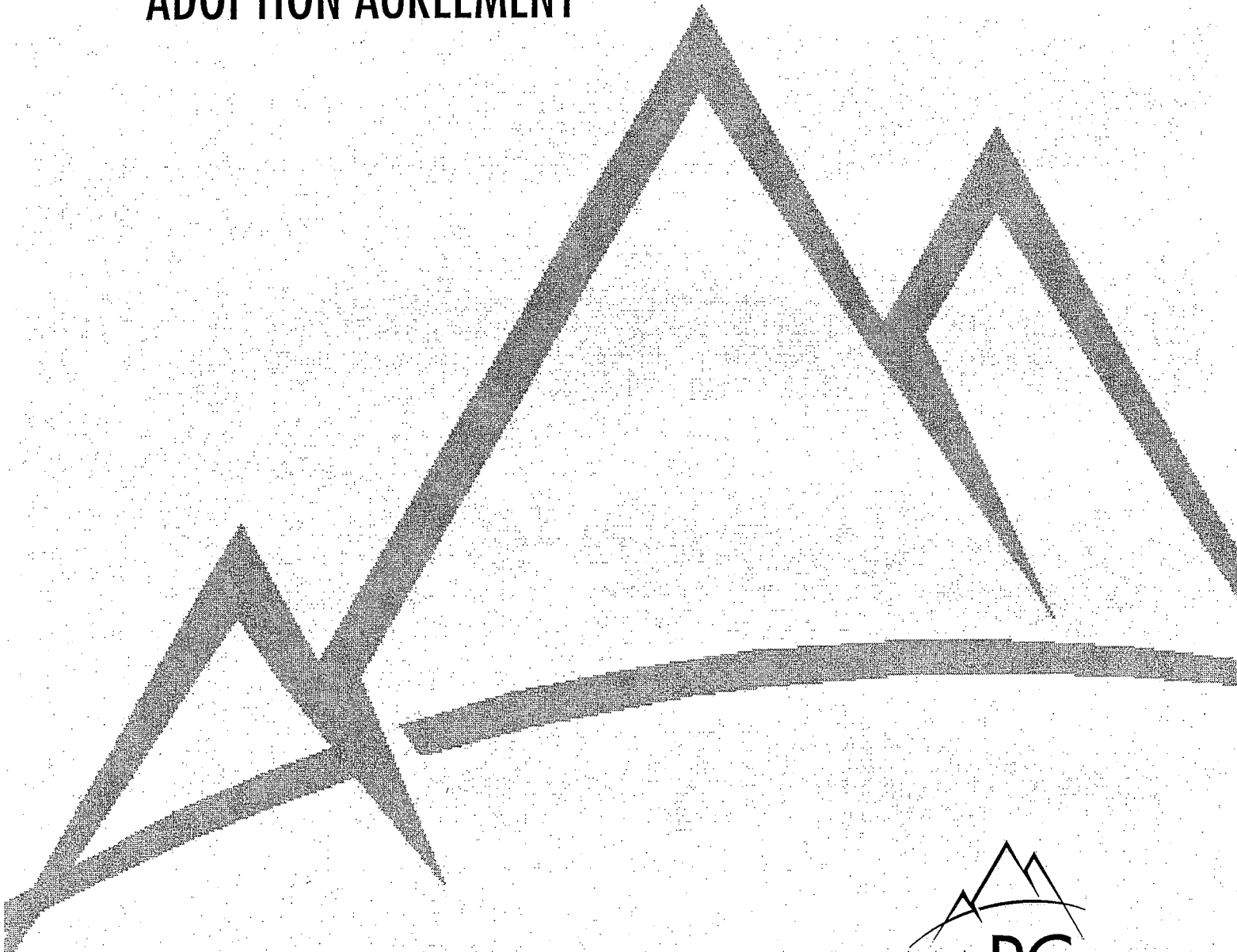
ICMA RETIREMENT CORPORATION

# GOVERNMENTAL MONEY PURCHASE PLAN & TRUST ADOPTION AGREEMENT



ICMA RETIREMENT CORPORATION

# GOVERNMENTAL MONEY PURCHASE PLAN & TRUST ADOPTION AGREEMENT



**ICMA RC**  
BUILDING PUBLIC SECTOR  
RETIREMENT SECURITY

ICMA RETIREMENT CORPORATION  
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST  
ADOPTION AGREEMENT

Plan Number 107909

The Employer hereby establishes a Money Purchase Plan and Trust to be known as Northern California Power Agency 401(a) Plan (the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

Yes                       No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

NORTHERN CALIFORNIA POWER AGENCY

I. Employer: NORTHERN CALIFORNIA POWER AGENCY

II. Effective Dates

1. **Effective Date of Restatement.** If this document is a restatement of an existing plan, the effective date of the Plan shall be January 1, 2007 unless an alternate effective date is hereby specified: June 29, 2014

(Note: An alternate effective date can be no earlier than January 1, 2007.)

2. **Effective Date of New Plan.** If this is a new Plan, the effective date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified:  
\_\_\_\_\_

3. **Special Effective Dates.** Please note here any elections in the Adoption Agreement with an effective date that is different from that noted in 1. or 2. above.

(Note provision and effective date.)

III. Plan Year will mean:

The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.03(f) of the Plan.)

The twelve (12) consecutive month period commencing on \_\_\_\_\_ and each anniversary thereof.

IV. Normal Retirement Age shall be age 62.0 (not to exceed age 65).

*Important Note to Employers:* Normal Retirement Age is significant for determining the earliest date at which the Plan may allow for in-service distributions. Normal Retirement Age also defines the latest date at which a Participant must have a fully vested right to his/her Account. There are IRS rules that limit the age that may be specified as the Plan's Normal Retirement Age. The Normal Retirement Age cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. An age under 55 is presumed not to satisfy this requirement, unless the Commissioner of Internal Revenue determines that the facts and circumstances show otherwise.

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good faith, reasonable determination will generally be given deference. A special rule, however, applies in the case of a plan where substantially all of the participants in the plan are qualified public safety employees within the meaning of section 72(t)(10)(B) of the Code, in which case an age of 50 or later is deemed not to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

**V. ELIGIBILITY REQUIREMENTS**

1. The following group or groups of Employees are eligible to participate in the Plan:

- All Employees
- All Full Time Employees
- Salaried Employees
- Non union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) All full-time employees who are "new members" under the Public Employee's Pension Reform Act (PEPRA)

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. **Note:** As stated in Sections 4.07 and 4.08, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment) N/A.

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

**VI. CONTRIBUTION PROVISIONS**

1. **The Employer shall contribute as follows:** (Choose all that apply, but at least one of Options A or B. If Option A is not selected, Employer must pick up Participant Contributions under Option B.)

**Fixed Employer Contributions With or Without Mandatory Participant Contributions.** (If Option B is chosen, please complete section C.)

A. Employer Contributions. The Employer shall contribute on behalf of each Participant 4.0 % of Earnings or \$ \_\_\_\_\_ for the Plan Year (subject to the limitations of Article V of the Plan).  
Mandatory Participant Contributions

are required     are not required

to be eligible for this Employer Contribution.

B. Mandatory Participant Contributions for Plan Participation.

Required Mandatory Contributions. A Participant is required to contribute (subject to the limitations of Article V of the Plan) the specified amounts designated in items (i) through (iii) of the Contribution Schedule below:

Yes                       No

Employee Opt-In Mandatory Contributions. Each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute the specified amounts designated in items (i) through (iii) of the Contribution Schedule below for each Plan Year (subject to the limitations of Article V of the Plan):

Yes       No

Contribution Schedule.

- (i) \_\_\_\_\_% of Earnings,  
(ii) \$ \_\_\_\_\_, or  
(iii) a whole percentage of Earnings between the range of 1% to 20% (*insert range of percentages between 1% and 20% inclusive (e.g., 3%, 6%, or 20%; 5% to 7%)*), as designated by the Employee in accordance with guidelines and procedures established by the Employer for the Plan Year as a condition of participation in the Plan. A Participant must pick a single percentage and shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

Employer "Pick up". The Employer hereby elects to "pick up" the Mandatory Participant Contributions<sup>1</sup> (pick up is required if Option A is not selected).

Yes       No (*"Yes" is the default provision under the Plan if no selection is made.*)

C. Election Window (Complete if Option B is selected):

Newly eligible Employees shall be provided an election window of 60 days (no more than 60 calendar days) from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

2. The Employer may also elect to contribute as follows:

A. Fixed Employer Match of Voluntary After-Tax Participant Contributions. The Employer shall contribute on behalf of each Participant \_\_\_\_\_% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed \_\_\_\_\_% of Earnings or \$ \_\_\_\_\_. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

B. Variable Employer Match of Voluntary After-Tax Participant Contributions. The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\_\_\_\_\_ % of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding \_\_\_\_\_% of Earnings or \$ \_\_\_\_\_);

---

<sup>1</sup> Neither an IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are "picked up" by the Employer are not includable in the Participant's gross income for federal income tax purposes. Pick-up contributions are not mandated to receive private letter rulings; however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2012-4 (or subsequent guidance).

PLUS \_\_\_\_\_% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate \_\_\_\_\_% of Earnings or \$ \_\_\_\_\_).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \$ \_\_\_\_\_ or \_\_\_\_\_% of Earnings, whichever is \_\_\_\_\_ more or \_\_\_\_\_ less.

3. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan:

Yes       No (*"No" is the default provision under the Plan if no selection is made.*)

4. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

Within one week of regular pay day on a bi-weekly basis

5. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

Within one week of regular pay day on a bi-weekly basis

6. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:

A. Plan contributions will be made based on differential wage payments:

Yes       No (*"Yes" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective beginning January 1, 2009 unless another later effective date is filled in here:

\_\_\_\_\_

B. Participants who die or become disabled will receive Plan contributions with respect to such service:

Yes       No (*"No" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective for participants who died or became disabled while performing qualified military service on or after January 1, 2007, unless another later effective date is filled in here:

\_\_\_\_\_



VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

- 1. Overtime  
 Yes                       No
- 2. Bonuses  
 Yes                         No
- 3. Other Pay (specifically describe any other types of pay to be included below)

VIII. ROLLOVER PROVISIONS

- 1. The Employer will permit rollover contributions in accordance with Section 4.12 of the Plan:  
 Yes                       No (*"Yes" is the default provision under the Plan if no selection is made.*)
- 2. Direct rollovers by non-spouse beneficiaries are effective for distributions after 2006 unless the Plan delayed making them available. If the Plan delayed making such rollovers available, check the box below and indicate the later effective date in the space provided.

Effective Date is \_\_\_\_\_

*(Note: Plans must offer direct rollovers by non-spouse beneficiaries no later than plan years beginning after December 31, 2009.)*

IX. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Section 5.02 of the Plan).

- 1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (e) of the Plan will apply unless another method has been indicated below.  
 Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

2. The Limitation Year is the following 12 consecutive month period: \_\_\_\_\_

3. Unless the Employer elects a delayed effective date below, Article 5 of the Plan will apply to limitations years beginning on or after July 1, 2007. \_\_\_\_\_

*(The effective date listed cannot be later than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.)*

**X. VESTING PROVISIONS**

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. (For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)

<b>Period of Service Completed</b>	<b>Percent Vested</b>
Zero	0 %
One	0 %
Two	0 %
Three	0 %
Four	0 %
Five	100 %
Six	100 %
Seven	100 %
Eight	100 %
Nine	100 %
Ten	100 %

**XI. WITHDRAWALS AND LOANS**

1. In-service distributions are permitted under the Plan after a participant attains (select one of the below options):

- Normal Retirement Age
- Age 70½ (*"70½" is the default provision under the Plan if no selection is made.*)
- Alternate age (after Normal Retirement Age): \_\_\_\_\_
- Not permitted at any age

2. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days.

- Yes
- No (*"Yes" is the default provision under the plan if no selection is made.*)

3. Tax-free distributions of up to \$3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.

- Yes
- No (*"No" is the default provision under the Plan if no selection is made.*)

4. In-service distributions of the Rollover Account are permitted under the Plan, as provided in Section 9.07.

- Yes
- No (*"No" is the default provision under the Plan if no selection is made.*)

5. Loans are permitted under the Plan, as provided in Article XIII of the Plan:

- Yes
- No (*"No" is the default provision under the Plan if no selection is made.*)

**XII. SPOUSAL PROTECTION**

The Plan will provide the following level of spousal protection (select one):

- 1. Participant Directed Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.
- 2. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. (*"Beneficiary Spousal Consent Election" is the default provision under the Plan if no selection is made.*)
- 3. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime. (If C is selected, the spousal consent requirements in Article XII also will apply.)

**XIII. FINAL PAY CONTRIBUTIONS**

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

The following group of Employees shall be eligible for Final Pay Contributions:

- All Eligible Employees
- Other: \_\_\_\_\_

Final Pay shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of Final Pay – must be leave that Employee would have been able to use if employment had continued and must be bona fide vacation and/or sick leave*):  
\_\_\_\_\_

- 1. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant \_\_\_\_\_ % of Final Pay to the Plan (subject to the limitations of Article V of the Plan).
- 2. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute \_\_\_\_ % (insert fixed percentage of final pay to be contributed) or up to \_\_\_\_\_% (insert maximum percentage of final pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XIV. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

- All Eligible Employees
- Other: \_\_\_\_\_

Accrued Leave shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (insert definition of accrued leave that is bona fide vacation and/or sick leave):  
\_\_\_\_\_

1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of \_\_\_\_\_ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).
- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant \_\_\_\_\_% of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute \_\_\_\_\_% (insert fixed percentage of accrued unpaid leave to be contributed) or up to \_\_\_\_\_% (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan). Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XV. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVI. The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust. This ICMA Retirement Corporation Governmental Money Purchase Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s) unless the Employer notifies the Plan Administrator, in writing, that it disapproves of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.

XVII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

XVIII. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XIX. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

EMPLOYER

ICMA RETIREMENT CORPORATION  
777 North Capitol St., NE Suite 600  
Washington, DC 20002  
800-326-7272

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Donna Stevener

Print Name: \_\_\_\_\_

Title: Chief Financial Officer

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_



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# Commission Staff Report

AGENDA ITEM NO.: 15

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** **TMG Utility Advisory Services, Inc.** Five Year Multi-Task Consulting Services Agreement for Smart Grid Services applicable to Members, SCPPA and SCPPA Members

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## Proposal

Approve a five year Multi-Task Consulting Services Agreement with TMG Utility Advisory Services, Inc. in an amount not-to-exceed \$1,500,000 for advisory services and client-side delivery support services to support smart grid and related IT projects on behalf of Members, SCPPA and SCPPA members.

## Background

NCPA Members are in various stages of evaluation and decision making with respect to the implementation of Meter Data Management (MDM) systems and Customer Information Systems (CIS) in each of their respective utilities. MDM and CIS applications are core applications, foundational to a smart grid system, that offer the potential for improved reliability, operational performance and customer service, and yet, can also present increased complexity and challenges to a utility's organization.

In support of the effort to achieve the goals that smart grid systems can provide, an ad hoc Smart Grid Committee was formed in mid-2015 of NCPA staff and members to identify opportunities where NCPA could provide joint action agency services in support of members' smart grid initiatives. The committee found common ground for pursuing joint efforts among three main areas: (1) information sharing; (2) replacement of Customer Information Systems (CIS); and (3) replacement of Meter Data Management Systems (MDMS) to function as an interface between the CIS and their respective smart grid systems.

NCPA, acting on behalf of the ad hoc Smart Grid Project committee members, issued a Request for Proposal (RFP) for consulting services in August 2015 to develop specifications to facilitate the procurement of Customer Information Systems (CIS), Meter Data Management Systems (MDMS), and related smart grid consulting services for each applicable NCPA member utility.

### Consulting Services Selection Process

In response to its RFP for Smart Grid consulting services, NCPA received proposals from eight respondents, of which the ad hoc Smart Grid Committee interviewed five consulting organizations:

- AAC Utility Partners for CIS consulting services;
- Black & Veatch for both MDM and CIS consulting services;
- Leidos Engineering for CIS consulting services;
- Navigant Consulting for MDM consulting services; and
- TMG Utility Advisory Services, Inc. and partnering subcontractor Utiliworks Consulting LLC for CIS and MDM consulting services.

The committee unanimously selected TMG Utility Advisory Services, Inc. to lead NCPA's smart grid initiative for smart grid consulting services. This five-year multi-task consulting services agreement establishes a contractual relationship with TMG to provide advisory services to NCPA with respect to application planning, quality assurance oversight and procurement for Smart Grid Services as well as client-side delivery support services in support of utility IT projects. NCPA will issue purchase orders for identified project tasks on behalf of contracting participants, subject to approval by the Commission, if required.

### Smart Grid Project Agreement

The Multi-Task Consulting Services Agreement between NCPA and TMG Utility Advisory Services, Inc. will be used in conjunction with the Smart Grid Project Agreement between NCPA and Contracting Participants that was approved previously by the Commission on October 2, 2015.

The Smart Grid Project Agreement establishes the contractual relationship between NCPA and Contracting Participants who desire NCPA to secure services on their behalf with respect to smart grid services for consulting services as well as other potential future services for the implementation, integration, maintenance and other functions related to smart grid system solutions. This services agreement between NCPA and Contracting Participants is a ten year agreement that is designed to be flexible to meet each participant's specific utility smart grid needs. Individual Contracting Participants may, subject to certain conditions, elect to participate or opt out of certain project phases and tasks based on their particular utility smart grid requirements.

Services associated with this Multi-Task Consulting Services Agreement between NCPA and TMG Utility Advisory Services, Inc. may further be utilized through the NCPA Support Services Agreement, once approved by the Commission, or any other applicable agreement with NCPA Members, SCPPA, and/or SCPPA members.

### Fiscal Impact

This Multi-Task Consulting Services Agreement between NCPA and TMG Utility Advisory Services, Inc. has a not-to-exceed limit of \$1,500,000 over its five year term. As indicated in section 1.5 of the Agreement, NCPA will issue purchase orders for any specific tasks on behalf of applicable contracting members and participants, which will be separately submitted for Commission approval, if required.



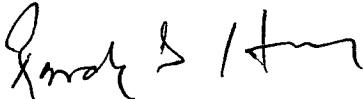
Environmental Analysis

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.

Recommendation

Staff recommends that the NCPA Commission approve Resolution 16-12 authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with TMG Utility Advisory Services, Inc. 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 by NCPA that applies to Members, SCPPA, and SCPPA members.

Respectfully submitted,



RANDY S. HOWARD  
General Manager

Prepared by:



ROBERT W. CARACRISTI  
Manager, Information Services  
and Power Settlements

Attachments (3)

- Resolution 16-12
- Multi-Task Consulting Services Agreement
- Smart Grid Project Agreement

**RESOLUTION 16-12**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A FIVE YEAR MULTI-TASK CONSULTING SERVICES AGREEMENT  
WITH TMG UTILITY ADVISORY SERVICES, INC.**

**(reference Staff Report #118:16)**

WHEREAS, NCPA members are in various stages of evaluation and decision making with respect to implementing smart grid systems in each of their respective utilities; and

WHEREAS, in support of this effort, a Smart Grid ad hoc Committee was formed of NCPA staff and members to identify opportunities where NCPA could provide joint action agency services; and

WHEREAS, the Smart Grid ad hoc Committee identified common ground for pursuing joint efforts among information sharing, replacement of Customer Information Systems (CIS), replacement of Meter Data Management Systems (MDMS), and other potential related smart grid services, in which these activities hereon are collectively referred to as the Smart Grid Project; and

WHEREAS, the Commission previously approved a related Smart Grid Project Agreement that establishes a contractual relationship between NCPA and Contracting Participants who desire to secure NCPA's services on their behalf with respect to Smart Grid Project development, implementation, and maintenance related services that meet the specific needs for each of their utility's smart grid requirements; and

WHEREAS, in response to NCPA issuing a Request for Proposal for Smart Grid consulting services, the Smart Grid ad hoc Committee unanimously selected TMG Utility Advisory Services, Inc. to provide consulting services related to the development of requirements and specifications for procurement of related MDM and CIS solutions for each applicable Contracting Participant; and

WHEREAS, NCPA now seeks to establish a contractual relationship with TMG Utility Advisory Services, Inc. for advisory services related to the application planning, quality assurance oversight and procurement for Smart Grid Services as well as client-side delivery support services in support of Smart Grid and other utility IT projects; and

WHEREAS, these services may be utilized through the use of the NCPA Smart Grid Project Agreement, NCPA Support Services Agreement, once it is approved, or other applicable agreement on behalf of contracting participants; 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 Consulting Services Agreement with TMG Utility Advisory Services, Inc. with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years to provide services to Members, SCPA and SCPA members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 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  
 VICE CHAIR

\_\_\_\_\_  
 ATTEST: CARY A. PADGETT  
 ASSISTANT SECRETARY



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
TMG UTILITY ADVISORY SERVICES, INC.**

This agreement for consulting services ("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 TMG Utility Advisory Services, Inc., a corporation with its office located at 9210 Honeycomb Drive, Texas 78737 ("Consultant") (together sometimes referred to as the "Parties") as of February 3, 2016 ("Effective Date") in Roseville, California.

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

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

Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services, or does not respond within the seven day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** one million five hundred thousand dollars (\$1,500,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable

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

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

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

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

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

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

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

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

**4.2.1 Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$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.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$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.** Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on "an occurrence" basis.

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

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

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

**4.5 Waiver of Subrogation.** Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of

subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

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

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

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

- 5.2 **Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant in its performance of Services under this Agreement. Consultant shall bear all losses, costs, damages, expense and liability of every kind, nature and description 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.

**Section 6. STATUS OF CONSULTANT.**

- 6.1 **Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any



compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

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

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

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

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Except as already identified in Exhibit A, Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not

relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

**Section 8. TERMINATION AND MODIFICATION.**

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

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

- 8.2 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.4 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

- 8.4.1 Immediately terminate the Agreement;

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

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.
- 9.4 **Confidential Information and Disclosure.**
  - 9.4.1 **Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information,

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

**9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in 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, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

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

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

**9.4.4 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal

department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

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

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

**10.7 Contract Administrator.** This Agreement shall be administered by Donna Stevener, Assistant General Manager, or her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Tim Almond  
TMG Utility Advisory Services, Inc.  
9210 Honeycomb Drive  
Austin, TX 78737

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:

Michael F. Dean  
General Counsel  
Northern California Power Agency  
Meyers Nave  
555 Capitol Mall, Suite 1200  
Sacramento, CA 95814

**10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:

- 10.11.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.11.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.11.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.11.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.11.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.11.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 10.12 **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Consultant's Proposal, the Exhibits shall control.
- 10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 10.14 **Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 10.15 **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide Services to an Agency member, SCCPA and/or a SCCPA member (collectively for the purposes of this section only "Member") pursuant to section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the

Purchase Order and Requested Services relating to such Member. If requested by Agency, such Member agrees to sign the "Acknowledgement of Agreement", attached hereto as Exhibit D and incorporated herein, prior to receiving Services under the Purchase Order.

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

NORTHERN CALIFORNIA POWER AGENCY

TMG UTILITY ADVISORY SERVICES, INC.

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
RANDY S. HOWARD, General Manager

\_\_\_\_\_  
[NAME, TITLE]

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
Assistant General Counsel



## EXHIBIT A

### SCOPE OF SERVICES

TMG Utility Advisory Services, Inc. ("Consultant") shall provide the NORTHERN CALIFORNIA POWER AGENCY ("Agency") with the following services:

- Advisory Services with respect to application planning, quality assurance oversight and procurement for Smart Grid Services that include, but are not limited to, the following:
  - Assist in the assessment of existing utility system applications and components related to Meter Data Management systems, Customer Information Systems, Advanced Metering Infrastructure, smart meters, geographic information system, communication network infrastructure and other devices, hereto referred to as "Smart Grid Services";
  - Assist in the development of functional, technical and service requirements for participants' utility needs with respect to Smart Grid Services;
  - Assist in the development of specifications, including but not limited to Request for Proposals with respect to Smart Grid Services;
  - Assist in the evaluation of quality, product fit to requirements, configurability, or any other limitations with respect to vendor proposals for Smart Grid Services;
  - Assist in the role of project management related to project implementation for vendors' Smart Grid Services with respect to all facets of project implementation including, but not limited to, project timelines, resource management, procurement, logistics, risk management, implementation, integration, monitoring, testing and project close out.
  - Assist in the evaluation of performance and maintenance with respect to Smart Grid Services.
- Client-Side Delivery Support Services to support utility IT projects that include, but are not limited to, the following:
  - Change management support for organizational readiness in preparation for enterprise software implementation;
  - Data conversion support to adapt legacy data to integrate with new system requirements;
  - Functional and Technical Support to support an organization's key goals;
  - Project Management Office (PMO) for project management and oversight;
  - Testing support for testing of all stages throughout an enterprise software implementation effort;
  - Market research services and products for next-generation smart grid solutions.
- For the purpose of this contract Utiliworks Consulting LLC shall be the sole subcontractor authorized to perform services under this Agreement and shall not perform more than 50% of the work for any given project phase, without the prior written approval by the Agency.

These services may apply for use to members or other participants through the use of the NCPA Smart Grid Project Agreement, NCPA Support Services Agreement, or other applicable agreement.

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks pursuant to Section 1.5 of this Agreement, including hourly fees and expenses, shall not exceed \$1,500,000. The hourly compensation shall be as follows:

TMG Utility Advisory Services, Inc. \$190.00 per hour for first three (3) years

TMG Utility Advisory Services, Inc. may increase its hourly rate at no greater than 5% per annum for the final fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) years of this Agreement.

Reimbursable expenses to be paid to the Consultant by the Agency include travel costs incurred by the Consultant for the purpose of rendering services to the Agency. Travel costs include airline tickets, car rental, lodging and meals. Agency will not reimburse Consultant for time needed to complete travel.

Agency shall not provide Consultant with any additional compensation for labor costs, taxes, fees, subcontractors or any other costs, expenses or fees related to the performance of work under this Agreement, beyond those expressly set forth in this Exhibit B.

The compensation set forth in this Exhibit B may only be modified in accordance with Section 8.2 of this Agreement.

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

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

\_\_\_\_\_

(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of  
TMG UTILITY ADVISORY SERVICES, INC.

(Company name)

for contract work at

NORTHERN CALIFORNIA POWER AGENCY, 651 COMMERCE DRIVE, ROSEVILLE, CA 95678

(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**

**Acknowledgement of Agreement**

This Acknowledgement confirms the intent of \_\_\_\_\_, a \_\_\_\_\_ ("Member") to participate in and utilize the Multi-Task Agreement to which this Exhibit is attached, including all other Exhibits attached hereto, between the Northern California Power Agency ("Agency") and \_\_\_\_\_ ("Consultant") effective \_\_\_\_\_, 20\_\_ ("Agreement"). Member has reviewed the terms and conditions of the Agreement in detail and agrees to abide by them. It is understood and agreed that payments for Services by Consultant provided to Member shall be paid by Agency and funded by Member to Agency pursuant to a Support Services Program Agreement between Agency and Member. All invoices for Services for Member shall be addressed to Agency.

Further, Member agrees and acknowledges that the terms, conditions, and applicable Exhibits set forth in the Agreement will apply between Member and Consultant.

**MEMBER**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONSULTANT**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## SMART GRID PROJECT AGREEMENT BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND CONTRACTING PARTICIPANTS

This SMART GRID PROJECT Agreement ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY ("NCPA"), a joint public powers agency with offices located at 651 Commerce Drive, Roseville, California and each Participant identified in Exhibit A (attached hereto and incorporated herein, each being a "Contracting Participant" and jointly referred to as "Contracting Participants"). NCPA and the Contracting Participants 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") in Roseville, California.

### Section 1. TERMS

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

1.1 NCPA is a public agency created by a joint powers agreement established under California law for the purpose of assisting its members in the efficient use of their common powers.

1.2 Contracting Participant is engaged in, among other things, transmitting and distributing electric power and other utility services within its respective corporate limits. Contracting Participant desires that NCPA provide Contracting Participant with the Services described in this Agreement.

1.3 Article III, section 3 of the "Amended and Restated Northern California Power Agency Joint Powers Agreement" (as amended and effective January 1, 2008) (hereinafter "JPA") entitled "Powers and Functions" provides that none of the debts, liabilities or obligations of NCPA shall be the debts, liabilities or obligations of any of the members of NCPA unless assumed in a particular case by resolution of the governing body of the member to be charged. Notwithstanding the foregoing, Article V, section 1 of the JPA entitled "General Provisions" provides that "[t]he governing Commission of NCPA is authorized to procure public liability and other insurance as it deems advisable to protect NCPA and each of the parties hereto, charging the cost thereof to the operating costs of NCPA."

1.4 Contracting Participant desires to secure NCPA's Services under this Agreement in a manner that balances the Contracting Participant's interests and the interests of NCPA members with the ongoing financial viability and professional responsibilities of NCPA. Accordingly, Contracting Participant desires to secure NCPA's Services under this Agreement by accepting a limited insurance based recourse against NCPA, with the option of procuring additional insurance at Contracting Participant's sole expense, thereby insuring that NCPA will substantially limit its risk for the provision of such Services which, in turn, allocates risks back to the Contracting Participant in the event NCPA is not adequately insured.

1.5 NCPA will provide Services to Contracting Participants under this Agreement by contracting with various consultants ("Consultants") pursuant to one or more Services Agreements between the Northern California Power Agency and selected Consultants ("Services Agreements").

1.6 Contracting Participants desire to secure NCPA's Services under this Agreement to provide Smart Grid Project development, implementation and maintenance related services. These services may include development of Specifications to facilitate Procurement of Customer Information Systems & Meter Data Management Systems for Contracting Participants (Smart Grid Project), as well as other related Smart Grid functions to assist Contracting Participants in development of various components of Smart Grid solutions at their utility.

## **Section 2. DEFINITIONS**

Whenever used in this Agreement with initial capitalization, these terms shall have the following meanings as applicable, whether in the singular or plural:

2.1 "Consultants" shall mean one or more consultants selected by NCPA throughout the term of this Agreement to assist with the Smart Grid Project, pursuant to the Services Agreements.

2.2 "Fiscal Year" shall mean the NCPA fiscal year, a twelve month period beginning July 1 and ending on the following June 30.

2.3 "Good Utility Practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts 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 of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. 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 region and consistently adhered to by the electric utility industry.

2.4 "Contracting Participant" or "Participant" shall mean a signatory to this Agreement.

2.5 "Services Agreements" shall mean the Services Agreements between Northern California Power Agency and Consultants to provide Smart Grid related consulting services.

2.6 "Smart Grid Project" shall mean the system components as described in the Scope of Service in Exhibit B.

2.7 "Stranded Costs" shall mean all costs incurred by NCPA in providing Services to Contracting Participants under this Agreement for one or more Tasks that could not reasonably be avoided by NCPA from the date it receives a written notice of termination for a particular Task pursuant to Section 4.2. Such costs may include, but not be limited to, salary and employment costs, rent, utilities, NCPA's administrative costs or contracts incurred to provide Services under this Agreement.

2.8 "Tasks" shall mean each individual task or service provided to one or more Contracting Participants pursuant to one or more Services Agreements.

### **Section 3. SERVICES TO BE PROVIDED; AUTHORIZED REPRESENTATIVES; STANDARD OF PERFORMANCE**

3.1 Services. This Agreement is entered into by the Parties in order for NCPA to provide services to Contracting Participant as described in the Scope of Service, Exhibit B attached hereto and incorporated herein ("Services").

3.2 Authorized Representatives. The Authorized Representatives of the Parties for contract administration under this Agreement are listed in Section 10.6. Each Authorized Representative has the authority to add additional Tasks, in addition to those set forth in Exhibit B, as long as such Tasks are consistent with Section 1.6 and within the total budget authorization for each Contracting Participant, as set forth in Exhibit A, or as increased pursuant to Section 3.6 below.

3.3 Standard of Performance. NCPA will perform and/or oversee, as applicable, the Services using that level of skill and attention reasonably required to complete the Services in a competent and timely manner.

3.4 Services Agreements. Contracting Participants acknowledge that the Tasks to be performed will generally be through the Services Agreements, rather than by NCPA using its employees, and that NCPA's Services are generally limited to the administration of the Services Agreements on behalf of the Contracting Participants, subject to Section 3.5.

3.5 NCPA Staff Performing Tasks. Notwithstanding any other provision hereof, NCPA may elect to utilize its staff to perform Tasks when deemed appropriate by NCPA and the Contracting Participant requesting the Task to be performed.

3.6 Increase in Budget Authorization. A Contracting Participant may increase its total budget authorization, as set forth in Exhibit A, by submitting to NCPA a written request for such increase, signed by the Contracting Participant and its general counsel/city attorney.

3.7 Additional Tasks. Notwithstanding any other provision of this Agreement, NCPA shall not be obligated to agree to perform, or contract for the performance of, any Tasks beyond the Tasks listed in Exhibit B.

### **Section 4. TERM; TERMINATION; AND ADDITIONAL PARTICIPANTS**

4.1 Term. The term of this Agreement is intended to be consistent with that of the Services Agreement(s) that may be executed to provide Services requested by one or more Contracting Participants over a period of time, but in no event shall be beyond Fiscal Year 2025. The term of this Agreement shall begin on the Effective Date and shall end upon the termination date of the Services Agreements entered into as part of the Smart Grid Project but shall not extend beyond Fiscal Year 2025.

4.2 Termination of Participation in Task by Contracting Participant. Each Contracting Participant shall have the authority to terminate its participation in one or more Tasks by providing at least thirty (30) days' prior written notice of its intent to terminate its participation in a specific Task. Notwithstanding any other provision hereof, the Contracting Participant shall be responsible for all Stranded Costs relating to its early termination of its participation in that Task, as reasonably determined by NCPA. Remaining Contracting Participants for a given Task may be reapportioned their respective share of costs for that Task in the event of early Termination by a Contracting Participant.

4.3 Termination of Participation in Agreement by Contracting Participant. Each Contracting Participant shall have the authority to terminate its participation in this Agreement, by providing at least thirty (30) days' prior written notice of its intent to terminate its participation in this Agreement. Notwithstanding any other provision hereof, the Contracting Participant shall be responsible for all Stranded Costs relating to its termination of its participation in this Agreement, as reasonably determined by NCPA. Contracting Participant shall compensate NCPA for all outstanding costs and reimbursable expenses incurred for Services and Tasks as of the date of written notice of termination..

4.4 Termination of Agreement by NCPA. NCPA may in its sole discretion termination this Agreement, with thirty (30) days' prior written notice to all Contracting Participants, with the consent of all Contracting Participants or if all Tasks are completed.

4.5 Additional Contracting Participants. Following the effective date of the Agreement, an entity wishing to become a Contracting Participant under this Agreement may so request in writing, with appropriate authorization of its governing board. If approved by the NCPA Commission, the requesting party shall become a Contracting Participant.

4.6 Addition of Contracting Participants to Existing Tasks. An existing or additional Contracting Participant may participate in an existing Task, subsequent to its written request and payment of its proportionate share of already incurred costs for that task as determined by those already participating Contracting Participants.

## **Section 5. INDEMNITY AND INSURANCE**

### **5.1 Limitation of NCPA's Liability.**

5.1.1 Except as provided in this section 5.1, NCPA shall not at any time be liable for any injury or damage occurring to a Contracting Participant or any other person or property from any cause whatsoever arising out of this Agreement, including the actions or inactions of Consultant.

5.1.2 The provisions of section 5.1.1 shall not apply where the injury or damage occurring to Contracting Participant is caused by the negligence of NCPA or of any employee, agent or contractor of NCPA, and that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the insurance policies described in this Section 5.



5.1.3 Notwithstanding Section 5.1.2 above, the Contracting Participant agrees to reimburse NCPA, in a timely manner, for all deductibles and/or self-insured retentions payable by NCPA for any claim, liability or damage arising out of this Agreement.

5.2 Indemnification of NCPA. Except as specified in Section 5.1.2 above, Contracting Participant shall, at its sole cost and expense, indemnify, defend (as set forth below), and hold harmless NCPA and all associated, affiliated, allied, member and subsidiary entities of NCPA, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement, except as caused by Indemnitees' sole or gross negligence.

5.3 Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Contracting Participant shall, upon reasonable prior written notice from any of the Indemnitees, at Contracting Participant's sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Contracting Participant, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor Contracting Participant shall admit liability in any such matter or on behalf of the other without express written consent, which consent shall not be unreasonably withheld or delayed, nor enter into any compromise or settlement of any claim for which Indemnitees are indemnified hereunder without prior express written consent. The Contracting Participant's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

5.4 Notice. The Parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 5.

5.5 Insurance. During the term of the Agreement and prior to providing any Services under this Agreement, NCPA shall maintain, or cause to be maintained, in full force and effect, and at its sole cost and expense, the types and limits of liability insurance as are annually approved by the governing Commission of NCPA. The types and limits of liability insurance that are applicable to this Agreement are evidenced in policy summaries, which are attached hereto as Exhibit D. NCPA represents that the types of liability insurance and coverage limits shown in Exhibit D are in full force and effect and shall remain so during the term of this Agreement unless NCPA gives prior written notification (preferably, of not less than 30 days) of modification, cancellation or rescission of such coverage.

5.6 Contracting Participant's Acknowledgment of Option to Secure Additional Insurance. The Contracting Participant acknowledges that there are limitations on NCPA's liability to the Contracting Participant under this Section 5 and this Agreement and that the Contracting Participant may need to purchase additional insurance of its own to cover the additional risks and the potential additional liabilities it is assuming under this Agreement. Contracting Participant agrees that it will cause, with respect to any additional insurance it obtains or which is otherwise

available to Contracting Participant, its insurers to issue an endorsement providing a waiver of subrogation rights as to Indemnitees.

5.7 Survival of Obligations. The defense and indemnity obligations of Section 5 shall survive the termination of this Agreement.

## **Section 6. COMPENSATION AND CHARGES**

6.1 Fees and Costs. Each Contracting Participant hereby agrees to pay NCPA an amount NOT TO EXCEED the estimated cost to NCPA, for Services through fiscal year 2025, as set forth in Exhibit A, and other administrative costs incurred by NCPA in performing the Services. The Budget will be updated and approved by the NCPA Commission, as it deems necessary. Such approved updates will reflect NCPA's then current estimated administrative costs for performing such Services. Each Contracting Participant shall pay NCPA for Services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified in Exhibit C shall be the only payments from Contracting Participant to NCPA for Services rendered pursuant to this Agreement. NCPA shall submit all invoices to Contracting Participant in the manner specified herein. Except as specifically authorized by Contracting Participant, NCPA shall not bill Contracting Participant for duplicate Services performed by more than one person.

NCPA and Contracting Participant acknowledge and agree that compensation paid by Contracting Participant to NCPA under this Agreement is based upon NCPA'S estimated costs of providing the Services required hereunder, including salaries and benefits of employees and subcontractors, if any, of NCPA. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which NCPA and its employees, agents, and subcontractors may be eligible. Contracting Participant therefore has no responsibility for such contributions beyond compensation required under this Agreement.

6.2 Monthly Charges for Services. Charges for Services provided hereunder shall include the current amount of Two Thousand Dollars (\$2,000) per month for administrative services in addition to amounts for Tasks provided by NCPA to Contracting Participants and shall be billed separately to each Contracting Participant in accordance with Exhibit C.

## **Section 7. BILLING AND PAYMENT**

7.1 Invoices. NCPA 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 be accompanied with adequate and proper supporting information and documentation for the Services performed, if and as applicable.

7.2 Monthly Payment. Contracting Participants shall make monthly payments, based on invoices received, for Services satisfactorily performed, and for authorized reimbursable costs incurred. Contracting Participants shall have thirty (30) days from the date of the invoice to pay NCPA.

Payments shall be remitted directly to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Receivable

Any amount due and payable but not paid by Contracting Participant within 30 days following the date of the invoice shall bear interest at the per annum prime rate (or reference rate) of the Bank of America NT & SA, then in effect, plus two percent per annum computed on a daily basis until paid. NCPA will mail all invoices within 24 hours of the invoice date thereon.

The postmark date on the envelope containing payment by check shall be used to determine timeliness of payment, except that payments received later than seven (7) days after the due date shall be declared late without regard to postmark date. An invoice coming due on a Friday, holiday, or weekend shall be due on the next following nationally recognized working day.

7.3 Billing Dispute. If all or any portion of a bill is disputed by Contracting Participant, the entire amount of the bill shall be paid when due, and NCPA'S Authorized Representative shall be concurrently provided written notice of the disputed amount and the basis for the dispute. NCPA shall reimburse any amount determined to have been incorrectly billed, within ten (10) days after such determination.

7.4 Total Payment. Each Contracting Participant shall pay for the Services to be rendered by NCPA pursuant to this Agreement. Contracting Participant shall not pay any additional sum for any expense or cost whatsoever incurred by NCPA in rendering Services pursuant to this Agreement unless the Agreement has been modified by a properly executed amendment in accordance with this Agreement.

7.5 Hourly Fees. Fees for Tasks performed by NCPA on an hourly basis shall be cost-based, including salary, benefits and applicable overhead.

7.6 Reimbursable Expenses. Reimbursable Expenses for Tasks performed by NCPA shall include reasonable expenses, including travel and overnight accommodations, if needed.

7.7 Authorization to Perform Services. NCPA is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from Contracting Participant's Contract Authorized Representative following receipt of the required approvals under the terms of this Agreement.

## **Section 8. LEGAL REQUIREMENTS**

8.1 Governing Law. The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine.

8.2 Compliance with Applicable Laws. The Parties shall comply with all laws applicable to the performance of the Services hereunder.

8.3 Nondiscrimination and Equal Opportunity. NCPA shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by NCPA under this Agreement. NCPA shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of NCPA thereby.

NCPA shall include the provisions of this Subsection in any subcontract approved by Contracting Participant's Contract Administrator or this Agreement.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

9.1 Confidential Information and Disclosure. During the term of this Agreement, either party ("Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party ("Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of Disclosing Party at the time of disclosure to Receiving Party. Receiving Party shall hold Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by Disclosing Party. Receiving Party shall not disclose Disclosing Party's Information to any person other than Receiving Party's employees, agents, contractors and subcontractors who have a need to know in connection with this Agreement.

Receiving Party's confidentiality obligations hereunder shall not apply to any portion of Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of Receiving Party;
- (b) Has been made known to Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of Receiving Party prior to the disclosure of such Information by Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;
- (d) Receiving Party is required by law to disclose; or
- (e) Has been independently developed by Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

Receiving Party shall return or destroy Disclosing Party's Information (including all copies thereof) to Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, Receiving Party may

retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. The parties understand that each party is a public entity and is subject to the laws that may compel either to disclose information about the other's business.

9.2 NCPA Records. NCPA shall maintain adequate logs and timesheets in order to verify costs incurred.

## **Section 10. MISCELLANEOUS PROVISIONS**

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

10.2 Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable by federal or state statute or regulation, but the remaining portions of the Agreement can be enforced without failure of material consideration to any Party, then the remaining provisions shall continue in full force and effect. To that end, this Agreement is declared to be severable. Provided, however, that in the event any provision is declared to be invalid, void or unenforceable, either Party may terminate this Agreement upon ten (10) days written notice given within five (5) days of receipt of notice of final entry of judgment.

10.3 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.4 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

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

10.6 Notices. Unless this Agreement requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered in person, or sent by registered or certified first class mail, to the persons specified below, each of whom shall also act as the Authorized Representative specified in Section 3.2:

Northern California Power Agency

Donna Stevener  
Assistant General Manager; Administrative Services  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:

Michael F. Dean  
General Counsel  
Northern California Power Agency  
Meyers Nave  
555 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Alameda Municipal Power

Glenn Steiger  
General Manager  
Alameda Municipal Power  
2000 Grand Street  
PO Box H  
Alameda, CA 94501

City of Healdsburg

Terry Crowley  
Utility Director  
City of Healdsburg  
401 Groove Street  
Healdsburg, CA 95448

City of Lodi

Elizabeth Kirkley  
Utility Director  
City of Lodi  
1331 Ham lane  
Lodi, CA 95242

City of Palo Alto

Valerie Fong  
Utility Director  
City of Palo Alto  
250 Hamilton Avenue  
PO Box 10250  
Palo Alto, CA 94301

City of Santa Clara

John Roukema  
Director of Electric Utility  
City of Santa Clara  
411 West Clay Street  
Santa Clara, CA 95050

City of Ukiah

Mel Grandi  
Utility Director  
City of Ukiah  
411 West Clay Street  
Ukiah, CA 95482

Whenever it is required, permitted, or desired in this Agreement that written notice or demand be given by any Party to any other Party, such notice or demand may be either personally served or sent by United States Mail, or facsimile. Notice shall be deemed to have been given when personally served, when deposited in the United States Mail, certified or registered with postage prepaid and properly addressed, or when transmitted by facsimile provided however, notices delivered by facsimile shall only be effective if delivered during regular business hours on a day that is considered a regular business day for NCPA by the involved Parties.

10.7 Integration; Incorporation. This Agreement, including all the Exhibits attached hereto, represents the entire and integrated agreement between Contracting Participant and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral. All Exhibits attached hereto are incorporated by reference herein.

10.8 Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Contracting Participant and NCPA agree to resolve the dispute in accordance with the following:

10.8.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute;

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

10.8.3 If the issue remains unresolved after ONE HUNDRED AND TWENTY (120) 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.

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

10.9 Other Agreements. This Agreement is not intended to modify or change any other agreement among any of the Parties, individually or collectively.

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

10.11 Obligations Several. The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

10.12 Effect of Section Headings. Section headings and subheadings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretation of text.

10.13 Authority of Signatories. The signatories hereby represent that they have been appropriately authorized to execute this Agreement on behalf of the Party for whom they sign.

10.14 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties following each Party's receipt of written resolution/authorization from their governing bodies, which resolutions/authorizations shall be condition precedents to any amendments of this Agreement and shall be attached as Exhibits to this Agreement.

10.15 Independent Contractor. At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of Contracting Participant.

The Parties have executed this Agreement as of the Effective Date.

Northern California Power Agency

\_\_\_\_\_  
RANDY S. HOWARD, General Manager

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission



Approved as to Form:

\_\_\_\_\_  
General Counsel

**City of Alameda**

\_\_\_\_\_  
Attest:

Approved as to Form:

\_\_\_\_\_  
**City of Healdsburg**

\_\_\_\_\_  
Attest:

Approved as to Form:

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**City of Lodi**

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Attest:

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Approved as to Form:

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**City of Palo Alto**

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Attest:

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Approved as to Form:

---

**City of Santa Clara**

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Attest:

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Approved as to Form:

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**City of Ukiah**

---

Attest:

Approved as to Form:

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EXHIBIT A  
CONTRACTING PARTICIPANTS

	Entity	Total Budgeted Authorization
1.	City of Alameda	\$ TBD
2.	City of Palo Alto	\$ TBD
3.	City of Healdsburg	\$ TBD
4.	City of Lodi	\$ TBD
5.	City of Santa Clara	\$ TBD
6.	City of Ukiah	\$ TBD

EXHIBIT B  
Scope of Services

The Agreement provides a mechanism for Contracting Participants to collectively or individually seek NCPA Services associated with Smart Grid Project solutions for Contracting Participants. In addition to the specific Tasks identified below, Scope of Services shall also include those services described in Section 1.6 and include, but not be limited to, activities related to the assessment, design, implementation, integration and maintenance associated with Smart Grid Project components that include Meter Data Management systems, Customer Information Systems, Advanced Metering Infrastructure, communication network infrastructure, smart meters, and other Smart Grid devices and systems.

Additional Tasks may be undertaken under this Agreement, subject to the Terms and Compensation limits established under this Agreement, and upon approval by the NCPA Commission.

**Scope of Service of Task A.** In accordance with the terms of this Agreement, NCPA will manage, on behalf of Contracting Participants, the acquisition of services (or "Tasks" as referred to in the Services Agreement) from Consultant as provided below. Pursuant to the Services Agreements, Consultant will provide the Services listed herein, in coordination with NCPA. It is intended that this Scope of Services be consistent with, and not broader than, the Scope of Work set forth in the Services Agreements.

The Scope of Work provided in accordance with this Agreement and the Services Agreement are described below

Pursuant to this Agreement and the Services Agreement, Consultant agrees to perform the following Tasks:

1. (A1) Provide initial educational workshop to Contracting Participants regarding the state of the marketplace with respect to each of the CIS and MDM enterprise functions as well as emerging trends in the industry. As part of this workshop, consultant shall host potential vendor solutions related to CIS and MDMs.
2. (A2) Develop Specifications to meet Contracting Participant's operational future needs for Customer Information Systems, and
3. (A3) Develop Specifications to meet Contracting Participant's operational future needs for Meter Data Management Systems:

Upon Completion of Tasks A 1, 2 and 3 outlined above, if one or more Contracting Participant(s) choose to move forward to procure and implement CIS and MDM systems, the Consultant may be called upon to perform the following Task B:

B. Assist in the role of project manager and associate role on behalf of each Contracting Participant to ensure such systems are implemented by Consultant to meet contractual requirements and achieve each Contracting Participant's individual organizational needs.

Exhibit C  
COMPENSATION SCHEDULE

Compensation for all costs shall not exceed \$ \_TBD\_\_\_\_\_.

Monthly charges for services provided by NCPA and/or invoiced by Consultant that are attributable to a specific Contracting Participant shall be allocated directly to each Contracting Participant as indicated by Consultant records and/or NCPA records.

Monthly charges for services provided by NCPA and/or invoiced by Consultant for Tasks that are attributable to joint activities shall be allocated, as a default method, to each Contracting Participant based on the number of participants for each applicable Task as indicated in Table 1.

A Task represents consulting and/or project costs related to a specific task (i.e. CIS, MDM, AMR/AMI) in which one or more Contracting Participants has contracted for Services, and also includes NCPA's costs either in providing the Tasks or in administering the Consultants' provision of the Tasks .

Tables 2, 3 and 4 represent examples of cost allocations to different Contracting Participants based on their respective election for various Tasks. Future identified Tasks may be allocated using a different allocation basis that better reflects cost causation principles subject to the agreement among Contracting Participants to a given Task. NCPA will establish a procedure that outlines the process for initiation of newly identified Tasks for existing or new Contracting Participants to contract for NCPA Services and the approval process by each Contracting Participant for such Tasks under this Agreement.

Table 1: Contracting Participants for identified Task A activities

Members	Customer Information Systems (CIS)	Meter Data Management Systems (MDMS)
Alameda	✓	✓
Healdsburg		✓
Lodi		✓
Palo Alto	✓	
Santa Clara	✓	
Ukiah		✓

Table 2: Consultant Estimated Costs for identified tasks

Task A1 Consulting Cost	Task A2 CIS Consulting Costs	Task A3 MDMS Consulting Costs
\$	\$	\$

Table 3: Example of allocated joint activities costs for each Contracting Participant for Task A2 for CIS

Task A2 Costs

City	CIS	%	Allocated Cost
Alameda	✓	33.33%	\$ TBD
Healdsburg		0.00%	\$ -
Lodi		0.00%	\$ -
Palo Alto	✓	33.33%	\$ TBD
Santa Clara	✓	33.33%	\$ TBD
Ukiah		0.00%	\$ -
<b>Total</b>		<b>100.00%</b>	<b>\$ TBD</b>

Table 4: Example of allocated joint activities costs for each Contracting Participant for Task A3 for MDMS

Task A3 Costs

City	MDM	%	Allocated Cost
Alameda	✓	25.00%	\$ TBD
Healdsburg	✓	25.00%	\$ TBD
Lodi	✓	25.00%	\$ TBD
Palo Alto		0.00%	\$ -
Santa Clara		0.00%	\$ -
Ukiah	✓	25.00%	\$ TBD
<b>Total</b>		<b>100.00%</b>	<b>\$ TBD</b>



EXHIBIT D  
NCPA SUMMARIES OF LIABILITY INSURANCE

See the attached Summaries of the following insurance coverage:

1. Workers' Compensation & Employer's Liability
2. Automobile Liability & Physical Damage
3. Excess Liability



651 Commerce Drive  
Roseville, CA 95678

phone (916) 781-3636  
fax (916) 783-7693  
web www.ncpa.com

# Commission Staff Report

AGENDA ITEM NO.: 16

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**Date:** February 17, 2016  
**To:** NCPA Commission  
**Subject:** **Compliance Services, Inc. Five Year Multi-Task General Services Agreement for Operations and Maintenance Services; Applicable to the following projects: All Generation Services Plant Locations, Members, SCPPA, and SCPPA Members**

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## Proposal

Approve a five year Multi-Task General Services Agreement with Compliance Services, Inc. in an amount not-to-exceed \$1,500,000 for operations and maintenance services for use at all facilities owned and/or operated by NCPA, by its members, by the Southern California Public Power Authority ("SCPAA"), or by SCPAA members; and authorize the NCPA General Manager to approve purchase orders pursuant to the Agreement totaling \$493,000 over five years for compliance with mandated D.O.T. regulations at the Alameda CT1 project.

## Background

The Alameda natural gas supply line was installed in 1986 as part of the CT1 project in Alameda. In 2007 NCPA became aware of mandatory D.O.T. regulations and immediately secured appropriate resources (Compliance Services, Inc.) to develop a compliance program and ensure safe natural gas pipeline operation. To continue compliance with mandated D.O.T. regulations for the natural gas supply pipeline to the Alameda facility, staff is seeking to enter into an agreement with Compliance Services, Inc.

In addition to these services, Compliance Services, Inc. can provide additional operations and maintenance related services.

## Selection Process

NCPA recently went out for bid for the Alameda natural gas pipeline operations and maintenance services and obtained the following bids:

Compliance Services, Inc.	\$493,000 for 5 year term
Energy Operations Management	Non-responsive
Navajo Nation Oil and Gas Company	Non-responsive

This five year contract commits NCPA to the cost of \$493,000 for the Alameda natural gas pipeline operations and maintenance only. The remainder of the contract does not commit NCPA to any

purchases. NCPA will issue purchase orders based on cost and availability of any additional services needed at the time.

#### Fiscal Impact

Total cost of the agreement is not-to-exceed \$1,500,000 over five years to be used out of NCPA approved budgets as services are rendered. The \$493,000 over the five year term will be charged to the CT1 project approved budgets. Additional purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

#### Environmental Analysis

This project is categorically exempt from CEQA as a class 1 exemption (routine operation, repair, maintenance or minor alteration of existing structures or facilities not expanding existing uses) pursuant to CEQA Guidelines section 15301.

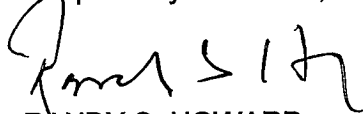
#### Committee Review

The recommendation below was reviewed by the Facilities Committee on February 3, 2016 and was recommended for Commission approval.

#### Recommendation

Staff recommends that the NCPA Commission approve Resolution 16-13 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Compliance Services, Inc. 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 all facilities owned and/or operated by NCPA, by its members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA members; and authorize the NCPA General Manager to approve purchase orders pursuant to the Agreement totaling \$493,000 over five years for compliance with mandated D.O.T. regulations at the Alameda CT1 project.

Respectfully submitted,



RANDY S. HOWARD  
General Manager

Prepared by:



KEN SPEER  
Assistant General Manager  
Generation Services

Attachments (2):

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

**RESOLUTION 16-13**

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

**(reference Staff Report #119:16)**

WHEREAS, Northern California Power Agency (NCPA) Alameda facility requires operations and maintenance services on the natural gas pipeline; and

WHEREAS, NCPA and Member facilities require other operations and maintenance services; and

WHEREAS, Compliance Services, Inc. is a provider of these services; 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 Manger or his designee to enter into a Multi-Task General Services Agreement with Compliance Services, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years.

PASSED, ADOPTED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016 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  
VICE CHAIR

ATTEST:

\_\_\_\_\_  
CARY A. PADGETT  
ASSISTANT SECRETARY



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

This agreement for general services ("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 Compliance Services, Inc., a with its office located at 2416 Tiverton Drive, Bakersfield, CA 93311 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2016 ("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 Exhibits A and A-1 through A-6 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 FIVE HUNDRED THOUSAND** dollars (\$1,500,000.00) 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

**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 "an occurrence" basis.

**4.4 Pollution Insurance.** If Contractor's Work involves its transporting hazardous materials, then Contractor shall obtain and maintain Contractors' Pollution Liability Insurance of not less than two million dollars (\$2,000,000) for any one occurrence and not less than four million dollars (\$4,000,000) aggregate. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim. Such insurance shall be on "an occurrence" basis.

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

**4.5 All Policies Requirements.**

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

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



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

**4.5.4 Additional Certificates and Endorsements.** If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Agency shall have the right to require Contractor to provide the certificates of insurance and/or policy endorsements, as referenced in Section 4.4.1, 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.

## **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 all the Parties.

- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and 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 **Work Provided Pursuant to Section 1.4.** If Contractor is providing Work to an Agency Member, SCPA or SCPA 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:

Compliance Services, Inc.  
Attention: Andy Bradfield, President  
2416 Tiverton Drive  
Bakersfield, CA 93311

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:

Michael F. Dean  
General Counsel  
Northern California Power Agency  
Meyers Nave  
555 Capitol Mall, Suite 1200  
Sacramento, CA 95814

- 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. 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. If requested by Agency, such Member will sign the "Acknowledgement of Agreement", attached hereto as Exhibit F and incorporated herein, prior to the Contractor performing Work under the Purchase Order.

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

NORTHERN CALIFORNIA POWER AGENCY

COMPLIANCE SERVICES, INC.

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
**RANDY S. HOWARD, General Manager**

\_\_\_\_\_  
**ANDY BRADFIELD, President**

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
Assistant General Counsel

**EXHIBIT A**  
**SCOPE OF SERVICES, COMPENSATION AND HOURLY FEES**

**SUMMARY OF SCOPE OF WORK**

Compliance Services, Inc. ("Contractor") shall complete the following Pipeline Hazardous Materials Safety Administration (PHMSA) activities as requested by the Northern California Power Agency ("Agency") at any Facilities owned or operated by NCPA, is Members, Southern California Public Power Authority (SCPPA) or SCPPA members:

- Ongoing operations and maintenance field activities
- Ongoing operations and maintenance compliance activities
- Ongoing demonstration of operator qualification (OQ) compliance
- Ongoing integrity management program field activities
- Ongoing integrity management compliance
- Ongoing integrity management action items

**Operations and Maintenance Field Activities:**

1. Complete PHMSA gas pipeline operations and maintenance (O&M) tasks field activities as identified in Exhibit A-1 shown below.
  - Contractor shall complete all O&M gas pipeline tasks in a timely manner in accordance with DOT pipeline regulations, company O&M procedures, company pipeline emergency plan procedures, pipeline operator qualification procedures, and all appropriate industry standards.
  - Contractor shall develop pipeline O&M procedures as required by 49 CFR 192.
  - Contractor will be available and take the lead during PHMSA pipeline O&M audits when they occur. And the company must be able to provide all required procedures and records as required by 49 CFR 192.
  - Contractor shall make all required PHMSA documentation available for viewing to NCPA staff using online database/management system.

**EXHIBIT A-1  
O&M Task Field Activities**

<b>Item #</b>	<b>Pipeline Task Description [192 Regulation]:</b>	<b>Freq.</b>	<b>Regulation 49 CFR</b>
<b>Ongoing O&amp;M:</b>			
1.	Patrols (class 3)	2x/yr <sup>2</sup>	192.705
2.	Critical Crossings Inspection (class 3)	4x/yr <sup>3</sup>	192.705
3.	Leak Survey with Instrument (class 3)	2x/yr <sup>2</sup>	192.706
4.	Emergency Valve Inspection	1x/yr <sup>1</sup>	192.745
5.	Test Pressure Relief Valve	1x/yr <sup>1</sup>	192.739
6.	Atmospheric Corrosion Inspection	1x/yr <sup>5</sup>	192.481
7.	Test Gas for Corrosive Properties	1x/yr <sup>5</sup>	192.477
8.	Pipe to Soil (CP Survey)	1x/yr <sup>1</sup>	192.465(b)
9.	Rectifier Inspection & Readings	6x/yr <sup>7</sup>	192.465(b)
10.	Class Location Study	1x/yr <sup>5</sup>	192.609
<b>Event Driven O&amp;M Items:</b>			
11.	One Call Processing, Marking, Onsite Standby if Pipeline Exposed (Hourly rate applies)	AR	192.614
12.	External Exposed Pipe Report Inspections	AR	192.459
13.	Internal Exposed Pipe Report	AR	192.475(b)
14.	Maintain Pipeline Markers	AR	192.707
15.	Maintain Warning Signs	AR	192.751
16.	Emergency Valves Protection from Tampering or Vandalism	AR	192.179

- 1x/yr<sup>1</sup> = Once per calendar year, not to exceed 15 months  
 2x/yr<sup>2</sup> = Twice per calendar year, not to exceed 7 ½ months  
 4x/yr<sup>3</sup> = Four times per calendar year, not to exceed 4 ½ months  
 AR = As required  
 1x/yr<sup>4</sup> = Due by March 15<sup>th</sup> for previous calendar year  
 1x/yr<sup>5</sup> = Once per calendar year  
 1x/yr<sup>6</sup> = Once per calendar year, not to exceed 18 months  
 6x/yr<sup>7</sup> = Six times per calendar year, not to exceed 2 ½ months

Remedial measures if needed above and beyond normal O&M activities listed in the table above would be invoiced at cost plus 15%. Examples of remedial measures for O&M activities:

- 1) Pipe casing work
- 2) Work regarding leak
- 3) Emergency valve work

- 4) Relief valve work
- 5) Remedial measure to mitigate corrosive properties in the gas. For example, installing corrosion coupons, injection corrosion inhibitor
- 6) Remedial measures to mitigate low cathodic protection readings. For example, additional surveys like Close Interval Survey, installing anodes, etc.
- 7) Rectifier work
- 8) Pipeline coating work
- 9) Pipe segments work

**Operations and Maintenance Compliance Activities:**

2. Contractor shall complete PHMSA gas pipeline operations and maintenance (O&M) tasks compliance activities as identified in Exhibit A-2 shown below.

- These compliance tasks shall be completed in a timely manner in accordance with DOT pipeline regulations, Company O&M procedures, pipeline emergency plan procedures, pipeline operator qualification procedures, and all appropriate industry standards.

**EXHIBIT A-2  
O&M Task Compliance Activities**

Item #	Pipeline Task Description [192 Regulation]:	Freq.	Regulation 49 CFR
<i>Ongoing O&amp;M Compliance Items:</i>			
	Update CP Maps	1x/yr <sup>5</sup>	192.491(a)
	Update Construction Maps and Records	1x/yr <sup>5</sup>	192.603(b)
1.	O&M Procedures Review	1x/yr <sup>1</sup>	192.605(a)
2.	PHMSA Annual Report	1x/yr <sup>4</sup>	191.17
3.	Review Work Performed by Operator	1x/yr <sup>5</sup>	192.605(b)(8)
4.	Relief Valve Capacity Review	1x/yr <sup>5</sup>	192.743
5.	Continuing Surveillance Review	1x/yr <sup>5</sup>	192.613
6.	Government Liaison Meeting	1x/yr <sup>5</sup>	192.614
7.	Maintain List of Excavators	1x/yr <sup>5</sup>	192.614
8.	Member of "One Call" dig alert in California	Ongoing	192.614
9.	Public Awareness Mailers to Residents	1x/2yr	192.616
10.	Public Awareness: Mailers to Excavators	1x/yr <sup>5</sup>	192.616
11.	Public Awareness: Mailers to Em. Responders	1x/yr <sup>5</sup>	192.616
12.	Public Awareness: Mailers to Public Officials	1x/3yr	192.616
13.	PA Surveys Results & Conclusions - Residents	1x/4yr	192.616
14.	PA Surveys Results & Conclusions – Excavators	1x/4yr	192.616
15.	PA Surveys Results & Conclusions – Em. Responders	1x/4yr	192.616



16.	PA Surveys Results & Conclusions - Public Officials	1x/4yr	192.616
17.	PA Program Self Assessment	1x/yr <sup>5</sup>	192.616
<b><i>Drug Plan and Testing Items:</i></b>			
1.	Company (Contractor) Drug Plan & Procedures	1x/yr <sup>5</sup>	199
2.	Company (Contractor) Records of Random Drug Testing	1x/yr <sup>5</sup>	199
3.	Sub-Contractor Drug Plan & Procedures	1x/yr <sup>5</sup>	199
4.	Sub-Contractor Records of Random Drug Testing	1x/yr <sup>5</sup>	199
5.	Post Accident Drug Testing Records	AR	199
<b><i>Emergency Response Items:</i></b>			
1.	Pipeline Emergency Procedures Review	1x/yr <sup>1</sup>	192.605(a)
2.	Emergency Drill or Training & Verify Effectiveness	1x/yr <sup>5</sup>	192.615(b)(2)
3.	Verify Qualification of Emergency Contractor	1x/yr <sup>5</sup>	Em. Plan
4.	Documentation of OSHA Hazwoper 8 HR Refresher	1x/yr <sup>5</sup>	Em. Plan
5.	Emergency Activity Review After an Em. Event	AR	192.615(b)(3)
<b><i>Event Driven O&amp;M Compliance Items:</i></b>			
1.	Verify MAOP if Class Location Changes	AR	192.611
2.	Telephonic Reports to NRC	AR	191.5
3.	Incident Report	AR	191.15
4.	Safety Related Condition Report	AR	191.23
5.	Abnormal Operations Report	AR	192.605(c)
6.	Failure Investigation Report	AR	192.617
7.	Conversion of Service Report	AR	192.14
8.	Abandonment Report	AR	192.727
9.	Pressure Testing Report	AR	192.501-517

**Additional Operations and Maintenance Activities:**

3. Contractor shall complete PHMSA gas pipeline additional operations and maintenance (O&M) activities as identified in Exhibit A-3 shown below.
  - These compliance tasks shall be completed in a timely manner in accordance with DOT pipeline regulations, Company O&M procedures, pipeline emergency plan procedures, pipeline operator qualification procedures, and all appropriate industry standards.

**EXHIBIT A-3**  
**Additional O&M Task Compliance Activities**

Item #	Pipeline Task Description [192 Regulation]:	Freq.	Regulation 49 CFR
	<b>Additional Event Driven O&amp;M Compliance Items:</b>		
1.	Test Results to Qualify Welding Procedures	AR	192.225
2.	Welder re-qualification	AR	192.227
3.	Visual Weld Inspector Training/Experience	AR	192.241(a)
4.	NDT: Procedures	AR	192.243(c)
5.	NDT: Total Number of Girth Welds	AR	192.243(f)
6.	NDT: Number of Welds Inspected by NDT	AR	192.243(f)
7.	NDT: Number of Welds Rejected	AR	192.243(f)
8.	NDT: Disposition of Each Rejected Weld	AR	192.243(f)
9.	Underground Clearance Distance	AR	192.325
10.	Pressure Testing	AR	192.517
11.	Up-rating	AR	192.553(b)
12.	Prevention of Accidental Ignition	AR	192.751
13.	Welding Procedures	AR	192.225(b)
14.	Welding Qualification	AR	192.227, 229
15.	Pipeline Work	AR	192.709
16.	New System Design Evaluation to Minimize Internal Corrosion	AR	192.476(c)

**Operator Qualification Compliance Activities:**

4. Contractor shall complete PHMSA gas pipeline operator qualification (OQ) tasks compliance activities as identified in Exhibit A-4 shown below.
  - These OQ activities shall be completed in a timely manner in accordance with DOT pipeline regulations, Company O&M procedures, pipeline operator qualification procedures, and all appropriate industry standards.
  - Contractor shall develop pipeline OQ procedures as required by 49 CFR 192.
  - Contractor will be available and take the lead during PHMSA pipeline OQ audits when they occur. And the company must be able to provide all required procedures and records as required by 49 CFR 192.801-809 and PHMSA OQ inspection protocols.
  - Contractor shall make all required PHMSA OQ documentation available for viewing to NCPA staff using online call up system.

**EXHIBIT A-4  
OQ Compliance Activities**

Item #	Pipeline Task Description [192 Regulation]:	Freq.	Regulation 49 CFR
<b><i>Ongoing OQ Compliance Items:</i></b>			
1.	Provide OQ Records via Online System Available to NCPA Using Password Protection	Ongoing	192.801-809 PHMSA protocols
2.	Provide Sub-Contractor Records via Online System Available to NCPA Using Password Protection	1x/3yr	192.801-809 PHMSA protocols
3.	Review and Update OQ Plan	1x/yr <sup>1</sup>	192.801-809 PHMSA protocols
5.	Train Company Employees as Needed to Maintain Qualifications	1x3yr	192.801-809 PHMSA protocols
6.	Operate Pipeline on Daily Basis Only Using Qualified Personnel	Ongoing	192.801-809 PHMSA protocols

**Integrity Management Field and Compliance Activities:**

5. Contractor shall complete PHMSA gas pipeline integrity management (IMP) tasks compliance activities as identified in Exhibit A-5 shown below.
  - These IMP activities shall be completed in a timely manner in accordance with DOT pipeline regulations, company IMP procedures, company O&M procedures, pipeline operator qualification procedures, and all appropriate industry standards.
  - As minimum, annual reviews using agenda format shall be conducted for each IMP element shown in Exhibit A-1 to satisfy all the requirements in Exhibit B (PHMSA IMP protocols).
  - Contractor shall develop pipeline IMP procedures as required by 49 CFR 192.
  - Contractor will be available and take the lead during PHMSA pipeline IMP audits when they occur. And the company must be able to provide all required IMP procedures and IMP records as required by 49 CFR 192. See EXHIBIT B, PHMSA Gas IMP Inspection Protocols for a list of required IMP procedures and documentation.
  - Contractor shall make all required PHMSA documentation available for viewing to NCPA staff using online call up system.

**EXHIBIT A-5**  
**Summary of IMP Compliance Activities**

Item #	Pipeline Task Description [192 Regulation]:	Freq.	Regulation 49 CFR
<b>Summary of Ongoing IMP Compliance Items:</b>			
1.	Element #1: ID of HCAs	1x/yr <sup>6</sup>	
2.	Element #2: ID of Threats, Data Integration, and Risk Analysis	1x/yr <sup>6</sup>	
3.	Element #3: Baseline Assessment	1x/yr <sup>6</sup>	
5.	Element #4: Direct Assessment	1x/yr <sup>6</sup>	
6.	Element #5: Remediation Work	1x/yr <sup>6</sup>	
7.	Element #6: Continual Evaluation and Assessment	1x/yr <sup>6</sup>	
8.	Element #7: Confirmatory Direct Assessment	1x/yr <sup>6</sup>	
9.	Element #8: Preventive and Mitigative Measures	1x/yr <sup>6</sup>	
10.	Element #10: Record Keeping	1x/yr <sup>6</sup>	
11.	Element #11: Management of Change	1x/yr <sup>6</sup>	
12.	Element #12: Quality Assurance	1x/yr <sup>6</sup>	
13.	Element #13: Communication Plan	1x/yr <sup>6</sup>	
14.	Element #14: Agency Notification	1x/yr <sup>6</sup>	
15.	Element #15: Environment and Safety	1x/yr <sup>6</sup>	

6. Contractor shall complete PHMSA Gas Integrity Management Program (IMP) required integrity assessments as currently scheduled for May 2020. Frequency of re-assessments shall not exceed 1x/7 years. Note, pipeline is not piggable at this time. Please provide an integrity assessment price below:

- 1) Eight hour pressure test using nitrogen
- 2) External corrosion direct assessment (ECDA)
- 3) Other technology as approved by PHMSA

**EXHIBIT A-6**  
**Integrity Management Program Action Items**

#	Description:	Target Date	Estimated Costs:
1	Provide data integration maps to satisfy IMP element #2 requirements. Maps must use GPS coordinates and meet ArcGIS industry standard.	Oct 2016	\$5,000
2	Conduct pressure test as required by IMP element #6.	May 2020	Cost plus 15% (\$80,000 Estimate Only)
3	Supervise and coordinate relocation of NCPA pipeline when required by city of Alameda for ongoing development project. Provide time and material rate.	tbd	Cost plus 15% (\$800,000 Estimate Only)
<b>Total Cost Exhibit A-6</b>			<b>\$885,000 (estimate)</b>

**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:

**Bid Costs Breakdown:**

1. Completion of all items described above in under the following headings:
  - ✓ **Operations and Maintenance Field Activities: (Exhibit A-1)**
  - ✓ **Operations and Maintenance Compliance Activities: (Exhibit A-2)**
  - ✓ **Additional Operations and Maintenance Compliance Activities (Exhibit A-3)**
  - ✓ **Operator Qualification Compliance Activities: (Exhibit A-4)**
  - ✓ **Integrity Management Field and Compliance Activities: (Exhibit A-5)**
  - ✓ **PHMSA IMP Inspection Protocols per Pipeline and Hazardous Materials Safety Administration Office of Pipeline Safety, Gas Integrity Management Inspection Manual, Inspection Protocol with Results Forms, August 2013 (Exhibit A-6)**

**Cost:**

- 1<sup>st</sup> Year - \$79,200 (\$6,600/month)
- 2<sup>nd</sup> Year - \$80,400 (\$6,700/month)
- 3<sup>rd</sup> Year - \$81,600 (\$6,800/month)
- 4<sup>th</sup> Year - \$82,800 (\$6,900/month)
- 5<sup>th</sup> Year - \$84,000 (\$7,000/month)

Assumptions:

- The prices in this proposal are for a five year period. NCPA will be invoiced once per month.
  - Contractor may use subcontractors to complete some of the pipeline tasks. A list of subcontractors will be provided.
2. Time and material as needed for USA One Call excavation marking and onsite monitoring.  
**Cost - \$80/hour**
  3. Miscellaneous expenses, travel, and consulting beyond the scope of proposal.
    - **Travel Time = \$50/hour**
    - **Mileage = IRS mileage rate (\$0.54/mile in 2016)**
    - **Food = \$50/day**
    - **Lodging = At cost or IRS per diem rate (\$140/night for Alameda, Ca.)**
    - **Consulting Rate: \$125/hour**

4. Cost to complete Gas Integrity Management Program (IMP) Action Items as identified in Exhibit A-6 below. **Cost shown in table A-6 below**

Remedial measures and mitigation activities required by integrity assessments and risk analysis will be invoice at cost plus 15% but must be approved in writing and purchase order issued by NCPA before work begins.

Examples of remedial measures for IMP activities to be invoiced at cost plus 15%:

- 1) Pipe casing work
- 2) Work due to integrity assessment
- 3) Excavation, coating work, pipeline work due to integrity assessments
- 4) Work on pipeline due to a leak during pressure test

**TABLE A-6  
Integrity Management Program Action Items**

#	Description:	Target Date	Estimated Costs:
1	Provide data integration maps to satisfy IMP element #2 requirements. Maps must use GPS coordinates and meet ArcGIS industry standard.	Oct 2016	\$5,000
2	Conduct pressure test as required by IMP element #6.	May 2020	Cost plus 15% (\$80,000 Estimate Only)
3	Supervise and coordinate relocation of NCPA pipeline when required by city of Alameda for ongoing development project. Provide time and material rate.	?	Cost plus 15% (\$800,000 Estimate Only)
<b>Total Cost Table A-6</b>			<b>\$885,000 (estimate)</b>

***Pricing for any additional services to be performed at NCPA, 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

COMPLIANCE SERVICES, 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.



**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 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)  
\_\_\_\_\_

**EXHIBIT F**

**Acknowledgement of Agreement**

This Acknowledgement confirms the intent of \_\_\_\_\_, a \_\_\_\_\_ ("Member") to participate in and utilize the Multi-Task Agreement to which this Exhibit is attached, including all other Exhibits attached hereto, between the Northern California Power Agency ("Agency") and \_\_\_\_\_ ("Contractor") effective \_\_\_\_\_, 20\_\_ ("Agreement"). Member has reviewed the terms and conditions of the Agreement in detail and agrees to abide by them. It is understood and agreed that payments for Services by Contractor provided to Member shall be paid by Agency and funded by Member to Agency pursuant to a Support Services Program Agreement between Agency and Member. All invoices for Services for Member shall be addressed to Agency.

Further, Member agrees and acknowledges that the terms, conditions, and applicable Exhibits set forth in the Agreement will apply between Member and Contractor.

**MEMBER**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





651 Commerce Drive  
Roseville, CA 95678

phone (916) 781-3636  
fax (916) 783-7693  
web www.ncpa.com

# Commission Staff Report

AGENDA ITEM NO.: 17

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**Date:** February 17, 2016  
**To:** NCPA Commission  
**Subject:** Geothermal Public Works Contract with Northern Industrial Construction for Unit #4 Main Steam Pipeline; **Applicable to the following project: Geothermal Plant 2, Unit 4**

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## Proposal

Approve a public works agreement with Northern Industrial Construction for a not to exceed amount of \$950,000 to construct a new 48" diameter pipeline to the Geothermal Plant 2, Unit 4 main steam turbine.

## Background

Funds of \$300,000 are budgeted in the FY2016 Geothermal budget to minimize the pressure drop to Unit 4. As detailed engineering work progressed, calculations showed that additional benefits could be realized by changing the scope of work. The original project envisioned minor piping changes at a cost of \$300,000 which was expected to increase the plant output by one-quarter MW. The engineering work determined that by completely re-routing a section of pipe the output of the plant could be increased by 1 to 1-1/2 MW (1 MW was used in the economic evaluation). Based thereon, staff recommends the section of pipe be re-routed. Phase 1 of the work would include minor modifications to the piping done this spring along with ordering of materials due to long lead times for delivery. Major prefab would be completed over the summer in Phase 2 and final ties to the plant would be completed in Phase 3 in late fall of this year.

## Selection Process

A formal Request for Proposal (RFP) for this public works project was issued on December 22, 2015, Bid No. GEO319. A mandatory bid walk was conducted on January 12, 2016, to pre-qualify contractors for subsequent bids to be considered responsive. Four contractors attended the bid walk and submitted bids prior to the bid deadline on January 26, 2016, as follows:

Northern Industrial Construction, Inc.	\$ 822,908
Southwest Contractors, Inc.	\$1,398,980
Hudson Mechanical, Inc.	No Bid, Non-Responsive
Ranger Pipelines, Inc.	No Bid, Non-Responsive

Staff has evaluated the bids and recommends that an agreement be entered into with Northern Industrial Construction, Inc. to provide the services in the amount of \$822,908. In addition, staff is seeking approval of contingency funds of \$127,092 (approximately 15%) to cover possible change orders and contingencies, for a total of \$950,000 requested for this project.

**SR: 120:16**

### Fiscal Impact

The cost for the base scope of work is \$822,908 as specified by the request for proposal. Including contingency funds of approximately 15%, the total cost of the project is \$950,000. The project will be done in phases over FY2016 and 2017. Funds of \$300,000 are included in the current FY 2016 budget and are available in the Generation Services, Geothermal account. Remaining funds of \$650,000 would be included in the FY2017 budget. Cost allocation will be based on project participation percentages. An economic analysis shows the following results.

Assumptions:	Benefit:	1MW gain in net generation declining at 2% per year
	Unit Availability	97%
	6 week unit outage every six (6) years	
	Project Life	15 years

Economic Results:	IRR	38.5%
	NPV @ 5%	\$4,104,163
	Average Annual Benefit	\$365,455
	Payback Period	3 years

### Environmental Analysis

These activities are categorically exempt under Class 1 and 2 from the provisions of the California Environmental Quality Act pursuant to Section 15301 (b) and 15302 (c) of the CEQA Guidelines. A Notice of Exemption was approved by the NCPA Commission on September 27, 2013 for this class of work and was filed in Lake County.

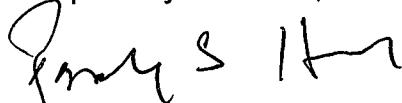
### Committee Review

The recommendation below was reviewed by the Facilities on February 3, 2016 and was recommended for Commission approval.

### Recommendation

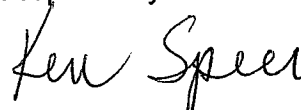
Staff recommends that the NCPA Commission approve Resolution 16-14 authorizing the General Manager or his designee to enter into the public works Agreement with Northern Industrial Construction, Inc. which shall not exceed \$950,000, with any non-substantial changes recommended and approved by the NCPA General Counsel.

Respectfully submitted,



RANDY S. HOWARD  
General Manager

Prepared by:



KEN SPEER  
Assistant General Manager

Attachments: (2)

- Resolution
- Public Works Agreement with Northern Industrial Construction, Inc.

**RESOLUTION 16-14**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING THE PUBLIC WORKS AGREEMENT WITH  
NORTHERN INDUSTRIAL CONSTRUCTION, INC.**

**(reference Staff Report #120:16)**

WHEREAS, the Northern California Power Agency (NCPA) operates and maintains on behalf of the project owners a Geothermal Facility near Middletown, California, consisting of two power plants with containment areas and 80 steam production and injection wells; and

WHEREAS, Northern Industrial Construction, Inc. was the low responsive bidder to the Request for Proposal issued for the Geothermal public works Plant 2, Unit 4 Main Steam Pipeline project with a bid of \$822,908; and

WHEREAS, an additional \$127,092 (approximately 15% of the bid amount) is requested to cover possible change orders and contingencies for a total project cost of not to exceed \$950,000; and

WHEREAS, these activities are categorically exempt under Class 1 and 2 from the provisions of the California Environmental Quality Act pursuant to Section 15301 (b) and 15302 (c) of the CEQA Guidelines. A Notice of Exemption was approved by the NCPA Commission on September 27, 2013 for this class of work and was filed in Lake County.

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into the public works Agreement with Northern Industrial Construction, Inc. which shall not exceed \$950,000, with any non-substantial changes recommended and approved by the NCPA General Counsel.

PASSED, ADOPTED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 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  
VICE CHAIR

ATTEST:

\_\_\_\_\_  
CARY A. PADGETT  
ASSISTANT SECRETARY

## AGREEMENT

This contract ("Contract" or "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2016, by and between the Northern California Power Agency, a joint powers public agency organized and existing under the laws of the State of California (hereinafter referred to as "NCPA") and Northern Industrial Construction, a sole proprietorship, P.O. Box 194, Kelseyville, CA 95451, (hereinafter referred to as "Contractor"), collectively referred to as the "Parties").

WHEREAS, NCPA intends to have constructed the Unit #4 Main Steam Pipeline ("Project") located at the NCPA's Geothermal Facilities near Middletown, CA (hereinafter referred to as the "Project"), and the work required by this Contract is an integral part of this Project, and

WHEREAS, on February 25, 2016, at its regularly scheduled meeting, the NCPA Commission approved and authorized this Project by Resolution No. \_\_\_\_\_ and

WHEREAS, both Parties have a desire to perform the work described herein;

**NOW THEREFORE, IT IS AGREED THAT:**

### **SECTION 1. SCOPE OF WORK**

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, materials, transportation and utility services and incidentals necessary to fully perform and complete, in a good workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers, and in strict accordance with the Contract Documents (as defined below), including without limitation the drawings and technical specifications and plans included therein, the Work of:

**Northern California Power Agency  
Project Description: Unit #4 Main Steam Pipeline  
NCPA Bid No.: GEO319**

It is understood and agreed that such tools, equipment, apparatus, facilities, labor, materials, transportation and utility services and incidentals shall be furnished, and the Work performed and completed, in accordance with the Contract Documents and subject to the approval of NCPA and NCPA's duly authorized representatives.

### **SECTION 2. TIME OF COMPLETION; LIQUIDATED DAMAGES**

Contractor hereby agrees to commence the Work within 10 calendar days from the date of NCPA's "Notice to Proceed". The Contractor will work to complete Phase 1 of the project within fifteen (15) consecutive calendar days from March 28, 2016 (the start date of the Unit #4 outage), except as adjusted by any subsequent change order. The Contractor will work to complete Phase 2 of the project by September 1, 2016, except as adjusted by any subsequent change order. The Contractor will work to complete Phase 3 of the project within ten (10) consecutive calendar days from the start of the subsequent outage estimated to be scheduled in the fall of 2016 and shall complete the **work no later than October 31, 2016**, except as adjusted by any subsequent change order. Ten days advance written notice of the outage start date scheduled in the fall of 2016 will be given to Contractor. Time is of the essence in this Agreement.

This Contract is being awarded in reliance upon the completion date set forth in the Contract Documents and the dates established by schedules set forth and released by NCPA. NCPA will hold the Contractor responsible and accountable for all damages suffered by NCPA as a consequence of the Contractor's



failure to meet the schedule dates, or to complete the work at the time specified, except for such excusable delays as listed in the Contract Documents.

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

Liquidated damages in the amount of \$5,000 per day for each day of delay shall be imposed on Contractor. Liquidated damages will be capped at 15% of the bid amount.

During Phase 3 of the project, an incentive award of \$5,000 per day for each calendar day short of ten days will be awarded to the Contractor. The award amount is capped at \$50,000.

### **SECTION 3. CONTRACT PRICE**

NCPA will pay Contractor in current funds as full consideration for the full and complete performance of this Agreement the sum of: Eight Hundred Twenty Two Thousand Nine Hundred Seven Dollars and 81 cents (\$822,907.81), being Contractor's bid amount, subject to subsequent contract change order(s), for furnishing all materials and for doing all the Work contemplated under this Agreement; for all loss or damages arising out of the nature of the Work, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work, until the Work is accepted by the NCPA; for all expenses incurred by or in consequences of the suspension or discontinuance of the Work; and for well and faithfully completing the Work, the whole thereof, in the manner and in accordance with the Contract Documents therefore and the requirements of NCPA under them.

### **SECTION 4. BONDS**

Prior to execution of this Agreement, Contractor shall obtain a one hundred percent (100%) Performance Bond, a one hundred percent (100%) Payment (Labor and Materials) Bond, and a ten percent (10%) Maintenance Bond each in the form included in the Contract Documents.

### **SECTION 5. INSURANCE**

Before beginning any work under this Contract, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below against claims that may arise from or in connection with the performance of the work hereunder by Contractor and its agents, representatives, employees, and subcontractors. Contractor shall maintain the insurance policies required by this section throughout the term of this Contract. The cost of such insurance shall be included in the Contractor's price. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to NCPA. Verification of the Contractor's required insurance shall be submitted and made part of this Contract prior to execution. The existence of insurance shall not relieve or decrease the liability of Contractor under the Contract Documents.

- 5.1. **Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits

of not less than One Million Dollars (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of NCPA. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against NCPA and its officers, officials, employees, and volunteers for loss arising from work performed under this Contract.

## **5.2. Commercial General Insurance.**

**5.2.1. General requirements.** Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Contract in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000.00), per occurrence, combined single limit coverage for risks associated with the work contemplated by this Contract. If a Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily injury, personal injury, including death resulting therefrom, completed operations and products liability; broad form property damage liability; coverage for the XCU hazards of explosion, collapse, and underground, and contractual liability as to the obligations assumed by the Contractor under the Contract Documents.

**5.2.2. Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (current edition) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement shall be attached limiting the coverage.

## **5.3 Automobile Liability Insurance.**

**5.3.1. General requirements.** Contractor, at its own cost and expense, shall maintain automobile liability insurance for the term of this Contract in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000.00), per occurrence, combined single limit coverage for risks associated with the work contemplated by this Contract. If an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit.

**5.3.2. Minimum scope of coverage.** Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (current edition) symbol 1. No endorsement shall be attached limiting the coverage.

## **5.4 All Policies Requirements.**

**5.4.1. Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Best's rating of no less than A:VII.

**5.4.2. Verification of Coverage.** Prior to beginning any work under this Contract, Contractor shall furnish NCPA with endorsements (as to insurance referenced in

Sections 5.2, 5.3 and 5.5) and certificates, with complete certified copies of all policies (if requested by NCPA), evidencing to NCPA's reasonable satisfaction, compliance with Section 5 herein. All endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

**5.4.3. Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice of any material changes to the insurance specified herein, including suspension, cancellation, termination, limitation, reduction in scope or amount. NCPA's receipt of such notice shall not constitute NCPA's acceptance of such material change.

**5.4.4. Additional Insured; Primary Insurance.** An endorsement at least as broad as Insurance Services Office form number CG 20 10 (current edition) shall be attached to policies referenced in Sections 5.2, 5.3 and 5.5, stating that NCPA and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to such policies. The coverage shall contain no special limitations on the scope of protection afforded to NCPA or its officers, employees, agents, or volunteers.

Each endorsement shall state that coverage is primary insurance with respect to NCPA and its officers, officials, employees, agents and volunteers, and that no insurance or self-insurance maintained by NCPA shall be called upon to contribute to a loss under the coverage.

**5.4.5. Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the written approval of NCPA for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Contract.

During the period covered by this Contract, only upon the prior express written authorization of NCPA, Contractor may increase such deductibles or self-insured retentions with respect to NCPA, its officers, employees, agents, and volunteers. NCPA may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

**5.4.6. Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**5.4.7. Variation.** NCPA may approve a variation in writing in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that NCPA's interests are otherwise fully protected.

**5.4.8. Reporting.** The endorsements shall also specify that any failure or delay to comply with reporting or other provisions of the policies shall not affect coverage provided to NCPA, its officers, officials, employees, agents or volunteers.

**5.4.9. Occurrence-basis for Coverage.** The endorsements shall also specify that coverage is on an occurrence or an accident basis, and not on a claims-made basis.

**5.5 Builder's Risk.** Contractor shall obtain and maintain at its own expense a builder's risk and fire insurance policy, special form including extended coverage and vandalism, and malicious mischief endorsements. The policy shall name NCPA and the Contractor as insureds. This insurance shall be in the amount of 100% of the Contract Price, and may be increased at NCPA's request to reflect change orders. In the event of partial or total destruction by fire of any or all of the Work at any time prior to completion and NCPA's acceptance of the Work, the Contractor shall promptly reconstruct all Work so destroyed or injured at the Contractor's sole cost and expense and at no cost to NCPA.

**5.6 Remedies.** In addition to any other remedies NCPA may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, NCPA may, at its sole option exercise any of the following remedies, which are alternatives to other remedies NCPA may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract;
- Order Contractor to stop work under this Contract or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Contract.

## **SECTION 6. INDEPENDENT CONTRACTOR**

**6.1. Independent Contractor.** At all times during the term of this Contract, Contractor shall be an independent contractor and shall not be an employee of NCPA. NCPA shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Contract. Notwithstanding any other NCPA, 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 Contract 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 NCPA, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of NCPA and entitlement to any contribution to be paid by NCPA for employer contributions and/or employee contributions for PERS benefits.

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

## **SECTION 7. REGISTRATION**

During the term of this Agreement, Contractor warrants that it is currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5. Contractor further warrants that any subcontractors, who are subject to Public Contract Code section 4104, are registered and qualified to perform public work consistent with Labor Code section 1725.5

## **SECTION 8. LAW, VENUE, AND CONFLICTS OF INTEREST**

**8.1.** This Agreement has been executed and delivered in the State of California, and the validity, enforceability and interpretation of any of the provisions of the Contract Documents, including this Agreement, shall be determined and governed by the laws of the State of California, without regard to the choice of law doctrine.

**8.2.** The duties and obligations of the parties created hereunder are performable in Placer County and in that County where the NCPA Project is located. Either Placer County or the County where the Project Facility is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**8.3.** Contractor may serve other clients, but none whose activities within the corporate limits of NCPA 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 Sections 81000 *et seq.*

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

**8.5.** Contractor hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of NCPA. If Contractor was an employee, agent, appointee, or official of NCPA in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Contract. Contractor understands that, if this Contract is made in violation of Government Code Sections 1090 *et seq.*, the entire Contract is void and Contractor will not be entitled to any compensation for services performed pursuant to this Contract, including reimbursement of expenses, and Contractor will be required to reimburse NCPA for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code Section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

#### **SECTION 9. CHANGE ORDERS**

It is agreed that the Project Manager is the sole person authorized to execute change orders necessary to the prosecution of the Work, unless NCPA otherwise notifies Contractor in writing.

#### **SECTION 10. EXTRA WORK**

Contractor hereby agrees that it will not proceed with any extra work unless it has been authorized in writing to do so by the Project Manager prior to the commencement of such extra work.

#### **SECTION 11. PROGRESS PAYMENTS**

**11.01** The Contractor shall submit to NCPA's designated representative at least 10 days before the first and/or third Monday of the month, for NCPA's approval, a request for payment. Each progress payment to the Contractor by NCPA shall be in payment for only that work performed by the Contractor during the period immediately preceding the Contractor's current request for payment.

**11.02** The Contractor shall submit time sheets to NCPA daily for approval and signature. The daily time sheets shall clearly delineate the number of worker-hours and equipment hours worked in each given area of work. Only those time sheets signed by NCPA will be honored for payment.

**11.03** Each request for payment submitted by the Contractor shall include backup documentation in support of all quantities and costs for which payment is requested, including but not limited to all material invoices, subcontractor/vendor statements of quantities and/or services provided, equipment rental invoices and signed daily time sheets.

**11.04** Work performed at the request of NCPA, which is outside the scope of work and unit prices as defined in these Contract Documents, shall be itemized separately, with back-up documentation attached, and the total cost figures for the work shall be entered on the billing form under "Other Work". Work itemization with back-up shall be submitted with the Contractor's request for payment.

**11.05** Subject to Section 12 of the General Conditions, after approval by NCPA, progress payments will be made to the Contractor in the amount of ninety five percent (95%) of the approved billing. Progress payments will be made within 30 days after NCPA receives the Contractor's Request for Payment. NCPA's Progress Payment shall not constitute approval or acceptance of the Work performed.

## **SECTION 12. FINAL PAYMENT**

**12.01** Final payment will not be made to the Contractor until it has furnished evidence satisfactory to NCPA, of the Contractor's payment or provision for payment of all bills for material, labor, services, etc., incurred in connection with the performance of the Work; and at NCPA's option the written consent of the Contractor's surety to release final payment.

**12.02** Final payment will further be contingent on approval of, and acknowledgment by, NCPA that the Contractor has completed all tasks and complied with all conditions of the Contract Documents. Upon approval by NCPA, the final payment will be made to the Contractor. NCPA may withhold from final payment, to the extent allowed by applicable law, amounts which in NCPA's opinion are determined to be reasonable and necessary to provide security against any losses, damages, expense, and liability covered by the Indemnification provision in the Contract Documents, and claims filed or reasonable evidence indicating probable filing of claims, damages to NCPA or third parties, liquidated damages, or other lawful bases for withholding final payment.

**12.03** Final payment by NCPA, and acceptance of it by the Contractor, shall not constitute a waiver by NCPA, to any rights with respect to the Contractor's continuing obligations under the Contract Documents.

## **SECTION 13. DISPUTES**

**13.1.** All questions of fact, and any and all disputes with references thereto, arising out of the performance of this Contract, or changes therein, or extra work in connection therewith, shall be submitted in writing to NCPA. NCPA will then make the final decision, which when made in writing shall be final and conclusive on the parties hereto.

**13.2.** Prior to initiating litigation in a court of competent jurisdiction, both Contractor and NCPA shall undergo alternative dispute procedures as outlined in Public Contract Code Sections 20104 *et seq.* The parties also expressly agree that the Alternative Dispute Resolution procedures outlined in Public Contract Code Sections 20104 *et seq.* shall apply to all claims, including those that exceed \$375,000, and that such procedures are incorporated as though fully set forth in this Contract.

## **SECTION 14. PREVAILING WAGES**

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 fixed 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. In accordance with California Labor Code Section 1773, NCPA 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. In accordance with California Labor Code Section 1773.2, 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 the Contractor must comply with all provisions of the Contract Documents and 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 NCPA 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.

#### **SECTION 15. GUARANTEE OF WORK**

Contractor hereby agrees that it will post a Maintenance Bond in the form included in the Contract Documents after final inspection by NCPA and completion of required corrections and/or repairs. Such Maintenance Bond shall guarantee Contractor's work for the period of one year after the date of recording of NCPA's Notice of Completion of the Work.

#### **SECTION 16. RELEASE**

Upon payment of undisputed amounts under this Agreement and if requested by NCPA, Contractor shall execute a Release in the form provided by NCPA. Such Release shall not apply to disputed contract claims in amounts specifically excluded by Contractor from the operation of the Release.

#### **SECTION 17. BINDING AGREEMENT; ASSIGNMENT**

Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract Documents shall inure to the benefit of and shall be binding upon the Contractor and NCPA and their respective successors and permitted assigns.

The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of all sureties on all bonds required by this agreement, including but not limited to the Payment (Labor and Materials) Bond, and NCPA.

#### **SECTION 18. CONTRACT DOCUMENTS**

The full, complete and exclusive contract between the parties hereto shall consist of the following identified documents (the "**Contract Documents**"): (1) The "**Bid Documents**," consisting of the Notice Inviting Bids, Instructions to Bidders, Bidder's Check List, Bid Form, Bid Bond, Designation of Subcontractors, Non-Collusion Declaration, Agreement, Workers' Compensation Insurance Certification, Performance Bond, Payment (Labor and Materials) Bond, Maintenance Bond, Escrow Agreement for Security Deposits in Lieu of Retention, General Conditions, Supplementary Conditions, and Technical Specifications and Plans, if any, and any Addenda, and (2) any Change Orders, Field Orders, or NCPA's directives issued pursuant to and in accordance with this Agreement.

#### **SECTION 19. INDEMNIFICATION AND ATTORNEY'S FEES**

Contractor shall at its own cost, defend, hold harmless, and indemnify NCPA, its governing board, officials, commission members, officers, directors, employees, agents, and successors in interest ("Indemnitees") from and against any and all liability, damages, losses, claims, demands, actions, costs including attorney's fees and expenses ("Liabilities"), on account of injury to or death of persons or damage to any property (including property of NCPA) or delay or damage to another contractor resulting from or arising out of or in any way connected with the performance by the Contractor of this Agreement, and Contractor will reimburse Indemnitees for all Liabilities incurred by Indemnitees in consequence of any claims, demands, and causes of action which may be brought against Indemnitees arising out of the

performance by the Contractor of this Agreement. However, notwithstanding, nothing in this section or the Contract Documents generally shall be construed to require the Contractor to indemnify the Indemnitees for their sole negligence, willful misconduct, or for defects in design furnished by Indemnitees. This section and the Contract Documents shall be construed consistent with Civil Code section 2782 so as to provide the maximum indemnification permitted by applicable law to Indemnitees.

This indemnification shall be in addition to any other indemnification provisions contained in the Contract Documents.

**SECTION 20. NO IMPLIED WAIVER OF BREACH**

The waiver of any breach of a specific provision of this Contract does not constitute a waiver of any other breach of that term or any other term of this Contract.

**SECTION 21. SUCCESSORS AND ASSIGNS**

The provisions of this Contract shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**SECTION 22. USE OF RECYCLED PRODUCTS**

Contractor shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**SECTION 23. NONDISCRIMINATION AND EQUAL OPPORTUNITY**

Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Contract. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Contract, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the immediately foregoing paragraph, verbatim, of this Subsection in any subcontract approved by the Contract Administrator or this Contract.

Contractor shall indemnify, defend, and hold harmless NCPA with respect to any alleged violation of this Section.

**SECTION 24. ENTIRE AGREEMENT**

The Contract Documents constitute the entire Agreement between the parties, and supersede any prior agreement between the parties, oral or written, including NCPA's award of the contract to Contractor, unless such agreement is expressly incorporated herein. NCPA makes no representations or warranties, express or implied, not specified in the Contract Documents.

**SECTION 25. EXECUTION OF OTHER DOCUMENTS**

The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract Documents.



**SECTION 26. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

**SECTION 27. SEVERABILITY**

If any provision of the Contract Documents shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 28. AMENDMENTS**

The terms of the Contract Documents shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

**SECTION 29. WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm, to an officer or director of the corporation, or to a manager of the LLC for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party who gives the notice.

Any written notice to Contractor shall be sent to:

Northern Industrial Construction, Inc.  
Attn: Mr. Brian Davis  
P.O. Box 194  
Kelseyville, CA 95451

Any written notice to NCPA shall be sent to:

Northern California Power Agency  
Attn: Project Manager, Ed Voge  
P.O. Box 663  
12000 Socrates Mine Road  
Middletown, CA 95461

and

Northern California Power Agency  
Attn: General Manager, Randy Howard  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:  
Michael F. Dean  
General Counsel  
Meyers Nave  
555 Capitol Mall, Ste. 1200  
Sacramento, CA 95814

Unit #4 Main Steam Pipeline  
1/12/16

**SECTION 29. TERMINATION OF AGREEMENT**

NCPA may terminate the Agreement as provided in the Contract Documents. The Contractor shall receive payment for all work performed to the date of termination in accordance with the provisions of the Contract Document.

**SECTION 30. MONITORING BY DEPARTMENT OF INDUSTRIAL RELATIONS**

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

**IN WITNESS WHEREOF**, the Northern California Power Agency has authorized the execution of this Agreement by its General Manager has caused this Agreement to be duly executed.

NORTHERN CALIFORNIA POWER AGENCY

ATTEST

By \_\_\_\_\_  
RANDY S. HOWARD, General Manager

By \_\_\_\_\_  
Assistant Secretary of the Commission

Date: \_\_\_\_\_

APPROVED AS TO FORM

By \_\_\_\_\_  
Ruthann G. Ziegler  
Assistant General Counsel

CONTRACTOR:

NORTHERN INDUSTRIAL CONSTRUCTION

(Name - Type or Print)

By \_\_\_\_\_  
Signature (if a partnership, all partners must sign)

\_\_\_\_\_  
Official Title

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
License No./Classification/Expiration Date

CORPORATE CERTIFICATE

I, \_\_\_\_\_, hereby certify that I am the Secretary of the Corporation named as Contractor in the foregoing Agreement; that \_\_\_\_\_ who signed the Agreement on behalf of the Contractor, was then \_\_\_\_\_ of such Corporation; that the Agreement was duly signed for and in behalf of such Corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal)

\_\_\_\_\_  
(Secretary)



651 Commerce Drive  
Roseville, CA 95678

phone (916) 781-3636  
fax (916) 783-7693  
web www.ncpa.com

# Commission Staff Report

AGENDA ITEM NO.:

18

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** Updated NCPA Power Management Cost Allocation Spreadsheet Model for Fiscal Year 2017

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## Background

Pursuant to the Power Management and Administrative Services Agreement ("PMASA"), costs associated with Power Management and Administrative Services shall be allocated among the Members in accordance with the NCPA Power Management Cost Allocation Spreadsheet Model ("Nexant Model"). The Nexant Model was first approved by the Commission pursuant to Commission Resolution 10-16, and has been periodically further modified by subsequent Commission resolutions.

In May of 2015, the NCPA Commission referred<sup>1</sup> the review of the Power Management and Administrative Services cost allocation methodology and principles to the Facilities Committee, and directed the Facilities Committee to coordinate a group of Member staff volunteers (the "Review Group") to review the current cost allocation methodologies and principles established by the Commission, to determine if any revisions to the Nexant Model were warranted.

## Discussion

The Review Group has completed its review of two (2) specific areas of study that will affect certain data inputs that are incorporated into the Nexant Model. The Review Group presented its findings to the Facilities Committee on February 16, 2016. Based on the findings presented, the Facilities Committee recommends that the Commission approve changes to how certain inputs are incorporated into the Nexant Model as more fully described herein. The Facilities Committee recommends that these changes be made effective beginning Fiscal Year 2017.

- PIRP Resource Model Inputs

NCPA currently provides scheduling coordination services for three (3) variable energy resources that have been certified as Participating Intermittent Resource Program resources ("PIRP Resources") by the California Independent System Operator ("CAISO"). As NCPA's Members continue to explore alternative renewable energy supply, it is likely that NCPA will schedule additional PIRP Resources in the near future. PIRP Resources are unique in that they are scheduled based on day-ahead and hour-ahead forecasts that are produced by the CAISO. As a result of this market design, PIRP Resources are required to update their real-time market schedules each hour. These hourly market schedule changes create a large number of hourly schedule counts (NCPA Schedules and CAISO Schedules) that are used as inputs in the current

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<sup>1</sup> Commission Resolution 15-37

Nexant Model. The large number of hourly schedule counts results in PIRP Resources being allocated a disproportionate share of costs associated with scheduling coordination activities. NCPA has automated the process it uses for developing and submitting PIRP hourly schedule changes to the CAISO; therefore, the Review Group determined that the creation and submission of hourly schedule changes for PIRP Resources does not result in a significant increase in work effort by NCPA's scheduling coordination staff. Based on the findings of the Review Group, the Facilities Committee recommends that the Hour Ahead NCPA Schedule and CAISO Schedule count inputs incorporated into the Nexant Model be modified to exempt and remove the hour ahead schedule counts attributed to PIRP Resources.

In conjunction with the modifications proposed by the Facilities Committee described above, the committee also evaluated changes to the way PIRP technology (integrated system) costs were allocated. The Nexant Model allocates integrated systems costs to Members based on the assignment of IT Factors. As noted above, NCPA has developed an automated integrated system solution for developing and submitting hourly schedule changes for PIRP Resources. Based on this understanding, the Facilities Committee requested the Review Group to consider whether PIRP Resources should be assigned an IT Factor of '1' or '2'. The Review Group presented their findings to the Facilities Committee on February 16, 2016, but did not provide a consensus recommendation to the Facilities Committee. Based on its consideration of the findings presented by the Review Group and discussion with NCPA staff, the Facilities Committee also recommends that PIRP Resources be assigned an IT Factor equal to one (1).

- Prescheduling Model Inputs

Based on findings presented by the Review Group, the Facilities Committee recommends the Prescheduling Cost Allocation factors used in the Nexant Model for allocating costs associated with Prescheduling activities be updated based on the labor-based cost allocation factors listed in Table 1:

**Table 1: Proposed adjustments to Prescheduling Cost Allocation Factors, Effective FY17**

Budget Cycle	Pool	BART	LEC	RSVL	SVP	TID
FY16	59.49%	19.99%	5.44%	7.04%	7.04%	1.00%
FY17, forward	42%	24%	19%	7%	7%	1%

The cost allocation factors identified in Table 1 are the product of extensive interviews with Power Management staff. The research conducted by the Review Group focused on the procedures NCPA staff follow when performing Prescheduling activities during a typical work day. The survey addressed what tasks are performed, the beneficiary or purpose of those tasks, the division of labor, and the approximate time allocated to those tasks and activities. Table 2 summarizes these findings, based on an example day of 10 labor-hours<sup>2</sup>.

<sup>2</sup> Note: Time spent transitioning between applications is recognized as a distinct activity, but no time was allocated directly to it. Instead, time associated with such transitions are incorporated into other line items.

**Table 2: Allocation of Time by Recipient Category (of Example 10 Hour Day)**

Task/Activity	Pool	BART	LEC	RSVL	SVP	TID	TOTAL
LEC Module			1 Hour				1 Hour
Coordination with Hydro OEs				0.75	0.75		1.50
NCPA Pool Module	1.50						1.50
Transition Between Applications; QC Points	See footnote 2	See footnote 2	See footnote 2	See footnote 2	See footnote 2	See footnote 2	See footnote 2
Bookouts & NERC e-Tags	0.50	1.25					1.75
2 Day-Ahead Activities	0.50	1.25					1.75
Post Day-Ahead Analytics & Strategies	1.50		1.00				2.50
<b>TOTAL</b>	<b>4.00</b>	<b>2.50</b>	<b>2.00</b>	<b>0.75</b>	<b>0.75</b>	<b>&lt;0.5</b>	<b>10</b>

The updated allocation factors presented in Table 1 are intended to be made effective beginning Fiscal Year 2017, as well as any future years to the extent the allocation factors are not subsequently modified by the Commission.

Committee Recommendation

The recommendations provided herein were reviewed by the Facilities Committee on February 16, 2016, and unanimously recommended for Commission approval.

Fiscal Impact

Costs associated with the development of the recommendations contained herein are allocated in accordance with approved budgeted categories.

Process

Pursuant to the PMASA, modification to the Nexant Model is approved using the voting methodology set forth in Section 5.4.2 of the PMASA.

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.

Recommendation

Staff recommends that the Commission approve the following updates to the NCPA Power Management Cost Allocation Spreadsheet Model, and that such modifications be made effective for Fiscal Year 2017:

1. Hour Ahead NCPA Schedule and CAISO Schedule count inputs incorporated into the Nexant Model be modified to exempt and remove the hour ahead schedule counts attributed to PIRP Resources;
2. PIRP Resources shall be assigned an IT Factor equal to one (1); and
3. The Prescheduling Cost Allocation factors used in the Nexant Model for allocating costs associated with Prescheduling activities be updated based on the labor-based cost allocation factors listed in Table 1 of this staff report.

Respectfully submitted,



RANDY S. HOWARD  
General Manager

Prepared by:



DAVID DOCKAHM  
Assistant General Manager,  
Power Management

Attachments (1)



## RESOLUTION 16-18

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY UPDATED NCPA POWER MANAGEMENT COST ALLOCATION SPREADSHEET MODEL FOR FISCAL YEAR 2017

(reference Staff Report #124:16)

WHEREAS, pursuant to the Power Management and Administrative Services Agreement ("PMASA"), costs associated with Power Management and Administrative Services shall be allocated among the Members in accordance with the NCPA Power Management Cost Allocation Spreadsheet Model ("Nexant Model"); and

WHEREAS, pursuant to Commission Resolution 15-37, the NCPA Commission referred the review of the Power Management and Administrative Services cost allocation methodology and principles to the Facilities Committee, and directed the Facilities Committee to coordinate a group of Member staff volunteers (the "Review Group") to review the current cost allocation methodologies and principles established by the Commission, to determine if any revisions to the Nexant Model are warranted at this time.; and

WHEREAS, the Review Group has completed its review of two (2) specific areas of study that will affect certain data inputs that are incorporated into the Nexant Model, and the Review Group presented its findings to the Facilities Committee on February 16, 2016; and

WHEREAS, in consideration of the findings presented by the Review Group, the Facilities Committee recommends that the Commission approve changes to how certain inputs are incorporated into the Nexant Model as fully described in Staff Report 124:16; and

WHEREAS, costs associated with the development of the recommendations contained herein are allocated in accordance with approved budgeted categories; 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 approves the following updates to the NCPA Power Management Cost Allocation Spreadsheet Model, and that such modifications be made effective for Fiscal Year 2017:

1. Hour Ahead NCPA Schedule and CAISO Schedule count inputs incorporated into the Nexant Model be modified to exempt and removed the hour ahead schedule counts attributed to PIRP Resources;
2. PIRP Resources shall be assigned an IT Factor equal to one (1); and

3. The Prescheduling Cost Allocation factors used in the Nexant Model for allocating costs associated with Prescheduling activities be updated based on the labor-based cost allocation factors listed in Table 1 of Staff Report 124:16.

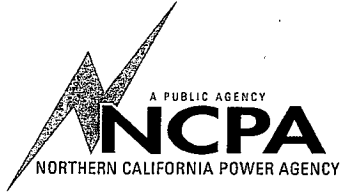
PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2016, by the following vote on roll call:

	<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  
VICE-CHAIR

ATTEST:

\_\_\_\_\_  
CARY A. PADGETT  
ASSISTANT SECRETARY



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# Commission Staff Report

AGENDA ITEM NO.:

19

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** Reestablish Storekeeper Position (Represented) and Salary Range

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## Background

The Storekeeper position was previously part of the IBEW 1245 bargaining unit. The position went unfilled for a period of approximately two years and was subsequently filled in 2011 as an unrepresented position (Administrative Assistant/Office Administrator I). During NCPA's recent negotiations with IBEW 1245, IBEW requested the position, with a single incumbent, be classified again as a Storekeeper and be brought back into the bargaining unit. NCPA's bargaining team agreed to consider this request outside of negotiations.

Human Resources consulted with NCPA legal counsel to determine if NCPA could move a position into the bargaining unit outside of the Employer-Employee Relations Resolution (EERR) required process. Legal counsel agreed that a side letter approving such a change could be used without setting precedent. NCPA has now signed such a letter of agreement authorizing this change (see attachment), and needs formal Commission approval of the Storekeeper job classification and pay range. The job description, proposed pay range and Letter of Agreement are attached.

## Fiscal Impact

There is no fiscal impact due to the creation of the Storekeeper job classification. This is an existing position and funding for the position was included in the FY 2016 budget.

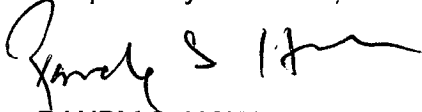
## Environmental Analysis

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.

## Recommendation

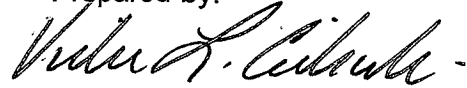
Staff recommends the Commission adopt Resolution 16-19 approving the reclassification of an Administrative Assistant/Office Administrator I position to Storekeeper, and approve the Storekeeper 2016 salary range of \$26.78/hour to \$32.13/hour.

Respectfully submitted,



RANDY S. HOWARD  
General Manager

Prepared by:



VICKI L. CICHOCKI  
Human Resources Manager

Attachments (3)

- Resolution 16-19
- Materials Specialist Job Description
- Letter of Agreement – Bargaining Unit Modification to include Storekeeper Position

**RESOLUTION 16:19**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
REESTABLISH STOREKEEPER CLASSIFICATION AND SALARY RANGE**

**(reference Staff Report #125:16)**

WHEREAS, during NCPA's table negotiations with the International Brotherhood of Electrical Workers Local Union 1245 (IBEW) NCPA agreed to consider adding an unrepresented position back into the IBEW bargaining unit; and

WHEREAS, NCPA Staff have now updated the Storekeeper job description and have identified an appropriate pay range for this position; and

WHEREAS, NCPA and the IBEW have mutually agreed through a side letter, to the current MOU, to reclassify the position held by Ross Calvin from Admin. Assistant/Office Assistant I to Storekeeper; and

WHEREAS, the Commission has reviewed the Storekeeper job description, Storekeeper pay range and the proposed position reclassification; and

WHEREAS, the Commission understands that the agreed upon change to the IBEW bargaining unit does not set a precedent for future bargaining unit changes per NCPA's Employer-Employee Relations Resolution (EERR); 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 approves reclassification of one Administrative Assistant I/Office Assistant I position to a Storekeeper classification with a 2016 pay range of \$26.78/hour to \$32.13/hour.

PASSED, ADOPTED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016 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  
VICE CHAIRMAN

ATTEST: \_\_\_\_\_  
CARY PADGETT  
ASSISTANT SECRETARY

**NCPA**  
**Job Description**

**Job Classification:** Storekeeper  
**Job Title:** Materials Specialist  
**Department:** Generation Services, Geothermal Plant  
**Reports To:** Materials Warehouse Coordinator I  
**FLSA Status:** Non-Exempt  
**Prepared By:** Bob Young  
**Prepared Date:** 12/14/15  
**Approved By:** Vicki Cichocki

**Summary:** Under general supervision of the Materials Procurement and Warehouse Coordinator oversees and maintains warehouse inventory including shipping, receiving, and inventorying of materials and assisting with the procurement of materials needed to maintain the geothermal power plants, steam field and related infrastructure. Maintains accurate records and delivers material from local vendors to project locations.

**Essential Duties and Responsibilities**

- Performs work related to warehouse receiving, inventorying, cataloging and purchasing of spare parts.
- Responds to questions from and processes requests for materials from various plant personnel, including plant maintenance personnel, power plant operators, plant engineers, and plant supervisors, managers and administrators. Advises plant staff about their requests, and delivers requested materials to various plant locations.
- Maintains accurate files, records, logs and changes to facility warehouse inventory following Agency and Generation Services inventory control policies and procedures using inventory control database (CMMS) or other inventory control software.
- Opens, inventories against requisition, assigns stock numbers and receives incoming parts and equipment, including scanning records and expediting receiving documentation to Materials Procurement & Warehouse Coordinator.
- Identifies inventory restocking needs, requests and compares price quotes from vendors, maintains quote file per policy and submits completed purchase requisitions for approval. Recommends minimum and maximum stock quantities.
- Resolves payment problems to maintain favorable business relationships with suppliers.
- Manages physical layout of the parts inventory to maximize functionality and space utilization.
- Develops and implements methods to improve space utilization in the warehouse, frequently requiring the use of a forklift and rigging to relocate heavy parts within the warehouse.
- Maintains shop equipment inventory and tools, and researches pricing and availability of the procurement of emergency parts and supplies.

## **Storekeeper Job Classification**

- Inventories and prepare Bid Lists for salvaged materials.
- Sets up warehouse space for periodic safety meetings, business presentations, or recognition events.
- Performs basic warehouse housekeeping including sweeping, dusting, and garbage disposal.
- Assists other staff members and other NCPA Generation Services facilities as needed.
- May backup the Materials Procurement and Warehouse Coordinator in his/her absence or may assist with warehouse set-up/maintenance activities at other NCPA locations
- Performs other job-related duties as required.

### **Supervisory Responsibilities**

This position has no supervisory responsibilities

### **Competencies**

To perform the job successfully, an individual should demonstrate the following competencies:

Analytical - Synthesizes complex or diverse information; Collects and researches data; Uses intuition and experience to complement data; Designs work flows and procedures.

Problem Solving - Identifies and resolves problems in a timely manner; Gathers and analyzes information skillfully; Develops alternative solutions; Works well in group problem solving situations; Uses reason even when dealing with emotional topics.

Project Management – Develops project plans; coordinates projects; Communicates changes and progress; Completes projects on time and budget;

Technical Skills - Assesses own strengths and weaknesses; Pursues training and development opportunities; Strives to continuously build knowledge and skills; Shares expertise with others.

Customer Service - Manages difficult or emotional customer situations; Responds promptly to customer needs; Solicits customer feedback to improve service; Responds to requests for service and assistance; Meets commitments.

Interpersonal Skills - Focuses on solving conflict, not blaming; Maintains confidentiality; Listens to others without interrupting; Keeps emotions under control; Remains open to others' ideas and tries new things.

## Storekeeper Job Classification

Oral Communication - Speaks clearly and persuasively in positive or negative situations; Listens and gets clarification; Responds well to questions; Demonstrates group presentation skills; Participates in meetings.

Written Communication - Writes clearly and informatively; Edits work for spelling and grammar; Varies writing style to meet needs; Presents numerical data effectively; Able to read and interpret written information.

Teamwork - Balances team and individual responsibilities; Exhibits objectivity and openness to others' views; Gives and welcomes feedback; Contributes to building a positive team spirit; Puts success of team above own interests; Supports everyone's efforts to succeed.

Quality Management - Looks for ways to improve and promote quality; Demonstrates accuracy and thoroughness; Applies feedback to improve performance; Monitors own work to ensure quality; Demonstrates attention to detail.

Quantity - Meets productivity standards; Completes work in timely manner; Strives to increase productivity; Works quickly.

Cost Consciousness - Works within approved budget; Develops and implements cost saving measures; Contributes to profits and revenue; Conserves organizational resources.

Diversity - Demonstrates knowledge of EEO policy; Shows respect and sensitivity for cultural differences; promotes a harassment-free environment.

Ethics - Treats people with respect; Keeps commitments; Inspires the trust of others; Works with integrity and ethically; Upholds organizational values.

Organizational Support - Follows policies and procedures; Completes administrative tasks correctly and on time; Supports organization's goals and values; Benefits organization through outside activities; Supports affirmative action and respects diversity.

Judgment - Displays willingness to make decisions; Exhibits sound and accurate judgment; Supports and explains reasoning for decisions; Includes appropriate people in decision-making process; Makes timely decisions.

Motivation - Sets and achieves challenging goals; Demonstrates persistence and overcomes obstacles; Measures self against standard of excellence; Takes calculated risks to accomplish goals.

Planning/Organizing - Prioritizes and plans work activities; Uses time efficiently; Sets goals and objectives; Develops realistic action plans.

Professionalism - Approaches others in a tactful manner; Reacts well under pressure; Treats others with respect and consideration regardless of their status or position; Accepts responsibility for own actions; Follows through on commitments.



## **Storekeeper Job Classification**

Safety and Security - Observes safety and security procedures; Determines appropriate action beyond guidelines; Reports potentially unsafe conditions; Uses equipment and materials properly.

Adaptability - Adapts to changes in the work environment; Manages competing demands; Changes approach or method to best fit the situation; Able to deal with frequent change, delays, or unexpected events.

Attendance/Punctuality - Is consistently at work and on time; Ensures work responsibilities are covered when absent; Arrives at meetings and appointments on time.

Dependability - Follows instructions, responds to management direction; Takes responsibility for own actions; Keeps commitments; Commits to long hours of work when necessary to reach goals. Completes tasks on time or notifies appropriate person with an alternate plan.

Initiative – Volunteers readily; Undertakes self-development activities; Seeks increased responsibilities; Takes independent actions and calculated risks; Looks for and takes advantage of opportunities; Asks for and offers help when needed.

Innovation - Meets challenges with resourcefulness; Generates suggestions for improving work;

**Qualifications** To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

### **Education and/or Experience**

Typically requires a high school degree and a minimum of three to five years' prior experience as Warehouseperson working in a multi-million dollar warehouse, with hundreds of parts, using modern material handling, warehousing and inventory control procedures. Additional education equivalent to an Associate's degree from an accredited college or university in business administration, accounting or related field is desirable. Prior shipping, receiving and warehouse operations experience with an electric utility highly preferred.

### **Language Skills**

Ability to read and interpret documents such as safety rules, operating instructions, and procedure manuals. Ability to accurately and effectively write detailed reports and correspondence.

### **Mathematical Skills**

Ability to calculate figures and amounts such as discounts, interest, commissions, percentages, area, circumference, and volume. Ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations.

## **Storekeeper Job Classification**

### **Reasoning Ability**

Ability to solve practical problems. Ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form. Ability to read and interpret plans and specifications.

### **Computer Skills**

To perform this job successfully, an individual should have knowledge of database software (Apollo parts systems), knowledge of computerized materials management software (CMMS), knowledge of the Microsoft Office Suite including Outlook, Excel, Word and PowerPoint, and other electronic business tools. In addition, the individual must possess the ability to type or keyboard 35 wpm.

### **Certificates, Licenses, Registrations**

Class C California operator's license issued by the State of California, Department of Motor Vehicles and valid vehicle insurance. Possess and maintain a good driving record as evidenced by freedom from multiple or serious traffic violations or accidents for a period of at least three (3) years.

### **Other Skills and Abilities**

Ability to operate trucks, cars, forklifts, and other warehouse equipment.  
Ability to operate power tools used to build specialized crates and shipping containers.  
Ability to operate banding equipment to secure loads to pallets for shipping and storage.

### **Physical Demands**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this Job, the employee is regularly required to sit; use hands to finger, grasp, handle, or feel and talk or hear. The employee is frequently required to stand; walk; reach with hands and arms; climb or balance; stoop, kneel, crouch, and or smell. The employee regularly uses feet, legs, hands and manual strength to reach and move equipment. The employee occasionally lifts and /or moves material weighing up to 50 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus.

### **Work Environment**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

## Storekeeper Job Classification

While performing the duties of this job, the employee is may occasionally be exposed to outside weather conditions. The employee is exposed to moving heavy and or bulky parts; cold or heat, high places, and may be exposed to toxic or caustic chemicals; the noise level in the work environment is usually moderate.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date



651 Commerce Drive  
Roseville, CA 95678

(916) 781-3636

www.ncpa.com

January 27, 2016

Mr. Janval Macor  
IBEW Local 1245  
30 Orange Tree Circle  
Vacaville, CA 95687

SUBJECT: Letter of Agreement re -- Bargaining Unit Modification to include Storekeeper position

Dear Janval:

Per our discussions during negotiations, NCPA proposes this side letter to document our agreement to add the Storekeeper job classification into the bargaining unit. As we discussed, this position was previously part of the bargaining unit, has a single incumbent, and the incumbent has agreed to join the bargaining unit. As such, NCPA agrees to add the Storekeeper position to the bargaining unit upon the ratification and signing of the new Memorandum of Understanding with IBEW 1245 which was effective on December 27, 2015. In addition, NCPA has agreed to place Ross Calvin at Level Three in the attached pay structure.

As per our discussion, this is a one-time exception to NCPA's Employer-Employee Relations Resolution (EERR). NCPA's agreement to this exception is not precedent setting for purposes of the EERR in regard to any future modification to the bargaining unit. If you are in agreement, please sign and return this letter. You may fax the letter back to my attention at (916) 781-4270 or scan and send an electronic copy.

If you have any questions, please feel free to call me.

Sincerely,

VICKI L. CICHOCKI  
Human Resources Manager

(916) 781-4209/781-4270 FAX

Agreed to by:

  
\_\_\_\_\_  
Janval Macor, Business Representative IBEW 1245

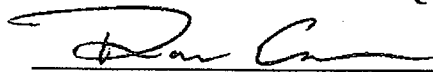
Date

01/28/2016

Cc: Randy Howard, General Manager  
Ken Speer, Assistant General Manager Generation Services

January 27, 2016

Page 2 - Bargaining Unit Modification to include Storekeeper



Ross Calvin

28 Jan 2016

Date

**Storekeeper pay range**

	2015	2016	2017	2018
Level 1	25.81	26.78	27.72	28.62
Level 2	27.10	28.12	29.10	30.05
Level 3	28.46	29.52	30.56	31.55
Level 4	29.88	31.00	32.08	33.13
Level 5	30.97	32.13	33.26	34.34



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# Commission Staff Report

AGENDA ITEM NO. 20

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**Date:** February 17, 2016  
**To:** NCPA Commission  
**Subject:** **Support Services Program Agreement between NCPA and Various Signatory Members by Which NCPA May Provide Certain Support Services to those Members**

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## Proposal

Approve a Support Services Program Agreement between the Northern California Power Agency (NCPA) and those members of NCPA who execute the Agreement (Signatory Members) by which NCPA may offer to provide certain support services to those Members including, but not limited to, joint purchasing, engineering services, transmission and distribution planning, power marketing and analysis, employee training, employment and human relations assistance, customer services and billing, metering and data management, power plant operations, and other forms of assistance and professional services relating to the operation of a publicly owned electric utility, as related to either the generation, transmission, or distribution of electricity or the wholesale or retail operation of such a utility, all within the scope of the NCPA Joint Powers Agreement. Further delegate authority to the NCPA General Manager to amend 56 existing services agreements as set forth in the attached list so those agreements may be utilized under this Support Services Program Agreement.

## Background

NCPA has prepared the proposed Support Services Program Agreement in an effort to improve the service offerings by NCPA to its members and provide additional economies of scale and savings. Approval of this agreement will allow NCPA members the opportunity to become a signatory to the agreement and thereby have the benefit of utilizing various support services available and offered and by NCPA.

## Fiscal Impact

Costs related to this agreement will be allocated to the Signatory Members electing participation and use of the various services offered in each specific procurement activity.

## Environmental Analysis

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

**SR: 121:16**

Committee Review

The recommendation below was reviewed by the Facilities Committee on February 3, 2016 and was recommended for Commission approval.

Recommendation

Staff recommends that the NCPA Commission approve Resolution 16-15 approving the Support Services Agreement between the Northern California Power Agency (NCPA) and those members of NCPA who execute the Agreement (Signatory Members) by which NCPA may offer to provide certain support services to those members, with any non-substantial changes recommended and approved by the NCPA General Counsel; and delegate authority to the NCPA General Manager to amend 56 existing services agreements so those agreements may be utilized under this Support Services Program Agreement.

Respectfully submitted,



RANDY S. HOWARD  
General Manager

Prepared by:



KEN SPEER  
Assistant General Manager  
Generation Services

Attachments (3):

- List of Agreements for Amendment to Expand Scope of Work To Allow For Use by Members
- Resolution
- Proposed Support Services Program Agreement

**RESOLUTION 16-15**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A SUPPORT SERVICES PROGRAM AGREEMENT BETWEEN  
NCPA AND ITS SIGNATORY MEMBERS AND DELEGATING TO THE NCPA  
GENERAL MANAGER AUTHORITY TO AMEND 56 EXISTING SERVICES  
AGREEMENTS TO ALLOW FOR THEIR USE UNDER THIS AGREEMENT**

**(reference Staff Report #121:16)**

WHEREAS, Northern California Power Agency (NCPA) has prepared a Support Services Program Agreement in an effort to improve the service offerings by NCPA to its members and provide additional economies of scale and savings; and

WHEREAS, NCPA may offer to its Members who execute the agreement certain support services including, but not limited to, joint purchasing, engineering services, transmission and distribution planning, power marketing and analysis, employee training, employment and human relations assistance, customer services and billing, metering and data management, power plant operations, and other forms of assistance and professional services relating to the operation of a publicly owned electric utility, as related to either the generation, transmission, or distribution of electricity or the wholesale or retail operation of such a utility, all within the scope of the NCPA Joint Powers Agreement; 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 approves the Support Services Agreement between the Northern California Power Agency (NCPA) and those members of NCPA who execute the Agreement (Signatory Members) by which NCPA may offer to provide certain support services to those Members, with any non-substantial changes recommended and approved by the NCPA General Counsel ; and delegates authority to the NCPA General Manager to amend 56 existing services agreements as listed in Staff Report #121:16 so those agreements may be utilized under this Support Services Program Agreement.

PASSED, ADOPTED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016 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  
VICE CHAIR

ATTEST:

\_\_\_\_\_  
CARY A. PADGETT  
ASSISTANT SECRETARY

## Existing Agreements For Amendment to Allow use by Members, SCLPA, SCLPA, SCLPA Members

Vendor Name	Short Description
Airgas USA LLC	Delivery of CEMS EPA gases, recertification of expired EPA protocol gases, supply racks, etc. at CTs/LEC
AMEC Environment & Infrastructure Inc	Various engineering services, mapping, surveying, GIS, development of drawings, plans, etc., observation and testing
American Exchanger Services Inc	Perform inspections and maintenance on heat exchangers, condensers, chillers.
American Power Systems LLC	Battery testing
ARB Construction, Inc	Mechanical, structural, civil work to support project and plant operations, exclusive of public works
Avogadro Group LLC	Source, Rata, Emissions testing
Bay City Boiler & Engineering	HRSG and Auxiliary boiler maintenance
Black & Veatch Inc	Consulting services related to project support and plant operations at LEC
California Electrical Services Inc	Engineering support and protection relay upgrade support
Condor Earth Technologies, Inc.	Geology, Geotechnical and Environmental Engineering
Control Components	Maintenance and inspections on valves and vents for CTs and LEC
CTI Controltech	Boiler and burner maintenance
Danick Mechanical Inc	Project support and plant operations maintenance
DRS Marine Inc.	Hydro Underwater Maintenance Services
Eaton Corporation	Electrical services.
EGS Consulting, Inc.	Engineering and geologic services at Geo facility.
Electrical Maintenance Consultants Inc	NCPA facilities electrical services support
Environex Inc	SCR & CO catalyst testing, system inspection and sampling and reporting
Fairchild & Wells, Inc	Annual injection well services including well inspections and well testing.
Farwest Insulation Contracting	Insulation services
First Global Gear Services, LLC	Turbo machinery support
GEI Consultants	Dam Safety Engineering; Geology, hydrology, hydraulics, geotechnical and structural consulting; preparation stamped construction documents all facilities.
GHD Inc	Engineering, Civil, Environmental, Geotechnical, Structural, Mapping, Surveying, GIS, development drawings, etc.

H3 Construction Services, Inc.	T&M maintenance services including piping fabrication, hydrotesting, HRSG erection and maintenance, catalyst removal/replacement, troubleshoooting, outage support, etc.
Hart High Voltage Apparatus Repair & Testing Co Inc	Electrical maintenance services
Herold & Mielenz Inc	Motor maintenance and other necessarily included services
Kestrel Power Engineering LLC	Engineering support for excitation systems
MWH Americas, Inc.	Project engineering consulting; civil, electrical, mechanical, geotechnical and structural engineering; development of drawings, specs, technical documents, reports and presentations
Nalco Company	Specialty chemical services and supplies for LEC and CT2 Stig
Performance Contracting Inc	Scaffolding and insulation services
Performance Mechanical Inc	Maintenance including piping fabrication, hydrotesting, HRSG work, catalyst, troubleshoooting, underground piping, outage support
PetroChem Insulation Inc	Insulation services for temperature control and noise abatement at Geo
Platinum Scaffolding Services, Inc	Scaffold support and on-call scaffolding support as needed all facilities; updated with First Amendment due to change in ownership and name change to Platinum Scaffolding Services, Inc.
Power Engineers Inc	Engineering services including protection settings, SEL event files, arc flash studies, transmission line work; general mechanical, civil, electrical and protection engineering
Precision Pump & Machine-KSB Inc.	Pump maintenance
Process Innovations, Inc.	OSIsoft PI Software maintenance services and training
Pro Energy Services LLC	Inspection and maintenance services and spare parts.
Quality Generator Services, Blue Toro LLC	Generator inspection/maintenance services
Reliability Optimization	Predictive maintenance services
RFI Communications & Security Systems	Services regarding Security solutions and systems integration.
SBIW Inc	Off site and on site (in situ) maintenance of turbine generator units and auxiliary equipment
Servo Con Associates, Inc. dba Servocon Alpha	Electrohydraulic control maintenance, new sales and design of hydraulic valves, cylinders pumps, etc.
Siemens Energy, Inc	T3000 maintenance and support for Geo and LEC control systems.

Sulzer Turbo Services Houston Inc	Bulk chemical purchases and delivery
Summit Crane Inc	Provide cranes and operators to support operations and maintenance at all CT sites as needed
Sunshine Metal Clad, Inc.	Insulation services at Geyser's Facility
Team Industrial Services	Specialty mechanical & inspection services including on-stream & turnaround/outage services
Tetra Engineering Group Inc.	Inspections including HRSG, power piping, steam plant assessments, root cause failures, consulting engineering
Titan Crane & Rigging Inc.	Cranes and operators
Trimark Associates, Inc.	Trimark GSA made for the purpose of monitoring, maintaining, and repairing SCADA systems, metering equipment and any communications or interface devices provided by Contractor located at or installed on the premises of the Project sites.
Trimark Associates, Inc.	Maintenance and installation of all meters, metering equipment, RIGS, DPG, communications or interface devices, and associated equipment for plants
Unique Scaffold, Ernie & Sons Scaffolding dba	Scaffolding services
Universal Plant Services	Various equipment inspections, outage work, crane support, project management
Voith Turbo Inc.	Turbo machinery support services
Wagner Mechanical Inc.	Maintenance including piping, hydrotesting, HRSG work, catalyst removal troubleshooting, outage support
West Valley Construction Company	T&M maintenance including piping fabrication/installation, hydrotesting, HRSG work, catalyst removal/replacement, underground piping, outage support
1/29/2016	

**NORTHERN CALIFORNIA POWER AGENCY**

**SUPPORT SERVICES PROGRAM  
AGREEMENT**

# SUPPORT SERVICES PROGRAM AGREEMENT

## PREAMBLE

This Support Services Program Agreement is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016 (“the Effective Date”) by and between the Northern California Power Agency, a joint powers agency of the State of California (“NCPA”) and those members of NCPA who execute this Agreement (each a “Signatory Member” and together the “Signatory Members”). NCPA and each Signatory Member are referred to individually as a “Party” and together as the “Parties.”

## RECITALS

A. NCPA and its Members desire to establish a support services program by which NCPA may offer to provide certain support services to the Members from time to time. These support services may include, but are not limited to, joint purchasing, engineering services, transmission and distribution planning, power marketing and analysis, employee training, employment and human relations assistance, customer services and billing, metering and data management, power plant operations and other forms of assistance and professional services relating to the operation of a publicly owned electric utility, as related to either the generation, transmission or distribution of electricity or the wholesale or retail operation of such a utility, all within the scope of the NCPA Joint Powers Agreement (“Support Services”).

B. Particular Support Services will from time to time be offered by NCPA to those Signatory Members who choose to accept and pay for such particular Support Services. Such offers will be without any liability on the part of Members of NCPA who are not Signatory Members nor any liability on the part of Signatory Members who do not choose to become a Participating Member with respect to the particular Support Services. A Signatory Member choosing to accept and pay for a particular Support Service will become a “Participating Member” with respect to that Support Service. A Signatory Member is not required to accept any particular Support Services by reason of being a Signatory Member.

C. Support Services shall be broadly construed. Provided, however:

(1) Support Services does not include the procurement of either energy (or the attributes of energy, such as renewable energy credits) which is provided through the Market Purchase Program Agreement, Single Member Services Agreements and the Pooling Agreement.

(2) Support Services does not include procurement of natural gas which is provided through the Natural Gas Program Agreement.

(3) Support Services does not include services provided by NCPA pursuant to third phase agreements relating to generation projects or other project agreements previously or subsequently entered into by NCPA and certain of its Members.

(4) Support Services does not include any on-going services which are to be provided by NCPA to its Members through program agreements. For example, Support Services does not include any legislative and regulatory services provided through the Legislative and Regulatory Affairs Program Agreement.

D. The Signatory Members desire that NCPA negotiate and enter into agreements with third parties to provide the Support Services for the benefit of Participating Members. This Agreement does not authorize NCPA to directly provide Support Services utilizing NCPA's own staff, except in limited circumstances. Such direct provision of Support Services may be provided to one or more Members through either a Single Member Service Agreement or a Professional Services/Operating Agreement as deemed appropriate by NCPA.

E. Each Support Service will be offered by NCPA to all the Signatory Members. Those Signatory Members wishing to accept the offer with respect to a particular Support Service will execute a written confirmation for that Support Service (a "Confirmation") and thereby become a Participating Member with respect to such Support Service. The Participating Members executing a particular Confirmation will pay NCPA the cost of providing the Support Services offered by such Confirmation as detailed in the Confirmation including the cost of developing the Confirmation; Signatory Members not executing a particular Confirmation will have no obligation with respect to the Support Services provided pursuant to that Confirmation.

\* F. Each Signatory Member, in executing this Agreement, will provide the identity of the Designated Representatives authorized to execute Confirmations on its behalf, and agrees that, subject to such not to exceed dollar limitations as are set forth in its signature page to this Agreement (as such limitations may be amended), any Confirmations executed by such Designated Representatives are binding upon the Signatory Member without further approval by the Signatory Member's Governing Board.

G. NCPA desires to provide, and the Signatory Members desire to secure, Support Services under this Agreement in a manner that balances their operational and economic interests and the interests of other NCPA Members with the ongoing financial viability and professional responsibilities of NCPA. Accordingly, Signatory Members desire to secure Support Services under this Agreement by accepting a limited insurance based recourse against NCPA, with the option of procuring additional insurance at Signatory Members' sole expense, thereby ensuring that NCPA will substantially limit its risk for the provision of such Support Services which, in turn, allocates risks back to the Signatory Members in the event NCPA is not adequately insured.

**NOW, THEREFORE,** the Parties agree as follows:

## **Section 1. Definitions and Interpretation.**

1.1 Definitions. Whenever used in this Agreement (including in the preamble and recitals hereto), the following terms shall have the means ascribed to them in this section:

“Agreement” means this NCPA Support Services Program Agreement, including all exhibits or schedules attached hereto, as the same may be amended from time to time in accordance with the terms and conditions hereof.

“All Resources Bill” means the single, combined monthly invoice from NCPA to a Participating Member with respect to all NCPA programs and projects.

“Annual Budget” means the budget for the Fiscal Year adopted by the Commission, as it may be amended from time to time.

“Associate Member” means the Plumas-Sierra Rural Electric Cooperative, an associate member of NCPA.

“Business Day” means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m., Pacific Time.

“Commission” means the NCPA Commission.

“Confirmation” has the meaning set forth in the recitals hereto.

“Costs” means both (i) the cost billed to NCPA by a third party provider of Support Services, plus (ii) the direct or indirect costs incurred by NCPA in obtaining such Support Services from the third party provider, including development of the Confirmation, administration of any agreements with the third party provider and any over-head costs incurred. Overhead costs shall be determined by NCPA on a Confirmation –by- Confirmation basis. “Costs” shall also include any NCPA direct or indirect costs, including salary, incurred in those limited instances where NCPA directly provides the Support Services under a Confirmation.

“Constitutive Documents” means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder, and with respect to each Signatory Member, the California Government Code and other statutory provisions applicable to such Signatory Member and any applicable agreements, charters, contracts, or other documents concerning the formation, operation or decision making of such Signatory Member, including, if applicable, its City Charter, and any codes, ordinances, bylaws, and resolutions adopted by such Signatory Member’s Governing Body.

“Defaulting Party” has the meaning set forth in Section 12.1.



“Designated Representatives” means, with respect to NCPA, both its General Manager, and its General Counsel, acting jointly, and with respect to each Signatory Member means both its Utility Director (or an employee or official other than the Utility Director designated by resolution of the Signatory Member’s Governing Board) and its City Attorney or General Counsel, acting jointly.

“Effective Date” has the meaning set forth in the preamble hereof.

“Electric System” means, with respect to each Signatory Member except the San Francisco Bay Area Rapid Transit District (“BART”), all properties and assets, real and personal, tangible and intangible, of the Signatory Member 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 Signatory Member is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Signatory Member’s ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System. “Electric System” means, with respect to BART, all properties and assets, real and personal, tangible and intangible, of BART now or hereafter existing, used or pertaining to the operation or maintenance of its transportation system, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent BART is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only BART’s ownership interest in such asset or property or only the part of the asset or property used for transportation system purposes shall be considered to be part of its Electric System.

“Event of Default” shall have the meaning provided in Section 12.1.

“Fiscal Year” means the NCPA fiscal year; currently the twelve month period beginning July 1 and ending on the next-following June 30.

“General Manager” means the General Manager of NCPA.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts 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 of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. 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 region and consistently adhered to by the electric utility industry.

“Governing Board” means with respect to NCPA its Commission, and with respect to each Signatory Member means its city council, board of directors, board of port commissioners, or other duly constituted legislative body having approval authority for contracting and purchasing under the terms of the Constitutive Documents of the Signatory Member.

“Joint Powers Agreement” or “JPA” means that certain Amended and Restated Northern California Power Agency Joint Power Agreement dated as of January 1, 2008, as the same may be amended from time to time.

“Member” means any member of NCPA or any Associate Member of NCPA.

“NCPA” has the meaning set forth in the preamble of this Agreement.

“NCPA Procurement Policies” means those policies for the procurement of goods and services adopted by the Commission, as the same may be amended from time to time.

“NERC” means the North American Electric Reliability Corporation, or its successor in interest as the national electric reliability organization designated by the Federal Energy Regulatory Commission.

“Participating Member” has the meaning set forth in the recitals of this Agreement.

“Party” or “Parties” has the meaning set forth in the preamble of this Agreement.

“Revenues” means, with respect to each Signatory Member with the exception of the San Francisco Bay Area Rapid Transit District (“BART”), all income, rents, rates, fees, charges, and other moneys derived by the Signatory Member from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System; and (c) the proceeds derived by the Signatory Member directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System, but the term Revenues shall not include (i) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the Signatory Member, or (ii) contributions from customers for the payment of costs of construction of facilities to serve them. In regard to BART, “Revenues” means all income, rents, rates, fees, charges, grants, fares or tariffs, subventions and other moneys derived by the BART from its operation including, without limiting the generality of the foregoing, (i) the earnings on and income derived from the investment of such income, rents, rates, fees, charges grants, fares or tariffs, subventions or other moneys, and (ii) the proceeds derived by the BART directly or indirectly from the sale,

lease or other disposition of all or a part of its assets, but the term Revenues shall not include any moneys derived from sources the use of which is limited by law to expenditures other than BART operating expenses.

“Security Account” means an account established by NCPA and funded by Participating Members in accordance with Section 7.2, the funds of which are available for use by NCPA with respect to a particular Confirmation in accordance with the terms and conditions herein and those of the particular Confirmation.

“Signatory Member” has the meaning set forth in the preamble hereto.

“Support Services” has the meaning set forth in the recitals of this Agreement .

“Uncontrollable Force” means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities or any other cause beyond the reasonable control of the Party claiming Uncontrollable Force which could not be avoided through the exercise of Good Utility Practice.

“Utility Director” means, with respect to each Signatory Member with the exception of the San Francisco Bay Area Rapid Transit District (“BART”), the person having administrative charge of and responsibility for the operation and maintenance of the Electric System of a Signatory Member. In regards to BART, “Utility Director” means the person having administrative charge of and responsibility for the procurement of electrical energy for the operation of the BART transportation system.

1.2 Interpretation of Agreement. As used in this Agreement (including the preamble and recitals hereto), unless in any such case the context requires otherwise:

1.2.1 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,” or “Exhibit” shall mean a Section, subsection, clause or Exhibit of this Agreement, as the case may be.

1.2.2 All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof.

1.2.3 A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, government, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns.

1.2.4 The singular shall include the plural and the masculine shall include the feminine, and vice versa.

1.2.5 All references to a "day" shall refer to a calendar day, unless specified as a Business Day.

## **Section 2. Effectiveness of Agreement; Signature Authority**

2.1 Effective Date as to Signatory Member. Following the approval of this Agreement by the Commission, any Member may become a Signatory Member by providing an executed counterpart of this Agreement to NCPA. This Agreement shall become effective as to a given Signatory Member upon the later of the Effective Date and the date on which an executed copy of this Agreement is provided to NCPA. NCPA shall provide a copy of each executed signature page of a Signatory Member to all other Signatory Members.

2.2 Form of Signature Page; Amendment of Designated Representatives and Not to Exceed Dollar Authority. Each Signatory Member signature page shall be in the form attached hereto as Exhibit "A." Each signature page shall identify the initial Designated Representatives of the Signatory Member and the monetary not to exceed authority for any individual Confirmations for that Signatory Member.

2.2.1 Any Signatory Member may amend its not to exceed authority at any time (either increasing or decreasing such authorities), by providing thirty (30) days written notice of such change to NCPA accompanied by a resolution of the Governing Board of the Signatory Member approving such change in the not to exceed authorities.

2.2.2 Signatory Members shall provide written notice to NCPA upon a change in the identity of either of its Designated Representatives.

## **Section 3. Support Services Procurement.**

3.1 Offers to Procure Support Services. NCPA may, from time to time in its sole discretion, offer to procure one or more Support Services for the Signatory Members. Signatory Members desiring to accept such offer with respect to a particular Support Service shall execute a Confirmation prepared by NCPA for that Support Service and thereby become a Participating Member with respect to such Confirmation and Support Service. Confirmations shall be in substantially the form attached hereto as Exhibit "B," and as provided in Section 5. Each such Confirmation shall indicate that the particular Support Service will be accomplished by NCPA contracting with a named third party to provide the Support Service, which contract shall thereafter be entered into by NCPA in accordance with the NCPA Procurement Policies. NCPA's Designated Representatives shall have the authority to execute Confirmations without the further approval of the Commission where the underlying contract with a third party is within the contracting authority of the General Manager as established by the NCPA Procurement Policies. Provided, however, that NCPA may in its sole discretion choose to self-

provide the Support Services, rather than contracting with a third party, where it is providing training, human resources assistance, assistance with NERC or other regulatory compliance, or assistance in the form of student interns to the Signatory Members.

3.2 NCPA Procurement of Support Services. NCPA agrees, upon receipt of a Confirmation executed by the Designated Representatives of one (1) or more Participating Members, to procure the Support Service specified in such Confirmation on behalf of the Participating Member(s). Provided, however, that NCPA may in its discretion decline to provide Support Services unless the number of Participating Members and the extent of participation is acceptable to NCPA.

3.3 NCPA Payment of Costs. NCPA shall pay all Costs incurred in providing Support Services under a particular Confirmation using funds: (a) received from Participating Members during the normal course of monthly billing of Members, with the Costs of each Confirmation itemized on the NCPA All Resources Bill; or (b) as necessary from Security Account funds for that Confirmation, if any, paid to NCPA in accordance with Section 7.2; or (c) such other sources and methods as may be agreed upon in writing by the Parties from time to time or as specified in a particular Confirmation.

**Section 4. No Purchase of Energy or Natural Gas; Other Exclusions.** Support Services do not include the purchase of natural gas, energy, or any attributes of energy including capacity, reliability or environmental attributes (such as credits, benefits, emissions reductions, offsets, and allowances, however titled). This Agreement and associated Confirmations shall not be utilized for the procurement of natural gas, energy, or any attributes of energy. NCPA shall continue to buy and sell natural gas and energy, or its attributes, on behalf of its Members through other existing agreements, including the Gas Purchase Program Agreement, the Market Purchase Program Agreement, Single Member Service Agreements and the Pooling Agreement. Support Services do not include those items referred to in Recital C.

**Section 5. Format of Confirmations; Dollar Not to Exceed Limitations; Amendments.**

5.1 Format of Confirmations. Confirmations shall generally be in substantially the form provided by Exhibit "B. Confirmations shall define the scope of the particular Support Service to be provided, the means by which NCPA will procure such Support Service, and any other terms on which such Support Services shall be provided, to the extent such terms are not defined by this Agreement.

5.1. The Confirmation shall identify the third party who will provide the Support Services and incorporate by reference the agreement between the third party and NCPA.

5.1.2 Confirmations shall not amend the terms of this Agreement. In the event NCPA and the Participating Members desire to include a provision in a Confirmation inconsistent with this Agreement, such Confirmation shall be effective only if approved by the Governing Boards of all Participating Members and the Commission.

5.2 Dollar Not to Exceed Limitations of Confirmations. Each Confirmation shall include a “not to exceed” amount or dollar limitation, broken down by Participating Member, indicating the maximum amount that each Participating Member shall be required to pay for the Support Services provided under the Confirmation. The “not to exceed” shall not relieve a Participating Member of its obligations under this Agreement, including Sections 7 and 11 hereof.

5.2.1 Except as provided in sections 7.4 (relating to use of Security Accounts) and 7.5 (relating to emergency additions to Security Accounts), no Participating Member shall be required to pay for Costs incurred in excess of its stated limitation on a given Confirmation, unless agreed to by the Participating Members.

5.2.2 Any Participating Member may amend its “not to exceed” amount or dollar limitation for a given Confirmation by providing written notice of the change to NCPA executed by its Designated Representatives.

5.3 Amendment of Confirmations. A Confirmation may be amended with respect to all Participating Members only in writing executed by the signatures of the Designated Representatives of NCPA and the Participating Members. Amendments relating to the “not to exceed” amount or dollar limitation of one or more Participating Members shall be accomplished as provided in subsection 5.2.2.

**Section 6. Participating Member Authority to Execute Confirmations.** Each Participating Member acknowledges and agrees to be bound by their respective Designated Representatives’ execution of Confirmations without further approval by the Governing Board of the Participating Member or other approvals, and agrees that such execution is in accordance with its Constitutive Documents.

**Section 7. Payment Obligations; Confirmation Security Account; Invoicing.**

7.1 Payment Obligations. Each Signatory Member agrees to pay NCPA each month its share of Costs specific to each Confirmation for which the Signatory Member is a Participating Member.

Such amounts shall be included by NCPA on the monthly All Resources Bill for each Signatory Member, except to the extent that a given Confirmation provides for a different invoicing mechanism and NCPA agrees thereto.

7.2 Confirmation Security Accounts.

7.2.1 Upon issuance of any Confirmation, NCPA shall determine whether or not a Participating Member deposit to a Security Account for that Confirmation will be required in order to provide the Support Service in question. If so, the amount of the required Security Account deposit shall be

noted on the Confirmation and the Participating Member or Members shall make the required deposits prior to provision of any Support Services pursuant to that Confirmation. Within ten days of NCPA's notice of the amount of the Security Account deposit, the affected Participating Member shall have the option of withdrawing its Confirmation and not receiving the Support Service requested therein.

7.2.2 Periodically, and at least quarterly, NCPA shall review and revise its determination of the security necessary for a particular Confirmation and whether each Participating Member has a sufficient balance in the Security Account for that Confirmation.

To the extent that any Participating Member's balance in the Security Account for the Confirmation is greater than one hundred and ten percent (110%) of the amount required, NCPA shall credit the difference between the balance and the amount required as soon as practicable to the Participating Member's next following All Resource Bill. To the extent that any Participating Member's balance in the Security Account for the Confirmation is less than ninety percent (90%) of the amount required, NCPA shall add the difference between the balance and the ninety percent (90%) as soon as practicable to the Participating Member's next following All Resource Bill, or as necessary, to a special invoice to the Participating Member.

7.3 Security Account in Addition to Other Security Accounts. Any required deposits into a Security Account for a Confirmation pursuant to this Agreement shall be separate from, and in addition to, any security accounts maintained pursuant to other agreements between NCPA and its Members, including but not limited to the Market Purchase Program Agreement, Single Member Services Agreement and the Gas Purchase Program Agreement. Each Security Account for a Confirmation shall be separate from, and in addition to, any Security Account for a different Confirmation.

7.4 Use of Security Account Funds. Security Account funds shall be segregated by Confirmation. NCPA may use any and all funds deposited into the Security Account for a particular Confirmation to pay any Costs it incurs in providing Support Services pursuant to that Confirmation, including making payments to counterparties under any agreement, or for termination payments, requests for assurances by third parties, credit support, payment of claims and related expenses under a Confirmation. Such use shall be without regard to any individual Participating Member's balance in the Security Account or its proportionate share of Confirmation Costs and irrespective of whether NCPA has issued an All Resources Bill or invoice for such Costs to the Participating Members or whether a Participating Member has made timely payments of All Resources Bills or invoices.

If funds deposited into the Security Account are used by NCPA to pay any Costs it incurs with respect to a particular Confirmation, NCPA will maintain a detailed accounting of each Participating Member's shares of funds withdrawn from the Security Account or letter of credit, and upon the collection of all or a part of such withdrawn funds from the applicable Participating Member or Members, NCPA will credit back to each Participating Member the

funds collected in proportion to such non-defaulting Participating Member's share of funds withdrawn from the Security Account.

Funds deposited into a Security Account for a particular Confirmation shall not be used to pay the Costs incurred pursuant to a different Confirmation, nor shall any funds in other security accounts maintained by NCPA and not established pursuant to this Agreement be used.

7.5. Emergency Additions. In the event that the funds are withdrawn pursuant to Section 7.4 of this Agreement, or if the Security Account for a particular Confirmation is insufficient to allow payment of an invoice, demand, request for further assurances or claims by third parties with respect to a particular Confirmation, NCPA shall notify all Participating Members for that Confirmation and then prepare and send a special or emergency assessment to the Participating Members. Each Participating Member shall pay to NCPA such assessment when and if assessed by NCPA within ten (10) days of the invoice date of the assessment. NCPA shall maintain a detailed accounting of each Participating Member's deposits into and shares of withdrawals from the Security Account for the particular Confirmation.

7.6 Interest on Security Accounts. Monies on deposit in the Security Accounts created pursuant to this Agreement shall be invested by NCPA in accordance with the investment policy adopted by the NCPA Commission. Interest earned (or losses sustained) on the Security Accounts shall be proportionately credited to the Participating Members in accordance with each Participating Member's Security Account obligations.

7.7 Return of Funds in Security Accounts. Upon the completion of the provision of Support Services under a particular Confirmation, or upon a permitted withdrawal of a Participating Member from a Confirmation, NCPA shall return the share of affected Security Account funds within ninety (90) days. Provided, however, that NCPA shall, in its sole discretion, as determined by the General Manager, estimate the then outstanding liabilities of the Participating Members including any estimated contingent liabilities and shall retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full.

## **Section 8. Invoicing.**

8.1 Invoices. As part of the All Resources Bill or by separate special invoice, as required in the circumstances, NCPA will issue an invoice to each Signatory Member for the fixed Support Services Program Agreement Costs as provided in Section 7.1 and its proportionate share of the Costs of any Confirmation as to which it is a Participating Member.

8.2 Payment of Invoices. All non-emergency invoices delivered by NCPA in the normal course of billing hereunder (including the All Resources Bill) are due and payable on the date indicated on such invoice, but in any event no later than thirty (30) days following receipt thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day. NCPA may apply a Participating Member's share of an applicable Security Account to the payment of all or any portion of an invoice issued to such Participating Member, provided that application of such funds from a Security Account relating



to a particular Confirmation shall not relieve the Participating Member 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 the relevant Participating Member, NCPA shall deposit the relevant portion of the payment into the Security Account and credit such deposit to such Participating Member. Emergency invoices shall be due as indicated in Section 7.5.

8.3 Late Payments. Any amount due and not timely paid by a Signatory Member shall bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%), or (ii) the maximum rate permitted by law.

## **Section 9. Settlement Data and Examination of Books and Records; Signatory Member Covenants.**

9.1 Settlement Data. NCPA will make settlement data available to the Participating Members. Procedures and formats for the provision of such data will be as established by the NCPA Commission from time to time.

### 9.2 Records.

9.2.1 NCPA Books and Records. NCPA shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks and other records or documents evidencing or relating to charges for the Support Services or expenditures or disbursements to the Signatory Members for a minimum of three (3) years, or for any longer period required by law, from the date of their payment.

9.2.2 Examination of Books and Records. Any Signatory Member shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement, including but not limited to (a) those required to be kept by Section 9.2.1 and (b) those required by NCPA to be kept by any third party provider of Support Services, at any reasonable, mutually agreed upon time.

9.2.3 Ownership of Records. Except as otherwise provided in a particular Confirmation, all reports, 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 NCPA prepares or obtains for a Participating Member pursuant to a Confirmation and that relate to the matters covered hereunder shall be the property of the Participating Member. NCPA hereby agrees to deliver those documents to the Participating Member upon termination of the Confirmation to which they refer. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Participating Member and are not necessarily suitable for any future or other use. Participating Member and NCPA agree that, until final approval by Participating Member, all data, plans, specifications, reports and other documents are confidential and will not be released to third

parties without prior written consent of the parties to a Confirmation, except as may otherwise be required by applicable law.

9.3 Signatory Member Covenants. Each Signatory Member covenants and agrees: (i) to continue to pay or advance to NCPA, from its Revenues all payments required under this Agreement; (ii) to make payments to NCPA under this Agreement where NCPA has incurred Costs or is obligated to pay a third party with respect to a Confirmation whether or not there is an interruption in, interference with, or reduction or suspension of Support Services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists provided such interruption, interference or reduction in Support Services is caused by forces constituting an Act of God and not reasonably contemplated by the Parties; and (iii) to operate its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and to maintain its Electric System in good repair, working order, and condition.

## **Section 10. Administration of Agreement.**

10.1 General. The NCPA Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents.

10.2 Withdrawal of Signatory Member. A Signatory Member may voluntarily withdraw from this Agreement at any time by providing two (2) year's advance written notice to NCPA and the other Signatory Members. A withdrawing Signatory Member shall reimburse NCPA for any and all Costs resulting from the withdrawal including the legal, accounting and administrative costs of winding up and assuring the complete satisfaction and discharge of the withdrawing Signatory Member's obligations. A withdrawing Signatory Member will continue to be liable for any Costs or on-going obligations relating to a Confirmation as to which that withdrawing Signatory Member is a Participating Member, and withdrawal from any given Confirmation shall be permitted only in accordance with the terms of the particular Confirmation. A withdrawing Signatory Member shall not be liable for Costs under a Confirmation, subsequent to the effective date of the Signatory Member's withdrawal and if unrelated to Support Services provided under the Confirmation to that withdrawing Signatory Member.

10.3 Termination of Agreement by NCPA. NCPA may terminate this Agreement at any time upon six (6) month's written notice to the Signatory Members. Any such termination shall not affect any on-going obligations of NCPA relating to Confirmations then in effect, provided that no additional Confirmations shall be offered to the Signatory Members by NCPA after the six month notice of termination has been provided to them by NCPA.

10.4 Termination by Signatory Members. Upon the occurrence of an Event of Default where NCPA is the Defaulting Party, and following the applicable cure periods, one or more Signatory Members may, without limiting their 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 the Signatory Members may have against NCPA, terminate this Agreement in whole, subject to the provisions of Section 12.6.4. Termination by one Signatory Member shall not affect the validity of the Agreement as to other Signatory Members.

## **Section 11. Insurance, Defense and Indemnity Obligations**

11.1 Limitation of NCPA Liability. Except as otherwise provided in this Section 11, NCPA shall not at any time be liable for any injury or damage occurring to a Participating Member or any other person or property from any cause whatsoever arising out of this Agreement or any Confirmation entered into pursuant to this Agreement.

11.2 Limited Right of Recourse. The provisions of Section 11.1 shall not apply where the injury or damage is to a Participating Member and is caused by the active negligence of NCPA or of any employee, agent or contractor of NCPA, provided, however, that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the insurance policies described in this Section 11.

11.2.1 Reimbursement of NCPA Deductibles. Notwithstanding Section 11.2 above, the applicable Participating Member agrees to reimburse NCPA, in a timely manner, for all deductibles or and/or self-insured retentions payable by NCPA for any claim, liability, or damage arising out of this Agreement or any Confirmation entered into pursuant to this Agreement.

11.3 Indemnity Obligation of Participating Members. Except as provided in Section 11.2 above, each Participating Member as to the particular Confirmation involved shall, at its sole cost and expense, indemnify and hold harmless NCPA, and its Members, and their respective officers, agents and employees ("Indemnitees") from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including reasonable attorneys' fees), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement or any Confirmation entered into pursuant to this Agreement.

11.4 Defense Obligation of Participating Members. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Participating Members as to the Confirmation involved shall, upon reasonable prior written notice from any of the Indemnitees, at Participating Member's sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Participating Member or Members, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor Participating Member shall admit liability in any such matter or on behalf of the other without express written consent, which consent shall not be unreasonably withheld or delayed, nor enter into any compromise or settlement of any claim for which Indemnitees are indemnified hereunder without prior express written consent. The Participating

Member's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

11.5. Notice of Claims Required. The Parties shall give each other prompt written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 11.

11.6 NCPA Obligation to Maintain Insurance. During the term of the Agreement and prior to providing Support Services under any Confirmation issued pursuant to this Agreement, NCPA shall maintain, or cause to be maintained, in full force and effect, and at its sole cost and expense, the types and limits of insurance as are annually approved by the governing Commission of NCPA.

11.7 Participating Member Insurance. The Signatory Members acknowledge that there are significant limits on NCPA's liability under the this section 11 and that upon becoming a Participating Member as to one or more Confirmations, the Participating Member may wish to purchase additional insurance of its own to cover the additional risks and the potential additional liabilities it is assuming under this Agreement and Confirmations entered into pursuant to this Agreement. Each Participating Member will, with respect to any additional insurance it obtains or which is otherwise available to it, cause its insurers to issue an endorsement providing a waiver of subrogation rights as to the Indemnitees.

11.8 Survival of Obligations. The defense and indemnity obligations of this Section 11 shall survive the termination of this Agreement.

## **Section 12. Default and Remedies.**

12.1 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Party in default of its obligations hereunder ("Defaulting Party"):

- (i) if any Signatory Member or Participating Member fails to make any payment due hereunder or to provide assurances as required of NCPA under a Confirmation when due hereunder within two (2) Business Days after receipt of notice given by NCPA of such non-payment; or
- (ii) the failure of a Signatory Member to perform any other covenant or obligation under this Agreement where such failure is not cured within ten (10) calendar days following receipt of a notice from NCPA demanding cure (provided that this shall not apply to any failure to make payments (which is covered by Section 12.1 (i) ); or
- (iii) if any representation or warranty of a Signatory Member material to the transactions contemplated hereby shall prove to have been incorrect in any material respect when made and the Signatory Member does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and

correct within ten (10) calendar days of the date of receipt of notice from any other Party demanding cure; or

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

(v) the failure of NCPA to perform any covenant or obligation under this Agreement following a ten (10) calendar day notice to cure by any non-defaulting Signatory Member.

12.2 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied within the time period specified in Section 12.1 above, as may be applicable, after written notice has been sent to the Defaulting Party from NCPA or a non-defaulting Signatory Member specifying the default and demanding that the same be remedied; provided, however, that the failure of a Party to provide such notice shall not be deemed a waiver of such default.

12.3 Participation Rights Of Defaulting Signatory Member. Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default and until such Event of Default is cured, the Signatory Member that is the Defaulting Party shall not have the right to participate under any additional Confirmations.

#### 12.4 Remedies in the Event of Default.

12.4.1 Remedies of NCPA. Upon the occurrence of an Event of Default where a Signatory Member is the Defaulting Party, without limiting its other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Party Participant, NCPA may: (i) suspend the provision of Support Services under this Agreement or any Confirmation issued pursuant to this Agreement to such Defaulting Party until the Event of Default is cured; (ii) demand that the Defaulting Party provide further assurances to compel the correction of the default, including the collection of a surcharge, or such other actions as may be necessary to produce Revenues to secure the cure of the Event of Default; and (iii) terminate this Agreement or any Confirmation as to the Defaulting Party, following the expiration of any applicable cure period pursuant to section 12.1, on ten (10) calendar days' prior written notice to the Defaulting Party.

12.4.2 Remedies of Signatory Members. Upon the occurrence of an Event of Default where NCPA is the Defaulting Party, and following the applicable cure periods pursuant to section 12.1, one or more Signatory Members may, without limiting their 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 they may have against NCPA, terminate this Agreement as to themselves and without affecting the validity of the Agreement as to other Signatory Members, subject to the provisions of Section 12.6.4.

12.5 Special Covenants Regarding Security Accounts. In the event that a Participating Member's balance in a required Security Account is insufficient to cover all invoices for Costs incurred under this Agreement sent to such Participating Member, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, such Participating Member shall cooperate in good faith with NCPA and shall cure the deficit as rapidly as possible, on an emergency basis, taking all such action as is necessary, including, but not limited to, raising rates and charges to its customers to increase its Revenues to replenish its share of the Security Accounts 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.

12.6 Effect of Termination or Suspension.

12.6.1 Generally. The suspension or termination of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged contingent liabilities or obligations arising from this Agreement until such obligations are satisfied in full, and all of the Costs incurred by NCPA in connection with such suspension or termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other costs and expenses that NCPA is entitled to recover under this Agreement, and other reasonable and necessary costs associated with any and all of the remedies, are paid in full.

12.6.2 Suspension by NCPA. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Signatory Member in accordance with Section 12.4.1(i) such Signatory Member shall pay any and all Costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such suspension and any portion of the Costs that were not recovered from such Signatory Member as a result of such suspension.

12.6.3 Termination by NCPA. If this Agreement is terminated by NCPA with respect to a Signatory Member in accordance with Section 12.4.1(iii) such Signatory Member shall pay any and all Costs incurred by NCPA as a result of such termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of the Costs that were not, or will not be, recovered from such Signatory as a result of such termination; provided, however, if NCPA terminates this Agreement with respect to the last remaining Signatory Member, then this Agreement shall terminate.

12.6.4 Termination by Signatory Members. If this Agreement is terminated by all Signatory Members in accordance with Section 10.4, or by unanimous consent of all of the Parties hereto, then the Signatory Members shall pay to NCPA all previously unpaid Costs incurred as of the date of such termination. The Signatory Members shall indemnify NCPA for any costs incurred in connection with such termination, including reasonable attorney fees, fees

and expenses of other experts, including auditors and accountants and other reasonable and necessary costs. If the Parties are unable to reach agreement as to the foregoing, then the Parties agree to submit the matter to mediation with a mutually agreed upon mediator. If the Parties are still unable to reach agreement following mediation, then the matter shall be submitted to binding arbitration subject to the rules of the American Arbitration Association, the costs of such arbitration being borne equally among the Signatory Members.

### **Section 13. Uncontrollable Forces.**

13.1 Uncontrollable Force In General. Obligations of the Parties, other than those to pay money when due, shall be excused for so long as and to the extent that failure to perform such obligations is due to an Uncontrollable Force; provided, however, that if a Party is unable to perform due to an Uncontrollable Force, such Party shall exercise due diligence to remove such inability with reasonable dispatch. Nothing contained in this Agreement shall be construed as requiring a Party to settle any strike, lockout, or labor dispute in which it may be involved, or to accept any permit, certificate, contract, or any other service agreement or authorization necessary for the performance of this Agreement or any Confirmations issued pursuant to this Agreement which contains terms and conditions which a Party determines in its good faith judgment are unduly burdensome or otherwise unacceptable.

13.2 Each Party shall notify the others promptly, by telephone to the other Parties' operating personnel as applicable and to the parties' Designated Representatives upon becoming aware of any Uncontrollable Force which may adversely affect the performance under this Agreement or any Confirmation entered into pursuant to this Agreement. A Party shall additionally provide written notice to any affected Parties within 24 hours after providing. Each Party shall notify the others promptly, when an Uncontrollable Force has been remedied or no longer exists.

### **Section 14. Dispute Resolution.**

14.1 Informal Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Signatory Members and NCPA agree to resolve the dispute in accordance with the following:

14.1.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute;

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

14.1.3 If the issue remains unresolved after thirty (30) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue arbitration pursuant to Section 14.2.

14.2 Arbitration. In the event that a dispute is unresolved following the informal dispute resolution process established in Section 14.1, either Party may, within sixty (60) days of the termination of such informal dispute resolution process, initiate binding arbitration to resolve such dispute. Disputes shall be arbitrated pursuant to the Commercial Arbitration and Mediation Rules of the American Arbitration Association. The costs of arbitration shall be equally shared by the Parties, and the Parties shall bear their own attorneys' fees. The arbitrator shall have no authority to amend this Agreement or any Confirmation.

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

## **Section 15. Miscellaneous**

15.1 Compliance with Applicable Laws. NCPA and any subcontractors shall comply with all laws applicable to the performance or provision of the Support Services hereunder.

15.2 Other Governmental Regulations. To the extent that this Agreement or any Confirmation entered into pursuant to this Agreement may be funded by fiscal assistance from another governmental entity, NCPA and any subcontractors shall comply with all applicable rules and regulations to which Participating Members are bound by the terms of such fiscal assistance program.

15.3 Licenses and Permits. NCPA represents and warrants to Participating Members that NCPA and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. NCPA represents and warrants to Participating Members that NCPA and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

15.4 Independent Contractor. At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of any Participating Member. A Participating Member shall not have the right to control the means by which NCPA accomplishes Support Services rendered pursuant to this Agreement and the Confirmations entered into pursuant to 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 Support Services under this Agreement and the Confirmations entered into pursuant to 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 any Participating Member, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of a Participating Member and entitlement to any contribution to be paid by a Participating Member for employer contributions and/or employee contributions for PERS benefits.



15.5 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement (including all Confirmations entered into pursuant to this Agreement), to the extent possible, consistent with applicable laws, including the California Public Records Act. It shall be the responsibility of the holder of the claim of confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.

15.6 Liabilities of Signatory Members.

15.6.1 No Signatory Member shall be liable under this Agreement for the obligations of any Confirmation as to which it is not a Participating Member. Notwithstanding the foregoing, the Parties acknowledge that any debts or obligations entered into by NCPA pursuant to this Agreement not connected with any Confirmation shall be jointly and severally borne by them as Signatory Members, and not by non-Signatory Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

15.6.2 Each Participating Member shall be solely responsible and liable for performance of its own obligations under this Agreement as to those Confirmations under which it has chosen to receive Member Services. The obligation of each Participating Member under a given Confirmation is a several obligation and not a joint obligation with those other Participating Members with respect to a given Confirmation, subject to the authority of NCPA pursuant to section 7 to utilize Security Account funds if necessary for a given Confirmation regardless of the Participating Member which provided such Security Account funds.

15.7 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPATING OR SIGNATORY OR OTHER MEMBER 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 ARISING FROM THIS AGREEMENT OR ANY CONFIRMATION ENTERED INTO PURSUANT TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH SIGNATORY MEMBER EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF NCPA AND ITS MEMBERS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this section of this Agreement shall be fully enforceable despite its reference to future or unknown claims and its application to future and unknown Confirmations.

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

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

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

15.11 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.

15.12 Notices. Any notice, demand or request required or authorized by this Agreement or any Confirmation entered into pursuant to this Agreement, to be given to any Party shall be in writing. They shall either be personally delivered to a Signatory Member's Designated Representatives and to the Secretary of the Commission or transmitted to the Signatory Member's Designated Representatives and to the Secretary of the Commission at the addresses shown on the signature pages hereof by U.S. mail, first class postage prepaid. The designation of such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Participant. Notices shall be deemed received upon delivery or three (3) days after mailing.

15.13 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 as to that Party.

15.14 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without

impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

15.15 No Assignment. Except as otherwise provided in a particular Confirmation, no Signatory Member may assign or otherwise transfer any other rights and obligations under this Agreement without the express written consent of NCPA.

15.16 Venue. In the event that a Party brings any action under this Agreement or any Confirmation issued pursuant to 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.

15.17 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 or any Confirmation issued pursuant to this Agreement, the Parties shall bear their own attorneys' fees.

15.18 Interpretation. Each Party to this Agreement is sophisticated in the operation of electric utilities, and operates a publicly owned Electric System. Each Party to this Agreement was represented by counsel during the negotiation of this Agreement. Hence, this Agreement and all Confirmations issued pursuant to this Agreement shall be interpreted as being equally drafted by all Parties and without reference to Civil Code Section 1654 requiring interpretation against Parties causing an ambiguity.

15.19 No Third Party Beneficiaries. Except as otherwise provided in a particular Confirmation to the contrary, nothing contained in this Agreement or any Confirmation issued pursuant to this Agreement is intended by the Parties, nor shall any provision of this Agreement or any Confirmation issued pursuant to this Agreement be deemed or construed by the Parties or by any third person, to be for the benefit of any third party, nor shall any third party have any right to enforce any provision of this Agreement or any Confirmation issued pursuant to this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement or any Confirmation issued pursuant to this Agreement.

15.20 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement or any Confirmation does not constitute a waiver of any other breach of that term or any other term of this Agreement or Confirmation.

15.21 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.

15.22 Conflict of Interest. NCPA shall not employ any Participating Member official or employee to perform Support Services for that Participating Member. No officer or employee of Participating Member shall have any financial interest in this Agreement or any Confirmation entered into pursuant to this Agreement that would violate California Government Code Sections 1090 *et seq.*

15.23 List of Exhibits. The Exhibits referenced herein are incorporated by this reference. They shall be denoted as follows:

Exhibit "A": Form of Signatory Member execution page including designation of Designated Representatives and purchasing amount limitations.

Exhibit "B": Form of Confirmation.

IN WITNESS WHEREOF, each Signatory Member has executed this Agreement with the approval of its Governing Body, and NCPA has authorized execution of this Agreement by its General Manager in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA POWER AGENCY

By: \_\_\_\_\_  
Randy S. Howard, General Manager

Attest:

\_\_\_\_\_  
Cary Padgett, Assistant Secretary to the Commission

Approved as to Form:

By: \_\_\_\_\_  
Michael F. Dean, General Counsel

EXHIBIT "A"

**NORTHERN CALIFORNIA POWER AGENCY  
SUPPORT SERVICES PROGRAM AGREEMENT  
Signatory Member Execution Page**

The Support Services Program Agreement is hereby approved, executed and joined by the following NCPA Member as a Signatory Member:

\_\_\_\_\_ [Name of NCPA Member Agency]

1. The initial Designated Representatives of the Signatory Member who are jointly authorized to execute Confirmations on behalf of the Signatory Member are:

\_\_\_\_\_  
Utility Director

\_\_\_\_\_  
General Counsel or City Attorney

2. The Designated Representatives are authorized to jointly execute any given individual Confirmation for Support Services on behalf of the Signatory Member which does not exceed \$ \_\_\_\_\_.

The NCPA Support Services Program Agreement was approved on \_\_\_\_\_, 20\_\_\_\_ by resolution no. \_\_\_\_\_ of the \_\_\_\_\_ [Name of Governing Body of Signatory Member, e.g., "city council" or "board of directors"].

By: \_\_\_\_\_ [Signature of person executing]

Its: \_\_\_\_\_ [Title of person executing]

Attest:

\_\_\_\_\_ [Signature of Person Attesting to Approval]

Its: \_\_\_\_\_ [Title of Person Attesting]

Approved as to Form:

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "B"

**NCPA Services Program Agreement Form of Confirmation:  
CONFIRMATION UNDER THE NCPA SUPPORT SERVICES PROGRAM  
AGREEMENT**

1. This is a Confirmation pursuant to the Support Services Program Agreement and subject to the terms and conditions of that agreement, except as expressly provided in this Confirmation. All capitalized terms have the meaning given to them in the Support Services Program Agreement.

2. The Participating Members for this Confirmation are:

3. NCPA agrees to provide the following Support Services to the Participating Members:

The Support Services will be contracted for by NCPA with \_\_\_\_\_ using an agreement in substantially the form attached to this Confirmation.

4. The Participating Members executing this Confirmation agree to pay for the Support Services in the not to exceed amounts specified in this Confirmation and in accordance with the provisions of the Support Services Program Agreement:

5. A Security Account deposit [ is not required for this Confirmation/is required for this Confirmation in the amount of \$ \_\_\_\_\_ ]

Participating Member \_\_\_\_\_ NORTHERN CALIFORNIA POWER AGENCY

By: \_\_\_\_\_

By its Designated Representatives:

\_\_\_\_\_

Randy S. Howard, General Manager

and

\_\_\_\_\_

Attest:

\_\_\_\_\_  
Cary Padgett,  
Assistant Secretary to the Commission

Approved as to Form:

By: \_\_\_\_\_

General Counsel

2507645.12



651 Commerce Drive  
Roseville, CA 95678

phone (916) 781-3636  
fax (916) 783-7693  
web www.ncpa.com

# Commission Staff Report

AGENDA ITEM NO. 21

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** Proposed New Member Policy and Guidelines for Obtaining Membership

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## Background

A Working Group was created at the request of the Executive Committee, to review and create a New Member Policy and Guidelines for Obtaining Membership. Commissioner Gary Plass (Healdsburg) was asked to Chair the Working Group, which consisted of members of the Commission, Utility Directors and NCPA Staff: Commissioner Gary Plass (Healdsburg), Commissioner Mark Chandler (Lodi), Michelle Bertolino (Roseville), Valerie Fong (Palo Alto), and John Roukema (Santa Clara).

The Working Group met over the past few months in person and via teleconference calls, to review the current policy and several historical drafts that had been created, but not acted upon. The Working Group completed its review and drafted a new policy that has been circulated for further review by the Legal Committee, Facilities Committee and Utility Directors.

Key policy recommendations emerging from the Working Group and committee reviews include:

- No "buy-in" fee is recommended
- A non-refundable \$10,000 fee is charged to process an applicant
- No minimum revenue requirement is recommended
- A comprehensive application and supporting documents must be submitted
- Minimum evaluation/screening criteria have been established
- Provision for prospective members to participate in NCPA meeting activities after being approved for membership, and waiting for individual Member approvals
- Provision for prospective members to participate in NCPA conferences at cost

## Issue

The New Member Policy as forwarded for review by the Working Group and with proposed amendments through the Committee process is ready for Commission consideration and potential approval.

Fiscal Impact

The costs of evaluating entities for possible membership in NCPA will be covered with the proposed \$10,000 application fee. Provisions are provided for additional studies to evaluate membership in projects or programs and the applicant is responsible for all costs associated with such studies.

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.

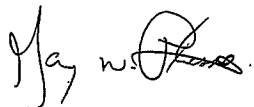
Committee Review

Comments and suggestions from the Legal Committee, Facilities Committee and Utility Directors have been incorporated into the attached new policy.

Recommendation

It is recommended that the Commission consider and adopt the attached Resolution 16-16 approving the Proposed New Member Policy and Guidelines for Obtaining Membership.

Respectfully submitted,



GARY W. PLASS  
Working Group Chair

Prepared by;



RANDY W. HOWARD  
General Manager

Attachments (2)

- Resolution 16-16
- Proposed New Member Policy and Guidelines for Obtaining Membership



RESOLUTION 16-16

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPENDIX D PROPOSED NEW MEMBER POLICY AND GUIDELINES  
FOR OBTAINING MEMBERSHIP

(reference Staff Report #122:16)

WHEREAS, a Working Group was created at the request of the Executive Committee, to review and create a New Member Policy and Guidelines for Obtaining Membership. Commissioner Gary Plass (Healdsburg) was asked to Chair the Working Group, which consisted of members of the Commission, Utility Directors and NCPA Staff: Commissioner Gary Plass (Healdsburg), Commissioner Mark Chandler (Lodi), Michelle Bertolino (Roseville), Valerie Fong (Palo Alto), and John Roukema (Santa Clara); and

WHEREAS, the Working Group met over the past few months in person and via teleconference calls, to review the current policy and several historical drafts that had been created, but not acted upon. The Working Group completed its review and drafted a new policy that has been circulated for further review by the Legal Committee, Facilities Committee and Utility Directors; and

WHEREAS, the New Member Policy as forwarded for review by the Working Group and with proposed amendments through the Committee process is ready for Commission consideration and potential approval; and

WHEREAS, the costs of evaluating entities for possible membership in NCPA will be covered with the proposed \$10,000 application fee. Provisions are provided for additional studies to evaluate membership in projects or programs and the applicant is responsible for all costs associated with such studies; and

WHEREAS, comments and suggestions from the Legal Committee, Facilities Committee and Utility Directors have been incorporated into the new policy; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency consider and approve the Proposed New Member Policy and Guidelines for Obtaining Membership.

PASSED, ADOPTED and APPROVED this \_\_\_ day of \_\_\_\_\_, 2016 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  
VICE CHAIR

ATTEST: \_\_\_\_\_  
CARY A. PADGETT  
ASSISTANT SECRETARY

## **Proposed New Member Policy and Guidelines for Obtaining Membership**

### Policy Statement

The Northern California Power Agency (NCPA) will admit to its ranks, organizations whose inclusion within NCPA will further the goals and objectives of NCPA and its members.

### Policy Guidelines

To facilitate its Policy for Obtaining Membership, NCPA has developed and follows the general guidelines below:

**Identification of Potential New Members.** The General Manager and staff will seek organizations and consider unsolicited requests for membership with organizations that meet the goals of this policy. The General Manager will routinely report to the Commission regarding efforts to solicit new members and consideration of unsolicited requests for membership that have been received.

**Request for Application.** Once identified, a potential new member (Applicant) must submit a request for a membership application to NCPA's General Manager. This request must state:

- The Applicant's last three-year's gross annual electric energy load and demand as filed with the Federal Energy Regulatory Commission or other such acceptable information.
- Audited financial reports for the previous three-years
- Description of customer base using the NCPA Report Card Form
- Details of governance structure and internal staffing organization chart
- Description of other wholesale and retail services provided
- A description of the NCPA programs and/or services in which the Applicant desires to participate
  - Legislative and Regulatory Program
    - Public Benefits
  - Generation Services Program
    - Renewable Energy Project Development
  - Power Management Program
    - Pooling
    - Gas or Electric Procurement
    - Schedule Coordination
    - NCPA Power Purchase Project Participation
- A description of any deficiencies associated with full compliance with state or federal mandated programs and the organizations plan and timeline for bringing itself into full compliance
- Disclosure regarding any legal or environmental liabilities

**Screening.** The minimum screening phase ensures that the Applicant:

- Meets the requirements for NCPA membership established in the NCPA joint powers agreement
- If granted membership, will benefit the Agency and its members

**Minimum Screening Criteria.**

- Has goals that are consistent with those of NCPA and its members
  - *Support for local control and decision making*
  - *Support for operating and expanding wholesale and retail electrical services within boundaries determined by a locally elected or nominated governing authority*
  - *A desire to minimize wholesale electric costs in order to provide economic benefits to their retail customers*
  - *A desire to work cooperatively with other agency members to minimize costs and realize competitive advantages through economies of scale and gains through joint transaction(s) and financing(s)*
- Is a preference purchaser or potential preference purchaser of electric service from the Western Area Power Administration of the United States, which is a “public agency”, as such term is defined in Section 6500 of the Government Code of the State of California. Applicant
- Has financial strength, manages legal matters, and complies with legislative and regulatory matters.
  - Where NCPA identifies potential legislative and/or regulatory non-compliance issues not disclosed in the request for application process, NCPA will contact the Applicant to obtain plans and timelines for achieving compliance
- Is willing and able to contribute to the costs associated with its requested level of involvement in NCPA.
- Participates in the political proceedings or can bring political advantages to issues that impact NCPA and its members
- Has access to long-term resource supply that would benefit NCPA’s members
- May enter into a long-term transaction with NCPA’s members that would not occur without membership
- Will benefit the members by participating in NCPA programs
- Willing to pay program costs and support administrative and general expenses costs for members
- Will not negatively affect the role of existing NCPA members without offsetting benefits

The minimum screening criteria represent the minimum criteria that will be considered in the assessment of the applicant for membership. The applicant is not required to meet every requirement under the minimum screening criteria in order to be considered for membership.

Upon completion of the screening process, NCPA and the Applicant will review the results for accuracy and completeness. A summary of the screening results will be provided to the Applicant for information purposes and to the NCPA Commission for consideration and possible adoption.

**Program Participation Analysis.** If the Commission unanimously concludes that an Applicant meets all screening criteria, NCPA will commence an analysis to determine that participation in the programs requested by the Applicant produces no conflicts or additional un-reimbursed costs to NCPA members. An Applicant can expect that NCPA will conduct legal, financial and technical reviews of the Applicant's ability to fund its participation and otherwise meet its obligations in the programs requested. Conditional Applicant specific requirements for membership (studies, facilities, commitments) will be identified as part of this phase.

Upon completion of program participation analysis and any additional studies required as part of the analysis, NCPA and the Applicant will jointly review the results for accuracy and completeness. A summary of the analysis will be provided to the Applicant. The Commission will be asked to approve the applicant for membership and may use all or part of the participation analysis in deciding whether to approve an applicant for membership.

**Notification of Membership Fees and Rights.** If the Commission unanimously concludes that the program participation analysis supports acceptance of the Applicant's request for membership, the General Manager will provide to the Applicant an estimate of the Applicant's contribution to each program in its first year of membership. In addition, the General Manager will advise the Applicant on which standing committees and task forces appointed by the Commission the Applicant is eligible to sit. At a minimum, the Applicant will be required to appoint a representative and an alternate to actively participate on the NCPA Commission and vote on matters related to the programs in which the Applicant participates.

**Approval of Membership.** Formal approval requires:

- Amendment of the JPA by each members' governing body to include the Applicant
- Execution of the JPA by the Applicant's governing body

**Withdrawal of Application.** An Applicant may withdraw its application at any time by providing written notification to NCPA's General Manager. No refunds of the application fee will be made.

**Schedule.** It is expected that processing an application including approval by the Commission and Members' governing bodies will require six to twelve months. During the processing period, an Applicant will be allowed to participate in the L&R and Commission activities of the Agency without a voting ability. The Applicant shall pay in advance for any participation in special events or activities that require a separate member fee during the period of time the application is being processed for approvals.

**Amendment of Policy and Guidelines.** The Commission may amend this policy and associated guidelines without prior notification to the applicant.

MEMBERSHIP APPLICATION REQUEST  
WITH THE  
NORTHERN CALIFORNIA POWER AGENCY

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THIS APPLICATION REQUEST (APPLICATION), dated \_\_\_\_\_, to the Northern California Power Agency (NCPA), a joint powers agency under the laws of the State of California, with its principal office at 651 Commerce Drive, Roseville California 95678 by \_\_\_\_\_, a \_\_\_\_\_ with its principal office at \_\_\_\_\_ is made with respect to the following:

RECITALS

- A. The NCPA Joint Powers Agreement provides that any preference purchaser or potential preference purchaser of electric service from the Western Area Power Administration of the United States (herein referred to as Applicant) that desires to participate in NCPA may do so upon NCPA approval and by signature of the agreement and payment to NCPA of certain costs and charges as determined by the Commission to be appropriate.
- B. The Applicant desires to participate as a member in NCPA.
- C. NCPA and the Applicant intend in this APPLICATION to record that the Applicant has requested consideration for possible membership.

APPLICATION

1. *Application Fee.* Upon submission of this APPLICATION and payment of the \$10,000 application fee, NCPA will provide a receipt of the Applicant's payment of an application fee. The Applicant acknowledges that no refunds of this application fee will be made.
2. *Tasks and Studies.* If the Applicant requests, NCPA shall consider to perform or cause the performance of the tasks and studies described in Attachment A to this Agreement.
3. *Payments.* The Applicant shall pay NCPA in advance for the tasks and services requested of NCPA pursuant to Section 2. NCPA agrees to provide an invoice with estimates for such tasks and services. A true-up of costs at the end shall be completed between the Applicant and NCPA.

4. *Cooperation.* The parties agree to cooperate with each other in exchange of information. The Applicant agrees to allow NCPA employees and its consultants and contractors reasonable access to the information in its possession which NCPA determines may be relevant to the successful completion of the tasks and services described in section 2 above.

5. *Joint Review.* Upon the completion of tasks and studies described in Section 2 above, the Applicant and NCPA shall jointly review the results of each for completeness and acceptability. If the Applicant requests further service to complete any service or task, the parties shall agree upon the additional fees, costs or charges that the Applicant shall pay to NCPA and amend this Agreement to reflect these changes. If the Applicant does not request further service after NCPA gives 30 days notice of completion, the parties hereby agree that the service or task shall be deemed complete and acceptable to the Applicant.

6. *Nonresponsibility.* The Applicant acknowledges that the services and tasks to be provided pursuant to this APPLICATION involve forecasts, discretion, judgment, and opinion and that NCPA shall not be responsible to the Applicant for the accuracy of the completed tasks and services. The Applicant hereby agrees to save, defend, indemnify and hold NCPA, its officers, employees, agents and consultants harmless from any loss or damage suffered by the Applicant arising out of this APPLICATION. The Applicant's use of or reliance on any of the services or tasks provided pursuant to this Agreement shall be at the Applicant's sole risk.

7. *No Obligation.* By submitting this APPLICATION, the Applicant gains no right to join NCPA and NCPA and its members undertake no obligation to permit the Applicant to join NCPA.

8. *Early Termination.* Either party may terminate the review of this APPLICATION upon written notification.

9. *Data Submittal.* The Applicant shall submit the following information with this APPLICATION:

- The Applicant's last three-year's gross annual electric energy load and demand as filed with the Federal Energy Regulatory Commission or other such acceptable information.
- Audited financial reports for the previous three-years
- Description of customer base using the NCPA Report Card Form
- Details of governance structure and internal staffing organization chart
- Description of other wholesale and retail services provided
- A description of the NCPA programs and/or services in which the Applicant desires to participate:
  - Legislative and Regulatory Program
    - Public Benefits
  - Generation Services Program
    - Project Development

- Operations and Maintenance
- Power Management Program
  - Pooling
  - Gas or Electric procurement
  - Schedule Coordination
  - NCPA Project participation
- A description of any deficiencies associated with full compliance with state or federal mandated programs and the organizations plan and timeline for bringing itself into full compliance

APPLICANT

NCPA

Submitted By: \_\_\_\_\_

Received By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_





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Roseville, CA 95678

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# Commission Staff Report

AGENDA ITEM NO. 22

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**Date:** February 25, 2016  
**To:** NCPA Commission  
**Subject:** CMUA Grid Regionalization Assessment (FY16 Pass-through: \$85,160)

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## Background

The currently proposed integration of PacifiCorp into the operations of the California Independent System Operator (CAISO), and the potentially subsequent incorporation of utilities from other states throughout the West, is one of the more significant developments in western markets and grid operations to be considered in California since the creation of the CAISO in the late 1990s. The significance of this proposal was heightened by the inclusion of language in last year's Senate Bill 350 to require the CAISO to prepare a proposed governance structure to facilitate a transition of the CAISO into a regional organization, and to join with the state's energy agencies to conduct a number of studies to assess whether regionalization and such governance changes will benefit California consumers.

Under the SB 350 timeline, the Governor will submit CAISO's proposed governance modifications and regionalization studies to the Legislature by December 31, 2017. The Legislature has until January 1, 2019 to enact a statute implementing the governance modification, otherwise the SB 350 regionalization process dissolves. The CAISO is planning to accelerate this timeline by submitting its proposed governance design and studies to the Governor's office this year.

While there is recognition that there may be differences among CMUA members regarding regionalization, there are some broadly shared areas of concern among most public power systems in this area, including:

- **Governance:** Currently, CAISO board members are appointed to three year terms by the Governor of California. However, to accommodate the needs of surrounding states, regionalization would necessitate changing the governance structure, including Board replacement or reformation, and modification to existing committees, structures, and processes. There have been a number of concerns expressed by the Legislature and other stakeholders, including NCPA, regarding whether regionalization offers a sufficient amount of benefits to California's consumers to warrant this trade-off of ceding our state's current jurisdiction over the CAISO.
- **Transmission Access Charge (TAC) Allocation:** High Transmission Access Charges (TAC) have been a long-time area of concern for several NCPA members, and regionalization adds further uncertainty about the direction and pace of future changes to the TAC charge. Regionalization will force policymakers to revisit cost allocation,

including reconsideration of the how the system-wide TAC charge is calculated, particularly with respect to how costs will be allocated between current CAISO customers and those in other states and balancing authorities. The primary concern in this regard is that the expansion of the CAISO will not provide relief from existing TAC charges, and even worse, could result in a shift of out of state transmission costs to California consumers who receive no inherent benefit.

- **Resource Adequacy.** CAISO has a formal resource adequacy process that includes “system, local, and flexible capacity obligations, annual and monthly showings of sufficiency, market incentives, penalties, must-offer requirements, and backstop procurement for the CAISO.” Other regions in the west do not necessarily do the same, raising questions about significant inconsistencies and inequities between the CAISO and other balancing authorities that join the CAISO.
- **Impacts on California’s Climate and Renewable Programs:** Policymakers are now evaluating whether regionalization will either promote our state’s ambitious climate and energy goals, or instead simply provide green benefits to other states at California’s expense. This will involve a close look at our state’s current AB 32 climate program as well as the Renewables Portfolio Standard (RPS) program administered by the California Energy Commission (CEC).

Given the significant scope and potentially enormous impact of the issues surrounding regionalization of the CAISO, the California Municipal Utilities Association (CMUA) Board of Directors on December 8, 2015 approved a special assessment on all CMUA electric utility members to fund analysis and representation for public power systems as formal consideration of regionalization by the CAISO and the state’s energy agencies proceeds. The Law Firm of Braun and Blaising will be providing these services above and beyond the standard set of regulatory services it now provides to CMUA.

This CMUA assessment will apply to ten NCPA members who are members of CMUA including Alameda, Gridley, Healdsburg, Lodi, Palo Alto, Redding, Roseville, Silicon Valley Power, Truckee Donner PUD, and Ukiah. Excluded from the assessment are: BART, Biggs, Lompoc, Plumas-Sierra REC, and the Port of Oakland.

As is currently the case with other organizational dues at NCPA, with Commission approval these costs can be paid by NCPA members as a pass-through under the NCPA Legislative and Regulatory Affairs budget. To ensure the affected NCPA members have that option, NCPA staff requests that the NCPA Commission authorize \$85,160 as a pass-through line item in the current FY16 NCPA budget. Because the pass-through is provided on behalf of CMUA, each NCPA member will need to separately authorize that this payment be made before NCPA will disburse the dollars on behalf of that member.

### **Fiscal Impact**

The total cost of the project is \$85,160 – equal to the pro rata share of \$400,000 applicable to the ten NCPA members covered in this agreement. As noted above, the amount was approved by the CMUA Board of Directors on December 8, 2016, and will cover legal and technical services provided by Braun and Blaising.

This project was not included in the current fiscal year budget, and will be assessed as a direct pass-through, based on the dollars shown below in Table 1.

Alameda	\$6,200
Gridley	920
Healdsburg	1,720
Lodi	7,520
Palo Alto	12,760
Redding	13,880
Roseville	14,000
Silicon Valley Power	22,000
Truckee Donner PUD	3,600
Ukiah	2,560
<b>Total</b>	<b>\$85,160</b>

### **Environmental Analysis**

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

### **Recommendation**

That the NCPA Commission approve Resolution 16-17 authorizing the request to enable NCPA members to pay the CMUA CAISO regionalization assessment as a pass-through item in the current NCPA FY16 budget, as shown in Table 1 above.

Respectfully submitted,



RANDY S. HOWARD  
General Manager

Prepared by:



JANE CIRRINCIONE  
Assistant General Manager  
Legislative and Regulatory Affairs

Attachments (1)

- Resolution 16-17

**RESOLUTION 16-17**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING CMUA GRID REGIONALIZATION ASSESSMENT  
(FY16 PASS-THROUGH: \$85,160)**

**(reference Staff Report #123:16)**

WHEREAS, the California Independent System Operator and the state's energy agencies are developing a proposal to change the governance of the CAISO to accommodate regional expansion, and studying the effects of such expansion on California's energy consumers; and

WHEREAS, there are concerns that public power has highlighted regarding regionalization of the CAISO, including but not limited to whether a change in CAISO governance is currently warranted, the potential for an increase in already high Transmission Access Charges for California consumers, how existing resource adequacy requirements will be applied to new entrants, and implications of this expansion on the implementation of AB 32 cap and trade programs as well and Renewables Portfolio Standard requirements and the need to assure "green" benefits are not provided to other states at California's expense; and

WHEREAS, the current timeframe for the CAISO and energy agency review is not sufficient to provide a thorough analysis of the full impacts of regionalization on California's consumers; and

WHEREAS, the California Municipal Utilities Association's (CMUA's) Board of Directors has established a special assessment to be paid by all members to provide legal representation and technical analysis throughout the CAISO deliberations related to regional expansion; and

WHEREAS, the CMUA assessment will apply to ten NCPA members who are members of CMUA including Alameda, Gridley, Healdsburg, Lodi, Palo Alto, Redding, Roseville, Silicon Valley Power, Truckee Donner PUD, and Ukiah; and

WHEREAS, as is the case with dues payments for other similar organizations, with Commission approval these CMUA costs can be paid by NCPA members as a pass-through under the NCPA Legislative and Regulatory Affairs 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; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the creation of a new pass-through line item in the current FY 2016 NCPA Legislative and Regulatory Affairs Budget in the amount of \$85,160 for purposes of payments into the CMUA CAISO Regionalization Special Assessment Fund by affected NCPA members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2016, 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  
 VICE CHAIR

ATTEST:

\_\_\_\_\_  
 CARY A. PADGETT  
 ASSISTANT SECRETARY