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Minutes

Date: October 24, 2019
To: NCPA Commission
From: Cary A. Padgett, Assistant Secretary to the Commission
Subject: NCPA Commission Meeting / Teleconference

1. Call Meeting to Order and Introductions

Chair Roger Frith called the meeting to order at 9:35 am at NCPA, 651 Commerce Drive, Roseville, California. A quorum was present. Introductions were made. Those in attendance and attending via teleconference are shown on the attached attendance list.

2. Approve Minutes of the September 27, 2019, Regular Commission Meeting

Motion: A motion was made by Jerry Serventi and seconded by John Allard to approve the Minutes of the September 27, 2019, Regular Commission Meeting. The motion carried by a majority on a roll call vote of those members present. *San Francisco BART, Healdsburg, Palo Alto, and Truckee Donner were absent.*

PUBLIC FORUM

No comments from the public addressed the Commission.

REPORTS AND COMMITTEE UPDATES

3. General Manager's Business Progress Report and Update

- Assistant General Manager Joel Ledesma provided an update and a brief presentation on the Kincade Fire that impacted NCPA's Geothermal facilities.
- Gave an update on NCPA's Support and Shared Services Agreements and provided a copy of the monthly status report.
- Hometown Connections Inc., Board Meeting Update: The Board met on October 8, in Healdsburg, California and approved the new membership of Great Lakes Utilities – a press release is being sent out this week.

4. Executive Committee

Committee Chair Frith reported the Committee met once since the last Commission meeting. The Committee heard reports from the General Manager and General Counsel and received an overview of the roles and responsibilities of the Executive Committee. The Committee also met in closed session. No reportable action was taken.

5. Facilities Committee

Assistant General Manager Tony Zimmer reported the Committee met once since the last Commission meeting. The Committee met and discussed items 14-23 on today's agenda. A quorum of the Committee was not established, but the Committee did recommend Commission approval of all items. Item 24 on today's agenda was discussed at the September 4 meeting. A quorum of the Committee was established at that meeting and recommended Commission approval.

6. Finance Committee

Assistant General Manager/CFO Monty Hanks reported the Committee met once since the last Commission meeting. The Committee reviewed and recommend for Commission acceptance NCPA's FY19 Annual Financial Statements and Associated Audit Report and Letter. Baker Tilly, the Agency's auditor, reported the financial statements received an Unmodified or 'clean' opinion meaning there were no material weaknesses or significant deficiencies in controls. In addition, there were no audit findings or concerns. This is item 12 on today's consent calendar. The Committee also directed staff to extend Baker Tilly's contract for another three-year term. Staff will bring the amended agreement for review at the next Finance Committee meeting, which is scheduled on November 12th.

7. Legal Committee

General Counsel Jane Luckhardt reported that the Committee met once since the last Commission meeting and discussed the Clean Fuel Reward Program Governance agreement language. The Committee also met in closed session. No reportable action was taken.

8. Legislative & Regulatory Affairs Committee

Commission Vice Chair Teresa O'Neill provided a report on behalf of the Committee Chair Mark Chandler. NCPA's Strategic Issues Conference is scheduled on January 14-16, 2020, at the Kimpton Sawyer Hotel in Sacramento. Online registration will be available November 1. Following the Commission meeting on January 16, NCPA will hold its bi-annual AB 1234 Ethics training for FPPC Form 700 filers. State regulators will be holding a workshop in Redding, as part of the SB 100 implementation, which will lead to the development of a report regarding the state's progress to meet its decarbonization goals. The next Committee meeting is scheduled on December 4.

9. Members' Announcements & Meeting Reporting

Commissioners and staff discussed the recent Pacific Gas and Electric Company's public safety power shutoff (PSPS) and how it impacted each of their communities.

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.

Staff pulled item 13 from the Consent Calendar for discussion.

Motion: A motion was made by John Allard and seconded by Teresa O'Neill to approve the Consent Calendar consisting of Items 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25. The motion carried by a majority of those members present on a roll call vote with the abstentions noted below for each item. *San Francisco BART, Healdsburg, Palo Alto, and Truckee Donner were absent.*

Port of Oakland abstained from all consent items.

- 10. NCPA's Financials for the Month Ended September 30, 2019** – approval by all members.
- 11. Treasurer's Report for the Month Ended September 30, 2019** – accept by all members.
- 12. Acceptance of the Annual Financial Statement and Associated Audit Report and Letter for the Year Ended June 30, 2019 and 2018** – accept and file by all members.
- 13. Pulled from Consent and moved to Discussion.**
- 14. Resolution 19-73, Utilicast, LLC – First Amendment to the Five Year Multi-Task Consulting Services Agreement; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), or SCPPA Members** – adopt resolution by all members authorizing General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement with Utilicast, LLC, with any non-substantial changes as recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$200,000 to \$1,000,000, for continued use at any facilities owned and/or operated by NCPA, NCPA Members, SCPPA, or by SCPPA Members.
Fiscal Impact: Upon execution, the total cost of the Agreement remains not to exceed \$1,000,000 over five years, to be used out of NCPA approved annual operating budgets as services are rendered.
- 15. Resolution 19-74, Thatcher Company of California, Inc. – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for Chemical Purchases; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities** – adopt resolution by all members authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Thatcher Company of California, Inc., for chemical purchases, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for use at all facilities owned and/or operated by the NCPA.
Fiscal Impact: Upon execution, the total cost of the agreement is not to exceed \$2,500,000

over five years, to be used out of the NCPA approved annual operating budgets.
Redding and Shasta Lake abstained.

- 16. Resolution 19-75, ANZGT Field Services, LLC – Five Year Multi-Task General Services Agreement for Gas Turbine Maintenance Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members** – adopt resolution by all members authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with ANZGT Field Services, LLC for gas turbine related maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, or by SCPPA Members.

Fiscal Impact: Upon execution, the total cost of the agreement is not to exceed \$2,500,000 over five years, to be used out of the NCPA approved annual operating budgets.

- 17. Resolution 19-76, Environex, Inc. – Five Year Multi-Task Professional Services Agreement for Catalyst Related Testing Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members** – adopt resolution by all members authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Environex, Inc., for catalyst related testing services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, or by SCPPA Members.

Fiscal Impact: Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years, to be used out of the NCPA approved annual operating budgets.

- 18. Resolution 19-77, Hill Brothers Chemical Company – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for Chemical Purchases; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities** – adopt resolution by all members authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Hill Brothers Chemical Company for chemical purchases, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for use at all facilities owned and/or operated by NCPA.

Fiscal Impact: Upon execution, the total cost of the agreement is not to exceed \$2,500,000 over five years, to be used out of the NCPA approved annual operating budgets.

Redding and Shasta Lake abstained.

- 19. Resolution 19-78, Team Industrial Services, Inc. – Five Year Multi-Task General Services Agreement for specialty mechanical, inspection, and maintenance services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members** – adopt resolution by all members authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Team Industrial Services, Inc., for specialty mechanical, inspection, and maintenance related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

Fiscal Impact: Upon execution, the total cost of the agreement is not-to-exceed \$500,000 to be used out of the NCPA approved annual operating budgets.

DRAFT

- 20. Resolution 19-79, Matheson Tri-Gas, Inc. – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for Continuous Emissions Monitoring Systems Environmental Protection Agency (CEMS EPA) gas purchases; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities –** adopt resolution by all members authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc., for CEMS EPA gas purchases, with any non-substantial changes as recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA.
Fiscal Impact: Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years, to be used out of the NCPA approved budget.
Redding and Shasta Lake abstained.
- 21. Resolution 19-80, Cooperative Response Center Associate Membership Agreement for utility customer service representative support services; Applicable to the following projects: all Northern California Power Agency (NCPA) Members and Southern California Public Power Authority (SCPPA) Members –** adopt resolution by all members authorizing the General Manager or his designee to enter into an Associate Membership Agreement with Cooperative Response Center, Inc. (CRC) for utility customer service representative support services, with any non-substantial changes recommended and approved by the NCPA General Counsel. NCPA Members and SCPPA Members can subscribe to these services through NCPA's Associate Membership, via the NCPA Support Services Program. For use by NCPA Members and SCPPA Members.
Fiscal Impact: This agreement does not carry a not to exceed amount.
- 22. Resolution 19-81, CT1 Alameda Unit 2 Generator Major Overhaul Project; Applicable to the following projects: CT1 Alameda Facility –** adopt resolution by all members authorizing the CT1 Alameda Unit 2 Generator Major Overhaul Project using Electrical Maintenance Consultants (EMC) and authorizing the General Manager or his designee to enter into agreements and to issue purchase orders to complete this work without further approval by the Commission, with a total cost not to exceed \$440,000.
Fiscal Impact: Total cost of the work is estimated not to exceed \$440,000. This project is included in the current fiscal year budget for \$400,000 under the maintenance reserve account. An additional \$40,000 will come out of the fixed maintenance accounts. Cost allocation will be based on project participation percentages.
Redding and Shasta Lake abstained.
- 23. Resolution 19-82, Utility Services, Inc. – Multi Task Professional Services Agreement for NERC regulatory compliance services, with a not to exceed amount of \$1,000,000; Applicable to the following projects: All NCPA Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members –** adopt resolution by all members authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Utility Services, Inc., for North American Electric Reliability Corporation (NERC) regulatory compliance services, with any non-substantial changes recommended and approved by the Northern California Power Agency (NCPA) General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, its Members, the Southern California Public Power Authority (SCPPA), or by SCPPA Members.
Fiscal Impact: Upon execution, the total cost of the agreement is \$1,000,000 over five years, to be used out of the NCPA approved budget.

24. Resolution 19-83, Approval of CY 2020 Northern California Power Agency (NCPA) Capacity Pool Rates – adopt resolution by all members approve and adopt the Local Area, System and Flexible Resource Adequacy capacity rates proposed herein for use in the NCPA Capacity Pool, as further described in Pooling Schedule 4, during the 2020 Resource Adequacy compliance year.

Fiscal Impact: Work associated with developing the NCPA Capacity Pool Local Area, System and Flexible Resource Adequacy capacity rates was undertaken pursuant to approved Power Management budget categories, and costs associated with this effort are allocated in accordance with approved cost allocation methodologies as described in the NCPA annual budget.

Redding and Santa Clara abstained.

25. Resolution 19-84, Approval of Amendment to Pooling Schedule 4 of the Northern California Power Agency (NCPA) Capacity Pool – adopt resolution by all members approving the amended Pooling Schedule 4 attached hereto, to enable Pool members to transact Flexible Resource Adequacy Capacity attributes in the NCPA Capacity Pool, including any non-substantive modifications made to the amended Pooling Schedule 4 as approved by NCPA's General Counsel.

Fiscal Impact: Work associated with developing the amended Pooling Schedule 4 was undertaken pursuant to approved Power Management budget categories, and costs associated with this effort are allocated in accordance with approved cost allocation methodologies as described in the NCPA annual budget.

Redding and Santa Clara abstained.

DISCUSSION / ACTION ITEMS

13. Approve 2020 NCPA Committee Meeting Calendar – approval by all members.

General Manager Randy Howard noted that the Lodi Energy Center Project Participants Committee September meeting was rescheduled to September 14 as September 7 is the Labor Day Holiday. He also mentioned that key industry meetings and conferences are listed at the bottom of the calendar as a reference.

Motion: A motion was made by Teresa O'Neill, and seconded by Jerry Serventi to approve the 2020 NCPA Committee Meeting Calendar as presented. The motion carried by a majority on a roll call vote of those members present

San Francisco BART, Healdsburg, Palo Alto, and Truckee Donner were absent.

26. Overview of Budget Process and Approach – Request for Guidance of FY2020/21 Northern California Power Agency Operating Budget Directions – request of guidance and direct staff to prepare for the FY2020/21 NCPA Operation Budget in accordance with accepted directions.

Assistant General Manager/CFO Monty Hanks gave a presentation on the overview of the budget process and approach for FY2020-21 Operating Budget. The Commission discussed and agreed with staff's recommendation.

Motion: A motion was made by Teresa O'Neill and seconded by John Allard to approve the Overview of Budget directions as presented and direct staff to prepare for the FY2020/21 Operating Budget in accordance with the accepted directions. The motion carried by a majority on a voice vote of those members present.

San Francisco BART, Healdsburg, Palo Alto, and Truckee Donner were absent.

27. Resolution 19-66, Approve the Amended Employment Agreement by and between NCPA and Randy S. Howard – adopt resolution by all members approving the Amended Employment Agreement by and between the Northern California Power Agency and Randy S. Howard as its General Manager; and authorize the Chair of the Commission to execute the Amended Employment Agreement by and between the Northern California Power Agency and Randy S. Howard as its General Manager.

Fiscal Impact: There is no fiscal impact to the Executive Services Salaries and Benefits account, and the cost associated the General Manager's compensation change is covered within the current fiscal year budget.

Chair Frith reported that the Executive Committee met several times over the past few months and successfully negotiated an Amended Employment Agreement with Randy S. Howard establishing the terms and conditions to extend his appointment as General Manager of the Agency for a term of three years, effective the first pay period following the approval of the Amended Agreement. The negotiated annual salary, which will be paid the first pay period following the approval date of the Amended Agreement, is Four Hundred Thousand (\$400,000) dollars. Assistant General Manager Monty Hanks gave a presentation on the General Manager/CEO industry compensation study that was conducted earlier in the year, which assisted the Committee in negotiating the terms and salary in the Amended Employment Agreement. The Commission discussed and reviewed the recommended Amended Employment Agreement and agreed with the Committee's recommendation.

Motion: A motion was made by Teresa O'Neill and seconded by Mel Grandi to adopt resolution by all members the Amended Employment Agreement by and between the Northern California Power Agency and Randy S. Howard as its General Manager; and authorize the Chair of the Commission to execute the Amended Employment Agreement by and between the Northern California Power Agency and Randy S. Howard as its General Manager. Motion carried by majority on a roll call vote of those members present. *San Francisco BART, Healdsburg, Lompoc, Palo Alto, and Truckee Donner were absent.*

Non-essential Members and NCPA staff left the meeting for Closed Session Items 28, 29, 30 discussion.

In compliance with NCPA's Bylaws Section 4(d)(ii), all attendees, except the appointed Commissioner and essential NCPA staff, left the meeting for Closed Session item 31 discussion.

CLOSED SESSION

28. 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.

29. Conference with Legal Counsel – Existing litigation pursuant to Government Code Section 54956.9(d)(1): Name of case: *In Re PG&E Corporation and Pacific Gas and Electric Company, Debtors; United States Bankruptcy Court, Northern District of California*, Case Nos. 19-30088 (Lead Case) and 19-30089 DM.

30. Conference with Legal Counsel – Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: One case.

31. Conference with Labor Negotiators – a) Pursuant to Government Code section 54957.6: Agency representatives: NCPA Executive Committee Members and Assistant General Manager/CFO Monty Hanks: Public Employee: General Manager; and b) **Continue Prior Appointment of Public Employee** – Pursuant to Government Code Section 54957: Public Employee: General Manager.

RECONVENED TO OPEN SESSION

All meeting attendees rejoined the meeting.

REPORT FROM CLOSED SESSION

Closed Session Disclosure: General Counsel Jane Luckhardt stated there was no reportable action taken on Closed Session items 28-30. Took action to move item 31 to open session for discussion and approval.

INFORMATIONAL ITEMS

32. Overview of FY 2019 Annual Billing Settlements Review Process – update and staff presentation.

Assistant General Manager / CFO Monty Hanks gave a presentation on the FY 2019 Settlement Summary and Preliminary Results of generation resources, transmission, management services, pass-through, and third party revenues. Preliminary results of the net FY 2019 settlements is approximately \$5.33 million. Once the settlement discussions are vetted through the Committees and approved by the Commission, Members will have the option to put these funds in the General Operating Reserve (GORE) or refund included in total annual billing settlements. Non-members refunds will be in accordance with Agency payment terms.

NEW BUSINESS

No new business was discussed.

ADJOURNMENT

The October 24, 2019, Commission meeting was adjourned at 11:55 am.

Respectfully submitted,

ROGER FRITH
Commission Chair




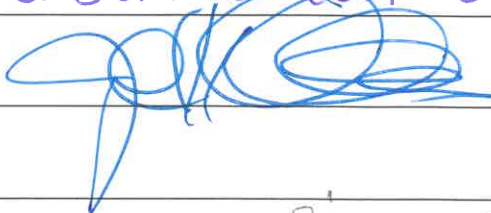



Prepared by,

CARY A. PADGETT
Assistant Secretary to the Commission

Attachments

**Northern California Power Agency
Commission Meeting of October 24, 2019
COMMISSIONER
Attendance List**

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

MEMBER	NAME
1 - ALAMEDA	
2 - BIGGS	
3 - GRIDLEY	Paul Eckert, teleconference
4 - HEALDSBURG	
5 - LODI	Jeff Berkeheimer, teleconference
6 - LOMPOC	Jenele Osborne, teleconference
7 - PALO ALTO	
8 - PORT OF OAKLAND	Jared Carpenter, teleconference
9 - PLUMAS-SIERRA REC	
10 - REDDING	Kristen Schroder, teleconference
11 - ROSEVILLE	
12 - SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT	
13 - SANTA CLARA	
14 - SHASTA LAKE	
15 - TRUCKEE DONNER	
16 - UKIAH	

**Northern California Power Agency
Commission Meeting October 24, 2019
Attendance List**

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

NAME	AFFILIATION
Michene Beaulieu	Roseville
Pauline Ruccia	Roseville
James Tatehara	Shasta Lake
Monty Hankes	NCPA
Tony Zimmer	NCPA
Jane Cimminione	NCPA
Joel Ledesma	NCPA
Jeff Berkhimer	Lodi
Mike Pross	PSREC
Randy Howard	NCPA
Retro Griffith	Biggs
James Luckhardt	NCPA
Kathy Nguyen (teleconference)	Part of Oakland
Vidhi Chawla (teleconference)	Alameda
May Baggett	NCPA

**Northern California Power Agency
ROLL CALL VOTE**

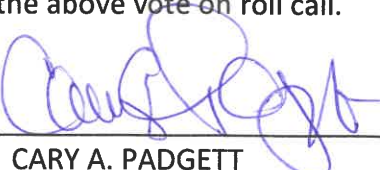
Topic: Minutes

	<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>X</u>	<u> </u>	<u> </u>
Healdsburg	<u> </u>	<u> </u>	<u>X</u>
Lodi	<u>Y</u>	<u> </u>	<u> </u>
Lompoc	<u> </u>	<u>X</u>	<u>X</u>
Palo Alto	<u> </u>	<u> </u>	<u>X</u>
Plumas-Sierra	<u>Y</u>	<u> </u>	<u> </u>
Port of Oakland	<u>X</u>	<u> </u>	<u> </u>
Redding	<u>X</u>	<u> </u>	<u> </u>
Roseville	<u>X</u>	<u> </u>	<u> </u>
Santa Clara	<u>Y</u>	<u> </u>	<u> </u>
Shasta Lake	<u>X</u>	<u> </u>	<u> </u>
Truckee Donner	<u> </u>	<u> </u>	<u>X</u>
Ukiah	<u>Y</u>	<u> </u>	<u> </u>

Passed and adopted this 24th day of October 2019, by the above vote on roll call.

ROGER FRITH
Commission Chair

ATTEST:



CARY A. PADGETT
Assistant Secretary

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: **October 24, 2019**

Consent Items Listed on the Agenda: # 10 to # 25

Consent Items Removed from the Agenda and Approved Separately:


13

ROLL-CALL VOTE BY MEMBERS:

John / Teresa

Member	Item Numbers Abstained	Vote	Absent
Alameda		Y	
BART			X
Biggs		Y	
Gridley		Y	X
Healdsburg			X
Lodi		Y	
Lompoc		Y	
Palo Alto			X
Port of Oakland	<i>abstained all Consent</i>		
Redding	<i>15, 18, 20, 22, 24, 25</i>	Y	
Roseville		Y	
Santa Clara	<i>24, 25</i>	Y	
Shasta Lake	<i>15, 18, 20, 22</i>	Y	
Truckee Donner			X
Ukiah		Y	
Plumas-Sierra		Y	

ATTEST:


Cary A. Padgett
Assistant Secretary to the Commission

**Northern California Power Agency
ROLL CALL VOTE**

Topic: #13

	<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>Y</u>	<u> </u>	<u> </u>
Healdsburg	<u> </u>	<u> </u>	<u>X</u>
Lodi	<u>Y</u>	<u> </u>	<u> </u>
Lompoc	<u>Y</u>	<u> </u>	<u> </u>
Palo Alto	<u> </u>	<u> </u>	<u>X</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>
Shasta Lake	<u>Y</u>	<u> </u>	<u> </u>
Truckee Donner	<u> </u>	<u> </u>	<u>X</u>
Ukiah	<u>Y</u>	<u> </u>	<u> </u>

Passed and adopted this 24th day of October 2019, by the above vote on roll call.

ROGER FRITH
Commission Chair

ATTEST:

CARY A. PADGETT
Assistant Secretary




Commission Staff Report

November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: October 31, 2019 Financial Report (Unaudited)

AGENDA CATEGORY: Consent

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

IMPACTED MEMBERS:

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

If other, please specify

RECOMMENDATION:

Approval by all members

NOTICE:

The disbursements of the Northern California Power Agency (NCPA) for the month reported herein, will be approved at the December 5, 2019 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 October 2019 financial reports are also included.

FISCAL IMPACT:

This report has no direct budget impact to the Agency.

ENVIRONMENTAL ANALYSIS:

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

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments: (1)

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

**Schedule of Disbursements
(Unaudited)**

For the Month of October 2019

Operations:

Geothermal	\$ 3,473,486
Hydroelectric	3,360,131
CT#1 Combustion Turbines	668,402
CT#2 STIG	592,832
Lodi Energy Center	4,171,072
NCPA Operating	<u>25,693,576</u>
Total	<u>\$ 37,959,499</u>

**NORTHERN CALIFORNIA POWER AGENCY
REPORT OF BUDGET VS. ACTUAL COST
FOR THE PERIOD ENDED OCTOBER 31, 2019**

PERCENT OF YEAR ELAPSED 33%

	This Month	Actual Year To-Date	FY 2020 Budget	% Used	
<u>GENERATION RESOURCES</u>					
<u>NCPA Plants</u>					
Hydroelectric					
Other Plant Cost	\$ 1,689,480	\$ 6,406,267	\$ 20,767,239	31%	
Debt Service (Net)	2,775,572	11,102,287	33,306,862	33%	
Annual Budget Cost	4,465,052	17,508,554	54,074,101	32%	
Geothermal					
Other Plant Cost	2,790,740	10,231,172	30,365,288	34%	
Debt Service (Net)	412,144	1,648,574	4,945,723	33%	
Annual Budget Cost	3,202,884	11,879,746	35,311,011	34%	
Combustion Turbine No. 1	834,168	2,134,430	6,169,530	35%	
Combustion Turbine No. 2 (Stig)					
Fuel and Pipeline Transport Charges	115,396	370,990	1,089,118	34%	
Other Plant Cost	185,732	803,420	2,552,870	31%	
Debt Service (Net)	483,035	1,932,140	5,796,421	33%	
Annual Budget Cost	784,163	3,106,550	9,438,409	33%	
Lodi Energy Center					
Fuel	4,200,170	10,376,524	39,513,147	26%	
Other Plant Cost	1,398,501	5,619,229	27,392,586	21%	
Debt Service (Net)	2,171,202	8,684,809	26,054,428	33%	
Annual Budget Cost	7,769,873	24,680,562	92,960,161	27%	
Member Resources - Energy	4,468,932	23,656,342	56,228,967	42%	(a)
Member Resources - Natural Gas	491,650	1,619,511	3,540,898	46%	(b)
Western Resources	1,523,665	7,991,017	23,325,119	34%	
Market Power Purchases	1,834,737	8,207,890	15,123,482	54%	(c)
Load Aggregation Costs - CAISO	60,353,053	186,917,468	256,029,593	73%	(d)
Net GHG Obligations	-	1,023,400	496,955	206%	(e)
	85,728,177	288,725,470	552,698,226	52%	
<u>TRANSMISSION</u>					
<u>Independent System Operator</u>					
Grid Management Charge	621,582	2,507,419	2,813,086	89%	(f)
Wheeling Access Charge	8,804,311	43,980,652	110,581,940	40%	(g)
Ancillary Services	69,873	3,182,252	2,372,540	134%	(h)
Other ISO Charges/(Credits)	(510,480)	12,619,715	1,321,289	955%	(i)
	8,985,286	62,290,038	117,088,855	53%	
<u>MANAGEMENT SERVICES</u>					
<u>Legislative & Regulatory</u>					
Legislative Representation	202,747	674,242	2,132,130	32%	
Regulatory Representation	69,810	207,228	748,387	28%	
Western Representation	45,525	189,590	745,117	25%	
Customer Programs	18,316	66,617	423,678	16%	
Judicial Action	2,282	78,636	625,000	13%	
<u>Power Management</u>					
System Control & Load Dispatch	421,622	2,024,396	6,082,417	33%	
Forecasting, Planning, Prescheduling & Trading	197,049	838,235	2,934,143	29%	
Industry Restructuring & Regulatory Affairs	29,146	115,298	414,479	28%	
Contract Admin, Interconnection Svcs & External Affairs	68,319	319,510	953,716	34%	
Gas Purchase Program	4,808	22,163	77,386	29%	
Market Purchase Project	7,460	30,824	111,270	28%	

Management Services continued on next page

**NORTHERN CALIFORNIA POWER AGENCY
REPORT OF BUDGET VS. ACTUAL COST
FOR THE PERIOD ENDED OCTOBER 31, 2019**

PERCENT OF YEAR ELAPSED
33%

	This Month	Actual Year To-Date	FY 2020 Budget	% Used
Energy Risk Management	11,287	54,383	211,744	26%
Settlements	65,672	261,496	979,916	27%
Integrated Systems Support	1,973	14,673	243,161	6%
Participant Pass Through Costs	79,108	227,793	1,560,447	15%
Support Services	388,014	522,170	-	N/A
	1,613,138	5,647,254	18,242,991	31%
TOTAL ANNUAL BUDGET COST	96,326,601	356,662,762	688,030,072	52%
<u>LESS: THIRD PARTY REVENUE</u>				
Plant ISO Energy Sales	10,718,520	33,715,058	127,623,712	26%
Member Resource ISO Energy Sales	2,030,049	9,867,852	29,156,411	34%
Member Owned Generation ISO Energy Sales	7,327,881	28,585,843	67,107,648	43% (j)
NCPA Contracts ISO Energy Sales	1,210,272	6,330,636	15,623,339	41% (j)
Western Resource Energy Sales	2,475,914	10,340,055	18,304,471	56% (k)
Load Aggregation Energy Sales	35,256,278	99,807,391	-	N/A
Ancillary Services Sales	340,847	3,200,429	4,196,879	76% (l)
Transmission Sales	9,198	36,792	110,376	33%
Western Credits, Interest and Other Income	6,332,543	33,181,689	19,227,470	173% (m)
	65,701,502	225,065,745	281,350,306	80%
NET ANNUAL BUDGET COST TO PARTICIPANTS	\$ 30,625,099	\$ 131,597,017	\$ 406,679,766	32%

- (a) Variance caused by greater than anticipated member contracts for Palo Alto and Port of Oakland.
- (b) Variance caused by greater than anticipated natural gas for Healdsburg, Lodi, Lompoc, and Ukiah.
- (c) Variance due to unbudgeted market purchases and NCPA contracts. Unbudgeted deals made after the FY20 budget including certain NextEra and Exelon deals.
- (d) Increase due to unbudgeted costs related to East Bay Community Energy and San Jose Community Energy.
- (e) Increase primarily due to greater than anticipated GHG allowances purchased at auction for City of Lodi, Gridley, Healdsburg, Biggs, and Ukiah.
- (f) Increase due to unbudgeted costs related to East Bay Community Energy and San Jose Community Energy.
- (g) Increase due to unbudgeted costs related to East Bay Community Energy and San Jose Community Energy.
- (h) Increase due to unbudgeted costs related to East Bay Community Energy and San Jose Community Energy.
- (i) Increase due to unbudgeted costs related to East Bay Community Energy and San Jose Community Energy.
- (j) Variance due to unbudgeted market purchase and NCPA contracts related revenues. Unbudgeted deals made after the FY20 budget including certain NextEra and Exelon deals.
- (k) Increase due to greater than anticipated MWhs due to the good hydro year. MWhs are 109% of budget at 10/31/19.
- (l) Increase due to greater than projected MWhs of generation.
- (m) Variance caused by unbudgeted revenue from customers and greater than anticipated member contract sales.

COMBINED STATEMENTS OF NET POSITION

NORTHERN CALIFORNIA POWER AGENCY AND ASSOCIATED POWER CORPORATIONS

UNAUDITED

	October 31,	
	2019	2018
	(in thousands)	
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	\$ 36,287	\$ 30,627
Investments	55,612	50,538
Accounts receivable		
Participants	2,699	156
Other	1,218	418
Interest receivable	430	416
Inventory and supplies	8,891	9,746
Prepaid expenses	772	51
TOTAL CURRENT ASSETS	105,909	91,952
RESTRICTED ASSETS		
Cash and cash equivalents	38,296	41,710
Investments	177,850	168,924
Interest receivable	790	786
TOTAL RESTRICTED ASSETS	216,936	211,420
ELECTRIC PLANT		
Electric plant in service	1,507,154	1,504,905
Less: accumulated depreciation	(1,014,408)	(983,785)
	492,746	521,120
Construction work-in-progress	182	182
TOTAL ELECTRIC PLANT	492,928	521,302
OTHER ASSETS		
Regulatory assets	222,883	229,212
Preliminary survey and investigation costs	642	149
Investment in associated company	265	265
TOTAL ASSETS	1,039,563	1,054,300
DEFERRED OUTFLOWS OF RESOURCES		
Excess cost on refunding of debt	29,845	38,717
Pension deferrals	17,055	19,200
Deferred Outflows - ARO	62,066	62,204
TOTAL DEFERRED OUTFLOWS OF RESOURCES	108,966	120,121
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	\$ 1,148,529	\$ 1,174,421

COMBINED STATEMENTS OF NET POSITION

NORTHERN CALIFORNIA POWER AGENCY AND ASSOCIATED POWER CORPORATIONS

UNAUDITED

	October 31,	
	2019	2018
	(in thousands)	
LIABILITIES		
CURRENT LIABILITIES		
Accounts payable and accrued expenses	\$ 48,210	\$ 20,753
Accounts and retentions payable - restricted for construction	10	50
Member advances	1,586	1,138
Operating reserves	19,464	21,472
Current portion of long-term debt	42,545	41,950
Accrued interest payable	10,927	11,185
TOTAL CURRENT LIABILITIES	122,742	96,548
NON-CURRENT LIABILITIES		
Net pension and OPEB liability	66,126	76,002
Operating reserves and other deposits	131,680	128,605
Interest rate swap liability	16,513	11,818
Asset Retirement Obligations	65,646	63,713
Long-term debt, net	616,480	663,975
TOTAL NON-CURRENT LIABILITIES	896,445	944,113
TOTAL LIABILITIES	1,019,187	1,040,661
DEFERRED INFLOWS OF RESOURCES		
Regulatory credits	83,627	86,168
Pension and OPEB deferrals	5,802	3,195
TOTAL DEFERRED INFLOWS OF RESOURCES	89,429	89,363
NET POSITION		
Net investment in capital assets	(38,482)	(44,858)
Restricted	40,309	46,440
Unrestricted	38,086	42,815
TOTAL NET POSITION	39,913	44,397
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION	\$ 1,148,529	\$ 1,174,421

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

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

UNAUDITED

	Four Months Ended October 31,	
	2019	2018
	(in thousands)	
OPERATING REVENUES		
Participants	\$ 132,743	\$ 128,693
Other Third-Party	84,095	112,921
TOTAL OPERATING REVENUES	216,838	241,614
OPERATING EXPENSES		
Purchased power	71,812	106,374
Operations	26,759	34,606
Transmission	79,292	59,234
Depreciation	10,340	10,319
Maintenance	8,145	7,584
Administrative and general	6,180	6,298
TOTAL OPERATING EXPENSES	202,528	224,415
NET OPERATING REVENUES	14,310	17,199
NON OPERATING (EXPENSES) REVENUES		
Interest expense	(13,761)	(13,242)
Interest income	754	4,996
Other	2,045	2,133
TOTAL NON OPERATING EXPENSES	(10,962)	(6,113)
FUTURE RECOVERABLE AMOUNTS	(816)	(1,921)
REFUNDS TO PARTICIPANTS	(995)	(2,836)
INCREASE (DECREASE) IN NET POSITION	1,537	6,329
NET POSITION, Beginning of year	38,376	38,068
NET POSITION, Period ended	\$ 39,913	\$ 44,397

OTHER FINANCIAL INFORMATION

COMBINING STATEMENT OF NET POSITION

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

October 31, 2019

	GENERATING & TRANSMISSION RESOURCES										Other Agency	Combined
	Geothermal	Hydroelectric	Multiple Capital Facilities	CT No. One	Lodi Energy Center	Transmission No. One	Purchased Power & Transmission	Associated Member Services				
ASSETS												
CURRENT ASSETS												
Cash and cash equivalents	\$ 1 \$	- \$	1 \$	1 \$	75 \$	- \$	- \$	98 \$	36,111 \$	55,612	36,287	55,612
Investments	-	-	-	-	-	-	-	-	-	-	-	-
Accounts receivable	-	-	-	-	-	-	-	-	-	-	-	-
Participants	5	-	-	-	-	-	-	-	2,699	428	2,699	2,699
Other	-	-	-	-	-	-	-	-	1,218	283	1,218	430
Interest receivable	-	-	-	-	-	-	-	-	-	-	-	-
Inventory and supplies	4,509	1,574	246	359	2,203	-	-	-	785	147	785	430
Prepaid expenses	62	104	7	11	68	-	-	-	-	-	-	8,891
Due from Agency and other programs*	8,517	9,728	2,494	2,055	24,730	-	-	33,969	516	-	-	772
TOTAL CURRENT ASSETS	13,094	11,406	2,748	2,426	27,076	-	-	34,901	(90,030)	5,619	105,909	-
RESTRICTED ASSETS												
Cash and cash equivalents	4,108	6,464	1,128	-	4,131	-	-	2,920	19,545	-	38,296	-
Investments	26,010	34,404	1,998	-	30,849	-	-	27,111	57,478	-	177,850	-
Interest receivable	115	116	11	-	138	-	-	-	410	-	790	-
TOTAL RESTRICTED ASSETS	30,233	40,984	3,137	-	35,118	-	-	30,031	77,433	-	216,936	-
ELECTRIC PLANT												
Electric plant in service	571,880	395,116	64,852	36,639	423,879	7,736	-	894	6,158	-	1,507,154	-
Less: accumulated depreciation	(540,693)	(274,833)	(51,305)	(34,737)	(101,043)	(7,736)	-	(541)	(3,520)	-	(1,014,408)	-
	31,187	120,283	13,547	1,902	322,836	-	-	353	2,638	-	492,746	-
Construction work-in-progress	-	-	-	-	182	-	-	-	-	-	182	-
TOTAL ELECTRIC PLANT	31,187	120,283	13,547	1,902	323,018	-	-	353	2,638	-	492,928	-
OTHER ASSETS												
Regulatory assets	(1,096)	133,070	8,106	-	25,089	-	-	-	57,714	-	222,883	-
Preliminary survey and investigation costs	-	-	-	-	-	-	-	642	-	-	642	-
Investment in associated company	-	-	-	-	-	-	-	-	265	-	265	-
TOTAL ASSETS	73,418	305,743	27,538	4,328	410,301	-	64,932	9,634	143,669	-	1,039,563	-
DEFERRED OUTFLOWS OF RESOURCES												
Excess cost on refunding of debt	1,251	26,134	743	-	1,717	-	-	-	-	-	29,845	-
Pension deferrals and OPEB deferrals	-	-	-	-	-	-	-	-	17,055	-	17,055	-
Asset Retirement Obligations	61,728	-	158	-	180	-	-	-	-	-	62,066	-
TOTAL DEFERRED OUTFLOWS OF RESOURCES	62,979	26,134	901	-	1,897	-	-	-	17,055	-	108,966	-
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	\$ 136,397 \$	\$ 331,877 \$	\$ 28,439 \$	\$ 4,328 \$	\$ 412,198 \$	\$ - \$	\$ 64,932 \$	\$ 9,634 \$	\$ 160,724 \$	\$ - \$	\$ 1,148,529	\$ - \$

* Eliminated in Combination

OTHER FINANCIAL INFORMATION

COMBINING STATEMENT OF NET POSITION

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

October 31, 2019

	GENERATING & TRANSMISSION RESOURCES									
	Geothermal	Hydroelectric	Multiple Capital Facilities	CT No. One	Lodi Energy Center	Transmission	Purchased Power & Transmission	Associated Member Services	Other Agency	Combined
LIABILITIES										
CURRENT LIABILITIES										
Accounts payable and accrued expenses	\$ 119	\$ 476	\$ -	\$ -	\$ 4,199	\$ -	\$ 37,547	\$ -	\$ 5,362	\$ 48,210
Accounts and retentions payable - restricted for construction	-	10	-	-	-	-	-	-	-	10
Member advances	791	-	-	-	-	-	-	795	-	1,586
Operating reserves	493	250	519	3,103	15,099	-	-	-	-	19,464
Current portion of long-term debt	5,290	20,725	4,490	-	12,040	-	-	-	-	42,545
Accrued interest payable	122	4,662	317	-	5,826	-	-	-	-	10,927
TOTAL CURRENT LIABILITIES	6,815	26,123	5,326	3,610	37,164	-	37,547	795	5,362	122,742
NON-CURRENT LIABILITIES										
Net pension and OPEB liability	-	-	-	-	-	-	-	-	66,126	66,126
Operating reserves and other deposits	1,546	16,483	-	-	1,159	-	33,000	2,061	77,431	131,680
Interest rate swap liability	-	16,513	-	-	-	-	-	-	-	16,513
Asset Retirement Obligations	65,308	-	158	-	180	-	-	-	-	65,646
Long-term debt, net	15,505	260,590	21,336	-	319,049	-	-	-	-	616,480
TOTAL NON-CURRENT LIABILITIES	82,359	293,586	21,494	-	320,388	-	33,000	2,061	143,557	896,445
TOTAL LIABILITIES	89,174	319,709	26,820	3,610	357,552	-	70,547	2,856	148,919	1,019,187
DEFERRED INFLOWS OF RESOURCES										
Regulatory credits	35,519	3,597	838	2,074	38,132	-	-	353	3,114	83,627
Pension and OPEB deferrals	-	-	-	-	-	-	-	-	5,802	5,802
TOTAL DEFERRED INFLOWS OF RESOURCES	35,519	3,597	838	2,074	38,132	-	-	353	8,916	89,429
NET POSITION										
Net investment in capital assets	(1,938)	(15,786)	(3,991)	-	(16,767)	-	-	-	-	(38,482)
Restricted	6,773	15,641	2,820	-	17,895	-	(2,823)	-	3	40,309
Unrestricted	6,869	8,716	1,952	(1,356)	15,386	-	(2,792)	6,425	2,886	38,086
TOTAL NET POSITION	11,704	8,571	781	(1,356)	16,514	-	(5,615)	6,425	2,886	39,913
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION	\$ 136,397	\$ 331,877	\$ 28,439	\$ 4,328	\$ 412,198	\$ -	\$ 64,932	\$ 9,634	\$ 160,724	\$ 1,148,529

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 Four Months Ended October 31, 2019

GENERATING & TRANSMISSION RESOURCES										
	Geothermal	Hydroelectric	Multiple Capital Facilities	CT No. One	Lodi Energy Center	Transmission	Purchased Power & Transmission	Associated Member Services	Other Agency	Combined
OPERATING REVENUES										
Participants	\$ 6,017	\$ 3,206	\$ 2,302	\$ 1,745	\$ 14,773	\$ -	\$ 96,953	\$ 7,606	\$ 141	\$ 132,743
Other Third-Party	8,410	9,151	499	569	18,359	-	46,256	851	-	84,095
TOTAL OPERATING REVENUES	14,427	12,357	2,801	2,314	33,132	-	143,209	8,457	141	216,838
OPERATING EXPENSES										
Purchased power	349	933	26	132	351	-	70,021	-	-	71,812
Operations	6,133	1,290	499	451	12,803	-	1,620	3,963	-	26,759
Transmission	106	256	2	12	258	-	78,656	2	-	79,292
Depreciation	1,367	3,136	738	67	4,873	-	-	39	120	10,340
Maintenance	2,609	2,713	353	1,133	1,312	-	-	25	-	8,145
Administrative and general	1,452	1,045	268	280	1,581	-	-	2,102	(548)	6,180
Intercompany (sales) purchases, net*	(334)	134	33	39	146	-	-	(18)	-	-
TOTAL OPERATING EXPENSES	11,682	9,507	1,919	2,114	21,324	-	150,297	6,113	(428)	202,528
NET OPERATING REVENUES	2,745	2,850	882	200	11,808	-	(7,088)	2,344	569	14,310
NON OPERATING (EXPENSES) REVENUES										
Interest expense	(207)	(8,354)	(438)	-	(4,762)	-	-	-	-	(13,761)
Interest income	95	94	18	3	369	-	247	34	(106)	754
Other	(1)	1	619	-	1,191	-	-	-	235	2,045
TOTAL NON OPERATING (EXPENSES) REVENUES	(113)	(8,259)	199	3	(3,202)	-	247	34	129	(10,962)
FUTURE RECOVERABLE AMOUNTS										
REFUNDS TO PARTICIPANTS	(748)	306	(781)	-	407	-	-	-	-	(816)
INCREASE (DECREASE) IN NET POSITION	(134)	(8)	58	194	-	-	68	(766)	(407)	(995)
NET POSITION, Beginning of year	1,750	(5,111)	358	397	9,013	-	(6,773)	1,612	291	1,537
	9,954	13,682	423	(1,753)	7,501	-	1,158	4,813	2,598	38,376
NET POSITION, Period ended	\$ 11,704	\$ 8,571	\$ 781	\$ (1,356)	\$ 16,514	\$ -	\$ (5,615)	\$ 6,425	\$ 2,889	\$ 39,913

* Eliminated in Combination

NORTHERN CALIFORNIA POWER AGENCY & ASSOCIATED POWER CORPORATIONS
AGED ACCOUNTS RECEIVABLE
October 31, 2019

<u>Status</u>	<u>Participant / Customer</u>	<u>Description</u>	<u>Amount</u>
CURRENT			\$ 3,916,767
PAST DUE:			
1 - 30			
31 - 60			
61 - 90			
91 - 120			
Over 120 Days			
PARTICIPANT and OTHER RECEIVABLES (net)			<u>\$ 3,916,767</u>



11

Commission Staff Report

November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Treasurer's Report for Month Ended October 31, 2019

AGENDA CATEGORY: Consent

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

IMPACTED MEMBERS:

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

If other, please specify

RECOMMENDATION:

Approval by all members.

BACKGROUND:

In compliance with Northern California Power Agency (NCPA) 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 \$6,822,695 of which approximately \$3,622,724 was applicable to Special and Reserve Fund Deposits, \$3,957 to Debt Service and \$3,196,014 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 \$301,184,262 at month end. The current market value of the portfolio totaled \$303,117,705.

The overall portfolio had a combined weighted average interest rate of 2.240% with a bond equivalent yield (yield to maturity) of 2.271%. Investments with a maturity greater than one year totaled \$179,430,000. October maturities totaled \$31 million and monthly receipts totaled \$35 million. During the month \$31 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 decreased 29 basis points (from 1.88% to 1.59%) and rates on one year T-Bills decreased 22 basis points (from 1.79% to 1.57%).

To the best of my knowledge and belief, all securities held by NCPA as of October 31, 2019 are in compliance with NCPA's investment policy. There are adequate cash flow and investment maturities to meet next month's cash requirements.

FISCAL IMPACT:

This report has no direct budget impact to NCPA.

ENVIRONMENTAL ANALYSIS:

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

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachment

NORTHERN CALIFORNIA POWER AGENCY

TREASURER'S REPORT

OCTOBER 31, 2019

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INTEREST RATE/YIELD ANALYSIS	4
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DETAIL REPORT OF INVESTMENTS	APPENDIX

**Northern California Power Agency
Treasurer's Report
Cash & Investment Balance
October 31, 2019**

	CASH	INVESTMENTS	TOTAL	PERCENT
NCPA FUNDS				
Operating	\$ 1,819,685	\$ 118,806,338	\$ 120,626,023	39.16%
Special Deposits	1,343,413	-	1,343,413	0.45%
Construction	32,916	5,064,171	5,097,087	1.65%
Debt Service	3,957	27,801,073	27,805,030	9.03%
Special & Reserve	3,622,724	149,512,680	153,135,404	49.72%
	<u>\$ 6,822,695</u>	<u>\$ 301,184,262</u>	<u>\$ 308,006,957</u>	<u>100.00%</u>

Portfolio Investments at Market Value

\$ 303,117,705

NOTE A -Investment amounts shown at book carrying value.

**Northern California Power Agency
Treasurer's Report
Cash Activity Summary
October 31, 2019**

	RECEIPTS			EXPENDITURES			CASH
	OPS/CONSTR	INTEREST (NOTE B)	INVESTMENTS (NOTE A)	OPS/CONSTR	INVESTMENTS (NOTE B)	INTER-COMPANY/ FUND TRANSFERS	INCREASE / (DECREASE)
NCPA FUNDS							
Operating	\$ 33,087,411	\$ 373,392	\$ 19,798,147	\$ (20,950,912)	\$ (16,856,287)	\$ (15,846,445)	\$ (394,694)
Special Deposits	2,081,807	6	-	(11,197,043)	-	9,110,358	(4,872)
Construction	-	-	-	-	-	-	-
Debt Service	-	284	470	-	(5,809,752)	5,809,032	34
Special & Reserve	-	320,109	10,948,303	-	(8,577,747)	927,055	3,617,720
	<u>\$ 35,169,218</u>	<u>\$ 693,791</u>	<u>\$ 30,746,920</u>	<u>\$ (32,147,955)</u>	<u>\$ (31,243,786)</u>	<u>\$ -</u>	<u>\$ 3,218,188</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
October 31, 2019**

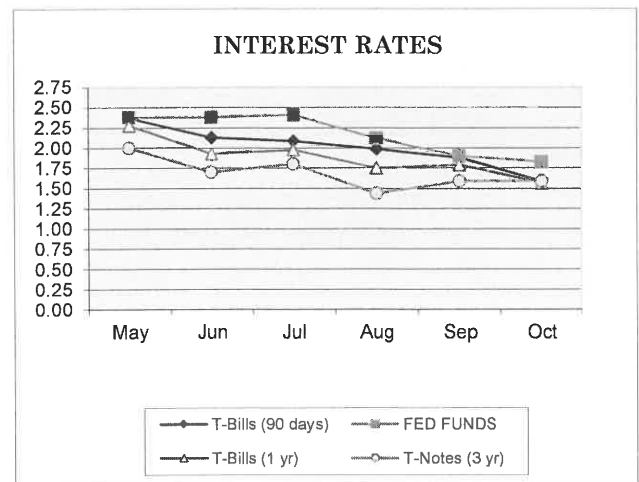
			(NON-CASH) DISC/(PREM) AMORT	(NON-CASH) GAIN/(LOSS) ON SALE	INVESTMENTS	
	PURCHASED	SOLD OR MATURED			TRANSFERS	INCREASE / (DECREASE)
NCPA FUNDS						
Operating	\$ 16,856,287	\$ (19,798,147)	\$ 13,430	\$ -	\$ -	\$ (2,928,430)
Special Deposits	-	-	-	-	-	-
Construction	-	-	4,417	-	-	4,417
Debt Service	5,809,752	(470)	36,104	-	-	5,845,386
Special & Reserve	8,577,747	(10,948,303)	4,624	-	-	(2,365,932)
	<u>\$ 31,243,786</u>	<u>\$ (30,746,920)</u>	<u>\$ 58,575</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 555,441</u>
Less Non- Cash Activity						
Disc/(Prem) Amortization & Gain/(Loss) on Sale						<u>(58,575)</u>
Net Change in Investment --Before Non-Cash Activity						<u><u>\$ 496,866</u></u>

NOTE A -Investment amounts shown at book carrying value.

**Northern California Power Agency
Interest Rate/Yield Analysis
October 31, 2019**

	WEIGHTED AVERAGE INTEREST RATE	BOND EQUIVALENT YIELD
OVERALL COMBINED	2.240%	2.271%
OPERATING FUNDS:	2.225%	2.329%
PROJECTS:		
Geothermal	2.412%	2.504%
Capital Facilities	2.080%	2.080%
Hydroelectric	2.195%	2.270%
Lodi Energy Center	1.905%	1.763%

KEY INTEREST RATES		
	CURRENT	PRIOR YEAR
Fed Fds (Overnight)	1.83%	2.19%
T-Bills (90da.)	1.59%	2.34%
Agency Disc (90da.)	1.47%	2.31%
T-Bills (1yr.)	1.57%	2.66%
Agency Disc (1yr.)	1.45%	2.53%
T-Notes (3yr.)	1.59%	2.92%



**Northern California Power Agency
Total Portfolio
Investment Maturities Analysis
October 31, 2019**

Type	0-7 Days	8-90 Days	91-180 Days	181-270 Days	271-365 Days	1-5 Years	6-10 Years	Total	Percent
US Government Agencies	\$ 685	\$ 30,653	\$2,464	\$ 14,594	\$ 2,000	\$ 110,626	\$ 2,000	\$ 163,022	53.70%
Corporate Bonds (MTN)	-	-	-	1,000	-	65,040	-	66,040	21.76%
US Bank Trust Money Market	441	-	-	-	-	-	-	441	0.15%
Commercial Paper	6,138	-	-	-	-	-	-	6,138	2.03%
Investment Trusts (LAIF)	56,370	-	-	-	-	-	-	56,370	18.57%
Investment Trusts (CAMP)	5,127	-	-	-	-	-	-	5,127	1.70%
U.S.Treasury Market Acct. *	3,017	-	-	-	-	-	-	3,017	0.99%
U.S.Treasury Bill/Note	-	1,534	32	-	66	264	-	1,896	0.62%
Certificates of Deposit	-	10	-	-	-	1,500	-	1,510	0.50%
Total Dollars	\$ 71,778	\$32,197	\$2,496	\$15,594	\$2,066	\$177,430	\$2,000	\$ 303,561	100.00%
Total Percents	23.64%	10.61%	0.82%	5.14%	0.68%	58.45%	0.66%	100.00%	

Investments are shown at Face Value, in thousands.

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

NORTHERN CALIFORNIA POWER AGENCY

Detail Report Of Investments

APPENDIX

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



Northern California Power Agency
Treasurer's Report
10/31/2019

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	5,025,000	1.850	11/26/2014	5,025,000		1	1.850	5,025,000	SYS70101	70101	5,025,000
Local Agency Investm	LAIF	33,160,140	2.446	07/01/2013	33,160,140		1	2.446	33,160,140	SYS70000	70000	33,160,140
California Asset Mgm	CMP	4,490	2.640	10/19/2018	4,490		1	2.640	4,490	SYS70070	70070	4,490
Union Bank of Califo	UBOC	838	0.002	07/01/2013	838		1	0.002	838	SYS70014	70014	838
US Bank	USB	1,819,685	0.001	06/30/2013	1,819,685		1	0.001	1,819,685	SYS70050	70050	1,819,685
US Bank	USB	1,113,321	0.850	08/24/2017	1,113,321		1	0.850	1,113,321	SYS70056	70056	1,113,321
US Bank	USB	10,000	0.050	10/07/2019	10,000	01/07/2020	67	0.050	10,000	SYS30319	30319	10,000
General Dynamics	UBOC	1,000,000	2.875	09/20/2018	988,980	05/11/2020	192	2.937	1,005,010	369550BA5	26668	999,672
Federal Home Loan Ba	UBOC	4,975,000	1.600	08/28/2017	4,990,373	07/17/2020	259	1.490	4,975,348	3130ABTW6	26466	4,978,788
U.S. Treasury	UBOC	118,000	1.750	10/31/2019	118,184	11/15/2020	380	1.598	118,152	9128283G3	26908	118,183
Walmart, Inc.	UBOC	1,000,000	1.900	09/20/2018	979,580	12/15/2020	410	2.848	1,002,360	931142EA7	26874	999,752
John Deere Capital C	UBOC	500,000	2.350	09/21/2018	492,195	01/08/2021	434	3.057	503,270	24422ETZ2	26676	495,970
Federal Home Loan Ba	UBOC	2,785,000	1.400	07/19/2016	2,783,608	01/19/2021	445	1.411	2,769,070	3130A8P80	26355	2,784,624
Cisco Systems Inc.	UBOC	1,000,000	2.200	09/20/2018	982,020	03/28/2021	485	2.969	1,005,730	17275RBD3	26667	990,232
NATIONAL RURAL UTIL	UBOC	500,000	2.900	07/31/2019	506,370	03/15/2021	500	2.096	506,765	63743HER9	26847	505,388
Home Depot Inc.	UBOC	500,000	2.000	03/21/2018	487,800	04/01/2021	517	2.846	501,780	437076BL5	26558	494,292
Intel Corp	UBOC	1,000,000	1.700	09/20/2018	968,960	05/19/2021	565	2.919	1,000,240	458140AV0	26670	981,939
Pfizer Inc	UBOC	500,000	1.950	06/12/2018	487,130	06/03/2021	580	2.858	501,465	717081DX8	26617	493,126
Federal Farm Credit	UBOC	2,602,000	1.720	08/28/2017	2,611,784	07/26/2021	633	1.620	2,606,554	3133EHSR5	26465	2,606,343
Federal Home Loan Mt	UBOC	3,500,000	1.500	11/23/2016	3,500,000	08/23/2021	661	1.500	3,486,490	3134GAVH4	26385	3,500,000
American Honda Finan	UBOC	1,000,000	1.700	09/20/2018	959,220	09/09/2021	678	3.149	997,310	02665WBG5	26669	974,517
3M Company	UBOC	1,000,000	3.000	09/21/2018	999,480	09/14/2021	683	3.018	1,020,100	88579YBA8	26675	999,674
Procter & Gamble	UBOC	1,000,000	2.300	09/20/2018	975,770	02/06/2022	828	3.060	1,013,940	742718DY2	26673	983,760
Johnson & Johnson	UBOC	1,000,000	2.250	09/20/2018	976,140	03/03/2022	853	2.982	1,013,990	478160CD4	26671	983,837
TD Ameritrade	UBOC	500,000	2.950	05/15/2018	493,385	04/01/2022	882	3.315	511,060	87236YAE8	26601	495,877
PepsiCo Inc.	UBOC	500,000	2.250	03/21/2018	487,005	05/02/2022	913	2.924	505,980	713448DT2	26557	492,094
Apple Inc.	UBOC	1,123,337	2.300	02/01/2018	1,121,966	05/11/2022	922	2.329	1,138,334	037833CQ1	26525	1,122,527
Boeing Co.	UBOC	500,000	2.200	06/12/2018	482,180	10/30/2022	1,094	3.074	502,700	097023BN4	26612	487,815
American Honda Finan	UBOC	500,000	2.600	06/12/2018	488,550	11/16/2022	1,111	3.157	509,710	02665WCA7	26614	492,134
Chevron Corp.	UBOC	500,000	2.355	03/21/2018	485,760	12/05/2022	1,130	3.008	507,485	166764AB6	26555	490,636
Visa Inc.	UBOC	400,000	2.800	08/03/2018	394,552	12/14/2022	1,139	3.135	411,980	92826CAC6	26647	396,106
Toyota Motor Credit	UBOC	1,000,000	2.700	08/03/2018	974,760	01/11/2023	1,167	3.315	1,027,910	89236TEL5	26645	981,836
Simon Property Group	UBOC	500,000	2.750	05/15/2018	484,585	02/01/2023	1,188	3.464	512,330	828807CN5	26603	489,366
Oracle Corp.	UBOC	500,000	2.625	03/21/2018	488,010	02/15/2023	1,202	3.154	509,930	68389XBR5	26556	491,952
Exxon Mobil Corporat	UBOC	1,000,000	2.726	08/03/2018	985,450	03/01/2023	1,216	3.068	1,028,560	30231GAR3	26648	989,405
John Deere Capital C	UBOC	500,000	2.800	06/12/2018	489,875	03/06/2023	1,221	3.264	514,465	24422ETG4	26613	492,840
Berkshire Hathaway I	UBOC	500,000	2.750	03/21/2018	492,280	03/15/2023	1,230	3.086	515,025	084670BR8	26554	494,776
United Parcel Serv	UBOC	500,000	2.500	05/15/2018	483,225	04/01/2023	1,247	3.248	509,615	911312BK1	26600	488,250
United Parcel Serv	UBOC	500,000	2.500	09/21/2018	483,120	04/01/2023	1,247	3.308	509,615	911312BK1	26677	487,262
Walmart, Inc.	UBOC	500,000	2.550	07/31/2019	507,870	04/11/2023	1,257	2.104	512,220	931142DH3	26848	507,337

Northern California Power Agency
Treasurer's Report

10/31/2019

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
Bank of NY Mellon Co	UBOC	500,000	3.500	05/15/2018	501,265	04/28/2023	1,274	3.443	525,195	06406RAG2	26602	500,892
Hershey Company	UBOC	500,000	3.375	06/12/2018	503,125	05/15/2023	1,291	3.236	525,705	427866AZ1	26615	502,245
US Bank	UBOC	1,000,000	3.400	08/03/2018	1,000,000	07/24/2023	1,361	3.399	1,050,890	90331HNV1	26646	1,000,000
Microsoft Corp.	UBOC	1,000,000	2.000	09/20/2018	947,350	08/08/2023	1,376	3.172	1,009,990	5949189Q6	26672	959,359
Oracle Corp.	UBOC	4,145,000	2.400	05/31/2019	4,106,452	09/15/2023	1,414	2.630	4,201,828	68389XBL8	26820	4,110,197
Federal Home Loan Mt	UBOC	219,000	2.000	10/30/2019	219,000	10/30/2023	1,459	2.000	219,123	3134GULV0	26905	219,000
JP Morgan	UBOC	500,000	3.875	02/15/2019	514,550	02/01/2024	1,553	3.561	533,870	46625HJT8	26760	512,464
Bank of America Corp	UBOC	1,700,000	2.500	09/24/2019	1,700,000	09/24/2024	1,789	2.577	1,695,240	06048WD56	26872	1,700,000
Federal Agricultural	UBOC	3,000,000	2.000	09/25/2019	3,000,000	09/25/2024	1,790	2.000	3,001,560	31422BME7	26886	3,000,000
Federal Farm Credit	UBOC	2,300,000	1.890	09/27/2019	2,300,000	09/27/2024	1,792	1.890	2,297,930	3133EUK20	26888	2,300,000
Toyota Motor Credit	UBOC	1,000,000	2.150	09/27/2019	1,000,000	09/27/2024	1,792	2.323	997,230	89236TGH2	26887	1,000,000
Federal Home Loan Ba	UBOC	1,500,000	2.000	10/04/2019	1,500,000	10/02/2024	1,797	1.999	1,486,635	3130AHTF4	26889	1,500,000
Fund Total and Average		\$ 92,000,811	2.186		\$ 91,585,383		553	2.319	\$ 92,433,163			\$ 91,717,941

MPP GHG Auction Acct

Local Agency Investm		98,400	2.446	07/01/2013	98,400		1	2.446	98,400	SYS70045	70045	98,400
Fund Total and Average		\$ 98,400	2.446		\$ 98,400		1	2.446	\$ 98,400			\$ 98,400

SCPA Balancing Account

Local Agency Investm	LAIF	1,623,446	2.446	07/01/2013	1,623,446		1	2.446	1,623,446	SYS70022	70022	1,623,446
Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYS70023	70023	0
Federal Home Loan Ba	UBOC	750,000	2.875	11/27/2018	750,045	09/11/2020	315	2.870	758,010	313370US5	26717	750,022
Federal National Mtg	UBOC	1,150,000	1.630	12/20/2018	1,128,369	10/30/2020	364	2.672	1,149,069	3135GORM7	26734	1,138,409
Bank of NY Mellon Co	UBOC	500,000	2.050	04/03/2018	486,105	05/03/2021	549	3.000	501,455	06406FAB9	26570	493,215
Microsoft Corp.	UBOC	500,000	2.375	04/04/2018	492,295	02/12/2022	834	2.798	507,285	594918BA1	26574	495,443
Walt Disney Company/	UBOC	500,000	2.450	07/24/2018	487,520	03/04/2022	854	3.186	508,125	25468PDQ6	26630	491,907
TD Ameritrade	UBOC	500,000	2.950	04/03/2018	497,200	04/01/2022	882	3.100	511,060	87236YAE8	26571	498,306
Home Depot Inc.	UBOC	500,000	2.625	04/04/2018	494,290	06/01/2022	943	2.918	511,000	437076BG6	26572	496,453
Public Storage	UBOC	500,000	2.370	04/04/2018	483,705	09/15/2022	1,049	3.161	506,620	74460DAB5	26573	489,476
Visa Inc.	UBOC	250,000	2.800	07/24/2018	246,975	12/14/2022	1,139	3.096	257,488	92826CAC6	26632	247,850
Intel Corp	UBOC	500,000	2.700	06/22/2018	492,300	12/15/2022	1,140	3.070	513,750	458140AM2	26625	494,634
Toyota Motor Credit	UBOC	550,000	2.825	05/09/2018	536,294	01/10/2023	1,166	3.203	562,403	89233P7F7	26598	540,632
Cisco Systems Inc.	UBOC	500,000	2.600	06/22/2018	487,655	02/28/2023	1,215	3.170	512,340	17275RBE1	26624	491,235
Exxon Mobil Corporat	UBOC	500,000	2.726	05/09/2018	492,670	03/01/2023	1,216	3.055	514,280	30231GAR3	26599	494,921
Berkshire Hathaway I	UBOC	500,000	2.750	05/09/2018	490,280	03/15/2023	1,230	3.185	515,025	084670BR8	26596	493,242
United Parcel Servic	UBOC	500,000	2.500	06/22/2018	484,780	04/01/2023	1,247	3.191	509,615	911312BK1	26627	489,110
Nike Inc	UBOC	500,000	2.250	05/09/2018	480,350	05/01/2023	1,277	3.108	511,375	654106AC7	26597	486,184
Simon Property Group	UBOC	500,000	2.750	07/24/2018	484,725	06/01/2023	1,308	3.438	512,025	828807DD6	26631	488,721
Federal Home Loan Mt	UBOC	2,600,000	2.750	08/17/2018	2,603,900	06/15/2023	1,322	3.467	2,619,734	3134GSMY8	26653	2,602,926

SCPA Balancing Account

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
Pfizer Inc	UBOC	500,000	3.000	06/22/2018	496,550	06/15/2023	1,322	3.150	520,135	717081DH3	26626	497,491
Federal Home Loan Mt	UBOC	2,500,000	3.050	08/28/2018	2,501,250	08/28/2023	1,396	3.039	2,523,775	3134GSUZ6	26654	2,500,956
Federal Home Loan Ba	UBOC	2,000,000	3.100	12/28/2018	2,000,000	12/28/2023	1,518	3.100	2,027,060	3130AFKR7	26736	2,000,000
Federal Home Loan Mt	UBOC	2,500,000	2.875	02/28/2019	2,500,000	02/28/2024	1,580	2.875	2,506,750	3134GS3G8	26759	2,500,000
Federal Home Loan Mt	UBOC	2,000,000	2.760	04/01/2019	2,000,000	04/01/2024	1,613	2.760	2,006,360	3134GS7J8	26797	2,000,000
Federal Home Loan Mt	UBOC	2,000,000	2.650	04/01/2019	2,000,000	04/01/2024	1,613	2.853	2,006,080	3134GS7H2	26798	2,000,000
Federal Home Loan Mt	UBOC	2,180,000	2.700	04/30/2019	2,180,000	04/30/2024	1,642	2.700	2,187,434	3134GTCQ4	26799	2,180,000
Toyota Motor Credit	UBOC	500,000	2.410	07/25/2019	500,000	07/25/2024	1,728	2.410	499,185	89238TGD1	26831	500,000
Federal Agricultural	UBOC	1,250,000	2.000	09/25/2019	1,250,000	09/25/2024	1,790	2.000	1,250,650	31422BME7	26873	1,250,000
Fund Total and Average		\$ 28,853,446	2.662		\$ 28,670,704		1254	2.922	\$ 29,131,534			\$ 28,734,579

General Operating Reserve

Local Agency Investm	LAIF	14,423,506	2.446	07/01/2013	14,423,506		1	2.446	14,423,506	SYST0000	70002	14,423,506
California Asset Mgm	CMP	5,122,699	2.640	12/14/2018	5,122,699		1	2.640	5,122,699	SYST0071	70071	5,122,699
Union Bank of Califo	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYST0019	70019	0
US Bank	USB	0	0.000	07/01/2013	0		1	0.000	0	SYST0051	70051	0
Federal National Mtg	UBOC	2,000,000	1.750	08/28/2015	2,026,240	11/26/2019	25	1.430	2,000,180	3135GQZV2	26246	2,000,429
Federal Farm Credit	UBOC	4,285,000	1.440	07/20/2016	4,280,715	01/19/2021	445	1.463	4,261,690	3133EGMP7	26356	4,283,841
Federal Home Loan Ba	UBOC	9,720,000	1.400	07/19/2016	9,715,140	01/19/2021	445	1.411	9,664,402	3130A8P80	26354	9,718,686
Federal National Mtg	UBOC	5,162,000	1.625	05/25/2016	5,162,000	05/25/2021	571	1.625	5,138,513	3136G3NL5	26332	5,162,000
Federal National Mtg	UBOC	1,300,000	1.500	09/30/2016	1,300,000	05/28/2021	574	1.500	1,295,164	3136G3W3	26368	1,300,000
Federal Farm Credit	UBOC	10,629,000	1.690	06/02/2016	10,629,000	06/02/2021	579	1.690	10,595,519	3133EQDH5	26335	10,629,000
Microsoft Corp.	UBOC	400,000	2.375	04/26/2018	391,480	02/12/2022	834	2.972	405,828	594918BA1	26578	394,879
TD Ameritrade	UBOC	500,000	2.950	04/26/2018	492,950	04/01/2022	882	3.335	511,060	87236YAE8	26582	495,665
Apple Inc.	UBOC	4,025,452	2.300	02/01/2018	4,020,538	05/11/2022	922	2.329	4,079,192	037833CQ1	26524	4,022,548
Federal Home Loan Ba	UBOC	3,575,000	2.125	08/28/2017	3,634,560	06/10/2022	952	1.760	3,624,442	313379Q69	26467	3,607,478
PepsiCo Inc.	UBOC	500,000	3.100	04/26/2018	500,310	07/17/2022	989	3.083	517,265	713448CX4	26580	500,199
Walt Disney Company/	UBOC	500,000	2.350	01/30/2019	489,400	12/01/2022	1,126	2.937	507,845	25468PCW4	26739	491,480
Visa Inc.	UBOC	500,000	2.800	04/26/2018	492,600	12/14/2022	1,139	3.145	514,975	92826CA06	26584	495,018
US Bank, N.A.	UBOC	750,000	2.850	01/30/2019	741,900	01/23/2023	1,179	3.140	771,660	90331HNL3	26737	743,432
Bank of NY Mellon Co	UBOC	500,000	2.950	04/26/2018	491,790	01/29/2023	1,185	3.325	516,040	0640GRAE7	26575	494,402
Oracle Corp.	UBOC	500,000	2.625	04/26/2018	487,350	02/15/2023	1,202	3.195	509,930	68389XBR5	26579	491,337
Praxair Inc	UBOC	500,000	2.700	04/26/2018	488,350	02/21/2023	1,208	3.225	511,120	74005PBF0	26581	492,010
Berkshire Hathaway I	UBOC	500,000	2.750	04/26/2018	488,920	03/15/2023	1,230	3.243	515,025	084670BR8	26576	492,353
United Parcel Servic	UBOC	500,000	2.500	04/26/2018	483,135	04/01/2023	1,247	3.245	509,615	911312BK1	26583	488,313
Chevron Corp.	UBOC	750,000	2.566	01/30/2019	738,750	05/16/2023	1,292	2.939	766,695	166764BK5	26740	740,722
Boeing Co.	UBOC	500,000	1.875	01/30/2019	477,500	06/15/2023	1,322	2.979	495,730	097023BQ7	26741	481,371
Chevron Corp.	UBOC	500,000	3.191	02/07/2019	507,025	06/24/2023	1,331	2.847	522,390	166764AH3	26755	505,849
Walmart, Inc.	UBOC	500,000	3.400	02/07/2019	510,960	06/26/2023	1,333	2.864	528,295	931142EK5	26758	509,128
Pfizer Inc	UBOC	500,000	3.200	01/30/2019	506,250	09/15/2023	1,414	2.908	523,855	717081EN9	26738	505,233
Citibank NA	UBOC	500,000	3.650	02/07/2019	507,490	01/23/2024	1,544	3.319	531,015	17325FA57	26756	506,383

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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
JP Morgan	UBOC	500,000	3.875	02/07/2019	515,120	02/01/2024	1,563	3.535	533,870	46625HJT8	26757	512,895
US Bank, N.A.	UBOC	440,000	3.375	10/31/2019	462,862	02/05/2024	1,557	2.093	464,499	91159HHV5	26906	462,862
HSBC USA INC	UBOC	1,700,000	3.000	02/20/2019	1,700,000	02/20/2024	1,572	3.503	1,696,209	40435UGC2	26754	1,700,000
Federal Home Loan Mt	UBOC	500,000	2.700	04/30/2019	500,000	04/30/2024	1,642	2.700	501,705	3134GTCQ4	26816	500,000
Toyota Motor Credit	UBOC	750,000	2.410	07/25/2019	750,000	07/25/2024	1,728	2.410	748,778	89236TGD1	26841	750,000
Federal Agricultural	UBOC	3,000,000	2.100	08/26/2019	3,000,000	08/26/2024	1,760	2.100	2,982,000	31422BKG4	26871	3,000,000
Federal Home Loan Ba	UBOC	1,000,000	2.000	10/04/2019	1,000,000	10/02/2024	1,797	1.999	991,090	3130AH7F4	26890	1,000,000
Fund Total and Average		\$ 77,032,657	2.107		\$ 77,038,540		615	2.119	\$ 77,281,801			\$ 77,023,718
GRAND TOTALS:		\$ 197,985,314	2.225		\$ 197,393,027		679	2.329	\$ 198,944,898.			\$ 197,574,638

*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 10/31/2019

Investment #26332 FNMA	Callable quarterly	Investment #26816 FHLMC	Callable on 4/30/2020
Investment #26335 FFCB	Callable anytime	Investment #26820 ORCL	Callable on 7/15/2023
Investment #26354 FHLB	Callable anytime	Investment #26831 TOYOTA	Callable semi-annually starting 7/25/2021
Investment #26355 FHLB	Callable anytime	Investment #26841 TOYOTA	Callable semi-annually starting 7/25/2021
Investment #26356 FFCB	Callable anytime	Investment# 26848 WMT	Callable on 01/11/2023
Investment #26368 FNMA	Callable quarterly	Investment# 26871 FPMC	Callable quarterly starting 8/26/2020
Investment #26385 FHLMC	Callable quarterly	Investment# 26872 BAC	Callable semi-annually starting 09/24/2021
Investment #26646 USB	Callable on 6/23/2023	Investment# 26873 FPMC	Callable semi-annually starting 09/25/2020
Investment #26653 FHLMC	Callable on 6/15/2020	Investment# 26886 FPMC	Callable semi-annually starting 09/25/2020
Investment #26736 FHLB	Callable on 12/28/2020	Investment# 26887 TOYOTA	Callable semi-annually starting 09/27/2021
Investment #26754 HSBC	Callable on 2/20/2020	Investment# 26888 FFCB	Callable anytime starting 09/27/2021
Investment #26797 FHLMC	Callable on 4/01/2020	Investment# 26889 FHLB	Callable anytime starting 10/02/2020
Investment #26798 FHLMC	Callable on 4/01/2020	Investment# 26905 FHLMC	Callable on 4/30/2020
Investment #26799 FHLMC	Callable on 4/30/2020	Investment# 26906 MC4	Callable on 1/05/2024



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GEO 2012 Construction Fund

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Federal Home Loan Ba	USB	200,000	1.939	09/26/2019	199,278	11/01/2019	0	1.974	200,000	313384NS4A	26856	200,000
Federal Home Loan Ba	USB	709,000	1.940	07/30/2019	695,131	07/27/2020	269	1.996	700,627	313384ZX0	26850	698,722
Fund Total and Average		\$ 909,000	1.940		\$ 894,409		209	1.991	\$ 900,627			\$ 898,722

Geo 2012A Debt Service

Federal Home Loan Ba	USBT	125,000	1.904	09/25/2019	124,345	01/02/2020	62	1.941	124,651	313384RG6A	26876	124,590
Federal Home Loan Ba	USBT	124,000	1.630	10/29/2019	123,635	01/02/2020	62	1.657	123,654	313384RG6A	26895	123,652
Federal Home Loan Mt	USBT	127,000	1.960	07/25/2019	125,887	01/02/2020	62	2.004	126,646	313396RG0	26832	126,571
Federal Home Loan Mt	USBT	124,000	1.760	09/26/2019	123,218	01/02/2020	62	1.795	123,654	313396RG0	26857	123,624
Fund Total and Average		\$ 500,000	1.815		\$ 497,085		62	1.851	\$ 498,605			\$ 498,437

Geo 2016A Debt Service

Federal Home Loan Ba	USBT	290,000	1.905	09/25/2019	288,481	01/02/2020	62	1.941	289,191	313384RG6A	26877	289,049
Federal Home Loan Ba	USBT	290,000	1.630	10/29/2019	289,147	01/02/2020	62	1.657	289,191	313384RG6A	26896	289,186
Federal Home Loan Mt	USBT	293,000	1.960	07/25/2019	290,432	01/02/2020	62	2.004	292,183	313396RG0	26833	292,011
Federal Home Loan Mt	USBT	291,000	1.760	09/26/2019	289,165	01/02/2020	62	1.795	290,188	313396RG0	26858	290,118
Fund Total and Average		\$ 1,164,000	1.814		\$ 1,157,225		62	1.850	\$ 1,160,753			\$ 1,160,364

Geothermal Special Reserve

Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYS70015	70015	0
Federal Home Loan Ba	UBOC	1,500,000	2.100	07/30/2019	1,500,000	04/29/2021	545	2.100	1,500,390	3130AGT54	26853	1,500,000
Fund Total and Average		\$ 1,500,000	2.100		\$ 1,500,000		545	2.101	\$ 1,500,390			\$ 1,500,000

Geo Decommissioning Reserve

Local Agency Investm	LAIF	322,055	2.446	07/01/2013	322,055		1	2.446	322,055	SYS70027	70027	322,055
Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYS70034	70034	0
American Honda Finan	UBOC	500,000	2.650	11/30/2018	493,500	02/12/2021	469	3.265	505,105	02665WCD1	26726	496,217
Toyota Motor Credit	UBOC	500,000	2.950	11/30/2018	496,300	04/13/2021	529	3.276	507,840	89236TEU5	26727	497,736
Federal National Mtg	UBOC	2,000,000	1.500	08/30/2016	2,000,000	05/28/2021	574	1.500	1,992,560	3136G33W3	26369	2,000,000
Ally Bank	UBOC	250,000	3.000	08/30/2018	250,000	08/30/2021	668	3.002	255,588	02007GEQ2A	30312	250,000
PNC Bank NA	UBOC	750,000	2.550	03/15/2018	735,450	12/09/2021	769	3.103	759,675	69353REY0	26553	741,794
Apple Inc.	UBOC	861,211	2.300	11/29/2017	860,117	05/11/2022	922	2.329	872,708	037833CQ1	26499	860,590
Wells Fargo Bank	UBOC	250,000	3.150	09/30/2018	250,000	09/30/2022	1,033	3.154	258,768	949763TLOA	30311	250,000
Great North Bank	UBOC	250,000	3.050	09/31/2018	250,000	09/31/2022	1,034	3.051	258,085	39103QAF3A	30310	250,000

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Geo Decommissioning 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
Discover Bank	UBOC	250,000	3.150	09/06/2018	250,000	09/06/2022	1,040	3.152	258,773	254673TM8A	30313	250,000
Walt Disney Company/	UBOC	750,000	2.350	03/15/2018	728,580	12/01/2022	1,126	3.004	761,768	25468PCW4	26551	735,981
John Deere Capital C	UBOC	750,000	2.800	03/15/2018	739,748	01/27/2023	1,183	3.104	771,225	24422ERT8	26550	743,177
Bank of NY Mellon Co	UBOC	750,000	2.950	03/15/2018	740,610	01/29/2023	1,185	3.229	774,060	06406RAE7	26549	743,747
IBM Credit LLC	UBOC	500,000	3.000	03/15/2018	496,820	02/06/2023	1,193	3.140	515,505	44932HAH6	26548	497,878
Enerbank USA	UBOC	250,000	3.200	08/30/2018	250,000	08/30/2023	1,398	3.203	262,008	29278T0P3A	30309	250,000
Citibank NA	UBOC	250,000	3.300	09/07/2018	250,000	09/07/2023	1,406	3.301	262,948	17312QS34A	30314	250,000
Federal Home Loan Mt	UBOC	1,000,000	2.760	04/01/2019	1,000,000	04/01/2024	1,613	2.760	1,003,180	3134GS7J8	26817	1,000,000
Federal Home Loan Mt	UBOC	2,000,000	2.650	04/01/2019	2,000,000	04/01/2024	1,613	2.853	2,006,080	3134GS7H2	26818	2,000,000
Federal Home Loan Mt	UBOC	1,960,000	2.700	04/30/2019	1,960,000	04/30/2024	1,642	2.700	1,966,684	3134GTCQ4	26819	1,960,000
Toyota Motor Credit	UBOC	500,000	2.410	07/25/2019	500,000	07/25/2024	1,728	2.410	499,185	89236TGD1	26842	500,000
Federal Home Loan Mt	UBOC	1,604,000	2.450	08/01/2019	1,604,000	08/01/2024	1,735	2.450	1,604,000	3134GTP31	26855	1,604,000
Federal Agricultural	UBOC	750,000	2.000	09/25/2019	750,000	09/25/2024	1,790	2.000	750,390	31422BME7	26874	750,000
Federal Home Loan Ba	UBOC	1,000,000	2.000	10/04/2019	1,000,000	10/02/2024	1,797	1.999	991,090	3130AH7F4	26891	1,000,000
Federal Home Loan Ba	UBOC	940,000	2.125	10/30/2019	940,000	10/29/2024	1,824	2.124	939,765	3130AHG56	26907	940,000
Federal Farm Credit	UBOC	2,000,000	3.450	07/27/2018	1,998,300	07/23/2025	2,091	3.455	2,049,940	3133EIJUT4	26644	1,999,426
Fund Total and Average		\$ 20,937,266	2.562		\$ 20,866,480		1368	2.673	\$ 21,148,985			\$ 20,892,601

Geo 2012A DSR Account

U.S. Treasury	USB	66,000	1.551	08/26/2019	64,996	08/13/2020	286	1.590	65,207	912796TD1	26867	65,187
Federal National Mtg	USBT	1,517,000	1.625	05/25/2016	1,517,000	05/25/2021	571	1.625	1,510,098	3136G3NL5	26333	1,517,000
Fund Total and Average		\$ 1,583,000	1.622		\$ 1,581,996		559	1.624	\$ 1,575,305			\$ 1,582,187
GRAND TOTALS:		\$ 26,593,266	2.412		\$ 26,497,195		1152	2.504	\$ 26,784,665.			\$ 26,532,311

*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 10/31/2019

Investment #26333 FNMMA Callable quarterly
Investment #26369 FNMMA Callable quarterly
Investment #26644 FFCB Callable anytime starting 7/23/2021
Investment #26817 FHLMC Callable on 4/01/2020
Investment #26818 FHLMC Callable on 4/01/2020
Investment #26819 FHLMC Callable on 4/30/2020
Investment #26842 TOYOTA Callable semi-annually starting 7/25/2021
Investment #26853 FHLB Callable quarterly starting 01/29/2020
Investment #26855 FHLMC Callable quarterly starting 11/01/2019
Investment #26874 FAMC Callable semi-annually starting 09/25/2020
Investment #26890 FHLB Callable anytime starting 10/02/2020
Investment #26891 FHLB Callable anytime starting 10/02/2020
Investment #26907 FHLB Callable on 1/29/2020



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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	485,000	1.890	09/25/2019	483,982	11/04/2019	3	1.920	484,932	313384NV7A	26881	484,924
Federal Home Loan Ba	USBT	534,000	1.929	08/26/2019	531,681	11/15/2019	14	1.955	533,653	313384PG8A	26862	533,599
Federal Home Loan Ba	USBT	484,000	1.680	10/29/2019	483,232	12/02/2019	31	1.706	483,303	313384PZ6A	26900	483,300
Fund Total and Average		\$ 1,503,000	1.837		\$ 1,498,895		16	1.867	\$ 1,501,888			\$ 1,501,823

Cap. Fac. Debt Svc Reserve

U.S. Treasury	USB	72,000	1.795	08/26/2019	71,713	11/14/2019	13	1.827	71,961	912796SS9	26869	71,953
Federal National Mtg	USB	71,000	1.530	07/28/2016	71,000	07/28/2021	635	1.530	70,891	3136G3S97	26358	71,000
Federal Home Loan Mt	USB	1,443,000	2.375	02/13/2012	1,447,430	01/13/2022	804	2.340	1,467,978	3137EADB2	25845	1,443,983
Fund Total and Average		\$ 1,586,000	2.311		\$ 1,590,143		761	2.281	\$ 1,610,830			\$ 1,586,936
GRAND TOTALS:		\$ 3,089,000	2.080		\$ 3,089,038		399	2.080	\$ 3,112,718			\$ 3,088,759

*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 10/31/2019
Investment #26358 FNMA Callable quarterly



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Capital Dev. Reserve Hydro

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Local Agency Investm	LAIF	5,203,213	2.446	07/01/2013	5,203,213		1	2.446	5,203,213	SYS70028	70028	5,203,213
Union Bank of Calif	UBOC	1,196,000	0.002	07/01/2013	1,196,000		1	0.002	1,196,000	SYS70031	70031	1,196,000
Branch Banking & Tru	UBOC	500,000	2.625	06/13/2018	488,420	01/15/2022	806	3.314	507,095	07330NAQ8	26618	492,884
Exxon Mobil Corporat	UBOC	500,000	2.397	06/13/2018	490,350	03/06/2022	866	2.946	507,665	30231GAJ1	26621	493,928
US Bank	UBOC	550,000	3.000	08/10/2018	545,607	03/15/2022	865	3.182	564,058	91159HHC7	26651	547,762
Public Storage	UBOC	500,000	2.370	03/14/2018	485,770	09/15/2022	1,049	3.051	506,620	74460DAB5	26546	490,923
Visa Inc.	UBOC	500,000	2.800	03/14/2018	494,470	12/14/2022	1,139	3.051	514,975	92826CAC6	26547	496,368
Toyota Motor Credit	UBOC	500,000	2.700	06/13/2018	489,100	01/11/2023	1,167	3.215	513,955	89236TEL5	26619	492,394
Oracle Corp.	UBOC	500,000	2.625	03/14/2018	488,715	02/15/2023	1,202	3.121	509,930	68389XBR5	26545	492,455
Boeing Co.	UBOC	500,000	2.800	03/14/2018	496,070	03/01/2023	1,216	2.971	510,495	097023BW4	26544	497,361
United Parcel Serv	UBOC	500,000	2.500	06/13/2018	484,900	04/01/2023	1,247	3.182	509,615	911312BK1	26620	489,252
Colgate-Palmolive Co	UBOC	550,000	2.100	08/09/2018	528,660	05/01/2023	1,277	2.985	557,689	19416QEC0	26652	534,202
Federal Home Loan Ba	UBOC	1,500,000	3.250	10/19/2018	1,500,000	10/19/2023	1,448	3.250	1,520,040	3130AEYR5	26701	1,500,000
Federal Farm Credit	UBOC	1,513,000	2.190	08/23/2019	1,513,000	11/15/2023	1,475	2.190	1,513,076	3133EKZQ2	26870	1,513,000
Federal Home Loan Ba	UBOC	2,000,000	3.100	01/29/2019	2,000,000	01/29/2024	1,550	3.100	2,004,620	3130AFRR0	26742	2,000,000
Fund Total and Average		\$ 16,512,213	2.442		\$ 16,405,275		788	2.598	\$ 16,639,046			\$ 16,439,742

Hydro Initial Facilities

Federal Home Loan Mt	USB	1,707,000	2.000	07/30/2019	1,692,396	12/31/2019	60	2.045	1,702,255	313396RE5	26851	1,701,310
Federal Farm Credit	USB	2,464,000	2.540	02/12/2019	2,464,493	02/12/2020	103	2.519	2,470,825	3133EKAFF3	26761	2,464,138
Fund Total and Average		\$ 4,171,000	2.319		\$ 4,156,889		85	2.326	\$ 4,173,080			\$ 4,165,448

Hydro Debt Service

Federal Home Loan Mt	USBT	547,000	2.000	07/30/2019	542,320	12/31/2019	60	2.045	545,479	313396RE5	26852	545,177
Federal Home Loan Ba	USBT	796,000	1.904	09/25/2019	791,830	01/02/2020	62	1.941	793,779	31338ARG6A	26878	793,388
Federal Home Loan Ba	USBT	794,000	1.630	10/29/2019	791,663	01/02/2020	62	1.657	791,785	31338ARG6A	26897	791,771
Federal Home Loan Mt	USBT	2,821,000	1.960	07/25/2019	2,796,272	01/02/2020	62	2.004	2,813,129	313396RGO	26834	2,811,478
Federal Home Loan Mt	USBT	796,000	1.760	08/26/2019	790,980	01/02/2020	62	1.795	793,779	313396RGO	26859	793,587
Fund Total and Average		\$ 5,754,000	1.883		\$ 5,713,065		62	1.923	\$ 5,737,951			\$ 5,735,401

Hydro 2018A Debt Service

Federal Home Loan Ba	USBT	1,150,000	1.904	09/25/2019	1,143,975	01/02/2020	62	1.941	1,146,792	31338ARG6A	26879	1,146,227
Federal Home Loan Ba	USBT	1,148,000	1.630	10/29/2019	1,144,621	01/02/2020	62	1.657	1,144,797	31338ARG6A	26898	1,144,777
Federal Home Loan Mt	USBT	1,156,000	1.960	07/25/2019	1,145,867	01/02/2020	62	2.004	1,152,775	313396RGO	26835	1,152,098
Federal Home Loan Mt	USBT	1,151,000	1.759	08/26/2019	1,143,741	01/02/2020	62	1.795	1,147,789	313396RGO	26860	1,147,511

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Hydro 2018A 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
Fund Total and Average												
		\$ 4,605,000	1.814		\$ 4,578,204		62	1.850	\$ 4,592,153			\$ 4,590,613

Hydro 2019A Debt Service

Federal Home Loan Ba	USBT	810,000	1.905	09/25/2019	805,757	01/02/2020	62	1.941	807,740	313384RG6A	26880	807,343
Federal Home Loan Ba	USBT	808,000	1.630	10/29/2019	805,622	01/02/2020	62	1.657	805,746	313384RG6A	26899	805,732
Federal Home Loan Mt	USBT	814,000	1.959	07/25/2019	806,865	01/02/2020	62	2.004	811,729	313396RG0	26836	811,252
Federal Home Loan Mt	USBT	811,000	1.760	08/26/2019	805,885	01/02/2020	62	1.795	808,737	313396RG0	26861	808,542
Fund Total and Average												
		\$ 3,243,000	1.814		\$ 3,224,129		62	1.850	\$ 3,233,952			\$ 3,232,869

Hydro 2012A Rebate Account

U.S. Treasury	USB	32,000	1.690	08/26/2019	31,733	02/20/2020	111	1.727	31,852	912796TC4	26868	31,833
Federal Home Loan Mt	USB	689,000	1.875	04/28/2017	691,391	08/09/2021	647	1.790	689,062	3134G93A3	26432	689,990
Fund Total and Average												
		\$ 721,000	1.867		\$ 723,124		623	1.787	\$ 720,914			\$ 721,823

Hydro Special Reserve

Local Agency Investm	LAIF	0	0.377	07/01/2013	0		1	0.377	0	SYS70000	70003	0
Union Bank of Calif	UBOC	0	0.002	07/01/2013	0		1	0.002	0	SYS70016	70016	0
Federal Home Loan Ba	UBOC	1,500,000	2.100	07/30/2019	1,500,000	04/29/2021	545	2.100	1,500,390	3130AGT54	26854	1,500,000
Fund Total and Average												
		\$ 1,500,000	2.100		\$ 1,500,000		545	2.101	\$ 1,500,390			\$ 1,500,000

Hydro 2012 Cost of Issuance

US Bank	USB	0	0.040	07/01/2013	0		1	0.040	0	SYS79061	79061	0
Fund Total and Average												
		\$ 0	***		\$ 0		***	***	\$ 0			\$ 0

Hydro 2012 DSRA

Federal Farm Credit	USB	100,000	1.750	08/28/2015	100,329	08/04/2020	277	1.680	100,117	3133EE5Z9	26244	100,051
U.S. Treasury	USB	146,000	2.250	02/27/2018	145,992	02/15/2021	472	2.251	147,215	9128283X6	26539	145,997
Federal National Mtg	USB	94,000	1.530	07/28/2016	94,000	07/28/2021	635	1.530	93,855	3136G3S97	26359	94,000
Federal Home Loan Mt	USB	3,928,000	2.375	02/09/2012	3,926,232	01/13/2022	804	2.380	3,995,994	3137EADB2	25852	3,927,608
Federal Farm Credit	USB	150,000	1.850	09/03/2019	150,000	03/03/2022	853	1.850	149,969	3133EKH66	26875	150,000
Fund Total and Average												
		\$ 4,418,000	2.321		\$ 4,416,553		779	2.324	\$ 4,487,150			\$ 4,417,656

GRAND TOTALS:	\$ 40,324,213	2,195	\$ 40,717,239	462	2,270	\$ 41,084,636.	\$ 40,803,552
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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 10/31/2019

Investment #26359 FNMA
Callabe quarterly
Investment #26701 FHLB
Callabe until 10/19/2020
Investment #26742 FHLB
Callabe quarterly
Investment #26854 FHLB
Callabe quarterly starting 01/29/2020
Investment #26870 FFCB
Callabe on and anytime after 11/15/2019
Investment #26875 FFCB
Callabe on and anytime after 09/03/2020



Northern California Power Agency
Treasurer's Report
10/31/2019

LEC GHG Auction Acct

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Local Agency Investm		75,103	2.446	07/01/2013	75,103		1	2.446	75,103	SYS70046	70046	75,103
Fund Total and Average		\$ 75,103	2.446		\$ 75,103		1	2.446	\$ 75,103			\$ 75,103

LEC Issue#1 2010A DS Fund

US Bank Trust	USB	455	0.600	07/01/2013	455		1	0.600	455	SYS79003	79003	455
Federal Home Loan Ba	USBT	1,120,000	1.940	07/25/2019	1,112,154	12/02/2019	31	1.980	1,118,387	313384PZ6A	26837	1,118,129
Federal Home Loan Ba	USBT	501,000	1.810	08/26/2019	498,531	12/02/2019	31	1.844	500,279	313384PZ6A	26863	500,219
Federal Home Loan Ba	USBT	500,000	1.910	09/25/2019	498,196	12/02/2019	31	1.943	499,280	313384PZ6A	26882	499,178
Federal Home Loan Ba	USBT	499,000	1.680	10/29/2019	498,208	12/02/2019	31	1.706	498,281	313384PZ6A	26901	498,278

Fund Total and Average		\$ 2,620,455	1.860		\$ 2,607,544		31	1.895	\$ 2,616,682			\$ 2,616,259
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LEC Issue #1 2010B DS Fund

US Bank Trust	USB	177	0.600	07/01/2013	177		1	0.600	177	SYS79004	79004	177
Federal Home Loan Ba	USBT	1,520,000	1.939	07/25/2019	1,508,352	12/02/2019	31	1.980	1,517,811	313384PZ6A	26838	1,517,461
Federal Home Loan Ba	USBT	727,000	1.810	08/26/2019	723,418	12/02/2019	31	1.844	725,953	313384PZ6A	26864	725,867
Federal Home Loan Ba	USBT	726,000	1.910	09/25/2019	723,381	12/02/2019	31	1.943	724,955	313384PZ6A	26883	724,806
Federal Home Loan Ba	USBT	724,000	1.680	10/29/2019	722,851	12/02/2019	31	1.706	722,957	313384PZ6A	26902	722,953

Fund Total and Average		\$ 3,697,177	1.858		\$ 3,679,179		31	1.893	\$ 3,691,853			\$ 3,691,264
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LEC Issue #2 2010A DS Fund

US Bank Trust	USB	435,622	0.600	07/01/2013	435,622		1	0.600	435,622	SYS79011	79011	435,622
Fund Total and Average		\$ 435,622	0.600		\$ 435,622		1	0.600	\$ 435,622			\$ 435,622

LEC Issue #2 2010B DS Fund

US Bank Trust	USB	336	0.600	07/01/2013	336		1	0.600	336	SYS79012	79012	336
Federal Home Loan Ba	USBT	1,181,000	1.940	07/25/2019	1,172,726	12/02/2019	31	1.980	1,179,299	313384PZ6A	26839	1,179,027
Federal Home Loan Ba	USBT	786,000	1.810	08/26/2019	782,127	12/02/2019	31	1.844	784,868	313384PZ6A	26865	784,775
Federal Home Loan Ba	USBT	784,000	1.910	09/25/2019	781,172	12/02/2019	31	1.943	782,871	313384PZ6A	26884	782,711
Federal Home Loan Ba	USBT	783,000	1.680	10/29/2019	781,758	12/02/2019	31	1.706	781,872	313384PZ6A	26903	781,867

Fund Total and Average		\$ 3,534,336	1.847		\$ 3,518,119		31	1.881	\$ 3,529,246			\$ 3,528,716
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LEC Issue#1 2017A DS Fund

Federal Home Loan Ba	USBT	303,000	1.939	07/25/2019	300,877	12/02/2019	31	1.980	302,564	313384PZ6A	26840	302,494
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Northern California Power Agency
Treasurer's Report



10/31/2019

LEC Issue#1 2017A 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
Federal Home Loan Ba	USBT	170,000	1.810	08/26/2019	169,162	12/02/2019	31	1.844	169,755	313384P26A	26866	169,735
Federal Home Loan Ba	USBT	169,000	1.909	09/25/2019	168,390	12/02/2019	31	1.943	168,757	313384P26A	26885	168,722
Federal Home Loan Ba	USBT	169,000	1.680	10/29/2019	168,732	12/02/2019	31	1.706	168,757	313384P26A	26904	168,756
Fund Total and Average		\$ 811,000	1.852		\$ 807,161		31	1.887	\$ 809,833			\$ 809,707

LEC Issue #1 2010 DSR Fund

US Bank Trust	USB	1,521	0.600	07/01/2013	1,521		1	0.600	1,521	SYS79005	79005	1,521
U.S. Treasury	USB	333,000	2.000	07/25/2019	329,633	01/23/2020	83	2.048	331,835	912796TC3	26844	331,485
Federal Farm Credit	USB	4,360,000	1.660	06/08/2016	4,360,000	05/25/2021	571	1.659	4,342,996	3133EGBZ7	26337	4,360,000
Federal Home Loan Mt	USB	150,000	1.125	07/28/2017	146,648	08/12/2021	650	1.699	148,808	3137EAE9	26454	148,522
Federal Home Loan Ba	USB	4,100,000	2.125	08/28/2017	4,168,306	08/10/2022	952	1.760	4,156,703	313379Q69	26463	4,137,247
Fund Total and Average		\$ 8,944,521	1.878		\$ 9,006,108		730	1.721	\$ 8,981,863			\$ 8,978,755

LEC Iss#1 2010B BABS Subs Resv

US Bank Trust	USB	992	0.600	07/01/2013	992		1	0.600	992	SYS79006	79006	992
Federal Home Loan Ba	USB	2,145,000	3.375	07/28/2017	2,255,146	06/12/2020	224	1.540	2,167,565	313370E38	26455	2,168,542
Federal Home Loan Ba	UBOC	150,000	1.920	07/25/2019	147,080	07/24/2020	266	1.980	148,250	313384ZU6	26845	147,872
Fund Total and Average		\$ 2,295,992	3.281		\$ 2,403,218		227	1.568	\$ 2,316,807			\$ 2,317,406

LEC Issue #2 2010B DSR BABS

US Bank Trust	USB	1,596	0.600	07/01/2013	1,596		1	0.600	1,596	SYS79013	79013	1,596
U.S. Treasury	USB	1,129,000	1.999	07/25/2019	1,117,585	01/23/2020	83	2.048	1,125,049	912796TC3	26846	1,123,794
Fund Total and Average		\$ 1,130,596	1.998		\$ 1,119,181		83	2.046	\$ 1,126,645			\$ 1,125,390

LEC O & M Reserve

Local Agency Investm		1,464,496	2.446	07/01/2013	1,464,496		1	2.446	1,464,496	SYS70047	70047	1,464,496
Union Bank of Calif	UBOC	0	0.002	07/18/2013	0		1	0.002	0	SYS70041	70041	0
Federal Home Loan Ba	UBOC	3,615,000	1.540	06/30/2017	3,613,952	06/05/2020	217	1.550	3,614,205	3130ABJ00	26440	3,614,787
Federal National Mtg	UBOC	3,000,000	1.300	06/30/2016	3,000,000	06/30/2020	242	1.300	2,992,170	3136G3UJ2	26341	3,000,000
Federal Farm Credit	UBOC	500,000	1.500	10/15/2019	499,335	04/15/2021	531	1.590	499,145	3133EKY83	26892	499,355
Federal Farm Credit	UBOC	1,000,000	1.920	10/21/2019	1,000,000	04/21/2022	902	1.920	1,000,140	3133EK254	26894	1,000,000
US Bank, N.A.	UBOC	595,000	2.650	05/31/2019	598,290	05/23/2022	934	2.456	606,501	90331HPC1	26822	597,830
Federal Home Loan Mt	UBOC	1,250,000	2.000	10/16/2019	1,250,000	10/16/2023	1,445	2.000	1,250,175	3134GUJB7	26893	1,250,000
Fund Total and Average		\$ 11,424,496	1.733		\$ 11,426,073		441	1.730	\$ 11,426,832			\$ 11,426,468

GRAND TOTALS: \$ 34,969,298 1,905 \$ 35,077,308 358 1,763 \$ 35,010,486. \$ 35,004,590

*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 10/31/2019
Investment #26337 FFCB
Investment #26822 USB Callable on and anytime after 4/22/2022



12

Commission Staff Report

November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Disposal of Northern California Power Agency Surplus Property

AGENDA CATEGORY: Consent

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

IMPACTED MEMBERS:

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

If other, please specify

RECOMMENDATION:

Note and file report by all members for the disposal of cubicle walls, desks and chairs from the Lodi Energy Center facility:

BACKGROUND:

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 above listed items have been disposed of due to being obsolete and having no value to the Agency.

FISCAL IMPACT:

This report has no direct fiscal 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

Attachments: Declaration of Surplus
Receipt of disposal



Date: 10/18/19

This notice confirms that the Northern California Power Agency has disposed of the following items listed below:

- Cubicle Walls / Desks / Old Chairs

These items were scrap and disposed of in the facility dumpster.

Northern California Power Agency

Employee Name: Melissa Philpot

Signature: Melissa C Philpot

Monies Received for this?

☐ YES

☒ NO



NORTHERN CALIFORNIA POWER AGENCY
DECLARATION OF EXCESS

Date: 8/1/19

QTY	U/M*	DESCRIPTION (Including All Applicable Model #'s, LCNs & VINs)	COND**	ESTIMATED VALUE		NCPA Property# / Stock # / Fleet # or Project #	SITE LOCATION
1.	1	LOT		UNIT	TOTAL		LEC/CT2
		Cubicle Walls/Desks/Old Chairs	S				
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							

JUSTIFICATION FOR EXCESS/DISPOSAL: Due to an increase in employees at the LEC/CT2 facility, we need to reorganize the cubicle area. The existing cubicles are too large for the area, are used and not in good shape. Also, the chairs are in bad shape and need replacement.

RECOMMENDED DISPOSITION: Other facilities have no use for these. Requesting approval to dispose of as trash.

PREPARED BY: Melissa Philpot / Michael DeBortoli Michael DeBortoli
ORG.
APPROVED BY: Jeff Bedner CODE: _____
(ASST. GEN. MANAGER)
AUTHORIZATION TO PROCEED: Jimmy S. 1/19 DATE: 8/14/19
(GENERAL MANAGER)

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



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Brown & Kysar, Inc. – Five Year Multi-Task Professional Services Agreement for Engineering Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

RECOMMENDATION:

Approval of Resolution 19-86 authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Brown & Kysar, Inc. for engineering services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Engineering services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. Brown & Kysar, Inc. is a new vendor for NCPA. After speaking with representatives from Brown & Kysar, Generation Services staff recommended developing an enabling agreement with this vendor, who specializes in serving small to mid-sized public power utilities in the West and would appreciate an opportunity to provide engineering services to community-owned utilities in California. NCPA has enabling agreements in place with Costa Engineers, Inc., Gannett Fleming, Inc., GHD, Inc., HDR Engineering, Inc., IEC Corporation, Kestrel Power Engineering, Power Engineers, and Thermal Engineering Company for similar services. NCPA desires to enter into an enabling agreement to establish terms and conditions should this vendor be the successful bidder on future projects.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seek bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy S. Howard", with a stylized flourish at the end.

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task Professional Services Agreement with Brown & Kysar, Inc.

RESOLUTION 19-86

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK PROFESSIONAL SERVICES AGREEMENT WITH BROWN &
KYSAR, INC.**

(reference Staff Report #219:19)

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

WHEREAS, Brown & Kysar, Inc. is a provider of these services; and

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

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

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

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND BROWN & KY SAR, INC.

This Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Brown & Kysar, Inc., an engineering, planning and permitting services corporation with its office located at 1315 SE Grace Ave., Ste 201, Battle Ground, WA 98604 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) 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** dollars (\$1,000,000.00) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

2.2 **Monthly Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. Interest at the rate of one and one-half percent (1.5%) per month shall be payable on any amounts that are due but unpaid 30 days from receipt of invoice. The Agency agrees to pay all costs of collection on unpaid balances.

- 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. 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 a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

4.4 All Policies Requirements.

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

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

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

4.4.4 Additional Certificates and Endorsements. If Consultant provides services to Agency members, SCPPA and/or SCPPA members, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or Agency member for which the Services are to be performed.

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

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

Section 6. STATUS OF CONSULTANT.

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

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

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

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

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's

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

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

Section 7. LEGAL REQUIREMENTS.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1** Immediately terminate the Agreement;
 - 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement; and/or
 - 8.4.3** Retain a different consultant to complete the Services not finished by Consultant.

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 Joel Ledesma, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Brown & Kysar, Inc.
Attention: Scott M. Lindsay, CEO
1315 SE Grace Ave., Ste 201
Battle Ground, WA 98604

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute.
- 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

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

10.15 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide services to an Agency member, 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 Services relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

BROWN & KYSAR, INC.

Date _____

Date _____

RANDY S. HOWARD,
General Manager

SCOTT M. LINDSAY,
Chief Executive Officer

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Brown & Kysar, Inc. ("Consultant") shall provide engineering services related to plant operation and maintenance as requested by the Northern California Power Agency ("Agency") at any facilities owned and/or operated by the Agency, NCPA Members, the Southern California Public Power Authority (SCPPA), and/or SCPPA Members.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed amount as subject to Section 2 of the Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

RATE SCHEDULE

(Effective January 1, 2019)

HOURLY RATES

Administrative	\$87
Technician	\$87
Designer/CAD Drafter	\$108
Consultant I (Analyst)	\$130
Consultant II (Professional)	\$147
Consultant III (Associate)	\$164
Consultant IV (Senior)	\$174
Principal	\$192

EQUIPMENT, SUPPLIES AND OTHER SERVICES

In an effort to keep hourly rates as low as possible, the following costs are broken out separately and billed on an as-used basis:

Direct expenses, including but not limited to the following, will be billed at rates allowed by the Internal Revenue Service:

- Subconsultants
- Meals and lodging
- Travel
- Shipping charges
- Printing and printing supplies
- Special fees, permits, etc.
- Mileage

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

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I, _____

(Name of person signing affidavit)(Title)

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

Brown & Kysar, 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.



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Hatton Crane and Rigging, Inc. – Five Year Multi-Task General Services Agreement for Crane and Rigging Support Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J. L.</i> Assistant General Manager	METHOD OF SELECTION: N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

RECOMMENDATION:

Approval of Resolution 19-87 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Hatton Crane and Rigging, Inc. for crane and rigging support services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Crane and rigging support services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. Hatton Crane and Rigging, Inc. is a new vendor for NCPA. NCPA has enabling agreements in place for crane and rigging support services with American Crane Rental, Maxim Crane Works, OST Trucks & Cranes, Summit Crane, and Titan Crane. Hatton Crane and Rigging, Inc. contacted NCPA's CT staff to inquire about being added to NCPA's vendor list for services. After having met with this vendor, staff recommends that NCPA enter into an enabling agreement with Hatton Crane and Rigging, Inc., so established terms and conditions are in place should this vendor be the successful bidder on future projects.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures and will seek bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy S. Howard", with a stylized flourish at the end.

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with Hatton Crane and Rigging, Inc.

RESOLUTION 19-87

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

(reference Staff Report #220:19)

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

WHEREAS, Hatton Crane and Rigging, Inc. is a provider of these services; and

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

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with Hatton Crane and Rigging, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for crane and rigging support services, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
HATTON CRANE & RIGGING, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Hatton Crane & Rigging, Inc., a corporation with its office located at 3643 Depot Road, Hayward, CA 94545 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED FIVE HUNDRED THOUSAND** dollars (\$500,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

4.6 Contractor's Obligation. Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the

provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the

State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

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

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

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

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

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

necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall

be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.

- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

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

- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

Hatton Crane & Rigging, Inc.
Attention: Jessica Hebert
3643 Depot Road
Hayward, CA 94545

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive

Roseville, CA 95678

With a copy to:

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

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

remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

HATTON CRANE & RIGGING, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

GARY HATTON,
President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Hatton Crane & Rigging, Inc. ("Contractor") shall provide crane and rigging services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Cranes
- Crane Operators
- Rigging
- Signalmen

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:

OPERATED AND MAINTAINED HYDRAULIC TRUCK CRANES				
Crane Size	Minimum Hour	Crew	Rate Per Hour	Counterweight Trucking
18 Ton	4	1	\$190	N/A
30 Ton	4	1	\$200	N/A
40 Ton	4	1	\$225	N/A
60 Ton	4	1	\$235	N/A
75 Ton	4	1	\$245	N/A
80 Ton	4	1	\$250	N/A
100 Ton	4	1	\$260	N/A
100 Ton	8	2	\$360	\$600 minimum
110 Ton	4	1	\$270	N/A
110 Ton	8	2	\$370	\$600 minimum
150 Ton	8	2	\$450	\$600 minimum
175 Ton	8	2	\$475	\$1200 minimum
200 Ton	8	2	\$500	\$1800 minimum
265 Ton	8	2	\$550	\$2400 minimum
450 Ton	8	N/A	Call for quote	Call for quote

OPERATED AND MAINTAINED ROUGH TERRAIN CRANES			
Crane Size	Crew	Rate Per Hour	Mob In & Out
90 Ton	1	\$245	\$2,000 each way
110 Ton	1	\$255	\$2,000 each way
160 Ton		Call for quote	

\$50.00 local transportation permit charge per mobilization

All Cranes are billed Portal to Portal from Manteca

\$150 per lift plan (minimum)

Work performed over (8) hours and before 5 AM or on Saturday (Over Time)

1 man crane crew \$ 50.00 / HR
2 man crane crew \$ 100.00 / HR

Work performed over (10) hours and before 5 AM or on Sunday (Double Time)

1 man crane crew \$ 100.00 / HR
2 man crane crew \$ 200.00 / HR

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

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

Hatton Crane & Rigging, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Contra Costa Electric, Inc. – Five Year Multi-Task General Services Agreement for Electrical Maintenance; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

IMPACTED MEMBERS:

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

If other, please specify

RECOMMENDATION:

Approval of Resolution 19-88 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Contra Costa Electric, Inc. for electrical maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Electrical maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with Contra Costa Electric, Inc., which is expiring. Contra Costa Electric, Inc. has been a successful bidder for NCPA projects in the past and NCPA staff has been pleased with the vendor's performance on past projects. NCPA desires to enter into this multi-task enabling agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA has enabling agreements in place with Eaton Electrical Services & Systems, Electrical Maintenance Consultants, GE Energy Connections, and Schneider Electric USA, Inc. for similar scopes of work.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

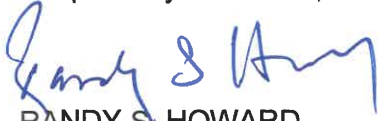
This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with Contra Costa Electric, Inc.

RESOLUTION 19-88

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH CONTRA COSTA ELECTRIC, INC.

(reference Staff Report #221:19)

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

WHEREAS, Contra Costa Electric, Inc. is a provider of these services; and

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

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with Contra Costa Electric, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for electrical maintenance services, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Contra Costa Electric, Inc., a corporation with its office located at 825 Howe Road, Martinez, CA 94553 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED FIVE HUNDRED THOUSAND** dollars (\$500,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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 property damage which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$2,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability. Contra Costa Electric is responsible for the \$500,000 deductible. No endorsement shall be attached limiting the coverage.

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

4.5.2 Notice of Reduction in or Cancellation of Coverage. Contractor shall provide at least thirty (30) days prior written notice to Agency, 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 with a cap limited to \$10,000,000.00.

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

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

4.6 Contractor's Obligation. Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the

provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the willful misconduct, the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of

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

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the

State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

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

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

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

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

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

necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall

be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.

- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

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

- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

Contra Costa Electric, Inc.
Attention: Joey Ramirez
825 Howe Road
Martinez, CA 94553

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.
- 13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCLPA or SCLPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

SIGNATURES ON NEXT PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

CONTRA COSTA ELECTRIC, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

JOEY RAMIREZ,
Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

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

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

- Electrical Maintenance
- Instrumentation
- High Voltage

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

NCPA Inside Wireman

Rates Effective June 1st, 2019 Through May 31st, 2020

Normal Day Shift - Rates		St	Ot	Dt
Craft Classification	Abrv.	Hrly Rate	Hrly Rate	Hrly Rate
Elec General Foreman	EGF	\$ 154.59	\$ 204.73	\$ 254.86
Elec Cable Splicer	ECS	\$ 141.76	\$ 186.10	\$ 230.44
Elec Certified Welder	EJCW	\$ 141.76	\$ 186.10	\$ 230.44
Elec Foreman	EF	\$ 141.76	\$ 186.10	\$ 230.44
Elec Journeyman	EJ	\$ 128.86	\$ 167.45	\$ 206.03
Elec Apprentice - 85%	EA85	\$ 113.01	\$ 145.80	\$ 178.57
Elec Apprentice - 80%	EA80	\$ 107.73	\$ 138.56	\$ 169.41
Elec Apprentice - 75%	EA75	\$ 102.42	\$ 131.36	\$ 160.29
Elec Apprentice - 70%	EA70	\$ 97.10	\$ 124.11	\$ 151.10
Elec Apprentice - 65%	EA65	\$ 91.85	\$ 116.93	\$ 142.00
Elec Apprentice - 60%	EA60	\$ 86.55	\$ 109.69	\$ 132.82
Elec Apprentice - 55%	EA55	\$ 81.27	\$ 102.49	\$ 123.70
Elec Apprentice - 50%	EA50	\$ 75.97	\$ 95.25	\$ 107.73
Elec Apprentice - 45%	EA45	\$ 61.64	\$ 79.02	\$ 96.38
Elec Apprentice - 40%	EA40	\$ 57.37	\$ 72.80	\$ 88.24

Swing Shift - Rates		St	Ot	Dt
Craft Classifications	Abrv.	Hrly Rate	Hrly Rate	Hrly Rate
Elec General Foreman_ss	EGF_ss	\$ 176.79	\$ 235.62	\$ 256.97
Elec Cable Splicer_ss	ECS_ss	\$ 161.69	\$ 213.75	\$ 232.32
Elec Certified Welder_ss	EJCW_ss	\$ 161.69	\$ 213.75	\$ 232.32
Elec Foreman_ss	EF_ss	\$ 161.69	\$ 213.75	\$ 232.32
Elec Journeyman_ss	EJ_ss	\$ 146.61	\$ 191.87	\$ 207.68
Elec Apprentice - 85%_ss	EA85_ss	\$ 128.29	\$ 166.78	\$ 181.04
Elec Apprentice - 80%_ss	EA80_ss	\$ 122.15	\$ 158.37	\$ 171.72
Elec Apprentice - 75%_ss	EA75_ss	\$ 116.11	\$ 150.07	\$ 162.49
Elec Apprentice - 70%_ss	EA70_ss	\$ 110.00	\$ 141.67	\$ 153.18
Elec Apprentice - 65%_ss	EA65_ss	\$ 103.89	\$ 133.34	\$ 143.90
Elec Apprentice - 60%_ss	EA60_ss	\$ 97.79	\$ 124.95	\$ 134.59
Elec Apprentice - 55%_ss	EA55_ss	\$ 91.70	\$ 116.57	\$ 125.31
Elec Apprentice - 50%_ss	EA50_ss	\$ 85.59	\$ 108.23	\$ 122.15
Elec Apprentice - 45%_ss	EA45_ss	\$ 69.89	\$ 90.25	\$ 97.14
Elec Apprentice - 40%_ss	EA40_ss	\$ 64.86	\$ 82.94	\$ 88.91

Grave Shift - Rates		St	Ot	Dt
Craft Classifications	Abrv.	Hrly Rate	Hrly Rate	Hrly Rate
Elec General Foreman_gs	EGF_gs	\$ 195.81	\$ 261.69	\$ 258.71
Elec Cable Splicer_gs	ECS_gs	\$ 178.93	\$ 237.23	\$ 233.88
Elec Certified Welder_gs	EJCW_gs	\$ 178.93	\$ 237.23	\$ 233.88
Elec Foreman_gs	EF_gs	\$ 178.93	\$ 237.23	\$ 233.88
Elec Journeyman_gs	EJ_gs	\$ 161.98	\$ 212.68	\$ 209.04
Elec Apprentice - 85%_gs	EA85_gs	\$ 141.64	\$ 184.74	\$ 183.45
Elec Apprentice - 80%_gs	EA80_gs	\$ 134.86	\$ 175.41	\$ 174.01
Elec Apprentice - 75%_gs	EA75_gs	\$ 128.08	\$ 166.12	\$ 164.62
Elec Apprentice - 70%_gs	EA70_gs	\$ 121.29	\$ 156.77	\$ 155.17
Elec Apprentice - 65%_gs	EA65_gs	\$ 114.53	\$ 147.48	\$ 145.77
Elec Apprentice - 60%_gs	EA60_gs	\$ 107.73	\$ 138.16	\$ 136.31
Elec Apprentice - 55%_gs	EA55_gs	\$ 100.95	\$ 128.82	\$ 126.89
Elec Apprentice - 50%_gs	EA50_gs	\$ 94.19	\$ 119.52	\$ 134.86
Elec Apprentice - 45%_gs	EA45_gs	\$ 77.09	\$ 99.92	\$ 97.76

NCPA Linemen

Local 47 & 1245 - Western Line Construction

Rates Effective June 1st, 2019 Through December 31st, 2019

Day Shift Rates		St	Ot	Dt
Craft Classification	Abrv.	Hrly Rate	Hrly Rate	Hrly Rate
Line Superintendent	LSGF	\$ 153.78	N/A	\$ 248.59
Line General Foreman	LGF	\$ 152.11	N/A	\$ 245.41
Line Cable Splicer Foreman	LFCS	\$ 141.55	N/A	\$ 226.31
Line Foreman	LF	\$ 141.55	N/A	\$ 226.31
Lineman Welder	LW	\$ 136.26	N/A	\$ 216.77
Line Jym Cable Splicer - Technician	LCS	\$ 131.08	N/A	\$ 207.39
Line Journeyman	LJ	\$ 131.08	N/A	\$ 207.39
Line Powderman	LPDM	\$ 119.55	N/A	\$ 186.73
Line Equipment Man	LES	\$ 110.18	N/A	\$ 169.35
Line Groundman-Truck Driver	LGMN	\$ 91.59	N/A	\$ 134.73
Underground Foreman (Civil Work PG&E)	ULFrm	\$ 118.08	N/A	\$ 184.04
Line Substation Technician Foreman	LSTF	\$ 141.55	N/A	\$ 226.31
Line Substation Technician	LST	\$ 131.08	N/A	\$ 207.39
Line Substation Technician Trainee 1st/Yr	LSTT1	\$ 86.17	N/A	\$ 128.42
Line Substation Technician Trainee 2nd/Yr	LSTT2	\$ 103.04	N/A	\$ 158.07
Line Substation Technician Trainee 3rd/Yr	LSTT3	\$ 119.86	N/A	\$ 187.65
Line Fabricator Tech	LFT	\$ 100.97	N/A	\$ 156.78
Line Fabricator Tech Trainee	LFTT	\$ 95.34	N/A	\$ 146.34
Line Apprentice - 90%	LApr90	\$ 120.19	N/A	\$ 187.98
Line Apprentice - 85%	LApr85	\$ 115.27	N/A	\$ 178.77
Line Apprentice - 80%	LApr80	\$ 110.28	N/A	\$ 169.56
Line Apprentice - 75%	LApr75	\$ 105.38	N/A	\$ 160.41
Line Apprentice - 70%	LApr70	\$ 100.40	N/A	\$ 151.18
Line Apprentice - 65%	LApr65	\$ 95.47	N/A	\$ 141.99
Line Apprentice - 60%	LApr60	\$ 90.52	N/A	\$ 132.77

NOTE CCE RESERVES THE RIGHT TO ISSUE CHANGES WITHIN THE RATE STRUCTURE AS NEGOTIATED WITH THE LOCAL AND OR CHANGES RELATED TO ALL VARIABLES WITHIN THE RATE COMPUTATION

NCPA Plumbers and Steamfitters

Rates Effective July 1st, 2019 Through June 30th, 2020

Day Shift Rates		St	Ot	Dt
Craft Classification	Abrv.	Hrly Rate	Hrly Rate	Hrly Rate
Steamfitter Sr. Gen Foreman	SFSGF	\$ 170.15	\$ 230.18	\$ 290.23
Steamfitter Gen Foreman	SFGF	\$ 161.06	\$ 216.83	\$ 272.60
Steamfitter Foreman	SFF	\$ 153.87	\$ 205.58	\$ 257.28
Steamfitter Alloy Welder / Crew	SFW	\$ 149.80	\$ 199.56	\$ 249.34
Steamfitter Journeyman	SFJ	\$ 142.55	\$ 188.89	\$ 235.24
Steamfitter Apprentice 10th	SFA85	\$ 128.92	\$ 168.85	\$ 208.77
Steamfitter Apprentice 9th	SFA80	\$ 124.39	\$ 162.15	\$ 199.96
Steamfitter Apprentice 8th	SFA75	\$ 119.84	\$ 155.48	\$ 191.14
Steamfitter Apprentice 7th	SFA70	\$ 115.30	\$ 148.83	\$ 182.35
Steamfitter Apprentice 6th	SFA65	\$ 110.75	\$ 142.16	\$ 173.52
Steamfitter Apprentice 5th	SFA60	\$ 106.23	\$ 135.48	\$ 164.68
Steamfitter Apprentice 4th	SFA55	\$ 101.68	\$ 128.80	\$ 155.89
Steamfitter Apprentice 3rd	SFA50	\$ 97.14	\$ 122.12	\$ 147.08
Steamfitter Apprentice 2nd	SFA45	\$ 71.56	\$ 91.43	\$ 111.27
Steamfitter Apprentice 1st	SFA40	\$ 67.03	\$ 84.75	\$ 102.48

Swing & Grave Shift Rates		St	Ot	Dt
Craft Classifications	Abrv.	Hrly Rate	Hrly Rate	Hrly Rate
Steamfitter Sr. Gen Foreman	SFSGFsg	\$ 188.11	\$ 256.62	\$ 325.14
Steamfitter Gen Foreman	SFGFsg	\$ 177.69	\$ 241.28	\$ 304.87
Steamfitter Foreman	SFFsg	\$ 169.20	\$ 228.12	\$ 287.02
Steamfitter Alloy Welder / Crew	SFWsg	\$ 164.51	\$ 221.22	\$ 277.92
Steamfitter Journeyman	SFJsg	\$ 156.15	\$ 208.93	\$ 261.68
Steamfitter Apprentice 10th	SFA85sg	\$ 140.49	\$ 185.89	\$ 231.26
Steamfitter Apprentice 9th	SFA80sg	\$ 135.26	\$ 178.18	\$ 221.12
Steamfitter Apprentice 8th	SFA75sg	\$ 130.07	\$ 170.54	\$ 211.02
Steamfitter Apprentice 7th	SFA70sg	\$ 124.85	\$ 162.87	\$ 200.86
Steamfitter Apprentice 6th	SFA65sg	\$ 119.60	\$ 155.15	\$ 190.69
Steamfitter Apprentice 5th	SFA60sg	\$ 114.38	\$ 147.49	\$ 180.58
Steamfitter Apprentice 4th	SFA55sg	\$ 109.17	\$ 139.81	\$ 170.44
Steamfitter Apprentice 3rd	SFA50sg	\$ 103.95	\$ 132.13	\$ 160.29
Steamfitter Apprentice 2nd	SFA45sg	\$ 77.80	\$ 100.60	\$ 123.37
Steamfitter Apprentice 1st	SFA40sg	\$ 72.61	\$ 92.94	\$ 113.26

NOTE: CCE RESERVES THE RIGHT TO ISSUE CHANGES WITHIN THE RATE
STRUCTURE AS NEGOTIATED WITH THE LOCAL AND OR CHANGES RELATED
TO ALL VARIABLES WITHIN THE RATE COMPUTATION

Rolling Stock Description	Hourly Rate	Daily Rate	Weekly Rate	Monthly Rate
Pickup Truck	\$ 13.23	\$ 99.00	\$ 330.00	\$ 1,320.00
Service Truck/Van	\$ 14.33	\$ 105.00	\$ 386.00	\$ 1,598.00
Bucket Truck @ (25 Ft)	\$ 44.10	\$ 291.00	\$ 1,251.00	\$ 4,141.00
Bucket Truck @ (50 Ft)	\$ 62.84	\$ 415.00	\$ 1,668.00	\$ 5,955.00
Bucket Truck @ (60 Ft)	\$ 65.05	\$ 436.00	\$ 1,818.00	\$ 6,254.00
Bucket Truck @ (65 Ft)	\$ 73.87	\$ 473.00	\$ 2,062.00	\$ 7,093.00
42 Passenger Bus	\$ 19.85	\$ 165.00	\$ 495.00	\$ 2,010.00
17 Passenger Bus	\$ 16.54	\$ 127.00	\$ 442.00	\$ 1,494.00
12 Passenger Bus	\$ 14.33	\$ 105.00	\$ 498.00	\$ 1,384.00
Line Truck	\$ 63.95	\$ 422.00	\$ 1,671.00	\$ 5,965.00
Boom Truck @ (7 Ton)	\$ 37.49	\$ 291.00	\$ 1,164.00	\$ 4,365.00
Boom Truck @ (18 Ton)	\$ 60.64	\$ 424.00	\$ 1,696.00	\$ 6,173.00
Golf Cart	\$ 9.27	\$ 75.00	\$ 250.00	\$ 625.00
Highway Digger	\$ 37.49	\$ 291.00	\$ 1,164.00	\$ 4,365.00
Pole Dolly	\$ 4.12	\$ 27.00	\$ 110.00	\$ 411.00
Reel Truck @ (1 ton)	\$ 30.87	\$ 233.00	\$ 932.00	\$ 3,495.00
5th Wheel - Reel Trailer	\$ 15.45	\$ 131.00	\$ 523.00	\$ 1,961.00
Single Drum U/G Cable Puller (6,000 lb)	\$ 45.32	\$ 283.00	\$ 1,189.00	\$ 3,508.00
Single Drum O/H Cable Puller (6,000 lb)	\$ 45.32	\$ 283.00	\$ 1,189.00	\$ 3,508.00
Four Drum Distribution Puller (1,500 lb)	\$ 45.32	\$ 283.00	\$ 1,189.00	\$ 3,508.00
Wash Trailer	\$ 75.19	\$ 544.00	\$ 2,176.00	\$ 8,160.00
Winch Truck @ (5 ton)	\$ 44.10	\$ 326.00	\$ 1,304.00	\$ 4,890.00
Tractor Truck	\$ 44.10	\$ 350.00	\$ 1,400.00	\$ 5,250.00
5th Wheel Trailer	\$ 6.18	\$ 38.00	\$ 151.00	\$ 569.00
Highway Van	\$ 2.06	\$ 20.00	\$ 78.00	\$ 292.00
Connex	\$ 2.06	\$ 8.00	\$ 33.00	\$ 99.00
Stakebed Truck @ (1 ton)	\$ 16.54	\$ 140.00	\$ 559.00	\$ 2,096.00
Office Trailer @ (30 ft)	\$ 4.12	\$ 27.00	\$ 110.00	\$ 411.00
Office Trailer @ (50 ft)	\$ 6.18	\$ 38.00	\$ 151.00	\$ 814.00
Instrument Calibration Trailer @ 32 ft)	\$ 38.11	\$ 229.00	\$ 916.00	\$ 3,435.00
Instrument Calibration Trailer @ 20 ft)	\$ 32.96	\$ 196.00	\$ 784.00	\$ 2,940.00
Bending/Threading Trailer @ (1/2" thru 2")	\$ 13.39	\$ 76.00	\$ 304.00	\$ 1,231.00
Hydraulic Bending Trailer @ (5" - 6")	\$ 14.42	\$ 88.00	\$ 350.00	\$ 1,313.00
Hand Trencher	\$ 14.33	\$ 82.00	\$ 328.00	\$ 1,230.00
Ride On Trencher	\$ 50.72	\$ 349.00	\$ 1,396.00	\$ 5,235.00
Bobcat Trencher (small)	\$ 37.49	\$ 240.00	\$ 946.00	\$ 2,914.00
Bobcat Trencher (large)	\$ 48.51	\$ 306.00	\$ 1,239.00	\$ 4,374.00
Welding Machine - Electric @ (200 amp)	\$ 8.24	\$ 57.00	\$ 175.00	\$ 656.00
Welding Machine - Gas @ (200 amp)	\$ 19.85	\$ 140.00	\$ 559.00	\$ 2,096.00
50 amp Plasma Cutter w/Compressor	\$ 12.13	\$ 87.00	\$ 349.00	\$ 1,309.00
Welding Truck w/ 200 amp Welder	\$ 26.46	\$ 204.00	\$ 814.00	\$ 3,053.00
Air Compressor - Gas @ (160 cfm)	\$ 20.95	\$ 152.00	\$ 605.00	\$ 2,269.00
Forklift	\$ 36.38	\$ 200.00	\$ 400.00	\$ 900.00

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

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

CONTRA COSTA ELECTRIC, INC.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



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Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: CTi Controltech, Inc. – Five Year Multi-Task General Services Agreement for Boiler and Burner Maintenance; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i> Assistant General Manager	METHOD OF SELECTION: N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

RECOMMENDATION:

Approval of Resolution 19-89 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with CTi Controltech, Inc. for boiler and burner maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Boiler and burner maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA utilized this vendor for the replacement of butterfly valves at the Geothermal facility when it was the successful bidder under a Public Works project a few years ago. Subsequently, NCPA entered into an enabling agreement with CTi Controltech which expired in June 2019. NCPA has enabling agreements in place for similar scopes of work with ACCO Engineered Systems, Inc., Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy (pending), and Johnson Controls, Inc. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with CTi Controltech, Inc.

RESOLUTION 19-89

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

(reference Staff Report #222:19)

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

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

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

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with CTi Controltech, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for boiler and burner maintenance services, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and CTi Controltech, Inc., a Delaware corporation with its office located at 22 Beta Court, San Ramon, CA 94583 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED FIVE HUNDRED THOUSAND** dollars (\$500,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

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

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

4.5.5 Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that

may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope for Professional Services.** For services including those provided by licensed architects, licensed engineers, licensed landscape architects, and/or licenses land surveyors, Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Contractor in its performance of Work under this Agreement. Contractor shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency.
- 5.3 Scope for General Services.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgements and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction

agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

5.4 Transfer of Title. Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

6.2 Contractor Not Agent. Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any

capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

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

- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

Contractor shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Contractor shall forfeit as a penalty to Agency \$50.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Contractor or by any subcontractor under Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each

worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

parties to this Agreement any data, plans, specifications, reports and other documents.

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

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

9.4 Confidential Information and Disclosure.

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

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

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted

disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

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

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

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

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

Section 10. PROJECT SITE.

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

10.2 Contractor's Equipment, Tools, Supplies and Materials. Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment,

tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

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

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

Section 12. HEALTH AND SAFETY PROGRAMS. The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall

include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4.

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

regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.

- 12.10** If Contractor is providing Work to an Agency Member, SCSA or SCSA 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:

Cti Controltech, Inc.
Attention: George Conostas
22 Beta Court
San Ramon, CA 94583

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

13.11.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;

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

- 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

CTI CONTROLTECH, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

GEORGE CONSTAS,
President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

CTi Controltech, Inc. ("Contractor") shall provide boiler and burner maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Design/Engineering/Configuration/Documentation/Field Engineering/Surveying
- Boiler/Burner Support including:
 - System and Component Set-Up
 - Testing
 - Training
 - Supervision
 - Consultation
 - Calibration
 - Boiler Load Tests
 - Start-Up
 - Maintenance

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:

<u>Discipline</u>	<u>Base Rate</u>
Combustion/Controls Engineer	\$275/hr
Project Engineer	\$190/hr
Field Service Technician	\$190/hr
Systems Engineer	\$190/hr
CAD Technician	\$125/hr

The above rates are straight time, normal working hours of 8:00am to 5:00pm, Monday through Friday excluding CTI Controltech recognized holidays. Outside of normal working hours overtime multiplier shall apply as follows:

Outside of normal working hours, hours in excess 8 hours/day and Saturdays	x 1.5
Sunday and holidays	x 2.0

Minimum Billing

The minimum billing will be four (4) hours. All billing will be made in one-half (1/2) hour increments. Off site standby billing is a minimum of four (4) hours at that day's rate.

Travel Time and Living Expenses

The maximum billing for travel time, at the applicable rate, will be eight (8) hours per man for any one calendar day. Travel time and expenses for each man are portal to portal. Travel, meals and lodging will be billed at actual cost plus 10%. Mileage to and from the job site in company vehicle will be invoiced at \$.65 per mile.

Cancellation or Change Notification

Three (3) day notification of cancellation and/or schedule change is required. Otherwise the job will be billed in its entirety.

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

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

CTi Controltech, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 __.

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

NOT APPLICABLE

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: American Cooling Tower, Inc. – Five Year Multi-Task General Services Agreement for Cooling Tower Maintenance; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J. L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

RECOMMENDATION:

Approval of Resolution 19-90 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with American Cooling Tower, Inc. for cooling tower maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Cooling tower maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with American Cooling Tower, Inc., which has since expired. American Cooling Tower, Inc. has often been the successful bidder for a number of NCPA projects in the past. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA has enabling agreements in place with Creative Cooling Technologies and Energy Options, Inc. for similar scopes of work.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

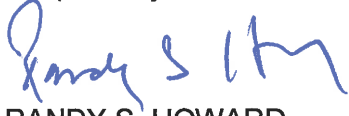
This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with American Cooling Tower, Inc.

RESOLUTION 19-90

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH AMERICAN COOLING TOWER, INC.

(reference Staff Report #223:19)

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

WHEREAS, American Cooling Tower, Inc. is a provider of these services; and

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

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with American Cooling Tower, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for cooling tower maintenance services, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and American Cooling Tower, Inc., a corporation with its office located at 3130 West Harvard Street, Santa Ana, CA 92704 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED FIVE HUNDRED THOUSAND** dollars (\$500,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

4.6 Contractor's Obligation. Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the

provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the

State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

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

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

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

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

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

necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall

be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.

- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

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

- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

American Cooling Tower, Inc.
Attention: Desi Bostard
3130 West Harvard Street
Santa Ana, CA 92704

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive

Roseville, CA 95678

With a copy to:

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

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

remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

AMERICAN COOLING TOWER, INC.

Date _____

Date _____

RANDY S. HOWARD,
General Manager

DESI BOSTARD,
Office Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

American Cooling Tower, Inc. ("Contractor") shall perform cooling tower maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Cooling Tower Maintenance
- Cooling Tower Inspections
- Cooling Tower Evaluations

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:

TIME AND MATERIAL OR EXTRA WORK RATES

STATE: California **AREA:** Northern California **VALID THROUGH:** 1/1/20
CUSTOMER:

Rates include wages, burdens, payroll taxes, subsistence, small tools, overhead, and profit.

<u>Classification</u>	<u>Straight Time (\$)</u>	<u>Overtime (\$)</u>
Superintendent	105.00	157.50
Safety Supervisor	105.00	157.50
Foreman	95.00	142.50
Leadman	85.00	127.50
Carpenter I	75.00	112.50
Carpenter II	70.00	105.00
Carpenter III	65.00	97.50
Helper/Holewatch	65.00	97.50

Straight time applies to work 8 hours per day, M-F. Overtime applies for all other hours.

Subcontracts.....Cost plus 15%
Local materials/consumables.....Cost plus 15%
Rentals (inc. equipment).....Cost plus 15% or Blue Book
Tools (with customer approval).....Cost plus 15%
Non-hazardous disposal.....Cost plus 15%
Inspection/engineering/consulting.....\$800/day
Inspect/eng/consult expense.....Cost plus 10%
Haz-mat handling/disposal.....Cost plus 30%

T & M (or extra work on firm contracts) requiring mobilization of crews (or additional staff) from outside 60 miles will require billing for travel time from point of departure to jobsite and return, one time per contract. Supervisor's (or Foreman's) truck will be charged at \$0.42/Mi & \$45.00 per day. If required subsistence will be billed at \$85/diem.

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

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

AMERICAN COOLING TOWER, INC.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Reliability Optimization, Inc. – Five Year Multi-Task Consulting Services Agreement for Predictive Maintenance Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

RECOMMENDATION:

Approval of Resolution 19-91 authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Reliability Optimization, Inc. for predictive maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Predictive maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with Reliability Optimization, Inc., which is expiring. In July 2019, NCPA requested competitive bids for predictive maintenance services for their CT facilities. Reliability Optimization, Inc. is a potential bidder. NCPA desires to enter into a multi-task enabling agreement with Reliability Optimization, Inc. to allow to establish terms and conditions under which this vendor will be able to perform the work that was bid, in addition to increasing the pool of qualified and proven vendors when seeking bids for specific work in the future.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$2,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA does not currently have additional agreements in place with other vendors for similar services. NCPA is actively pursuing additional vendors to add to our pool of qualified vendors when seeking bids for future projects. NCPA seeks bids from as many qualified providers as possible, bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task Consulting Services Agreement with Reliability Optimization, Inc.

RESOLUTION 19-91

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH RELIABILITY
OPTIMIZATION, INC.**

(reference Staff Report #224:19)

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

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

WHEREAS, NCPA seeks to enter into a Multi-Task Consulting Services Agreement with Reliability Optimization, Inc. to provide such services as needed at all NCPA facilities, NCPA Members, SCPPA, and SCPPA Member facilities in an amount not to exceed \$2,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Reliability Optimization, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for predictive maintenance services, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND RELIABILITY OPTIMIZATION, INC.

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Reliability Optimization, Inc., a corporation with its office located at 325 Park Drive, Aptos, CA 95003 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED TWO MILLION** dollars (\$2,000,000.00) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial General Insurance. Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$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. Not Applicable.

4.4 All Policies Requirements.

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

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

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

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

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

4.5 Consultant's Obligation. Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this

Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Consultant, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

Section 6. STATUS OF CONSULTANT.

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

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

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

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

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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

Section 7. LEGAL REQUIREMENTS.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1** Immediately terminate the Agreement;
 - 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

- 8.4.3** Retain a different consultant to complete the Services not finished by Consultant; and/or
- 8.4.4** Charge Consultant the difference between the costs to complete the Services that is unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

Section 9. KEEPING AND STATUS OF RECORDS.

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

not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in 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 Joel Ledesma, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Reliability Optimization, Inc.
Attention: Kevin Nordenstrom, President
325 Park Drive
Aptos, CA 95003

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

10.11.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;

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

10.11.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails,

the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

10.11.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

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

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

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

RELIABILITY OPTIMIZATION, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

KEVIN NORDENSTROM,
President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Reliability Optimization, Inc. ("Consultant") shall provide predictive maintenance testing services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Vibration Testing
- On-Line/Off-Line Motor Analysis
- Infrared Thermographic Imaging
- Airborne Ultrasonic Testing
- Corona Survey
- Lubrication Oil Analysis
- Transformer Oil Analysis
- SF6 Gas Analysis
- Generator & Generator Step Up Transformer Partial Discharge Analysis
- PdM Testing Reporting

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Pricing for CT facilities:

- Lodi Energy Center – \$84,498 annually, billed at \$7,041.50 monthly
- CT1 Lodi – \$12,023 annually, billed at \$6,011.50 semi-annually
- CT1 Alameda – \$17,100 annually, billed at \$8,550.00 semi-annually
- STIG – \$20,962 annually, billed at \$10,481.00 semi-annually

If additional work is needed outside of the standard scope of predictive maintenance, the pricing will be agreed upon at the time a Purchase Order is issued.

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

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

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

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

RELIABILITY OPTIMIZATION, 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.



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: RAM Mechanical, Inc. – Five Year Multi-Task General Services Agreement for General Time and Material (T&M) Mechanical Maintenance; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

RECOMMENDATION:

Approval of Resolution 19-92 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with RAM Mechanical, Inc. for general time and material (T&M) mechanical maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

General T&M mechanical maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with RAM Mechanical, Inc., which has since expired. RAM Mechanical, Inc. has been a successful bidder for NCPA projects in the past, and NCPA staff has been pleased with the vendor's performance on past projects. NCPA desires to enter into this multi-task enabling agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA has enabling agreements in place with Danick Mechanical, Performance Mechanical, Inc., TNT Industrial Contractors, and Wagner Mechanical for similar scopes of work.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$2,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with RAM Mechanical, Inc.

RESOLUTION 19-92

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

(reference Staff Report #225:19)

WHEREAS, general time and material (T&M) mechanical maintenance services are periodically required at the facilities owned and/or operated by the Northern California Power Agency (NCPA), NCPA Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

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

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with RAM Mechanical, Inc. to provide such services as needed at all NCPA facilities, NCPA Members, SCPPA, and SCPPA Member facilities in an amount not to exceed \$2,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with RAM Mechanical, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for general T&M mechanical maintenance services, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and RAM Mechanical, Inc., a corporation with its office located at 3506 Moore Road, Ceres, CA 95307 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED TWO MILLION** dollars (\$2,000,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

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

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

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

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

subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 **Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 **Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 **Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem

wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for

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

9.4 Confidential Information and Disclosure.

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

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

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

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

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

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

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

Section 10. PROJECT SITE.

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

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

Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

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

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

Materials shall include diesel fuel used for trucks owned or leased by the Contractor.

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

Section 13. MISCELLANEOUS PROVISIONS.

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

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

13.7 Contract Administrator. This Agreement shall be administered by Joel Ledesma, 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:

RAM Mechanical, Inc.
Attention: Scott Boyer, GM of Construction
3506 Moore Road
Ceres, CA 95307

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

13.11.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;

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

party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

RAM MECHANICAL, INC.

Date _____

Date _____

RANDY S. HOWARD,
General Manager

LUIS CASTANEDA,
Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

RAM Mechanical, Inc. ("Contractor") shall provide general T&M maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

- Piping
- Hydrotesting
- HRSG maintenance
- Catalyst maintenance
- Underground piping maintenance
- Rotating Equipment maintenance
- General maintenance
- Outage support
- Troubleshooting
- Miscellaneous steel work

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Effective	July / 1 / 19	to	June / 30 / 20
Millwrights	Regular	Time+1/2	Double
Journeyman	\$104.00 /hr	\$139.00 /hr	\$174.00 /hr
Foreman	\$126.50 /hr	\$170.50 /hr	\$214.00 /hr
General Foreman	\$130.50 /hr	\$176.00 /hr	\$222.00 /hr
Sheetmetal Workers	Regular	Time+1/2	Double
Journeyman	\$ 104.00 /hr	\$ 133.00 /hr	\$ 162.00 /hr
Foreman	\$ 129.00 /hr	\$ 166.50 /hr	\$ 204.50 /hr
General Foreman	\$ 130.00 /hr	\$ 168.50 /hr	\$ 207.00 /hr
Pipefitters	Regular	Time+1/1	Double
Journeyman	\$ 101.00 /hr	\$ 130.00 /hr	\$ 158.00 /hr
Foreman	\$ 126.50 /hr	\$ 165.00 /hr	\$ 202.00 /hr
General Foreman	\$ 130.50 /hr	\$ 172.00 /hr	\$ 211.50 /hr
Other Trades	Regular	Time+1/2	Double
Other Trades	Regular	Time+1/2	Double
Other Trades	Regular	Time+1/1	Double
Safety Coordinator	Regular	Time+1/2	Double
Cordinator	\$ 75.00 /hr	\$ 107.50 /hr	\$ 139.00 /hr
Shop Support	Regular	Time+1/2	Double
Laborer	\$ 55.00 /hr	\$ 74.00 /hr	\$ 91.00 /hr

Labor Rates Include small tools whose value is less than \$400.00. All other tools will be charged at daily, weekly or monthly rates, depending on time required. Any applicable union requirements, such as subsistence and travel pay, will be charged at cost plus 20% overhead-Travel and subsistence apply to areas over 50-miles away from RMI office. All other costs, such as materials, outside rentals and subcontractors will be charged at cost plus 20% overhead and 5% profit. Questions regarding the above fees should be directed to my attention at Ram Mechanical, Inc., 3506 Moore Rd., Ceres, Ca. 95307; or call (209) 531-9155.

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

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

RAM MECHANICAL, INC.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

-

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



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Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Custom Valve Solutions, Inc. dba Custom Valve Solutions – Five Year Multi-Task General Services Agreement for Machining Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

Approval of Resolution 19-93 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Custom Valve Solutions, Inc. dba Custom Valve Solutions for valve and actuator maintenance and related services, 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, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Valve and actuator maintenance, machining, balancing, and related services are required from time to time for the operation and maintenance of plant facilities. NCPA has agreements in place with Bay Valve Services and Engineering, LLC, Control Components, Inc., and Mechanical Analysis Repair dba MarTech for similar services. Having worked with Custom Valve Solutions previously, an NCPA Member suggested that NCPA add this vendor to its list of enabling agreements to increase the pool of qualified and proven vendors when seeking bids for specific work. Based thereon, NCPA desires to enter into an enabling agreement with Custom Valve Solutions, so established terms and conditions are in place should this vendor be the successful bidder on future projects.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures and seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with Custom Valve Solutions, Inc. dba Custom Valve Solutions

RESOLUTION 19-93

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH CUSTOM VALVE SOLUTIONS, INC. DBA CUSTOM VALVE SOLUTIONS

(reference Staff Report #226:19)

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

WHEREAS, Custom Valve Solutions, Inc. dba Custom Valve Solutions is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with Custom Valve Solutions, Inc. dba Custom Valve Solutions to provide such services as needed at all NCPA facilities, NCPA Members, SCPPA, and SCPPA Member facilities in an amount not to exceed \$1,500,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with Custom Valve Solutions, Inc. dba Custom Valve Solutions, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years, for machining services, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
CUSTOM VALVE SOLUTIONS, INC. DBA CUSTOM VALVE SOLUTIONS**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Custom Valve Solutions, Inc., dba Custom Valve Solutions, a corporation with its office located at 1101 Nimitz Avenue, Suite 100, Vallejo, CA 94592 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED ONE MILLION 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
AcctsPayable@ncpa.com

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

4.6 Contractor's Obligation. Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the

provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency. In no event will damages exceed \$2,000,000.
- 5.3 Transfer of Title.** Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of

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

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the

State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

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

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

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

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

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

necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall

be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.

- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

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

- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

Custom Valve Solutions, Inc. dba Custom Valve Solutions
Attention: Edward Kumisca
1101 Nimitz Avenue, Suite 100
Vallejo, CA 94592

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive

Roseville, CA 95678

With a copy to:

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

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

remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

CUSTOM VALVE SOLUTIONS, INC. DBA
CUSTOM VALVE SOLUTIONS

Date _____

Date _____

RANDY S. HOWARD,
General Manager

EDWARD KUMISCA,
President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Custom Valve Solutions, Inc. dba Custom Valve Solutions ("Contractor") shall provide machining services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Machining
- Balancing
- Hydroelectric Services
- AC/DC Motor Rewind and Rebuild
- Rebuild or Re-Manufacturing of Equipment
- Maintenance
- Valve and Actuator Maintenance

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:

Pricing for services to be performed 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

Custom Valve Solutions, Inc. dba Custom Valve Solutions

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



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Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Farwest Insulation Contracting – Five Year Multi-Task General Services Agreement for Insulation Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

RECOMMENDATION:

Approval of Resolution 19-94 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Farwest Insulation Contracting for insulation services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Insulation services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with Farwest Insulation Contracting, which is expiring. Farwest Insulation Contracting has been a successful bidder for NCPA projects in the past, and NCPA staff has been pleased with the vendor's performance on past projects. NCPA desires to enter into this multi-task enabling agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA has enabling agreements in place with Bayside Insulation & Construction, Petrochem Insulation, Inc., Sunshine Metal Clad, Inc., and American Industrial Scaffolding, Inc. for similar scopes of work.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with Farwest Insulation Contracting

RESOLUTION 19-94

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH FARWEST INSULATION CONTRACTING

(reference Staff Report #227:19)

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

WHEREAS, Farwest Insulation Contracting is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with Farwest Insulation Contracting to provide such services as needed at all NCPA facilities, NCPA Members, SCPPA, and SCPPA Member facilities in an amount not to exceed \$500,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with Farwest Insulation Contracting, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for insulation services, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Farwest Insulation Contracting, a corporation with its office located at 1220 S. Sherman Street, Anaheim, CA 92805 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 20__ ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED FIVE HUNDRED THOUSAND** dollars (\$500,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types

of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

Additionally, in accordance with the California Administrative Code, Title 8, Group 3, Article 2, Section 16000, Publication of Prevailing Wage Rates by Awarding

Bodies, copies of the applicable determination of the Director can be found on the web at: <http://www.dir.ca.gov/DLSR/PWD/> and may be reviewed at any time.

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

8.4.1 Immediately terminate the Agreement;

8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;

8.4.3 Retain a different Contractor to complete the Work not finished by Contractor; and/or

8.4.4 Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to

Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

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

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

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

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

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

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

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

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

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

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.

- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in

whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

Farwest Insulation Contracting
Attention: Rory McDonnell
672 Enterprise Court
Livermore, CA 94550

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

FARWEST INSULATION CONTRACTING

Date _____

Date _____

RANDY S. HOWARD,
General Manager

ERIC B. SARMENTO,
Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Farwest Insulation Contracting ("Contractor") shall provide insulation related services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Insulation
- Electrical Tracing

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Labor Rates:

Zone 1 includes the following California counties: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties.

Classification	Straight Time	Overtime	Double Time
General Foreman	\$155.66	\$219.15	\$282.64
Foreman	\$152.37	\$214.21	\$276.06
Mechanic	\$145.79	\$204.34	\$262.89
Apprentice 5th	\$132.16	\$184.85	\$237.54
Apprentice 4th	\$120.46	\$167.30	\$214.14
Apprentice 3rd	\$102.88	\$140.94	\$178.99
Apprentice 2nd	\$80.68	\$111.36	\$142.03
Apprentice 1st	\$57.92	\$81.33	\$104.75

Zone 2 includes the following California counties: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Nevada, Placer, Plumas, Sacramento, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties.

Classification	Straight Time	Overtime	Double Time
General Foreman	\$127.85	\$177.43	\$227.02
Foreman	\$124.56	\$172.50	\$220.43
Mechanic	\$117.98	\$162.62	\$207.27
Apprentice 5th	\$107.13	\$147.30	\$187.48
Apprentice 4th	\$98.21	\$133.93	\$169.64

Apprentice 3rd	\$84.81	\$113.83	\$142.85
Apprentice 2nd	\$66.09	\$89.46	\$112.84
Apprentice 1st	\$46.79	\$64.65	\$82.50

Wages Valid through July 31, 2020

Travel Expenses

County	Rate	Zone	County	Rate	Zone
Alameda	\$11.00	1	Placer (west of Highway 49)	\$11.00	2
Alpine	\$85.00	2	Placer (east of Highway 49)	\$31.00	2
Amador	\$21.00	2	Plumas	\$85.00	2
Butte	\$85.00	2	Sacramento	\$11.00	2
Calaveras	\$31.00	2	San Benito	\$85.00	1
Colusa	\$31.00	2	San Francisco	\$16.00	1
Contra Costa	\$11.00	1	San Joaquin	\$21.00	2
Del Norte	\$85.00	2	San Mateo	\$16.00	1
El Dorado (west of 49)	\$11.00	2	Santa Clara	\$21.00	1
El Dorado (east of 49)	\$31.00	2	Santa Cruz	\$36.00	2
Fresno	\$11.00	2	Shasta	\$85.00	2
Glenn	\$85.00	2	Sierra	\$85.00	2
Humboldt	\$85.00	2	Siskiyou	\$85.00	2
Kings	\$41.00	2	Solano	\$11.00	1
Lake	\$85.00	2	Sonoma	\$21.00	1
Lassen	\$85.00	2	Stanislaus	\$16.00	2
Madera	\$21.00	2	Sutter	\$31.00	2
Marin	\$11.00	1	Tehama	\$85.00	2
Mariposa	\$31.00	2	Trinity	\$85.00	2
Mendocino	\$85.00	2	Tulare	\$41.00	2
Merced	\$21.00	2	Tuolumne	\$31.00	2
Modoc	\$85.00	2	Yolo	\$11.00	2
Mono	\$85.00	2	Yuba	\$31.00	2
Monterey	\$85.00	2			
Napa	\$21.00	1			
Nevada	\$21.00	2			

Material Rates:

Actual invoice cost plus 10%

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

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

Farwest Insulation Contracting

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



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Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy – Five Year Multi-Task General Services Agreement for Chiller, HVAC, Boiler, and Burner Maintenance; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Combustion Turbines	

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

RECOMMENDATION:

Approval of Resolution 19-95 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy for chiller, HVAC, boiler, and burner maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SPCPA, or by SPCPA Members. The Scope of Work will be amended to now include boiler and burner maintenance and inspection services.

BACKGROUND:

Chiller, HVAC, boiler, and burner maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SPCPA, and by SPCPA Members. In June 2019, NCPA requested competitive bids for CT2 chiller inspection and maintenance. EMCOR was the successful bidder, resulting in a project-specific agreement. EMCOR performed well, therefore NCPA now desires to enter into a multi-task enabling agreement with EMCOR to increase the pool of qualified vendors for this scope of work, with established terms and conditions in place, for efficient competitive bidding. NCPA has enabling agreements in place with ACCO Engineered Systems, Inc. and Johnson Controls, Inc. for chiller, HVAC, boiler, and burner maintenance services, and CTi Controltech, Inc. for boiler and burner maintenance services.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:


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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy

RESOLUTION 19-95

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH MESA ENERGY SYSTEMS, INC. DBA EMCOR SERVICES MESA ENERGY

(reference Staff Report #228:19)

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

WHEREAS, Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy is a provider of these services; and

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

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for chiller, HVAC, boiler, and burner maintenance services, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
MESA ENERGY SYSTEMS, INC. dba EMCOR SERVICES MESA ENERGY**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy, a corporation with its office located at 2 Cromwell, Irvine, CA 92618 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED ONE MILLION** dollars (\$1,000,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

4.6 Contractor's Obligation. Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the

provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.

6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors. If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.

6.6 Maintenance Labor Agreement. If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

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

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

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

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

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

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

State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

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

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

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

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

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

necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall

be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.

- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

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

- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy
Attention: Mike Bruins
3906 Kristi Court
Sacramento, CA 95827

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive

Roseville, CA 95678

With a copy to:

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

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

remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

MESA ENERGY SYSTEMS, INC. dba
EMCOR SERVICE MESA ENERGY

Date _____

Date _____

RANDY S. HOWARD,
General Manager

LEON RUA,
Branch Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy ("Contractor") shall provide chiller, HVAC, boiler and burner maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Chiller Maintenance
- HVAC Maintenance
- Boiler and Burner Maintenance

CT Facilities Specific Chiller Services to Include:

Service	Frequency Per Year
Operational Inspections	3
Annual PM	1
Megohm Ref. and Solution Pump	1
Lithium Bromide Analysis	1

ABSORPTION CHILLER ANNUAL MAINTENANCE

1. CHECK IN WITH PROPER SITE PERSONNEL
2. CHECK ABSORPTION CHILLER OPERATIONS
3. CHECK SYSTEM SAFETIES
4. CHECK SYSTEM OPERATING PRESSURES AND TEMPERATURES
5. CHECK REFRIGERANT CHARGE
6. CHECK REFRIGERANT AND SOLUTION PUMP OPERATIONS
7. CHECK REFRIGERANT AND SOLUTION PUMP AMPERAGE PER MOTOR NAMEPLATE
8. MEGOHM TEST REFRIGERANT AND SOLUTION PUMP WINDINGS
9. CALIBRATE THERMISTORS AND SENSORS AS NEEDED
10. CHECK PURGE SOLENOID VALVE
11. CHECK PURGE OPERATIONS
12. CHANGE PURGE PUMP OIL IF NEEDED
13. CHECK AND VERIFY COOLER AND CONDENSER APPROACH
14. CHECK TUBE CLEANLINESS (customer to remove end bells and reinstall)
15. LOG ENTERING AND LEAVING FLUID TEMPERATURES
16. CHECK STEAM TEMPERATURE AND PRESSURE
17. CHECK FOR UNUSUAL NOISE AND VIBRATION
18. CHECK OVERALL ABSORPTION CHILLER CONDITION
19. CLEAN AREA AROUND WORK SPACE
20. COMPLETE ANY REQUIRED MAINTENANCE CHECK LISTS ITEM IN MANUFACTURE IOM
21. REPORT FINDINGS TO CUSTOMER

ABSORPTION CHILLER OPERATIONAL MAINTENANCE

1. CHECK IN WITH PROPER SITE PERSONNEL
2. CHECK ABSORPTION CHILLER OPERATIONS
3. CHECK SYSTEM OPERATING PRESSURES AND TEMPERATURES
4. CHECK REFRIGERANT CHARGE
5. CHECK REFRIGERANT AND SOLUTION PUMP OPERATIONS
6. CHECK PURGE SOLENOID VALVE OPERATION
7. CHECK PURGE OPERATIONS
8. CHANGE PURGE PUMP OIL IF NEEDED
9. CHECK AND VERIFY COOLER AND CONDENSER APPROACH
10. LOG ENTERING AND LEAVING FLUID TEMPERATURES
11. CHECK STEAM TEMPERATURE AND PRESSURE
12. CHECK FOR UNUSUAL NOISE AND VIBRATION
13. CHECK OVERALL CONDITION
14. CLEAN AREA AROUND WORK SPACE
15. REPORT FINDINGS TO CUSTOMER

ABSORPTION CHILLER LITHIUM BROMIDE ANALYSIS

1. CHECK IN WITH CUSTOMER
2. REMOVE SAMPLE PER GUIDELINES
3. DROP OFF FOR ANALYSIS
4. LABEL AND COMPLETE PAPERWORK INDICATING PRESENT OPERATING CONDITIONS
5. PROVIDE LITHIUM BROMIDE SAMPLE RESULTS TO CUSTOMER

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:

CT Facilities Fees:

Year 1 - \$5,417.00/Year (billed quarterly)

Year 2 - \$5,633.00/Year (billed quarterly)

Year 3 - \$5,859.00/Year (billed quarterly)

Year 4 - \$6,093.00/Year (billed quarterly)

Year 5 - \$6,337.00/Year (billed quarterly)

Standard Service Call Rates:

Labor Classification	Straight Rate	Overtime Rate	Weekend/Holiday Rate
Unitary (Regular HVAC)	\$130.00	\$195.00	\$260.00
Applied (Chillers)	\$145.00	\$217.50	\$290.00
Controls (BMS)	\$145.00	\$217.50	\$290.00
Parts & Supplies	Cost Plus 35%		
Truck Charge	\$85.00		

Pricing for additional services to be performed at other NCPA facilities, NCPA Member or SCPA locations will be quoted at the time services are requested.

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: American Industrial Scaffolding, Inc. – Five Year Multi-Task General Services Agreement for Scaffolding and Insulation Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Geothermal	

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

RECOMMENDATION:

Approval of Resolution 19-96 authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with American Industrial Scaffolding, Inc. for scaffolding and insulation services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

BACKGROUND:

Scaffolding and insulation services are required from time to time for the operation and maintenance of NCPA facilities and those of our Members and SCPPA. American Industrial Scaffolding, Inc. is a new vendor for NCPA. NCPA has enabling agreements in place for insulation services with Bayside Insulation & Construction Inc., Farwest Insulation Contracting, PetroChem Insulation Inc., and Sunshine Metal Clad, Inc. In addition, NCPA has enabling agreements in place for scaffolding services with Unique Scaffold and Platinum Scaffolding Services, Inc. NCPA's Geothermal staff was contacted by American Industrial Scaffolding, Inc., who expressed a desire to be added to NCPA's vendor list for services, because they routinely work in the Geysers area. After having met with this vendor, staff recommends that NCPA enter into an enabling agreement with American Industrial Scaffolding, Inc., so established terms and conditions are in place should this vendor be the successful bidder on future projects. Also, increasing the pool of qualified vendors willing to work in the more remote location of NCPA's Geothermal facility results in more competitive bidding when services are needed.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures and seek bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

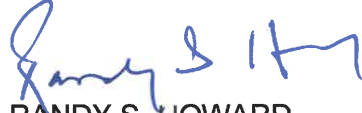
This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments:

RESOLUTION 19-96

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH AMERICAN INDUSTRIAL SCAFFOLDING, INC.

(reference Staff Report #229:19)

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

WHEREAS, American Industrial Scaffolding, Inc. is a provider of these services; and

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

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

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

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and American Industrial Scaffolding, Inc., a corporation with its office located at 5056 Commercial Circle, Suite B, Concord, CA 94520-8574 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable

4.4 Pollution Insurance. Not Applicable

4.5 All Policies Requirements.

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

Section 6. STATUS OF CONTRACTOR.

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

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

Contractor shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages,

expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Contractor's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

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

- 8.4.1** Immediately terminate the Agreement;
- 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- 8.4.3** Retain a different Contractor to complete the Work not finished by Contractor; and/or

- 8.4.4** Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without

reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

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

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

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

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

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

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

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

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

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

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

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the

Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.

- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCSPPA or SCSPPA 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 Joel Ledesma, 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:

Ken Norris
V.P. Operations/Owner
American Industrial Scaffolding, Inc.
5056 Commercial Circle, Suite B
Concord, CA 94520-8574

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

AMERICAN INDUSTRIAL SCAFFOLDING, INC.

Date_____

Date_____

RANDY S. HOWARD, General Manager

BILL WRIGHT, President & CEO (Owner)

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

American Industrial Scaffolding, Inc. ("Contractor") shall provide scaffolding and insulation services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by NCPA, its Members, Southern California Public Power Authority (SCPPA) and SCPPA members.

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

- Scaffolding
 - Scaffold Design and Project Planning
 - Erection and Dismantling
 - Maintenance
- Insulation
 - Hot and Cold Insulation
 - Removal Thermal Blankets – Manufacture and Installation
 - Heat Tracing
 - Fireproofing

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

For Prevailing Wage Projects:

Scaffolder

ST \$107.07
OT \$136.15
DT \$165.23

Insulator

ST \$111.08
OT \$147.56
DT \$184.01

Scaffolder and Insulator Rates include working Lead and working Foreman

Subsistence / Per Diem	\$50/day (billed at actual payment requirements of prevailing wage w/o OH or Margin)
Travel	\$60/trip (based on actual payment requirements of prevailing wage w/o OH or Margin)
Vehicles	\$75/day

Apprentice Rates will be billed at actual cost required by union assignment level and prevailing wage requirements + 25% for W/C & GL Insurance, Testing, Safety, Overhead, and Profit

Rates subject to change if Prevailing Rates change.

Non-Prevailing Wage Projects - 2019

Insulation

Skilled Helper

ST \$ 59.14
OT \$ 75.86
DT \$ 92.58

Journeyman

ST \$ 67.73
OT \$ 88.63
DT \$109.53

Lead

ST \$ 75.05
OT \$ 98.74
DT \$122.42

Foreman

ST \$ 84.23
OT \$112.10
DT \$139.96

Subsistence / Per Diem \$85/day

Travel	\$80/trip
Vehicles	\$75/day

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

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Di Drill Survey Services, Inc. – Five Year Multi-Task Consulting Services Agreement for Downhole Wireline Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Plant Facilities.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>JR.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Geothermal	

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

RECOMMENDATION:

Approval of Resolution 19-97 authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Di Drill Survey Services, Inc., for downhole wireline services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all NCPA plant facilities.

BACKGROUND:

Downhole wireline services are required from time to time for the operation and maintenance of NCPA plant facilities. NCPA has a current agreement in place with Di Drill Survey Services, Inc., however, the funds for this agreement have been exhausted. NCPA utilized this vendor recently at its Geothermal facility when it was the successful bidder for the P-Site and Q-Site Well Workover Project. NCPA desires to enter into this new multi-task enabling agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA is in the process of putting enabling agreements into place for similar scopes of work with Cogco, Inc., and PPS Operations, LLC (formerly Pacific Process Systems, Inc.).

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

The recommendation above was reviewed by the Lodi Energy Center Project Participant Committee on November 4, 2019, and was approved.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task Consulting Services Agreement with Di Drill Survey Services, Inc.

RESOLUTION 19-97

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH DI DRILL SURVEY SERVICES, INC.

(reference Staff Report #230:19)

WHEREAS, downhole wireline services are periodically required are periodically required at all Northern California Power Agency (NCPA) Plant Facilities; and

WHEREAS, Di Drill Survey Services, Inc. is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task Consulting Services Agreement with Di Drill Survey Services, Inc. to provide such services as needed at all NCPA Plant Facilities in an amount not to exceed \$1,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Di Drill Survey Services, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for downhole wireline services, for use at all NCPA Plant Facilities.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Di Drill Survey Services, Inc., a corporation with its office located at 11158 Taft Hwy, Bakersfield, CA 93311 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

2.5 Timing for Submittal of Final Invoice. Contractor shall have ninety (90) days after completion of the Requested Work to submit its final invoice for the

Requested Work. In the event Contractor fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Contractor is deemed to have waived its right to collect its final payment for the Requested Work from Agency.

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

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

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

4.5.4 Additional Certificates and Endorsements. Not Applicable.

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** If Contractor's Work involves its transporting hazardous materials, Contractor shall be deemed to be in exclusive possession and control of such materials and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of such materials, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Contractor or its agents complete transfer of such materials into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Contractor shall be responsible for all such notifications. Should Contractor be required to remedy or remove such materials as a result of a leak, spill, release or discharge of such materials into the environment at Agency's Site or elsewhere, Contractor agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor

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

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

6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors. If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.

6.6 Maintenance Labor Agreement. If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

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

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

7.3 Licenses and Permits. Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

7.4 Monitoring by DIR. Not Applicable

7.5 Registration with DIR. Not Applicable.

7.6 Prevailing Wage Rates. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less

than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

Additionally, in accordance with the California Administrative Code, Title 8, Group 3, Article 2, Section 16000, Publication of Prevailing Wage Rates by Awarding Bodies, copies of the applicable determination of the Director can be found on the web at: <http://www.dir.ca.gov/DLSR/PWD/> and may be reviewed at any time.

Contractor shall provide a certified copy of its payroll, on forms to be determined by the Agency and consistent with the Labor Code, within ten (10) days of the Contractor's receipt of Agency's written request therefor. Contractor's failure to timely comply with this provision may subject the Contractor to penalties pursuant to state law.

Contractor shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Contractor shall forfeit as a penalty to Agency \$200.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Contractor or by any subcontractor under Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Contractor.

In the event of termination, Contractor shall be entitled to compensation for Work satisfactorily completed as of the effective date of termination; Agency, however,

may condition payment of such compensation upon Contractor delivering to Agency any or all records or documents (as referenced in Section 9.1 hereof).

8.2 Amendments. The Parties may amend this Agreement only by a writing signed by both of the Parties.

8.3 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Contractor shall survive the termination of this Agreement.

8.4 Options upon Breach by Contractor. If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

8.4.1 Immediately terminate the Agreement;

8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;

8.4.3 Retain a different Contractor to complete the Work not finished by Contractor; and/or

8.4.4 Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Contractor's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.

9.2 Contractor's Books and Records. Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

9.4.3.1 Disclosure to employees, agents, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

9.4.3.2 Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

9.4.3.3 Disclosure by Agency in response to a request pursuant to the California Public Records Act.

9.4.4 Handling of Confidential Information. Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

10.1 Operations at the Project Site. Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.

10.2 Contractor's Equipment, Tools, Supplies and Materials. Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall

assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

Section 12. HEALTH AND SAFETY PROGRAMS. The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4.

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.

- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.

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 Joel Ledesma, 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:

Daniel McCall
President
Di Drill Survey Services, Inc.
11158 Taft Hwy.
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:

Jane E. Luckhardt
General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.
- 13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

DI DRILL SURVEY SERVICES, INC.

Date_____

Date_____

RANDY S. HOWARD, General Manager

DANIEL MCCALL, President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Di Drill Survey Services, Inc. ("Contractor") shall provide labor and equipment for downhole wireline services on wells for use at all NCPA Plant facilities.

Services to include, but not limited to the following:

- Pressure, temperature, and spinner surveys
- Casing caliper surveys
- Wireline wellbore plugs
- Downhole video services
- Miscellaneous wireline work in support of drilling operations.

No project under this Agreement shall include Work that would qualify as a Public Works Project under the California Public Contract Code.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all work, including hourly fees and expenses, shall not exceed the amount set forth in Section 2 hereof. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Rates on following page.

NCPA Pricing 2019

WIRELINE RATES	UOM	Cost
Wireline Unit (Includes mast unit, lubricator, and pack off)	Per Day	\$2,300.00
Wireline Unit Standby	Per Day	\$1,250.00
Wireline Unit Mileage	Per Mile	\$2.50
Wireline Operator	Per Day	\$675.00
Wireline Operator Standby	Per Day	\$425.00
Per Diem	Per Day	\$250.00
High Pressure Equipment Charge (BOP) if required	Per Day	\$250.00
Pump Down Equipment (Used on High Angle Wells)	Per Day	\$250.00
GYRO SURVEY RATES	UOM	Cost
Gyro Survey Equipment	Per Well	\$4,000.00
Gyro Orientation (Includes UBHO sub)	Per Well	\$4,250.00
Gyro Orientation (Each additional day same well)	Per Day	\$3,900.00
Gyro Equipment Standby	Per Day	\$3,150.00
Service Truck	Per Mile	\$2.00
Gyro Engineer	Per Day	\$675.00
Gyro Engineer Standby	Per Day	\$425.00
Per Diem	Per Day	\$250.00
Drop Gyro (Includes drop assembly)	Per Well	\$3,750.00
Thread Inspection per connection	Per Well	\$65.00
ADDITIONAL ITEMS	UOM	Cost
Memory Gyro Module	Per Well	\$500.00
Thermal Shield (If temps exceed 158°F)	Per Well	\$1,200.00
DOWNHOLE CAMERA SERVICES	UOM	Cost
View Max Lite Side View < 5000'	Per Run	\$3,500.00
View Max Lite Side View > 5000'	Per ft.	\$0.50
View Max Lite Side View (Standby)	Per Day	\$2,200.00
High Temp Camera < 5000'	Per Run	\$4,750.00
High Temp Camera > 5000'	Per ft.	\$1.00
High Temp Camera (Standby)	Per Day	\$2,750.00
Camera Specialist	Per Day	\$1,200.00
Camera Specialist Standby	Per Day	\$850.00
Per Diem (Subsistence)	Per Day	\$250.00
Service Unit Mileage (If over 50 miles)	Per Mile	\$2.50

PRODUCTION LOGGING SERVICES	UOM	Cost
Temperature/Pressure Survey (Flat Rate)	Per Well	\$3,500.00
Temperature/Pressure Survey (Standby)	Per Day	\$675.00
Casing Collar Locator (CCL)	Per Day	\$1,950.00
Tool Technician	Per Day	\$875.00
Tool Technician Standby	Per Day	\$550.00
Per Diem	Per Day	\$250.00
Fill Tag	Per Run	\$1,050.00

SLICKLINE SERVICES	UOM	Cost
Includes Gauge Ring Runs, Fill Tags, Sample Bailing, and Sand Bailing. (Charges in addition to wireline unit)		
Rig up Charge	Per Job	\$700.00
Hourly Rate	Per Hour	\$195.00
Slickline Unit Mileage (If over 50 miles)	Per Mile	\$2.50

LOST IN HOLE	UOM	Cost
View Max Lite Complete Tool Assembly with Centralizers	Per Tool	\$195,000.00
High Temp Camera Complete Tool Assembly with Centralizers	Per Tool	\$205,000.00
Gyro Downhole Survey System with Running Gear	Per Tool	\$228,000.00
Gyro Downhole Survey System with Running Gear (With Thermal Shield)	Per Tool	\$248,000.00
Gyro Surface Equipment		\$35,000.00
Kinley KBC Complete Tool Assembly including Centralizers	Per Tool	\$95,000.00
Kinley Megadata Complete Tool Assembly including Centralizer	Per Tool	\$145,000.00
Mechanical Temperature Probe	Per Tool	\$38,500.00
Temperature/Pressure Probe	Per Tool	\$125,000.00
Temperature/Pressure/Spinner Probe	Per Tool	\$152,500.00
Weight Bar 3' (Feed Through) 30% Discount for dummy bars	Per Tool	\$900.00
Weight Bar 5'	Per Tool	\$1,150.00
Weight Bar 7'	Per Tool	\$1,350.00
1 3/8" CCL/Temp	Per Tool	\$42,500.00
3.5" UBHO Sub with Sleeve	Per Tool	\$3,500.00
4.75" UBHO Sub with Sleeve	Per Tool	\$3,750.00
6.75" UBHO Sub with Sleeve	Per Tool	\$3,950.00
3.5" Cross Over Sub	Per Tool	\$2,200.00
4.75" Cross Over Sub	Per Tool	\$2,550.00
6.75" Cross Over Sub	Per Tool	\$2,850.00

- Inspections, Re-facing, or Recuts will be charged back to the customer
- Any other services or items requested will be charged to customer (If abnormal wear and Tear)
- Damage to equipment- if equipment is ran outside of design parameters client will be charged repair cost plus 15%.

NOTE: As a public agency, NCPA shall not reimburse Contractor for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

do hereby certify that the below-named company has prepared and implemented security plans in conformity with 49 CFR 172, subpart I and has conducted employee background investigations in conformity with 49 CFR 172.802(a), as the same may be amended from time to time,

(Company name)

for hazardous materials delivery to:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

NO APPLICABLE

EXHIBIT E

**ATTACHMENT A [from MLA]
AGREEMENT TO BE BOUND**

**MAINTENANCE LABOR AGREEMENT ATTACHMENT
LODI ENERGY CENTER PROJECT**

The undersigned hereby certifies and agrees that:

- 1) It is an Employer as that term is defined in Section 1.4 of the Lodi Energy Center Project Maintenance Labor Agreement ("Agreement" solely for the purposes of this Exhibit E) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Section 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and condition of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5) It will secure a duly executed Agreement to be Bound, in form identical to this documents, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Gifford's Backhoe Services, Inc. - First Amendment to Five Year Multi-Task General Services Agreement for miscellaneous maintenance labor and equipment rental services; Applicable to the following projects: Northern California Power Agency (NCPA) Geothermal Plant Facility.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Geothermal	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>	City of Ukiah <input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input checked="" type="checkbox"/>
City of Biggs <input checked="" type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>	Other <input checked="" type="checkbox"/>
<i>If other, please specify</i>		Turlock

RECOMMENDATION:

Approval of Resolution 19-98 authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with Gifford's Backhoe Services, Inc., for miscellaneous maintenance labor and equipment rental services, with any non-substantial changes recommended and approved by the NCPA General Counsel, increasing the not exceed amount from \$1,000,000 to \$2,000,000, for continued use at the NCPA Geothermal Plant Facility.

BACKGROUND:

Miscellaneous maintenance labor and equipment rental services, including trucking of fresh and fire water, vacuum truck services, and rental of equipment such as cranes, backhoes, and drilling operation equipment, are required from time to time for the operation and maintenance of NCPA's Geothermal Plant Facility. Gifford's Backhoe Services, Inc. is a provider of these services and equipment.

NCPA entered into a five year Multi-Task General Services Agreement with Gifford's Backhoe Services, Inc., effective August 27, 2018, for an amount not to exceed \$1,000,000. NCPA utilized this vendor to supply roustabout services at the Geothermal facility when it was the successful bidder for the P-Site and Q-Site Well Workover Projects. NCPA wants to ensure that there are sufficient funds available on this enabling agreement through its expiration in August 2023 should this vendor submit successful bid proposals in the future. Therefore, NCPA is now requesting an increase in the not to exceed amount from \$1,000,000 to \$2,000,000. NCPA has enabling agreements in place with Northern Industrial Construction and Epidendio Construction for similar scopes of work.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$2,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- Multi-Task General Services Agreement with Gifford's Backhoe Services, Inc.
- First Amendment to Multi-Task General Services Agreement with Gifford's Backhoe Services, Inc.

RESOLUTION 19-98

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A FIRST AMENDMENT TO MULTI-TASK GENERAL SERVICES AGREEMENT
WITH GIFFORD'S BACKHOE SERVICES, INC.

(reference Staff Report #231:19)

WHEREAS, miscellaneous maintenance labor and equipment rental services are required from time to time at the Northern California Power Agency (NCPA) Geothermal Plant Facility; and

WHEREAS, Gifford's Backhoe Services, Inc. is a provider of these services; and

WHEREAS, NCPA entered into a Multi-Task General Services Agreement with Gifford's Backhoe Services, Inc. effective August 27, 2018; and

WHEREAS, NCPA recently used this vendor to supply roustabout services during the Geothermal P-Site and Q-Site Well Workover Project, and as a result, this agreement is now running low on funds; and

WHEREAS, NCPA seeks to increase the not to exceed amount of the current agreement from \$1,000,000 to \$2,000,000 to ensure there are sufficient funds for any future projects for the remaining term of the 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 authorizes the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with Gifford's Backhoe Services, Inc. with any non-substantial changes as approved by the NCPA General Counsel, increasing the not to exceed amount from \$1,000,000 to \$2,000,000, for miscellaneous maintenance labor and equipment rental services, for use at the NCPA Geothermal Plant Facility.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
GIFFORD'S BACKHOE SERVICES, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Gifford's Backhoe Services, Inc., a corporation with its office located at P.O. Box 153, Cobb, CA 95426 ("Contractor") (together sometimes referred to as the "Parties") as of August 27, 2018 ("Effective Date") in Roseville, California.

Section 1. SCOPE OF WORK. Subject to the terms and conditions set forth in this Agreement, Contractor is willing to provide to Agency the range of services and/or goods described in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Contractor completes the Work, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Contractor shall perform the Work in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged and for which Contractor is providing the Work. Contractor represents that it is licensed, qualified and experienced to provide the Work set forth herein.
- 1.3 Assignment of Personnel.** Contractor shall assign only competent personnel to perform the Work. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Contractor shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Work Provided.** Work provided under this Agreement by Contractor may include Work directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Work to be Performed.** At such time that Agency determines to have Contractor perform Work under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Work to be performed ("Requested Work"), may include a not-to-exceed cap on monetary cap on Requested Work and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Work shall be completed. Contractor shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Contractor chooses not to perform the Requested Work. If Contractor agrees to perform the Requested Work, begins to perform the Requested Work, or does not respond within the seven day period specified, then Contractor will have

agreed to perform the Requested Work on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED ONE MILLION dollars (\$1,000,000)** for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

2.1 Invoices. Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Work performed;
- The Purchase Order number authorizing the Requested Work;
- At Agency's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction;
- At Agency's option, the total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing work hereunder.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable
AcctsPayable@ncpa.com

2.2 Monthly Payment. Agency shall make monthly payments, based on invoices received, for Work satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

2.3 Payment of Taxes. Contractor is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.4 Authorization to Perform Work. The Contractor is not authorized to perform any Work or incur any costs whatsoever under the terms of this Agreement until receipt of a Purchase Order from the Contract Administrator.

- 2.5 Timing for Submittal of Final Invoice.** Contractor shall have ninety (90) days after completion of the Requested Work to submit its final invoice for the Requested Work. In the event Contractor fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Contractor is deemed to have waived its right to collect its final payment for the Requested Work from Agency.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Work.

Section 4. INSURANCE REQUIREMENTS. Before beginning any Work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

- 4.1 Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than one million dollars (\$1,000,000.00) per accident.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial General Insurance. Contractor shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

4.2.2 Automobile Liability. Contractor shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Contractor, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

4.2.3 General Liability/Umbrella Insurance. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

4.3 Professional Liability Insurance. Not Applicable

4.4 Pollution Insurance. Not Applicable

4.5 All Policies Requirements.

4.5.1 Verification of coverage. Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

4.5.2 Notice of Reduction in or Cancellation of Coverage. Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

4.5.3 Higher Limits. If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.

4.5.4 Additional Certificates and Endorsements. If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Contractor shall provide the certificates of insurance and policy endorsements, as referenced in Section 4.5.1, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.

4.5.5 Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.

4.6 Contractor's Obligation. Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** If Contractor's Work involves its transporting hazardous materials, Contractor shall be deemed to be in exclusive possession and control of such materials and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of such materials, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Contractor or its agents complete transfer of such materials into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Contractor shall be responsible for all such notifications. Should Contractor be required to remedy or remove such materials as a result of a leak, spill, release or discharge of such materials into the environment at Agency's Site or elsewhere, Contractor agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** Contractor is an independent contractor and not an employee of Agency. Agency shall have the right to control Contractor only insofar as the results of Contractor's Work and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Contractor accomplishes Work rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any

compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

Contractor shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Contractor's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Contractor agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Contractor shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Contractor.

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all

subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

- 6.4 **Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 **Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 **Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 **Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 **Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 **Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem

wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

Additionally, in accordance with the California Administrative Code, Title 8, Group 3, Article 2, Section 16000, Publication of Prevailing Wage Rates by Awarding Bodies, copies of the applicable determination of the Director can be found on the web at: <http://www.dir.ca.gov/DLSR/PWD/> and may be reviewed at any time.

Contractor shall be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

Contractor shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Contractor shall forfeit as a penalty to Agency \$50.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Contractor or by any subcontractor under Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Contractor.

In the event of termination, Contractor shall be entitled to compensation for Work satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Contractor delivering to Agency any or all records or documents (as referenced in Section 9.1 hereof).

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.

- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Contractor shall survive the termination of this Agreement.

8.4 Options upon Breach by Contractor. If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

- 8.4.1** Immediately terminate the Agreement;
- 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- 8.4.3** Retain a different Contractor to complete the Work not finished by Contractor; and/or
- 8.4.4** Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

9.4.3.1 Disclosure to employees, agents, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

9.4.3.2 Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

9.4.3.3 Disclosure by Agency in response to a request pursuant to the California Public Records Act.

9.4.4 Handling of Confidential Information. Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival

purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

Section 12. HEALTH AND SAFETY PROGRAMS. The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4.

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result

in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.

- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 13.7 Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 13.8 Notices.** Any written notice to Contractor shall be sent to:

Kenneth Gifford
President
P.O. Box 153
Cobb, CA 95426

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt
General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*


- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.
- 13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

Date

8-27-18


RANDY S. HOWARD, General Manager

GIFFORD'S BACKHOE SERVICES, INC.

Date

Aug 2, 2018


KENNETH GIFFORD, President

Attest:



Assistant Secretary of the Commission

Approved as to Form:


Jane E. Luckhardt, General Counsel

Michelle Schellentrager

From: Randy Howard
Sent: Monday, August 27, 2018 8:48 AM
To: *Mgmt Team
Cc: *Admin Assts; *AcctsPayable; Brynna Bryant; Cathy S. Keefer
Subject: Signature Authority

Good morning,

I am out of the office on vacation August 27-31. Ken Speer will have signature authority on my behalf.

Regards,
Randy

Randy S. Howard
General Manager



Northern California Power Agency
A Public Agency
651 Commerce Drive
Roseville, CA 95678
916-781-4200

EXHIBIT A

SCOPE OF WORK

GIFFORD'S BACKHOE SERVICES, INC. ("contractor") agrees to provide maintenance services at the NPCPA Geothermal Facility as follows:

- **Provide miscellaneous maintenance labor services and equipment rental;**
- **Provide Trucking, Equipment and Operator Services, including Vacuum truck services, fresh/fire water trucking, cranes, backhoe labor, compactors, D class bulldozers, and excavators;**
- **Provide miscellaneous heavy equipment maintenance services related to Drilling operations and disposal;**
- **Perform work on Drill Rig cuttings located in sumps throughout Agency's Geothermal Facility, including performing cutting analysis, separation of cuttings in various bins and hauling of bins to waste sites, as directed by Agency.**

No project under this Agreement shall include Work that would qualify as a Public Works Project under the California Public Contract Code.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all work, including hourly fees and expenses, shall not exceed the amount set forth in Section 2 hereof. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Current Rates—As of January 1, 2018

Trucking—with Driver

10 yd Dump	\$90.00/hr
6 yd Dump	\$75.00/hr
Double Rolloff Trailer	\$100.00/hr
Bobtail Rolloff Truck	\$95.00/hr
End Dump	\$100.00/hr
Truck w/50 ton Lowboy Trailer	\$120.00/hr
Truck w/24 ft. Tilt Trailer	\$100.00/hr
Dump Truck w/Transfer Trailer	\$100.00/hr
Truck & Trailer	\$100.00/hr
Vacuum Tanker	\$120.00/hr
Vacuum Truck	\$100.00/hr
Water Truck (4,000 gal)	\$100.00/hr
Potable Water Delivery (state licensed)	\$225.00/load

Crane —with Operator

18 ton Hydra Crane w/trailer	\$130.00/hr
18 ton Hydra Crane w/Bobtail	\$130.00/hr

Labor

Labor—Level 1	\$38.75/hr
Labor—Level 11	\$41.50/hr
Labor—Level 111	\$43.50/hr
Labor—Level IV	\$46.25/hr
Labor—Level V	\$49.10/hr
Operator	\$51.65/hr
Working Foreman	\$53.35/hr

Labor Overtime = Time and a half and double time rates apply after 8 hours

Equipment Overtime = Cost plus \$25.00/hr after 8 hours

Overtime rates apply to any work performed on Saturday and/or Sunday

No Fuel Surcharges

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested – Not Applicable

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 – Not Applicable

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity
and employment history of all employees of

(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the
above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY
PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY
THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

EXHIBIT D – Not Applicable

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

do hereby certify that the below-named company has prepared and implemented security plans in conformity with 49 CFR 172, subpart I and has conducted employee background investigations in conformity with 49 CFR 172.802(a), as the same may be amended from time to time,

(Company name)

for hazardous materials delivery to:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

EXHIBIT E – Not Applicable

**ATTACHMENT A [from MLA]
AGREEMENT TO BE BOUND**

**MAINTENANCE LABOR AGREEMENT ATTACHMENT
LODI ENERGY CENTER PROJECT**

The undersigned hereby certifies and agrees that:

- 1) It is an Employer as that term is defined in Section 1.4 of the Lodi Energy Center Project Maintenance Labor Agreement ("Agreement" solely for the purposes of this Exhibit E) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Section 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and condition of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5) It will secure a duly executed Agreement to be Bound, in form identical to this documents, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: _____

Name of Employer

(Authorized Officer & Title)

(Address)

Date:_____

NORTHERN CALIFORNIA POWER AGENCY

Date:_____

GIFFORD'S BACKHOE SERVICES, INC.

RANDY S. HOWARD, General Manager

KENNETH GIFFORD, President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

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:

Current Rates—as of January 1, 2019

Trucking—with Driver

10 yd Dump	\$100.00/hr
6 yd Dump	\$75.00/hr
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Bobtail Rolloff Truck	\$100.00/hr
End Dump	\$110.00/hr
Truck w/50 ton Lowboy Trailer	\$130.00/hr
Truck w/24 ft. Tilt Trailer	\$105.00/hr
Dump Truck w/Transfer Trailer	\$110.00/hr
Truck & Trailer	\$107.00/hr
Vacuum Tanker	\$125.00/hr
Vacuum Truck	\$105.00/hr
Potable Water Delivery (state licensed)	\$225.00/load
Water Truck (4,000 gal)	\$105.00/hr
Field Service Truck	\$75.00/day
16 ft. Flatbed Trailer	\$75.00/day
Overnight Travel Charge	\$125.00/day

Crane —with Operator

18 ton Hydra Crane w/trailer	\$135.00/hr
18 ton Hydra Crane w/Bobtail	\$135.00/hr

Labor

Labor—Civil	\$45.00/hr
Labor—Roustabout	\$45.00/hr
Labor—Lead Man	\$50.00/hr
Labor—Operator	\$52.00/hr
Labor—Foreman	\$55.00/hr

Overtime will be charged in accordance to CA Overtime Laws

Overtime rates apply to any work performed on Federal Holidays

Equipment Overtime = Cost plus \$25.00/hr after 8 hours, cost plus \$37.50/hr after 12 hours

Equipment Overtime Weekends/Federal Holidays = Cost plus \$25.00/hr first 8 hours, cost plus \$37.50/hr after 8 hours

Equipment Overtime applies to combination of equipment if same driver/operator

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.



26

Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Geothermal Resource Group, Inc. - First Amendment to Five Year Multi-Task Consulting Services Agreement for assisting in development of new or production well workovers, interpretation of well analysis reports and supervision during drilling operations. Applicable to the following projects: NCPA Geothermal Plant Facility.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Geothermal	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>	City of Ukiah <input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input checked="" type="checkbox"/>
City of Biggs <input checked="" type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>	Other <input checked="" type="checkbox"/>
<i>If other, please specify</i>		Turlock

SR: 232:19

RECOMMENDATION:

Approval of Resolution 19-99 authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement with Geothermal Resource Group, Inc., for assisting in development of new or production well workovers, interpretation of well analysis reports and supervision during drilling operations, with any non-substantial changes recommended and approved by the NCPA General Counsel, increasing the not exceed amount from \$500,000 to \$1,500,000, for use at the NCPA Geothermal Plant Facility.

BACKGROUND:

Well related services are required from time to time for project support at NCPA's Geothermal Plant Facility. Geothermal Resource Group, Inc. is a provider of these services. NCPA entered into a five-year Multi-Task Consulting Services Agreement with Geothermal Resource Group, Inc., effective March 8, 2019, for an amount not to exceed \$500,000 for well related services. After completing competitive bidding, NCPA recently used this vendor to supply both on-site company man and superintendent services during the Geothermal P-Site and Q-Site Well Workover Project. NCPA wants to ensure that there are sufficient funds available on this enabling agreement through its expiration in March 2024 should this vendor submit successful bid proposals in the future. Therefore, NCPA is now requesting an increase in the not to exceed amount from \$500,000 to \$1,500,000 over the term.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,500,000 over five years, to be used out of the NCPA approved annual operating budgets as services are rendered. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has additional enabling agreements in place with Rodney Bray and Capuano Engineering Company for similar services and, in addition, seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval on Consent Calendar.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- Multi-Task Consulting Services Agreement with Geothermal Resource Group
- First Amendment to Multi-Task Consulting Services Agreement with Geothermal Resource Group

RESOLUTION 19-99

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A FIRST AMENDMENT TO MULTI-TASK CONSULTING SERVICES
AGREEMENT WITH GEOTHERMAL RESOURCE GROUP, INC.

(reference Staff Report #232:19)

WHEREAS, assisting in development of new or production well workovers, interpretation of well analysis reports and supervision during drilling operations are required from time to time at the NCPA Geothermal Plant Facility; and

WHEREAS, Geothermal Resource Group, Inc. is a provider of these services; and

WHEREAS, NCPA entered into a Multi-Task Consulting Services Agreement with Geothermal Resource Group, Inc., effective March 8, 2019; and

WHEREAS, NCPA recently used this vendor to supply both on-site company man and superintendent services during the Geothermal P-Site and Q-Site Well Workover Project and wants to ensure that there are sufficient funds available on this agreement through its expiration in March 2024; and

WHEREAS, NCPA seeks to increase the not to exceed amount of the current agreement from \$500,000 to \$1,500,000; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary; 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 First Amendment to the Multi-Task Consulting Services Agreement with Geothermal Resource Group, Inc. with any non-substantial changes as approved by the NCPA General Counsel, increasing the not to exceed amount from \$500,000 to \$1,500,000 for assisting in development of new or production well workovers, interpretation of well analysis reports and supervision during future drilling operations for use at the NCPA Geothermal Plant Facility.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
GEOTHERMAL RESOURCE GROUP, INC.**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Geothermal Resource Group, Inc., a corporation, with its office located at 77530 Enfield Lane, Building E, Palm Desert, CA 92211 ("Consultant") (together sometimes referred to as the "Parties") as of March 8, 2019 ("Effective Date") in Roseville, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified therein.

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) year from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, upon receiving written notice from Agency of such request, reassign such personnel, as soon as a qualified person becomes available.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency.
- 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 (7) 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 (7) 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 FIVE HUNDRED THOUSAND** dollars (\$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
AcctsPayable@ncpa.com

2.2 Monthly Payment. Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

- 2.4 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement without verbal or written authorization from the Contract Administrator.
- 2.5 Timing for Submittal of Final Invoice.** Consultant shall use its best efforts to within ninety (90) days after completion of its Services submit its final invoice for the Requested Services. In the event Consultant is delayed in billing due to receipt of an invoice from a third party, it shall so advise Agency. In the event Consultant fails to submit an invoice to Agency for any amounts due within 120 days from completion of its Services, 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. Intentionally Omitted

4.4 All Policies Requirements.

4.4.1 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

4.4.2 Notice of Reduction in or Cancellation of Coverage. Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

4.4.3 Higher Limits. If Consultant maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Consultant.

4.4.4 Additional Certificates and Endorsements. Intentionally Omitted

4.4.5 Waiver of Subrogation. Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

4.5 Consultant's Obligation. Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that 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, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation) arising out of Consultant's operations or the misconduct or negligent acts, errors or omissions by Consultant, its officers, officials, agents, and employees while providing the Services, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Consultant agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Consultant.

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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 with prior written Notice;
 - 8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to the Services provided;
 - 8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or
 - 8.4.4 Charge Consultant the cost to complete the Services that are unfinished at the time of material breach.

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 or as required by Law, 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 or the Services provided.

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 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.
- 10.8 Notices.** Any written notice to Consultant shall be sent to:

William M. Rickard
President
Geothermal Resource Group, Inc.
77530 Enfield Land, Building E
Palm Desert, CA 92211

With a copy to:

Monica E. Amboss, Attorney
Law Office of Monica E. Amboss, a California Professional Law Corporation
40634 Eastwood Lane
Palm Desert, CA 92211

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt
General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

- 10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

10.11.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

10.11.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

10.11.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

10.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.15 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. .

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

GEOTHERMAL RESOURCE GROUP, INC.

Date 3/8/19

Date 25 Feb 2019


RANDY S. HOWARD, General Manager


William M. RICKARD, President

Attest:


Assistant Secretary of the Commission

Approved as to Form:



Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Geothermal Resource Group, Inc. ("Consultant") shall provide consulting services as requested by the Northern California Power Agency ("Agency") at the Geyser's Geothermal Facility Plant. Services shall include, but not be limited to the following:

- Assist in the development of new or production well workover plans and bid packages for drilling rig operations.
- Provide drilling engineering.
- Provide day and/or night supervision at the drill rig site for all drilling activities performed at the work site, including but not limited to:
 - Supervise the operation of the drill rig and all of the contractors that will be working on the drill rig site, with an emphasis on safety and the environment ; and
 - Track costs while managing the drilling operation in the most fiscally responsible method possible.
- Plan and supervise well testing activities.
- Wellsite geology.
- Interpret well analysis reports and assist to derive best solutions.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed the amount stated in Section 2 of the Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Geothermal Resource Group Rates

Rates may be adjusted annually to reflect merit, market, and changes in the expected level and mode of operations upon the giving of 30 days' written notice to Agency. Revised fee schedules and charges will apply to existing and new assignments.

Engineering and Geoscience

The charge for time required to perform engineering and geosciences services and related consultation, including office, field and travel time, is charged at the hourly and daily rates set forth below for the labor classifications indicated.

<u>Labor Classification</u>	<u>Rate per Hour</u>	<u>Rate per Day</u>
Senior Technical Advisor	\$480	\$4800
Principal Engineer	\$290	\$2900
Senior Engineer/Geologist	\$225	\$2250
Project Engineer/Geologist	\$170	\$1700
Staff Engineer/Geologist	\$110	\$1100
Technician	\$85	\$850
Clerical	\$60	\$600

Field Management and Supervision

<u>Labor Classification</u>	<u>Rate per Day</u>
Drilling Manager	\$2250
Coordinating Supervisor	\$2000
Drilling Supervisor	\$1900
Well Test Engineer	\$2250
Well Site Geologist	\$1700
Geochemist	\$1700
Survey Engineer	\$1500

Other Charges

Travel and Other Direct Costs

The minimum charge for work performed away from the point of origin is one half day. All travel is charged portal to portal, and travel over 5 hours is charged a full day. The cost of travel, transfers and other direct project costs are charged at cost plus 18%. Air travel over 4 hours is via business class seating. A per diem charge of \$250 per day may be used for lodging, meals

and incidentals in lieu of actual costs, or \$90 per day for meals and incidentals if lodging is not required. Personal vehicle mileage is reimbursed at the rate permitted by the Internal Revenue Service.

Third-Party Costs

Third party costs will be billed at cost plus 18%.

Consulting Retainer

A consulting retainer may be required for Clients without established GRG credit history.

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.



**FIRST AMENDMENT TO MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND GEOTHERMAL RESOURCE GROUP,
INC.**

This First Amendment ("Amendment") to Multi-Task Consulting Services Agreement is entered into by and between the Northern California Power Agency ("Agency") and Geothermal Resource Group, Inc., ("Consultant") (collectively referred to as "the Parties") as of _____, 2019.

WHEREAS, the Parties entered into a Multi-Task Consulting Services Agreement dated effective March 8, 2019, (the "Agreement") for Geothermal Resource Group, Inc., to provide consulting services as requested by the Northern California Power Agency at its Geothermal Plant Facility; and

WHEREAS, the Agency now desires to amend the Agreement to increase the total compensation authorized by the Agreement from a "NOT TO EXCEED" amount of \$500,000 to a "NOT TO EXCEED" amount of \$1,500,000; and

WHEREAS, the Parties have agreed to modify the Agreement as set forth above; and

WHEREAS, in accordance with Section 8.2 all changes to the Agreement must be in writing and signed by all the Parties; and

NOW, THEREFORE, the Parties agree as follows:

1. **Section 2—Compensation** of the Agreement is amended and restated to read as follows:

Agency hereby agrees to pay 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.

The remainder of Section 2 of the Agreement is unchanged.

2. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

SIGNATURES ON FOLLOWING PAGE

Date: _____

Date: _____

NORTHERN CALIFORNIA POWER AGENCY

GEOTHERMAL RESOURCE GROUP, INC.

RANDY S. HOWARD, General Manager

WILLIAM M. RICKARD, President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel



Commission Staff Report

November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Review and Approve the Northern California Power Agency (NCPA) Investment Policy Guidelines and Delegate Investment Duties to the Treasurer-Controller

AGENDA CATEGORY: Consent

FROM:	Monty Hanks <i>MH</i> Assistant General Manager/CFO	METHOD OF SELECTION: N/A
Division:	Administrative Services	<i>If other, please describe:</i>
Department:	Accounting & Finance	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

It is recommended the NCPA Commission approve Resolution 19-102. The resolution includes an annual review of NCPA's Investment Policy No. 200-100 and a recommendation of no changes to the current policy. In addition, the resolution also confirms delegation to the Treasurer-Controller the authority to establish proper safeguards, controls, and procedures to maintain NCPA funds in a lawful, rational, and prudent manner including the investment of such funds. The Treasurer-Controller assumes full responsibility for investment transactions until the authority is revoked or expires, and shall make a report each month of those transactions to the Commission.

BACKGROUND:

Investment Policy

NCPA sets forth its objectives, risk preference, authorized investments and other investment related priorities in its Investment Policy. The Investment Policy serves as a guide for setting and achieving investment goals, defines rules, and reduces exposure to liability and loss. While it has long been deemed good investment practice to have a written policy, it is considered a standard of best practice for government agencies to have a written policy and review it annually. Staff has reviewed the Investment Policy against the Government Code and recommends no changes or updates at this time. The Treasurer-Controller is scheduled to attend the State of California's Local Agency Investment Fund (LAIF) conference where the Investment Policy will be reviewed by other finance professionals. If any changes are recommended, the Treasurer-Controller will bring the Investment Policy back to the Finance Committee for review.

Delegation of Investment Duties

The Treasurer-Controller under authority granted by Commission Resolution No. 83-103, dated December 22, 1983, may invest monies of NCPA as provided in Section 53600 et. seq. of the Government Code. Government Code section 53607 provides that:

"The authority of the legislative body to invest or reinvest funds of a local agency, or to sell or exchange securities so purchased may be delegated for a period of one year by the legislative body to the treasurer of the local agency, who shall thereafter assume full responsibility for those transactions until the authority is revoked or expires, and shall make a report of those transactions to the legislative body. Subject to review, the legislative body may renew the delegation of authority pursuant to this section each year."

Hence, a formal delegation of investment duties to the Treasurer-Controller is required annually.

FISCAL IMPACT:

There is no direct dollar impact to this proposed policy. The resolution approves NCPA's Investment Policy and delegates authority to the Treasurer-Controller for the investment activities of the Agency.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation was reviewed by the Finance Committee on November 12, 2019 and was unanimously recommended for Commission approval.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy S. Howard", is written over the typed name.

RANDY S. HOWARD
General Manager

Attachments: Resolution 19-102

RESOLUTION 19-102

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY REVIEW AND APPROVE INVESTMENT POLICY GUIDELINES AND DELEGATE INVESTMENT DUTIES TO THE TREASURER-CONTROLLER

(reference Staff Report #237:19)

WHEREAS, Chapter 4 of the California Government Code, section 53600 et. seq., deals with the financial affairs of local government agencies, including cities and sets forth the objectives, risk preference, authorized investments and other investment related priorities in its Investment Policy; and

WHEREAS, the Northern California Power Agency Joint Powers Agreement specifies the laws regulating general law cities as being the law that applies to the Agency; and

WHEREAS, it is considered good investment practice to have a written policy, it is considered a standard of best practice to have the policy reviewed annually; and

WHEREAS, staff has performed a review of the Investment Policy against the State Code and has determined no changes or updates are needed to the current policy; and

WHEREAS, Government Code section 53607 provides that “the authority of the legislative body to invest or reinvest funds of a local agency, or to sell or exchange securities so purchased may be delegated for a period of one year by the legislative body to the treasurer of the local agency, who shall thereafter assume full responsibility for those transactions until the authority is revoked or expires, and shall make a report of those transactions to the legislative body. Subject to review, the legislative body may renew the delegation of authority pursuant to this section each year”; and

WHEREAS, the Commission desires to confirm the authority of the Treasurer-Controller to establish proper safeguards, controls, and procedures to maintain NCPA funds in a lawful, rational, and prudent manner including the investment of such funds in compliance with Government Code section 53600 et. seq.; 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 adopts a resolution approving the annual review of the Investment Policy and confirms that the duly appointed Treasurer-Controller of the Northern California Power Agency is delegated the authority to maintain NCPA funds in a lawful, rational, and prudent manner including the investment of such funds in compliance with Government Code section 53600 et. seq. The Treasurer-Controller assumes full responsibility for investment transactions until such authority is revoked or expires, and shall make a report each month of those transactions to the Commission.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by
the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda			
San Francisco BART			
Biggs			
Gridley			
Healdsburg			
Lodi			
Lompoc			
Palo Alto			
Port of Oakland			
Redding			
Roseville			
Santa Clara			
Shasta Lake			
Truckee Donner			
Ukiah			
Plumas-Sierra			

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



Commission Staff Report

November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: FY2018-19 Annual Billing Settlements

AGENDA CATEGORY: Consent

FROM:	Monty Hanks <i>MH</i> Assistant General Manager/CFO	METHOD OF SELECTION: N/A
Division:	Administrative Services	
Department:	Accounting & Finance	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i> <hr/> <hr/>		

RECOMMENDATION:

Northern California Power Agency (NCPA) staff recommends the Commission approve Resolution 19-104 and the attachments thereto regarding the FY2018-19 Annual Billing Settlements.

BACKGROUND:

The attached FY2018-19 Annual Billing Settlements Summary shows a comparison of Actual Costs and Final Billing Settlements (i.e., Collections vs. Actual).

This year's Net Refund of Excess Collections due to participants at fiscal year-end was \$5.3 million or 1.3% of Collections to date. The sources of these refunds were as follows: (1) Net Generation & Transmission operating costs of \$2.4 million; (2) Management Services costs of \$1.6 million; and (3) Pass-Through Costs and Interest and Other Income of \$1.3 million.

The Utility Directors have reviewed the final draft of the FY2018-19 Annual Billing Settlements Summary and supporting data, which is currently available on NCPA Connect. Supporting data includes the final re-run of the All Resources Bill to reflect the final settlement amounts, explanations of the primary refund drivers, and schedules reflecting annual costs, collections, and resulting over/under collections by month.

Fuel, CAISO charges and energy and ancillary services sales do not play a material role in the annual settlements process as those items are adjusted monthly in the Agency's All Resources Bill when the actual costs for these categories are invoiced by NCPA.

FISCAL IMPACT:

Upon approval by the Commission, the amount of \$5,336,452 will be distributed to participants. NCPA member refund amounts will be deposited into their respective General Operating Reserve accounts, and non-members will receive a credit miscellaneous billing in early December.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation was reviewed by the LEC Project Participant Committee on November 4th as well as the Facilities Committee on November 6th and was recommended for Commission approval at both meetings.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments: Billing Settlements Summary

RESOLUTION 19-104

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE FY 2018-19 ANNUAL BILLING SETTLEMENTS

(reference Staff Report #239:19)

WHEREAS, the Northern California Power Agency, (Agency) FY2018-19 Annual Billing Settlements has been closed, reconciled, and finalized; and

WHEREAS, the independent audit of the Agency's financial statements has been completed; and

WHEREAS, the Agency's generating, transmission, energy contract resources, and other programs are billed monthly throughout the fiscal year on an estimated basis; and

WHEREAS, the Agency's monthly billings to participants for FY2018-19 have been re-run using the finalized FY2018-19 Annual Billing costs; and

WHEREAS, these processes have resulted in a final billing cost settlement for each program; and

WHEREAS, the Utility Directors reviewed the detailed support for the FY2018-19 Annual Billing Settlements Summary, the related Project and Program Cost Summary Reports, and the re-run of the monthly All Resources Bills and have found all to be satisfactory; 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 adopts the FY2018-19 Annual Billing Settlements, as summarized in the attachments hereto; and, does hereby direct that the net refund of \$5,336,452 due to participants be distributed.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019
by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY

**Northern California Power Agency
FY 2019 Billing Settlement Summary - By Participant and Customers**

	Collections	Actual Costs	Refund (Charge)
Summary all Participants and Customers	\$ 424,507,265	\$ 419,170,813	\$ 5,336,452
Summary By Participant			
Alameda	\$ 27,890,803	\$ 27,580,648	\$ 310,155
BART	29,300,957	29,052,999	247,958
Biggs	1,306,002	1,278,187	27,815
Gridley	3,139,545	3,080,238	59,307
Healdsburg	6,223,169	6,156,125	67,044
Lodi	37,675,297	37,133,240	542,057
Lompoc	10,539,026	10,428,432	110,594
Palo Alto	78,440,706	77,146,980	1,293,726
Plumas Sierra	7,089,529	6,965,117	124,412
Port of Oakland	7,805,417	7,698,391	107,026
Redding	848,964	791,953	57,011
Roseville	3,712,172	3,286,599	425,573
Santa Clara	129,458,746	128,070,500	1,388,246
Shasta Lake	138,463	136,082	2,381
Truckee-Donner	144,522	129,037	15,485
Ukiah	8,386,258	8,297,829	88,429
Other Project Participants:			
TID	138,303	105,396	32,907
Azusa	575,398	549,628	25,770
California Department of Water Resources	6,356,372	6,052,701	303,671
MID	(941,040)	(1,023,262)	82,222
Power & Water Resources Pooling Authority	2,113,639	2,088,976	24,663
Total - Participants	360,342,248	355,005,796	5,336,452
Summary By Customer			
East Bay Community Energy	42,946,569	42,946,569	-
Merced Irrigation District	399,910	399,910	-
Pioneer Community Energy	7,215,564	7,215,564	-
Placer County Water Agency	414,119	414,119	-
San Jose Clean Energy	13,188,855	13,188,855	-
Total - Customers	64,165,017	64,165,017	-
Total	\$ 424,507,265	\$ 419,170,813	\$ 5,336,452
			1.3%

Source: ASU FY2019 Summary (by Participant)

**Northern California Power Agency
FY 2019 Billing Settlement Summary -- Explanation Overview**

General Comment

Billing settlements is the process of comparing actual participant and third party collections to actual cost requirements. Participant collections are based on a combination of actual costs and the approved Annual Budget. NCPA Plant collections are based on budgeted fixed and variable costs. Fixed costs are collected ratably over the fiscal year, and variable costs are collected based on budgeted generation MWh. Management Services revenue requirements are generally collected ratably over the fiscal year.

ISO charges and energy and ancillary services revenues do not play a material role, if any in the annual billing settlement process. Similarly Third Party energy purchases and sales, are settled up concurrently with ISO processes in the All Resources Bill.

The result of the year end settlements analysis is a refund of \$5,336,452 or 1.3% which is the net of total collections of \$424,507,265 less costs of \$419,170,813. The refund is primarily comprised of lower net costs for Generation Resources and Management Services as follows:

Generation Resources

Generation Resources accounts for \$2.4 million or approximately 45.0% of the total refunded amount. The primary driver for the variance was the net decrease in actual costs from those billed to participants as outlined below.

<u>Refund (in 000's)</u>	
	Routine O&M costs higher than collections primarily due to higher operating costs resulting from annual maintenance work on major
\$ (2,417)	generators at GEO, LEC and CT 1.
609	Postponement of certain O&M and capital projects.
177	Final actual allocated Generation Services costs were lower than projected due to vacant positions and reduced use of outside services.
189	A&G costs were lower than projected primarily driven by lower overall A&G costs.
2,105	Lower debt service costs resulting from Hydro refunding at lower rates.
65	Other costs, primarily lower property and liability insurance premiums and engineering costs.
1,675	Higher interest income & miscellaneous income collected during the year.
<u>\$ 2,403</u>	

Management Services

Management Services accounts for \$1.6 million or approximately 30.5% of the total refunded amount. Billing requirements are generally collected ratably over the fiscal year. Variance drivers are listed below:

<u>Refund (in 000's)</u>	
\$ 385	Salaries and Benefits were less than projected primarily due to staff transitions.
588	Legal and Other Outside Services were lower than estimated.
196	Judicial Action activities related to Tariffs and Rates were lower than anticipated.
348	A&G costs less than projected primarily driven by lower salaries & benefits and lower contract services as we continue to perform more work in-house.
111	Travel, Hardware, Software, Supplies, Network and Data Services costs were less than projected.
<u>\$ 1,628</u>	

Pass Through Costs

Pass Through Costs were overfunded by \$259 thousand, or 4.9% of the total refunded amount. The overfunded amount represents primarily excess collection of BAMx and Other Projects costs.

Third Party Revenues

Third Party Revenue was higher than anticipated by \$1.05 million, or 19.6% of the total refunded amount; the increase was primarily driven by higher interest and Power Management Service Revenue.

	ALA	AZU	BART	BIG	CDWR	ESCE	GRI	HCA	LDO	LDM	MD	MD	PAL	PCE	PCMA	PLU	POI	PWR	RFD	ROS	SHA	SJCE	DWP	TDUPD	TD	URS	Total \$							
GENERATION RESOURCES																																		
NCPA Plans																																		
Hydroelectric	\$	799,319	\$	\$	\$	\$	\$	\$	(39,565)	\$	831,941	\$	184,514	\$	\$	\$	1,706,131	\$	\$	\$	(\$13,855)	\$	\$	\$	3,956,100	\$	\$	163,660	\$	8,832,854				
Geothermal	\$	7,720	\$	\$	\$	\$	\$	\$	243	\$	2,950	\$	1,030	\$	2,940	\$	\$	\$	\$	\$	\$	9,236	\$	\$	\$	253,101	\$	\$	5,981	\$	1,050			
Combustion Turbine No. 1 (2015)	\$	1,732,975	\$	\$	\$	\$	\$	\$	26,368	\$	406,130	\$	896,767	\$	268,129	\$	1,276,470	\$	\$	\$	\$	\$	\$	\$	\$	3,889,236	\$	\$	\$	\$	7,338,392			
Combustion Turbine No. 2 (2015)	\$	966,535	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	1,864,001	\$	330,532	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	1,761,923	\$	\$	\$	\$	4,236,044			
LEC	\$	\$	577,438	\$	1,895,143	\$	(21,098)	\$	3,363,717	\$	\$	\$	340,342	\$	(74,725)	\$	(97,186)	\$	(268,232)	\$	\$	\$	\$	\$	\$	\$	21,840	\$	\$	2,115,938	\$	\$		
Member & Customer Revenue & Credits	\$	496,288	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$			
NCPA Contracts - Gas	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$			
NCPA Commerce	\$	1,054,372	\$	\$	(272,816)	\$	44,601	\$	\$	\$	\$	\$	388,385	\$	(24,725)	\$	(763,737)	\$	(182,701)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Power	\$	7,357	\$	\$	(26,243)	\$	1,330	\$	\$	\$	\$	\$	805	\$	688	\$	5,487	\$	1,506	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Water Revenue	\$	1,813,124	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	(217,452)	\$	(185,260)	\$	(186,700)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Net ID Load Acquisition	\$	11,802,312	\$	\$	11,366,125	\$	\$	\$	36,837,265	\$	\$	\$	1,557,937	\$	1,539,795	\$	19,046,464	\$	6,406,346	\$	\$	\$	\$	\$	\$	\$	1,664,676	\$	\$	\$	\$	\$	\$	
Net Capacity Paid	\$	10,134	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	(8,216)	\$	157,234	\$	2,772	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Land Leasing Costs	\$	75,123	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	13,317	\$	15,644	\$	26,347	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
GHG Allowance Purchase	\$	91,280	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	227,840	\$	2,360,180	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
TS&I - NCPA & State Project #1	\$	36,400	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	64,443	\$	164,118	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Subtotal Generation Resources	\$	11,055,951	\$	577,438	\$	19,205,195	\$	484,432	\$	6,363,717	\$	26,934,534	\$	2,446,148	\$	4,444,768	\$	35,916,554	\$	7,046,116	\$	\$	\$	\$	\$	\$	\$	3,963,257	\$	\$	\$	\$	\$	\$
TRANSMISSION																																		
Independent System Operator	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Wholesale Access System	\$	2,313,722	\$	\$	8,646,214	\$	345,409	\$	\$	\$	\$	\$	654,109	\$	1,864,421	\$	\$	\$	2,287,744	\$	2,427,036	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
ISO (Not Creditable)	\$	544,260	\$	\$	\$	\$	\$	\$	8,544,437	\$	\$	\$	\$	\$	1,866,534	\$	943,914	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
ISO (Other Creditable)	\$	(130,861)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
ISO Amort. Costs	\$	(61,344)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
ISO (Partial) Adjustments	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Subtotal Transmission	\$	7,669,000	\$	\$	9,709,389	\$	354,479	\$	\$	\$	\$	\$	15,524,736	\$	4,664,768	\$	1,865,836	\$	6,384,476	\$	3,596,116	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
MAINTENANCE RESOURCES																																		
Logistics & Regulatory	\$	75,584	\$	\$	\$	\$	\$	\$	42,751	\$	\$	\$	44,264	\$	82,632	\$	82,548	\$	57,935	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Regulatory Representation	\$	33,130	\$	\$	\$	\$	\$	\$	20,822	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Water Revenue	\$	24,281	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Member Support Services	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
JPA Assessment	\$	51,268	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Asset Audit	\$	64,365	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Power Management	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
SCADA, Energy Risk Mgmt & Settlements	\$	968,431	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Green Power Project	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Water Power Purchase Project	\$	10,000	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Gas Purchase Program	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Power Management Fee	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Support Services	\$	38,014	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Power-Flow Costs	\$	154,533	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Miscellaneous / Other	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Whaling Capital Deprec. Adjustment	\$	37,044	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Business Management Services	\$	1,146,000	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
TOTAL ANNUAL ACTUAL COST	\$	21,123,632	\$	564,874	\$	26,944,840	\$	1,404,768	\$	6,422,225	\$	43,106,343	\$	3,345,719	\$	6,523,620	\$	37,506,292	\$	16,606,094	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
LESS: THIRD PARTY REVENUE, CREDITS AND TRANSFERS																																		
Market Sales	\$	(2,076)	\$	\$	\$	(26,127)	\$	\$	\$	\$	\$	\$	(386)	\$	(644)	\$	(6,420)	\$	(849)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Ancillary Services Revenue	\$	(19,682)	\$	\$	\$	(9,796)	\$	\$	\$	\$	\$	\$	(189,776)	\$	(1,232)	\$	(14,776)	\$	(2,835)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Interest and Other Income	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Net transfers (to/from OGS)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
GHG Allowance Collections	\$	(81,400)	\$	\$	\$	(432,366)	\$	(7,450)	\$	\$	\$	\$	(239,856)	\$	(251,840)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Other Credits/DETC	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Net Grants Revenue (Revenue)	\$	(15,500)	\$	(4,476)	\$	(10,235)	\$	(9,965)	\$	(81,852)	\$	\$	(14,880)	\$	(53,811)	\$	(118,589)	\$	(65,164)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Pat. Service Revenue (AS&S)	\$	(26,199)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	(2,123)	\$	(5,841)	\$	(20,317)	\$	(6,479)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Other Revenue Adjustments	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Member Load Following Revenue	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Dispatchment Revenue	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
Stranded Third Party Revenue, Credits and Transfers	\$	(23,436)	\$	(6,476)	\$	(643,883)	\$	(94,749)	\$	(86,455)	\$	(189,776)	\$	(546,736)	\$	(360,451)	\$	(233,932)	\$	(61,827)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
NET ANNUAL ACTUAL COST	\$	37,899,807	\$	578,398	\$	26,300,956	\$	1,309,062	\$	6,335,770	\$	42,916,667	\$	3,159,565	\$	6,239,969	\$	36,850,768	\$	16,444,267	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

[illegible]

[illegible]



Commission Staff Report

November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Northern California Power Agency (NCPA) Scheduling Coordination Program Agreement Appendix B – Approval of Revised Version 23 of Appendix B

AGENDA CATEGORY: Consent

FROM:	Robert Caracristi <i>RWC</i> Manager, Information Services and Power Settlements	METHOD OF SELECTION: N/A
Division:	Administrative Services	
Department:	Power Settlements	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>	City of Ukiah <input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit <input checked="" type="checkbox"/>	City of Palo Alto <input checked="" type="checkbox"/>	Plumas-Sierra REC <input checked="" type="checkbox"/>
City of Biggs <input checked="" type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input checked="" type="checkbox"/>
City of Gridley <input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		
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RECOMMENDATION:

Staff recommends approval of Resolution No. 19-105 implementing a revised Version 23 of Appendix B to the Scheduling Coordination Program Agreement (SCPA), which details the allocation of California Independent System Operator (CAISO) charges and payments to NCPA Members.

BACKGROUND:

The Power Management and Administrative Services Agreement (PMASA) dated October 1, 2014, sets forth the terms and conditions under which NCPA provides contracted services to participants. The PMASA includes the Scheduling Coordination Program Agreement (SCPA), which defines the guidelines through which NCPA provides scheduling coordination services to members who are signatories to the PMASA. Included within the SCPA are several appendices that detail the multiple protocols and procedures associated with NCPA's participation in the CAISO markets with respect to, among other things, the scheduling, dispatch and financial settlements of members' loads and supply resources. Pursuant to the SCPA, these appendices may be modified, subject to Commission approval, to conform to changes in scheduling protocols and CAISO market settlement rules.

A revised Version 23 of Appendix B to the Scheduling Coordination Program Agreement (SCPA) incorporates updates to two settlement charge codes associated with the CAISO serving as the reliability coordinator (RC) for entities within its balancing authority area (BAA). In addition, version 23 of Appendix B includes minor revisions to several existing settlement charge codes for improved clarity and consistency.

The proposed updates to Appendix B are technical in nature as summarized in the table below. A clean and redline version of both Appendix B are each available for review on the NCPA Connect extranet website (connect.ncpa.com).

Appendix B to the SCPA Change Summary Table

Appendix B Section	Change Action	Description
Charge Code 5705 for CAISO Reliability Coordinator (RC) Services Charge Allocation Page 124 of redline version of Appendix B	New settlement charge code 5705 added for the annual allocation of CAISO costs associated with provision of reliability coordination services within the CAISO Balancing Authority Area (BAA). This charge code is effective as of 7/1/2019 and settles annually by the CAISO during each January calendar month.	<ul style="list-style-type: none">Consistent with CAISO methodology, NCPA Members are allocated their respective share of NCPA charges for RC services in proportion to each utility's metered demand as measured in total annual megawatt hours;Consistent with CAISO methodology, NCPA will calculate members' respective metered demand quantities for the calendar year two years prior to the current assessment year (e.g. 2017 MWh meter data applied to 2019 assessment year)

Appendix B Section	Change Action	Description
Charge Code 6496 for Peak Reliability Coordinator Charge Page 227 of redlined version of Appendix B	Retired charge code 6496 effective 6/30/2019 for outgoing Peak Reliability service provider of RC services for the CAISO BAA	Charge Code 6496 was the predecessor to charge code 5705 in which CAISO allocated Peak Reliability RC charges to all scheduling coordinators, including NCPA, within the CAISO BAA.
Charge Code 6977 for Allocation of Transmission Loss Obligation Charge for RT Schedules under Control Agreements Page 189 of redlined version of Appendix B	Modify charge code 6977 allocation to NCPA members based on gross measured demand to be consistent with CAISO allocation methodology.	<ul style="list-style-type: none"> This Appendix B modification represents both a software change and documentation update. Current settlement allocation among NCPA members is in proportion to each utility's net measured demand, which excludes the metered demand quantities served by a member's respective behind-the-meter generation. Change effective retroactive to 7/1/2019
Charge Code 7896 for Monthly CPM (Capacity Procurement Mechanism) Allocation Page 202 of redlined version of Appendix B	Update Appendix B documentation to clarify that allocation of amounts associated with charge code 7896 apply to all NCPA Members' respective metered demand quantities.	<p>This is a document only change to Appendix B that applies to the CAISO's Exceptional Dispatch CPM.</p> <p>Current Appendix B indicates that allocation of Exceptional Dispatch for CPM applies exclusively to Pool Members. This change clarifies that allocation for Exceptional Dispatch of CPM applies to all NCPA Members in proportion to their respective utility's metered demand.</p>
NCPA Unit Energy Allocation (UEA) process that describes allocation of metered energy. Page 20 of redlined version of Appendix B	Document change to Appendix B to clarify the pre-UEA process for allocation of CAISO real time Dispatch Instructions to Operating Entities of jointly owned NCPA Projects.	<ul style="list-style-type: none"> This is a document only change to Appendix B to clarify the pre-UEA process for allocation of CAISO real time Dispatch Instructions to Operating Entities of jointly owned NCPA Projects. Current Appendix B references instructions sourced from an outdated process;

Appendix B Section	Change Action	Description
NCPA Unit Energy Allocation (UEA) process, cont'd.		<ul style="list-style-type: none">As described on page 20, CAISO real time dispatch instructions and regulation energy are generally allocated to NCPA operating entities in proportion to their respective share of applicable capacity award shares for each product (i.e. Spin, Non-Spin, Regulation, Supplemental energy).

FISCAL IMPACT:

No significant costs will be incurred to implement the changes to the SCPA Appendices and funds are available in the NCPA budget to support the work associated with these contract updates.

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:

No formal action was taken due to the lack of a quorum, however, the seven (7) Project participants present at the meeting voiced their support for the recommendation below and no other meeting attendees had any objections.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachment: Resolution 19-105

RESOLUTION 19-105

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY SCHEDULING COORDINATION PROGRAM AGREEMENT VERSION 23 APPENDIX B REVISION

(reference Staff Report #240:19)

WHEREAS, the Amended and Restated Scheduling Coordination Program Agreement (“SCPA”) dated October 1, 2014, sets forth the terms and conditions under which NCPA supplies Scheduling Coordination Services to members; and

WHEREAS, the SCPA contains multiple appendices that detail the protocols and procedures through which NCPA participates in the California Independent System Operator (“CAISO”) markets through the CAISO’s bid-to-bill process cycle that includes, among other things, the submission of energy and capacity bids into the CAISO, and the resulting scheduling, dispatch and allocation of financial settlements associated with members’ loads and supply resources; and

WHEREAS, the appendices of the SCPA contain the terms and conditions for allocating the numerous CAISO charges and credits to the members in an equitable manner, the scheduling details applicable to the agreement, and various other technical and administrative provisions; and

WHEREAS, as required from time to time the SCPA participants recommend revision and updates to the administrative and technical provisions contained in Appendix B to the SCPA to accurately reflect the evolving terms and conditions related to services from the CAISO; and

WHEREAS, to ensure the accuracy of cost allocations it is necessary to make changes and updates to the estimate and allocation formulas in Appendix B as outlined in the Appendix B Change Summary Table of the Staff Report; and

WHEREAS, on November 6, 2019 the Facilities Committee reviewed the proposed changes to Version 23 of Appendix B to the SCPA and recommended Commission approval; 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 acting by and through the Parties to the NCPA Scheduling Coordination Program Agreement approves revised Version 23 of Appendix B to the SCPA effective retroactive July 1, 2019 as described in Staff Report #240:19, and authorizes NCPA staff under the direction of the NCPA General Manager to implement the provisions thereto.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



30

Commission Staff Report

Date November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Approval of an Amendment to the Amended and Restated Market Purchase Power Agreement to enable the Northern California Power Agency to transact Low Carbon Fuel Standard Credits on behalf of the Participants.

AGENDA CATEGORY: Consent

FROM:	Tony Zimmer <i>72</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Power Management	<i>If other, please describe:</i>
Department:	Power Management	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		
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RECOMMENDATION:

Staff recommends that the Commission approve and adopt an amendment to the Amended and Restated Market Purchase Program (MPP) Agreement, as further described in this Staff Report, to enable the Northern California Power Agency (NCPA) to transact Low Carbon Fuel Standard (LCFS) credits on behalf of the MPP Participants, including any non-substantive modifications to the applicable MPP Agreement exhibits as may be approved by NCPA's General Counsel.

Staff also recommends that the Commission authorize the General Manager of NCPA, acting on behalf of NCPA, to enter into any brokerage agreements or other contracting instruments that are authorized in accordance with Exhibit I of the MPP Agreement or the NCPA Energy Risk Management Regulations (ERMR), to enable NCPA to transact LCFS credits on behalf of the MPP Participants.

BACKGROUND:

The MPP Agreement, was developed to enable NCPA to enter into transactions for Approved Products on behalf of the Members who are signatory to the agreement (the Participants). Approved Products are defined in the NCPA ERMR, and include energy and energy related commodities.

DISCUSSION:

Certain MPP Participants have requested NCPA to transact LCFS credits on their behalf through the MPP. LCFS credits are administered through a program established by the California Air Resources Board (ARB) that is designed to reduce the carbon intensity of fuels used for transportation. Certain NCPA Members are eligible to participate in the LCFS credits program by earning credits for electric vehicle charging within their service territories. LCFS credits that are earned through the program can be sold through ARB authorized brokers, and any revenues earned from such sales can then be used by the Member to reinvest in electric vehicle based programs.

To enable NCPA to transact LCFS credits on behalf of MPP Participants, the MPP Agreement must be amended to (i) update Exhibit I to include a reference to brokers that are approved by the ARB, which are registered in the LCFS Reporting Tool and Credit Bank and Transfer System (LRT-CBTS), and associated brokerage agreements, as such may be approved by NCPA's General Counsel, and (ii) add a new Participant Authorization form to be used for transacting LCFS credits as Exhibit K.

A copy of the amendments to the MPP Agreement are attached to this staff report for your reference.

FISCAL IMPACT:

Work associated with developing the amendment to the MPP Agreement was undertaken pursuant to approved Power Management budget categories, and costs associated with this effort are allocated in accordance with approved cost allocation methodologies as described in the NCPA annual budget.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation provided herein was presented to the Facilities Committee on November 6, 2019. No formal action was taken by the Facilities Committee due to the lack of a quorum, however, the Participants present at the meeting voiced their support for the recommendation provided herein and no other meeting attendees had any objections.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 19-108
- MPP Agreement Amendment

RESOLUTION 19-108

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING AN AMENDMENT TO THE AMENDED AND RESTATED MARKET PURCHASE POWER AGREEMENT (reference Staff Report #244:19)

WHEREAS, the Amended and Restated Market Purchase Program Agreement (MPP Agreement or MPP) was developed to enable Northern California Power Agency (NCPA) to enter into transactions for Approved Products on behalf of the Members who are signatory to the agreement (the Participants); and

WHEREAS, Approved Products are defined in the NCPA Energy Risk Management Regulations (ERMR), and include energy and energy related commodities; and

WHEREAS, certain MPP Participants have requested NCPA to transact Low Carbon Fuel Standard (LCFS) credits on their behalf through the MPP; and

WHEREAS, LCFS credits are administered through a program established by the California Air Resources Board (ARB) that is designed to reduce the carbon intensity of fuels used for transportation, and certain NCPA Members are eligible to participate in the LCFS credits program by earning credits for electric vehicle charging within their service territories; and

WHEREAS, LCFS credits that are earned through the program can be sold through ARB authorized brokers, and any revenues earned from such sales can then be used by the Member to reinvest in electric vehicle based programs; and

WHEREAS, to enable NCPA to transact LCFS credits on behalf of MPP Participants, the MPP Agreement must be amended to (i) update Exhibit I to include a reference to brokers that are approved by the ARB, which are registered in the LCFS Reporting Tool and Credit Bank and Transfer System (LRT-CBTS), and associated brokerage agreements, as such may be approved by NCPA's General Counsel, and (ii) add a new Participant Authorization form to be used for transacting LCFS credits as Exhibit K; and

WHEREAS, work associated with developing the amendment to the MPP Agreement was undertaken pursuant to approved Power Management budget categories, and costs associated with this effort are allocated in accordance with approved cost allocation methodologies as described in the NCPA annual budget; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency adopts and approves the amendment to the MPP Agreement, as further described in Commission Staff Report 244:19, to enable NCPA to transact LCFS credits on behalf of the MPP Participants, including any non-substantive modifications to the applicable MPP Agreement exhibits as may be approved by NCPA's General Counsel. Furthermore, the Commission of the Northern California Power Agency authorizes the General Manager of NCPA, acting on behalf of NCPA, to enter into any brokerage agreements or other contracting instruments that are authorized in accordance with Exhibit I of the MPP Agreement or the NCPA ERMR, to enable NCPA to transact LCFS credits on behalf of the MPP Participants.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY

EXHIBIT I

NCPA COMMISSION APPROVED BROKERS

This Exhibit I contains the list of Commission approved Brokers that may be used to consummate Contract Transactions.

1. Approved brokers registered in the Low Carbon Fuel Standard Reporting Tool and Credit Bank and Transfer System ("LRT-CBTS"); provided, however, any associated brokerage agreement(s) that may be used by NCPA to transact Local Carbon Fuel Standard Credits with an approved broker shall be reviewed and approved by NCPA's General Counsel.

EXHIBIT K

PARTICIPANT AUTHORIZATION – LOW CARBON FUEL STANDARD CREDITS

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact Low Carbon Fuel Standard Credits ("LCFS Credits") designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller:
- (b) Contract Quantity: _____ Low Carbon Fuel Standard Credits
- (c) LCFS Credits Transferred to NCPA on Date: _____
- (d) Applicable Program: _____
- (e) Sell by Date (specify date; if applicable): _____
- (f) Minimum Price: _____
- (g) Special Terms and Exceptions: See Attachment K-1
- (h) Security Deposit Amount Required: _____
- (i) Transfer from GOR: _____
- (j) Pay by Check or Wire (specify): _____
- (k) Delivery Term (if applicable): Beginning _____ Ending _____
- (l) Contract Price: See Attachment D-1

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT K-1

ATTACHMENT K-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
LOW CARBON FUEL STANDARD CREDITS

(Attach Buyer's/Seller's completed Attachment K-1 to the Participant Authorization)



Commission Staff Report

November 21, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Authorization of NCPA General Manager to enter into Task Order ESG-NCPA-SANTACLARA01 and Santa Clara Confirmation Number 0144 under the NCPA Shared Services Agreement

AGENDA CATEGORY: Consent

FROM:	Jane Cirrincione <i>JCC</i>	METHOD OF SELECTION:
	AGM, L&R Affairs	<i>Competitive Pricing Process</i>
Division:	Legislative & Regulatory Affairs	<i>If other, please describe:</i>
Department:	Legislative & Regulatory	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Subject to approval by Silicon Valley Power (SVP), and under the Shared Services Agreement between Northern California Power Agency (NCPA) and Southern California Public Power Authority (SCPPA) and the NCPA Support Services Program, authorize the NCPA General Manager or his designee to enter into Task Order No. ESG-NCPA-SANTA CLARA01 and Confirmation No. 0144 under the NCPA Support Services Program Agreement, with any non-substantial changes as approved by the NCPA General Counsel, and issue a purchase order to Efficiency Services Group, LLC (ESG) for the requested services.

BACKGROUND:

Santa Clara wishes for ESG to provide its "Keep Your Cool" Commercial Refrigeration Direct Install Program, to meet the goals and objectives of the City of Santa Clara and SVP to help commercial business owners save a significant amount of energy. Santa Clara requested ESG's services through the Shared Services Agreement between NCPA and SCPPA.

NCPA and SCPPA executed a Shared Services Agreement effective August 1, 2015, authorizing, among other things, the purchase or acquisition of goods and services by either NCPA or SCPPA, or the Members of NCPA or SCPPA, where provision has been provided in contracts to allow for the goods and services offered under the contract to extend to the other Party and its Members.

SCPPA issued a Request for Proposals on June 7, 2018, for efficiency-related services and products, and a total of 49 vendors were selected as qualified, including ESG. SCPPA entered in to an agreement with ESG on July 19, 2018, for various efficiency-related services.

In order for Santa Clara to receive efficiency-related services from ESG pursuant to the Shared Services Agreement, Task Order No. ESG-NCPA-SANTA CLARA01 will amend the agreement between SCPPA and ESG to specifically include NCPA as a Member under the agreement, allow NCPA to contract directly with ESG, and add language to meet the California Labor Code requirements for prevailing wage and registration of the project with the Department of Industrial Relations. The Task Order also specifies that invoices will be sent directly to NCPA, instead of SCPPA.

Santa Clara's Confirmation No. 0144 confirms that NCPA agrees to provide support services in accordance with the Task Order. The Confirmation authorizes costs not-to-exceed \$814,813.97, which includes NCPA's administrative costs of not-to-exceed \$3,655. ESG's services will begin in Fiscal Year 2020 and continue through Fiscal Year 2021.

FISCAL IMPACT:

No fiscal impact to NCPA. Services will be provided by ESG and will be billed to and paid by Santa Clara per the terms of the Support Services Program Agreement. NCPA's administrative costs will be reimbursed by SVP.

SELECTION PROCESS:

ESG was selected as a result of a competitive solicitation issued by SCPA. Santa Clara will utilize ESG's services via the Shared Services Agreement between NCPA and SCPA.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation will be reviewed and discussed in the Legislative and Regulatory Affairs Committee on December 4, 2019.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy S. Howard", is written over the typed name.

RANDY S. HOWARD
General Manager

Attachments:

- Resolution No. 19-111
- Task Order ESG-NCPA-SANTACLARA01
- Santa Clara Confirmation Number 0144
- Goods and Services Agreement between Southern California Public Power Authority and Efficiency Services Group, LLC

RESOLUTION 19-111

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY TO ENTER INTO A CONFIRMATION AND TASK ORDER FROM SILICON VALLEY POWER WITH ENERGY SERVICE GROUP, LLC UNDER THE SUPPORT SERVICES AGREEMENT

(Staff Report #246:19)

WHEREAS, the Northern California Power Agency (NCPA) and the Southern California Public Power Authority (SCPPA) executed a Shared Services Agreement effective August 1, 2015, authorizing among other things, the purchase or acquisition of goods and services by either NCPA or SCPPA, or the Members of NCPA or SCPPA; and

WHEREAS, certain NCPA member utilities have a need for specific goods and/or services that will improve the efficient use of electric energy by customers to allow Members to continue to provide cost-effective, reliable and environmentally beneficial electric utility service in their respective communities; and

WHEREAS, SCPPA issued a competitive solicitation to secure efficiency-related services and products in a Request for Proposal process in June 2018; and

WHEREAS, Energy Services Group, LLC submitted a proposal in response to the RFP, and was deemed qualified and capable to provide specific services; and

WHEREAS, the Legislative & Regulatory Committee considered Santa Clara's Confirmation No. 0144 and Task Order No. ESG-NCPA-SANTA CLARA01 at its December 4, 2019 meeting; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 of the California Environmental Quality Act. No environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency adopts the recommendation to enter into Task Order ESG-NCPA-SANTACLARA01 and Santa Clara Confirmation Number 0144 under the NCPA Support Services Program Agreement:

PASSED, ADOPTED AND APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY

TASK ORDER No.: ESG-NCPA-SANTA CLARA01

Date: 10/22/2019

Project Description: Efficiency Services Group “Keep Your Cool” Commercial Refrigeration Direct Install Program

Sponsor: Northern California Power Agency (NCPA or Agency)

Participating NCPA Member: City of Santa Clara/Silicon Valley Power

Consultant: Efficiency Services Group, LLC (ESG)

Consultant, SCPPA and NCPA, on behalf of the Participating NCPA Member (“Participating Member”) identified above, agree that Consultant shall provide the Services specified herein pursuant to the terms and conditions of the Goods and Services Agreement Between Southern California Public Power Authority And Efficiency Services Group, LLC (“Agreement”) dated July 19, 2018, except as specifically modified herein.

SCPPA and NCPA executed a Shared Services Agreement effective August 1, 2015, authorizing among other things, the purchase or acquisition of goods and services by each Party or a Party’s Members where provision has been provided in contracts for the other Party and its Members to avail themselves of goods and services offered under the contract or where either Party’s bidder or Consultant is willing to extend prices to the other Party and its Members.

Scope of Services

Consultant will provide its “Keep Your Cool” Commercial Refrigeration Direct Install Program, as designed to meet the goals and objectives of the City of Santa Clara/Silicon Valley Power to help commercial business owners save a significant amount of energy. The Program includes Customer Recruitment, Site Audit Report, Project Logistics, Retrofit Installations, Quality Assurance/Quality Control, Program Metrics, and Measures, Budget Tracking and Invoicing, Contractor Management, and related Tasks, as specifically outlined in ESG’s proposal for Santa Clara/Silicon Valley Power dated September 6, 2019, a copy of which is attached hereto as Exhibit “A”. The services shall commence in FY 2020 and continue through FY 2021 (June 30, 2022), based on Purchase Orders issued by NCPA to ESG.

Compensation and Schedule

The total cost for the requested Services under this Task Order shall not exceed \$811,158.97, which shall include all fees, costs, and expenses, in accordance with Consultant’s Pricing included in Exhibit “A.” This dollar amount is not a guarantee that the full amount will be paid to Consultant, but is merely a limit of potential expenditures under this Task Order.

The services shall be performed during the period including July 1 through June 30 each year, beginning in FY 2020 and continuing through FY 2021 as requested by Sponsor on behalf of its Participating NCPA Member. Sponsor shall issue a Purchase Order to Consultant for the requested Services.

Changes/Amendments to Agreement

In accordance with Section 4 of the Agreement, entitled "Changes/Amendments," the Agreement between SCLPA and ESG is hereby amended and/or restated for purposes of this Task Order only as follows:

- a. The following WHEREAS clause is added to the Agreement:

WHEREAS, in addition to the SCLPA members, the Northern California Power Agency ("NCPA") and its member agencies, from time to time, have a similar need for services, and where NCPA and its member agencies participate in this Agreement the term Member shall apply to each in the same manner as it applies to any SCLPA member; and

- b. The definition of "Participating Member" set forth in Section 1, entitled "Services to be Provided", is amended as follows: A Member, or NCPA or a NCPA member agency, who participates in any Task Order shall be referred herein as the "Participating Member."

- c. Section 5 of the Agreement, entitled "Payment," is hereby amended and restated for purposes of this Task Order only to read in full as follows:

5. Payment: NCPA shall pay Consultant directly for Services provided to the City of Santa Clara/Silicon Valley Power under this Task Order in accordance with the terms and payment schedule contained in the applicable Task Order. Consultant shall submit invoices not more often than once a month during the term of this Task Order based on the cost for services performed and reimbursable expenses incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Work performed;
- The Purchase Order number authorizing the Work;
- At NCPA's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation to Agency's reasonable satisfaction; and
- At NCPA's option, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing work hereunder.

Invoices shall be sent to:
Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable
AcctsPayable@ncpa.com

NCPA shall make payments to Consultant, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. NCPA shall have sixty (60) days

from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

d. Section 18, entitled "Department of Industrial Relations and Prevailing Wage Rates," is hereby added to the Agreement, as follows:

18. Department of Industrial Relations and Prevailing Wage Rates

(a) Monitoring by DIR. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(b) Registration with DIR. During the term of this Agreement, Consultant warrants that it and its subcontractors are registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.

(c) 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, Consultant must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Consultant assumes all responsibility for such payments and shall defend, indemnify and hold the Parties 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.

Consultant shall provide a certified copy of its payroll, on forms to be determined by the Agency and consistent with the Labor Code, within ten (10) days of the Consultant's receipt of Agency's written request therefor. Consultant's failure to timely comply with this provision may subject the Consultant to penalties pursuant to state law.

Consultant shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Consultant shall forfeit as a penalty to Agency \$200.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Consultant or by any subcontractor under Consultant 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 Consultant.

Representatives of Sponsor and Participating Members

Sponsor Representative

Randy S. Howard, General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
Telephone: 916-781-3636

Linda Stone, Support Services Program Coordinator
Linda.stone@ncpa.com
Telephone: 916-781-4248

Participating Member Representatives:

Mary Medeiros McEnroe
City of Santa Clara
mmedeiros@santaclaraca.gov

Melisa Revino
mrevino@svpower.com
Telephone: 408-615-6673

Prior Amendment(s) to the Agreement

None.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed this Task Order effective as of the date first written above.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By:

MICHAEL S. WEBSTER
Executive Director

Approved as to Legal Form and Content:

RICHARD J. MORILLO
General Counsel

and

EFFICIENCY SERVICES GROUP, LLC

By:

MARK GOSVENER
Chief Operational Officer

Sponsor's Acknowledgement and Agreement

By signing this Task Order, Sponsor agrees that it is responsible for payment to Consultant for all fees and expenses invoiced by Consultant in accordance with Section 5, above, and will be responsible for all payment obligations incurred in connection with the work performed at the direction of or on behalf of Participating NCPA Member. Sponsor agrees to hold SCPPA and all SCPPA members harmless for payment for work performed at the direction of, and for the exclusive benefit of Participating NCPA Member.

NORTHERN CALIFORNIA POWER AGENCY

By:

RANDY S. HOWARD
General Manager

Approved as to form:

Jane E. Luckhardt, NCPA General Counsel



COMMERCIAL REFRIGERATION DIRECT INSTALL PROGRAM

Submitted by Efficiency Services Group, LLC

**Mark Gosvener
Chief Operating Officer
5605 NE Elam Young Parkway
Hillsboro, OR 97124
(888) 883-9879 Toll-Free
(503) 718-3733 Phone
(503) 344-6942 Fax
markg@esgroupllc.com**

**Submitted in Accordance with
City of Santa Clara, DBA Silicon Valley Power**

**REQUEST FOR PROPOSAL
FOR
Third Party Energy Efficiency Programs**

September 6, 2019

Program Description

The goal of the Commercial Refrigeration Direct Install Program is to help commercial customers of Silicon Valley Power (SVP) save energy by providing low-risk, high-return refrigeration upgrade measures. The program is marketed under the name Keep Your Cool (KYC). ESG and our program partner have effectively delivered this program in over ten utility service territories throughout California and have successfully completed thousands of refrigeration upgrade projects over the last six years.

Overview

The KYC program has proven to be a very popular program with the utility customers that have been served in the past and is currently operating with high customer satisfaction.

ESG believes that offering this program will provide the opportunity for SVP to:

- Strengthen their customer relationships by providing a great customer experience in the program
- Afford significant energy and cost savings to targeted customers
- Contribute savings toward AB2021 targets

The success of the program requires the effective implementation of four strategies:

- 1) Selection of a comprehensive mix of measures to address the upgrade opportunities identified at customer sites.
- 2) Identifying eligible customers with the need for refrigeration upgrades, and effectively presenting the program to them and securing their participation.
- 3) Installations by professional and experienced field technicians.
- 4) Complete and accurate invoicing and reporting of all program activity to SVP.

The KYC program is designed to perform well in all phases of the program.

Mix of Measures

The KYC program began several years ago by offering gaskets, strip curtains and door closers. Over the years, additional measures have been added to program. ESG proposes that SVPs program include the following measures:

- Strip Curtains
- Door Closers
- Anti-Sweat Heater (ASH) controls
- Electronically Commutated Motors (ECM)
- Q-Sync Motors
- Motor Controllers
- LED Case Lighting
- LED Canopy Lighting
- LED T8 Lamps in horizontal cases
- Retrofit Doors for Open Cases

Measure Descriptions

Strip Curtains

Walk-in cooler and freezer doors often stand open for extended periods of time while product is being moved in and out. Strip curtains are installed in walk-in cooler and freezer doors and substantially reduce the amount of warm air entering the coolers during stocking.

Door Closers

The door latches on walk-in cooler and freezer doors often do not fully hold the door closed. Door closers hold the doors snugly closed, reducing the amount of warm air entering the cooled areas.

Anti-Sweat Heater (ASH) Controls

Reach-in cooler doors have heaters in the frames that turn on each time they are opened to clear the frost that appears from humidity condensing on the glass. This is to prevent frost/condensation from hindering the view of the product. ASH controllers sense the humidity in the air and override the door-frame heaters from coming on when humidity levels are low.

Electronically Commutated Motors (ECM)

ECMs are electronic, lower wattage, variable speed capable motors that replace standard, shaded pole motors on evaporator fan motors.

Q-Sync Motors

The Q-sync motor is a permanent magnet, synchronous AC motor (PMSM). The design is inherently more energy efficient than all current motor technologies, including electronically commutated, due to a number of design improvements. It operates at a higher power factor than ECM, utilizes AC power, eliminating an inefficiency as well as electronics which in turn improves the reliability. Because of the simplified design the cost is similar to existing EC motors on the market. As a result, it is not only possible to realize greater gains when replace shaded-pole and PSC motors, but it is cost-effective to upgrade aging EC motors with PMSM technology. The Emerging Technologies Coordinating Council has recommended in project report ET15SDG1061 that these motors be integrated into incentive programs. The Dept. of Energy has also funded studies showing reliable energy savings moving from EC to PMSM technology.

Motor Controllers

Motor controllers sense the outdoor temperature and reduce the RPMs of the ECMs on cooler days when cooling loads are lighter. By operating at lower RPMs, motor controllers provide additional savings over and above the wattage reduction achieved by the ECMs.

LED Case Lighting

LED case lights replace fluorescent T12s and T8s in reach-in coolers. Many customers feel that LED case lights improve the look of product being displayed. This is the most visible measure to the customers and is therefore one of the most popular measures.

LED Canopy Lighting

LED canopy lights replace HID lights in the canopies over gas station pumps. This measure is usually installed in conjunction with other KYC measures installed in gas station food marts.

LED T8 Lamps in horizontal cases

LED T8 lamps can easily replace horizontal fluorescent T8 lamps in meat, produce and dairy cases in grocery stores. T8 LEDs can be installed on the first visit to customer site or installed at the same time as other KYC measures are being installed at a customer site.

Retrofit Doors for Open Cases

Adding doors to open medium temperature refrigerated cases significantly reduces energy use. Retrofit doors installed in this program will not have anti-sweat heaters.

Subscribing the Program

In 2017 and 2018, ESG provided the KYC program for SVPs small to mid-sized commercial customers. While in the service territory, we discovered that many customers have already upgraded their equipment. However, some larger customers still had opportunity. In addition to first-hand experience with SVPs commercial customers, ESG will employ the successful targeting/subscribing strategies used in other utility service territories. These may include sending postcards announcing the program and visiting customer sites to present the program to prospective customers. The following customer types will be targeted in the KYC program:

- Restaurants
- Food Marts
- Liquor Stores
- Grocery Stores
- Schools and other institutions with commercial kitchens
- Florists

Professional Installations

All installations in the KYC Program will be performed by experienced technicians with an emphasis on a great customer experience in the program.

Customer Satisfaction

ESG assures that any customer questions or concerns are addressed and resolved before closing the project and invoicing SVP. ESG and our program partner understand the importance of emphasizing with the customer that the program is coming from SVP and using the program experience to help SVP build/strengthen their relationships with their customers.

Reporting and Invoicing

ESG thoroughly understands the CEC reporting requirements for utility energy efficiency programs. Because of this, ESG can generate complete and accurate activity report and invoice formats that make it easy for SVP

to track budgets, program expenses, and report program results to the State. ESG will prepare monthly activity reports and invoices as required by SVP.

Turnkey Administration

ESG will provide complete turnkey program administration, including:

- Program development (product selection, marketing materials, customer outreach)
- Customer service/support
- Measure installation
- Warranty fulfillment
- Reporting/invoicing
- CEC compliance support

Program Targets

This program is designed to target any customers with commercial refrigeration. SVP's service territory contains approximately the following number of potential commercial accounts which could take advantage of the measures included in this program:

Type	Estimated kWh by Business Type
Restaurants	20,181
Bars	257,382
Liquor Retail	149,341
Florists	13,842
Hotels	32,034
Education	11,923
Small/Medium Grocery	1,281,348
Supermarket	1,010,261
Totals	2,776,312

Incentive Structure

In order to achieve SVP's cost effectiveness goals, the program measures be will be offered at a 30% co-pay to customers. SVP will pay 70% of the measure cost and the administrative fee. The incentive structure is based on per unit pricing for installed measures. SVP is only charged for measures installed, which guarantees that reportable energy savings are associated with all program costs. The following table reflects the 70% measure cost plus administrative fees and does not include the customer co-pay.

Measure	Cost Unit	Per Unit Cost to SVP
ASH Controller: Coolers	door	\$147.92
ASH Controller: Freezers	door	\$230.52
Auto Door Closer: Reach-In, Cooler	closer	\$114.48
Auto Door Closer: Reach-In, Freezer	closer	\$114.48
Auto Door Closer: Walk-In, Cooler	closer	\$150.62
Auto Door Closer: Walk-In, Freezer	closer	\$150.62
ECM Motor Controller	controller	\$897.55
Horizontal Case Lights	linear feet	\$7.27
LED Canopy Light	fixture	\$560.88
LED Case Light	fixture	\$259.19
Programmable EC Motor (3/4 HP, 5.6A)	motor	\$485.61
Programmable EC Motor (1/2 HP, 4.0A)	motor	\$464.97
Programmable EC Motor (1/3 HP, 2.6A)	motor	\$399.91
Programmable EC Motor (1/15 HP, 1.8A)	motor	\$221.64
Programmable EC Motor (1/47 HP, 1.1A), 16W	motor	\$180.35
Programmable EC Motor (1/5 HP, 3.2A)	motor	\$392.68
Q Sync Motor (1/15 HP), replacing Standard Motor	motor	\$221.64
Q Sync Motor (1/15 HP), replacing EC Motor	motor	\$221.64
Q Sync Motor (1/47 HP), replacing Standard Motor	motor	\$180.35
Q Sync Motor (1/47 HP), replacing EC Motor	motor	\$180.35
Retrofit Doors for Open Cases	linear feet	\$377.00
Strip Curtain: Walk-in	square feet	\$9.47

Program Budget

The KYC program fees are on a price per measure basis. All program costs, including program development, program administration, marketing, measure installation, and customer follow-up are covered in the fees for measures installed. This model allows SVP to only pay for measures that are installed and allows SVP to scale the program budget up or down as needed.

A Program not to exceed budget of \$815,000 is expected to serve approximately 15 to 30 businesses. The actual number of customers served will be determined by the size of the customers that ultimately participate. The projected quantities and budget by measure are as follows:

Measure	Cost Unit	Per Unit Cost to SVP	Estimated Units	Estimated Cost to SVP
ASH Controller: Coolers	door	\$147.92	582	\$86,092.07
ASH Controller: Freezers	door	\$230.52	25	\$5,763.07
Auto Door Closer: Reach-In, Cooler	closer	\$114.48	15	\$1,717.22
Auto Door Closer: Reach-In, Freezer	closer	\$114.48	10	\$1,144.82
Auto Door Closer: Walk-In, Cooler	closer	\$150.62	12	\$1,807.45
Auto Door Closer: Walk-In, Freezer	closer	\$150.62	10	\$1,506.21
ECM Motor Controller	controller	\$897.55	22	\$19,746.08
Horizontal Case Lights	linear feet	\$7.27	956	\$6,946.94
LED Canopy Light	fixture	\$560.88	10	\$5,608.75
LED Case Light	fixture	\$259.19	311	\$80,477.72
Programmable EC Motor (3/4 HP, 5.6A)	motor	\$485.61	25	\$12,140.37
Programmable EC Motor (1/2 HP, 4.0A)	motor	\$464.97	25	\$11,624.18
Programmable EC Motor (1/3 HP, 2.6A)	motor	\$399.91	25	\$9,997.86
Programmable EC Motor (1/15 HP, 1.8A)	motor	\$221.64	543	\$120,350.54
Programmable EC Motor (1/47 HP, 1.1A), 16W	motor	\$180.35	543	\$97,927.47
Programmable EC Motor (1/5 HP, 3.2A)	motor	\$392.68	25	\$9,816.99
Q Sync Motor (1/15 HP), replacing Standard Motor	motor	\$221.64	35	\$7,757.40
Q Sync Motor (1/15 HP), replacing EC Motor	motor	\$221.64	35	\$7,757.40
Q Sync Motor (1/47 HP), replacing Standard Motor	motor	\$180.35	35	\$6,312.08
Q Sync Motor (1/47 HP), replacing EC Motor	motor	\$180.35	35	\$6,312.08
Retrofit Doors for Open Cases	linear feet	\$377.00	800	\$301,600.00
Strip Curtain: Walk-in	square feet	\$9.47	924	\$8,752.24
Total				\$811,158.97

Term

This program will begin upon contract approval until program and end on June 30, 2021.

Program Strategy/Avoiding Lost Opportunities

This program is a completely turnkey offer. The KYC Program has a proven success in gaining access to customer businesses by going door-to-door and by making several callbacks if needed to assure the customer has multiple interactions with the program and lost opportunities are minimized. ESG's knowledge of SVP's

service territory and commercial customers will allow us to effectively target and approach customers, present the program, and persuade them to participate.

Program Objectives

Program objectives include:

Objective #1: Employ effective marketing/sales strategies to persuade customers to participate in the program

Objective #2: Fully utilize the budget allocated to the program

Objective #3: Maintain a 100% customer satisfaction rate

Program Metrics

The proposed metrics for this program include but are not limited to, the following:

- # of business subscribed
- # of measures installed
- Amount of program budget utilized
- Mix of measures installed
- Customer satisfaction

All program metrics will be tracked on a monthly and program-to-date basis. Metrics will be generated by site audit data detailing measure upgrade opportunities, verified measures installed, and customer satisfaction. Activity reports will include a budget tracker to show how much of the program budget has been utilized and the amount of remaining program budget.

Program Implementation

ESG anticipates that program development tasks will be completed within 30 days of notice to proceed from SVP. These tasks include, but are not limited to:

- Working with SVP to finalize the program mix of measures
- Preparation of reporting and invoicing templates
- Prepare target list of customers to be approached
- Preparation of introduction letter from SVP and other program promotional materials

The term for the program is two years. If SVP allocates more or less funding to the program, the program delivery timeline will be adjusted accordingly.

Program Development

Task: Finalize Customer Eligibility

All SVP customers with commercial refrigeration equipment are eligible to participate. ESG and SVP will work together to verify that customer's electricity is provided by SVP.

Task: ESG and Staff Training

ESG will train the marketing, administrative and installation staff on the specifics of the SVP program and protocols.

Task: Marketing Materials

ESG will update marketing materials (program flyers, utility letters, door hangers, post cards etc.) from the previous program. ESG will obtain SVP's approval of all collateral prior to distribution. SVP will provide ESG with any leave-behind materials which are intended to promote other SVP programs/services.

Task: Customer Outreach

ESG has found that employing a door-to-door outreach approach is very successful for this type of program. ESG will prepare a list of customers to be approached in the program that will allow us to market the program in an efficient and effective way. ESG understands the sensitivity of customer information and will assure it is only used in the context of delivering the services approved for this program.

ESG may request that SVP mail a utility-endorsed letter to customers in the targeted geographic area(s) or on the targeted customer list in order to announce the program and "warm up the doors" for the KYC marketing staff.

Program Delivery

Task: Customer Service/Support

The KYC Program will have a local phone number for customers to call with general inquiries and to schedule appointments for site visits. This number will connect customers directly to program staff that can answer questions about the program and put them in a queue for an on-site visit by program subscription staff. ESG also staffs a toll-free program hotline for multiple utility programs which can be used for customer service/support at the request of SVP. This assures that SVP customers will always be able to get in touch with KYC program staff.

Task: Refrigeration Audits

The KYC subscription staff will visit customer sites to present the program and sign them up to participate. The following are the objectives for the site visit.

- Identify the decision maker and present the program to them.
- Gain permission to perform a refrigeration audit.
- Evaluate refrigeration equipment and identify energy upgrade opportunities.
- Prepare a customer project proposal including a work order itemizing measures, customer signature documents.
- Forward work order and signature documents to program administrative staff.
- Persuade customer to participate and have them sign signature documents.

Task: Measure Installation

The KYC installation staff will perform the following when installing KYC measures.

- Order product necessary to complete the project.
- Contact customer to schedule the installation appointment.
- Install all measures and assure they are functioning correctly before completing the project.
- Get customer signature on completion documents.
- Notify ESG that project is complete.

Task: Warranty Fulfillment

Technicians engage in a walk-through process with customers prior to job close, ensuring customer is fully satisfied and all issues are resolved at project completion. Customers also have unlimited access to ongoing technical support after project completion in order to address issues with equipment performance that arises after post inspection. KYC answers calls from Participants during normal business hours. During non-business hours, Participants are encouraged to leave a message for an on-call technician who can expedite a return call. Steps taken for issue resolution are first a phone troubleshoot, warranty on-site troubleshoot if needed, and finally warranty product replacement if needed. Measures installed under the KYC program have a minimum 1year warranty from date of installation (parts and labor). Warranty periods for KYC Measures are:

MEASURE	PARTS WARRANTY	INSTALLATION WARRANTY
Q SYNC MOTORS	2 Year	1 Year
STRIP CURTAINS	1 Year	1 Year
HARDWARE	1 Year	1 Year
ECMs	2 Years	1 Year
MOTOR CONTROLS	5 Years	1 Year
LED CASE LIGHTS	1 Year	1 Year
ASH CONTROLS	1 Year	1 Year
LED LIGHTS	50,000 Hours	1 Year

Task: Reporting/Invoicing

Detailed customer, site and measure installation data will be reported to SVP in Excel spreadsheet format. All reports will be submitted to SVP on a monthly basis, along with the monthly invoice for work completed. Reports will include all customers served, and detailed information regarding measures installed at each customer site.

Task: CEC Compliance Support

ESG will maintain the documentation necessary to support SVP's reporting requirements (SB 1037, EM&V) for no less than five years.

Payment Schedule

All program costs will be paid on a per-unit-installed basis. Per-unit prices include all costs associated with program development, program implementation, administration and marketing/outreach of the program. ESG shall bear the time and material costs associated with program development tasks and recover those costs upon successful installation of measures (via the per-unit prices); there is no risk of SVP incurring costs with no associated energy savings.

ESG will submit invoices to SVP monthly, accompanied by detailed reports on work performed by customer/business.

In the event that an invoice error is identified by SVP, a corrected invoice will be submitted by ESG within five business days of receiving notification from SVP.

Customer Interface

ESG will employ the same successful recruitment strategy utilized in delivering this program for numerous utilities. Effective recruitment of program participants begins with the coordination of effort between ESG and SVP. Target customer lists will be generated based on the results of ESGs snapshot audit program and the marketing efforts of previous refrigeration programs in SVPs service territory. ESG is recommending that eligibility for the program be any SVP commercial customer that uses refrigeration in their business that can be addressed with the KYC measures.

The KYC program has been successfully subscribed utilizing a cold-call approach. However, the KYC subscription staff has the most success when the doors have been “warmed up” for them. For example, a post card describing the program, or a utility-endorsed letter can be sent to customers that are located in the targeted geographic area(s). Following this initial contact, the KYC subscription staff will be deployed to follow-up with customers in the target area(s). If the subscription staff is unable to gain access to a customer site, leave-behind materials will be provided and will include information for the customer to schedule a future visit.

Subcontractor

ESG will serve as the program administrator for the Keep Your Cool Program. In addition, ESG has one partner we plan to have help in the implementation of the program. ESG has had a relationship with this partner for several years and have successfully delivered utility programs with both. Our program partner is:

Redwood Energy Services, PO Box 7072, Menlo Park CA 94026

Efficiency Services Group key program personnel include:

Mark Gosvener, COO – Contract related issues and general oversight of the program.

Miranda Boutelle, Program Manager – Program administration, coordination with General Pacific, reporting, invoicing, main point of contact for SVP.

ESG program administration responsibilities include:

- Communication with SVP. ESG will serve as SVP’s point of contact for anything related to the Residential Program.
- Coordinating all program development tasks for program partners
- Activity reporting and invoicing
- Budget tracking
- Customer follow-up visits and measure verification

Redwood Energy Services key personnel:

John Pink is the program representative from Redwood Energy Services. John will coordinate with ESG regarding program subscription activities and will oversee all aspects of measure installation. Tasks will:

- Initial customer outreach and program subscription activities
- Ordering product to be installed at customer sites
- Measure installation
- Submitting project paperwork to ESG

Quality Assurance and Measure Verification Activities

Projects will not be closed until customers have indicated satisfaction with all services provided and they have signed the Project Completion Form.

Customer Complaint Resolution

Customer complaints are dealt with on a case-by-case basis depending on the specific needs of the customer. Customers may call ESG directly on our toll-free line or contact Redwood Energy Services directly. Phone numbers will be listed in program marketing materials, and on a door tag attached to each door that is serviced in the program. Customer complaints are considered urgent and receive an immediate call-back from a KYC representative. Every effort is made to resolve the customer complaint completely and promptly.

When ESG performs the follow-up site visit, the customer is asked if they have any questions or concerns. Any concerns or complaints are forwarded via email to the KYC representative responsible for its resolution, and the responsible person is required to send an email reply that the complaint has been resolved and the customer is completely satisfied.

Marketing Activities

Experience has shown that customer response to the program is significantly improved by endorsement from their utility. This can be accomplished by SVP mailing a letter to a targeted list of customers prior to the deployment of the KYC subscription staff. Field staff will have a copy of the utility endorsement or reference it when they approach businesses.

ESG will coordinate with SVP to determine which promotional materials will be used in the program and produce custom marketing materials for SVP's program. These materials may include, but are not limited to:

- Utility letter
- Postcards
- Door Hangers
- Product Information Sheets
- Warranty Flyers

ESG has experienced tremendous success accessing customer facilities and securing their participation. Customers typically display a positive response to an unscheduled visit because the subscription staff represent a known entity (SVP).

Savings Estimate per Item

Measure	Estimated Units	Estimated kWh	Estimated kW	Source
ASH Controller: Coolers	582	217,668	25.608	TRM (version 6.9.16)
ASH Controller: Freezers	25	13,900	0.025	TRM (version 6.9.16)
Auto Door Closer: Reach-In, Cooler	15	5,970	1.125	PGECOREF113 R1 Auto Closers for Reach in Cooler or Freezer Doors.doc
Auto Door Closer: Reach-In, Freezer	10	12,050	2.27	PGECOREF113 R1 Auto Closers for Reach in Cooler or Freezer Doors.doc
Auto Door Closer: Walk-In, Cooler	12	11,772	1.716	TRM (version 6.9.16)
Auto Door Closer: Walk-In, Freezer	10	23,650	3.63	TRM (version 6.9.16)
ECM Motor Controller	22	69,344	7.92	TRM (version 6.9.16) average of measures/custom calculation
Horizontal Case Lights	956	55,448	9.56	TRM (version 6.9.16)/custom calculation
LED Canopy Light	10	11,620	0	TRM (version 6.9.16)/custom calculation
LED Case Light	311	230,702	31.671	TRM (version 6.9.16) average of measures/custom calculation
Programmable EC Motor (3/4 HP, 5.6A)	25	69,550	7.95	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/2 HP, 4.0A)	25	63,950	7.3	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/3 HP, 2.6A)	25	49,850	5.7	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/15 HP, 1.8A)	543	577,752	65.703	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/47 HP, 1.1A), 16W	543	221,544	25.521	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/5 HP, 3.2A)	25	35,225	4.025	TRM (version 6.9.16)/custom calculation
Q Sync Motor (1/15 HP), replacing Standard Motor	35	52,220	5.964	TRM, PGE3PREF123, published values
Q Sync Motor (1/15 HP), replacing EC Motor	35	15,260	1.7395	TRM, PGE3PREF123, published values
Q Sync Motor (1/47 HP), replacing Standard Motor	35	23,275	2.6565	TRM, PGE3PREF123, published values
Q Sync Motor (1/47 HP), replacing EC Motor	35	4,970	0.567	ETCC Project ID ET15SDG1061, TRM and PGE3PREF123

Retrofit Doors with Open Cases	800	407,840	.0608	SCE13RN027.0 Add Door to Low and Medium Temp Display Cases
Strip Curtain: Walk-in	924	134,904	5.544	TRM (version 6.9.16) 80% Cooler, 20% Freezer
Totals		2,308,464	264.835	

Measurement and Verification of Savings Discussion

Technical Reference Manual (TRM) values were used to estimate all measures that were listed in the TRM. Sources for measures not listed in the TRM are identified in the table above. Custom savings calculators will determine the savings for all motors, motor controllers, and lighting measures.

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 Member for this Confirmation is the CITY OF SANTA CLARA in the amount of not-to-exceed \$811,158.97 for the Efficiency Services Group, LLC services described in paragraph 3.

3. CITY OF SANTA CLARA requests the following described Support Services in the dollar amount specified above, as follows:

Efficiency Services Group, LLC (ESG) shall provide its "Keep Your Cool" Commercial Refrigeration Direct Install Program as designed to meet the goals and objectives of the City of Santa Clara/Silicon Valley Power to help commercial business owners save a significant amount of energy. The Program includes Customer Recruitment, Site Audit Report, Project Logistics, Retrofit Installations, Quality Assurance/Quality Control, Program Metrics and Measures, Budget Tracking and Invoicing, Contractor Management, and related Tasks, as specifically outlined in its proposal dated September 6, 2019, copy attached and incorporated herein. The services shall commence in FY 2020 and continue through FY 2021.

Pursuant to the Shared Services Agreement between NCPA and the Southern California Public Power Authority (SCPPA), NCPA agrees to provide the support services in accordance with the Goods and Services Agreement between Southern California Public Power Authority and Efficiency Services Group, LLC dated July 19, 2018, and the Task Order executed among SCPPA, NCPA, and ESG for these services.

4. The Participating Member executing this Confirmation agrees to pay for the Support Services in the not to exceed amount specified in paragraph 2, above; plus the Administrative Cost of not-to-exceed \$3,655 (\$685 to develop the Confirmation and first month of administration plus \$165 per month for each additional month administrative costs are actually incurred), in accordance with the provisions of the Support Services Program Agreement. The total amount expended under this Confirmation will not exceed \$814,813.97.

5. A Security Account deposit is not required for this Confirmation.

Participating Member:

CITY OF SANTA CLARA
By its Designated Representatives:

NORTHERN CALIFORNIA POWER AGENCY

Deanna J. Santana, City Manager

Randy S. Howard, General Manager

And

Brian Doyle, City Attorney

Cary A. Padgett, Assistant Secretary to Commission

Approved as to form:

Jane E. Luckhardt, NCPA General Counsel



COMMERCIAL REFRIGERATION DIRECT INSTALL PROGRAM

Submitted by Efficiency Services Group, LLC

**Mark Gosvener
Chief Operating Officer
5605 NE Elam Young Parkway
Hillsboro, OR 97124
(888) 883-9879 Toll-Free
(503) 718-3733 Phone
(503) 344-6942 Fax
markg@esgroupllc.com**

**Submitted in Accordance with
City of Santa Clara, DBA Silicon Valley Power**

**REQUEST FOR PROPOSAL
FOR
Third Party Energy Efficiency Programs**

September 6, 2019

Program Description

The goal of the Commercial Refrigeration Direct Install Program is to help commercial customers of Silicon Valley Power (SVP) save energy by providing low-risk, high-return refrigeration upgrade measures. The program is marketed under the name Keep Your Cool (KYC). ESG and our program partner have effectively delivered this program in over ten utility service territories throughout California and have successfully completed thousands of refrigeration upgrade projects over the last six years.

Overview

The KYC program has proven to be a very popular program with the utility customers that have been served in the past and is currently operating with high customer satisfaction.

ESG believes that offering this program will provide the opportunity for SVP to:

- Strengthen their customer relationships by providing a great customer experience in the program
- Afford significant energy and cost savings to targeted customers
- Contribute savings toward AB2021 targets

The success of the program requires the effective implementation of four strategies:

- 1) Selection of a comprehensive mix of measures to address the upgrade opportunities identified at customer sites.
- 2) Identifying eligible customers with the need for refrigeration upgrades, and effectively presenting the program to them and securing their participation.
- 3) Installations by professional and experienced field technicians.
- 4) Complete and accurate invoicing and reporting of all program activity to SVP.

The KYC program is designed to perform well in all phases of the program.

Mix of Measures

The KYC program began several years ago by offering gaskets, strip curtains and door closers. Over the years, additional measures have been added to program. ESG proposes that SVPs program include the following measures:

- Strip Curtains
- Door Closers
- Anti-Sweat Heater (ASH) controls
- Electronically Commutated Motors (ECM)
- Q-Sync Motors
- Motor Controllers
- LED Case Lighting
- LED Canopy Lighting
- LED T8 Lamps in horizontal cases
- Retrofit Doors for Open Cases

Measure Descriptions

Strip Curtains

Walk-in cooler and freezer doors often stand open for extended periods of time while product is being moved in and out. Strip curtains are installed in walk-in cooler and freezer doors and substantially reduce the amount of warm air entering the coolers during stocking.

Door Closers

The door latches on walk-in cooler and freezer doors often do not fully hold the door closed. Door closers hold the doors snugly closed, reducing the amount of warm air entering the cooled areas.

Anti-Sweat Heater (ASH) Controls

Reach-in cooler doors have heaters in the frames that turn on each time they are opened to clear the frost that appears from humidity condensing on the glass. This is to prevent frost/condensation from hindering the view of the product. ASH controllers sense the humidity in the air and override the door-frame heaters from coming on when humidity levels are low.

Electronically Commutated Motors (ECM)

ECMs are electronic, lower wattage, variable speed capable motors that replace standard, shaded pole motors on evaporator fan motors.

Q-Sync Motors

The Q-sync motor is a permanent magnet, synchronous AC motor (PMSM). The design is inherently more energy efficient than all current motor technologies, including electronically commutated, due to a number of design improvements. It operates at a higher power factor than ECM, utilizes AC power, eliminating an inefficiency as well as electronics which in turn improves the reliability. Because of the simplified design the cost is similar to existing EC motors on the market. As a result, it is not only possible to realize greater gains when replace shaded-pole and PSC motors, but it is cost-effective to upgrade aging EC motors with PMSM technology. The Emerging Technologies Coordinating Council has recommended in project report ET15SDG1061 that these motors be integrated into incentive programs. The Dept. of Energy has also funded studies showing reliable energy savings moving from EC to PMSM technology.

Motor Controllers

Motor controllers sense the outdoor temperature and reduce the RPMs of the ECMs on cooler days when cooling loads are lighter. By operating at lower RPMs, motor controllers provide additional savings over and above the wattage reduction achieved by the ECMs.

LED Case Lighting

LED case lights replace fluorescent T12s and T8s in reach-in coolers. Many customers feel that LED case lights improve the look of product being displayed. This is the most visible measure to the customers and is therefore one of the most popular measures.

LED Canopy Lighting

LED canopy lights replace HID lights in the canopies over gas station pumps. This measure is usually installed in conjunction with other KYC measures installed in gas station food marts.

LED T8 Lamps in horizontal cases

LED T8 lamps can easily replace horizontal fluorescent T8 lamps in meat, produce and dairy cases in grocery stores. T8 LEDs can be installed on the first visit to customer site or installed at the same time as other KYC measures are being installed at a customer site.

Retrofit Doors for Open Cases

Adding doors to open medium temperature refrigerated cases significantly reduces energy use. Retrofit doors installed in this program will not have anti-sweat heaters.

Subscribing the Program

In 2017 and 2018, ESG provided the KYC program for SVPs small to mid-sized commercial customers. While in the service territory, we discovered that many customers have already upgraded their equipment. However, some larger customers still had opportunity. In addition to first-hand experience with SVPs commercial customers, ESG will employ the successful targeting/subscribing strategies used in other utility service territories. These may include sending postcards announcing the program and visiting customer sites to present the program to prospective customers. The following customer types will be targeted in the KYC program:

- Restaurants
- Food Marts
- Liquor Stores
- Grocery Stores
- Schools and other institutions with commercial kitchens
- Florists

Professional Installations

All installations in the KYC Program will be performed by experienced technicians with an emphasis on a great customer experience in the program.

Customer Satisfaction

ESG assures that any customer questions or concerns are addressed and resolved before closing the project and invoicing SVP. ESG and our program partner understand the importance of emphasizing with the customer that the program is coming from SVP and using the program experience to help SVP build/strengthen their relationships with their customers.

Reporting and Invoicing

ESG thoroughly understands the CEC reporting requirements for utility energy efficiency programs. Because of this, ESG can generate complete and accurate activity report and invoice formats that make it easy for SVP

to track budgets, program expenses, and report program results to the State. ESG will prepare monthly activity reports and invoices as required by SVP.

Turnkey Administration

ESG will provide complete turnkey program administration, including:

- Program development (product selection, marketing materials, customer outreach)
- Customer service/support
- Measure installation
- Warranty fulfillment
- Reporting/invoicing
- CEC compliance support

Program Targets

This program is designed to target any customers with commercial refrigeration. SVP's service territory contains approximately the following number of potential commercial accounts which could take advantage of the measures included in this program:

Type	Estimated kWh by Business Type
Restaurants	20,181
Bars	257,382
Liquor Retail	149,341
Florists	13,842
Hotels	32,034
Education	11,923
Small/Medium Grocery	1,281,348
Supermarket	1,010,261
Totals	2,776,312

Incentive Structure

In order to achieve SVP's cost effectiveness goals, the program measures be will be offered at a 30% co-pay to customers. SVP will pay 70% of the measure cost and the administrative fee. The incentive structure is based on per unit pricing for installed measures. SVP is only charged for measures installed, which guarantees that reportable energy savings are associated with all program costs. The following table reflects the 70% measure cost plus administrative fees and does not include the customer co-pay.

Measure	Cost Unit	Per Unit Cost to SVP
ASH Controller: Coolers	door	\$147.92
ASH Controller: Freezers	door	\$230.52
Auto Door Closer: Reach-In, Cooler	closer	\$114.48
Auto Door Closer: Reach-In, Freezer	closer	\$114.48
Auto Door Closer: Walk-In, Cooler	closer	\$150.62
Auto Door Closer: Walk-In, Freezer	closer	\$150.62
ECM Motor Controller	controller	\$897.55
Horizontal Case Lights	linear feet	\$7.27
LED Canopy Light	fixture	\$560.88
LED Case Light	fixture	\$259.19
Programmable EC Motor (3/4 HP, 5.6A)	motor	\$485.61
Programmable EC Motor (1/2 HP, 4.0A)	motor	\$464.97
Programmable EC Motor (1/3 HP, 2.6A)	motor	\$399.91
Programmable EC Motor (1/15 HP, 1.8A)	motor	\$221.64
Programmable EC Motor (1/47 HP, 1.1A), 16W	motor	\$180.35
Programmable EC Motor (1/5 HP, 3.2A)	motor	\$392.68
Q Sync Motor (1/15 HP), replacing Standard Motor	motor	\$221.64
Q Sync Motor (1/15 HP), replacing EC Motor	motor	\$221.64
Q Sync Motor (1/47 HP), replacing Standard Motor	motor	\$180.35
Q Sync Motor (1/47 HP), replacing EC Motor	motor	\$180.35
Retrofit Doors for Open Cases	linear feet	\$377.00
Strip Curtain: Walk-in	square feet	\$9.47

Program Budget

The KYC program fees are on a price per measure basis. All program costs, including program development, program administration, marketing, measure installation, and customer follow-up are covered in the fees for measures installed. This model allows SVP to only pay for measures that are installed and allows SVP to scale the program budget up or down as needed.

A Program not to exceed budget of \$815,000 is expected to serve approximately 15 to 30 businesses. The actual number of customers served will be determined by the size of the customers that ultimately participate. The projected quantities and budget by measure are as follows:

Measure	Cost Unit	Per Unit Cost to SVP	Estimated Units	Estimated Cost to SVP
ASH Controller: Coolers	door	\$147.92	582	\$86,092.07
ASH Controller: Freezers	door	\$230.52	25	\$5,763.07
Auto Door Closer: Reach-In, Cooler	closer	\$114.48	15	\$1,717.22
Auto Door Closer: Reach-In, Freezer	closer	\$114.48	10	\$1,144.82
Auto Door Closer: Walk-In, Cooler	closer	\$150.62	12	\$1,807.45
Auto Door Closer: Walk-In, Freezer	closer	\$150.62	10	\$1,506.21
ECM Motor Controller	controller	\$897.55	22	\$19,746.08
Horizontal Case Lights	linear feet	\$7.27	956	\$6,946.94
LED Canopy Light	fixture	\$560.88	10	\$5,608.75
LED Case Light	fixture	\$259.19	311	\$80,477.72
Programmable EC Motor (3/4 HP, 5.6A)	motor	\$485.61	25	\$12,140.37
Programmable EC Motor (1/2 HP, 4.0A)	motor	\$464.97	25	\$11,624.18
Programmable EC Motor (1/3 HP, 2.6A)	motor	\$399.91	25	\$9,997.86
Programmable EC Motor (1/15 HP, 1.8A)	motor	\$221.64	543	\$120,350.54
Programmable EC Motor (1/47 HP, 1.1A), 16W	motor	\$180.35	543	\$97,927.47
Programmable EC Motor (1/5 HP, 3.2A)	motor	\$392.68	25	\$9,816.99
Q Sync Motor (1/15 HP), replacing Standard Motor	motor	\$221.64	35	\$7,757.40
Q Sync Motor (1/15 HP), replacing EC Motor	motor	\$221.64	35	\$7,757.40
Q Sync Motor (1/47 HP), replacing Standard Motor	motor	\$180.35	35	\$6,312.08
Q Sync Motor (1/47 HP), replacing EC Motor	motor	\$180.35	35	\$6,312.08
Retrofit Doors for Open Cases	linear feet	\$377.00	800	\$301,600.00
Strip Curtain: Walk-in	square feet	\$9.47	924	\$8,752.24
Total				\$811,158.97

Term

This program will begin upon contract approval until program and end on June 30, 2021.

Program Strategy/Avoiding Lost Opportunities

This program is a completely turnkey offer. The KYC Program has a proven success in gaining access to customer businesses by going door-to-door and by making several callbacks if needed to assure the customer has multiple interactions with the program and lost opportunities are minimized. ESG's knowledge of SVP's

service territory and commercial customers will allow us to effectively target and approach customers, present the program, and persuade them to participate.

Program Objectives

Program objectives include:

Objective #1: Employ effective marketing/sales strategies to persuade customers to participate in the program

Objective #2: Fully utilize the budget allocated to the program

Objective #3: Maintain a 100% customer satisfaction rate

Program Metrics

The proposed metrics for this program include but are not limited to, the following:

- # of business subscribed
- # of measures installed
- Amount of program budget utilized
- Mix of measures installed
- Customer satisfaction

All program metrics will be tracked on a monthly and program-to-date basis. Metrics will be generated by site audit data detailing measure upgrade opportunities, verified measures installed, and customer satisfaction. Activity reports will include a budget tracker to show how much of the program budget has been utilized and the amount of remaining program budget.

Program Implementation

ESG anticipates that program development tasks will be completed within 30 days of notice to proceed from SVP. These tasks include, but are not limited to:

- Working with SVP to finalize the program mix of measures
- Preparation of reporting and invoicing templates
- Prepare target list of customers to be approached
- Preparation of introduction letter from SVP and other program promotional materials

The term for the program is two years. If SVP allocates more or less funding to the program, the program delivery timeline will be adjusted accordingly.

Program Development

Task: Finalize Customer Eligibility

All SVP customers with commercial refrigeration equipment are eligible to participate. ESG and SVP will work together to verify that customer's electricity is provided by SVP.

Task: ESG and Staff Training

ESG will train the marketing, administrative and installation staff on the specifics of the SVP program and protocols.

Task: Marketing Materials

ESG will update marketing materials (program flyers, utility letters, door hangers, post cards etc.) from the previous program. ESG will obtain SVP's approval of all collateral prior to distribution. SVP will provide ESG with any leave-behind materials which are intended to promote other SVP programs/services.

Task: Customer Outreach

ESG has found that employing a door-to-door outreach approach is very successful for this type of program. ESG will prepare a list of customers to be approached in the program that will allow us to market the program in an efficient and effective way. ESG understands the sensitivity of customer information and will assure it is only used in the context of delivering the services approved for this program.

ESG may request that SVP mail a utility-endorsed letter to customers in the targeted geographic area(s) or on the targeted customer list in order to announce the program and "warm up the doors" for the KYC marketing staff.

Program Delivery

Task: Customer Service/Support

The KYC Program will have a local phone number for customers to call with general inquiries and to schedule appointments for site visits. This number will connect customers directly to program staff that can answer questions about the program and put them in a queue for an on-site visit by program subscription staff. ESG also staffs a toll-free program hotline for multiple utility programs which can be used for customer service/support at the request of SVP. This assures that SVP customers will always be able to get in touch with KYC program staff.

Task: Refrigeration Audits

The KYC subscription staff will visit customer sites to present the program and sign them up to participate. The following are the objectives for the site visit.

- Identify the decision maker and present the program to them.
- Gain permission to perform a refrigeration audit.
- Evaluate refrigeration equipment and identify energy upgrade opportunities.
- Prepare a customer project proposal including a work order itemizing measures, customer signature documents.
- Forward work order and signature documents to program administrative staff.
- Persuade customer to participate and have them sign signature documents.

Task: Measure Installation

The KYC installation staff will perform the following when installing KYC measures.

- Order product necessary to complete the project.
- Contact customer to schedule the installation appointment.
- Install all measures and assure they are functioning correctly before completing the project.
- Get customer signature on completion documents.
- Notify ESG that project is complete.

Task: Warranty Fulfillment

Technicians engage in a walk-through process with customers prior to job close, ensuring customer is fully satisfied and all issues are resolved at project completion. Customers also have unlimited access to ongoing technical support after project completion in order to address issues with equipment performance that arises after post inspection. KYC answers calls from Participants during normal business hours. During non-business hours, Participants are encouraged to leave a message for an on-call technician who can expedite a return call. Steps taken for issue resolution are first a phone troubleshoot, warranty on-site troubleshoot if needed, and finally warranty product replacement if needed. Measures installed under the KYC program have a minimum 1year warranty from date of installation (parts and labor). Warranty periods for KYC Measures are:

MEASURE	PARTS WARRANTY	INSTALLATION WARRANTY
Q SYNC MOTORS	2 Year	1 Year
STRIP CURTAINS	1 Year	1 Year
HARDWARE	1 Year	1 Year
ECMs	2 Years	1 Year
MOTOR CONTROLS	5 Years	1 Year
LED CASE LIGHTS	1 Year	1 Year
ASH CONTROLS	1 Year	1 Year
LED LIGHTS	50,000 Hours	1 Year

Task: Reporting/Invoicing

Detailed customer, site and measure installation data will be reported to SVP in Excel spreadsheet format. All reports will be submitted to SVP on a monthly basis, along with the monthly invoice for work completed. Reports will include all customers served, and detailed information regarding measures installed at each customer site.

Task: CEC Compliance Support

ESG will maintain the documentation necessary to support SVP's reporting requirements (SB 1037, EM&V) for no less than five years.

Payment Schedule

All program costs will be paid on a per-unit-installed basis. Per-unit prices include all costs associated with program development, program implementation, administration and marketing/outreach of the program. ESG shall bear the time and material costs associated with program development tasks and recover those costs upon successful installation of measures (via the per-unit prices); there is no risk of SVP incurring costs with no associated energy savings.

ESG will submit invoices to SVP monthly, accompanied by detailed reports on work performed by customer/business.

In the event that an invoice error is identified by SVP, a corrected invoice will be submitted by ESG within five business days of receiving notification from SVP.

Customer Interface

ESG will employ the same successful recruitment strategy utilized in delivering this program for numerous utilities. Effective recruitment of program participants begins with the coordination of effort between ESG and SVP. Target customer lists will be generated based on the results of ESGs snapshot audit program and the marketing efforts of previous refrigeration programs in SVPs service territory. ESG is recommending that eligibility for the program be any SVP commercial customer that uses refrigeration in their business that can be addressed with the KYC measures.

The KYC program has been successfully subscribed utilizing a cold-call approach. However, the KYC subscription staff has the most success when the doors have been “warmed up” for them. For example, a post card describing the program, or a utility-endorsed letter can be sent to customers that are located in the targeted geographic area(s). Following this initial contact, the KYC subscription staff will be deployed to follow-up with customers in the target area(s). If the subscription staff is unable to gain access to a customer site, leave-behind materials will be provided and will include information for the customer to schedule a future visit.

Subcontractor

ESG will serve as the program administrator for the Keep Your Cool Program. In addition, ESG has one partner we plan to have help in the implementation of the program. ESG has had a relationship with this partner for several years and have successfully delivered utility programs with both. Our program partner is:

Redwood Energy Services, PO Box 7072, Menlo Park CA 94026

Efficiency Services Group key program personnel include:

Mark Gosvener, COO – Contract related issues and general oversight of the program.

Miranda Boutelle, Program Manager – Program administration, coordination with General Pacific, reporting, invoicing, main point of contact for SVP.

ESG program administration responsibilities include:

- Communication with SVP. ESG will serve as SVP’s point of contact for anything related to the Residential Program.
- Coordinating all program development tasks for program partners
- Activity reporting and invoicing
- Budget tracking
- Customer follow-up visits and measure verification

Redwood Energy Services key personnel:

John Pink is the program representative from Redwood Energy Services. John will coordinate with ESG regarding program subscription activities and will oversee all aspects of measure installation. Tasks will:

- Initial customer outreach and program subscription activities
- Ordering product to be installed at customer sites
- Measure installation
- Submitting project paperwork to ESG

Quality Assurance and Measure Verification Activities

Projects will not be closed until customers have indicated satisfaction with all services provided and they have signed the Project Completion Form.

Customer Complaint Resolution

Customer complaints are dealt with on a case-by-case basis depending on the specific needs of the customer. Customers may call ESG directly on our toll-free line or contact Redwood Energy Services directly. Phone numbers will be listed in program marketing materials, and on a door tag attached to each door that is serviced in the program. Customer complaints are considered urgent and receive an immediate call-back from a KYC representative. Every effort is made to resolve the customer complaint completely and promptly.

When ESG performs the follow-up site visit, the customer is asked if they have any questions or concerns. Any concerns or complaints are forwarded via email to the KYC representative responsible for its resolution, and the responsible person is required to send an email reply that the complaint has been resolved and the customer is completely satisfied.

Marketing Activities

Experience has shown that customer response to the program is significantly improved by endorsement from their utility. This can be accomplished by SVP mailing a letter to a targeted list of customers prior to the deployment of the KYC subscription staff. Field staff will have a copy of the utility endorsement or reference it when they approach businesses.

ESG will coordinate with SVP to determine which promotional materials will be used in the program and produce custom marketing materials for SVP's program. These materials may include, but are not limited to:

- Utility letter
- Postcards
- Door Hangers
- Product Information Sheets
- Warranty Flyers

ESG has experienced tremendous success accessing customer facilities and securing their participation. Customers typically display a positive response to an unscheduled visit because the subscription staff represent a known entity (SVP).

Savings Estimate per Item

Measure	Estimated Units	Estimated kWh	Estimated kW	Source
ASH Controller: Coolers	582	217,668	25.608	TRM (version 6.9.16)
ASH Controller: Freezers	25	13,900	0.025	TRM (version 6.9.16)
Auto Door Closer: Reach-In, Cooler	15	5,970	1.125	PGECOREF113 R1 Auto Closers for Reach in Cooler or Freezer Doors.doc
Auto Door Closer: Reach-In, Freezer	10	12,050	2.27	PGECOREF113 R1 Auto Closers for Reach in Cooler or Freezer Doors.doc
Auto Door Closer: Walk-In, Cooler	12	11,772	1.716	TRM (version 6.9.16)
Auto Door Closer: Walk-In, Freezer	10	23,650	3.63	TRM (version 6.9.16)
ECM Motor Controller	22	69,344	7.92	TRM (version 6.9.16) average of measures/custom calculation
Horizontal Case Lights	956	55,448	9.56	TRM (version 6.9.16)/custom calculation
LED Canopy Light	10	11,620	0	TRM (version 6.9.16)/custom calculation
LED Case Light	311	230,702	31.671	TRM (version 6.9.16) average of measures/custom calculation
Programmable EC Motor (3/4 HP, 5.6A)	25	69,550	7.95	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/2 HP, 4.0A)	25	63,950	7.3	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/3 HP, 2.6A)	25	49,850	5.7	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/15 HP, 1.8A)	543	577,752	65.703	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/47 HP, 1.1A), 16W	543	221,544	25.521	TRM (version 6.9.16)/custom calculation
Programmable EC Motor (1/5 HP, 3.2A)	25	35,225	4.025	TRM (version 6.9.16)/custom calculation
Q Sync Motor (1/15 HP), replacing Standard Motor	35	52,220	5.964	TRM, PGE3PREF123, published values
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Measurement and Verification of Savings Discussion

Technical Reference Manual (TRM) values were used to estimate all measures that were listed in the TRM. Sources for measures not listed in the TRM are identified in the table above. Custom savings calculators will determine the savings for all motors, motor controllers, and lighting measures.

**GOODS AND SERVICES AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
EFFICIENCY SERVICES GROUP, LLC.**

This GOODS AND SERVICES AGREEMENT ("Agreement") is dated and effective as of July 19, 2018, by and between Efficiency Services Group, LLC ("Consultant"), a limited liability corporation, located at 5605 NE Elam Young Pkwy, Hillsboro, OR 97124 and the Southern California Public Power Authority ("SCPPA"), a joint powers agency created pursuant to the laws of the State of California, with offices at 1160 Nicole Court, Glendora, California 91740. SCPPA and Consultant are also referred to herein individually as ("Party") and together as ("Parties").

WHEREAS, SCPPA member utilities ("Members") are engaged in the generation, transmission, and distribution of electrical energy to retail customers; and

WHEREAS, certain Members have a need for specific goods and/or services that will improve the efficient use of electric energy by customers to allow Members to continue to provide cost-effective, reliable and environmentally beneficial electric utility service in their respective communities; and

WHEREAS, SCPPA issued a competitive solicitation to secure efficiency-related services and products in a Request for Proposal (RFP) process in June 2018;

WHEREAS, Consultant was deemed to be qualified and capable and was selected to perform specific services through the competitive solicitation process;

NOW, THEREFORE, in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

1. **Services to be Provided:** SCPPA engages the Consultant to provide all services and related products ("Services") identified within the Consultant's Response to the previously defined RFP. Said Response is made part of and incorporated to this Agreement by reference. All Services to be provided hereunder are to be set forth in a separate task order ("Task Order") substantially in the form attached hereto as Exhibit A. All Task Orders shall supersede and take precedence over the Consultant's Response to the RFP.

A Member who participates in any Task Order shall be referred herein as the "Participating Member." A Task Order may be made on behalf of SCPPA and/or one or more Members and in all cases shall be signed by the Consultant and SCPPA; provided the Participating Member shall not be liable for any Task Order related costs unless Participating Member(s), at its election, signs the Task Order or submits a letter to SCPPA confirming its participation and funding commitment in form and content mutually acceptable to SCPPA and Participating Member. Consultant will perform the Services within the applicable Task Order at the

direction of and on behalf of SCPPA and/or the Participating Member. There may be one or more Task Orders associated with this Agreement. A Task Order may be amended or replaced only upon written agreement executed by Consultant and SCPPA and the participating Member(s), as may be elected by Participating Member(s). Alternatively, when a Participating Member has elected to confirm its Task Order participation through a letter, the Participating Member may confirm its consent to an amendment of a Task Order by an updated participation letter.

2. **Independent Contractor:** Consultant is an independent contractor, is not an employee of SCPPA or any SCPPA Member and shall not be entitled to any benefits or rights, including, but not limited to, sick leave, vacation leave, holiday pay, worker's compensation or other insurance benefits. Consultant shall furnish the Services in its own manner and method except as required by this Agreement. Consultant shall have no authority, express or implied, to act on behalf of or bind SCPPA or its Members in any capacity whatsoever as agents or otherwise. Consultant may use the services of subcontractors to perform a portion of its obligations under this Agreement with the prior written approval of SCPPA. Subcontractors shall be provided with a copy of this Agreement and Consultant shall have an affirmative duty to assure that all subcontractors comply with the same and agree to be bound by its terms. Consultant shall be the responsible party with respect to all actions of its subcontractors. Consultant is not required to perform the services at fixed hourly or daily times, nor at SCPPA or Member premises unless as provided in the Scope of Services. Consultant's time spent at SCPPA, Member, or project location premises shall be subject to normal business hours, appropriate safety standards and security requirements.
3. **Standard of Care:** The Consultant will perform Services under this Agreement with the degree of skill and diligence normally practiced in the same industry by consultants performing the same or similar services. Consultant shall comply with all Federal, State, County, local and other governing laws, rules and regulations applicable to the performance of the Services including participating Member(s) business practices or other requirements set forth in a Task Order, including, but not limited to, equal opportunity practices, living wage ordinances, applicable business licenses, taxpayer protection acts (limiting gifts or campaign contributions), and assignment of antitrust causes of action.
4. **Changes/Amendments:** The terms and conditions of this Agreement may not be changed except as to a particular Task Order. Any such change can be made in a new Task Order or an amendment to an existing Task Order, all consistent with the requirements of Section 1 above. Any change(s) from the terms and conditions of this Agreement shall only apply to the Services performed under the particular Task Order in which such change(s) were made. Services not expressly set forth herein or in a Task Order are excluded. Consultant shall promptly notify SCPPA and participating Member(s) if changes to the Scope of Services will affect the schedule, level of effort or payment to Consultant. If Consultant determines that changes should be made to a Task Order, Consultant shall notify SCPPA and participating Member(s) of such proposed changes in writing, including the effects on the schedule, level of effort and compensation for such changes.
5. **Payment:** SCPPA shall pay Consultant in accordance with the terms and payment schedule

contained in the applicable Task Order. Each invoice shall include the following:

- a. A reference to SCPPA Resolution No. 2018-070;
- b. Name of the participating Member(s) and the contact information for participating Member(s) designated representative(s);
- c. The basis for the amount invoiced, (e.g. services provided, units and costs, etc.)

Consultant shall provide all invoices to both the participating Member(s) and to SCPPA. Invoices delivered to SCPPA should be sent to billinginvoices@scppa.org. Invoices received by SCPPA on or before the 15th day of a given month and subsequently approved by the participating Member(s) on or before the 25th day of the same month, will be paid by SCPPA before the end of the following month. All other properly invoiced amounts shall be paid not more than sixty (60) days after delivery of an invoice, provided that the funds for the payment of such invoices have been transmitted to SCPPA by the participating Member(s). SCPPA will use best efforts to pay invoices within a sixty (60) day period.

6. **Taxes:** Any and all taxes imposed on Consultant's income, imposed or assessed by reason of this agreement or its performance, including but not limited to sales or use taxes, shall be paid by Consultant. Consultant shall be responsible for any taxes or penalties assessed by reason of any claims that Consultant is an employee of SCPPA. SCPPA and Consultant specifically agree that Consultant is not an employee or agent of SCPPA.
7. **Indemnity:** Consultant shall defend, indemnify and hold harmless SCPPA, its participating Member(s) and their officers, agents, representatives and employees from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever for death, bodily injury or personal injury to any person, including Consultant's employees and agents, or damage or destruction to any property of either Party, or third person in any manner arising by reason of negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of the Consultant, or the Consultant's officers, agents, employees, or subcontractors of any tier, except for the sole active negligence or willful misconduct of SCPPA, its participating Member(s) and their officers, agents, representatives or employees.
8. **Intellectual Property Infringement.** Consultant shall defend, indemnify and hold SCPPA and Member(s) free and harmless from and against any loss, cost and expense that SCPPA or any participating Member(s) incurs because of a claim that any deliverables, materials or equipment (hereinafter "Product") provided pursuant to this Agreement infringes on the intellectual property right of others. Consultant's obligations under this indemnification are expressly conditioned on the following: (i) SCPPA must promptly notify Consultant of any such claim; (ii) SCPPA must in writing grant Consultant sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if SCPPA chooses to represent its own interests in any such action, SCPPA may do so at its own expense, but such representation must not prejudice Consultant's right to control the defense of the claim and negotiate its settlement or compromise); (iii) SCPPA and its participating Member(s) must cooperate with Consultant to facilitate the settlement or defense of the claim; (iv) the claim must not arise from modifications to or misuse of the Product by SCPPA, its participating Member(s) or others. In the event of any such infringement claim, Consultant, at its sole option and expense, may (A) retake title and possession of the Product and refund all compensation

paid by SCPPA, or (B) obtain for SCPPA the right to continue using the Product under the terms of this Agreement; or (C) replace the Product with another that is substantially equivalent in function, or modify the Product so that it becomes non-infringing and substantially equivalent in function.

9. Insurance. Consultant shall at its sole cost and expense procure, provide and maintain, and shall require each subcontractor (regardless of tier) to provide and maintain, in effect during the performance of any Services under this Agreement insurance coverage with carriers reasonably satisfactory to SCPPA, as follows:

- (a) Workers' Compensation insurance in accordance with statutory limits, as required by the state in which the services are to be performed, including a waiver of subrogation favoring SCPPA, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) each employee for accident, \$1,000,000 each employee for disease, and \$1,000,000 policy limit for disease.
- (b) Commercial General Liability insurance providing coverage for bodily injury, property damage, personal injury, advertising liability, blanket contractual liability, Consultant's obligations under this Agreement, products and completed operations, and coverage for independent contractors with limits of not less than one million dollars (\$1,000,000) for each occurrence, an annual aggregate of two million dollars (\$2,000,000), and a products/completed operations aggregate of two million dollars (\$2,000,000). Such policy shall cover SCPPA and each participating Member(s) as an additional insured, include a severability of interest provision, and be primary and not contributory with respect to any insurance carried by SCPPA or its Members.
- (c) Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles used by Consultant in the performance of the services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury and property damage.
- (d) Errors & Omissions/Professional Liability insurance, with limits of one million dollars (\$1,000,000).

The insurance to be provided by Consultant under this Agreement shall not include any of the following: except for Professional Liability Insurance, any claims-made insurance policies; any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by SCPPA; any endorsement limiting coverage available to SCPPA or participating Member(s) that is otherwise required by this Section 9; and any policy or endorsement language that (i) negates coverage to SCPPA of participating Member(s) for SCPPA's or participating Members' own negligence; (ii) limits the duty to defend SCPPA or participating Member(s) under the policy; (iii) provides coverage to SCPPA or participating Member(s) only if Consultant is negligent, or (iv) permits the recovery of defense costs from any additional insured. The insurance provided under this Agreement shall not contain any restrictions or limitations which are inconsistent with SCPPA's or the participating Members' rights under this Agreement.

Consultant shall furnish SCPPA a certificate of insurance evidencing the required coverages prior to commencement of Services under this Agreement or any Task Order issued pursuant to this Agreement. Consultant shall provide SCPPA a new or renewed certificate of insurance upon any changes or modifications to coverage including any extension or renewal of required insurance coverage; provided that any changes or modifications to coverage shall be consistent with the requirements of this Agreement.

10. Term and Termination: The term of this Agreement shall be three (3) years from the date hereof, unless sooner terminated in accordance with this Section 10, at which time it shall either expire or be extended for one (1) additional term of three (3) years in writing by SCPPA, subject again to earlier termination in accordance with this Section 10; provided, that in no case shall this Agreement expire while Services pursuant to any Task Order remain to be completed. SCPPA's decision to grant an extension for an additional three (3) year term shall be at the sole discretion of the SCPPA Executive Director. Notwithstanding anything to the contrary contained herein, either Party may terminate this Agreement, with or without cause, upon thirty (30) days' written notice to the other Party. SCPPA shall pay Consultant for all Services rendered up to the date of termination plus reasonable expenses for winding down the Services. Any rights or obligations pursuant to Sections 5, 6, 7, 8, and 11 shall survive the expiration or termination of this Agreement.

11. Use and Ownership of Work Products:

(a) As used in this agreement, the term "Work Product" means any and all deliverables or materials fixed in a tangible medium of expression, including software code, written procedures, written documents, abstracts and summaries thereof, or any portions or components of the foregoing created, written, developed, conceived, perfected or designed in connections with the Services provided under this Agreement.

(b) SCPPA shall retain all rights, title and interest in and to the Work Product, including all intellectual property rights therein and any and all enhancements, improvements and derivative works thereof, and Consultant obtains no rights therein.

(c) SCPPA agrees that Consultant shall not have any liability for any revision or addition to, alteration or deviation from the Work Product or deliverables or use other than the intended purpose by the intended recipient, except as such revision, addition to, alteration or deviation may have received the prior approval of Consultant.

12. Information Provided by Others: To the extent available to SCPPA or the participating Members(s), SCPPA, the participating Member(s), or both shall provide to the Consultant in a timely manner any information reasonably needed to perform the Services hereunder. Consultant may rely on the accuracy of information provided by SCPPA and its representatives. Any Customer Data furnished to Consultant by SCPPA or its participating Member(s) shall be deemed Confidential Information subject to Section 13 of this Agreement. The term "Customer Data" shall mean any and all data that describes anything whatsoever about an individual customer of a participating Member(s), such as address, employment, contact information, usage history, financial transactions and/or credit history, or that affords

a clear basis for inferring things done by or to an individual or entity such as a record of a person's presence in a place, or requests for temporary changes in service. "Customer Responses" shall be any and all information or opinion collected or gathered from an individual customer of a participating Member(s), either verbally, in writing, or electronically.

13. **Confidential Information:** With respect to any information supplied in connection with this Agreement, Confidential Information shall be any and all: (1) Customer Data provided by SCPPA or any participating Member to Consultant or any of Consultant's subcontractors; and (2) Customer Responses collected by Consultant or any of Consultant's subcontractors from customers of any Members; and (3) any information provided to one Party from another that is labeled and/or marked confidential. The recipient agrees to protect the Confidential Information in a reasonable and appropriate manner, and to use and reproduce the Confidential Information only as necessary to realize the benefits of or perform its obligations under this Agreement and for no other purpose.

Notwithstanding the foregoing, Confidential Information does not include information which (i) at the time of disclosure is within the public domain through no breach of this Agreement by either Party; (ii) has been known or independently developed by and is currently in the possession of recipient prior to disclosure or receipt thereof; (iii) was or is acquired by recipient from a third party (other than a SCPPA Member Customer contacted by Consultant in the course of performance of this Agreement) or (v) disclosed pursuant to a legal requirement or order. The recipient may disclose the Confidential Information on a need-to-know basis to its contractors, agents and affiliates who agree to confidentiality and non-use terms that are substantially similar to these terms. The parties acknowledge and agree that any proprietary software provided by Consultant in connection with this Agreement shall be considered the Confidential Information of Consultant.

In the case of a *bona fide* request received by SCPPA under the California Public Records Act ("CPRA," Cal. Gov't Code § 6250 et seq.) from a third party for access to Consultant's Confidential Information subject to this Agreement, SCPPA shall promptly notify Consultant of such request and shall follow Consultant's reasonable instructions in responding thereto subject to the understanding that SCPPA cannot delegate the responsibilities imposed on it by the CPRA to Consultant. In the event access to such Confidential Information is denied and the third party requesting the same initiates litigation to compel access under the CPRA, SCPPA shall promptly advise Consultant of such litigation, and SCPPA shall have no other duty or obligation to Consultant under this Agreement with respect to the denial of access to such Confidential Information or to oppose or defend any such litigation. Consultant, at its own cost and expense, shall indemnify, defend and hold SCPPA free and harmless from such litigation or any claim, suit, cost, expense, judgment or order related thereto or otherwise arising from the denial of access to Consultant's Confidential Information to said third party.

Confidential Information must be kept in a secure location. Confidential Information received from customers of a Member will only be provided by Consultant to SCPPA and its designated representatives, and to no other party. Consultant shall, when directed by SCPPA, create aggregated data derived from Confidential Information in such a way such that individual customer responses or data cannot be determined. Consultant will retain the Confidential

Information only so long as it is necessary to perform Consultant's tasks under the Agreement, and after such time, the Confidential Information will be returned to SCPPA (or at SCPPA's written option, destroyed), and Consultant will retain no copies of the Confidential Information.

Consultant shall be responsible to ensure that any subcontractors used to provide Services that have access to Confidential Information or who will collect Customer Responses comply with the provisions of this Section 13.

14. **Dispute Resolution:** Consultant and SCPPA shall attempt to resolve conflicts or disputes which arise under this Agreement or which relate in any way to this Agreement or the subject matter of this Agreement in a fair and reasonable manner. Where Parties are unable to otherwise resolve conflicts or disputes, the Parties agree to attempt to mediate the conflict or dispute by a professional mediator. If mediation does not settle any conflict or dispute the Parties may agree in writing to arbitration under the rules governing commercial arbitration as promulgated by the American Arbitration Association, arbitrability shall be subject to the Federal Arbitration Act and the locale of the arbitration shall be Southern California.

Notwithstanding any other term of this Agreement and to the fullest extent permitted by law, both parties agree to waive any consequential, indirect and special damages and agree that the total liability of Consultant to all parties under or in connection with this Agreement and all Task Orders hereunder, whether in contract, tort, negligence, breach or otherwise shall not exceed two times the total fee paid to Consultant hereunder, with the exception of liability for personal injury or death caused by the negligence or willful misconduct of Consultant. Consultant's liability under or in connection with this Agreement or any Task Order shall expire two (2) years from the date of completion of the services pursuant to the applicable Task Order.

15. **Representatives**

Each Parties representative for administration of this Agreement shall be as indicated below. All notices, requests, demands and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender and delivered by first class mail, postage prepaid; by electronic mail or facsimile, with a hard copy mailed first class, postage prepaid; or when sent by a courier or service guaranteeing overnight delivery to the receiving party, addressed as follows:

To SCPPA:

Bryan Cope
1160 Nicole Court
Glendora, CA 91740
(626) 793-9364
bcope@scppa.org

To Consultant:

Mark Gosvener
5605 NE Elam Young Pkwy
Hillsboro, OR 97124
(888) 883-9879
markg@esgroupplc.com

All questions pertaining to this Agreement shall be referred to the above-named person(s), or to the representative's designee.

Except as otherwise provided herein, the representatives set forth herein shall have authority to give all notices required herein.

Either party may change its address for the purposes of this Agreement by giving written notice of such change to the other party in the manner provided in this Section.

Notice shall be deemed effective: 1) immediately, upon personal delivery; 2) two calendar days after transmission by electronic mail or facsimile; five calendar days after deposit in first class mail, if mailed within the United States; and ten calendar days after deposit in the mail, if mailed from outside the United States.

16. Miscellaneous:

(a) This Agreement is binding upon and will inure to the benefit of SCPPA and Consultant and their respective successors and assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party; provided, however, that either Party may assign this Agreement to a successor of the Party's entire business relating to this Agreement.

(b) If any provision of this Agreement is rendered invalid or unenforceable under any circumstance, the remainder of this Agreement shall continue to be in full force and effect and the provision declared invalid or unenforceable shall continue to be in full force and effect as to other circumstances in accordance with, the laws of the State of California.

(c) This Agreement is entered into in Los Angeles County in the State of California and shall be governed by, and construed in accordance with, the laws of the State of California.

17. Counterparts and Electronic Signatures: This Agreement may be executed in one or more counterparts, each of which when executed by each party shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and Records Act, and California's Uniform Electronic Transactions Act.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: 
MICHAEL S. WEBSTER
Executive Director

Approved as to Legal Form and Content:


RICHARD J. MORILLO
General Counsel

and;

EFFICIENCY SERVICES GROUP, LLC.

By: 
MARK GOSVENER
Chief Operational Officer

EXHIBIT A

TASK ORDER FORM

**TASK ORDER No.: [...input number, sequential to prior
task orders, if applicable...]**

Date: []

Project Description: []

Participating SCPPA Member(s) (if applicable): []

Consultant: []

SCPPA and Contractor acknowledge and agree that, by making Contractor's services available to multiple Members, through SCPPA pursuant to this Agreement, Contractor is able to provide Members substantial benefits that would not otherwise be available by procuring Contractor's services independently, including but not limited to:

- reduced complexity and effort required for Members to develop and implement efficiency-related programs;
- streamlined billing processes; and
- increased purchasing power for Members through economies of scale and scope, leading to significantly lower costs to participating Members and increased visibility of Members and Members' needs by Contractor.

To achieve these economies, Contractor is offering to provide the services listed herein to SCPPA Members. Members may elect to use any one or more of these services, as they may choose on their own accord. In addition, Contractor will provide best efforts to accommodate Members' request(s) for additional services that are not specified herein. Any such additional services would be provided at the labor billing rate schedule presented below.

Consultant, SCPPA and the participating Member(s) ("Participant(s)") identified above agree that Consultant shall provide the Services specified herein pursuant to the terms and conditions of the Master Professional Services Agreement ("Agreement") between SCPPA and Consultant dated [...input Master Professional Services Agreement date...], except as specifically modified herein.

Scope of Services

[Add Introduction or General Description of Services, if desired]

Task 1: []

Task 2: []

Task 3: []

[Add tasks as needed]

Compensation and Schedule

[Specify fees and schedule]

Representative(s) of Participating Member(s)

[Identify Names and appropriate Contact information for all Member staff who are authorized representatives for the administration of the Agreement and who should be sent invoices from Consultant]

Amendment(s) to the Agreement

[Specify, or indicate "None."]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed this Task Order as of the date first written above.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
MICHAEL S. WEBSTER
Executive Director

and;

[... LEGAL ENTITY NAME ...]

By: _____
[... PRINTED NAME IN CAPS ...]
[... printed title ...]

Participant's Acknowledgement and Agreement

By signing this Task Order, Participant agrees to reimburse SCPPA for all fees and expenses invoiced by Consultant and will be responsible for all payment obligations incurred by SCPPA in connection with the work performed at the direction of or on behalf of Participant. Participant agrees to hold SCPPA and all other SCPPA members harmless for payment for work performed at the direction of, and for the exclusive benefit of Participant.

[... Name of Participating Member(s), if applicable ...]

By: _____
[... PRINTED NAME IN CAPS ...]
[... printed title ...]

- ☐ Check here if Participant has indicated acknowledgement and agreement by letter addressed to SCPPA.



Commission Staff Report

November 21, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Approval of Amendment to the Funding Agreement for Energy Efficiency Services dated November 10, 2018.

AGENDA CATEGORY: Consent

FROM:	Jane Cirrincione <i>JCC</i>	METHOD OF SELECTION:
	AGM, L&R Affairs	<i>Competitive Pricing Process</i>
Division:	Legislative & Regulatory Affairs	<i>If other, please describe:</i>
Department:	Legislative & Regulatory	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Shasta Lake <input checked="" type="checkbox"/>
Alameda Municipal Power <input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>	City of Ukiah <input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input checked="" type="checkbox"/>	Plumas-Sierra REC <input checked="" type="checkbox"/>
City of Biggs <input checked="" type="checkbox"/>	City of Redding <input checked="" type="checkbox"/>	Port of Oakland <input checked="" type="checkbox"/>
City of Gridley <input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>	Truckee Donner PUD <input checked="" type="checkbox"/>
City of Healdsburg <input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Authorize the Northern California Power Agency (NCPA) General Manager or his designee to execute an Amendment to the existing Funding Agreement with the California Municipal Utilities Association (CMUA) and Southern California Public Power Authority (SCPPA) to increase the total not-to-exceed amount by \$275,500, of which NCPA will be responsible for payment of its 25.774% proportionate share of the augmented budget for the Agreement.

BACKGROUND:

Under the Agreement, CMUA is administering a joint contracting and cost sharing opportunity for members of CMUA, NCPA, and SCPPA, collectively referred to hereinafter as "CA POU's." The Agreement is with Energy Platforms, LLC (EP) for the development and maintenance of a demand side management cost-effectiveness tool and reporting platform. NCPA approved participation in the Agreement under Resolution 18-57 on July 26, 2018. The original contract was not-to-exceed \$827,600 and NCPA's share of this amount was \$213,309.

During the initial development process, CA POU's requested changes to the scope of work that was originally created for the development of the Cost Effectiveness Tool and Reporting Platform (CET/RP). The additional work was required to complete enhancements of the cost-effectiveness evaluations and reporting platform to comply with the statutorily mandated energy efficiency program reporting requirements in Public Utilities Code section 9505. The subsequent work by EP allowed Members to complete their respective analyses so that NCPA, SCPPA, and CMUA staff were able to prepare the Fiscal Year 2018 energy efficiency program report in a timely manner. The budget for the additional enhancements to the CET/RP was approved by the Commission in the Fiscal Year 2020 budget adopted under Resolution 19-43.

Subsequently, CMUA, NCPA, and SCPPA have agreed to further increase the budget by \$111,500 for EP to perform additional services under the Agreement. This decision was driven by a vote of participating CA POU's in October 2019. The Member-requested enhancements to the CET/RP will expedite use of the model and improve the analytical capabilities of CA POU's. Further, the enhancements will improve the ability of CMUA, NCPA, and SCPPA to prepare the annual energy efficiency report for submittal in March 2020 and in future years.

The proposed Amendment incorporates the cost increases from both the initial budget augmentation and the current supplemental services, as agreed to by participating Members in October 2019. The total additional cost to NCPA is \$71,003.99, which increases the not-to-exceed total for NCPA's share to \$284,312.99.

FISCAL IMPACT:

No fiscal impact to NCPA. The total expense for the additional upgrades will be shared between participants based on the same "50/50" split that was used in the original cost allocation under Resolution 18-57, with 50% of program costs divided equally among all POU's and the remaining 50% of costs split among all POU's based on their respective percentage of cumulative load from calendar year 2016.

SELECTION PROCESS:

CMUA, NCPA, and SCPA collaborated to issue and administer a competitive solicitation for professional and technical services in 2017-2018, to develop an energy efficiency database tool that would calculate the cost-effectiveness of energy efficiency demand reduction measures and programs, and to summarize and report program expenditures, energy savings, and demand reductions in order to report this information to the CEC and other regulatory agencies.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation will be reviewed and discussed in the Legislative and Regulatory Affairs Committee on December 4, 2019.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments:

- Resolution No. 19-112
- Amendment to CMUA Funding Agreement for Energy Efficiency Services

RESOLUTION 19-112

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY TO APPROVE AND AUTHORIZE EXECUTION OF AN AMENDMENT TO THE FUNDING AGREEMENT FOR ENERGY EFFICIENCY SERVICES WITH THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION AND THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

(Staff Report #247:19)

WHEREAS, the Northern California Power Agency (NCPA) has previously collaborated with the California Municipal Utilities Association (CMUA) and the Southern California Public Power Authority (SCPPA) on the development of a demand side management cost-effectiveness tool and reporting platform; and

WHEREAS, NCPA, CMUA, and SCPPA jointly released a competitive solicitation (Request for Proposal) for the selection of a consultant to develop a web-based application to replace the previous Excel-based spreadsheet tool; and

WHEREAS, NCPA, CMUA, and SCPPA selected Energy Platforms, LLC through a competitive solicitation to develop the web-based cost-effectiveness tool and reporting platform; and

WHEREAS, CMUA executed a consulting services agreement with Energy Platforms, LLC to develop a web-based cost-effectiveness tool and reporting platform for use by the electric utility members of CMUA, NCPA, and SCPPA, for an amount not-to-exceed \$827,600 over the five-year term of the agreement; and

WHEREAS, the electric utility members of CMUA, NCPA, and SCPPA collectively agreed to additional enhancements to the web-based cost-effectiveness tool and reporting platform at a cost of \$275,500, in order to improve the analytical capabilities of the system and ensure that the reports generated will meet statutory and regulatory requirements; and

WHEREAS, NCPA has agreed under the existing Agreement to pay its proportionate share of 25.774% of the total cost of services provided under the 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 of 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 adopts the recommendation to approve and authorize execution of an amendment to the Funding Agreement for Energy Efficiency Services with the California Municipal Utilities Association and Southern California Public Power Authority, for which NCPA's share of the additional costs shall not exceed \$71,003.99, for enhancements to the cost-effectiveness tool and reporting platform.

PASSED, ADOPTED AND APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

 ROGER FRITH
 CHAIR

ATTEST:

 CARY A. PADGETT
 ASSISTANT SECRETARY

AMENDMENT TO FUNDING AGREEMENT FOR ENERGY EFFICIENCY SERVICES

This Amendment to Funding Agreement for Energy Efficiency Services, ("Amendment") is dated for convenience, December 1, 2019 ("Effective Date"), by and among the California Municipal Utilities Association ("CMUA"), a California non-profit corporation, the Northern California Power Agency ("NCPA"), a joint powers agency, and the Southern California Public Power Authority ("SCPPA"), a joint powers agency. CMUA, NCPA, and SCPPA are also referred to individually as a "Party" and jointly as "the Parties."

WITNESSETH:

WHEREAS, CMUA, NCPA, and SCPPA entered into a Funding Agreement for Energy Efficiency Services ("Agreement") on or about November 10, 2018, wherein CMUA agreed to enter into a consultant services agreement ("CSA") with Energy Platforms, LLC ("Consultant") in an amount **not to exceed eight-hundred twenty-seven thousand six hundred dollars (\$827,600)** and a cost allocation of the following:

- CMUA was responsible for **30.748%** of the total cost of services provided under the CSA, and total payments not exceed **two-hundred fifty-four thousand four hundred sixty- seven dollars (\$254,467)**.
- NCPA was responsible for **25.774%** of the total cost of services provided under the CSA, and total payments not exceed **two-hundred thirteen thousand three hundred nine dollars (\$213,309)**.
- SCPPA was responsible for **43.478%** of the total cost of services provided under the CSA, and total payments not exceed **three-hundred fifty-nine thousand eight hundred twenty-four dollars (\$359,824)**.

WHEREAS, CMUA, intends to amend the CSA to expand the scope of services and to increase the compensation amount by \$275,500 to a total of \$1,103,100.

WHEREAS, CMUA, NCPA, and SCPPA desire to amend the Agreement to modify the total not to exceed amount, maintain the cost allocation percentages as originally agreed upon by all Parties and increase the respective not to exceed amounts for each party.

NOW, THEREFORE the Parties agree as follows:

1. Section 1 of the Agreement, titled "Retainer of Consultant," shall be amended to increase the not to exceed amount to \$1,103,100.
2. Section 1.3 of the Agreement, titled "Cost Allocation," shall be amended to increase the not to exceed amount for each party as follows:
 - CMUA shall be responsible **30.748%** total cost of services provided under the CSA, and total payments not to exceed **three-hundred thirty-nine thousand, one hundred, eighty-one dollars, and nineteen cents (\$339,181.19)**;
 - NCPA shall be responsible **25.774%** total cost of services provided under the CSA, and total payments not to exceed **two-hundred eighty-four thousand, three hundred, twelve dollars and ninety-nine cents (\$284,312.99)**;

- SCPPA shall be responsible **43.478%** total cost of services provided under the CSA, and total payments not to exceed **four-hundred seventy-nine thousand, six hundred five dollars and eighty-two cents \$479,605.82).**

Except as expressly provided in this Amendment, all the terms and provisions of the Agreement shall remain in full force and effect. Regarding the issues covered by this Amendment, this Amendment constitutes the entire understanding and agreement of the Parties and supersedes all prior or contemporaneous agreements and understandings, whether written or oral.

IN WITNESS WHEREOF, each signatory hereto represents that he or she has been properly authorized to execute and deliver this Agreement on behalf of the Party for which he or she signs.

California Municipal Utilities Association


BARRY MOLINE
Executive Director

Southern California Public Power Authority

MICHAEL S. WEBSTER
Executive Director

Approved as to form:

Richard J. Morillo
General Counsel

Northern California Power Agency

RANDY S. HOWARD
General Manager

Approved as to form:

Jane Luckhardt
General Counsel



Commission Staff Report

Date: November 19, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: NCPA 2020 Wildfire Mitigation Plan. Applicable to the following projects: All NCPA Generation Facility locations

AGENDA CATEGORY: Discussion/Action

FROM:	Joel Ledesma <i>J.L.</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Generation Services	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		
<hr/>		
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RECOMMENDATION:

Approval of Resolution 19-100 for the Northern California Power Agency (NCPA) 2020 Wildfire Mitigation Plan, to apply to all NCPA generation facilities, effective immediately. This plan supersedes a previous version approved on August 23, 2018, and shall be reviewed and approved on an annual basis.

BACKGROUND:

Public Utilities Code, Division 4.1, Chapter 6 Wildfire Mitigation, Code 8387 requires electric utilities to assess the risk of catastrophic wildfire posed by a utility's overhead electrical lines and equipment. With the passage of California Senate Bill 901 on September 21, 2018, additional and more prescriptive plan requirements must be met beginning January 1, 2020.

NCPA's goal in drafting, adopting, and following the 2020 Wildfire Mitigation Plan is to reduce the risk of NCPA facilities igniting a wildfire. NCPA, with the assistance of an outside consultant, has drafted its 2020 Wildfire Mitigation Plan, applicable to all NCPA generation facilities.

This plan will be reviewed by a qualified independent evaluator in Q1 2020, per requirements.

FISCAL IMPACT:

Any expenses associated with the preventive maintenance procedures and practices included in the plan are already covered in previously approved Plant budgets. The plan also includes investigation of potential risk reduction measures, that, if implemented, may require additional budget dollars. Those amounts are not known or established at this time.

ENVIRONMENTAL ANALYSIS:

Work associated with this Project is categorically exempt under Class 1, 3, 4, and 11 Exemptions under CEQA guidelines 15301(b), 15303, 15304, and 15311 and is therefore categorically exempt from CEQA. Class 1 is the "existing facilities" exemption, which includes the repair, maintenance, or minor alteration of existing public structures, facilities, mechanical equipment, involving negligible or no expansion of use. Class 3 is installation of small new equipment and facilities in small structures; Class 4 is minor alterations in the condition of the land; and, Class 11 is construction or placement of minor structures accessory to existing facilities. All necessary Federal, State and County notifications will be made before commencing the work.

A Notice of Exemption was approved by the NCPA Commission on September 27, 2013, for this class of work and was filed in Lake and Sonoma Counties, and in Alpine, Calaveras, San Joaquin, and Tuolumne Counties.

COMMITTEE REVIEW

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and the Committee recommended staff add additional language regarding the Castle Rock Junction-Lakeville 230 kV co-tenancy line in the Geysers area.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 19-100
- NCPA 2020 Wildfire Mitigation Plan

RESOLUTION 19-100

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING NCPA'S 2020 WILDFIRE MITIGATION PLAN

(reference Staff Report #233:19)

WHEREAS, Public Utilities Code, Division 4.1, Chapter 6 Wildfire Mitigation Code 8387 requires electric utilities to assess the risk of catastrophic wildfire posed by a utility's overhead electrical lines and equipment; and

WHEREAS, California Senate Bill 901, passed on September 21, 2018, further stipulates additional and more prescriptive plan requirements must be met beginning on January 1, 2020; and

WHEREAS, NCPA, with the help of an outside consultant, drafted its 2020 Wildfire Mitigation Plan, including preventative maintenance procedures and practices, applicable to all NCPA generation facilities; and

WHEREAS, NCPA now seeks to implement the NCPA 2020 Wildfire Mitigation Plan, superseding the previous version approved on August 23, 2018; and

WHEREAS, work associated with this Project is categorically exempt under Class 1, 3, 4, and 11 Exemptions under CEQA guidelines 15301(b), 15303, 15304, and 15311 and is therefore categorically exempt from CEQA. Class 1 is the "existing facilities" exemption, which includes the repair, maintenance, or minor alteration of existing public structures, facilities, mechanical equipment, involving negligible or no expansion of use. Class 3 is installation of small new equipment and facilities in small structures; Class 4 is minor alterations in the condition of the land; and, Class 11 is construction or placement of minor structures accessory to existing facilities. All necessary Federal, State and County notifications will be made before commencing the work. A Notice of Exemption was approved by the NCPA Commission on September 27, 2013, for this class of work and was filed in Lake and Sonoma Counties, and in Alpine, Calaveras, San Joaquin, and Tuolumne Counties; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to implement NCPA's 2020 Wildfire Mitigation Plan, to apply to all NCPA generation facilities effective immediately. This plan supersedes a previous version approved on August 23, 2018, and shall be reviewed and approved on an annual basis.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda			
San Francisco BART			
Biggs			
Gridley			
Healdsburg			
Lodi			
Lompoc			
Palo Alto			
Port of Oakland			
Redding			
Roseville			
Santa Clara			
Shasta Lake			
Truckee Donner			
Ukiah			
Plumas-Sierra			

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY

NORTHERN CALIFORNIA POWER AGENCY WILDFIRE MITIGATION PLAN

VERSION 1.0

*Approved by NCPA Commission on December 5, 2019 per
Resolution 19-100*

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EXECUTIVE SUMMARY

Northern California Power Agency (NCPA) has prepared the following Wildfire Mitigation Plan (WMP) in accordance with California Public Utilities Commission (CPUC) regulation 8387 (SB 901). NCPA is a Joint Powers Agency, which owns and operates several electrical generation facilities to support its members' generation needs.

The objective of this WMP is to reduce the risk of wildfires that could be ignited or propagated by NCPA electrical equipment or facilities in high fire threat locations. The plan describes the range of activities that NCPA is taking to mitigate the threat of power line-ignited wildfires, including its current programs, policies, and procedures as well as future plans to decrease risk and improve resiliency. The plan has prioritized the prevention of elements that create a wildfire event: 1) fuel, or geographic conditions represented by the California Department of Forestry and Fire Protection (CAL FIRE) and CPUC risk maps, and 2) ignition, represented by facilities subject to creating a fire. The facility types of highest interest are open wire power lines (transmission and distribution) that are near heavy vegetation or forest.

NCPA has no retail customers. As such, this report focuses exclusively on NCPA electrical facilities with minimal discussion regarding customer communication typical of other utility WMPs.

1. OVERVIEW

1.A. POLICY STATEMENT

The Northern California Power Agency (NCPA), a California Joint Action Agency, has an overarching goal to provide safe, reliable, and economic electric service to its public power members and associate members. To meet this goal, NCPA constructs, maintains, and operates its equipment in a manner that minimizes the risk of wildfire ignition and propagation caused by NCPA-owned and -operated electric utility equipment (generation, generation tie-lines, and distribution).

1.B. PURPOSE OF THE WILDFIRE MITIGATION PLAN

The objective of this Wildfire Mitigation Plan (WMP) is to reduce the risk of wildfires that could be ignited or propagated by NCPA electrical equipment or facilities in high fire threat locations.

The plan describes the range of activities that NCPA is taking to mitigate the threat of power line-ignited wildfires, including its current programs, policies, and procedures as well as future plans to decrease risk and improve resiliency. This plan is subject to direct supervision by the NCPA Commission and is implemented by the NCPA General Manager. This plan complies with the requirements of Public Utilities Code section 8387 (origin SB-901) for publicly owned electric utilities to prepare a wildfire mitigation plan by January 1, 2020, and to review and update it annually thereafter.

Historically, NCPA has continuously improved its practices to minimize wildfire risks. This includes:

- A transmission line vegetation management program that is compliant with NERC Standard FAC-003 and CAL FIRE regulations
- Compliance with CAL FIRE and California Public Utilities Commission regulations and guidance for overhead distribution and transmission lines
- CAL FIRE emergency response plans
- Power management/dispatch response procedures
- Periodic equipment inspections and safe work practices
- Workforce training

This WMP is in response to the requirements of California Senate Bill 901 (SB-901). It supersedes a prior plan drafted and approved prior to SB-901, specifically pursuant to Public Utilities Code, Division 4.1, Chapter 6 Wildfire Mitigation (effective January 1, 2017).

In 2019, NCPA initiated the development of this current WMP. NCPA hired POWER Engineers to evaluate NCPA's electrical facilities, processes, and documentation based on the design, configuration, operations, maintenance, and condition of NCPA facilities in relation to their potential to initiate a wildfire event. The evaluation included consideration of NCPA system descriptions, record design/construction documents, typical facilities layouts, basic fire protection system features, data sheets, inspection practices and procedures, baseline

vegetation conditions, potential climate change effects, vegetation management practices, fire threat and hazard maps, and other documentation.

The investigation also included limited on-site surveys for better understanding of the general design, configuration, and condition of NCPA equipment and the surrounding environment for identification of associated risks.

POWER then prepared a wildfire mitigation report with prioritized recommendations for potential improvement. The analysis and recommendations of that report formed the basis for development of site-specific implementation plans with action items scheduled on the basis of risk and cost. These plans provide guidance for NCPA to identify, correct, remediate, or employ new or better methods to be prepared for, reduce, and eliminate the risk of wildfires in and around NCPA facilities. The conclusions of the wildfire mitigation report also helped inform the development of this WMP.

1.B.1. COORDINATION WITH LOCAL AGENCIES

NCPA's local coordination efforts related to wildfire mitigation include regular meetings for its Emergency Action Plan process. For example, the NCPA Hydroelectric facility hosts an annual face-to-face meeting with local emergency management agencies including: the U.S. Forest Service; CAL FIRE; sheriff departments for Calaveras, Tuolumne, and Alpine Counties; California Highway Patrol; California Department of Parks and Recreation (Calaveras Big Trees State Park); and others. In addition, a separate annual meeting is held with the U.S. Forest Service, since many NCPA Hydroelectric facilities are located on U.S. Forest Service lands. Wildfire mitigation is one of the agenda items that is always explicitly discussed.

The NCPA Hydroelectric and Geothermal facilities also coordinate vegetation management activities with CAL FIRE and routinely utilize CAL FIRE (in cooperation with California Department of Corrections Conservation Fire Camp labor) for vegetation management and wildfire mitigation around the facilities. Additionally, NCPA Geothermal facility staff meet annually with Pacific Gas and Electric (PG&E), Calpine (operator of other geothermal facilities at the Geysers), CAL FIRE, the Bureau of Land Management, and Lake County Sanitation District.

1.C. ORGANIZATION OF THE WILDFIRE MITIGATION PLAN

This WMP includes the following elements:

- Objectives of the plan
- Roles and responsibilities for carrying out the plan
- Identification of key wildfire risks and risk drivers
- Description of wildfire prevention, mitigation, and response strategies and programs
- Metrics for evaluating the performance of the plan and identifying areas for improvement
- Review and validation of the plan
- Timelines

2. OBJECTIVES OF THE WILDFIRE MITIGATION PLAN

2.A. MINIMIZING SOURCES OF IGNITION

The primary goal of this WMP is to minimize the probability that NCPA's transmission and distribution system may be the origin or contributing source for the ignition of a fire. NCPA's priorities include facility improvement projects as well as continued and improved inspection, maintenance, and vegetation management practices. NCPA has evaluated and will continue to evaluate and implement prudent and cost-effective improvements to its physical assets, operations, and training that can help to meet this objective.

2.B. RESILIENCY OF THE ELECTRIC GRID

The secondary goal of this WMP is to improve the resiliency of the electric grid. As part of the development of this plan, NCPA has assessed and will continue to assess new industry practices and technologies that will reduce the likelihood of an interruption (frequency) in service and improve the restoration (duration) of service.

2.C. IDENTIFYING UNNECESSARY OR INEFFECTIVE ACTIONS

The final goal for this WMP is to measure the effectiveness of specific wildfire mitigation strategies. Where a particular action, program component, or protocol is determined to be unnecessary or ineffective, NCPA will assess whether a modification or replacement is merited. This plan will also help determine if more cost-effective measures would produce the same or improved results.

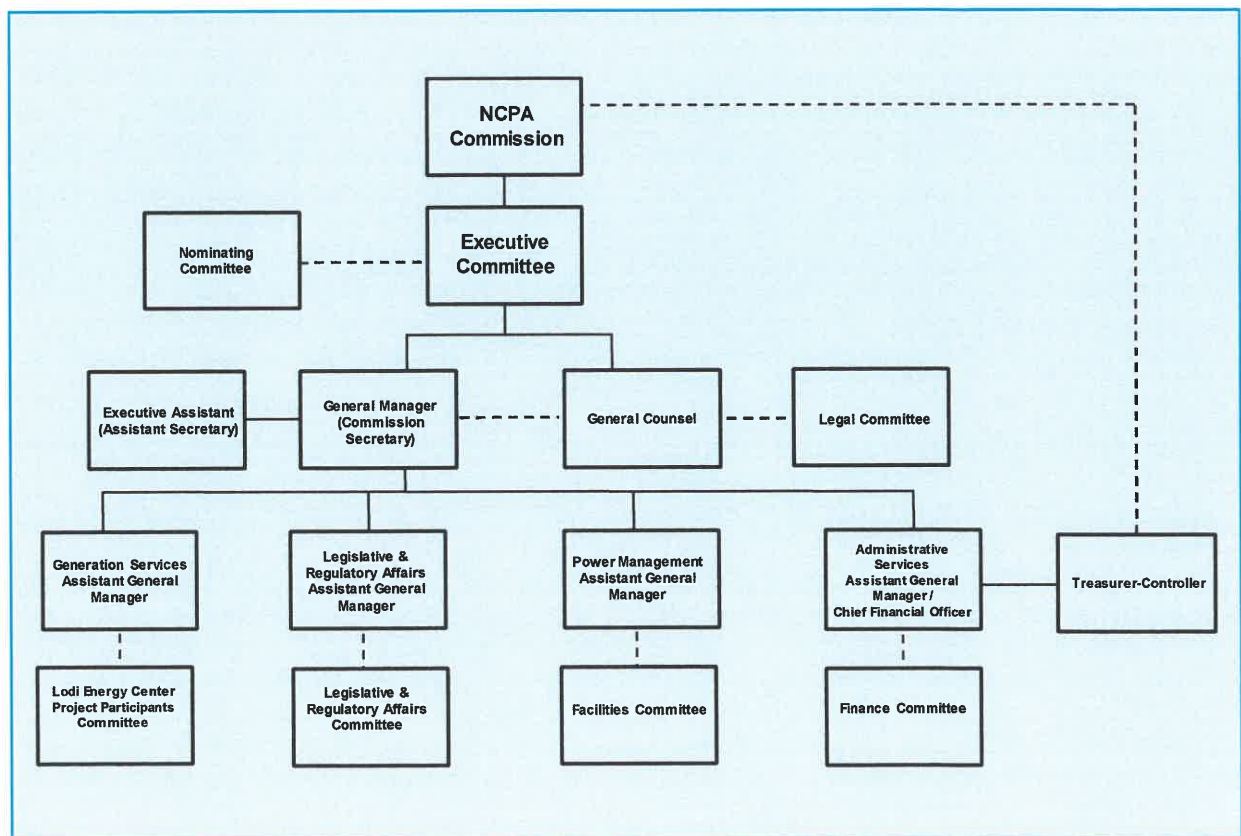
NCPA's current and planned wildfire risk mitigation activities will be formally reviewed annually according to this WMP regarding the effectiveness of ongoing practices, investigation of new technologies, and changing climate and ground conditions to continually prioritize the highest value activities for fire risk mitigation.

3. ROLES AND RESPONSIBILITIES

3.A. UTILITY GOVERNANCE STRUCTURE

NCPA is governed by a Commission that maintains several committees, including an Executive Committee, a Nominating Committee, a Legal Committee, a Legislative & Regulatory Affairs Committee, a Facilities Committee, and a Finance Committee. The Executive Committee includes a Chair, Vice Chair, and five at-large representatives.

Among its approximately 160 employees, NCPA has an internal management team, including a General Manager; an Assistant General Manager for Legislative & Regulatory Affairs; an Assistant General Manager for Power Management; an Assistant General Manager for Generation Services; an Assistant General Manager for Finance & Administrative Services; a General Counsel; and an Executive Assistant & Assistant Secretary to the Commission.



3.B. WILDFIRE PREVENTION

NCPA's organizational responsibilities with respect to wildfire mitigation correspond to its two main facility locations that reside in high fire threat areas: the North Fork Stanislaus Hydroelectric Project (Hydro) and Geyser's Geothermal (Geo) Projects. Hydro and Geothermal plant managers have responsibility for operations at each respective generating facility. The plant supervisors at each location are responsible for the workforce training and execution of all policies and procedures related to fire risks, equipment design, maintenance, inspection, vegetation management, and operations for all activities at their facilities.

The NCPA Dispatch Center in Roseville, under the direction of the Assistant General Manager for Power Management, has jurisdictional and operational responsibilities for the generator tie lines, including procedures for Operating Instructions and Emergency Assistance (NCPA-PM-108) and Emergency Operating Guidelines for the Collierville-Bellota 230 kV Lines (NCPA-PM-201).

Under the direction of the Assistant General Manager for Generation Services, the plant managers are responsible for implementation and execution of the WMP with respect to their facilities. In coordination with the NCPA Dispatch Center, the plant managers coordinate activities with internal and external entities necessary to operate and react to wildfire activity.

Additionally, all NCPA employees are responsible for:

- Performing good housekeeping practices
- Maintaining their work areas free of potentially flammable materials
- Participating in fire prevention and suppression training as required

3.C. WILDFIRE RESPONSE AND RECOVERY

The objective of crisis management is to provide direction for rapid performance of hazard assessment, prioritization, notification, and applicable actions. NCPA has evaluated potential hazards in the work environment and surrounding areas and has worked with local authorities to develop emergency response plans for each facility that address mitigation of hazards and effective response. The goals are to protect personnel, the public, and the environment, and the assets of NCPA.

NCPA utilizes a number of resources to communicate emergency or hazardous conditions to personnel (including non-NCPA personnel) at geothermal plants, powerhouses, and associated facilities and locations. These resources include two-way radio communications equipment, cell phones, satellite phones, telephone landlines, email, and the Internet.

The agency maintains separate emergency response plans for Geothermal and Hydro generation projects. The plans provide guidance and emergency resources for: fire events, unplanned, sudden or non-sudden hazardous materials/waste releases, air emissions exceedances, natural or manmade disasters (earthquakes, floods, bomb threats, or suspected terrorist or sabotage events, etc.), or emergency hazards.

Any accident or incident requiring emergency response and support from external agencies shall be reported to the appropriate NCPA plant supervisor. The type and severity of the event(s) shall determine the appropriate response and course of action.

The NCPA Dispatch Center is the main point of contact for PG&E on any public safety power shutoff (PSPS) notification affecting any of NCPA's or members' generation and member loads. The NCPA Dispatch Center's responsibility is to provide relevant PG&E PSPS notification to affected members based on phone messages or emails received from PG&E through its Everbridge mass notification system. The NCPA Dispatch Center will also follow up on the Everbridge PSPS notifications with information on any planned power shutoff events based on PG&E's PSPS websites or direct PG&E communication where current and real-time information is available.

3.D. COORDINATION WITH WATER UTILITIES/DEPARTMENT

The power from the NCPA generation facilities is delivered to the California Independent System Operator (CAISO) grid. Unlike a typical public utility, NCPA does not have a defined service territory nor does NCPA deliver or provide power directly to any water utilities. However, the NCPA Hydroelectric Project does transport and deliver water owned by two (2) water utilities through infrastructure (dams and tunnels) operated by NCPA. One of those entities, the Calaveras County Water District (CCWD) owns the hydro facilities that NCPA operates to deliver this water. The Utica Water and Power Authority (UWPA) also receives some of their water through the same facilities. It is important to note that neither curtailment of NCPA generation facilities nor de-energization of the NCPA powerlines has any impact on the abilities of CCWD or UWPA to obtain water. NCPA routinely communicates and coordinates with CCWD and UWPA, and both entities are included on communication flow charts for the relevant emergency plans, such as the Emergency Response Plans.

3.E. COORDINATION WITH COMMUNICATION INFRASTRUCTURE PROVIDERS

NCPA does not provide power directly to any communication infrastructure providers and therefore does not routinely coordinate or communicate with communication infrastructure providers related to wildfire mitigation or power outages.

3.F. MUTUAL AID AGREEMENTS

NCPA members are uniquely and ideally qualified to assist with the emergency replacement of poles and wires that are necessary to return electric distribution and communication facilities to normal operating condition. However, mutual aid agreements have also long been utilized by publicly owned utilities during times of need. These agreements are usually formed and exercised among neighboring utilities as proximity allows for quick response and less travel expenses. Additionally, mutual aid agreements that have a broader geographical reach, allowing for the provision of aid from utilities across the state or nation, can provide better protection from large regional events that may result in neighboring utilities having to respond to the same emergency events. NCPA is a member of the California Utilities Emergency

Association, which plays a key role in ensuring communications between utilities during emergencies and maintains a mutual aid agreement for its members. As a member of the American Public Power Association (APPA), NCPA and its members can also authorize APPA mutual aid agreements.

4. WILDFIRE RISKS AND DRIVERS ASSOCIATED WITH DESIGN, CONSTRUCTION, OPERATION, AND MAINTENANCE

NCPA electrical infrastructure consists of the following facilities that are in Moderate to Very High CAL FIRE Hazard Severity Zones (2009) and/or Tier 2/3 CPUC Fire Threat Zones (2018). See Appendix 1.

NCPA Project	NCPA Facility	Cal Fire Hazard Severity Zone (2009)			CPUC Fire Threat Zone (2018)	
		Moderate	High	Very High	Tier 2	Tier 3
North Fork Stanislaus Hydroelectric Project (Hydro)	Collierville Powerhouse 11523 Camp 9 Rd., Murphys, CA	-	-	X	X	-
	New Spicer Meadows Powerhouse 38.393735, -	-	-	X	-	-
	McKay's Point Diversion Dam	-	-	X	-	X
	McKay's 17kV Service Line	-	-	600 ft.	-	600 ft.
	Beaver Creek 38°14'02.94" N 120°16'43.50" W	-	-	X	-	X
	Collierville-Bellota 230kV Gen-	10 miles	11 miles	15 miles	25 miles	-
Geysers Geothermal	Plant 1, Middletown, CA	-	-	X	-	X
	Plant 2, Middletown, CA	-	-	X	-	X
	230 kV Gen-Tie Line	-	-	2.5 miles	-	2.5 miles
	Effluent Pump System and 21 kV Service Line	-	-	3 miles	-	3 miles
	Steam Field and Delivery (includes	-	-	8 miles	-	8 miles

NCPA is also a 6.13% co-tenant of the Castle Rock Junction-Lakeville 230 kV Transmission Line in the Geysers area. This line is located in a Tier 3 CPUC Fire Threat Zone and is operated and maintained by PG&E; it is included within the scope of the PG&E Wildfire Mitigation Plan.

4.A. PARTICULAR RISKS AND RISK DRIVERS ASSOCIATED WITH TOPOGRAPHIC AND CLIMATOLOGICAL RISK FACTORS

Multiple wildfire risk drivers have been identified from recent wildfires. These include drought conditions, vegetation type and density, weather conditions (high winds and climate change), and local topographic features (terrain). Vegetation and climate conditions are discussed in section 5.

Primary risk drivers are weather and climate. Weather and climate include extended drought periods, changing weather patterns, and high winds. These weather and climate factors affect vegetation conditions, including vegetation health, type and density. Stressed vegetation is prone to disease, insect infestations, and increased mortality rates.

Physical conditions, such as terrain and high winds, affect fire risks. These factors influence fire movement and direction, and control migration rates. Generally, fires move upslope without strong winds, while high winds (i.e. Diablo winds) rapidly drive fires primarily in the same direction

as the wind. Topographic features, such as steep canyons, create localized conditions that affect fire movement and rates.

Several of the risk drivers are interrelated:

- **Extended drought:** Extended drought periods result in multiple stress factors for vegetation: dry trees and brush, higher susceptibility to disease and insects, easier ignition, faster burn rate, etc.
- **Vegetation type:** Fire risk is partially dependent upon vegetation type. Some vegetation burns quickly (e.g. dry grass), while other types burn hotter (e.g. hardwood trees such as oak). Each vegetation type presents its own unique challenges for vegetation management and control.
- **Vegetation density:** Vegetation density directly affects wildfire hazards. Dense vegetation generally represents the highest hazard level, while sparse vegetation density is substantially lower risk. Vegetation density is often associated with weather conditions and local micro-climates.
- **Weather:** Weather conditions include precipitation, humidity, storms, and winds. Each factor affects wildfire risks. Lightning strikes associated with thunderstorms or dry lightning are a natural cause of wildfires.
- **High winds:** High winds drive wildfires. They also down trees and sometimes down power lines. In turn, downed power lines are potential ignition sources and the documented cause of some major wildfires in California.
- **Terrain:** Topographic features and terrain affect wildfire migration and area-specific risks. Fires generally burn uphill, especially within steep canyons. Wind-driven upslope and up-canyon fires spread rapidly and represent increased fire hazards.
- **Changing weather patterns (climate change):** Climate change alters vegetation habit, causing species migration. It may result in increased or decreased precipitation, precipitation type changes (e.g. more rain than snow), higher maximum temperatures, extended heatwaves, more frequent drought. In turn, these changes may cause increased tree mortality, increased stressed vegetation, greater susceptibility to disease or insect infestation.
- **Communities at risk:** Communities located in high-hazard zones are most at risk of wildfires. The risk level changes from year to year based on overall weather conditions, as well as during the year, changing from the wet season through the dry summer and fall.
- **Fire history:** Fire history affects wildfire risks. Vegetation changes are directly associated with wildfires. In addition to consuming existing vegetation, the new landscape is open to different vegetation types, both native and invasive. With native vegetation, a natural cycle occurs with different species dominating the environment and evolving over an extended timeframe. Since different vegetation types represent varied fire hazards, the risk level also evolves over time in conjunction with vegetation changes.

Wildfires have occurred in the general region of NCPA's hydro and geothermal facilities, however NCPA facilities have not been associated with any ignition source. The 2017 Tubbs and 2019 Kincadee Fires affected areas nearby, and immediately adjacent to the geothermal facilities. The 2015 Valley Fire destroyed much of the 21kV Service Line for the Effluent Pump System.

4.B. ENTERPRISE-WIDE SAFETY RISKS

Enterprise-wide safety risks are NCPA facility actions or events that could create fire ignition sources. These risks include:

- **Equipment/structure/facilities:** Inherent risk of facilities, primarily open wire transmission and distribution ignition events
- **Object to wire or equipment contact:** Trees, birds, downed conductors, lightning strikes, or high wind events resulting in contact of equipment
- **Wire to wire contact:** Wires touching one another, and dropping molten metal to the ground
- **Vehicle operations:** Maintenance, inspection or vegetation clearing crew vehicles causing fires (i.e. catalytic converters contacting dry brush)
- **Vegetation clearing:** Chain saws and other mechanized equipment use
- **Hot Work:** Welding or other activity that could cause ignition in the area of work

4.C. CHANGES TO CPUC FIRE THREAT MAP

A key concern for NCPA is the historical risk of wildfires in the vicinity of the agency's facilities, particularly within potential fire hazard zones. Both CAL FIRE and the CPUC have developed maps to identify potential fire hazard zones, published in 2007 and 2018, respectively. NCPA has reviewed current CAL FIRE hazard severity zone and CPUC fire-threat maps with respect to agency facilities, as shown in Appendix 1. These maps have not been adjusted since the noted publication dates nor have any local agencies imposed any expansions to the maps.

CPUC Fire Threat Maps are static, based on data available at the time they were created. As noted below, wildfire risks evolve over time in response to the risk drivers listed above. In section 5, annual tree mortality data illustrates a migration of tree mortality, with the risk area expanding from year to year. NCPA will review available data and adjust fire threat hazard zones when applicable to NCPA facilities.

4.C.1. MAP COMPARISONS AND UPDATES

Currently published wildfire hazard maps from CAL FIRE and the CPUC show different boundaries for the risk areas delineated. They also use different terminology for hazard zones. Several factors could account for these boundary differences between agency maps: publication dates, study methodology, vegetation changes over time, recent wildfires, and potential climate change effects. The zones delineated by the CAL FIRE and CPUC maps are discussed below.

CAL FIRE CALIFORNIA FIRE HAZARD SEVERITY ZONE MAP

CAL FIRE generated and published Fire Hazard Severity Zone Maps for the entire state of California in 2007, including separate maps for each county. These maps delineate three hazard zone levels: moderate, high, and very high. The figures in Appendix 1 illustrate these fire hazard severity zones.

CAL FIRE is currently updating these maps. It is not known if the zones in these maps will correspond more closely to the 2018 CPUC Fire Threat Zone map boundaries. The agency will release draft versions of these updated maps for public review.

CPUC FIRE-THREAT MAPS

The CPUC has developed and published Fire-Threat Maps. These 2018 maps include Tier 2 (elevated fire risk) and Tier 3 (extreme fire risk) zones. Additionally, the CPUC uses a Tier 1 (zero to moderate fire risk) category, which includes a High Hazard Zone (HHZ) designation based on a 2018 U.S. Forest Service-CAL FIRE joint map of tree mortality HHZs. This Tier 1 information addresses the hazard areas with large expanses of dead trees and associated fire risks.

4.C.2. FIRE ZONE REVIEW PROCESS

The existing fire zone review process, set forth by regulatory agencies such as CAL FIRE and CPUC, is an important tool for reducing wildfire risks and hazards. Preparing and executing adequate vegetation management plans is a critical component of this process. The current fire zone process incorporates lessons learned from past major wildfire events, with each new occurrence adding knowledge and forming the basis for improving the process.

Since differences exist between currently published CAL FIRE and CPUC wildfire hazard zone maps, NCPA uses the most conservative approach to vegetation management and asset protection, assuming the highest risk factor from the combined datasets.

5. WILDFIRE PREVENTATIVE STRATEGIES

5.A. PREVENTATIVE STRATEGIES AND PROGRAMS

NCPA's strategies to reduce wildfire risk include continuous evaluation and improvement of its programs and procedures. Current strategies include facility maintenance programs, inspection programs, vegetation management programs, and asset documentation programs.

Facility Maintenance Programs: NCPA has a robust preventive maintenance program to maintain the safe and reliable operation of its transmission and distribution lines. Given the growing risk of wildfires, opportunities for improvement have been identified and will be explored as part of each facility's improvement plan. Improvement may be implemented based on workable solutions and relative priorities:

- **The Collierville-Bellota (CB) 230 kV Gen-Tie Line:** This transmission line is NCPA's longest. Much of the line is within a Tier 2 fire threat zone. NCPA prioritizes the safe and reliable operation of the CB line. The line is over 30 years old, and a thorough review of the line and its attendant facilities was recently undertaken. A listing of maintenance improvements includes insulation, hardware, and conductor damping improvements. An avian protection plan is currently underway.
- **Mackay's Point 17 kV Overhead Line:** This three-span distribution line is in a Tier 3 fire threat zone. This short line has been maintained and is monitored consistently. Because of its location and danger tree threat, NCPA is considering hardening improvements to the line.
- **Geothermal 230 kV Gen-Tie Transmission Line:** This nine-span line connects with PG&E's 230 kV system. The line is characterized by long dead-ended spans and thick vegetation. The line is consistently inspected and maintained.
- **Geothermal Effluent Pump System 21 kV Line:** This 6-mile distribution line is in a Tier 3 fire threat zone. This line was largely rebuilt following damage caused by the 2017 Valley Fire. The wood pole line has construction framing typical to distribution construction. NCPA is considering the implementation of avian protection on this line.

NCPA Programs: NCPA will consider several of its ongoing programs including:

- **Asset documentation:** NCPA will review its current facility documentation including geographically referenced facility locations and to improve accessibility of current facility drawings, materials lists, and design criteria.
- **Emergency operating procedures:** NCPA will review existing procedures in light of current fire threat risks and lessons-learned from recent events.
- **Technology and services:** NCPA will continually explore technology and services that can improve situational awareness and timely response to emerging threats to equipment and facilities.

5.B. HIGH FIRE-THREAT DISTRICT

NCPA directly participated in the development of the CPUC's Fire-Threat Map,¹ which designates a High Fire-Threat District. In the map development process, NCPA served as a territory lead, and worked with utility staff and local fire and government officials to identify the areas of NCPA's service territory that are at an elevated or extreme risk of power line-ignited wildfire. NCPA has incorporated the High Fire-Threat District into its construction, inspection, maintenance, repair, and clearance practices, where applicable.

A key concern for NCPA is the historical risk of wildfires in the vicinity of the agency's facilities, particularly within potential fire hazard zones. Both CAL FIRE and the CPUC have developed maps to identify potential fire hazard zones, published in 2007 and 2018, respectively. NCPA has reviewed current CAL FIRE hazard severity zone and CPUC fire-threat maps with respect to agency facilities, as shown in Appendix 1.

NCPA reviewed facilities and determined the hazard zones where these facilities are located. These facilities and their locations are described in section 4.

The CPUC defines a High Fire-Threat District consisting of three areas:

- Tier 1 High Hazard Zones on the U.S. Forest Service-California Department of Forestry and Fire Protection (CAL FIRE) joint map of Tree Mortality High Hazard Zones
- Tier 2 of the CPUC Fire-Threat Map where there is an elevated risk for utility-associated wildfires
- Tier 3 of the CPUC Fire-Threat Map where there is an extreme risk for utility-associated wildfires

NCPA facilities in relation to CPUC and CAL FIRE threat maps are shown in Appendix 1 of this report.

5.C. POTENTIAL CLIMATE CHANGE EFFECTS

Climate change has affected vegetation in many ways. Droughts are longer and more severe. Large storm events are more common and intense. Summers are hotter and may include more thunderstorms. These climate change factors affect vegetation and the associated wildfire risks:

- Vegetation adapts, with plant migration into different areas
- Vegetation dries out during droughts, presenting increased fire danger
- Stressed vegetation is more susceptible to insect infestations, damaging trees, or accelerating mortality
- Thunderstorms present lightning strike risks along with strong wind events

Extended periods of intense rainfall also typically increase landslide risks. In turn, landslides could damage or topple structures, limit access, or create safety hazards by damaging roads, or

¹ Adopted by CPUC Decision 17-12-024.

cause localized tree mortality by severing root systems. Note that heavy rainfall is not the only landslide trigger mechanism, but it is the one most closely associated with climate change.

5.D. POTENTIAL CLIMATE CHANGE RISK MANAGEMENT IMPACTS

Climate change has affected the risks associated with wildfires, especially in fire hazard zones. Shifting weather patterns result in impacts to vegetation and increased wildfire risks. Some of the specific climate change impacts that affect wildfire risks include:

- Tree and underbrush growth rates
- Vegetation type changes
- Vegetation migration from existing habitats
- Stress and disease contributing to higher tree mortality

As potential impacts shift over time, fire hazard management practices will evolve and adapt to changing risk management requirements.

5.E. TREE MORTALITY

It is estimated that over 100 million trees in California died from drought-related stress between 2012 and 2017. The extended drought period left millions of acres of forestland highly susceptible to insect attacks. Drought stress is aggravated in forests with too many trees competing for limited water resources.

In 2015, California established the Tree Mortality Task Force (<https://frap.fire.ca.gov/frap-projects/tree-mortality/>). This task force was established to identify and map tree mortality areas with the greatest potential for causing harm to people and property. The High Hazard Zones were prioritized for tree removal.

Dead, rotten, and diseased trees represent two potential wildfire risks for NCPA. Tall trees adjacent to power line right-of-way represent a hazard due to falling branches or potential toppling. This threat increases substantially with tall dead trees or tall trees with dead tops. Dead or highly stressed trees are also an easily ignitable fuel source. They ignite quicker and generally burn faster than healthy trees.

5.F. VEGETATION MANAGEMENT

NCPA has developed and implemented a Transmission Vegetation Management Program (TVMP) to establish the vegetation maintenance requirements for each facility to achieve reliability of its generation interconnection system. The NCPA document, Generation Services Common Procedure GS-305: Transmission Vegetation Management Program, defines NCPA procedures for vegetation management.

NCPA meets or exceeds the minimum industry standard vegetation management practices. For transmission-level facilities, NCPA complies with NERC FAC-003-4. For both transmission and distribution-level facilities, NCPA meets: (1) Public Resources Code section 4292; (2) Public

Resources Code section 4293; (3) General Order 95 Rule 35; and (4) General Order 95 Appendix E Guidelines to Rule 35.

The TVMP enhances reliability by preventing outages from vegetation located within or adjacent to the power line right-of-way, by maintaining required clearances between power lines and vegetation within or adjacent to the right-of-way, by reporting vegetation-related outages of the system to WECC, and by documenting the process for an annual vegetation work plan. The program satisfies the requirements for vegetation management specified in NERC FAC-003-4, which requires a Generator Owner to have documented maintenance strategies, procedures, processes, or specifications to prevent the encroachment of vegetation into the Minimum Vegetation Clearance Distance of applicable lines as specified in requirement R3.

The objectives of the TVMP are to:

- Adhere to the Power Line Fire Prevention Field Guide published by CAL FIRE in November 2008 and used by California utilities for the care and maintenance of trees, shrubs, and other woody plants when pruning vegetation near electric facilities.
- Maintain defined clearance distances between the generation interconnection facilities and all trees, brush, and other vegetation that could grow too close to electrical facilities including conductors, poles, and guy wires. Since the clearances specified in the Power Line Fire Prevention Field Guide are more stringent than the MVCD described in FAC-003-4, NCPA adheres to the CAL FIRE field guide.
- Where appropriate and necessary, develop site-specific, environmentally sensitive, cost-effective and socially responsible solutions to vegetation control near the NCPA generation interconnection facilities. Document the process for the annual vegetation work plan for applicable power lines.
- Maintain public and worker safety, maintain compliance with NERC standards and other regulatory and legal requirements, provide reliable electric service that allows for operational flexibility, and promote environmental stewardship and habitat enhancement.
- Potential improvements to its programs include increasing the frequency and scope of aerial lidar surveys on its transmission and distribution facilities, and a continued emphasis on identification and timely removal of danger and hazard trees that threaten overhead transmission and distribution lines.

5.G. INSPECTIONS

NCPA performs annual inspections of its transmission and distribution facilities in accordance with General Order 95 and General Order 165. The following additional inspections have been performed on the CB 230 kV line:

- Lidar vegetation flights
- Corona scans of insulators for the past three years
- Infrared "hot-spot" inspections of conductor, conductor splices, and dead-end hardware.

In addition to its annual ground-based inspection, the Geothermal 230 kV line performed an aerial drone survey in 2019.

These inspections are documented and issued by NCPA's computerized maintenance management system (CMMS), and records of those inspections are maintained.

Strategic improvements to the inspection program include increasing the frequency and scope of inspections, increasing the use of drone-based visual inspections, consideration of new technology, improving the inspection methodology approach, and consideration of fire threat zones in the inspection programs.

The TVMP also establishes requirements for the type and schedule of right-of-way vegetation inspections.

5.H. WORKFORCE TRAINING

NCPA has implemented work rules and complementary training programs for its workforce to help reduce the likelihood of the ignition of wildfires.

Trainings for employees to cover fire hazards and NCPA's Fire Prevention Plan consists of fire extinguisher training, fire prevention training, hazardous materials handling training, and emergency response training. These trainings are conducted by an outside vendor and/or NCPA supervisors or environmental health and safety specialists.

NCPA employees also receive training on emergency response plans when the employee is assigned initially to the job, when the plan changes, and when the employee's responsibilities or designated actions under the plans change.

Each facility manager is responsible for conducting site-specific training to ensure that the purpose and function of NCPA safety procedures are understood by employees and that knowledge and skills required for safe operation are acquired by employees. Refresher training is performed and documented on an annual basis, and retraining is conducted when:

- An annual audit reveals there are deviations from or inadequacies in the employee's knowledge of the procedure or changes in the regulations
- A new or revised control method of a system or piece of equipment

The following procedures provide additional guidance for employee training specific to the areas described in these NCPA documents:

- Generation Services Common Procedure GS-101: Lock Out Tag Out Try Procedure
- Generation Services Common Procedure GS-103: Electrical Safety Procedure
- Generation Services Common Procedure GS-107: Proper Handling of Hazardous Waste
- Generation Services Common Procedure GS-111: Hot Work Procedure
- Generation Services Common Procedure GS-115: Welding Safety Procedure
- Generation Services Common Procedure GS-126: Fire Protection and Prevention Plan
- Power Management Common Procedure PM-108: Operating Instructions and Emergency Assistance

- Power Management Common Procedure PM-201: Emergency Operating Guidelines, Collierville Power House Bellota-Collierville 230kV Lines

5.I.RECLOSING POLICY

NCPA does not employ automatic reclosers on its 230 kV lines. This is a typical approach for utility operations in rugged and remote terrain, for both personnel and fire hazard safety reasons. In the event of a planned or emergency line trip, close coordination with NCPA generation services and dispatch as well as with PG&E's grid control center is mandatory, and lines are only re-energized after extensive line patrol visual confirmation. If the lines are tripped due to a forecasted or imminent wildfire or if a wildfire is believed to be caused by downed lines, close coordination with CAL FIRE's onsite representative and control center are required before NCPA's generation services attempts to reclose the line.

5.J. DE-ENERGIZATION

In the event of active fire situations in the vicinity of the CB 230 kV transmission line, NCPA may be directed by CAL FIRE to de-energize the line's two circuits for firefighter and/or aircraft protection. The on-call Hydro Supervisor will coordinate Hydro personnel response to any wildland fires in and around the CB 230 kV transmission lines and contact on-site CAL FIRE personnel if necessary. If CAL FIRE requests de-energizing both of the 230 kV lines, the NCPA Dispatch Center will shut down both Collierville units before de-energizing these lines. NCPA is currently able to de-energize both circuits of the CB 230 kV line via SCADA and other procedures within 20 minutes.

The Collierville 480 VAC station service is designed to automatically transfer to the offsite PG&E 17 kV source. If the 17 kV source is not available, the 480 VAC standby diesel generator will start and provide station service power. The NCPA Dispatch Center will notify Generation Services Hydro staff of any issues with the 17 kV source or if the diesel generator is in operation. The NCPA Dispatch Center will notify the CAISO and work with PG&E's Grid Control Center to de-energize both 230 kV lines.

NCPA's Geothermal plant manager relies on PG&E to determine de-energization. NCPA's Hydro plant manager has the authority to preemptively shut off power due to fire-threat conditions; however, this option will only be used in extraordinary circumstances. NCPA will make a case-by-case decision to shut off power.

NCPA also maintains transmission line trip procedures to significantly reduce fire risk, including requiring patrols prior to restoring transmission lines. Requiring patrols during high fire risk scenarios is typical and recommended of California utilities.

5.J.1. IMPACTS TO PUBLIC SAFETY

NCPA has no retail customers, and de-energizing agency facilities will not directly affect retail customers, who will be notified by their specific utility providers of PSPS.

5.J.2. CUSTOMER NOTIFICATION PROTOCOLS

NCPA has no retail customers, so no customer notification protocols are in place. However, NCPA is the primary point of contact between PG&E PSPS and its member utilities. Formal procedures are currently in draft form to notify NCPA member utilities of de-energization activities and the protocol has been implemented several times in 2019.

6. RESTORATION OF SERVICE

After a de-energization event, NCPA will restore service in coordination with PG&E's restoration efforts. NCPA's PM-201 and Geothermal Facilities Maintenance Procedure (GO-646) specifically address restoration for Hydro and Geothermal facilities respectively.

7. EVALUATING OF THE PLAN

7.A. METRICS AND ASSUMPTIONS FOR MEASURING PLAN PERFORMANCE

NCPA will track two metrics to measure the performance of this Wildfire Mitigation Plan: (1) number of fire ignitions; and (2) number of NCPA wires down.

METRIC 1: FIRE IGNITIONS

NCPA will track fire ignitions in their territory as follows:

- Self-ignited or human-caused
- An NCPA facility failure was associated with the fire
- An NCPA electrical facility wire-to-wire contact was associated with the fire
- The ignition was a result of an extreme weather event

All fires will be documented in terms of the number of acres and facilities impacted.

METRIC 2: WIRES DOWN

The second metric is the number of NCPA distribution and transmission wires downed. A wires down event includes any instance where an electric transmission or primary distribution conductor falls to the ground or on to a foreign object. NCPA will divide the wires down metric between wires down inside and outside of High Fire Threat Districts. All wires down events will be documented.

7.B. IMPACT OF METRICS ON PLAN

NCPA anticipates that tracking these metrics will help with identification of which lines are most susceptible to unexpected outages, time-of-year risks, as well as fire threat district risks. From this, NCPA will identify lines that are disproportionately impacted and will then evaluate potential improvements to the plan.

7.C. MONITORING AND AUDITING THE PLAN

This WMP will be presented to the NCPA Commission on an annual basis. Additionally, a qualified independent evaluator will present a report on this plan to the NCPA Commission. See section 8.

7.D. IDENTIFYING AND CORRECTING DEFICIENCIES IN THE PLAN

NCPA may correct deficiencies and implement plan improvements as needed. These improvements will be documented in the annual report to the NCPA Commission.

7.E. MONITORING THE EFFECTIVENESS OF INSPECTIONS

Line inspections for NCPA fall into two categories:

1. Line patrol and evaluation of line facilities on a structure-by-structure basis. This is either ground or aerial (drone or helicopter) based.
2. Vegetation monitoring and evaluation, either ground-based on a structure-by-structure and span-by-span basis or by lidar aerial methods.

Measuring the effectiveness of these inspections can be performed by review by independent professionals of the inspection documentation and analysis in the case of the lidar vegetation inspection. A second method would include "ride-alongs" with inspection personnel to review their methodology and reporting. Lastly, an independent review of similar facilities can be performed and compared and reviewed with inspection personnel.

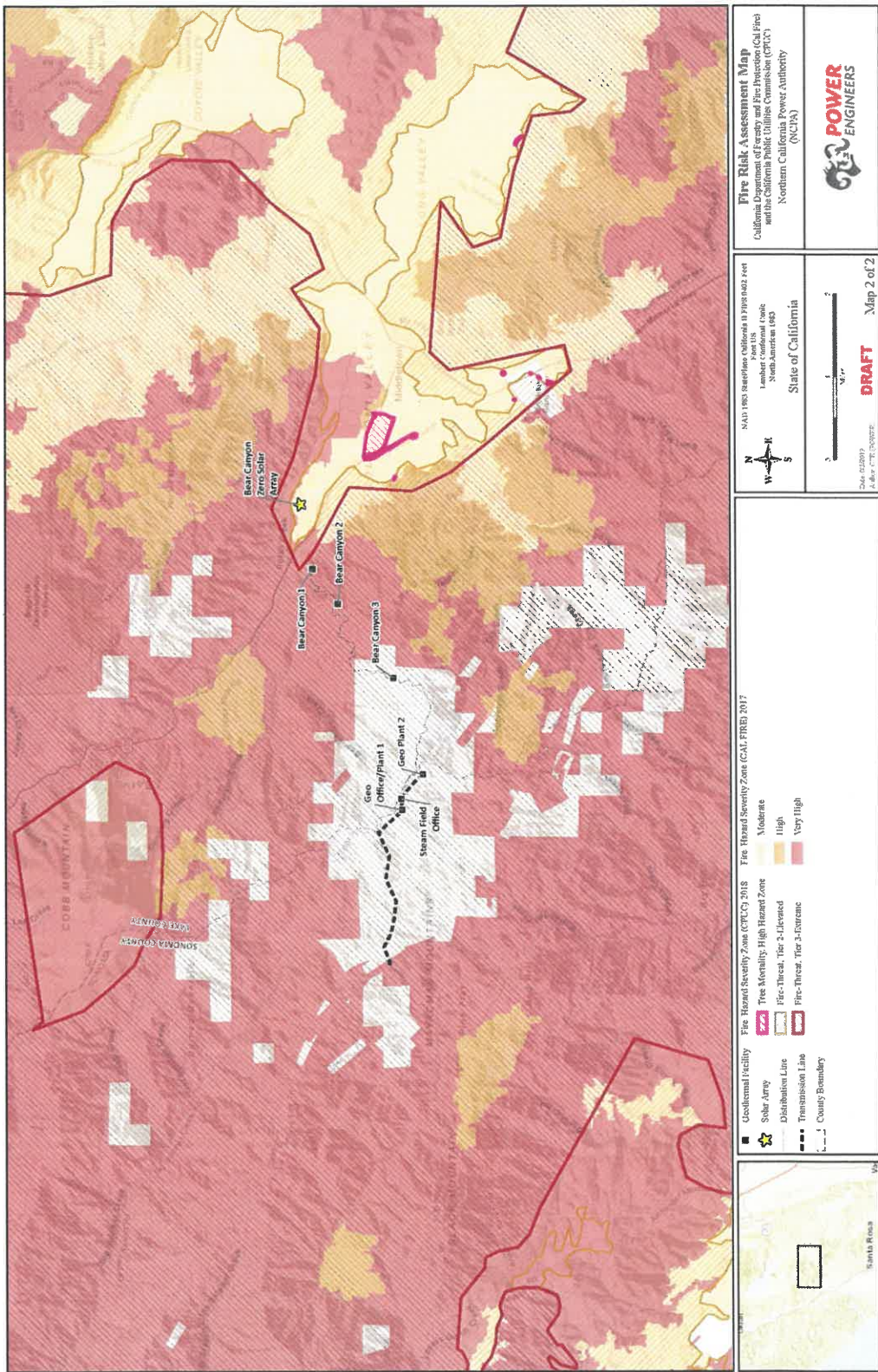
8. INDEPENDENT AUDITOR

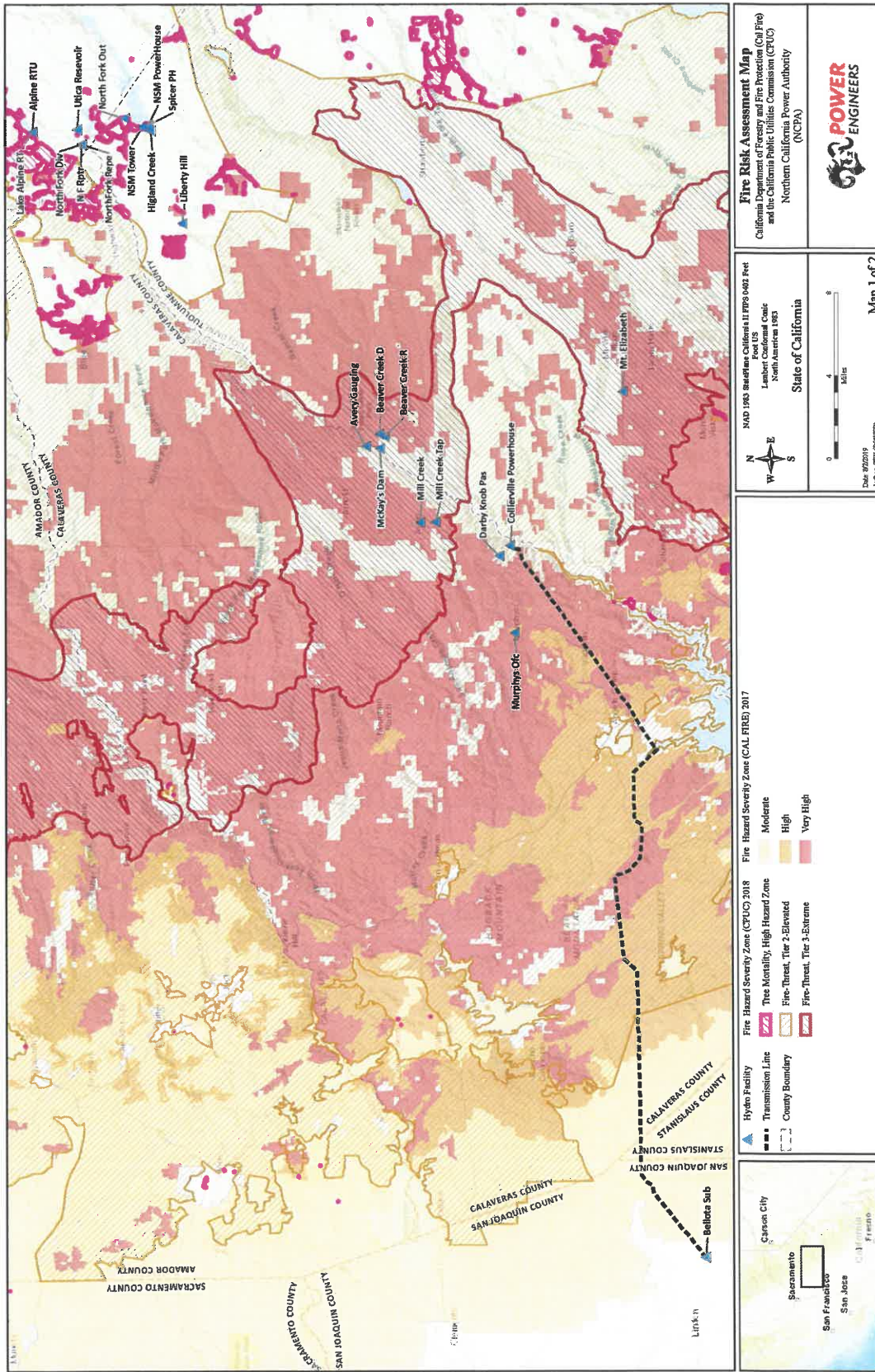
NCPA will contract with a qualified independent evaluator with experience in assessing the safe operation of electrical infrastructure to review and assess the comprehensiveness of this WMP. The independent evaluator must issue a report that is posted to the NCPA website. This report must also be presented to the NCPA Commission at a public meeting.

NCPA anticipates that the CPUC will soon provide a list of qualified independent evaluators. In lieu of such a list, NCPA will draw from a list it compiled following a Request for Qualifications issued in June 2019. Selection will be based on competitive bid.

The independent evaluation and report is planned to be completed before June 30, 2020.

APPENDIX 1







34

Commission Staff Report

Date: November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Approval of the Northern California Power Agency Solar Project 1 Third Phase Agreement

AGENDA CATEGORY: Discussion/Action

FROM:	Joel Ledesma <i>JA</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	
Department:	Generation Services	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		
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RECOMMENDATION:

Approval of Resolution 19-101 granting authority to the General Manager of the Northern California Power Agency ("Agency," or "NCPA") to execute the Third Phase Agreement, on behalf of the Agency, including any non-substantive modifications approved by the Agency's General Counsel.

BACKGROUND:

NCPA Solar Project 1 was launched in March of 2017 with the objective of establishing a cost-effective series of photovoltaic (PV) solar power plants within NCPA Member service territories. The strategy was to treat this as a single NCPA-managed project to leverage economies of scale related to project management, engineering, siting, procurement, financing, and legal and administrative support. Energy would be procured by NCPA via a Power Purchase Agreement (PPA) with a third-party, with an option for NCPA or a participant to purchase the plant at a later date.

There are three phases to this project:

- Phase 1: Develops the project concept and identifies participants and potential sites within their service territory.
- Phase 2: The viability of potential sites is evaluated and a Request for Proposal (RFP) for PPAs is prepared and issued for the most viable sites. Proposals are evaluated and PPAs are negotiated. CEQA requirements are fulfilled, as needed.
- Phase 3: The PPA is executed by NCPA via a Third Phase Agreement with the participant.

Seven participants entered Phase 2 during the first half of 2018. Engineering consultant Burns & McDonnell evaluated eighteen sites. Ultimately, seven sites representing five Members were included in the RFP, which drew five proposals in August 2019. Two proposals included all sites but were not the lowest cost providers for all of the sites. Based on cost alone, each participant favored a different vendor which results in the need for at least five separate PPAs. In addition, various issues unique to each participant meant that these PPAs would be executed on different dates throughout 2020 and possibly beyond. This required a Third Phase Agreement that would be flexible enough to accommodate multiple PPAs and to allow participants to execute when they are ready, in effect creating an NCPA program.

DISCUSSION:

The attached Third Phase Agreement for NCPA Solar Project 1 will create an NCPA program to facilitate the development of and resale of the electricity products generated from these PPAs from the Agency to the participating Members ("Participating Members"). The Third Phase Agreement will create a Participant-specific NCPA Projects, as such is defined in the Amended and Restated Facilities Agreement, and as NCPA Members join the program those Participating Members will be responsible for all Project Costs associated with the Participating Member's PPA(s) within their service territory on a take-or-pay basis. The Third Phase Agreement will remain in effect for the life of all of the PPA(s) subject to cancellation as to and upon any Participating Member exercising that Participating Member's election to purchase the PV plant located in that Participating Member's service territory. The Second Phase Agreement will terminate as to any Participating Member executing the Third Phase Agreement upon the effective date of the Third Phase Agreement.

Under the terms of each PPA to be executed under this Agreement, the Agency will purchase all electricity products and environmental attributes associated with the subject site. Electricity products and environmental attributes includes energy, capacity attributes and may include local resource adequacy capacity, and renewable energy credits and any emissions reductions, offsets and allowances ("Product").

Contract price, energy delivered, and purchase options will vary by PPA. The form PPA includes an option for NCPA or the Participating Member to purchase the facility after the 10th, 15th, and 20th year of operation, and includes an option to add energy storage infrastructure. The initial form PPA is attached to this staff report.

As NCPA Members obtain reasonable pricing and proposals for plants in their service territories, NCPA will continue to advance these projects including through the mechanism of non-binding letters of intent.

FISCAL IMPACT:

The Agency's cost for purchasing output from each plant will be based upon each PPA's pricing executed under this Third Phase Agreement. The Agency will be charged based on the measured net electrical output of each site, and may incur fixed costs if stated in any of the PPAs. All Project Costs; including direct PPA expenses, outside legal fees, etc.; will be allocated to the Participating Members specifically for any plant or PPA-specific expenses for plants located in their service territories and for non-plant or non-specific PPA expenses in proportion to the number of project PPAs, as stated in the Third Phase Agreement, and such costs will be included in applicable NCPA administrative services costs.

NCPA will also assess Power Management and Administrative Services (PM&AS) costs to the Participating Members pursuant to the Power Management and Administrative Services Agreement.

ENVIRONMENTAL ANALYSIS:

Setting up NCPA Solar Project 1 as a program without the specific approval of any plants or PPAs does not constitute a "project" under CEQA. Nonetheless, Construction of most sites currently under review for inclusion in NCPA Solar Project 1 are "projects" under CEQA regulations. (Note: Rooftop solar installations on either the roof of an existing building or an existing parking lot may be exempt from CEQA review under California Public Resource Code Section 21080.35.)

Prior to an NCPA Member entering the Third Phase Agreement, NCPA, or the NCPA Member, will serve as the Lead Agency to fulfill all necessary CEQA requirements, with a Notice of Determination filed at the county corresponding to their site's location.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee on November 6, 2019, and was recommended for Commission approval.

The recommendation above was reviewed by the Legal Committee on November 21, 2019, and was recommended for Commission approval.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- Third Phase Agreement for NCPA Solar Project 1
- Form Power Purchase Agreement

RESOLUTION 19-101

RESOLUTION OF THE COMMISSION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE THIRD PHASE AGREEMENT FOR NCPA SOLAR PROJECT 1

(reference Staff Report #234:19)

WHEREAS, Northern California Power Agency (NCPA) Members are subject to state and local mandates that require publicly owned electric utilities to increase the use of eligible renewable energy resources to meet retail sales; and

WHEREAS, NCPA Solar Project 1 was launched in March of 2017 to establish a cost-effective series of photovoltaic (PV) solar power plants within NCPA Member service territories; and

WHEREAS, in February 2018, the Commission approved a Second Phase Agreement that authorized NCPA to evaluate the viability of potential sites identified by participants; to prepare and issue a Request for Proposal (RFP) for Power Purchase Agreements (PPAs) for the most viable sites; to fulfill CEQA requirements as needed; and to evaluate and negotiate PPAs; and

WHEREAS, seven viable sites among five participants were identified, but no single respondent to the RFP provided the lowest PPA cost per site; hence driving a need for a Third Phase Agreement that is flexible enough to accommodate multiple PPAs and to allow participants to execute when they are ready, in effect, to create an NCPA program; and

WHEREAS, the NCPA Solar Project 1 Third Phase Agreement incorporates such needed flexibility by creating an NCPA program to facilitate the development of and resale of the electricity products generated from these PPAs from the Agency to the participating Members (Participating Members). The Third Phase Agreement will create a Participant-specific NCPA Project, as such is defined in the Amended and Restated Facilities Agreement, and as NCPA Members join the program, those Participating Members will be responsible for all Project Costs associated with the Participating Member's PPA(s) within their service territory on a take-or-pay basis; and

WHEREAS, the Agency's cost for purchasing output from each plant will be based upon each PPA's pricing executed under this Third Phase Agreement; with all Project Costs, including direct PPA expenses, outside legal fees, etc.; to be allocated to the Participating Members specifically for any plant or PPA-specific expenses for plants located in their service territories and for non-plant or non-specific PPA expenses in proportion to the number of project PPAs, as stated in the Third Phase Agreement, and such costs will be included in applicable NCPA administrative services costs; and

WHEREAS, establishing NCPA Solar Project 1 as a program without the specific approval of any plant or PPA does not constitute a "project" under CEQA. Nonetheless, construction of most sites currently under review for inclusion in NCPA Solar Project 1 are "projects" under CEQA regulations and CEQA requirements will be fulfilled and reviewed by the NCPA Commission prior to an NCPA Member entering the Third Phase Agreement; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager to execute the Third Phase Agreement, on behalf of the Agency, including any non-substantive modifications approved by the Agency's General Counsel.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY



Attachments to Item 34

SUBJECT:

Approval of the NCPA Solar Project 1 Third Phase Agreement

The attachments can be viewed on
NCPA's website www.ncpa.com or by logging on to
NCPA Connect.

THIRD PHASE AGREEMENT

FOR

NCPA SOLAR 1

by and among

NORTHERN CALIFORNIA POWER AGENCY

And

EACH OF THE PUBLIC AGENCIES SIGNATORY HERETO

Dated as of _____, 2019

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This THIRD PHASE AGREEMENT FOR NCPA SOLAR 1 ("this Agreement") is dated as of _____, 2019, by and among the Northern California Power Agency, a joint powers agency of the State of California ("NCPA"), and the signatories to this Agreement other than NCPA ("Participants"). NCPA and the Participants are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. NCPA has heretofore been duly established as a public agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale.

B. Each of the Participants is a signatory to the Joint Powers Agreement which created NCPA and therefore, is a Member.

C. Each of the Participants to this Agreement have executed the Amended and Restated Facilities Agreement which establishes the framework under which Project Agreements are created for the development, design, financing, construction, and operation of specific NCPA Projects.

D. The Participants desire NCPA to enter into one or more Power Purchase Agreements ("Renewable PPAs") with an entity or entities selected through a request for

proposal process ("Sellers"), to purchase electric capacity and energy produced by eligible renewable resources for the benefit of the Participants' customers.

E. Each Participant is authorized by its Constitutive Documents to obtain electric capacity and energy for its present or future requirements, through contracts with NCPA or otherwise.

F. To enable NCPA to enter into the Renewable PPAs on behalf of the Participants, pursuant to the terms and conditions of the Amended and Restated Facilities Agreement, NCPA and the Participants wish to enter into this Agreement to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the Renewable PPAs, and to enable and obligate the Participants to take delivery of and pay for such electric capacity and energy and to pay NCPA for all costs it incurs for undertaking the foregoing activities.

G. Upon full execution of this Agreement, NCPA will enter into the Renewable PPAs on behalf of the Participants, and such Renewable PPAs shall be deemed a NCPA Project by the Commission.

H. Each of the Parties intends to observe the provisions of this Agreement in good faith and shall cooperate with all other Parties in order to achieve the full benefits of joint action.

I. Each of the Participants is a signatory to the Second Phase Agreement, and pursuant to Section 9.2 of the Second Phase Agreement, upon the Effective Date of this

Agreement for the Participant(s) who elect(s) to enter into this Agreement the Second Phase Agreement shall terminate and thereafter be of no further force or effect as to that (if one) or those (if more than one) Participant(s).

J. The Parties desire to allocate equitably costs of NCPA's provision of services under this Agreement among the Participants.

K. The Parties desire to allow Participants to enter into this Agreement upon approval of each Participant's governing body so that the Agreement will begin with the first Participant and will include any additional Participant(s) that later enter into this Agreement pursuant to Section 10 with the additional locations and names to be added to Exhibit A and additional Renewable PPAs to be added to Exhibit B.

L. The Participants further desire, insofar as possible, to insulate other Members who are not Participants, from risks inherent in the services and transactions undertaken on behalf of the Participants pursuant to this Agreement.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Definitions.

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 1 of this Agreement shall have the meaning indicated in Section 1 of the Power Management and Administrative Services Agreement:

1.1.1 “Administrative Services Costs” means that portion of the NCPA administrative, general and occupancy costs and expenses, including those costs and expenses associated with the operations, direction and supervision of the general affairs and activities of NCPA, general management, treasury operations, accounting, budgeting, payroll, human resources, information technology, facilities management, salaries and wages (including retirement benefits) of employees, facility operation and maintenance costs, taxes and payments in lieu of taxes (if any), insurance premiums, fees for legal, engineering, financial and other services, power management services, general settlement and billing services and general risk management costs, that are charged directly or apportioned to the provision of services under this Agreement. Administrative Services Costs as separately defined herein and used in the context of this Agreement is different and distinct from the term Administrative Services Costs as defined in Section 1 of the Power Management and Administrative Services Agreement.

1.1.2 “Agreement” means this Third Phase Agreement for Renewable Energy including all Exhibits attached hereto.

1.1.3 “CAISO” means the California Independent System Operator Corporation, or its functional successor.

1.1.4 “CAISO Tariff” means the duly authorized tariff, rules, protocols and other requirements of the ISO, as amended from time to time.

1.1.5 "Capacity Attributes" means any and all current or future defined characteristics consistent with the operational limitations of the Project, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including Resource Adequacy Benefits, Flexible Capacity Benefits, and any tracking or accounting associated with the foregoing, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, attributed to or associated with the Project.

1.1.6 "Constitutive Documents" means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder with respect to the governance of NCPA, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its city charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant's governing body.

1.1.7 "Defaulting Participant" has the meaning set forth in Section 7.2.

1.1.8 "Energy" means electric energy expressed in units of kWh or MWh.

1.1.9 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the

generation from the Project, as the case may be, and its displacement of conventional energy generation. Environmental Attributes include: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions such as, but not limited to, a REC.

Environmental Attributes do not include: (i) any Energy, capacity, reliability or other power attributes from the Project; (ii) production tax credits associated with the construction or operation of the Project, and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation' (iii) fuel-related subsidies or "tipping fees" that may be paid to Sellers to accept certain fuels, or local subsidies received by Sellers or the owners of the site for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

1.1.10 "Event of Default" has the meaning set forth in Section 7.2.

1.1.11 “Flexible Capacity” has the meaning set forth in the CAISO Tariff.

1.1.12 “Flexible Capacity Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s Flexible Capacity requirement.

1.1.13 “General Operating Reserve” means the NCPA General Operating Reserve created through resolution of the Commission, as the same may be amended from time to time.

1.1.14 “KWh” means kilowatt hour.

1.1.15 “MW” means megawatt.

1.1.16 “MWh” means megawatt hour.

1.1.17 “NCPA” has the meaning set forth in the recitals hereto.

1.1.18 “Participant” has the meaning set forth in the recitals of this Agreement.

1.1.19 “Power Management and Administrative Services Agreement” means the NCPA Power Management and Administrative Services Agreement, dated as of October 1, 2014 between NCPA and the Members who are signatories to that agreement by which NCPA provides Power Management and Administrative Services.

1.1.20 “Product” means Energy, Capacity Attributes and Environmental Attributes delivered to the Participants pursuant to the Renewable PPAs wherein each

Participant shall receive the Energy, Capacity Attributes and Environmental Attributes produced by the plant(s) located in that Participant's service territory.

1.1.21 "Project" or "Renewable PPA" means the Power Purchase Agreement(s), listed in Exhibit B between NCPA and Sellers, under which NCPA, on behalf of the Participants, purchases Product from new construction solar photovoltaic generation resource(s) located in the state of California at the locations and by the names specified in Appendix A (the combined resources are referred to as "NCPA Solar 1"). Upon final execution, the Renewable PPAs shall be deemed a NCPA Project in accordance with the Amended and Restated Facilities Agreement. Exhibit B contains all of the Renewable PPAs. As each additional Participant signs this Agreement the additional location(s) and name(s) will be added to Exhibit A and additional Renewable PPA(s) will be added to Exhibit B.

1.1.22 "Project Costs" means all costs charged to and paid by NCPA pursuant to the Renewable PPAs.

1.1.23 "Party" or "Parties" has the meaning set forth in the preamble hereto; provided that "Third Parties" are entities that are not Party to this Agreement.

1.1.24 "REC" or "Renewable Energy Certificate" means a certificate of renewable energy generation from units that register in the WREGIS system, or other commonly accepted renewable energy generation tracking system or program, which can be used to verify compliance with state and provincial requirements such as RPS.

1.1.25 “Resource Adequacy” means the procurement obligation of load serving entities, including the Participants, as such obligations are described in CPUC Decisions D.04-10-035, D.05-10-042 and and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemaking (R.) 17-09-020 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

1.1.26 “Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s Resource Adequacy obligations.

1.1.27 “Revenue” means , with respect to each Participant, all income, rents, rates, fees, charges, and other moneys derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System; (c) the proceeds derived by the Participant directly or indirectly from the sale, lease or other

disposition of all or a part of the Electric System; and (d) the proceeds derived by Participant directly or indirectly from the consignment and sale of freely allocated greenhouse gas compliance instruments into periodic auctions administered by the State of California under the California Cap-and-Trade Program, provided that such proceeds are a permitted use of auction proceeds, but the term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Participant or (ii) contributions from customers for the payment of costs of construction of facilities to serve them.

1.1.28 "RPS" or "Renewable Portfolio Standard Program" means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, *et seq.*

1.1.29 "Scheduling Protocols" means the applicable provisions of the Amended and Restated Scheduling Coordination Program Agreement, and any other contractual or other arrangements between NCPA and the Participants concerning the scheduling, delivery and metering of the Renewable PPAs.

1.1.30 "Second Phase Agreement" means the Second Phase Agreement for the NCPA Solar Project 1 adopted and authorized by the NCPA Commission pursuant to Resolution 18-07.

1.1.31 "Security Deposit" means the account established by NCPA and funded by the Participants in accordance with Section 5, the funds of which are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.32 "Sellers" is defined in recital D of this Agreement, or as otherwise set forth in the Renewable PPAs.

1.1.33 "Term" has the meaning set forth in Section 10.

1.1.34 "Third Party" means an entity (including a Member) that is not Party to this Agreement

1.1.35 "WREGIS" means Western Renewable Energy Generation Information System, or its functional successor.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," "Appendix", "Schedule", or "Exhibit" shall mean a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law, regulation or ordinance shall be a reference to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended

from time to time, or its successor. A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. A reference to a “day” shall mean a Calendar Day unless otherwise specified. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

Section 2. Purpose. The purpose of this Agreement is to: (i) set forth the terms and conditions under which NCPA shall enter into each of the Renewable PPAs on behalf of the Participants, (ii) authorize NCPA, acting on behalf of the Participants, to engage in all activities related to that basic purpose, and (iii) specify the rights and obligations of NCPA and the Participants with respect to the Renewable PPAs.

Section 3. Sale and Purchase of Product. By executing this Agreement, each Participant acknowledges and agrees to be bound by the terms and conditions of the Agreement, and that the Agreement is written as a “take-or-pay” agreement. Any Product delivered to NCPA under the Renewable PPAs shall be delivered to each Participant in proportion to the production from the plant(s) located in that Participant’s service territory, and each Participant shall accept and pay for its respective plant(s) production of such Product. To the extent a Participant is unable to accept such deliveries in full, NCPA shall dispose of such surplus in its sole discretion, in such a manner to attempt to maximize Participant value and that Participant shall reimburse to NCPA any costs

incurred by NCPA in doing so. Notwithstanding the above, NCPA may allocate Product procured through the Renewable PPAs among the Participants in such percentages as NCPA may, in its reasonable discretion, determine are necessary, desirable, or appropriate, in order to accommodate Participant transfer rights pursuant to Section 9.

3.1 Scheduling. Product delivered from Sellers shall be scheduled for and to the Participants in accordance with Scheduling Protocols, and the terms and conditions of the Renewable PPAs.

Section 4. Billing and Payments

4.1 Participant Payment Obligations. Each Participant agrees to pay to NCPA each month its respective portion of the Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement and the Amended and Restated Facilities Agreement. In addition to the aforementioned monthly payment obligations, each Participant is obligated to fund: (i) any and all required Security Deposits calculated in accordance with Section 5, and (ii) any working capital requirements for the Project maintained by NCPA as set forth in the Annual Budget.

4.2 Invoices. NCPA will issue an invoice to each Participant for its share of Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement and the Amended and Restated Facilities Agreement (“All Costs”). Each Participants’ share of All Costs shall

include Project Costs directly attributed to the plant(s) and associated Renewable PPA(s) located in that Participant's service territory and that Participant's percentage share of all other costs (costs not directly attributed to any specific plant or Renewable PPA) determined by dividing the number of Renewable PPA(s) in that Participant's service territory by the total number of Renewable PPAs contained in this NCPA Project at the time those costs are incurred, the "Project Participation Percentage" (as reflected on Exhibit A as such Exhibit is amended as additional Participants enter into this Agreement pursuant to Section 10 hereof). Such invoice may be either the All Resources Bill or separate special invoice, as determined by NCPA. At NCPA's discretion, invoices may be issued to Participants using electronic media or physical distribution.

4.3 Payment of Invoices. All invoices delivered by NCPA (including the All Resources Bill) are due and payable thirty (30) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day.

4.4 Late Payments. Any amount due and not paid by a Participant in accordance with Section 4.3 shall be considered late and bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

4.5 Billing Disputes. A Participant may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days of the date of such invoice; nonetheless the Participant shall pay the full amount billed when due. If a Participant does not timely question or dispute the accuracy of any invoice in writing, the invoice shall be deemed correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, NCPA shall issue a corrected invoice and refund any amounts that may be due to the Participant. If NCPA and the Participant fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after the Participant has disputed it, the General Manager shall promptly submit the dispute to the Commission for resolution. If the Commission and the Participant fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days of its submission to the Commission, the dispute may then be resolved under the mediation and arbitration procedures set forth in Section 12 of this Agreement. Provided, however, that prior to resorting to either mediation or arbitration proceedings, the full amount of the disputed invoice must be paid.

4.6 Billing/Settlement Data and Examination of Books and Records.

4.6.1 Settlement Data. NCPA shall make billing and settlement data available to the Participants in the All Resources Bill, or other invoice, or upon request. At its sole discretion, NCPA may also make billing and settlement support information available to Participants using electronic media (e.g. electronic data portal). Procedures

and formats for the provision of such electronic data submission may be established by the Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require the Participants to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

4.6.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

Section 5. Security Deposit Administration

5.1 Security Deposit Requirements. Each Participant agrees that any funds deposited at NCPA to satisfy Participant's Security Deposit requirements pursuant to this Agreement shall be irrevocably committed and held by NCPA in the General Operating Reserve, and that such funds may be used by NCPA in accordance with Section 5.1.3. Each Participant's Security Deposit will be accounted separately from and in addition to any other security accounts or deposits maintained pursuant to any other agreement between NCPA and the Participant, or any other such security account or deposits required of Members. In connection with fulfilling the Security Deposit requirements of this Agreement, Participant may elect to use its uncommitted funds held in the General Operating Reserve to satisfy in whole or in part its Security Deposit required under Section 5. If Participant chooses to satisfy in whole or in part its security requirements

using its uncommitted funds held in the General Operating Reserve, Participant is required to execute and deliver to NCPA an Irrevocable Letter of Direction, directing NCPA to utilize Participant's uncommitted General Operating Reserve funds for such purposes, and the designated funds will thereafter be irrevocably committed and held by NCPA to satisfy the requirements of this Agreement.

5.1.1 Initial Amounts. Each Participant shall insure that sufficient Security Deposit funds have been deposited with and are held by NCPA equal to the highest three (3) months of estimated Project Costs, as estimated by NCPA. Such Security Deposit requirement may be satisfied by Participant in whole or part either in cash, through irrevocable commitment of its uncommitted funds held in the General Operating Reserve in accordance with Section 5.1, or through a clean, irrevocable letter of credit satisfactory to NCPA's General Manager.

5.1.2 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of Project Costs for which Participant shall be obligated to pay under this Agreement. Following such review, NCPA shall determine whether each Participant has a sufficient Security Deposit balance at NCPA. To the extent that any Participant's Security Deposit balance is greater than one hundred and ten percent (110%) of the amount required herein, NCPA shall credit such amount as soon as practicable to the Participant's next following All Resources Bill, or by separate special invoice. To the extent that any Participant's Security Deposit balance is less

than ninety percent (90%) of the amount required herein, NCPA shall add such amount as soon as practicable to such Participant's next All Resources Bill, or as necessary, to a special invoice to be paid by Participant upon receipt. Credits or additions shall not be made to Participants who satisfy these Security Deposit requirements in whole through the use of a letter of credit, provided that the amount of the letter of credit shall be adjusted, as required from time to time, in a like manner to assure an amount equal to the highest three (3) months of estimated Project Costs is available to NCPA.

5.1.3 Use of Security Deposit Funds. NCPA may use any and all Security Deposit funds held by NCPA (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder, including making payments to Sellers, without regard to any individual Participant's Security Deposit balance or proportionate share of Project Costs, and irrespective of whether NCPA has issued an All Resources Bill or special invoice for such costs to the Participants or whether a Participant has made timely payments of All Resources Bills or special invoices. Should Participant have satisfied its Security Deposit requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy Participant's obligations hereunder at NCPA's sole discretion. Notwithstanding the foregoing, if any Participant fails to pay any costs incurred by NCPA pursuant to this Agreement, NCPA shall first use that non-paying Participant's Security Deposit and

shall not use any other Participants' Security Deposit until such non-paying Participant's Security Deposit has been exhausted.

5.1.4 Accounting. If Security Deposit funds or a letter of credit are used by NCPA to pay any costs it incurs hereunder as described in Section 5.1.3, NCPA will maintain a detailed accounting of each Participant's shares of funds withdrawn, and upon the collection of all or a part of such withdrawn funds, NCPA will credit back to each non-defaulting Participant the funds collected in proportion to such non-defaulting Participant's share of funds initially withdrawn.

5.1.5 Emergency Additions. In the event that funds are withdrawn pursuant to Section 5.1.3, or if the Security Deposit held by NCPA is otherwise insufficient to allow for NCPA to pay any invoice, demand, request for further assurances by Sellers, or claims, NCPA shall notify all Participants of the deficiency. In conjunction with such notice, NCPA shall send a special or emergency assessment invoice to the Participant or Participants that caused or are otherwise responsible for the deficiency. Each Participant of such an invoice shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit Participant has established for such purposes. In the event that the Participant or Participants that caused or are otherwise responsible for the deficiency cannot, does not or will not pay to NCPA the special or emergency assessment within two (2)

Business Days of the invoice date, NCPA shall immediately submit a special or emergency invoice to all remaining Participants, and such remaining Participants shall pay to NCPA such assessment within two (2) Business Days of the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit that Participant has established for such purposes.

5.1.6 Security Deposit Interest. NCPA shall maintain a detailed accounting of each Participant's Security Deposits, and withdrawals of such funds, held by NCPA. Security Deposits held by NCPA shall be invested by NCPA in accordance with the General Operating Reserve policies and investment policies adopted by the NCPA Commission. Interest earned on the Security Deposit funds shall be proportionately credited to the Participants in accordance with their weighted average balances held therein. Any Security Deposit losses caused by early termination of investments shall be allocated among the Participants in accordance with the General Operating Reserve provisions and guidelines approved by the Commission, as the same may be amended from time to time; provided, however, to the extent that either the General Operating Reserve provisions and guidelines do not apply or the Security Deposit is not adequate to cover the losses, then such losses shall be allocated among the Participants in accordance with their proportionate Security Deposit balances.

5.1.7 Return of Funds. Upon termination or a permitted withdrawal of a Participant in accordance with this Agreement, the affected Participant may apply to NCPA for the return of their share of Security Deposit funds ninety (90) days after the effective date of such termination or withdrawal. However, NCPA shall, in its sole but reasonable discretion, as determined by the NCPA General Manager, estimate the then outstanding liabilities of the Participant, including any estimated contingent liabilities and shall retain all such funds, if any, until all such liabilities have been fully paid or otherwise satisfied in full. After all such liabilities have been satisfied in full, as determined by NCPA's General Manager, any remaining balance of the Participant's share of the Security Deposit will be refunded to the Participant within sixty (60) days thereafter.

Section 6. Cooperation and Further Assurances. Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

6.1 NCPA shall notify each Participant of each Purchase Option Date, as such is defined in the Renewable PPAs, not less than 270 days prior to the Purchase Option Date. Regardless whether NCPA provides said notice to Participants, each Participant shall advise NCPA of its non-binding interest in invoking the Purchase Option not less than 250 days prior to the applicable Purchase Option Date. Notwithstanding the forgoing, NCPA shall not execute a Project Purchase Option in any of the Renewable PPAs without first obtaining a written request to exercise a Project Purchase Option for a plant located within that Participant's service area (as described in Section 13.11 of this Agreement), and no Party shall have any liability to the other Parties for failure to provide notices as described in this Section 6.1.

6.2 Each Participant shall advise NCPA of its non-binding interest in invoking the Storage Option Agreement not less than 90 days prior to any applicable Storage Option Agreement date. Notwithstanding the forgoing, NCPA shall not execute a Storage Option Agreement in any of the Renewable PPAs without first obtaining a written request to exercise a Storage Option Agreement for a plant located within that Participant's service area (as described in Section 13.11 of this Agreement), and no Party shall have any liability to the other Parties for failure to provide notices as described in this Section 6.2.

Section 7. Participant Covenants and Defaults

7.1 Each Participant covenants and agrees: (i) to make payments to NCPA, from its Electric System Revenues, of its obligations under this Agreement as an operating

expense of its Electric System; (ii) to fix the rates and charges for services provided by its Electric System, so that it will at all times have sufficient Revenues to meet the obligations of this Agreement, including the payment obligations; (iii) to make all such payments due NCPA under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists; and (iv) to operate its Electric System, and the business in connection therewith, in accordance with Good Utility Practices.

7.2 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Participant (the “Defaulting Participant”):

(i) the failure of any Participant to make any payment in full to NCPA when due;

(ii) the failure of a Participant to perform any covenant or obligation of this Agreement where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure. Provided, that this subsection shall not apply to any failure to make payments specified by subsection 7.2 (i));

(iii) if any representation or warranty of a Participant material to the services provided hereunder shall prove to have been incorrect in any material respect when made and the Participant does not cure the facts underlying such incorrect representation or

warranty so that the representation or warranty becomes true and correct within thirty

(30) Calendar Days of the date of receipt of notice from NCPA demanding cure; or

(iv) if a Participant is in default or in breach of any of its covenants or obligations under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement.

7.3 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation due to Uncontrollable Forces. Provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager using telephone communication within two (2) Business Days of the onset of the Uncontrollable Force, and provide subsequent written notice to the General Manager and all other Parties within ten (10) Business Days of the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch.

Provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

7.4 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 7.2 above, as may be applicable, provided, however, upon request of the Defaulting Participant the Commission may waive the default at its sole discretion, where such waiver shall not be unreasonably withheld.

7.5 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 7.2, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Participant, NCPA may take any or all of the following actions:

(i) suspend the provision of services under this Agreement to such Defaulting Participant;

(ii) demand that the Defaulting Participant provide further assurances to guarantee the correction of the default, including the collection of a surcharge or increase in electric rates, or such other actions as may be necessary to produce necessary Revenues to correct the default; or

(iii) use its best efforts to sell and transfer for the Defaulting Participant's account all or a portion of the Product from or the Defaulting Participant's Renewable PPA(s) for the remainder of the term of the Defaulting Participant's Renewable PPA(s). . Notwithstanding that all or any portion of the Product from or the Defaulting Participant's Renewable PPA(s) is so sold or transferred, the Defaulting Participant shall remain liable for all of its obligations not otherwise satisfied by the sale or transfer of Defaulting Participant's Renewable PPA(s) hereunder unless released therefrom by NCPA upon assumption by a transferee or assignee.

7.6 Effect of Suspension.

7.6.1 Generally. The suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

7.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with subsection 7.5(i), such Participant 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, or other reasonable and necessary costs associated with such suspension and any portion of the Project Costs, scheduling and dispatch

costs, and Administrative Services Costs that were not recovered from such Participant as a result of such suspension.

Section 8. Administration of Agreement

8.1 Commission. The Commission is responsible for the administration of this Agreement. Each Participant shall be represented by its Commissioner or their designated alternate Commissioner (“Alternate”) pursuant to the Joint Powers Agreement. Each Commissioner shall have authority to act for the Participant represented with respect to matters pertaining to this Agreement.

8.2 Forum. Whenever any action anticipated by this Agreement is required to be jointly taken by the Participants, such action shall be taken at regular or special meetings of the NCPA Commission.

8.3 Quorum. For purposes of acting upon matters that relate to administration of this Agreement, a quorum of the Participants shall consist of those Commissioners, or their designated Alternate, representing a numerical majority of the Participants.

8.4 Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement. A unanimous vote of all Participants shall be required for action regarding: (i) any transfer of rights to a Third Party as described in Section 9 of this Agreement; and (ii) for matters related to any of the following actions as provided for in the Renewable PPAs: (a) exercising any early termination provisions as set forth in the Renewable PPAs, (b) invoking all of the Project Purchase Options, as such is

defined in the Renewable PPAs, (c) invoking all of the Storage Option Agreements, as such is defined in the Renewable PPAs, and (d) exercising any assignment rights as set forth in the Renewable PPAs. For all other matters pertaining to this Agreement, a majority vote of the Participants shall be required for action.

Section 9. Transfer of Rights by Participants

9.1 A Participant has the right to make transfers, sales, assignments and exchanges (collectively “transfers(s)”) of any portion of its Renewable PPA(s) and rights thereto, subject to the approval provisions in Section 8.4 of this Agreement, provided that the transferee satisfies all applicable criterion in the affected Renewable PPA. If a Participant desires to transfer a portion or its entire share of its Renewable PPA(s) for a specific time interval, or permanently, NCPA will, if requested by such Participant, use its best efforts to transfer that portion of the Participant’s Renewable PPA(s).

9.2 Before a Participant may transfer an excess Renewable PPA(s) pursuant to Section 9.1 to any person or entity other than a Participant, it shall give all other Participants the right to purchase the Renewable PPA(s) on the same terms and conditions. Such right shall be exercised within thirty (30) days of receipt of notice of said right.

No transfer shall relieve a Participant of any of its obligations under this Agreement except to the extent that NCPA receives payment of these obligations from a transferee.

Section 10. Term and Termination. This Agreement shall become effective when it has been duly executed by one or more Participant(s), and delivered to and executed by NCPA (the “Effective Date”). NCPA shall notify one or all Participants in writing of the Effective Date. **Subsequent to the initial Effective Date, a Member may become a Participant by executing this Agreement. Such Member Participant will become a Participant effective on the later of the following three events: 1) date of its delivery to NCPA of an executed counterpart of this Agreement, 2) the date of NCPA’s execution of the applicable Renewable PPA(s), and (3) the date of NCPA’s adoption of the amendments of the Exhibits to reflect the addition of the new Participant.** The Term of this Agreement shall be coterminous with the Renewable PPAs, and shall commence on the Effective Date, and shall continue as to each Participant through the term of each Renewable PPA located in that Participant’s service area.

Section 11. Withdrawal of Participants. No Participant may withdraw from this Agreement except as otherwise provided for herein.

Section 12. Settlement of Disputes and Arbitration. The Parties agree to make best efforts to settle all disputes among themselves connected with this Agreement as a matter of normal business under this Agreement. The procedures set forth in Section 10 of the Power Management and Administrative Services Agreement shall apply to all disputes that cannot be settled by the Participants themselves; provided, that the provisions of Section 4.5 shall first apply to all disputes involving invoices prepared by NCPA.

Section 13. Miscellaneous

13.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. Confidential or trade secret information shall be marked or expressly identified as such.

If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any other Party's (the "Supplying Party") confidential data or information which the Receiving Party has possession of ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party's costs reasonably incurred with

respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, and the Receiving Party's attorney's fees; or

(ii) that the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

13.2 Indemnification and Hold Harmless. Subject to the provisions of Section 13.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing boards, officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

13.3 Several Liabilities. No Participant shall be liable under this Agreement for the obligations of any other Participant or for the obligations of NCPA incurred on behalf of other Participants. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement. The obligation of each Participant under this Agreement is, in the first instance, a several obligation and not a joint obligation with those of the other Participants.

Notwithstanding the foregoing, the Participants acknowledge that any debts or obligations incurred by NCPA under this Agreement on behalf of any of them shall be borne solely by such Participants in proportion to their respective Project Participation Percentages, and not by non-Participant Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

13.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES SUCH CLAIMS AND

RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

13.5 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the Commission or the governing body of a Participant, as applicable. Any such waiver by the Commission in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

13.6 Amendments. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement. Any addition to, amendment to or termination of the Exhibits attached hereto shall take effect after being approved by the Commission in a

manner consistent with the voting procedures set forth in Section 8.4 of this Agreement, without the requirement of an approval of the individual Participants' governing bodies.

13.7 Assignment of Agreement.

13.7.1 Binding Upon Successors. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

13.7.2 No Assignment. Neither this Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, which consent shall not be unreasonably withheld.

13.8 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

13.9 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

13.10 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

13.11 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered to a Participant's Commissioner or Alternate, and to the General Manager, or shall be transmitted to the Participant and the General Manager at the addresses shown on the signature pages hereof. The designation of such addresses may be changed at any time by written notice given to the General Manager who shall thereupon give written notice of such change to each Participant. All such notices shall be deemed delivered when personally delivered, two (2) Business Days after deposit in the United States mail first class postage prepaid, or on the first Business Day following delivery through electronic communication.

13.12 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement.

13.13 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any

counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

13.14 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

13.15 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

13.16 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 13.2 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

13.17 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

IN WITNESS WHEREOF, NCPA and each Participant have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.

NORTHERN CALIFORNIA
POWER AGENCY
651 Commerce Drive
Roseville, CA 95678

By: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Its: General Counsel
Date: _____

Attestation (if applicable):

By: _____
Its: _____
Date: _____

CITY OF HEALDSBURG
401 Grove Street
Healdsburg, CA 95440

By: _____
Title: City Manager
Date: _____

Approved as to form:

By: _____
Its: City Attorney
Date: _____

Attestation (if applicable)

By: _____
Its: _____
Date: _____

EXHIBIT A
LIST OF PARTICIPANTS,
PLANTS, LOCATIONS AND PROJECT PARTICIPANT PERCENTAGE

The following is a list of the Participants who are signatory to this Agreement, the plants and associated Renewable PPSs located in that Participant's service territory and their respective Project Participation Percentage share of the Project:

Member Participant	Plant Name/ Renewable PPA	Plant Location	Project Participant Percentage

EXHIBIT B
RENEWABLE PPAS

The Renewable PPAs are listed below and attached to this Agreement as subsequently numbered Exhibits (i.e. Exhibit B1, B2, etc.)

POWER PURCHASE AGREEMENT

BETWEEN

[SELLER NAME]

AND

**NORTHERN CALIFORNIA POWER AGENCY
<Site or Participant Name>**

Dated as of _____, 2019

DRAFT

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DRAFT

POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT (this "**Agreement**"), dated as of this [____] day of [____], 2019, is being entered into by and between the NORTHERN CALIFORNIA POWER AGENCY ("**Buyer**"), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et seq. ("**Act**"), and the "Amended and Restated Northern California Power Agency Joint Powers Agreement" entered into pursuant to the provisions of the Act among Buyer and Buyer's members, dated as of [], and [SELLER NAME] ("**Seller**"). Each of Buyer and Seller is referred to individually in this Agreement as a "**Party**" and together as the "**Parties**."

RECITALS

WHEREAS, Buyer's members have adopted or are adopting policies that are designed to increase the amount of energy that they provide to their retail customers from eligible renewable energy resources and to comply with the California Renewable Energy Resources Act; and

WHEREAS, [Seller Name] responded to the RFP on behalf of its wholly owned subsidiary, Seller, and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, certain renewable energy, Capacity Rights and associated Environmental Attributes for the purchase price set forth in Appendix A-1; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.1 **Definitions.** The following terms in this Agreement and the appendices hereto shall have the following meanings when used with initial capitalized letters:

"Act" has the meaning set forth in the preamble of this Agreement.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or, as is appropriate given the context, is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble of this Agreement, and includes the Appendices and Schedules attached hereto.

“Agreement Term” has the meaning set forth in Section 2.2(a).

“Ancillary Documents” means (i) the Option Agreement and the Storage Option Agreement, (ii) upon execution, the Generator Interconnection Agreement and the Co-Tenancy Agreement, and (iii) any agreement or document executed and delivered between Buyer, on the one hand and any Seller Party, on the other hand.

“Annual Contract Quantity” means, for each Contract Year, the number of MWh set forth on Appendix C. The Parties shall update Appendix C for the first partial Contract Year and the last partial Contract Year upon receipt of notice from Seller of the number of MWhs for each such partial Contract Year.

“ASME” means American Society of Mechanical Engineers.

“Assumed Daily Deliveries” has the meaning set forth in Section 13.4(c).

“ASTM” means American Society for Testing and Materials.

“Authorized Auditors” means representatives of Buyer or Buyer’s Authorized Representative who are authorized to conduct audits on behalf Buyer.

“Authorized Representative” means, with respect to each Party, the Person designated as such Party’s authorized representative pursuant to Section 14.1.

“Availability Standards” means the program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy (as defined in the CAISO Tariff) resources and possible charges and incentive payments for performance thereunder.

“AWS” means American Welding Society.

“Bankruptcy” means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case, action or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for ninety (90) days.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect.

“Brown Act” has the meaning set forth in Section 14.21(d).

“Business Day” means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Sacramento, California or New York, New York.

“Buyer” has the meaning set forth in the preamble of this Agreement.

“Cal-OSHA” means the California Occupational Safety & Health Administration.

“CAISO” means the California Independent System Operator.

“CAISO Costs” means (i) all current and future costs, expenses, fees, charges, credits and other amounts assessed by the CAISO to Seller or to Buyer in connection with the Facility and (ii) any and all costs, expenses, fees, charges and other amounts incurred in connection with performing Scheduling services, settlement services and serving as the Scheduling Coordinator. For the avoidance of doubt, CAISO Costs include any and all fees, costs and charges that come into existence for integration of the Facility (by virtue of its being an intermittent solar resource) into the CAISO Grid and any imbalance costs, expenses and charges.

“CAISO Master File” has the meaning set forth in the CAISO Tariff.

“CAISO Tariff” means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures and standards attached thereto and any replacement thereof or successor thereto in effect.

“CAMD” means the Clean Air Markets Division of the EPA and any other state, regional or federal or intergovernmental entity or Person that is given authorization or jurisdiction or both over a program involving the registration, validation, certification or transferability of Environmental Attributes.

“Capacity Rights” means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, Resource Adequacy Attributes, Local Capacity Requirement Attributes, associated attributes or reserves, or any of the foregoing as may in the future be defined by the CAISO, or any other balancing authority, reliability entity or Governmental Authority, associated with the electric generating capability of the Facility, including the right to resell such rights.

“CEC” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission.

“CEC Certified” means that the CEC has certified that the Facility is an eligible renewable energy resource in accordance with RPS Law.

“CEC Performance Standard” means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for electric generation facilities that are owned or operated (or both) by local publicly owned electric utilities, or for which a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

“CEQA” means the California Environmental Quality Act, California Public Resources Code § 21000, et seq.

“CEQA Acceptability Notice” has the meaning set forth in Section 3.1.

“CEQA Determinations” means that:

(a) The lead agency conducting the review of the Facility as required under CEQA shall have (i) reviewed and approved the CEQA Documents, (ii) issued a final land use entitlement or other discretionary permit for the Facility, and (iii) filed a Notice of Determination in compliance with CEQA;

(b) Buyer, acting as a responsible agency under CEQA, shall have provided to Seller the CEQA Acceptability Notice with respect to the Facility; and

(c) The applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA with respect to the Facility shall have expired without any such challenge having been filed or, in the event of any such challenge, the challenge shall have been determined adversely to the challenger by final judgment or settlement.

“CEQA Documents” means a draft environmental impact report, mitigated negative declaration or equivalent document prepared by or relied upon by the lead agency in approving Permits for the Facility.

“CEQA Unacceptability Notice” has the meaning set forth in Section 3.1.

“Change in Control” means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions: following which the Ultimate Parent Entity directly or indirectly no longer (i) remains the owner of more than fifty percent (50%) of the equity ownership of Seller, or (ii) retains the power to control the management and policies of Seller; *provided, however*, that a Change in Control shall not include any transaction or series of transactions in which membership or equity interests in Seller or an Upstream Equity Owner are issued or transferred to another Person solely for the purpose of a Tax Equity Financing.

“Change in Law” means a material change to any WREGIS standards, rules, or requirements, or a change to any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval.

“**Closing**” means the consummation of the transactions (a) under the Option Agreement or (b) with respect to a sale pursuant to Buyer’s exercise of the Right of First Offer or Right of First Refusal.

“**Commercial Operation**” means all of the following have occurred:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, “substantial completion” under the relevant construction contracts has been achieved, and the Facility possesses all of the characteristics and satisfies all of the requirements set forth for the Facility in this Agreement;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to operate the Facility;

(c) Seller has delivered to Buyer a certificate of an independent engineer substantially in the form attached hereto of Appendix L-2;

(d) Seller has obtained all Permits (including the CEQA Determinations) required for the construction, operation and maintenance of the Facility in accordance with this Agreement, including the Permits identified on Appendix B-1, and all such Permits are final and non-appealable;

(e) Seller has obtained all real property rights, including with respect to the Site Control Documents, and any other easements, rights-of-way, or encroachments necessary for Seller to perform its obligations under this Agreement, the Option Agreement, and the Storage Option Agreement;

(f) Seller has entered into one or more agreements providing for the operation and maintenance of the Facility with one or more Qualified Operators;

(g) Buyer has received the Delivery Term Security as provided in Section 5.7 in a form reasonably acceptable to Buyer;

(h) The Facility is both authorized and able to operate and deliver Energy at the Contract Capacity in accordance with the Generator Interconnection Agreement, Prudent Utility Practices, the Requirements, and all Requirements of Law; *provided* that the Facility need not be CEC Certified as a condition to achieving Commercial Operation;

(i) Provided that Buyer, in its role as Scheduling Coordinator, has submitted all required information for the FCDS Finding in a timely manner to the CAISO, Seller has provided notice from the CAISO that the Facility has completed startup testing and has been approved by the CAISO to commence operations and Seller has provided evidence reasonably satisfactory to Buyer that the Seller has obtained a Full Capacity Deliverability Status Finding;

(j) Seller has delivered to Buyer a notice with the Annual Contract Quantity for the first and last partial Contract Years, after which the Parties shall update and amend Appendix C; and

(k) Seller has obtained Insurance coverage for the Facility as required by Appendix F.

“Commercial Operation Date” means the date on which Commercial Operation of the Facility occurs, as determined pursuant to Section 3.5.

“Conditional Use Permit” means the conditional use permits for the Facility and the Site.

“Confidential Information” has the meaning set forth in Section 14.21(a).

“Construction Start Date” means the date on which Seller delivers to Buyer a written certification substantially in the form attached hereto as Appendix L-1.

“Contract Capacity” means ____ MW, as measured by the sum of inverter nameplate capacity.

“Contract Price” means, for any period of time, the Contract Price set forth in Appendix A-1.

“Contract Year” means (a) with respect to the first (1st) Contract Year, the period beginning on the Commercial Operation Date and extending through December 31 of the calendar year in which the Commercial Operation Date occurs, (b) with respect to the second (2nd) through the twentieth (20th) Contract Years, the applicable calendar year, and (c) with respect to the twenty first (21st) Contract Year, the period beginning on January 1 of the applicable calendar year and extending through the day before the anniversary of the Commercial Operation Date.

“Costs” has the meaning set forth in Section 13.4(f)(iii).

“Co-Tenancy Agreement” means an agreement or agreements to be entered into for Seller to use the Generator Interconnection Agreement, in a form acceptable to both Parties, such acceptance not to be unreasonably withheld, conditioned, or delayed; provided that if Buyer does not respond within thirty (30) days of receipt of any draft Co-Tenancy Agreement, Buyer will be deemed to have accepted such draft Co-Tenancy Agreement.

“Cover Damages” has the meaning set forth in Section 6.3.

“CPRA” has the meaning set forth in Section 14.21(d).

“Curtailment Period” means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, notice, instruction or directive (but excluding any CAISO forecast) from a Transmission Provider, the CAISO, WECC, NERC, or any other reliability entity due to (a) a System Emergency, (b) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (c) an event of Force Majeure at or downstream from the Point of Delivery, (d) over-generation or any other reason adversely affecting the normal function and operation of the CAISO grid or a Transmission Provider’s system, as may from time to time be identified by the CAISO, the Transmission Provider, WECC, NERC, or any other reliability entity. For the avoidance of doubt, the term

“Curtailment Period” shall not include curtailments directed by CAISO for economic reasons as described in Section 7.4(b) or any curtailment by Buyer pursuant to Section 7.4(b).

“**Daily Delay Damages**” means the liquidated damages specified in Section 3.6(c) and Section 3.6(d).

“**Day-Ahead Market**” has the meaning set forth in the CAISO Tariff.

“**Deemed Generated Energy**” has the meaning set forth in Section 7.4(c).

“**Default**” has the meaning set forth in Section 13.1.

“**Defaulting Party**” has the meaning set forth in Section 13.1.

“**Delivery Term**” has the meaning set forth in Section 2.2(b).

“**Delivery Term Security**” has the meaning set forth in Section 5.7(b).

“**Dispute**” has the meaning set forth in Section 14.3(a).

“**Dispute Notice**” has the meaning set forth in Section 14.3(a).

“**Distributed Generation Resource**” means generation resources connected to utility distribution systems, without regard to size or resource type.

“**Downgrade Event**” means, with respect to the Person providing Project Development Security or Delivery Term Security hereunder, any event that results in (a) the failure of such Person to maintain the credit rating or organizational status of a Qualified Issuer, as applicable, or (b) the commencement by such Person of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding (whether under any present or future statute, law or regulation), or (c) Buyer electing to terminate any relationship with such Person pursuant to directives from any Governmental Authorities applicable to Buyer.

“**Early Termination Date**” has the meaning set forth in Section 13.4(a).

“**EEI**” means Edison Electric Institute.

“**Effective Date**” means the date on which Buyer provide written notice to Seller that it has executed this Agreement together with an executed copy of the Agreement.

“**EIRP Forecast**” means the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol for use in submitting a Schedule for the output of the Facility in the Real-Time Market, and if such forecast is not available, the final forecast for the Energy in the Day-Ahead Market as provided by Seller.

“**Electric Metering Devices**” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“Eligible Intermittent Resources Protocol” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

“Energy” means electrical energy.

“Enforceability Opinion” means an executed original of a written legal opinion from counsel for Seller (such counsel to be reasonably acceptable to Buyer), concerning this Agreement and the Ancillary Documents (including enforceability and due authorization thereof) and related matters, in form and substance satisfactory to Buyer and its counsel, dated as of the Effective Date and addressed to Buyer.

“Environmental Attribute Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute, or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

“Environmental Attributes” means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (A) that are at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any other Governmental Authority or other Person and (B) that are attributable to (i) generation by the Facility during the Delivery Term or Replacement Energy required to be delivered by Seller to Buyer during the Delivery Term and (ii) the emissions or other environmental characteristics of such generation or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “*UNFCCC*”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including RPS Law and California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto) or any similar international, federal, state or local program or crediting “early action” with a view thereto, laws or regulations involving or administered by the CAMD and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Energy produced from the Facility and do not include (a) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on an ownership or security interest in the Facility, (b) any other depreciation deductions and benefits, and other tax benefits arising from ownership of the Facility and (c) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

“Environmental Attributes Value” means the value of Environmental Attributes purchased by Buyer under this Agreement, stated in \$/MWh, determined based on a Renewable Energy Credit pricing index that has been mutually agreed upon by Seller and Buyer or, if such

index is not available, the value of the Environmental Attributes as determined by the average of three (3) nationally-recognized broker quotes for Environmental Attributes that meet the definition of Environmental Attributes set forth in this Agreement; *provided* that such index pricing or broker quotes shall relate to Environmental Attributes that are derived from comparable vintage and generation technology as the Environmental Attributes that are being replaced, and are from a generator that qualifies as an “eligible renewable energy resource” within the meaning of the RPS Law at the time of such pricing or broker quotes, as applicable; *further provided*, that during the period of time the Contract Price is changed pursuant to Section 7.7(b), “Environmental Attributes Value” shall mean Zero Dollars (\$0) per MWh.

“Environmental Compliance Milestone” means (a) Seller has obtained the CEQA Determinations and is in compliance with any mitigation plans, monitoring programs or other requirements associated therewith, and the applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA has expired without any such challenge having been filed, or in the event of any such challenge, the challenge has been determined adversely to the challenger by final judgment or settlement; (b) Buyer has received true, correct and complete copies of the Conditional Use Permit; and (c) Buyer has received true, correct and complete copies of all documents relating to the environmental condition of the Site in form, scope and substance reasonably satisfactory to Buyer, including any Phase I ESA prepared relative to Site.

“EPA” means the United States Environmental Protection Agency.

“EPC Contractor” means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Facility.

“EPS Compliance” or **“EPS Compliant”** when used with respect to the Facility or any other facility providing Replacement Energy at any time, means that the Facility or facility, as applicable, satisfies both the PUC Performance Standard and the CEC Performance Standard in effect at the time; *provided*, if it is impossible for the Facility or facility, as applicable, to satisfy both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the Facility or facility, as applicable, shall be deemed EPS Compliant if it satisfies the CEC Performance Standard in effect at the time and those portions of the PUC Performance Standard in effect at the time that it is possible for the Facility or facility, as applicable, to satisfy while at the same time satisfying the CEC Performance Standard in effect at the time.

“EPS Law” means Sections 8340 and 8341 of the California Public Utilities Code or its successor or comparable state or federal programs.

“Escrow Account” has the meaning set forth in Section 5.7(a).

“Excess Energy” means, in any Contract Year, Facility Energy delivered in excess of one hundred and ten percent (110%) of the Annual Contract Quantity for such Contract Year, which deliveries shall be verified in invoices provided by Seller as set forth in Section 11.2(a).

“Facility” means the _____MW solar photovoltaic power generating facility described in Appendix B-1 and depicted on Appendix B-2, including all property interests and related interconnection facilities owned by Seller.

“Facility Assets” has the meaning set forth in Section 14.25(a), as further defined in the Option Agreement.

“Facility Cost” means, measured as of any date, the aggregate amount of all costs and expenses incurred by Seller during the Agreement Term for the development, design, engineering, equipping, procuring, constructing, installing, starting up, and testing of the Facility, including (a) the cost of all labor, services, materials, suppliers, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection therewith, (b) the cost of acquiring and maintaining the Site Control Documents, (c) real and personal property taxes, ad valorem taxes, sale, use, and excise taxes, and insurance (including title insurance) premiums payable with respect to the Facility, (d) initial working capital requirements of the Facility, (e) the cost of acquiring the Permits for the Facility, (f) the cost of establishing a spare parts inventory for the Facility, and (g) financial, legal, and consulting fees, costs, and expenses.

“Facility Debt” means, measured as of any date, the payment obligations of Seller or any Upstream Equity Owner or Ultimate Parent Entity with respect to the Facility in connection with borrowed money, including (a) principal of and premium and interest on indebtedness, (b) fees, charges, penalties, and expenses related to indebtedness, (c) amounts due upon acceleration or in connection with prepayment or restructuring of indebtedness, and (d) swap or interest rate hedging breakage costs. For the sake of clarity, Facility Debt does not include any Tax Equity Financing.

“Facility Energy” means Energy generated by the Facility, less station load, transformation losses and transmission losses to the Point of Delivery, as measured by CAISO- approved Electric Metering Devices.

“Facility Lender” means any financing party or Tax Equity Investor providing Facility Debt, including any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations, including any lender to any Upstream Equity Owner or Ultimate Parent Entity with respect to the Facility. For the sake of clarity, Facility Lender does not include any Tax Equity Investor in its capacity as a Tax Equity Investor, but only includes a Tax Equity Investor that provides Facility Debt and then only in such Tax Equity Investor’s capacity as the provider of such Facility Debt.

“Facility Lender Consent” has the meaning set forth in Section 13.3.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” has the meaning set forth in Section 14.6(b).

“Force Majeure Notice” has the meaning set forth in Section 14.6(a).

“Forced Outage” means the removal of service availability of the Facility, or any portion of the Facility, for emergency reasons or conditions in which the Facility, or any portion thereof, is unavailable due to unanticipated failure, including as a result of Force Majeure.

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” or **“FCDS Finding”** means (a) Seller has elected Full Capacity Deliverability Status for the Facility and such election is acknowledged by the interconnection provider and CAISO in the Generator Interconnection Agreement, (b) all network and transmission upgrades required in the Generator Interconnection Agreement and associated studies or reports to achieve FCDS have been constructed and placed in service and (c) the Facility’s Net Qualifying Capacity (as defined in the CAISO Tariff) has been confirmed in writing by CAISO (including by posting to the CAISO website).

“GAAP” means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

“Gains” has the meaning set forth in Section 13.4(f)(i).

“Generator Interconnection Agreement” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, Pacific Gas and Electric, and the CAISO governing the terms and conditions of Seller’s interconnection with the CAISO grid, including any description of the plan for interconnecting to the CAISO grid.

“Governmental Authority” means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority with jurisdiction over the Parties, the Facility, or this Agreement, or any Person acting as a delegate or agent of any Governmental Authority; provided that “Governmental Authority” specifically excludes Buyer, any successor or assignee of Buyer and the Participating Members.

“Guaranteed Commercial Operation Date” means [Insert Date]

“Guaranteed Generation” means, (a) with respect to each full Contract Year, an amount equal to eighty percent (80%) of the Annual Contract Quantity for such Contract Year, and (b) with respect to (1) the first partial Contract Year, an amount determined by multiplying the Annual Contract Quantity for such partial Contract Year times the sum of the percentages in Table 2 of Appendix C for the Month in which the Commercial Operation Date occurs (prorated based on the Commercial Operation Date) and the remaining Months in that Contract Year times either sixty percent (60%) if the Commercial Operation Date occurs on or after [Mth/Day] or eighty percent (80%) if the Commercial Operation Date occurs prior to [Mth/Day]; and (2) the last partial Contract

Year, an amount determined by multiplying the Annual Contract Quantity for such partial Contract Year times the sum of the percentages in Table 2 of Appendix C for the Months in such Contract Year times eighty percent (80%), which amounts shall be reduced by the aggregate amount of Deemed Generated Energy during all Seller Excused Hours during such Contract Year.

“IEEE” means the Institute of Electrical and Electronics Engineers.

“Indemnitees” has the meaning set forth in Section 14.19(a).

“Independent Manager” means a manager who is not at the time of initial appointment, or at any time while serving as Independent Manager, and has not been at any time during the preceding five (5) years: (i) a member, stockholder, equity holder, director, manager (except as the Independent Manager of Seller), officer, employee, partner, attorney or counsel of Seller, any member of Seller, or any Affiliate of Seller; (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Seller, any member of Seller, or any Affiliate of Seller (other than for serving as Independent Manager of Seller), (iii) a Person controlling or under common control with any such stockholder, equity holder, partner, manager, customer, supplier or other like Person, or (iv) a member of the immediate family of any such member, stockholder, equity holder, director, officer, employee, manager, partner, customer, supplier or other like Person.

“Insurance” means the policies of insurance as set forth in Appendix F.

“Interest Rate” has the meaning set forth in Section 11.3.

“ISA” means the Instrument Society of America.

“Key Milestone” means a Milestone for which liquidated damages are provided in Appendix I.

“Land Lease” means an agreement to be entered into for Seller to use real estate as described in Appendix N, in a form acceptable to both Parties, such acceptance not to be unreasonably withheld, conditioned, or delayed.

“Land Option” means an irrevocable option(s) to lease the real estate as described in Appendix N.

“Lessor” means any lessor of real property for the Facility pursuant to a Site Control Document.

“Licensed Professional Engineer” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of California, and otherwise qualified to perform the work required hereunder.

“Lien” means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including any option, of any other Person in or with respect to any real or personal property.

“Local Capacity Requirement Attributes” means the benefits or attributes now or existing in the future based on the procurement obligations of Buyer with respect to local resource capacity requirements as prescribed by the PUC, the CAISO or other regional entity, and that are associated with the electric generating capability of the Facility.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in Appendix C of the CAISO Tariff.

“Losses” has the meaning set forth in Section 13.4(f)(ii).

“Major Maintenance Blockout” has the meaning set forth in Section 4.5(a).

“Milestone” has the meaning set forth in Section 3.6(a).

“Milestone Date” has the meaning set forth in Section 3.6(a).

“MMR” has the meaning set forth in Section 12.6(b).

“Moody’s” means Moody’s Investor Services, Inc.

“Month” means a calendar month commencing at 00:00 Pacific Prevailing Time on the first day of such month and ending at 24:00 Pacific Prevailing Time on the last day of such month.

“MW” means megawatt in alternating current, or ac. May also be referred to as “MWac”

“MWh” means megawatt-hours.

“NERC” means the North American Electric Reliability Corporation.

“Non-Consolidation Opinion” means a reasoned opinion of [Insert Legal Corporation Name], in form and substance reasonably acceptable to Buyer, as to the non-consolidation of Seller in a bankruptcy proceeding of any Upstream Equity Owner, addressed and delivered to Buyer on or before the Effective Date.

“Non-Defaulting Party” has the meaning set forth in Section 13.4(a).

“Notice of Proposed Third Party Sale” has the meaning set forth in Section 14.25(c).

“Notifying Party” has the meaning set forth in Section 14.3(a).

“O&M Agreement” means the agreement for the provision of operation and maintenance services for the Facility entered into or to be entered into by and between Seller and a Qualified Operator.

“Operation and Maintenance Plan” has the meaning set forth in Section 4.3(a).

“Option Agreement” means that certain Option Agreement to be entered into by the Parties, substantially in the form set forth on Appendix K.

“OSHA” means the Occupational Safety and Health Administration of the United States Department of Labor.

“Outside Commercial Operation Date” means [Date], which date may be extended only pursuant to Section 3.6(b).

“Pacific Prevailing Time” means the local time in the State of California.

“Participating Intermittent Resource” has the meaning set forth in the CAISO Tariff.

“Participating Intermittent Resource Program” or **“PIRP”** means the rules, protocols, procedures and standards for Participating Intermittent Resources under CAISO’s Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff, and any replacement or successor program.

“Participating Members” means [Member Name(s)] **“Party”** or **“Parties”** has the meaning set forth in the preamble of this Agreement.

“Performance Security” means the Project Development Security or Delivery Term Security for the Facility, together or individually, as applicable.

“Permits” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be filed, submitted, obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production, sale and delivery of Products from the Facility, including Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including the, Conditional Use Permit, CEQA Determinations and the Permits described in Appendix B-1.

“Permitted Encumbrances” means (a) the Lien in favor of the Facility Lender, (b) any Lien approved by Buyer in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, (c) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, *provided* that such proceedings end by the expiration of the Agreement Term, (d) suppliers’, vendors’, mechanics’, workman’s, repairman’s, employees’ or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, and (e) easements, rights-of-way, use rights, encroachments, or exceptions of record that have been identified to Buyer by Seller in writing prior to the Commercial Operation Date, and approved by Buyer in its reasonable discretion, not to be

unreasonably withheld, conditioned, or delayed, and in no event later than fourteen (14) Business Days, and that do not or will not materially interfere with or impair the operation of the Facility or performance of Seller's obligations under this Agreement.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.

"Phase 1 ESA" means an environmental study prepared in accordance with ASTM E1527-13 (Standard Practice for Environmental Site Assessment: Phase 1 Environmental Assessment Process) with respect to the Site to be prepared by a consultant acceptable to Buyer and delivered to Buyer that demonstrates there are no recognized environmental conditions with respect to the Site that could have an adverse impact on the Facility or the ability of Seller to perform its obligations under this Agreement.

"PNode" means the CAISO Pricing Node as defined in the CAISO Tariff to be established by CAISO at the [Substation Name] and Seller shall provide notice to Buyer of the name which CAISO designates for the PNode prior to the Commercial Operation Date.

"PNode Price" means the Locational Marginal Price of the Facility's PNode, as determined by the CAISO. For the avoidance of doubt, the PNode Price shall not include the value of any Environmental Attributes or Capacity Rights, if any.

"PNode Price Option" has the meaning set forth in Section 7.7(b).

"Point of Delivery" means the PNode, or such other point as mutually agreed in writing by the Parties, *provided* that in the case of Replacement Product, an alternative delivery point may be designated in accordance with Section 9.2.

"Pre-Certification Period" has the meaning set forth in Section 6.1(d).

"Present Value Rate" means, at any date, the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally-recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

"Products" means any and all Facility Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the foregoing that are or can be produced by, or are associated with, the Facility, whether now attainable or established in the future, including delivered Energy, renewable attributes, and Renewable Energy Credits. Except as otherwise provided in Section 7.7, the Products shall meet the standard of "Portfolio Content Category 1" as defined by RPS Law.

"Project Development Security" has the meaning set forth in Section 5.7(a).

“Project Purchase Option” means the right, but not the obligation, of Buyer, in its sole discretion, to purchase the Facility and certain related assets from Seller in accordance with the provisions of the Option Agreement.

“Proposed Purchase Notice” has the meaning set forth in Section 14.25(b).

“Proposed Sale Notice” has the meaning set forth in Section 14.25(b).

“Prudent Utility Practices” means those practices, methods, and acts, that are commonly used by a significant portion of the solar-powered electric generation industry in prudent engineering and operations to design, construct, and operate and maintain electric equipment (including solar-powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of the CAISO, FERC, NERC, WECC, as each may be amended from time to time, and all applicable Requirements of Law. Prudent Utility Practices are not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the solar-powered electric generation industry.

“Public Utilities Code” means the Public Utilities Code of the State of California, as may be amended from time to time.

“PUC” means the California Public Utilities Commission and any successor thereto.

“PUC Performance Standard” means, at any time, the greenhouse gas emission performance standard in effect at such time for electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, or for which a load-serving entity and not a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the PUC or other Governmental Authority under the EPS Law.

“QRE” has the meaning set forth in Section 8.4.

“Qualified Bond Issuer” means a Person (a) acceptable to Buyer or (b) that is admitted in California and is rated “A” or higher by A.M. Best Company, Inc.

“Qualified Buyer Assignee” means (a) a Participating Member, (b) any other member of Buyer that is a member as of the Effective Date, or (c) a third party Person and is rated (1) “A2” or higher by Moody’s and “A” or higher by S&P, if such Person is rated by both Moody’s and S&P, or (2) “A2” or higher by Moody’s or “A” or higher by S&P if such Person is rated by either S&P or Moody’s, or (3) equivalent ratings by any other credit rating agency of recognized national standing.

“Qualified Issuer” means a Person (a) reasonably acceptable to Buyer, (b) that maintains a United States domestic branch, and a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) “A2” or higher by Moody’s and “A” or higher by S&P, if such Person is rated by both Moody’s and S&P or (2) “A2” or higher by Moody’s, or “A” or higher by S&P if such Person is rated by either S&P or Moody’s or (c) that (1) maintains a United States domestic

branch, and a current long-term credit rating (corporate or long-term senior unsecured debt) of (x) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P or (y) “A3” or higher by Moody’s, or “A-” or higher by S&P if such Person is rated by either S&P or Moody’s, and (2) has a tangible net worth that is equal to or in excess of \$500,000,000.

“Qualified Operator” means (a) a Person reasonably acceptable to Buyer that has at least three (3) years of operating experience with at least two (2) utility-scale solar projects of 10 MW ac or higher, (b) any Person identified on Appendix H or any such Person’s Affiliates, or (c) any other Person reasonably acceptable to Buyer.

“Qualified Transferee” means a Person that (a) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of \$150,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A2” or higher by Moody’s and “A” or higher by S&P, if such Person is rated by both Moody’s and S&P or (ii) “A2” or higher by Moody’s, or “A” or higher by S&P if such Person is rated by either S&P or Moody’s, or (iii) equivalent ratings by any other credit rating agency of recognized national standing and retains, or causes Seller to retain, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (b) is reasonably acceptable to Buyer and, in each case, (c) executes a written assumption agreement in favor of Buyer pursuant to which any such Qualified Transferee shall assume all the obligations of Seller under this Agreement, Option Agreement and the Storage Option Agreement.

“Quality Assurance Program” has the meaning set forth in Section 5.4.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“REC” or “Renewable Energy Credit” means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, which certificate is issued through the accounting system established, used or approved by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated and delivered from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a “green tag” or “renewable energy certificate”) for which the owner of the REC can evidence that it has purchased Energy that is CEC Certified.

“Recipient Party” has the meaning set forth in Section 14.3(a).

“Remedial Action Plan” has the meaning set forth in Section 3.6(a).

“Remaining Term” means, at any date, the remaining portion of the Delivery Term at that date without regard to any early termination of this Agreement.

“Replacement Capacity Rights” means Capacity Rights associated with Shortfall Energy, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Product is being provided.

“Replacement Energy” means Energy produced by a facility other than the Facility that, at the time delivered to Buyer, (i) is both RPS Compliant and EPS Compliant, (ii) qualifies under RPS law, (iii) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided and (iv) that has the same or comparable value as the Energy that would have been generated by the Facility during the relevant period considering timing of delivery and the applicable locational marginal pricing values, provided that if the Locational Marginal Price differs between the Replacement Energy Point of Delivery and the PNode, Buyer and Seller shall cooperate in good faith to either issue a credit or charge, as applicable, for the difference in value; and further provided, that during the period of time the Contract Price is changed pursuant to Section 7.7(b) or after any repeal of the RPS Law or EPS Law, “Replacement Energy” shall mean Energy that has the same or comparable value as the Energy that would have been generated by the Facility during the relevant time period considering timing of delivery and the applicable locational marginal pricing values, provided that if the Locational Marginal Price differs between the Replacement Energy Point of Delivery and the PNode, Buyer and Seller shall cooperate in good faith to either issue a credit or charge, as applicable, for the difference in value.

“Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Product, or, absent such a purchase, (a) the PNode Price, plus (b) the price of the Environmental Attributes that would have been generated by the Facility valued at the Environmental Attributes Value, plus (c) the value of Capacity Rights, if any, equivalent to those that would have been provided by the Facility, whether sold separately or bundled as a package, in each case, for the calculation period, all as reasonably calculated by Buyer.

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Capacity Rights.

“Replacement Product Period” has the meaning set forth in Section 9.2.

“Requirements” means, collectively, (a) any standards or requirements of ASTM, ASME, AWS, EPA, EEL, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA, Uniform Building Code, or Uniform Plumbing Code applicable to the design or construction of the Facility, (b) any applicable local county fire department standards or codes, (c) Prudent Utility Practices, (d) all applicable Requirements of Law, including the UCC, (e) Seller’s Quality Assurance Program, and (f) all other requirements of this Agreement.

“Requirement of Law” means any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

“Resource Adequacy Attributes” means the benefits or attributes, if any, now or existing in the future based on the procurement obligations of Buyer with respect to Resource Adequacy as prescribed by the PUC, the CAISO or any other regional entity, and that are associated with the

electric generating capability of the Facility or another RPS Compliant eligible renewable resource providing Replacement Product.

“RFP” has the meaning set forth in the recitals to this Agreement.

“Right of First Offer” and **“ROFO”** have the meaning set forth in Section 14.25(a).

“Right of First Refusal” and **“ROFR”** have the meaning set forth in Section 14.25(b).

“RPS Compliance” or **“RPS Compliant”** means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 1” eligible renewable resource, or equivalent if the RPS Law is changed, under the RPS Law.

“RPS Compliance Period” means each “Compliance Period” as defined in the RPS Law.

“RPS Law” means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code § 25740 through 25751, any related regulations or guidebooks promulgated by the CEC or, as applicable, the PUC or its successor or equivalent state or federal programs.

“SCADA” means the supervisory control and data acquisition system for the Facility.

“Schedule” or **“Scheduling”** means the actions of Seller and Buyer, their Authorized Representatives, the Scheduling Coordinator and the Transmission Providers, if applicable, of notifying, requesting and confirming to the CAISO the amounts of Facility Energy and Replacement Product expected to be delivered consistent with the Scheduling interval at the Point of Delivery on any given date during the Delivery Term, all in the manner contemplated by the CAISO Tariff.

“Scheduled Outage” means any outage with respect to the Facility other than a Forced Outage.

“Scheduled Outage Projection” has the meaning set forth in Section 4.5(a).

“Scheduling Coordinator” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth in the preamble of this Agreement.

“Seller Excused Hour” means an hour during which, Seller is unable to produce or deliver Facility Energy from the Facility as a result of (a) curtailments, as set forth in Section 7.4, (b) Buyer’s unexcused failure to accept Facility Energy, or (c) Force Majeure.

“Seller Party” means each of Seller and Affiliates of Seller as of the Effective Date executing any Ancillary Document.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Statement” has the meaning set forth in the CAISO Tariff.

“Shared Facilities Agreement” means an agreement or agreements to be entered into for Seller to use the transformer, protective devices and other associated equipment and the interconnection facilities that will be described in the Generator Interconnection Agreement of Q1208, in a form acceptable to both Parties, such acceptance not to be unreasonably withheld, conditioned, or delayed.

“Shortfall Energy” has the meaning set forth in Section 9.1.

“Shortfall Damages” has the meaning set forth in Section 9.3.

“Shortfall Makeup Period” means the Contract Year following the Contract Year during which Shortfall Energy accrues.

“Site” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B-2 as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines or roadways servicing such Site or the Facility located (or to be located) thereon.

“Site Control” means that the Site Control Documents have been executed by Seller and each counterparty thereto and are in full force and effect and such Site Control Documents are sufficient to permit Seller to fulfill all of its obligations under this Agreement, the Option Agreement and the Storage Option Agreement; except for such easements, rights-of-way, encroachments and other real estate rights which Seller reasonably expects to be timely obtained prior to the Commercial Operation Date in the ordinary course of business.

“Site Control Documents” means (a) each Land Lease, (b) the Shared Facilities Agreement, and (c) the documents listed on Appendix N.

“Site Control Key Milestone” means the Key Milestone requiring Seller to have achieved Site Control.

“NP-15 Price” means the CAISO NP-15 Trading Hub Day-Ahead Market hourly LMP, as published by the CAISO. For the avoidance of doubt, the NP-15 Price shall not include the value of any Environmental Attributes or Capacity Rights, if any.

“Special Purpose Entity” means a limited liability company which at all times on and after the Effective Date meets the following conditions:

(a) shall not (without the prior written consent of Buyer) (i) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets, except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a Special

Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction.

(b) its organizational documents do and will limit its activities to acquiring, developing, owning, holding, selling, financing, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement, the Ancillary Documents, the Site Control Documents and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(c) has not been, is not, and will not be engaged in any business unrelated to the acquisition, development, construction, ownership, management or operation of the Facility;

(d) has not had, does not have and will not have, any assets other than those related to the Facility;

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity; provided that (for the avoidance of doubt) the foregoing shall not restrict any Upstream Equity Owner or any other Seller Affiliate from identifying its indirect relationship to the Facility through Seller;

(f) will maintain its financial statements, bank accounts, accounts, books, resolutions, agreements and records separate from any other Person and has filed and will file its own tax returns (except to the extent treated as a “disregarded entity” for tax purposes or is otherwise not required to file separate tax returns under applicable law);

(g) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Seller and (except for tax purposes) not as a division, department or part of any other Person;

(h) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(i) has not made and will not make loans or advances to any Person or hold evidence of indebtedness issued by any other Person (other than cash and investment securities or as may be permitted under the Shared Facilities Agreement or Generator Interconnection Agreement) or made any gifts or fraudulent conveyances to any Person;

(j) has not identified and will not identify its members, or any Affiliate of any member, as a division or department or part of it, and has not identified itself and shall not identify itself as a division or department of any other Person;

(k) has not entered into or been a party to, and will not enter into or be a party to, any material transaction with its members or Affiliates, except in the ordinary course of its business and on terms which are commercially reasonable and comparable with those which could be obtained in a comparable arm’s-length transaction with an unrelated third party (it being

acknowledged that Seller has entered into or may enter into Land Leases, Shared Facilities Agreements, the Generator Interconnection Agreement, operations and maintenance agreement, construction management agreement, development services agreement or Co-Tenancy Agreements with a Seller Affiliate);

(l) has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify its managers, members, and officers, as the case may be, other than (i) the Independent Manager in connection with the actions related to the performance of this Agreement; and (ii) its managers, members, and officers with respect to actions taken or omitted to be taken in good faith by such manager, member or officer with respect to the development, construction, financing, ownership and operation of the Facility;

(m) has considered and shall consider the interests of its creditors in connection with all limited liability company actions;

(n) except for obligations relating to security posted by Seller in favor of Buyer hereunder or in favor of other parties to contracts entered into by Seller pertaining to the Facility and also except for obligations to Facility Lenders or Tax Equity Investors, does not and will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Person;

(o) has complied and will comply with all of the terms and provisions contained in its organizational documents, including the provision requiring that there be an Independent Manager at all times, and has done or caused to be done and will do all things necessary to preserve its existence;

(p) has not commingled, and will not commingle its funds or assets with those of any Person and has not participated and will not participate in any cash management system with any other Person;

(q) will conduct all business in its own name and, except in connection with a Tax Equity Financing utilizing a lease or inverted lease structure, from and after the Commercial Operation Date will hold its material assets in its own name and conducted and will conduct all material business in its own name;

(r) has maintained, and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; *provided, however*, that, to the extent permitted by GAAP any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(s) has paid, and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations (it being acknowledged and agreed that Seller may have no employees to the extent it contracts out its requirements for all necessary managerial, operational and other services);

(t) has observed, and will observe appropriate limited liability company formalities, including those required under its limited liability company operating agreement;

(u) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except (i) for the period prior to the conversion or repayment of any construction Facility Debt, which for the avoidance of doubt, shall occur on or around the Commercial Operation Date, in connection with any Facility Debt or (ii) in connection with the Generator Interconnection Agreement, any Shared Facilities Agreement, or any Co-Tenancy Agreement;

(v) has not acquired and will not acquire securities of its members or any Affiliate, and has not acquired and will not acquire obligations of its members or any Affiliate, except (i) for the period prior to the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, in connection with any Facility Debt or (ii) in connection with the Generator Interconnection Agreement, any Shared Facilities Agreement, or any Co-Tenancy Agreement;

(w) has allocated, and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including paying for shared space and services performed by any employee of an Affiliate;

(x) now maintains and uses, and will maintain and use separate stationery, invoices, and checks bearing its name; such stationery, invoices, and checks utilized by it or utilized to collect its funds or pay its expenses has borne and shall bear its own name and has not borne and shall not bear the name of any other entity unless such entity is clearly designated as being its agent;

(y) following the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, has not pledged and will not, pledge its assets for the benefit of any other Person, except for the security posted in favor of Buyer as provided herein, or in accordance with the Generator Interconnection Agreement;

(z) has had, now has and will have articles of organization, a certificate of formation or an operating agreement, as applicable, that includes the requirement that there will be an Independent Manager, and provides that it will not, without the affirmative vote of its Independent Manager: (A) dissolve, merge, liquidate or consolidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets (other than as permitted under Section 14.7(c)); (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition; or (D) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(aa) has been, is and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and has maintained, is maintaining

and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; *provided, however*, that this clause (aa) shall not require anyone to make any contribution of capital to Seller and shall not require Seller to make any capital call on its members or to otherwise raise capital; and

(bb) has and will have no indebtedness other than (i) Facility Debt relating to the development, bridge, construction or permanent financing for the Facility, including any indebtedness in its replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business relating to its ownership, management, administration, leasing and operation of the Facility and the Facility related contracts, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of Twenty Million Dollars (\$20,000,000) in the aggregate, (iv) the Performance Security and any indebtedness incurred in support of or connection with the Performance Security, and (v) such other liabilities that are permitted pursuant to this Agreement, except that, until the execution of the principal documents for the Facility's construction financing, such limited liability company may (i) satisfy the insurance requirements of this Agreement by or through Seller's parent entities or investors provided that the policies or endorsements extending insurance coverage to Seller shall reference Seller as an independent legal entity and (ii) satisfy any required security/performance assurance, whether due to be provided to Buyer under this Agreement or the CAISO, by or through Seller's parent entities or investors so long as each letter of credit, guaranty or other instrument of such security/performance assurance references Seller as an independent legal entity.

"S&P" means Standard & Poor's Financial Services LLC.

"Storage Option Agreement" means that certain Storage Option Agreement to be entered into by the Parties in substantially the form set forth on Appendix O.

"Subcontract" means any agreement or contract entered into on or after the Effective Date by Seller and a Person other than Buyer, which Person is providing goods or services to Seller that are related to the performance of Seller's obligations under this Agreement. Subcontracts specifically include any agreement or contract that is referred to or defined as a "subcontract" in the policies, ordinances, codes or laws with which Seller must comply pursuant to this Agreement, or that is made with a "subcontractor" as such term is used or defined in such policies, ordinances, codes, or laws.

"Subcontractor" means any party to a Subcontract with Seller.

"System Emergency" means each of the following: (i) "System Emergency" as set forth in the CAISO Tariff and (ii) a condition or situation that in the judgment of Buyer (a) is imminently likely to endanger life or property; or (b) is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, reliability of, or damage to the Transmission System, Transmission Provider's interconnection facilities (as defined in the Generator Interconnection Agreement) or the transmission systems of others to which the Transmission System is directly connected.

“**Tax**” or “**Taxes**” means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

“**Tax Equity Financing**” means, with respect to Seller or any Upstream Equity Owner, any transaction or series of transactions (including without limitation any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an Upstream Equity Owner, as applicable, being issued or otherwise provided to another Person (a “**Tax Equity Investor**”) in exchange for capital contributions to Seller or such Upstream Equity Owner, as applicable, or the Facility being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the construction of the Facility by monetizing the Tax credits, depreciation and other tax benefits associated with the Facility.

“**Tax Equity Investor**” has the meaning set forth in the definition of Tax Equity Financing.

“**Termination Notice**” has the meaning set forth in Section 13.4(a).

“**Termination Payment**” means a payment in an amount equal to the Non-Defaulting Party’s (a) Losses, plus (b) Costs, minus (c) Gains; *provided, however*, that if such amount is a negative number, the Termination Payment shall be equal to zero.

“**Test Energy**” means Facility Energy that is delivered to the Point of Delivery prior to the Commercial Operation Date.

“**Transmission Provider**” means the Person operating the Transmission System to and from the Point of Delivery.

“**Transmission Services**” means the transmission and other services required to transmit Facility Energy to or from the Point of Delivery.

“**Transmission System**” means the facilities utilized to provide Transmission Services.

“**Ultimate Parent Entity**” means (a) as of the Effective Date, FTP Power LLC, and (b) from and after any other Change in Control or other transfers permitted under Section 14.7(c) where the Ultimate Parent Entity changes, the entity specified by the Parties on Schedule 12.2(h) as being the “Ultimate Parent Entity.”

“**Unexcused Cause**” has the meaning set forth in Section 14.6(b).

“**UNFCCC**” has the meaning set forth in the definition of “Environmental Attributes.”

“**Upstream Equity Owner**” means any direct or indirect owner of Seller at any level below the Ultimate Parent Entity.”

“**WECC**” means the Western Electricity Coordinating Council.

“**WREGIS**” means Western Renewable Energy Generation Information System.

“**WREGIS Certificates**” has the meaning set forth in Section 8.4.

“**WREGIS Operating Rules**” means the rules describing the operations of the WREGIS, as published by WREGIS.

Other terms defined herein have the meanings so given when used in this Agreement with initial-capitalized letters.

Section 1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) time is of the essence
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person’s successors and assigns (regardless of whether such Person’s successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (d) reference to any gender includes the other;
- (e) reference to any agreement (including this Agreement), document, act, statute, law, instrument, tariff or Requirement means such agreement, document, act, statute, law, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, act, statute, law, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements, or successors;
- (f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;
- (g) “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;
- (h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term, regardless of whether words such as “without limitation” are expressly included in the applicable provision;
- (i) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”;

(j) unless otherwise indicated, reference to time shall always refer to Pacific Prevailing Time; and reference to any “day” shall mean a calendar day, unless otherwise indicated; and

(k) the term “or” is not exclusive, regardless of whether “and/or” is used in the applicable provision.

ARTICLE II

EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Effective Date. This Agreement is effective as of the Effective Date. On or prior to the Effective Date, each of the following has occurred: (a) both Parties have executed and delivered this Agreement; (b) Buyer has received (i) copies of all requisite resolutions and incumbency certificates of each Seller Party and any other documents evidencing all actions taken by each Seller Party to authorize the execution and delivery of this Agreement and all Ancillary Documents requiring execution by such Seller Party, such resolutions to be certified as of the Effective Date by an authorized representative of the Seller Party; and (ii) the Enforceability Opinion and the Non-Consolidation Opinion; (c) Seller has received copies of all requisite resolutions and incumbency certificates of Buyer authorizing the execution and delivery of this Agreement and all Ancillary Documents requiring execution by Buyer, such resolutions to be certified as of the Effective Date by an authorized official of Buyer, (d) Buyer and Seller have executed and delivered the Option Agreement, and (e) Buyer and Seller have executed and delivered the Storage Option Agreement.

Section 2.2 Term.

(a) **Agreement Term.** The term of this Agreement (the “*Agreement Term*”) shall commence on the Effective Date and end on the last day of the Delivery Term or upon the earlier termination of this Agreement in accordance with the terms hereof.

(b) **Delivery Term.** This Agreement shall have a delivery term (the “*Delivery Term*”) commencing on the Commercial Operation Date and ending at 11:59 pm on the day before the twentieth (20th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms of this Agreement.

Section 2.3 Survivability. The provisions of this ARTICLE II, ARTICLE XII, ARTICLE XIII, Section 14.9 and Section 14.21 shall survive for a period of one year following the termination of this Agreement. The provisions of ARTICLE XI shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of ARTICLE V, ARTICLE VI, ARTICLE VIII, and ARTICLE IX shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries (including the provision to Buyer of Replacement Product or Shortfall Damages) related to any period prior to termination of this Agreement.

Section 2.4 Early Termination.

(a) **Early Termination by Mutual Agreement.** This Agreement may be terminated by mutual written agreement of the Parties.

(b) **Early Termination for Failure to Provide Performance Security.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller, if Seller fails to deliver the Project Development Security within ten (10) Business Days after the Effective Date.

(c) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.4.

(d) **Early Termination for Failure to Achieve a Key Milestone.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller, pursuant to Section 3.6(c).

(e) **Early Termination for Failure to Achieve Commercial Operation Date.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller, if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date.

(f) **Early Termination for Failure to Obtain CEC Certification.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller if the Facility is not CEC Certified by the date that is six (6) Months following the Commercial Operation Date.

(g) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 14.6(c).

(h) **Early Termination for Exercise of ROFO or ROFR.** If pursuant to a written agreement entered into by Buyer, Buyer accepts the ROFO or the ROFR for any proposed sale of the Facility, this Agreement shall terminate effective upon the Closing of such sale to Buyer.

(i) **Early Termination for Exercise of Project Purchase Option.** If, pursuant to a written agreement entered into by Buyer, Buyer elects to exercise the Project Purchase Option, this Agreement shall terminate effective upon the Closing under the Option Agreement, unless sooner terminated as otherwise herein provided.

(j) **Early Termination for Shortfall.** Buyer may in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller, pursuant to Section 9.5.

(k) **Early Termination Due to Environmental Effects.** Buyer may in its sole discretion and without penalty to Buyer, terminate this Agreement, in either case, effective upon notice to Seller, pursuant to Section 3.1.

(l) **Effect of Termination.** Except as otherwise provided herein, any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of a Party for Defaults occurring prior to such termination.

ARTICLE III DEVELOPMENT OF THE FACILITY

Section 3.1 CEQA Determinations. Buyer has all rights and powers available to it as a responsible agency under CEQA to participate in the CEQA review of the Facility, including commenting on the lead agency's notice of preparation, consulting with and providing comments to the lead agency during preparation of the CEQA Documents. Buyer shall have full discretion to consider the CEQA Documents in order to reach its own decision under CEQA about the Facility, with full authority under CEQA to: (a) adopt and require feasible mitigation measures or alternatives to avoid or lessen significant environmental impacts resulting from the Facility; (b) determine that any significant impacts that cannot be mitigated are acceptable due to overriding concerns; or (c) terminate this Agreement due to the Facility's significant adverse environmental impacts. On or before the thirtieth (30th) day after the lead agency's filing of a notice of determination under CEQA, or the thirtieth (30th) day after the Effective Date, whichever is later, Buyer may issue one of the following: (i) a notice confirming it has complied with CEQA Guidelines sections 15096(a), (f), (g), and (h) by considering the CEQA Documents, adopting applicable alternatives or mitigation measures, making findings, and filing a Notice of Determination for its approval of the purchase of Facility Energy (the "**CEQA Acceptability Notice**"), or (ii) a notice that Buyer, based upon its independent review of the CEQA Documents, has determined not to approve the purchase of the Facility Energy hereunder, and to terminate this Agreement, the Option Agreement and the Storage Option Agreement due to the significant adverse environmental effects from the Facility specified in the CEQA Documents (the "**CEQA Unacceptability Notice**"). If Buyer fails to provide Seller with a notice by the end of such thirty (30) day period, so long as no challenge has been successfully made or is pending against the determination of the lead agency as of such date, Buyer will be deemed to have confirmed that Seller has complied with CEQA Guidelines. The Parties shall work together in good faith to make any necessary amendments to this Agreement required in connection with the CEQA review process. Upon delivery by Buyer of a CEQA Unacceptability Notice, this Agreement, the Option Agreement and the Storage Option Agreement shall automatically terminate.

Section 3.2 General.

(a) **Project Design.** Seller shall determine the proposed design and configuration of the Facility as it deems appropriate, subject to the Requirements and the requirements of the Ancillary Documents, including the characteristics and other requirements for the Facility set forth in Appendix B-1, and also subject to any conditions imposed by the lead agency or any responsible agency as part of the CEQA review of the Facility and which Seller deems acceptable.

(b) **Permitting.** Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to construct, maintain, and operate the Facility in accordance with the Requirements and for the performance of Seller's obligations hereunder.

(c) **Meetings with Governmental Authorities.** Seller shall represent the Facility as necessary in all meetings with and proceedings before all Governmental Authorities.

(d) **Construction.** Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. Seller shall develop, operate and maintain the Facility, at its sole risk and expense, and in compliance with the Requirements and applicable manufacturer's and operator's specifications and recommended procedures; *provided, however*, meeting these requirements shall not relieve Seller of its other obligations under this Agreement.

(e) **Other Information.** In addition to the reports required to be delivered under this Agreement, including Section 3.6, and Section 5.6, Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations, of Seller, its Subcontractors or the Facility, financial or otherwise, and other data concerning the Seller, its Subcontractors or the Facility as Buyer or Buyer's Authorized Representative may, from time to time, reasonably request. Buyer and Buyer's Authorized Representative shall be permitted to inspect the Facility from time to time upon reasonable notice to Seller and during reasonable business hours subject to Site safety protocols and orientation, but Buyer and Buyer's Authorized Representative shall not interfere with the activities at the Facility.

(f) **Recording.** No later than five (5) Business Days after the later of execution of the Land Lease and Seller's receipt of a memorandum of option executed by Buyer, Seller shall record (i) a memorandum of option in the form required by the Option Agreement in the Official Records of Sacramento County, California, and (ii) a memorandum of option in the form required by the Storage Option Agreement in the Official Records of Sacramento County, California.

Section 3.3 Site Confirmation. Seller represents and warrants that (a) Seller's agents and representatives have visited, inspected and are familiar with the Site and its surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, the presence, if any, of archaeological and cultural artifacts and topography, and solar radiation, air and water quality conditions, (b) Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, the presence, if any, of endangered species, handling and storage of materials and equipment, and availability and quality of labor and utilities), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section 3.3 shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer.

Section 3.4 Subcontracts.

(a) Seller shall cause provisions to be included in each Subcontract that provide: (i) Buyer with rights of access to the Facility and the work performed under such Subcontract at all reasonable times (but subject to Site safety protocols and orientation) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information; and (ii) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyer and its agents, representatives and

consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof or the exercise of Buyer's rights under Section 5.2.

(b) Seller shall deliver to Buyer a schedule of the performance of initial performance tests and all other tests required under each Subcontract.

Section 3.5 (a) Certification of Commercial Operation Date. Not less than thirty (30) days prior to the date upon which Seller expects to achieve Commercial Operation, Seller shall give written notice to Buyer of such expected Commercial Operation Date. Seller shall provide Buyer with notice in accordance with Section 14.2 when Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "**Commercial Operation**" have been satisfied; *provided, however*, that Buyer shall not be obligated to accept a Commercial Operation Date that is earlier than [Insert Date]. Within ten (10) Business Days of Seller's notice of Commercial Operation, Buyer shall in writing either accept or reject the notice in its reasonable discretion and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. If, during such ten (10) Business Day period, Buyer does not either accept or reject such notice, then for all purposes of this Agreement Buyer shall be deemed to have accepted such notice. Upon Buyer's acceptance or deemed acceptance of such notice as provided in this Section 3.5, the Commercial Operation Date shall be the date upon which the conditions for Commercial Operation of the Facility occurred.

(b) **Consequences of Failure to Obtain an FCDS Finding.** If (a) the network and transmission upgrades required in the Generator Interconnection Agreement and associated studies or reports to achieve FCDS are not in service, or (b) such upgrades are in service but CAISO has not yet confirmed in writing the Facility's Net Qualifying Capacity, in either case by the date when all requirements for Commercial Operation other than the FCDS Finding requirement have been satisfied, then for each billing cycle until such required network and transmission upgrades are placed in service and all other conditions to the Full Capacity Deliverability Status Finding have been satisfied, (1) clauses (b) and (c) in the definition of FCDS Finding shall not apply for purposes of satisfying clause (i) of the definition of "Commercial Operation", and (2) the Contract Price shall be reduced by (x) \$X.XX/MWh during the first ninety (90) days after the Commercial Operation Date, and, if applicable (y) \$X.XX/MWh thereafter for Facility Energy, pro-rated for partial deliverability amounts and for any amounts of Net Qualifying Capacity that Buyer can obtain and use for its Resource Adequacy purposes. By way of example only, if at the Commercial Operation Date, only 25% of the Contract Capacity has qualified for deliverability status, 75% of the Facility Energy shall receive the reduced Contract Price of \$XX.00/MWh for the first 90 days after the Commercial Operation Date and shall receive the reduced Contract Price of \$XX.00/MWh thereafter until all conditions of the FCDS Finding have been satisfied.

Section 3.6 Milestone Schedule.

(a) Attached as Appendix I is a milestone schedule with deadlines for the development of the Facility through the Commercial Operation Date (each milestone, a "**Milestone**" and each date by which a Milestone is to be completed, a "**Milestone Date**"). Seller shall achieve each Milestone by the Milestone Date therefor. Until the Commercial Operation

Date, Seller shall provide Buyer with a report on a quarterly basis (until six (6) Months prior to the scheduled Commercial Operation Date, at which time such reports shall be provided on a Monthly basis) that includes: (i) a description of the Site plan for the Facility, (ii) a description of any planned changes to the Facility or Site plan since the previously delivered report, (iii) a bar chart schedule showing progress to achieving the remaining Milestones, (iv) a chart showing the critical path schedule of major items and activities, (v) a summary of activities at the Facility during the previous Month, (vi) a forecast of activities during the then-current Month, (vii) a list of any issues that could impact Seller's achievement of Milestones by the applicable Milestone Dates, and (viii) pictures, in sufficient quantity and of appropriate detail, documenting construction and startup progress with respect to the Facility. If Seller anticipates that it will not achieve a Milestone by the applicable Milestone Date (as such date may be extended pursuant to this Section 3.6), Seller shall promptly prepare and deliver to Buyer a remedial action plan ("**Remedial Action Plan**"), which shall set forth (1) the anticipated period of delay, (2) the basis for such delay, (3) an outline of the commercially reasonable steps that Seller is taking to address the delay and to ensure that future Milestones, including the Guaranteed Commercial Operation Date, will be timely achieved, (4) a proposed revised date for achievement of the applicable Milestone and (5) such other information and in such detail as may be reasonably requested by Buyer. Except as set forth in Section 3.6(c), Seller shall not have any liability for failure to timely achieve a Milestone other than the obligation to submit a Remedial Action Plan; *provided, however*, that the foregoing shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any other Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Milestone.

(b) Each Milestone Date (including the Outside Commercial Operation Date) may be extended, on a day-for-day basis to the extent Seller is actually, demonstrably and unavoidably delayed in achieving such Milestone due to Force Majeure; provided that the Outside Commercial Operation Date shall not be extended beyond [Insert Date], for any reason whatsoever.

(c) If Seller fails to achieve any Key Milestone by the applicable Milestone Date, including a failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.6(b)), Seller shall pay liquidated damages to Buyer in an amount equal to (i) the number of days between the Milestone Date and the date upon which such Key Milestone is achieved (or the Agreement is terminated by Buyer), multiplied by (ii) the applicable daily liquidated damage amount set forth for such Key Milestone in Appendix I (the "**Daily Delay Damages**"). For the avoidance of doubt, if multiple Key Milestones are missed, Seller shall pay Daily Delay Damages for each Key Milestone. If Seller fails to achieve any Key Milestone other than the Guaranteed Commercial Operation Date, by the date that is one hundred eighty (180) days after the Milestone Date for such Key Milestone, Buyer shall have the right in its sole discretion and without penalty to (1) terminate this Agreement for a Default under Section 13.4, or (2) allow Seller to continue to pay the Daily Delay Damages to Buyer, during which time Buyer shall not terminate the Agreement based on Seller's failure to timely achieve such Key Milestone. If Seller achieves the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, then Buyer shall refund to Seller, without interest, any amounts previously paid to Buyer as Daily Delay Damages for failure to achieve the Environmental Compliance Key Milestone and/or the Site Control Key Milestone by the respective Milestone Date therefor. If Seller fails to achieve Commercial Operation by the Outside

Commercial Operation Date (as such date may be extended pursuant to Section 3.6(b)), Buyer shall have the right in its sole discretion and without penalty to terminate this Agreement for a Default under Section 13.4.

(d) The damages that Buyer would incur due to Seller's failure to timely achieve a Key Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Daily Delay Damages are a fair and reasonable calculation of such damages, and shall be Seller's sole liability and obligation, and Buyers' sole right and remedy, for Seller's failure to achieve any Key Milestone by the Milestone Date therefor. Notwithstanding the foregoing, the Daily Delay Damages shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with, before or after Seller's delay in achievement of the applicable Key Milestone, or in connection with any termination for failure to achieve a Key Milestone by the Milestone Date therefor or Commercial Operation by the Outside Commercial Operation Date.

Section 3.7 Decommissioning and Other Costs. Unless a Closing occurs pursuant to the exercise by Buyer of the ROFO, ROFR or the Project Purchase Option, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 General Operational Requirements. Seller shall, at all times:

(a) At its sole expense, operate and maintain the Facility (i) in accordance with the Requirements and (ii) in a manner that is reasonably likely to achieve the Annual Contract Quantity and result in a useful life for the Facility of not less than the Delivery Term;

(b) At its sole expense, operate and maintain the Facility using a Qualified Operator in accordance with the Requirements;

(c) Use qualified and trained personnel managing, operating and maintaining the Facility and for coordinating with Buyer, and ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

(d) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and Transmission System; and

(e) Comply with operating and maintenance standards recommended or required by the Facility's equipment suppliers.

Section 4.2 Operation and Maintenance Plan.

(a) **General.** Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such

equipment in accordance with Prudent Utility Practices and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

(b) **After Commercial Operation.** Following the Commercial Operation Date, Seller shall provide to Buyer on a quarterly basis, any regularly prepared operations and maintenance status reports of the Facility provided to WECC or the Facility Lenders. In addition to the other required and preventative maintenance actions required by this Agreement, Seller shall (and shall notify Buyer results of the following): (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify and perform all preventative maintenance requirements for the following calendar year; (iii) schedule and assign routine maintenance during operations, planned outages, as well as maintenance that can be conducted in parallel; (iv) conduct periodic maintenance to various equipment; (v) conduct periodic quality assurance and quality control activities and inspections in accordance with the Quality Assurance Program; and (vi) hire Subcontractors, as applicable to meet the Facility's maintenance, betterment, and improvement needs.

Section 4.3 After Purchase Option Notice. Following the provision by Buyer of a Purchase Option Tentative Exercise Notice (as defined in the Option Agreement) and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement, Seller shall, to the extent prepared in the ordinary course of business:

(a) devise and implement, or cause the Qualified Operator to devise and implement, an operations and maintenance plan, or implement an existing plan that includes the status of the Facility and each of the major components thereof in order to maintain such equipment in accordance with Prudent Utility Practices (the "***Operation and Maintenance Plan***"). Such Operation and Maintenance Plan shall be consistent with the requirements of any Facility Lender. Seller shall keep, or cause the Qualified Operator to keep, records with respect to inspections, maintenance, and repairs. The Operation and Maintenance Plan and all records associated therewith shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice; provided that Buyer shall at all times comply with Seller's or the Qualified Operator's written safety and security requirements and shall not interfere with Facility operations and activities when present at the Facility;

(b) provide Buyer, on a quarterly basis, with a detailed description in the form of a written report, regarding the on-going operations of the Facility during such quarter, setting forth the status of the operations of the Facility or any component thereof, including any equipment or other operational or maintenance failures, defects or other issues and any repairs, replacements, or other remediation provided or to be provided therefor in a form which is reasonably acceptable to Buyer;

(c) as of [Month/Year] of each calendar year, update the Operation and Maintenance Plan for the subsequent twelve (12) Month calendar year period and submit the same to Buyer;

(d) perform routine and preventive maintenance actions in accordance with all applicable manufacturers' instructions, the Quality Assurance Program, Prudent Utility Practice, and the Operation and Maintenance Plan, including to: (i) conduct regular visual equipment inspections and log significant parameters ; (ii) identify all preventive maintenance requirements for a period of the following two (2) calendar years; (iii) schedule and assign routine maintenance during operations, planned outages, and maintenance that can be conducted in parallel (but not extend required actions) in the event of a forced or unscheduled outage, and outage and curtailment notifications (scheduled and unscheduled); (iv) conduct periodic maintenance to various equipment, and provide a report about any findings to Buyer; (v) conduct periodic quality control and quality assurance activities and inspections in accordance with Appendix G and provide reports thereof to Buyer; and (vi) hire Subcontractors, as applicable, to meet the Facility's plant's maintenance, betterment, and improvement needs.

Section 4.4 Environmental Credits. Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any Requirement of Law; *provided* for the avoidance of doubt, Seller shall not use any Environmental Attributes to satisfy the foregoing obligation.

Section 4.5 Outages.

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during specified periods of time during each calendar year in accordance with Prudent Utility Practices and this Section 4.5 (such periods, the "***Major Maintenance Blockout***"). No later than one hundred twenty (120) days prior to the anticipated Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices. No later than sixty (60) days prior to the anticipated Commercial Operation Date, and for each calendar year thereafter, no later than one hundred twenty (120) days prior to the deadline for providing the CAISO Resource Adequacy filings and proposed maintenance outages for the following year as described in the CAISO Tariff, Seller shall provide Buyer and the Scheduling Coordinator with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the "***Scheduled Outage Projection***") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with maintenance scheduling requests by Buyer consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (A) the anticipated start and end dates of each Scheduled Outage; (B) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (C) the anticipated MW of operational capacity, if any, during the Scheduled Outage. Seller shall use commercially reasonable efforts to notify Buyer and its Scheduling Coordinator of any change in the Scheduled Outage Projection fifty-five (55) days prior to first day of the Month of the originally-scheduled date of the Scheduled Outage but in no event shall Seller notify Buyer later than forty-five (45) days prior to the first day of the Month of the originally-scheduled date of the Scheduled Outage. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and shall, to the extent feasible and consistent with Prudent Utility Practices, arrange for Scheduled Outages to

occur between October 1 and May 1 of each year (or such other period as reasonably determined by Buyer from time to time) and coincident with planned transmission outages, but not to overlap with the Major Maintenance Blockout. In the event of a System Emergency, Seller shall use commercially reasonable efforts to reschedule any Scheduled Outage previously scheduled so that it occurs during the System Emergency.

(b) In addition to reporting outages to Buyer and the Scheduling Coordinator within any applicable time period for reporting outages under the CAISO Tariff and applicable rules and regulations of the CAISO, immediately upon identification of a situation likely to result in a Forced Outage occurring within a twenty-four (24) hour period that is likely to cause or require removal of the Facility from service, or a reduction in the maximum output capability of the Facility by one (1) MW or more from the value most recently recorded in the generation outage reporting system for the CAISO, Seller shall notify Buyer and the Scheduling Coordinator. For all other Forced Outages, Seller shall provide Buyer and the Scheduling Coordinator with as much advance notice as practicably possible, but in all cases, shall notify Buyer and the Scheduling Coordinator within 30 minutes after the commencement of the Forced Outage. Seller shall provide detailed information concerning each Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW of operational capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

(c) In addition to the requirements set forth in Section 4.5(a) and Section 4.5(b), the Parties shall cooperate to develop mutually acceptable procedures for addressing Scheduled Outages and any other outages arising in connection with the Project.

(d) In the event of any inconsistency between the provisions in this Section 4.5 and any applicable requirements of CAISO, the provisions of CAISO shall govern.

ARTICLE V

COMPLIANCE DURING CONSTRUCTION AND OPERATIONS; SECURITY

Section 5.1 Guarantees. Seller warrants and guarantees that it will perform, or cause to be performed, all development, engineering, design and construction in a good and workmanlike manner and in accordance with the Requirements. Seller warrants that to Seller's knowledge, after due inquiry, at the Commercial Operation Date, the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering and construction and covenants and agrees that it will obtain from the manufacturer(s) of the equipment installed in the Facility limited warranties in line with current solar industry practices, but with no less than, in each case, twenty (20) year limited power warranties on the photo voltaic panels installed at the Facility, ten (10) year limited product warranties on the photo voltaic panels installed at the Facility and five (5) year limited warranties on the inverters installed at the Facility. Seller further warrants that, throughout the Delivery Term: (a) the Facility will be free and clear of all Liens other than Permitted Encumbrances, and (b) the Facility will be designed, constructed and tested in compliance with the Requirements. Seller also warrants and guarantees that throughout the Delivery Term, it will monitor the operation and

maintenance of the Facility and that said operation and maintenance is, and will be, in full compliance with all Requirements applicable to the Facility. Without limiting the foregoing, Seller shall promptly repair and/or replace, consistent with Prudent Utility Practice, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently. Seller shall exercise commercially reasonable efforts to timely undertake all updates or modifications to the Facility, and its equipment and materials, including procedures, programming and software, required by Prudent Utility Practice. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with Prudent Utility Practice.

Section 5.2 Buyers' Rights to Monitor in General. Buyer shall have the right, and Seller shall permit Buyer and its Authorized Representative, advisors, engineers and consultants, to observe, inspect, and monitor the construction and operations and activities of the Facility, including (a) reviewing and monitoring all initial performance tests during Facility start-up and all tests required under the Subcontracts to be performed prior to each Milestone and achievement of Commercial Operation, and (b) performing such detailed examinations and inspections as, in the judgment of Buyer, are appropriate and advisable to determine that the Facility equipment and ancillary components of the Facility have been installed in accordance with the Requirements; provided that such activities on the part of Buyer and its Authorized Representative shall be coordinated with Seller so as to not interfere with the construction or operation of the Facility. Seller shall provide Buyer at least ten (10) Business Days prior notice of the commencement of any performance tests. Seller shall cause its personnel, consultants, and contractors to be available to, and cooperate in all reasonable respects with, Buyer and its Authorized Representative, advisors, engineers, and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing, performance, operation, or maintenance thereof and Buyer's exercise of its rights under this Section 5.2. Buyer's rights to access the Facility shall be subject to Seller's, and, if applicable, Subcontractor's or the Qualified Operator's reasonable safety protocols.

Section 5.3 Effect of Review by Buyer. Any review by Buyer or a Buyer's Authorized Representative of the design, construction, engineering, operation or maintenance of the Facility, or observation of any testing, is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review or observations with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller), nor any failure to conduct any such review, nor any observation of testing or failure to observe testing, relieve Seller from any of its obligations under this Agreement. By making any such review or observing any such testing, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer or Buyer's Authorized Representative of the Facility thereof, including any review of the design, construction, operation or maintenance, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

Section 5.4 Quality Assurance Program. Seller agrees to maintain and comply with a written quality assurance policy ("*Quality Assurance Program*") attached hereto as Appendix G,

and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

Section 5.5 No Liens. Except as otherwise permitted by this Agreement (including without limitation in connection with Tax Equity Financing utilizing a lease or inverted lease structure): (a) the Facility shall be owned by Seller during the Agreement Term; and (b) Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of the Facility or any other property or assets that are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer.

Section 5.6 Reporting and Information. Commencing on the date Test Energy is first delivered to Buyer, Seller shall provide to Buyer and the Scheduling Coordinator (a) Monthly reports of the operation of the Facility, which shall include (i) a performance summary of the Month- and Contract Year-to-date MWh delivery of Facility Energy, capacity factor, and availability (including actual availability vs. expected availability), (ii) reports of expected generation indicators of when Shortfall Energy may result; (iii) descriptions of weather, reasons for any downtime, maintenance or repairs, and Curtailment Periods and other curtailment events during the applicable Month, and (iv) a safety and environmental summary, and (b) such other information regarding the permitting, engineering, construction or operations of the Facility as Buyer or the Scheduling Coordinator may, from time to time, reasonably request.

Section 5.7 Performance Security.

(a) Within ten (10) Business Days after the Effective Date, Seller shall furnish to Buyer (i) one or more letters of credit issued by Qualified Issuers substantially in the form attached hereto as Appendix E or otherwise reasonably acceptable to Buyer, or (ii) cash (to be held in an escrow account pursuant to an escrow agreement with a Qualified Issuer in form and substance satisfactory to Buyer (an “*Escrow Account*”)), or a combination of the two, in the aggregate amount of [Insert Amount] (\$X,XXX,XXX), which shall guarantee Seller’s obligations under this Agreement (the “*Project Development Security*”) *provided*, that if (1) any collateral security interests granted by Seller to secure any Facility Debt also secures obligations of the borrower or of its Affiliates with respect to any project other than the Facility or (2) the Facility Debt is in an amount that, in the aggregate, exceeds seventy percent (70%) of the Facility Cost, then, in each case, the amount of the Project Development Security shall be increased by [Insert Amount](\$XX,XXX), for an increase in total of [Insert Amount](\$XXX,XXX) in the event there is a coincident occurrence of both (1) and (2), during such period as the grant of collateral security interests by Seller remains in place or the Facility Debt exceeds seventy percent (70%) of the Facility Cost, as applicable. For the avoidance of doubt, the total amount of additional security Seller may be required to post shall be [Insert Amount](\$XXX,XXX) in the event that there is a coincident occurrence of both (1) and (2) above. Seller shall maintain the Project Development Security until Seller posts the Delivery Term Security pursuant to Section 5.7(b), or until Buyer is required to return the Project Development Security under Section 5.7(c).

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer (1) one or more letters of credit issued by Qualified Issuers substantially in the form attached hereto as Appendix E or otherwise reasonably acceptable to Buyer, or (2) cash (to be held in an Escrow Account), or (3) a performance and payment bond from a Qualified Bond Issuer in form and substance acceptable to Buyer, or any combination of the foregoing (subject to the limitation on any performance and payment bond as provided below), in the aggregate amount of [Insert Amount] Dollars (\$X,XXX,XXX) which shall guarantee Seller's obligations under this Agreement (collectively, the "***Delivery Term Security***"); provided that under no circumstances shall any performance and payment bond provided as part of the Delivery Term Security exceed the amount of [Insert Amount] Dollars (\$XXX,XXX). From and after the end of the tenth (10th) Contract Year, the required amount of the Delivery Term Security shall be reduced to [Insert Amount] Dollars (\$X,XXX,XXX) and shall consist of (1) one or more letters of credit issued by Qualified Issuers substantially in the form attached hereto as Appendix E or otherwise reasonably acceptable to Buyer, or (2) cash (to be held in an Escrow Account), or any combination of the foregoing. From and after the Commercial Operation Date, Seller shall maintain the Delivery Term Security in the required amount until the end of the Delivery Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.7(c).

(c) Buyer shall return the unused portion of the (i) Project Development Security, if any, to Seller promptly after: (A) Seller's provision of the Delivery Term Security, unless Seller elects to apply the Project Development Security toward the Delivery Term Security, or (B) the effective date of any early termination of the Agreement by Buyer promptly upon payment of all damages due and owing to Buyer, and (ii) Delivery Term Security, if any, to Seller promptly after: (A) the Agreement Term has ended, and (B) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(d) Buyer may draw on the Performance Security (i) at any time following Seller's failure to timely pay Daily Delay Damages when due hereunder in the amount of such Daily Delay Damages, (ii) upon Seller's failure to pay Buyer the Shortfall Damages when due hereunder, or (iii) upon Seller's failure to make when due any other payment due to Buyer hereunder in the amount of such unpaid payment, including any Termination Payment. Buyer may draw all or any part of such amounts due to Buyer from any form of security provided under this Section 5.7, and in any sequence Buyer may elect, in its sole discretion. Any failure of, or delay by, Buyer in electing to draw any amount from the Performance Security shall in no way prejudice Buyer's rights to subsequently recover such amounts from the Performance Security or in any other manner. Within five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the applicable amount set forth in Section 5.7(a) or Section 5.7(b).

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, Seller shall replace the Performance Security from the Person that has suffered the Downgrade Event within ten (10) Business Days of Seller's knowledge of the occurrence of such Downgrade Event. Such replacement security shall meet the

requirements of this Section 5.7. If the replacement Performance Security is not provided by Seller, Buyer shall have the right to demand payment of the full amount of the Performance Security, and Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that if and to the extent such amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement have been paid or performed in full.

(f) If any Performance Security is in the form of a letter of credit, then Seller shall provide, or cause to be provided, a replacement letter of credit from a Qualified Issuer, in the amount required under this Section 5.7 within ten (10) Business Days of notice from Buyer to Seller requesting such replacement Performance Security after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit to extend such letter of credit at least fifteen (15) Business Days prior to the expiration of such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes Bankrupt. If the replacement letter of credit is not delivered in accordance with this Section 5.7(f), Buyer shall have the right to demand payment of the Performance Security, and Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that, if and to the extent such retained amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement shall have been paid or performed in full.

(g) Seller shall, from time to time as requested by Buyer's Authorized Representative, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Requirements of Law, the Performance Security and the rights, Liens and priorities of Buyers with respect to such Performance Security.

(h) Notwithstanding the other provisions of this Agreement, the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyers' exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

ARTICLE VI PURCHASE AND SALE OF PRODUCT

Section 6.1 Purchases by Buyer.

(a) Subject to the terms of this Agreement, prior to the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Test Energy for the applicable Contract Price set forth in Section 1 of Appendix A-1.

(b) Subject to the terms of this Agreement, and except as set forth in Section 6.1(d), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with

Facility Energy (other than Excess Energy) and the Replacement Product at the applicable Contract Price set forth in Section 2 of Appendix A-1.

(c) Subject to this Agreement, and except as set forth in Section 6.1(d), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Excess Energy at the applicable Contract Price set forth in Section 3 of Appendix A-1.

(d) Seller shall use good faith efforts to ensure that the Facility is CEC Certified following the Commercial Operation Date. During the period of time between the Commercial Operation Date and the day that is one (1) day following the date upon which Seller delivers evidence to Buyer that the Facility is CEC Certified (the “**Pre-Certification Period**”), Buyer shall have the right to retain a portion of any payment to be made to Seller under Section 6.1(a) and Section 6.1(c) in an amount equal to the difference between (i) the applicable Contract Price, and (ii) NP-15 Price for the respective hours in which Facility Energy was generated. Buyer shall release such retained amount, without interest of any kind, within thirty (30) days following Buyer’s receipt from Seller of the CEC certificate confirming that the Facility is CEC Certified, but only to the extent that Buyer is able to apply the RECs generated by the Facility during the Pre-Certification Period towards compliance with Buyer’s obligations under RPS Law.

Section 6.2 Third Party Sales. Except as provided in ARTICLE IX, in no event shall Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Except with the prior written consent of Buyer or as otherwise provided in Section 6.3 or Section 7.4, Seller shall not sell or otherwise transfer all or any part of the Products required to be delivered by Seller under this ARTICLE VI, ARTICLE VII, ARTICLE VIII or ARTICLE X to someone other than Buyer. Buyer will cooperate with Seller to enable scheduling of any Products resold to a third party as permitted herein and shall promptly remit any net revenues received by Buyer in connection with such third party sales. A violation of this Section 6.2 shall be an immediate Default, and in addition to any other rights and remedies available to it under Section 13.2, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting (A) the price per MWh that would have been payable by Buyer for the Products not delivered from (B) the Replacement Price. Buyer shall provide Seller prompt written notice of the Replacement Price, together with back-up documentation.

Section 6.3 Buyers’ Failure. Unless excused by Force Majeure, a System Emergency, or Seller’s failure to perform and except during any Curtailment Period, if Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy or Replacement Product required to be received by Buyer under this ARTICLE VI, ARTICLE VIII, or ARTICLE X, Buyer shall, on the date payment would otherwise be due to Seller, pay Seller Cover Damages; *provided* that Seller shall use commercially reasonable efforts to resell any Facility Energy and Environmental Attributes not able to be received by Buyer; *provided* that Buyer shall provide notice to Seller in writing if it elects to receive the Environmental Attributes associated with Facility Energy to be sold to third parties, and if Buyer so elects, Seller shall deliver to Buyer the Environmental Attributes associated with Facility Energy sold to third parties. “**Cover Damages**” means the positive difference, if any, obtained by subtracting (A) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy or Replacement Product, and,

if applicable Environmental Attributes, (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (B) the price that would have been payable by Buyer for the Facility Energy, Replacement Product, or Environmental Attributes, if applicable, not received by Buyer, plus any reasonable and documented costs incurred by Seller in connection with the resale or attempted resale of such Facility Energy, Replacement Product, or Environmental Attributes, if applicable. Seller shall provide Buyer prompt notice of the Cover Damages together with back-up documentation.

Section 6.4 Nature of Remedies. The remedy set forth in Section 6.2 is in addition to, and not in lieu of, any other right or remedy of Buyer, under this Agreement or otherwise, for failure of Seller to sell and deliver the Products as and when required by this Agreement. The remedy set forth in Section 6.3 is the sole and exclusive remedy of Seller for any failure by Buyer to receive the Product as and when required by this Agreement, and all other remedies and damages for any such failure are hereby waived by Seller.

ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General.

(a) Seller shall use all reasonable efforts consistent with Prudent Utility Practices and the other provisions of this Agreement to maximize the output of Facility Energy from the Facility except as otherwise set forth and in accordance with this Agreement. Subject to Buyer's role as Scheduling Coordinator for the Facility, Seller shall arrange for, and shall bear all risks and benefits associated with, delivery of all Facility Energy and Replacement Product to the Point of Delivery, including the arrangement of and payment for the interconnection of the Facility to the CAISO grid and any Transmission Services required to deliver Test Energy, Facility Energy and Replacement Product to the Point of Delivery at the CAISO grid, including interconnection costs, transmission losses to the Point of Delivery, the transmission of Facility Energy, and transformer crossover fees associated with the transmission of Energy from the on-site substation to the Point of Delivery; *provided* that Replacement Product may be delivered at alternative locations as may be mutually agreed by the Parties.

(b) Buyer shall arrange for, and shall bear all risks and retain all benefits associated with, acceptance and transmission of Facility Energy and Replacement Product at and from the Point of Delivery, including the arrangement of and payment for Transmission Services from the Point of Delivery at the CAISO grid, and shall Schedule or arrange for Scheduling and Transmission Services to deliver Facility Energy and Replacement Product to Buyer, including charges related to control area services, inadvertent energy flows, transmission losses, the transmission of Facility Energy and Replacement Product, and otherwise associated with the management of Buyer's loads.

(c) Facility site with any one of the following conditions may not be required to be registered with the CAISO:

- (i) Capacity less than 500 KW; or
- (ii) A Distributed Generation Resource; or
- (iii) Located outside of the CAISO Balancing Authority Area

Section 7.2 Scheduling Coordinator; CAISO Cost Allocation. If applicable, Buyer or Buyer's designee shall act as Scheduling Coordinator for the Facility and shall have the full right and obligation to Schedule all Energy from the Facility (including but not limited to any Energy Seller needs to sell in mitigation of damages as required hereunder) in accordance with all CAISO and other applicable requirements. The Facility shall have a separate resource ID with CAISO for scheduling purposes. Buyer shall be financially responsible for and shall pay for all CAISO Costs; provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges under a Settlement Statement (i) incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement, (ii) incurred by Buyer because of any outages, including Scheduled Outages and Forced Outages, for which notice has not been provided as required under this Agreement, or (iii) to the extent arising as a result of Seller's failure to comply with a Curtailment Order under Section 7.4 if such failure results in incremental costs to Buyer.

Section 7.3 Forecasting and Scheduling of Energy.

(a) Except upon the occurrence of a curtailment under Section 7.4, Buyer, as Scheduling Coordinator, shall Schedule all Facility Energy and Replacement Energy (including all Energy sold by Seller in mitigation of damages hereunder) in accordance with the CAISO Tariff, NERC and WECC operating policies and criteria, and any other applicable guidelines, and the Scheduling and forecasting procedures provided in or developed under this Section 7.3, based on the then-most-current forecast of energy provided under the EIRP Forecast. Seller, at its own cost, shall install metering, telemetry and control equipment so as to be able to provide Facility Energy to the Point of Delivery and respond to CAISO, Transmission Provider, or reliability coordinator's dispatch orders.

(b) Buyer, as Scheduling Coordinator, will take all actions, at Seller's sole cost and expense, required to cause the Facility to be a certified Participating Intermittent Resource and to cause the Facility to become and remain a participant in PIRP, as soon as reasonably possible, consistent with the CAISO Tariff, following the Commercial Operation Date. Prior to the effective date of the PIRP certification, (x) Buyer, as Scheduling Coordinator, shall submit bids to CAISO consistent with the most recently available valid forecast provided by Seller to Buyer under Section 7.3(c), and (y) provided that Buyer has complied with subsection 7.3(b)(x), Seller will reimburse Buyer for fifty percent of all imbalance costs, expenses and charges related to the Facility up to \$XXXX per Month (i.e. Seller's total obligation to Buyer under this subsection 7.3(b)(y) is up to \$XXXX per Month) until the earlier of (I) the Facility is a certified Participating Intermittent Resource, and (II) ninety (90) days after the Commercial Operation Date. Seller shall provide Buyer and the Scheduling Coordinator with a copy of the notice from the CAISO certifying the Facility as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Following certification and whenever applicable, Seller and Buyer shall comply with PIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during the Delivery Term. All the provisions relating to Scheduling of the Facility and other matters covered by PIRP shall be interpreted and applied as may be reasonably necessary to comply with PIRP.

(c) Seller shall provide, or shall cause its designee to provide, the following

non-binding forecasts, and any updates to such forecasts, to Buyer and the Scheduling Coordinator based on the most current forecast of Facility Energy and Replacement Product:

(i) At least one-hundred twenty (120) days before (a) the scheduled Commercial Operation Date and (b) the beginning of each Contract Year, a non-binding forecast of each Month's average-day deliveries of Facility Energy and Replacement Product from the Facility, for the following eighteen (18) Months.

(ii) No later than sixty (60) days before the beginning of each Month during the Delivery Term, a non-binding forecast of each day's average hourly deliveries of Facility Energy and Replacement Product, for such Month.

(iii) No later than ten (10) Business Days before the beginning of each Month during the Delivery Term, a non-binding forecast of each day's average hourly deliveries of Facility Energy and Replacement Product for the following Month.

(iv) On the first Business Day of each calendar week during the Delivery Term, a non-binding forecast of each day's average deliveries of Facility Energy and Replacement Product, by hour, for the following fourteen (14) days.

(v) By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Facility Energy and Replacement Product during the Delivery Term, a copy of a non-binding hourly forecast of deliveries of Facility Energy and Replacement Product for each hour of the immediately succeeding day. Any forecast provided on a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall, by 10:00 a.m. Pacific Prevailing Time, provide to Buyer and the Scheduling Coordinator a copy of any updates to such forecast indicating a change in forecasted Facility Energy from the then-current forecast.

(vi) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day (as defined by WECC) for each hour of the Delivery Day (as defined by WECC) in MW or MWh units (as applicable), in the format reasonably designated by the Scheduling Coordinator, a non-binding preschedule forecast of Facility Energy and Replacement Product via email. The prescheduled amounts of Facility Energy and Replacement Product shall be the good faith estimate of Seller or Seller's designee of the anticipated delivery of Facility Energy and Replacement Product at the time. A forecast provided a day prior to any non-Business Day shall include forecasts for the next day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide to Buyer and the Scheduling Coordinator a copy of any and all updates to the forecast of the Facility's availability from the then-current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Facility availability shall be maintained in accordance with the preschedule plan submitted to the Scheduling Coordinator.

(d) Seller shall notify Buyer and the Scheduling Coordinator via email,

telephone, or other mutually acceptable method, of any hourly changes due to a change in Facility availability or an outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour, or such other limit as specified in the CAISO Tariff. Seller shall notify Buyer and the Scheduling Coordinator of other unanticipated changes in availability by email or telephone as promptly as reasonably possible. Any notice delivered under this Section 7.3(d) shall include the reason for the outage and an estimated duration of the outage. Once the outage has ended, Seller shall notify Buyer and the Scheduling Coordinator that the outage has ended, the cause of the outage, and the actions taken to resolve the outage in order for the CAISO outage report to be updated accordingly.

(e) Throughout the Delivery Term, Seller shall provide to Buyer and the Scheduling Coordinator the following data on a real-time basis, and in a format that reasonably allows Buyer and the Scheduling Coordinator to copy, paste or otherwise use such data:

(i) Read-only access to meteorological and related solar measurements, megawatt capacity and any other Facility availability information required in accordance with EIRP requirements;

(ii) Read-only access via secure login credentials to Energy output information collected by the SCADA system for the Facility; *provided* that if Buyer or the Scheduling Coordinator is unable to access the Facility's SCADA system, then upon written request from Buyer or the Scheduling Coordinator, Seller shall provide Energy output information and meteorological measurements through such other format as may be mutually acceptable to Seller and Buyer, all as may be updated from time to time based on advancements in technology in accordance with Prudent Utility Practices; and

(iii) Read-only access to all Electric Metering Devices.

(f) Seller will provide the Scheduling Coordinator and Buyer's real time operators with continuously updated non-binding hourly forecasts of deliveries of Facility Energy and Replacement Product for each hour of the succeeding twenty four (24)-hour period, in either electronic format, via an internet website accessible via secure login credentials, or via email in the form of an excel spreadsheet (or any combination thereof, so long as the Scheduling Coordinator or real time operator is able to readily access and utilize such forecasts), transmitted on an hourly basis. Seller shall reasonably cooperate with Buyer and the Scheduling Coordinator to attempt to optimize the estimates for such time period two (2) hours prior to such forecasts. Seller shall reasonably cooperate with Buyer and the Scheduling Coordinator to enable such forecasts to be prepared in accordance with mutually agreed upon communications protocols as they are implemented or upgraded from time to time in accordance with Prudent Utility Practices.

(g) Seller and Buyer and the Scheduling Coordinator shall mutually develop forecasting and Scheduling procedures in addition to those set forth in this Section 7.3, in order to administer the provisions of this Agreement in compliance with all applicable Requirements and requirements of the Transmission Provider, CAISO, NERC, WECC, and any balancing authority involved in the Scheduling of Energy under this Agreement. Seller and Buyer and the Scheduling Coordinator shall promptly cooperate to make any reasonably necessary and appropriate modifications to such forecasting or Scheduling procedures as may be required from time to time.

Section 7.4 Curtailment.

(a) Seller shall reduce deliveries of Facility Energy to the Point of Delivery immediately upon notice from Buyer, the Scheduling Coordinator, the CAISO, a Transmission Provider, or any balancing authority or reliability entity during Curtailment Periods affecting Buyer. Buyer shall be excused from receiving any Facility Energy from Seller and shall not be obligated to pay Seller for the amount of reduced Facility Energy arising during a curtailment under this Section 7.4(a); *provided* that the Parties shall calculate the amount of Deemed Generated Energy for reductions of deliveries of Facility Energy arising under this Section 7.4(a), for purposes of determining Seller's compliance towards its Guaranteed Generation. If required by Buyer, the Scheduling Coordinator, the CAISO, a Transmission Provider, or any balancing authority or reliability entity, Seller shall provide the capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megavar output in real-time by means of setpoints received by the SCADA system of Seller.

(b) In addition to the curtailments described in Section 7.4(a), Buyer may curtail deliveries of Facility Energy, at any time and for the duration specified by Buyer. For the avoidance of doubt, if no dispatch orders or instructions are received by Buyer or the Scheduling Coordinator, or if dispatch orders or instructions are received from CAISO to produce less Facility Energy from the Facility than the CAISO final market forecast amount to be produced from the Facility for any period of time (or if there is no CAISO market forecast, then, an amount of MWh calculated based on an equation that incorporates relevant Facility availability, weather and other pertinent data for the period of time during the curtailment event in order to approximate the amount of Facility Energy that would have been delivered during any period of time), in either case, solely and directly resulting from Buyer's bidding and scheduling strategies and activities, the Facility will be deemed to have been curtailed pursuant to this Section 7.4(b) for which Buyer will be required to reimburse Seller as set forth herein. Buyer, Buyer's real-time operators or the Scheduling Coordinator shall provide to Seller a dispatch notice in accordance with CAISO scheduling timelines set forth in the CAISO Tariff of its request for curtailment under this Section 7.4(b), and Seller shall comply with such request in accordance with Prudent Utility Practices, provided that the dispatch order is consistent with the Facility's operational characteristics as then-currently modeled in the CAISO Master File. The curtailment notice to Seller shall indicate the amount of any Facility Energy to be produced in each applicable Settlement Interval. Seller shall respond to curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Seller shall provide the capability to implement curtailment notices, including adjustments to operating constraints, such as ramp rates, megawatt output, and megavar output, in real-time by means of set points received by the SCADA system of Seller. Buyer has right to curtail without a limit. Buyer shall pay Seller contract price for the Deemed Generated Energy. To the extent any Facility Energy is sold to a third party under this Section 7.4(b), the obligation to pay the amounts set forth for a curtailment by Buyer under this Section 7.4(b) shall be reduced accordingly by an amount equal to the net proceeds Seller receives from such sales of Facility

Energy (after subtracting any Scheduling fees, wheeling charges, and other associated costs, fees, and reasonable expenses incurred in connection with such sales). All Environmental Attributes and Capacity Rights associated with such Facility Energy sold to third parties shall be delivered at no additional cost to Buyer.

(c) **“Deemed Generated Energy”** means the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Point of Delivery, but for a curtailment event arising under this Section 7.4 or during any other Seller Excused Hour, which amount shall be equal to (i) the amount of MWh provided for in the EIRP Forecast applicable to the curtailment or other event, regardless of whether Seller is participating in the EIRP during the curtailment event, less (ii) the amount of Facility Energy delivered to the Point of Delivery during the curtailment or other event, if any, or, if there is no EIRP Forecast available, (A) an amount of MWh calculated based on an equation that incorporates relevant Facility availability, weather and other pertinent data for the period of time during the curtailment event in order to approximate the amount of Facility Energy that would have been delivered, less (B) the amount of Facility Energy delivered to the Point of Delivery during the curtailment event, if any; *provided* that, if the applicable difference calculated pursuant to either of the formulas provided above is negative, the Deemed Generated Energy shall be zero (0). The equation in (A) and (B) shall be subject to review and approval by Buyer.

(d) Within thirty (30) days after any curtailment pursuant to Section 7.4(a) and 7.4(b), Buyer, as Seller’s SC, shall provide Seller with all necessary information needed and reasonably requested by Seller, whether from Buyer or CAISO, including CAISO “flags” with respect to the curtailments, for Seller to determine if payments are owed to Seller by Buyer pursuant to Section 7.4(b).

Section 7.5 No Payment. Buyer shall not be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Delivery for any reason (including Force Majeure), except as otherwise stated in Section 6.3 and Section 7.4(b).

Section 7.6 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of the Facility Energy at and from the Point of Delivery. Seller warrants that it will deliver all Facility Energy, Replacement Product, Capacity Rights, and all of the associated Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Facility Energy and all of the associated Products shall pass from Seller to Buyer at the Point of Delivery; *provided* that title to and risk of loss as to any Replacement Energy specified by Buyer to be delivered to a point or points of interconnection other than the Point of Delivery pursuant to Section 9.2 and all of the associated Environmental Attributes shall pass from Seller to Buyer upon delivery of such Replacement Energy to such point or points.

Section 7.7 RPS and EPS Compliance.

(a) Seller warrants and guarantees that from the time it receives notice from the CEC that the Facility is CEC Certified, and at all times thereafter until the expiration or earlier

termination of the Agreement, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be both RPS Compliant and EPS Compliant (if EPS Law is applicable to the Facility), except if the Facility fails to be RPS Compliant or EPS Compliant (if EPS Law is applicable to the Facility) as a result of (i) a Change in Law making it impossible, after the use of commercially reasonable efforts as required under Section 7.7(b), for the Facility to be RPS Compliant or EPS Compliant, or (ii) any repeal of the RPS Law or EPS Law.

(b) If a Change in Law occurs after the Commercial Operation Date that (x) does not repeal the RPS Law or the EPS Law, (y) causes the Facility to cease to be RPS Compliant and/or EPS Compliant and (z) reduces the value to Buyer of the Environmental Attributes, then Seller shall use commercially reasonable efforts to comply with such Change in Law and cause the Facility to be RPS Compliant and EPS Compliant. If, notwithstanding such commercially reasonable efforts, the Facility is still not RPS Compliant and EPS Compliant due to the occurrence of a Change in Law, then Buyer shall have the option to change the Contract Price to the PNode Price (the “**PNode Price Option**”) or such other index price as mutually agreed to by the Parties in writing; provided such PNode Price Option must be exercised in writing no later than two (2) years following an applicable Change in Law. If Buyer exercises the PNode Price Option, the Contract Price shall be the PNode Price for the respective hours in which Facility Energy was generated despite the failure of the Facility to be RPS Compliant and EPS Compliant, unless Seller delivers Replacement Product that is RPS Compliant and EPS Compliant from a RPS Compliant and EPS Compliant source. If Buyer exercises the PNode Price Option: (i) the PNode Price shall be subject to the limitation that the average price for Facility Energy paid by Buyer in any Month shall not exceed the Contract Price nor be less than [Insert Percentage] percent (XX%) of the Contract Price; (ii) Seller shall retain the Environmental Attributes and Seller shall be relieved of its obligations hereunder related thereto; and (iii) Buyer shall be entitled to the Capacity Rights generated.

(c) From time to time and at any time requested by Buyer or Buyer’s Authorized Representative, Seller will furnish to Buyer, Buyer’s Authorized Representative, Governmental Authorities, or other Persons designated by any Buyer, all certificates and other documentation reasonably requested by Buyer or Buyer’s Authorized Representative in order to demonstrate that the Facility, the Facility Energy, and the associated Environmental Attributes were or are RPS Compliant and EPS Compliant.

ARTICLE VIII ENVIRONMENTAL ATTRIBUTES

Section 8.1 Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by and between Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term associated with the Facility Energy and any Replacement Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller’s production or acquisition of the Environmental Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such

Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes except with respect to any sales by Seller pursuant to Section 6.3. Buyer and Seller acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the Contract Price.

Section 8.2 Reporting of Ownership of Environmental Attributes. During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it except with respect to any sales by Seller pursuant to Sections 6.3 and 7.4, and during a Buyer Force Majeure.

Section 8.3 Environmental Attributes. Upon the request of Buyer or Buyer's Authorized Representative, Seller shall take all actions and execute all documents or instruments necessary under applicable law regulations, guidebooks promulgated by the CEC or PUC, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term and Seller shall file with the CEC and any other applicable Persons all materials and documents required to demonstrate that the Facility is entitled to be CEC Certified.

Section 8.4 WREGIS. In furtherance and not in limitation of Section 8.3, prior to Seller's first delivery of Facility Energy hereunder, Seller shall register with WREGIS to evidence the transfer of any Environmental Attributes under applicable law or any voluntary program ("**WREGIS Certificates**") associated with Facility Energy or Replacement Product in accordance with WREGIS reporting protocols and WREGIS Operating Rules and shall register the Facility with WREGIS. After the Facility is registered with WREGIS, at the option of Buyer's Authorized Representative, Seller shall transfer WREGIS Certificates using the Forward Certificate Transfer method as described in WREGIS Operating Rules from Seller's WREGIS account to Buyer's WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for WREGIS Certificate issuance fees and WREGIS expenses associated with registering the Facility, maintaining its account, acquiring and arranging for a Qualified Reporting Entity ("**QRE**") and any applicable QRE agreements, and transferring WREGIS Certificates to Buyer, Buyer's Authorized Representative, or any other designees. Buyer shall be responsible for its WREGIS expenses associated with maintaining its own account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Forward Certificate Transfers shall occur monthly based on the certificate creation timeline established by the WREGIS Operating Rules. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each Month. In addition to the foregoing, Seller shall document the production and transfer of Environmental Attributes under this Agreement to Buyer by delivering to Buyer an attestation in substantially the form attached as Appendix D for the Environmental Attributes associated with Facility Energy or Replacement Product, if any, measured in whole MWh, or by such other method as Buyer shall designate.

Section 8.5 Further Assurances. In addition to and not in limitation of Section 8.4, Seller shall document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for the Environmental Attributes associated with Facility Energy or

included with Replacement Product, if any, for the preceding Month in the form of the attestation set forth as Appendix D. At Buyer's Authorized Representative's request, the Parties shall execute all such documents and instruments and take commercially reasonable actions in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, each Party shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

ARTICLE IX MAKEUP OF SHORTFALL ENERGY

Section 9.1 Makeup of Shortfall. Within thirty (30) days after (i) the end of the first full Contract Year and (ii) the end of each succeeding Contract Year, Seller shall provide Buyer with a calculation of Facility Energy for such Contract Year. If Seller fails during any Contract Year to deliver Facility Energy in an amount equal to the Guaranteed Generation for the Facility, then Seller shall make up the shortfall of Facility Energy ("**Shortfall Energy**") in accordance with this ARTICLE IX. During the Shortfall Makeup Period, the amount of Shortfall Energy shall be reduced by the amount of any Facility Energy or Deemed Generated Energy delivered or deemed to be delivered above the Guaranteed Generation, including Excess Energy, during the applicable Shortfall Makeup Period. If Seller fails to make up the full amount of any Shortfall Energy by the end of the Shortfall Makeup Period, or the end of an RPS Compliance Period, as applicable, Buyer may elect, in its sole discretion, to receive, for any deficiency in Shortfall Energy, Replacement Product in accordance with Section 9.2 or Shortfall Damages in accordance with Section 9.3.

Section 9.2 Replacement Product. If Buyer elects to receive Replacement Product under Section 9.1, such Replacement Product shall be delivered to the Point of Delivery or such other point of delivery as is mutually agreed upon by the Parties (which point of delivery shall be deemed the "Point of Delivery" for such Replacement Product for purposes of ARTICLE VII and the other Scheduling and delivery provisions hereof) and on a delivery schedule mutually agreed to by Seller and Buyer. Any additional costs or expenses associated with delivery of Replacement Product to a Point of Delivery designated under this Section 9.2 shall be borne by Seller. To the extent Seller is unable to deliver or provide sufficient Replacement Product to make up the remaining Shortfall Energy within sixty (60) days after the end of the Shortfall Makeup Period (the "**Replacement Product Period**"), then Seller shall pay Buyer damages for the then-remaining amount of Shortfall Energy in accordance with Section 9.3. Notwithstanding the foregoing, at the end of each RPS Compliance Period during the Delivery Term, if there is any Shortfall Energy at such time, Buyer may elect in its sole discretion to require Seller to pay Buyer damages in accordance with Section 9.3 for the amount of Shortfall Energy in the last calendar year of such RPS Compliance Period.

Section 9.3 Shortfall Damages. If Buyer has elected to receive Shortfall Damages under Section 9.1, or Seller fails to make up the full amount of any Shortfall Energy by the end of the Replacement Product Period, Seller shall within thirty (30) days after the end of the applicable

period pay Buyer damages, which damages shall be an amount, for each MWh of remaining Shortfall Energy, equal to the positive difference, if any, obtained by subtracting (a) the Contract Price from (b) the Replacement Price, and adding the amount of all documented and reasonable out-of-pocket costs and expenses incurred by Buyer to purchase such Replacement Product (“*Shortfall Damages*”). If Seller fails to pay Buyer the Shortfall Damages within such thirty (30) day period, Buyer shall have the right to immediately draw the applicable amount of Shortfall Damages owed to Buyer from the Delivery Term Security.

Section 9.4 Availability Requirement. Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable, other than the Capacity Rights.

Section 9.5 Shortfall Energy Termination. If Seller fails during any two consecutive Contract Years to deliver at least Sixty Two and One Half percent (**62.5%**) of the Guaranteed Generation for such Contract Years then Buyer, in its sole discretion, may within thirty (30) days after the end of such Contract Year, elect to either (a) collect Shortfall Damages for the Shortfall Energy pursuant to Section 9.3 and terminate this Agreement; or (b) allow Seller to cure such failure by providing Buyer with Replacement Product or Shortfall Damages as described in Section 9.2 and Section 9.3.

ARTICLE X CAPACITY RIGHTS

Section 10.1 Capacity Rights. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of Seller’s rights, title and interest in and to the Capacity Rights. The consideration for the transfer of Capacity Rights, if any, is contained within the Contract Price. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer’s ownership of the Capacity Rights or otherwise.

Section 10.2 Covenant Regarding Capacity Rights. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and shall not in the future assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. During the Agreement Term, Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belongs to it.

Section 10.3 Further Assurances. Seller shall execute and deliver such documents and instruments and take such other action as required by the CAISO and as Buyer’s Authorized Representative may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

ARTICLE XI
BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES

Section 11.1 Billing and Payment. Billing and payment for all Products shall be as set forth in this ARTICLE XI.

Section 11.2 Calculation of Energy Delivered; Invoices and Payment.

(a) Not later than the tenth (10th) day of each Month, commencing with the next Month following the Month in which Facility Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer an invoice showing the amount due for the preceding Month from Buyer to Seller for Facility Energy, Capacity Rights and Environmental Attributes. Seller shall calculate the amount of Facility Energy from meter readings at the Electric Metering Devices maintained pursuant to Section 11.6, adjusting for any applicable station load, transformation losses and transmission losses to the Point of Delivery in accordance with a methodology agreed to by Buyer. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number, the name, address and identifying information of Seller and the identification of material, equipment or services covered by the invoices, and shall be sent to the address set forth in Appendix J or such other address as Buyer may provide to Seller. Seller shall separately provide in such invoice (i) Seller's computation of any allocation for Replacement Product delivered by Seller and taken by Buyer under this Agreement during the preceding Month, any Deemed Generated Energy calculated during the preceding Month (including any supporting documentation associated therewith) and (ii) any other amounts due to Seller, including amounts due under Section 6.3. Any electronic information delivered by Seller under this ARTICLE XI shall be in a format such as Microsoft Excel (or its equivalent) that allows Buyer to cut, paste or otherwise readily use and work with such information or documentation or as otherwise mutually agreed by the Parties.

(b) Concurrently with the delivery of each Monthly invoice, Seller shall deliver attestations of all Environmental Attribute transfers (including those transferred with WREGIS) substantially in the form set forth in Appendix D.

(c) Subject to Section 11.2(d) and Section 11.3, not later than the thirtieth (30th) day after receipt by Buyer of Seller's Monthly invoice (or the next succeeding Business Day, if the thirtieth (30th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such Monthly invoice.

(d) Notwithstanding Section 11.2(c), if Buyer believes that it has insufficient information to verify the amount of Deemed Generated Energy calculated by Seller in the invoice, or if Buyer requires additional time to verify such information, Buyer shall notify Seller thereof within thirty (30) days after receipt of an invoice from Seller, and timely pay the amounts set forth in such Monthly invoice not related to Deemed Generated Energy. Within thirty (30) days after receipt by Buyer of additional information regarding such Deemed Generated Energy calculation, or on the date mutually agreed to by the Parties, Buyer shall pay to Seller the amount specified in the invoice or notify Seller of any discrepancies with respect to its calculation of the Deemed Generated Energy, in which event such invoice shall be subject to the provisions of Section 11.3.

(e) Seller shall, in subsequent invoices, adjust previously invoiced amounts to reflect (i) adjustments pursuant to Section 11.3, or (ii) adjustments, reconciliations or final settlements with WREGIS occurring after the date of the initial invoice, or any other adjustments agreed to by the Parties (which shall be without interest of any kind), *provided* that Buyer shall not be required to make invoice payments if the invoice is received more than one (1) year after the billing period.

(f) Except with respect to disputed invoices where the dispute is first raised within six (6) Months after the applicable Monthly billing period and for any adjustments made pursuant to Section 11.2(e) and Section 11.6(a), Buyer shall not be required to make invoice payments if the invoice is received more than six (6) Months after the applicable Monthly billing period.

Section 11.3 Disputed Invoices. If any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. Disputes shall be discussed directly by the Parties' Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve such Disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any Dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "**Interest Rate**" shall mean the lesser of (i) two percent (2%) above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

Section 11.4 Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, each Party shall have the right at any time or from time to time without notice to other Party or to any other Person, any such notice being hereby expressly waived, to set off against any amount due a Party from the other Party under this Agreement or otherwise any amount due such Party from the other Party under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation.

Section 11.5 Records and Audits. Seller shall maintain, and the Authorized Auditors shall have access to, all records and data pertaining to the performance and management of this Agreement (including compliance with the Requirements) and related Subcontracts, and as necessary to properly reflect all costs claimed to have been incurred hereunder and thereunder, including (a) in their original form, all (i) documents provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, employee time sheets, accounting procedures and practices, and (iv) records of financial transactions, and (b) other evidence, regardless of form (for example, machine readable media such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities). If Seller is required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. In the event of a Dispute, records

that relate to the Agreement, Dispute, litigation or costs, or items to which an audit exception has been taken, shall be maintained. Buyer and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder, the expiration or termination date of this Agreement, or final settlement of all disputes, claims, or litigation, whichever is later. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at Seller's principal business office or any other of Seller's offices as mutually agreed upon by Buyer and Seller, at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller shall be subject at any time with fourteen (14) days prior written notice to audits or examinations by Authorized Auditors, relating to all billings and required to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable governmental audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review an Authorized Auditor's examination results or audit and respond to Buyer prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days after notice to Seller of the identified overpayment. If an Authorized Auditor's examination or audit reveals that Buyer's overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit, which examination or audit expenses and costs shall be paid by Seller to Buyers within fifteen (15) days after notice to Seller. Seller shall contractually require all Subcontractors performing services under this Agreement to comply with the provisions of this Section 11.5 by inserting this Section 11.5 into each Subcontract.

Section 11.6 Electric Metering Devices. – To Be Determined

Section 11.7 Taxes. Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state, and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Site or any other assets of Seller, the Products or the transaction arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction from (but excluding) the Point of Delivery to Buyer. If Seller is required by a Requirement of Law to remit or pay Taxes that are the responsibility of Buyer hereunder, Buyer shall promptly reimburse

Seller for such Taxes. If Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

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ARTICLE XII REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 12.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller as of the Effective Date:

(a) Buyer is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of Buyer's regulatory or governing bodies, other than that which has been obtained; *provided* that further authorizations from Buyer's regulatory or governing bodies will be required for Buyer to exercise the Project Purchase Option; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

Section 12.2 Representations and Warranties of Seller. Except as otherwise set forth in Section 12.2(b), Section 12.2(h)(ii) and Section 12.2(n)(ii), Seller makes each of the following representations and warranties to Buyer as of the Effective Date and continuing throughout the Agreement Term; provided that Seller makes the representation and warranty set forth in Section 12.2(o) as of the Effective Date only.

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its respective state of incorporation or organization and is qualified to do business in the State of California, and has the legal power and authority to own or lease its properties, to carry on its business as now being conducted and (in the case of Seller) to enter into this Agreement and each Ancillary Document to which it is a party, and to carry out the transactions contemplated hereby and thereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and any Ancillary Documents to which it is a party.

(b) At the time such Ancillary Documents are executed, Seller has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement and all Ancillary Documents requiring execution by such Seller, and Seller has delivered to Buyer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct, and complete, and (ii) an incumbency certificate signed by the

secretary of Seller certifying as to the names and signatures of the Authorized Representatives of Seller.

(c) The execution, delivery and performance by each Seller of this Agreement and any Ancillary Documents to which it is a party have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) The execution and delivery of this Agreement and all Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and any Ancillary Documents, do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller (except as contemplated hereby), and Seller has obtained all Permits (including the CEQA Determinations) required for the construction, operation, and maintenance of the Facility in accordance with the Requirements and the performance of Seller's obligations hereunder and under the Ancillary Documents to which Seller is a party, or such Permits are reasonably expected to be timely obtained in the ordinary course of business.

(e) Each of this Agreement and the Ancillary Documents to which Seller is a party constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(f) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement or any Ancillary Documents.

(g) Seller is not in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement or any Ancillary Document except as may be otherwise provided in Section 7.7.

(h) (i) Seller is a Special Purpose Entity and (ii) the corporate organizational structure and ownership of Seller and the Upstream Equity Owner(s) up to the Ultimate Parent Entity, as of the Effective Date, is set forth on Schedule 12.2(h) and as of the date of each update to Schedule 12.2(h) (as provided in Section 12.4), Schedule 12.2(h) (as then updated) sets forth the corporate organizational structure of Seller and each Upstream Equity Owner.

(i) Seller has (i) not entered into this Agreement or any Ancillary Document to which it is a party with the actual intent to hinder, delay or defraud any creditor, and (ii) received

reasonably equivalent value in exchange for its obligations under this Agreement and any Ancillary Document to which it is a party. No petition in bankruptcy has been filed against Seller, and Seller has never made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(j) Seller has no reason to believe that any of the Permits (other than the CEQA Determinations) required to construct, maintain or operate the Facility in accordance with the Requirements will not be timely obtained in the ordinary course of business and by the Milestone Date required therefor.

(k) Tax returns and reports of Seller required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon Seller and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller knows of no proposed Tax assessment against it that is not being actively contested by it in good faith and by appropriate proceeding.

(l) Seller owns or possesses or will acquire all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of its obligations under this Agreement, and, to Seller's knowledge, Seller's use thereof does not infringe on the intellectual property rights of third parties.

(m) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of the Products except as provided herein.

(n) Seller (i) reasonably expects to obtain the CEQA Determinations in the ordinary course of business and (ii) on and after obtaining such CEQA Determinations, is in compliance with any mitigation plans, monitoring programs or other requirements associated therewith.

(o) As of the Effective Date, Seller has complied with all of the assumptions made with respect to Seller in the Non-Consolidation Opinion.

Section 12.3 Covenants of Seller Related to Site Control Documents.

(a) A copy of the Site Control Documents duly executed by Seller and the counterparties thereto shall be delivered to Buyer promptly upon execution thereof, but in no event any later than the Site Control Milestone Date.

(b) Seller shall on or before the Site Control Milestone Date (i) cause the execution (if applicable), delivery, and performance by Seller of the Site Control Documents to be duly authorized by all necessary action by Seller and to constitute the legal, valid, and binding obligation of Seller, (ii) maintain Site Control at all times after the Site Control Milestone Date, and (iii) provide Buyer with prompt notice of any change in the status of Seller's Site Control.

(c) For each Site Control Document capable of being recorded, Seller shall cause either a memorandum of such Site Control Document or the Site Control Document itself to

be recorded in the applicable county for such Site Control Document promptly upon execution and delivery thereof.

(d) Seller shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Site Control Documents, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could materially impair or tend to impair the rights of Seller under the Site Control Documents, or could reasonably be likely to be grounds for any Lessor or any other counterparty to Seller thereunder to terminate a Site Control Document.

(e) Seller shall use commercially reasonable efforts to enforce the provisions of the Site Control Documents short of termination thereof such that Seller may enjoy all of the rights granted to Seller thereunder.

(f) Seller shall give Buyer notice of any of the following of which Seller has actual notice upon receipt of actual notice or becoming aware of such occurrence: (i) any default or event which, with the giving of notice or passage of time, or both, would become a default under any of the Site Control Documents, or the receipt by Seller of any notice from any Lessor, or any other counterparty to Seller thereto, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to any Site Control Document. Buyer, at its option, may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under a Site Control Document. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(g) After Seller's execution and delivery of a Site Control Document, Seller shall not terminate or cancel, or permit or suffer the termination or cancellation of any Site Control Document; *provided, however*, that prior to [Insert Date], Seller may modify the Site Control Documents to add parcels to, or remove parcels from, the Site Control Documents so long as (a) Seller owns, leases or has a recorded option to purchase or lease the parcels and (b) such parcels are covered by the Conditional Use Permit; and further provided that Seller is permitted to terminate the Land Option in connection with its exercise and execution of the Land Lease. In addition, subject to the foregoing, after Seller's execution and delivery of a Site Control Document, Seller shall not (i) modify, change, amend or assign the Site Control Document in any way that would be reasonably likely to result in a material adverse effect on Seller's performance of its obligations under this Agreement or would be reasonably likely to result in a material adverse effect on Buyer's rights under the Option Agreement or Storage Option Agreement, or (ii) waive, excuse, condone, or in any way release or discharge the counterparty to any Site Control Document of or from the obligations, covenants, conditions, and agreements by such counterparty under such Site Control Document in any way that would be reasonably likely to result in a material adverse effect on Seller's performance of its obligations under this Agreement or would be reasonably likely to result in a material adverse effect on Buyer's rights under the Option Agreement or Storage Option Agreement, in each case, without the prior written consent of Buyer. In the event

of any update to the Site pursuant to this Section 12.3, Seller will provide a notice with an updated Appendix B-2 to reflect any changes to the Site, which such updated Appendix B-2 will be deemed to replace the existing Appendix B-2.

(h) On or before the Commercial Operation Date Seller shall use commercially reasonable efforts to cause each counterparty under a Site Control Document to provide Buyer with an estoppel certificate that states that: (i) the relevant Site Control Document is in full force and effect and has not been supplemented, amended, assigned or subleased; (ii) there are no uncured defaults under the relevant Site Control Document and no event or circumstance has occurred and is continuing which, with the giving of notice, the passage of time or both, would constitute a default under the Site Control Document; (iii) for any Site Control Document that does not recognize and allow for the Right of First Refusal, Right of First Offer and Project Purchase Option, evidences such counterparty's consent to Seller's grant of the Right of First Refusal, Right of First Offer and Project Purchase Option and to the assignment of such Site Control Document to Buyer following exercise of the Right of First Refusal, Right of First Offer or Project Purchase Option; and (iv) evidences such counterparty's consent to the right of Buyer to cure any payment default by Seller under the Site Control Documents prior to termination thereof.

(i) Seller shall (i) obtain Buyer's approval prior to the execution and delivery by Seller of any Site Control Document for land not shown on Appendix N and (ii) provide to Buyer copies of all Site Control Documents; *provided* Buyer's approval of Site Control Documents shall not be unreasonably withheld, conditioned, or delayed.

(j) Upon any payment by Buyer to cure any default of Seller under a Site Control Document that prevents termination of such Site Control Document or the exercise of any other remedy of any counterparty thereunder arising out of such default, Seller, within ten (10) days following receipt of notice from Buyer that it made such payment, shall reimburse the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to but excluding the date of such reimbursement by Seller.

(k) Except with respect to the portion of the property on which the Facility substation is located, as long as this Agreement is in effect, there shall be no merger of any Site Control Document or of the leasehold estate or easement created thereby with the fee estate in the property subject to the Site Control Document and Seller shall not acquire any interest in such fee estate without the prior written consent of Buyer.

(l) Subject to the terms of a Facility Lender Consent and to the extent permissible under applicable Requirements of Law, in the event that a petition under the Bankruptcy Code shall be filed by or against Seller, Seller hereby presently, absolutely, irrevocably, and unconditionally grants and assigns to Buyer the sole and exclusive right to instruct Seller to elect to assume and assign or reject the Land Lease pursuant to Section 365 of the Bankruptcy Code, and Seller agrees that any election, if made by Seller or Seller's trustee without the prior consent of Buyer shall be void at inception and of no force or effect. Absent (i) the consent of any Facility Lender or Tax Equity Investor to a rejection of the Land Lease, or (ii) Seller's representation that (a) it cannot cure, or provide adequate assurance that it will promptly cure, all defaults under the Land Lease, (b) it cannot compensate, or provide adequate assurance

that it will promptly compensate, a party other than Seller to the Land Lease for any actual pecuniary loss to such party arising from such default, and (c) it cannot provide adequate assurance of future performance under the Land Lease, Buyer shall instruct Seller to assume the Land Lease. Buyer shall have the right, but not the obligation, to instruct Seller or Seller's trustee as to such assumption and assignment of the Land Lease, and Seller shall, or shall cause Seller's trustee to, comply with such instructions.

(m) Subject to the terms of a Facility Lender Consent, in the event of a Lessor Bankruptcy and the resulting termination, rejection or disaffirmance by the Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under the Land Lease pursuant to the Bankruptcy Code, Seller hereby presently, absolutely, irrevocably, and unconditionally grants and assigns to Buyer the right to make or refrain from making any election available to lessees under the Bankruptcy Code (including the election available pursuant to Section 365(h) of the Bankruptcy Code and any successor provision) and Seller agrees that any such election, if made by Seller without the prior written consent of Buyer (which Buyer would not anticipate granting due to the importance of the Land Lease as security) shall be void at inception and of no force or effect. Without limiting the generality of the foregoing sentence, Seller shall not, without Buyer's prior written consent, elect to treat the Land Lease or the leasehold estate created thereby as terminated under Section 365 of the Bankruptcy Code, after rejection or disaffirmance of the Land Lease by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor, and any such election made without such consent shall be void at inception and of no force or effect. At the request of Buyer, Seller will join in any election made by Buyer under the Bankruptcy Code and will take no action in contravention of the rights granted to Buyer pursuant to this (m).

(n) Subject to the terms of a Facility Lender Consent, in the event of a Lessor Bankruptcy and the resulting termination, rejection or disaffirmance by the Lessor under the Land Lease (whether as debtor in possession or otherwise) or by any trustee of such Lessor pursuant to the Bankruptcy Code, and Buyer elects to have Seller remain in possession under any legal right Seller may have to occupy the property pursuant to the Land Lease, then Seller shall remain in possession and shall perform all acts necessary for Seller to retain its right to remain in such possession, whether such acts are required under the then-existing terms and provisions of the Land Lease or otherwise.

Section 12.4 Covenants of Seller to Provide Quarterly Attestations. Seller shall provide to Buyer each calendar quarter a certificate executed by an authorized officer of Seller (a) certifying that the representations and warranties set forth in this Agreement remain true and correct as of the date of such certificate, (b) certifying that there exists no Default by Seller or any event that, after notice or with the passage of time or both, would constitute a Default hereunder, and (c) attaching true and correct copies of all Site Control Documents and all amendments or waivers of such Site Control Documents executed in the prior quarter, if any, *provided*, that with respect to any attestation as to any representation and warranty set forth in Section 12.2(h), if applicable, Seller shall update such attestation and Schedule 12.2(h) in order to account for any mergers, transfers, consolidations, assignments, restructurings, or similar transactions to the extent that such transactions either (A) do not constitute a Change in Control or (B) have been consented to by Buyer.

Section 12.5 Additional Covenants of Seller.

(a) **Material Adverse Effect.** In the event of a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller or an “event of default” (as defined in the O&M Agreement) by Seller or the operator under the O&M Agreement, Seller shall promptly notify Buyer thereafter. With respect to material adverse effects on Seller or defaults under the O&M Agreement that would reasonably be expected to result in a material adverse effect on the performance of Seller under this Agreement or the operations of the Facility, Seller shall, within thirty (30) days after providing such notice, provide Buyer with a plan or report, including with respect to any operational problem related to the Facility, if reasonably requested by Buyer, the report (at Seller’s sole cost and expense) of a Licensed Professional Engineer that demonstrates in detail reasonably acceptable to Buyer, that the material adverse effect or event of default by Seller or the operator under the O&M Agreement has been mitigated or cured, or is reasonably expected to be mitigated or cured within a reasonable period or within the cure periods provided therefor (and listing, in detail, the actions that Seller has taken, is taking, or proposes to take with respect to such condition or event), or that such material adverse effect or event of default by Seller or the operator under the O&M Agreement will not have a material adverse effect on the performance of Seller under this Agreement or the operation of the Facility. A failure to provide such plan or report within thirty (30) days, or to use commercially reasonable efforts to undertake any of the actions set forth under such plan or report, will be deemed a failure by Seller to perform under Section 13.1(b).

(b) **Permits.** Seller shall timely obtain all Permits required for the construction of the Facility, the performance of such Seller Party’s obligations hereunder and under the Ancillary Documents to which such Seller Party is a party, and the operation of the Facility in accordance with the Requirements.

(c) **Special Purpose Entity.** Seller shall remain at all times throughout the Agreement Term a Special Purpose Entity.

(d) **Facility Debt.** On and after the Effective Date and prior to the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, Seller shall not permit Facility Debt in an amount that, in the aggregate, exceeds eighty percent (80%) of the Facility Cost, so long as Seller provides the additional security as required by Section 5.7(a) if the Facility Debt exceeds seventy percent (70%) of the Facility Cost. Following the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, Seller shall not permit Facility Debt in an amount that, in the aggregate, exceeds seventy percent (70%) of the Facility Cost. On January 1, April 1, July 1, and October 1 of each year commencing on the Effective Date, Seller shall provide to Buyer a certificate of an officer, director or member of Seller attesting to the Facility Debt as being equal to or less than seventy percent (70%) of the Facility Cost as of such date, which certificate shall be accompanied by supporting documentation in reasonable detail, including Seller’s most recent annual and quarterly financial statements and a statement of the Facility’s then-current Facility Debt and Facility Cost values.

Section 12.6 Storage Technology.

(a) **[Reserved]**

(b) **Interconnection.** Provided that Buyer provides reasonable direction as to storage technology and design, Seller shall complete and submit a material modification request (the “*MMR*”) with the CAISO for the installation of an energy storage system to the Facility location, in an amount equal to [Insert MW] MW, or as otherwise mutually agreed by the Parties (the “*Storage Capacity*”). Seller shall promptly forward all material communication with the CAISO to Buyer regarding the MMR. If CAISO determines that the MMR does not constitute a material modification, Seller shall use commercially reasonable efforts to reserve the Storage Capacity for Buyer’s installation of an energy storage system in accordance with the Storage Option Agreement. If CAISO determines that such request is a material modification, at Buyer’s request, Seller shall assist Buyer with a new interconnection request and interconnection agreement. Buyer shall pay all costs exceeding \$XX,XXX in connection with the MMR.

(c) **Land.** On or before the Site Control Milestone Date, Seller shall reserve land on the Site to accommodate a storage facility configuration at the Facility inverter locations or at the Facility substation location, or any other location mutually agreed to by the Parties and shall provide evidence to Buyer of such reservation of land; provided that Seller shall not be required to dedicate more than 2,000 square feet of land per MW of installed Storage Capacity.

(d) **Permit.** Provided that Buyer provides reasonable direction as to storage technology and design, Seller shall, at Buyer’s request, use commercially reasonable efforts, but incurring no more than \$XX,XXX of costs, to obtain a Conditional Use Permit modification to allow for the installation and operation of an energy storage system at the Facility location.

(e) **No Other Storage.** Seller shall not incorporate into, or utilize any storage technology or capability whatsoever with the Facility, except in connection with Buyer’s exercise, if any, of its option under the Storage Option Agreement, or as required by any Governmental Authority other than Buyer or its Participating Members.

ARTICLE XIII

DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 13.1 Default. Each of the following events or circumstances shall constitute a “*Default*” by the responsible Party (the “*Defaulting Party*”):

(a) **Payment Default.** Failure by a Party to make any payment under this Agreement when and as due (other than payments disputed in good faith) that is not cured within thirty (30) days after receipt of notice thereof from the other Party (which amount shall include payment of interest from the due date at the Interest Rate);

(b) **Performance Default.** Failure by a Party to perform any of its duties or obligations under this Agreement (other than any failure that is separately listed as a Default of Seller under this Section 13.1) that is not cured within thirty (30) days after receipt of notice thereof from the other Party; *provided* that if such failure is curable, but cannot be cured within such thirty

(30) day period despite reasonable commercial efforts and such failure is not a failure to make a payment when due, such Party shall have up to sixty (60) additional days to cure.

(c) **Breach of Representation and Warranty.** Any representation, warranty, certification or other statement made by a Party in this Agreement or any Ancillary Document, or, in the case of Seller, made in a certification delivered pursuant to Section 12.4, is false or inaccurate at the time made and materially and adversely affects Seller's ability to perform its obligations hereunder; *provided* that no Default shall exist if such falsity or inaccuracy is remedied within thirty (30) days after receipt of notice thereof from another Party; and further provided that if such falsity or inaccuracy is curable, but cannot be cured within such thirty (30) day period despite reasonable commercial efforts, such Party shall have up to sixty (60) additional days to cure.

(d) **Bankruptcy.** Bankruptcy of Buyer or Seller.

(e) **Performance Security Failure.** (i) The failure of Seller to furnish Performance Security by the times set forth in Section 5.7, or the failure of Seller to maintain or replace the Performance Security in compliance with Section 5.7, (ii) the failure of any of the Performance Security to be in full force and effect in accordance with Section 5.7 or (iii) the issuer of any Performance Security provided by Seller hereunder contests the validity or enforceability of the Performance Security or the letter of credit provider denies that it has any liability in respect of any Performance Security and such Performance Security is not replaced in compliance with Section 5.7.

(f) **Insurance Default.** The failure of Seller to maintain and provide acceptable evidence of the required Insurance for the required period of coverage as set forth in Appendix F that is not cured within five (5) Business Days after receipt of notice of such failure from Buyer.

(g) **Fundamental Change.** Except as permitted by Section 14.7, (i) a Party makes an assignment of its rights or delegation of its obligations under this Agreement, the Option Agreement, the Storage Option Agreement, or any Site Control Document, or (ii) a Change in Control occurs.

(h) **Site Control Document Default.** Seller breaches any of its obligations under Section 12.3, which breach is not cured within ten (10) days after receipt of notice thereof from Buyer, other than a breach of Seller's obligations under Section 12.3(g), which shall immediately trigger a Default hereunder.

(i) **Casualty.** Seller fails to meet its obligations under Section 14.19(b).

(j) **Key Milestone.** Seller fails to achieve any Key Milestone (other than Commercial Operation) on or before the date that is one hundred eighty (180) days after the Milestone Date for such Key Milestone.

(k) **Commercial Operation Date.** Seller fails to achieve Commercial Operation on or before the Outside Commercial Operation Date.

Section 13.2 Default Remedy.

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may, at its option, suspend performance hereunder or continue to provide services pursuant to its obligations under this Agreement; *provided* that nothing in this Section 13.2(a) shall affect Seller's rights and remedies set forth in this Section 13.2. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 14.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 14.3 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity including a termination of this Agreement pursuant to Section 13.4. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement, (ii) termination of this Agreement pursuant to Section 13.4, and (iii) on and after the tenth (10th) anniversary of the COD exercise of the Project Purchase Option as provided in the Option Agreement. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power by Buyer.

Section 13.3 Cure Rights of Facility Lender and Tax Equity Financing Estoppel. In connection with any financing or refinancing of the Facility, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement that is commercially reasonable and customary in the industry for limited or non-recourse project financing transactions and in form and substance satisfactory to Buyer; *provided, however*, the terms of such financing, documentation relating thereto and consent shall not conflict with the applicable terms and conditions of this Agreement (such consent, the "***Facility Lender Consent***"). The Facility Lender Consent shall provide the Facility Lender or its agent notice of the occurrence of any Default described in Section 13.1 and the opportunity to cure any such default. In addition, in connection with any Tax Equity Financing, Buyer shall in good faith negotiate an estoppel certificate that is commercially reasonable and customary in the industry for tax equity financing transactions and in a form and substance satisfactory to Buyer.

Section 13.4 Termination for Default.

(a) If a Default occurs, the Party that is not the Defaulting Party (the “**Non-Defaulting Party**”) may, for so long as the Default is continuing and, to the extent permitted by applicable law, without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice by it (“**Termination Notice**”) to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) (“**Early Termination Date**”) on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement; *provided*, upon the occurrence of any Default of the type described in Section 13.1(d), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment. The Gains, Losses and Costs relating to the Products that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid for the Products under this Agreement to the equivalent quantities and relevant market prices, either quoted by one or more bona fide third party offers, or which are reasonably expected by the Non-Defaulting Party to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice, adjusted to account for differences in transmission, if any. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in Energy contracts and bona fide third party offers. The Non-Defaulting Party shall not be required to enter into any such replacement agreement in order to determine its Gains, Losses and Costs or the Termination Payment.

(c) For purposes of the Non-Defaulting Party’s determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal to the Assumed Daily Deliveries, (ii) the Environmental Attributes associated therewith, and (iii) all other components of the Products. The “**Assumed Daily Deliveries**” shall be an amount equal to the greater of (A) the quotient of the Guaranteed Generation divided by 365, and (B) the average daily amount of Facility Energy during the Delivery Term, if any.

(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment, which notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is a positive number, the Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation of the Termination Payment shall be submitted to the dispute resolution process provided in Section 14.3.

Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) as determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

(i) “**Gains**” means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(ii) “**Losses**” means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(iii) “**Costs**” means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace this Agreement, excluding attorneys’ fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party’s Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(v) The Present Value Rate shall be used as the discount rate in all present value calculations required to determine Gains, Losses and Costs.

(g) At the time for payment of any amount due under this Section 13.4, each Party shall pay to the other Party, all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 13.4(a)).

ARTICLE XIV MISCELLANEOUS

Section 14.1 Authorized Representative. Each Party shall designate an authorized **representative** who shall be authorized to act on its behalf with respect to those matters contained herein (each an “**Authorized Representative**”), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternates if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement. To the extent that an Authorized Representative’s contact information is not provided in Appendix J, at the time a Party designates such Authorized

Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative's contact information.

Section 14.2 Notices. With the exception of billing invoices pursuant to Section 11.1, all notices, requests, demands, consents, approvals, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix J, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt or rejection in the case of delivery in person, by reliable overnight courier, or by registered or certified mail. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, approvals, waivers and other communications through alternate methods, such as electronic mail.

Section 14.3 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 14.3) (a "**Dispute**"), either Party (the "**Notifying Party**") may deliver to the other Party (the "**Recipient Party**") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "**Dispute Notice**"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 14.3(a) and Section 14.3(b) by the expiration of the thirty (30) day period set forth in Section 14.3(a), then a Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.12 and Section 14.13 of this Agreement.

(d) In addition to the Dispute resolution process set forth in this Section 14.3, the Parties shall comply with California law governing claims against public entities and presentment of such claims.

Section 14.4 Further Assurances; Change in Electric Market Design.

(a) Each Party agrees to execute and deliver all further instruments and documents, and take all further actions not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

(b) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the Dispute resolution process set forth in Section 14.3. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure.

Section 14.5 No Dedication of Facilities. Any undertaking by one Party to the other Party under any provisions of this Agreement shall not constitute the dedication of the Facility or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 14.6 Force Majeure.

(a) A Party shall not be considered to be in Default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, *provided* the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial occurrence of the claimed Force Majeure event) (the "***Force Majeure Notice***"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such Force Majeure Notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time such Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or Buyer is unable to receive, Facility Energy due to a Force Majeure, then Buyer shall have no obligation to pay Seller for Facility Energy not delivered or received by reason thereof. The foregoing provisions shall not excuse any obligation of Seller with respect to Shortfall Energy (and Replacement Product, as applicable) arising prior to the occurrence of any Force Majeure event. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term “**Force Majeure**” means any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout of a national scope, act of the public enemy, war, insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by Governmental Authority, military or lawfully established civilian authorities, or other occurrence that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in clause (iv) above shall be construed so as to require a Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an “**Unexcused Cause**”): (1) any requirement to comply with a RPS Law or any change (whether voluntary or mandatory) in any RPS Law, or other Change in Law, that may affect the value of the Products; (2) events arising from the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller’s ability to sell any Facility Energy at a price in excess of those provided in this Agreement or Buyer’s ability to purchase Product or any part thereof at a price lower than those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service; (7) failure of third parties to provide goods or services essential to a Party’s performance; (8) Facility or equipment failure of any kind; (9) any changes in the financial condition of Buyer, any Seller Party, the Facility Lender or any subcontractor or supplier affecting the affected Party’s ability to perform its obligations under this Agreement; or (10) Seller’s inability to obtain sufficient fuel, including due to lack of wind, sun or other fuel source of an inherently intermittent nature, or power to operate the Facility.

(c) Buyer may terminate this Agreement if (i) a Force Majeure event occurs that diminishes the production of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive Months, or (ii) the Facility is rendered inoperable and an independent engineer that is mutually acceptable to both Parties determines that the Facility cannot be repaired or replaced within a period not to exceed twenty four (24) Months following the date of the occurrence of the Force Majeure event.

(d) Any termination of this Agreement under Section 14.6(c) shall be “no-fault” and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, each Party shall pay the other Party for any and all amounts hereunder that may be owing, including Seller’s obligation to make payments to Buyer for any existing Shortfall Energy, or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the

Performance Security (less any amounts drawn by Buyer in accordance with this Agreement). The exercise by Buyer of its right to terminate the Agreement shall not render Buyer or Seller liable for any losses or damages incurred by the other Party whatsoever.

Section 14.7 Assignment of Agreement.

(a) Buyer may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, the Option Agreement and the Storage Option Agreement in whole or in part without the consent of Seller to a Qualified Buyer Assignee; provided that any one or more assignments to the [Insert Member Name] may not exceed one (1) MW in total. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of Buyer under this Agreement, the Option Agreement, and the Storage Option Agreement, thereby relieving the assignor Buyer from its duties and obligations hereunder and thereunder.

(b) Except as set forth in this Section 14.7, Seller shall not assign any of its rights, or delegate any of its obligations, in or under this Agreement, the Option Agreement or the Storage Option Agreement without the prior written consent of Buyer, such consent not to be unreasonably withheld. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(c) Buyer's consent shall not be required in connection with the collateral assignment or pledge of this Agreement to any Facility Lender for the purposes of financing the Facility, the assignment of this Agreement to a Qualified Transferee by a Facility Lender following or in connection with the exercise of remedies by a Facility Lender, or the assignment of this Agreement in connection with a Tax Equity Financing utilizing a lease or inverted lease structure; *provided, however*, that (1) the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement, the Option Agreement, and the Storage Option Agreement as applicable, (2) in connection with any such assignment or pledge and the exercise of remedies by any Facility Lender, the Facility Lender acknowledges and agrees to be bound by the requirement that the Facility be operated and maintained by a Qualified Operator and (3) in the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender shall be bound by the covenants and agreements of Seller in this Agreement, the Option Agreement and the Storage Option Agreement. Without limiting the foregoing, following the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, the collateral of Seller securing the Facility Debt of any Upstream Equity Owner or Ultimate Parent Entity shall (i) secure only the obligations under financing agreements providing for the Facility Debt that are allocated to the Facility and (ii) not secure any obligations of any other project of the borrower or any of its affiliates. Seller shall provide Buyer with sixty (60) days' prior notice of any such collateral assignment or pledge. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Products (not including the proceeds thereof) to any Facility Lender.

(d) Seller shall provide sixty (60) days' written notice to Buyer prior to the occurrence of any (i) Change in Control or (ii) any Tax Equity Financing.

(e) A Change in Control is permitted if (i) Buyer has given prior written consent to the transaction or transactions constituting the Change in Control, or (ii) the Change in Control occurs in connection with the exercise of remedies by a Facility Lender (including a transfer of direct or indirect interests in the Facility by a Facility Lender following the exercise of remedies) and the new Upstream Equity Owner following the Change in Control meets the criteria set forth in clause (a) or (b) of the definition of Qualified Transferee. In connection with any Change in Control under subsection 14.7(e)(i), at Buyer's request, Seller shall cause the resulting Ultimate Parent Entity and Upstream Equity Owners to deliver an estoppel certificate to Buyer confirming that this Agreement and the Ancillary Documents remain in full force and effect.

(f) Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement, the Option Agreement and the Storage Option Agreement in accordance with this Section 14.7, without the prior written consent of Buyer and otherwise subject to compliance with the Right of First Offer and Right of First Refusal set forth in Section 14.25. Any purported sale or transfer in violation of this Section 14.7(f) shall be null and void and of no force or effect.

(g) In no event shall Buyer be liable to any Facility Lender for any claims, losses, expenses or damages whatsoever other than liability a Buyer may have to Seller under this Agreement, the Option Agreement, or the Storage Option Agreement, as applicable. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender shall be bound by the covenants and agreements of Seller in this Agreement, the Option Agreement and the Storage Option Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of all or any portion of the Facility by any Facility Lender in connection with any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage or similar Lien on the Facility, shall be made only to an entity that is a Qualified Transferee.

(h) Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses (including reasonable attorneys' fees and expenses) incurred by Buyer in the preparation, negotiation, execution or delivery of the Facility Lender Consent, and any other documents requested by Seller, the Facility Lender, or any Tax Equity Investor and provided by Buyer, in connection with this Section 14.7 or any Tax Equity Financing.

Section 14.8 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

Section 14.9 Attorneys' Fees & Costs. Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorneys' fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

Section 14.10 Voluntary Execution. Both Parties acknowledge that they have read and fully understand the content and effect of this Agreement and that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

Section 14.11 Entire Agreement; Amendments. This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

Section 14.12 Governing Law. This Agreement was made and entered into in the County of Sacramento, California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

Section 14.13 Venue. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Sacramento in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

Section 14.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories 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 signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

Section 14.15 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 14.16 Waiver; Available Remedies. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Except to the extent this Agreement expressly provides an exclusive

remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief; provided that where this Agreement provides an exclusive remedy, then specific performance and injunctive relief are not available. The rights granted herein are cumulative except where otherwise provided herein.

Section 14.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Section 14.18 Third Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Parties. Nothing in this Agreement, whether express or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third party beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement or any covenant, condition, provision, duty, obligation or undertaking contained or established herein. This Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any Person that is not a party hereto.

Section 14.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless Buyer, Participating Members, and all of their respective commissioners, officers, agents, employees, advisors, and Authorized Representatives and assigns and successors in interest (collectively, “*Indemnitees*”) and, at the option of Buyer, to defend such Indemnitees from and against any and all suits and causes of action (including proceedings before FERC), claims, charges, damages, demands, judgments, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Seller’s employees and agents, or third persons, or damage or destruction to any property of either Party or third persons, in any manner arising by reason of any breach of this Agreement by Seller, any failure of a representation, warranty or guarantee of Seller hereunder to be true in all material respects, the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of the Seller’s officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of any such Indemnitee.

(b) **Damage or Destruction.** If there is a casualty event or other event causing the destruction of the Facility that renders the Facility incapable of generating 50% or more of the Annual Contract Quantity, Seller shall, within four (4) Months of such event, enter into a contract

for the design of a replacement facility designed to be capable of satisfying the obligations of Seller under this Agreement.

(c) **Insurance.** Seller shall obtain and maintain the Insurance coverages listed in Appendix F.

(d) **Condemnation or Other Taking.** Throughout the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility, the Facility Assets, or any portion thereof, including the occurrence of any hearing associated therewith. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. Subject to the consent of the Facility Lender, all awards and compensation for the taking or purchase in lieu of condemnation of the Facility, the Facility Assets or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(e) **Limitation of Liability.** EXCEPT TO THE EXTENT INCLUDED IN THE LIQUIDATED DAMAGES, INDEMNIFICATION OBLIGATIONS RELATED TO THIRD PARTY CLAIMS, OR OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY OR, IN THE CASE OF BUYER, ITS INDEMNITEES, BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER COSTS, BUSINESS INTERRUPTION DAMAGES RELATED TO OR ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER STATUTE, CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY AT LAW OR IN EQUITY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES OF SUCH DAMAGES, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, CONTRIBUTORY, CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

(f) To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss.

Section 14.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and

effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 14.21 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, either Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("***Confidential Information***"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.21, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries or Affiliates;

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, ruling or other Requirement of Law, including laws or regulations requiring disclosure of financial information and information material to financial matters and filing of financial reports and responding to oral questions, discovery requests, subpoenas, civil investigations or similar processes; and

(iv) with respect to Buyer, to any of its respective members from time to time.

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall

provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code § 6250, et seq. ("**CPRA**"), and the Ralph M. Brown Act, Cal. Govt. Code § 54950, et seq. ("**Brown Act**"). Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA or Brown Act.

(e) Notwithstanding the foregoing or any other provision of this Agreement, any Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement, and the rights, Liens and priorities of Buyer with respect to such credit support.

(f) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer or Buyer's Authorized Representative determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against Buyer or any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any Indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all Indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all Indemnitees, as well as all damages or liability of any nature.

(g) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity.

Section 14.22 Mobile-Sierra. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of Energy under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meanings of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so during the Agreement Term. Notwithstanding any provision of this Agreement, the Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the Agreement Term, under Sections 205 and 206 of the Federal Power Act, and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree not to seek, nor support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of this Agreement through application or complaint to FERC or any other state or federal agency, board, court or tribunal, related in any manner as to whether such rates, terms or conditions are just and reasonable or in the public interest under the Federal Power Act, absent prior written agreement of the Parties. The Parties also agree that, absent prior agreement in writing by the Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this Section 14.22 is unenforceable or ineffective as to such Party), a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review that requires FERC to find an "unequivocal public necessity" or "extraordinary circumstances where the public will be severely harmed" to modify a contract, as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 at 550-51 (2008), and *NRG Power Marketing, LLC v. Maine Public Utilities Comm'n*, 558 U.S. 165 (2010).

Section 14.23 Taxpayer Identification Number (TIN). Seller declares that its authorized TIN is [Inset TIN Number]. No payment will be made under this Agreement without a valid TIN.

Section 14.24 Service Contract. The Parties intend that this Agreement will qualify as a "service contract" as such term is used in Section 7701(e) of the United States Internal Revenue Code of 1986.

Section 14.25 Right of First Offer and Right of First Refusal.

(a) Buyer has a "***Right of First Offer***" (or "***ROFO***") and a "***Right of First Refusal***" (or "***ROFR***") for any proposed sale of the Facility and related assets (the "***Facility Assets***") by Seller.

(b) Prior to Seller (or Seller's Affiliate), as applicable, commencing the negotiation of a sale of the Facility Assets (other than in connection with a Tax Equity Financing or the exercise of remedies by a Facility Lender prior to the conversion or repayment of any construction Facility Debt (including a sale of the Facility Assets by a Facility Lender following the exercise of remedies), in which case the provisions of this Section 14.25 shall not apply), Seller shall provide notice to Buyer of Seller's proposed transaction (a "***Proposed Sale Notice***"). Upon

receipt of such Proposed Sale Notice, Buyer shall have ninety (90) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility Assets from Seller or its Affiliates, which notice shall include Buyer's proposed purchase price for the Facility Assets, as applicable (a "***Proposed Purchase Notice***"). If Buyer provides such Proposed Purchase Notice, then the Parties shall undertake for a period of up to ninety (90) days from the date of Buyer's Proposed Purchase Notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility Assets to Buyer.

(c) If (i) Buyer does not timely provide such Proposed Purchase Notice to Seller indicating that Buyer is interested in negotiating the purchase of the Facility Assets from Seller following a Proposed Sale Notice, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer within the ninety (90) day period set forth in Section 14.25(b) and the consummation of the sale of the Facility Assets does not occur within sixty (60) days thereafter (or such longer period of time as is required by Buyer to obtain the appropriate approvals so long as Buyer is diligently pursuing approval from the relevant authorities, it being understood that Buyer must obtain approvals from all relevant authorities prior to consummating the purchase of the Facility Assets, then Seller shall be free to negotiate the sale of the Facility Assets to any third party; *provided, however*, that prior to consummating any such sale, (A) Seller shall provide Buyer with a concise summary of the commercial terms negotiated by Seller with the third party (a "***Notice of Proposed Third Party Sale***") and (B) Buyer shall have the right to purchase the Facility Assets on substantially similar terms as set forth in the Notice of Proposed Third Party Sale, subject to any modifications required to conform the transaction to requirements for transactions entered into by public agencies, by providing written notice to Seller within ninety (90) days after receipt of the Notice of Proposed Third Party Sale (or such longer period as is required for Buyer to obtain the appropriate approvals so long as Buyer is diligently pursuing approval from the relevant authorities). If Buyer does not elect to exercise its Right of First Refusal and complete its purchase within such ninety (90) days Seller shall be free to consummate the sale of the Facility Assets to the third party; *provided*, that such sale shall be on substantially similar terms and conditions presented to Buyer in the Notice of Proposed Third Party Sale. Any sale of the Facility Assets shall include the assignment and transfer of this Agreement and the Ancillary Documents to such transferee and an assumption by such transferee of all of Seller's obligations under this Agreement and the Ancillary Documents and require a written assumption agreement in favor of Buyer pursuant to which such transferee shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents and agree to be bound by all of the terms and conditions of this Agreement and the Ancillary Documents.

(d) If Seller fails to (i) present a Notice of Proposed Third Party Sale within six (6) Months after the expiration of the ninety (90) day period set forth in Section 14.25(b), or (ii) consummate the sale of the Facility Assets to a third party within forty-five (45) days after the expiration of the ninety (90) day period set forth in Section 14.25(c), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO and ROFR processes hereunder) before commencing or continuing negotiations with any third party or consummating a sale of the Facility Assets.

Buyer and Seller were represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

BUYER:

NORTHERN CALIFORNIA POWER
AGENCY

By: _____

Its: General Manager

Date: _____

Approved as to Form:

By: _____

Its: General Counsel

Date: _____

SELLER:

[Seller Name]

By: _____

Its: Authorized Person

Date: _____

DRAFT

**APPENDIX A-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

CONTRACT PRICE

1. Test Energy. The Contract Price for Products associated with Test Energy is equal to [Insert Price] per MWh.
2. Facility Energy. The Contract Price for the Products associated with all Facility Energy other than Test Energy and Excess Energy is [Insert Price] per MWh.
3. Excess Energy. The Contract Price for Products associated with Excess Energy [Insert Price] per MWh.

**APPENDIX A-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

[RESERVED]

DRAFT

**APPENDIX B-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

FACILITY, PERMITS AND OPERATOR

1. Name of Facility:

Location:

2. Owner:

3. Operator: To be designated after Effective Date

4. Equipment:

(a) Type of Facility: Solar Photovoltaic

(b) Capacity: ____ MW

(c) Capacity Factor: ____%*

Total nominal gross nameplate capacity: ____ MW

Total nominal net capacity under expected average Site conditions: ____ MW

5. Expected Commercial Operation Date (from Appendix 1): [D a t e] unless otherwise agreed to in writing by the Parties

6. Permits:

(a) CEQA Determination

(b) Conditional Use Permit

(c) Building Permit

(d) Grading Permit

(e) Other permits, if any, required for the construction and operation of the Facility.

* The actual Capacity Factor may vary depending on weather and other meteorological conditions, final Facility design and other factors, although the Annual Contract Quantities in Appendix C and the Guaranteed Generation levels are fixed for all purposes of the Agreement.

**APPENDIX B-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

MAP OF FACILITY

DRAFT

**APPENDIX C
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

ANNUAL CONTRACT QUANTITY

Table 1

Contract Year	Annual Contract Quantity, MWh
Initial Partial Contract Year	*
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
Last Partial Contract Year	*

*To be updated by the Parties at the Commercial Operation Date upon receipt of notice from Seller with the number of MWhs for such partial Contract Years.

Table 2

Month	% of Total Annual Contract Quantity
Jan	
Feb	
Mar	
Apr	
May	
Jun	
Jul	
Aug	
Sep	
Oct	
Nov	
Dec	

**APPENDIX D
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

FORM OF ATTESTATION

_____(Seller)_____ **Environmental Attribute Attestation and Bill of Sale**

_____("Seller") hereby sells, transfers and delivers to Northern California Power Agency
_____("Buyer") the Environmental Attributes and Environmental Attribute Reporting Rights associated
with the generation from the Facility described below:

Facility name and location:

Fuel Type: Capacity (MW):

Operational Date:

As applicable: CEC Reg. no._

Energy Admin. ID no.

Q.F. ID no.

Dates

MWhs generated

in the amount of one Environmental Attribute or its equivalent for each MWh generated. Seller

further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and
- iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person/telephone: _____

**APPENDIX E
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

FORM OF LETTER OF CREDIT

**IRREVOCABLE AND UNCONDITIONAL
STANDBY LETTER OF CREDIT NO.**

Applicant:

Beneficiary:

Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

Amount:

Expiration Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable and Unconditional Standby Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD \$XX,XXX,:XXX by sight payment upon presentation to us at our office at [bank's address],¹ of: (i) your written demand for payment containing the text of Exhibit I, (ii) your signed statement containing the text of Exhibit II and, (iii) the original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings) (the "Documents"). Drawings may be presented via fax to _____. The original Letter of Credit and documents are to be sent via overnight courier to our address indicated above.

A presentation under this Letter of Credit may be made only on a day, and during hours, in which such office is open for business, and payments can be effected via wire transfer (a "Business Day"). Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit

¹ Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.
Appendix E-1

shall remain in full force and effect with respect to any continuing balance; provided that the Available Amount shall be reduced by the amount of each such drawing.

Upon presentation to us of your Documents in conformity with the foregoing, we will, on the third (3rd) succeeding Business Day after such presentation, irrevocably and without reserve or condition except as otherwise stated herein, make payment hereunder in the amount set forth in the demand. If the demand is for less than all of the Available Amount, then we will return the original of this Letter of Credit to you with our payment. Payment shall be made to your order in the account at the bank designated by you in the demand in immediately available funds. We agree that if, on the Expiration Date, the office specified above is not open for business by virtue of an interruption of the nature described in the Uniform Customs Article 36, this Letter of Credit will be duly honored if the specified Documents are presented by you within thirty (30) days after such office is reopened for business.

Provided that the presentation on this Letter of Credit is made on or prior to the Expiration Date and the applicable Documents as set forth above conform to the requirements of this Letter of Credit, payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely a written order issued by a court, which order specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment.

We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related Documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and Document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s).

This Letter of Credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Exhibit IV hereto signed by an authorized officer of Beneficiary, accompanied by this Letter of Credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the next Business Day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one (1) year from the Expiration Date, or any future expiration date, unless at least thirty (30) calendar days prior to the Expiration Date (or any future expiration date), we send you notice by registered mail, return receipt requested or overnight courier at your address herein stated or such other address of which you notify us in advance in writing that we elect not to consider this Letter of Credit extended for any such additional period.

We may, in our sole discretion, increase or decrease the stated amount of this Letter of Credit, and the Expiration Date may be extended, by an amendment to this Letter of Credit in the form

of Exhibit III signed by us. Any such amendment for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this Letter of Credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the Beneficiary set forth above shall inure to the benefit of your successors by operation of law. In this connection, in the event of a drawing made by a party other than the Beneficiary, such drawing must be accompanied by the following signed certification and copy of document proving such successorship:

"The undersigned does hereby certify that [drawer] is the successor by operation of law to the Northern California Power Agency, a beneficiary named in [name of bank] Letter of Credit No. _____ "

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practices for Documentary Credits" (2007 Revision) of the International Chamber of Commerce Publication No. 600 (the "Uniform Customs"). As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State court in the County of [] in the State of California or in the United States District Court for the [] District of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Exhibits I, II, III and IV hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the address referred to above, and shall specifically refer to this Letter of Credit no.

Yours faithfully,

(name of issuing bank)

By _____
Title _____

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____

[Insert Bank Address]

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$ _____ by deposit to our account no. _____ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Standby Letter of Credit no. _____ dated _____, 20_ in the amount of \$ _____ established by you in our favor for the account of _____ as the Applicant.

DATED: _____ 20__.

NORTHERN CALIFORNIA POWER AGENCY

By _____

Title _____

EXHIBIT II
STATEMENT

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit no. _____, dated _____, 20__ in the amount of \$ _____ established

by you in our favor for the account of _____, as the Applicant.

We hereby certify to you that \$ _____ is due, owing and unpaid to us by the Applicant in that certain [DESCRIBE AGREEMENT].

DATED:

NORTHERN CALIFORNIA POWER AGENCY

By _____

Title _____

EXHIBIT III

AMENDMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____

Beneficiary:

Northern California Power Agency

Applicant:

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Standby Letter of Credit is hereby amended as follows: by increasing *I* decreasing *I* leaving unchanged (strike two) the stated amount by \$ _____ to a new stated amount of \$ _____ or by extending the Expiration Date to _____ from _____. All other terms and conditions of the Letter of Credit remain unchanged.

An amendment is effective only when accepted by the Northern California Power below. Agency,

Dated: _____

Yours faithfully,

(name of issuing bank)

By _____
Title _____

ACCEPTED

NORTHERN CALIFORNIA POWER AGENCY

By _____

Title _____

Date _____

EXHIBIT IV

SURRENDER

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

Notice of Surrender of Letter of Credit

Date: _____

Attention: Letter of Credit Department

Ladies and Gentlemen:

We refer to your above-mentioned Irrevocable and Unconditional Standby Letter of Credit (the "Letter of Credit"). The undersigned, an authorized signer of the Northern California Power Agency, hereby surrenders this Letter of Credit to you for cancellation as of the date set forth above. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

NORTHERN CALIFORNIA POWER AGENCY

By _____

Title _____

**APPENDIX F
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

INSURANCE

I. GENERAL REQUIREMENTS

Within ten (10) days after the Effective Date, Seller shall furnish Buyer evidence of commercial automobile liability, commercial general liability, excess liability, and workers' compensation coverage meeting the requirements set forth in this Appendix F from insurers acceptable to Buyer and in a form acceptable to the risk management section of the project manager for Buyer or acceptable to Buyer's agent for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense. Prior to the date on which each of Builders' Risk, Property All Risk and Professional Liability insurance is required to be obtained, Seller shall furnish Buyer evidence of coverage meeting the requirements of this Appendix F.

Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance is primary for purposes under this Agreement despite any conflicting provision in Seller's policies to the contrary.

Such insurance shall not be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to General Manager, Northern California Power Agency.

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned (if applicable), non-owned, and hired vehicles for performance of the work by Seller or its officers, agents, or employees, as required, to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than \$1,000,000.00 combined single limit per occurrence, with a self-insured retention or deductible of no more than \$100,000, and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its members, and their officers, agents, and employees while acting within the scope of their employment, as additional insureds with Seller, and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement by Seller or its officers, agents, or employees. The evidence of insurance shall be a form acceptable to Buyer's risk manager.

B. Commercial General Liability

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire, Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than \$10,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be a form acceptable to Buyer's risk manager, and shall provide for the following:

1. Include Buyer and its members, and their respective officers, agents, and employees as additional insureds with the Named Insured for the activities and operations of Seller and its officers, agents, or employees under this Agreement.
2. Severability-of-Interest Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."
3. A description of the coverages included under the policy.

C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies on an endorsement to the policy acceptable to

Buyer's risk management agent. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than \$1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be a form of Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's risk management agent. Workers' Compensation/Employer's Liability exposure may be self-insured *provided* that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's risk manager by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

E. Builders' Risk

Prior to commencing Site construction activities, Seller, or Seller's EPC Contractor, shall provide Builder's Risk insurance, which shall be of the "all risk" type, shall be written in completed value form, and shall protect Seller, the Northern California Power Agency, the Board of Directors, and Buyer's members against risks of damage to buildings, structures, and materials and equipment whether on site or in transit from any location worldwide. Outside of the United States, this transit insurance requirement may be satisfied by the purchase of a global marine specific policy, if applicable. The amount of such insurance shall be not less than the insurable value of the work at completion. Buyer shall be a named additional insured on the policy. The Builder's Risk insurance shall provide for losses to be payable to Seller and the aforementioned additional insured, as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Seller and the aforementioned named additional insured. The Builders' Risk policy shall insure against all risks of direct physical loss or damage to property from any cause including testing, ensuing loss, commissioning, and, to the extent available in the insurance market on generally commercially reasonable terms, earthquake and flood, provided, that should Seller determine that either earthquake or flood coverage is not available on generally commercially reasonable terms as aforesaid, Seller shall notify Buyer not less than thirty (30) days in advance of the date when such coverage will not, or will no longer, be available together with a description of Seller's efforts to obtain such coverage and an explanation of the basis for Seller's determination in reasonable detail. The policy shall be in full force and effect until the earlier of: (1) the Commercial Operation Date or the substantial completion of the Facility, whichever date is the later, or (2) the effective date of the Property All Risk Insurance referenced below.

F. Property All Risk Insurance

Seller shall procure and maintain an All Risk Physical Damage policy to insure the full replacement value of the property located at Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials, or faulty design. This policy shall be obtained and placed in full force and effect prior to the expiration of the Builder's Risk Policy. This policy shall have the same insureds, and all losses shall be payable in the same manner, as provided for the Builders' Risk Policy in Paragraph II.E.

G. Professional Liability

Prior to the commencement of work by Seller's EPC Contractor under Seller's engineering, procurement and construction contract for the Facility, and subject to the following paragraph, Seller shall provide (or cause its EPC Contractor to provide) Professional Liability insurance with contractual liability coverage included covering Seller's (or such EPC Contractor's, as applicable) liability arising from errors and omissions made directly or indirectly during the execution of this Agreement (or the engineering, procurement and construction contract, as applicable) and shall provide coverage for the total limits actually arranged by Seller, but not less than \$1,000,000.00, combined single limit. Such policy shall be maintained for not less than three (3) years after the Commercial Operation Date under this Agreement. Evidence of such insurance shall be in the form of a special endorsement of insurance and shall include a Waiver of Subrogation in favor of Buyer, its officers, agents and employees.

The Parties agree to confer in good faith prior to the hiring of Seller's EPC Contractor (i) to determine whether the preceding requirement for Professional Liability insurance is reasonably necessary to be included in this Agreement to protect Buyer or the Buyer's Members consistent with Prudent Utility Practices and (ii) to modify (or eliminate) such requirement as mutually agreed to be appropriate based on the foregoing standard in clause (i).

**APPENDIX G
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

QUALITY ASSURANCE PROGRAM

Seller shall implement a Quality Assurance ("Q/A") Program to ensure that the performance of the Facility fulfills the Requirements. The Q/A Program shall provide assurance that the Facility will comply with the Requirements and the manufacturers' or suppliers' requirements for successful operation of the Facility.

Quality at Seller

Seller believes that quality is the unit of measure for assessing fulfillment of project goals. A quality project meets or exceeds the contract requirements and accepted standards of professional and industry practice. Furthermore, high quality projects are those that address client and societal needs more successfully than "low" quality projects. While this may seem like a straightforward definition, the process to ensure quality is much more involved and includes quality management, quality planning, quality control, quality assurance, a quality system, and total quality management.

"Quality assurance" refers to a process that reduces the potential for error throughout the phases of a project. On projects with a Q/A Program, the chances of producing a poor quality deliverable are substantially reduced. Quality control procedures are an integral part of quality assurance. Historically, industry has used the term "quality control" to indicate a checking procedure for verifying the quality of deliverables. This checking commonly occurs at the end of the process, long after an error may have been made and compounded by subsequent work. While quality control checks at the end of a project are an essential exercise, scheduled periodic reviews at each phase of project conceptual and final design are integral to Seller's Q/A Program. In addition, quality maintenance which meets or exceeds manufacturers' or suppliers' requirements and best industry practices must be an integral part of Seller's Q/A Program.

The Quality Management Process

The surest way to achieve satisfactory quality is to adhere to a proven quality process. The term "quality" most accurately refers to a project's ability to satisfy needs when considered as a whole and each part of the process meets or exceeds the standards of Prudent Utility Practices.

Seller's project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller's project management team targets the following areas to monitor quality:

- 1) A written Q/A Manual.
- 2) Independent engineering review of the entire project process, from design review through Commercial Operation.
- 3) A written maintenance manual for the Facility for the duration of the Commercial Operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Seller has purchased equipment and/or material and best industry practices.

Q/A Manual

The idea of a Q/A manual is to incorporate quality assurance in all areas of project execution. Seller has found that quality needs to be institutionalized into the project process, not only in the budgeting process, but everywhere. For example, specific tasks and duties need to be allocated to specific individuals; roles and interface points need to be clearly defined; individual assignments need to be realistic; special attention needs to be paid to complex areas within projects; schedules need to be realistic and achievable; and lastly the work culture needs to be enjoyable and open so that employees are empowered to react quickly to symptoms of quality problems before they actually manifest.

Seller's quality program shall be documented in a Quality Assurance manual (the "Q/A Manual"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers' and suppliers' recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Q/A Manual within ninety (90) days after the Effective Date to Buyer or Buyer's Authorized Representative. The Q/A Manual shall be kept current by Seller throughout the term of this Agreement through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Authorized Representative.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. Furthermore, it shall provide the plan and strategy for quality control and review during the construction period. The Q/A Manual shall strive, at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the Requirements.
- (c) The materials received at the Site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties as necessary.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the construction of the Facility.

- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) Detailed and complete plan for maintenance and operation during commercial operations consistent with manufacturers' and suppliers' recommendations and best industry practices.

Conceptual Design Review

Seller has a team of professionals who develop and review conceptual design. The team consists of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed in order to assess the solar resource, project constructability, site access, cultural and biological impact, land use restrictions, and landowner requirements. At this stage, the site plan is reviewed, modified as necessary, and used to begin the permitting and public review process. The site plan may be further modified based on comments received during the permitting and public review process. Subsequent to this phase, final third party engineering will commence.

Final Engineering Design

Third party engineering firms, licensed to practice in the state in which the project is to be constructed, will commence the detailed design necessary for the permitting and construction of the Facility. Each firm will have its own quality assurance and quality control procedures, however, Seller and a third party independent engineer will review the final work products to ensure conformance with this Agreement. When Seller and third party independent engineer have completed a multiple phase review process, and all comments have been addressed, the design is considered final and ready for construction permitting.

During the final engineering design process, geotechnical studies will be finalized as needed. If existing subsurface conditions are different from anticipated, the design may be modified to account for any variances. Any changes of this nature will be documented in as-built design drawings and approved in advance by Seller.

Quality Assurance at the Construction Site

Seller will hire a third party general contractor to construct the project. The contractor will be required to have a quality assurance program implemented by its own staff, and utilizing third party inspectors as necessary. The primary areas of focus are assuring conformance of construction to design drawings, conformance of materials to specifications, and to ensure prudent industry standards and best practices are being utilized. The contractor will be required to provide third party inspection and testing as necessary. The contractor will also be required to maintain a set of drawings during the course of construction, which will be used to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller's construction management team prior to implementation.

The contractor will provide the required oversight and training of its installation crew to ensure the construction of the Facility meets its quality guidelines. As necessary, equipment suppliers will have technical advisors on site to inspect, advise, and sign off on installation means and methods. In addition, Seller will have its own construction management team on site consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents and Q/A procedures. The contractor and appropriate equipment suppliers will commission the Facility per prudent industry standards, equipment specifications, and utility requirements. Prior to construction completion, a punchlist will be developed by the contractor, Seller, Seller's representatives, and third party independent engineer. This punchlist is maintained by the contractor, and is signed off by Seller upon completion of all punchlist items. Lastly, the independent engineer will perform periodic audits during construction to oversee critical items, confirm construction progress, and provide independent reporting and assessments to the project stakeholders.

Following completion of the project, the contractor will be required to provide to Seller as-built design drawings, record of all testing documentation, and final permit approvals. This documentation will be maintained at the project site during operations of the Facility.

Quality Assurance During Commercial Operations

Seller shall supply a Quality Assurance Plan for Buyer's review and approval no less than sixty (60) days prior to the anticipated Commercial Operation Date. Upon receipt of Quality Assurance Plan, Buyer shall provide written approval, such approval not to be unreasonably withheld, or comment within ten (10) Business Days.

**APPENDIX H
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

QUALIFIED OPERATORS

DRAFT

**APPENDIX I
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

MILESTONE SCHEDULE

No.	Guaranteed Date	Milestone Description	Daily Liquidated Damages
1.	Ten (10) days after the Effective Date	Seller has delivered all certificates and other documents required to establish that Commercial Automobile Liability, Commercial General Liability, Excess Liability and Workers' Compensation/Employer's Liability Insurance meeting the requirements of the Agreement and <u>Appendix F</u> is in full force and effect	
2.	Ten (10) Business Days after the Effective Date	Seller has delivered the Project Development Security	
3.		Seller has delivered to Buyer a CEC pre-certification form duly approved by the CEC.	
4.		Seller has achieved the Environmental Compliance Milestone	\$per day
5.		Seller has executed and delivered copies of the Site Control Documents and has obtained Site Control; provided that delivery of the Land Option or Land Lease to Buyer shall satisfy this Milestone	\$per day

No.	<u>Guaranteed Date</u>	<u>Milestone Description</u>	<u>Damages Daily Liquidated</u>
6.		Seller has entered into a Subcontract for the engineering, procurement, and construction of the Facility that satisfies the requirements set forth in the Agreement and has delivered a copy of such Subcontract to Buyer (with confidential or proprietary information redacted at Seller's discretion).	
7.		Seller has notified Buyer of the financing arrangement for the financing of the construction of the Facility.	
8.		Seller has obtained all Permits set forth on <u>Appendix B-1</u> (which shall be final and non-appealable), excluding all Permits not yet required for Seller's operation of the Facility but that are reasonably expected to be obtained in due course.	\$per day
9.		Seller has achieved the Construction Start Date.	\$per day
10.		Seller has achieved initial synchronization of the Facility.	
11.		Commercial Operation Date	\$per day

**APPENDIX J
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

**AUTHORIZED REPRESENTATIVES;
BUYER AND SELLER BILLING, NOTIFICATION
AND SCHEDULING CONTACT INFORMATION**

1. Authorized Representative. The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

1.1 Buyer:

Northern California Power
Agency c/o: General Manager
651 Commerce Drive
Roseville, CA 95678

Telephone: 916-781-3636

Facsimile: 916-783-7693

Email: _____

1.2 Seller:

[Company Name]Attention:
Operations & Maintenance
Telephone:
Facsimile:
Email:

2. Billings. Billings and payments pursuant to Article XI and Appendix A-1 shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Northern California Power Agency
Attention: Settlements
Telephone: 916-781-3636
Facsimile: 916-781-4255
Email: settlements@ncpa.com; acctspayable@ncpa.com

2.2 If Payment to Buyer:

Northern California Power
Agency Attention: Accounts
Payable Telephone: 916-781-4211
Facsimile: 916-781-4255
Email: Acctspayable@ncpa.com

2.3 If Payment or Billing to Seller:

[Company Name]
Controller
Attention: Accounts Receivables
Telephone:
Facsimile:
Email:

3. **Notices.** Unless otherwise specified by Buyer all notices (other than Scheduling notices, curtailment notices, and Deemed Generated Energy notices):

If to Buyer:

Northern California Power Agency
Attention: General Counsel
Telephone: 916-781-3636
Facsimile: 916-783-7693
Email: _____

If to Seller:

[Company Name]Attention: General
Counsel's Office Telephone:
Facsimile:
Email:

4. **Schedulers.** Unless otherwise specified by Buyer, all notices related to Scheduling of the Facility shall be sent to the following address:

If to Buyer:

Northern California Power Agency

Pre-scheduling: Monthly, weekly, and daily generation schedules are to be provided to NCPA Pre-Scheduling contacts.

Name	Phone	Email
NCPA Preschedulers	916-786-0123	Preschedulers@ncpa.com
	916-786-0124	
Facsimile:	916-781-4239	

Schedule Coordination: Daily generation schedules received after 10:00 am the day prior to being scheduled and all Hour Ahead or Real-Time schedule changes to be provided to NCPA Schedule Coordinator contacts.

Name	Phone	Email
NCPASC	916-781-4237	SC2@ncpa.com
Facsimile:	916-781-4226	

Outage Coordination: All Planned and/or Forced Outages of generation facilities are to be provided to NCPA Dispatch and NCPA SC.

Name	Phone	Email
NCPA Dispatch	916-786-3518	Dispatch@ncpa.com
NCPA SC	916-781-4237	SC2@ncpa.com
Facsimile:	916-781-4226	

If to Seller:

[Seller Name]Attention: Operations
& Maintenance Telephone:
Facsimile:
Email:

5. **Curtailments.** All notices related to curtailments of the Facility pursuant to Section 7.4 shall be sent to the following address:

If to Buyer:

Northern California Power Agency
(see above)

If to Seller:

[Seller Name]Attention: Operations
& Maintenance Telephone:
Facsimile:
Email:

6. **Deemed Generated Energy.** Unless otherwise specified by Buyer, all notices related to calculations of Deemed Generated Energy shall be sent to the following address:

If to Buyer:

Northern California Power Agency
Attention: Settlements
Telephone: 916-781-3636
Facsimile: 916-781-4255
Email: settlements@ncpa.com

If to Seller:

[Seller Name]Attention: Operations
& Maintenance Telephone:
Facsimile:
Email:

Either Party may update its contact information in this Appendix J by delivering a notice to the other Party pursuant to Section 14.2 of the Agreement.

**APPENDIX K
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY AND
[SELLER NAME]**

FORM OF OPTION AGREEMENT

This Purchase Option Agreement (this "Agreement") is made as of _____ (the "Effective Date"), by and between [Seller Name] ("Developer"), and the Northern California Power Agency ("NCPA"), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et seq. (the "Act"), and that certain Amended and Restated Northern California Power Agency Joint Powers Agreement entered into pursuant to the provisions of the Act among NCPA and NCPA's members, dated as of January 1, 2008. Developer and NCPA are sometimes hereinafter individually or collectively called a "Party" or the "Parties."

WHEREAS, Developer and NCPA are party to that certain Power Purchase Agreement, dated as of [_____] (the "PPA"). Terms used but not defined herein shall have the respective meanings given in the PPA.

WHEREAS, pursuant to the PPA, Developer is developing the Facility, a solar photovoltaic power generating facility to be located at the Site, and NCPA will purchase the energy, Capacity Rights and environmental attributes from the Facility.

WHEREAS, Developer has agreed to offer NCPA the option to purchase the Facility on the terms provided herein, and NCPA has agreed to accept such option to purchase.

WHEREAS, pursuant to the PPA, the Parties have agreed to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, NCPA entering into the PPA, the covenants and agreements herein contained, and other good and valuable consideration, (the receipt and adequacy of which is hereby acknowledged by the Parties), the Parties, intending to be legally bound, hereto agree as follows:

1. OPTION TO PURCHASE FACILITY.

1.1 Grant of Purchase Option. Developer hereby gives and grants NCPA an irrevocable right and option, to be exercised in its sole discretion, to purchase all of the Developer's right, title, and interest in and to the Facility on the terms set forth herein (the "**Purchase Option**") (the occurrence of the transfer of the Facility, the "Closing"). So long as no Default by NCPA has occurred and is continuing under the PPA, NCPA may exercise the Purchase Option, (a) with the transfer of the Facility to occur after the sixth anniversary of the Commercial Operation Date , upon delivery of notice to

Developer that NCPA is exercising its remedies under Section 13.2(d) of the PPA as a result of Developer's Default (each, a "**Purchase Option Date**"). Developer acknowledges that NCPA has no obligation to exercise the Purchase Option and that NCPA may decline to exercise the Purchase Option for any or no reason, as NCPA deems appropriate in its sole discretion.

1.2 Determination of Purchase Price.

(a) *Fair Market Value.* NCPA may request a determination of the purchase price under the Purchase Option (the "**Purchase Price**") (i) with respect to a Purchase Option Date under Section 1.1(a), on or at any time within two hundred ten (210) days before each Purchase Option Date or (ii) with respect to a Purchase Option Date under Section 1.1(b), on or within sixty (60) days after NCPA's delivery of notice to Developer under Section 1.1(b) (the date of such request, the "**Purchase Price Notice Date**"). The Purchase Price shall be the fair market value of the Facility determined in accordance with this Section 1.2; provided that the Purchase Price shall in no event be less than the applicable amount set forth on Exhibit A. The fair market value of the Facility shall be the amount a willing buyer would pay for the Facility and all rights and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell on the applicable Closing Date (as defined below), taking into account all relevant facts and circumstances relating to the Facility, and assuming (except in the case NCPA is exercising its Project Purchase Option as a result of Default under the PPA, in which case the Energy, Capacity Rights, Environmental Attributes and other products generated by the Facility will be assumed to be sold at their fair market price as of the Closing Date for the remaining useful life of the Facility) (a) delivery of the expected generation for the then-remaining term of the PPA at the Contract Price, and (b) that the Facility is able to generate revenue for the remaining useful life of the Facility at a price per MWh equal to the then fair market price for Energy, Capacity Rights, Environmental Attributes and other products generated by the Facility, as may adjusted due to any material casualty or other loss event, real or threatened condemnation proceeding, or other material adverse event affecting all or any portion of the Facility prior to and as of the Closing Date. If NCPA disagrees with Developer's determination of the fair market value, the Parties may meet and attempt to agree on a fair market value.

(b) *Independent Appraiser.* If the Parties are unable to agree on the fair market value, the Parties shall jointly retain an independent appraiser to determine such fair market value (the "**Independent Appraiser**"), NCPA shall be responsible for the costs of the Independent Appraiser. The Independent Appraiser shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Facility, and who specifically has prior experience valuing solar energy generating facilities. The Independent Appraiser shall be reasonably acceptable to both Parties. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties or their respective Affiliates. The Independent Appraiser shall make a determination of the Purchase Price within thirty (30) days after appointment (the "**Price Determination**"). Upon making the Price Determination, the Independent Appraiser shall provide a written notice thereof to both Developer and NCPA, along with all supporting documentation detailing the method of calculation of the Purchase Price. Except in the event of fraud or manifest error, the Price Determination shall be a final and binding determination of the fair market value of the Facility.

(c) *Additional Appraisers.* If the Parties are unable to agree upon an Independent Appraiser within thirty (30) days after NCPA submits a request for a determination of the Purchase Price under this Section 1.2, then each of Developer and NCPA shall select and retain an independent appraiser meeting the requirements for an independent appraiser set forth in this Section 1.2. Each Party shall cause its appraiser to make a determination of the Purchase Price within thirty (30) days. Upon completion of the two appraisals, NCPA and Developer shall deliver the results to each other. If the purchase price determinations of the two independent appraisers vary by less than ten percent (10%), the Price Determination shall be the simple average of the price determinations of the two appraisals. If the variance is greater than ten percent (10%), the two independent appraisers shall select a third independent appraiser meeting the requirements for an independent appraiser set forth in this Section 1.2, or if the first two appraisers fail to agree upon a third appraiser within fifteen (15) days, a third independent appraiser shall be appointed by the American Arbitration Association ("AAA") upon application of either Party in accordance with the applicable rules and regulations of the AAA for such selection. The third appraiser shall select one of the appraisals generated by the first two appraisers within thirty (30) days of his retention and such resulting price shall be the Price Determination. If the third appraiser selects the appraisal originally generated by NCPA's appraiser, Developer shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally prepared by Developer, NCPA shall pay the fees of the third appraiser.

(d) *Exercise of Purchase Option.* If NCPA wishes to exercise the Purchase Option following the Price Determination, it shall deliver an exercise notice (the "**Exercise Notice**") to Developer within one hundred eighty (180) days after receipt of the Price Determination (the "**Exercise Period**"). Any such exercise notice shall be irrevocable once delivered, subject to NCPA's rights to not close under Section 4. If NCPA does not exercise the Purchase Option during the Exercise Period, then the Price Determination shall be null and void, and NCPA may not request a new determination of the Purchase Price until the next Purchase Option Date.

1.3 Terms and Date of Facility Purchase. The Parties shall consummate the sale of the Facility to NCPA no later than ninety (90) days following NCPA's delivery of an Exercise Notice. On the effective date of such sale (the "**Closing Date**"), (a) Developer shall surrender and transfer to NCPA all of Developer's right, title, and interest in and to all assets, properties, rights and interests of every kind, nature and description (whether real, personal or mixed, whether tangible or intangible, and wherever situated), operated, owned or leased by, or allocated to, Developer for or in connection with the Facility and its intended purpose, operation, and function (other than any assets that NCPA and Developer have mutually agreed to exclude from the transfer and sale, collectively, the "**Excluded Assets**") and shall retain all liabilities, and profits (including any Environmental Attributes), arising from or relating to the Facility prior to and as of the Closing Date in accordance with Section 1.4; (b) NCPA shall pay the Purchase Price to Developer in readily available funds, and shall assume all liabilities arising from or relating to the Facility after the Closing Date in accordance with Section 1.4; (c) NCPA shall pay all amounts incurred by NCPA due to Developer under the PPA as of the Closing Date net of any amounts owed by Developer to NCPA thereunder; (d) both Developer and NCPA shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the Facility in NCPA, and (ii) deliver such ancillary documents, including releases, resolutions, certificates, third-party consents and approvals, transfer permits, warranties, maintenance records, and such similar documents as may be reasonably necessary to complete and conclude the sale of the Facility to NCPA; and (e) the PPA shall automatically terminate. The purchase and sale of the Facility shall be on an "as-is, where-is" basis, except that Developer shall make representations and warranties regarding title, authority, and liens and shall, prior to the Closing Date,

provide disclosures with specificity and in good faith, to the knowledge of Developer, regarding any actions, suits, arbitrations, procedures, and/or claims pending or threatened against Developer or the Facility, which if adversely determined, could adversely affect the Facility or result in a material liability to NCPA. Developer shall, to the extent reasonably possible, transfer or assign to NCPA all manufacturer and third-party warranties with respect to the Facility or any part thereof. NCPA shall pay all transaction and closing costs associated with exercise of the Purchase Option.

1.4 Allocation of Liabilities. At the Closing, NCPA shall assume and agree to pay for, perform, fulfill and discharge after the Closing, the liabilities and obligations relating to the Facility that are first required to be performed after the Closing or arising or occurring after the Closing, other than the Excluded Liabilities (collectively, the "**Assumed Liabilities**"). The Assumed Liabilities shall include all liabilities and obligations under contracts which are assumed by NCPA at the Closing arising before the Closing Date and becoming due after Closing Date; provided that the Assumed Liabilities shall not include any liabilities arising out of a breach or default thereof by Developer prior to the Closing Date. NCPA shall not assume, and shall not be deemed to have assumed, and shall have no liability with respect to (whether asserted before or after the Closing and regardless of whether the same or the basis therefor may have been disclosed to NCPA by Developer or otherwise be known to NCPA), any liabilities or obligations of any nature, fixed or contingent or known or unknown related to the Facility other than as specifically set forth in this Section 1.4 (with all such unassumed obligations referred to in this Agreement as the "**Excluded Liabilities**"). Without limiting the generality of the preceding sentence, NCPA shall have no liability with respect to any of the following liabilities or obligations (whether asserted before or after the Closing and regardless whether the same or the basis therefor may have been disclosed to NCPA by Developer or otherwise be known to NCPA), all of which are included in the Excluded Liabilities:

(a) Any liability or obligation of Developer in respect of Taxes attributable to the Facility for taxable periods ending on or prior to the Closing, including any supplemental tax liability related to activity at the Facility conducted on or before the Closing that arises after the Closing;

(b) Any liability or obligation of Developer relating to the Facility, including arising out of Developer's ownership and operation of the Facility, arising or occurring on or prior to the Closing;

(c) Any liability or obligation of Developer with respect to the employment or termination of any employee or group of employees by Developer, or the terms thereof, whether union or nonunion, whether the liability or obligation calls for performance or observance before or after the Closing and whether the liability or obligation arises from a collective bargaining agreement, pension trust fund plan, or other agreement or arrangement to which Developer is a party or by which Developer is bound (whether oral or written and whether express or implied in fact or in law) or any past practice or custom or otherwise;

(d) Any liability or obligation of Developer for pension fund payments or unfunded pension fund liabilities;

(e) Any liability or obligation arising from or associated with any of the Excluded Assets;

(f) Any liability or obligation of Developer or its Affiliates to a third party arising from any indemnification claim, injury to or death of any person or damage to or destruction of any property, whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Developer or its Affiliates arising on or prior to the Closing; and

(g) Any liability or obligation of Developer or its Affiliates arising solely in connection with the Facility secured by a Lien of a Facility Lender, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, or benefit monetization, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing, and specifically excluding any obligations associated with any equity investment or Tax Equity Financing provided to Developer, or any Affiliate of Developer, to support the development, construction and operation of the Facility ("Facility Debt"), or Liens or encumbrances other than those permitted in writing by NCPA at the Closing.

2. **ACCESS AND DUE DILIGENCE.** Between the Purchase Price Notice Date and the Closing Date (such period, the "Applicable Diligence Period"), upon reasonable advance notice, Developer will (a) afford NCPA and its representatives (and the Independent Appraiser) full and complete access during normal business hours to the Facility and to Developer's personnel, any and all contracts, permits, books and records, properties, design schematics, blueprints or other similar documents, and any other documents and data (provided that NCPA shall observe, and shall cause its representatives to observe, all of Developer's security protocols), (b) furnish NCPA and NCPA's representatives (and the Independent Appraiser) with copies of all such documents and data as NCPA or the Independent Appraiser may reasonably request, and (c) furnish NCPA and its representatives (and the Independent Appraiser) with such additional financial, operating, and other data and information in Developer's possession or to which Developer has access as NCPA and its representatives (and the Independent Appraiser) may reasonably request. During the Applicable Diligence Period, upon reasonable advance notice (but not less than twenty four (24) hours), Developer shall afford NCPA and its representatives (and the Independent Appraiser), with reasonable access to the Facility for the purpose of inspecting the same, to conduct any performance tests or physical inspections or otherwise, including to conduct a phase 1 environmental site assessment, in such manner so as not to materially disturb or interfere with the normal operations of the Facility.

3. **OPERATION OF THE FACILITY; CONDUCT OF BUSINESS.** During the Applicable Diligence Period, Developer will conduct its business with respect to the Facility in accordance with the ordinary course of business consistent with past practices and Prudent Utility Practices. During the Applicable Diligence Period, Developer shall not (a) sell or otherwise dispose of or encumber any of the Facility Assets or any other property or assets which are primarily related to the operation, maintenance and use of the Facility (other than sales, leases, transfers or dispositions in the ordinary course of business consistent with past practice and Prudent Utility Practices), or (b) except as may be required by their terms, and except in the ordinary course of business consistent with past practice, modify, subordinate, amend, terminate, cancel, sever or surrender, or permit or suffer the modification, subordination, amendment, termination, cancellation, severance or surrender of any contract, permit or warranty, without the prior written approval of NCPA.

4. **NOTIFICATION.** During the Applicable Diligence Period, Developer shall give prompt notice (each notice, a "**Change Notice**") to NCPA of the occurrence or non-occurrence of any event, change, effect or development of any kind which could be reasonably expected to result in a: (a) material adverse

effect, or (b) breach of any of Developer's covenants under this Agreement. If elected by NCPA, the Purchase Price may be adjusted by an amount (as determined by the Parties in good faith, or absent their mutual agreement, by an Independent Appraiser using the same methodology as set forth in Section 1.2) to take into account each event described in a Change Notice; provided that the Purchase Price shall in no event be less than the applicable amount set forth on Exhibit A. NCPA shall have the right, but not the obligation, to either (i) terminate the Purchase Option with respect to the applicable Purchase Option Date and elect not to purchase the Facility; *provided, however*, that such termination shall not affect NCPA's right to exercise a Purchase Option with respect to a future date, or (ii) proceed with the Closing despite the existence of the Change Notice and pay the Purchase Price, as such Purchase Price may be adjusted pursuant to this Section 4, subject to the minimum purchase price in Exhibit A.

5. MISCELLANEOUS.

5.1 Representations and Warranties of NCPA.

(a) NCPA is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by NCPA of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of such NCPA's regulatory or governing bodies, other than that which has been obtained; provided that further authorizations from Buyer's regulatory or governing bodies will be required for NCPA to exercise the Option; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of NCPA enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

5.2 Representations and Warranties of Developer.

(a) Developer is a limited liability company duly organized, validly existing and in good standing under the laws of its respective state of incorporation or organization and is qualified to do business in the State of California, and has the legal power and authority to own or lease its properties, to carry on its business as now being conducted and (in the case of Developer) to enter into this Agreement, and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) Developer has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement, and Developer has delivered to Developer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of Developer as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of Developer certifying as to the names and signatures of the authorized representatives of Developer.

(c) The execution, delivery and performance by Developer of this Agreement have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

5.3 Survival. (a) The rights of NCPA under this Agreement and (b) the Purchase Option shall be prior and superior to the rights of any Facility Lender and prior to and superior to the rights of any other person or entity that subsequently acquires an interest in the Facility. Any person or entity acquiring the Facility or any interest therein of any nature (including, without limitation, via foreclosure or deed-in-lieu of foreclosure by any Facility Lender) shall take the Facility subject to the rights of NCPA to acquire the Facility.

5.4 Waiver of Consequential Damages. THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE FACILITY OR THIS AGREEMENT.

5.5 Assignment. NCPA may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, in whole or in part without the consent of Developer to a Qualified Buyer Assignee that is also the assignee of the PPA. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Developer pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of NCPA under this Agreement, thereby relieving the assignor NCPA from its duties and obligations hereunder. Except as set forth in this Section 5.5, neither Party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

5.6 Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by NCPA and Developer.

5.7 Governing Law and Venue. This Agreement and the Exhibits attached hereto shall be governed by and construed under the laws of the State of California. The Parties hereto agree that venue for any action brought to enforce the terms of this Agreement shall be in the applicable courts of the County of Sacramento and the Parties hereby submit to the jurisdiction of such courts.

5.8 Entire Agreement. The terms of this Agreement and the PPA constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior or contemporaneous agreements, representations, negotiations and understandings of the Parties concerning the subject matter hereof, whether oral or written, are hereby superseded and merged herein.

5.9 Notices. All notices, consents, waivers, demands, requests or other instruments or communications to be given by one Party to the other Party shall be given in accordance with the requirements for such instruments or communications set forth in the PPA.

5.10 PPA Termination. If the PPA expires or is terminated for any reason whatsoever, then the Purchase Option and this Agreement shall automatically terminate and be of no further force or effect.

5.11 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

5.12 Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories 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 signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

5.13 No Partnership. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

5.14 Recording. No later than ten (10) Business Days after execution of the Land Lease, Developer shall deliver a memorandum of this Agreement to NCPA, the form and substance of which shall be reasonably acceptable to NCPA, which memorandum shall be executed by the Parties and shall be promptly recorded by Developer in the Official Public Records of the County in which the Site is located.

5.15 Further Assurances. Upon the reasonable request of the other Party, the applicable Party shall execute and deliver such further documents, instruments or conveyances and take, or cause to be taken, all appropriate action of any kind (subject to applicable Requirements of Law) as may be reasonably necessary or advisable to carry out any of the provisions hereof and to otherwise consummate and effectuate the transactions contemplated by this Agreement, all at the sole cost and expense of the requesting Party. Upon NCPA's request and without further consideration, Developer or its Affiliates, as applicable, shall promptly do, execute, acknowledge and deliver all such further acts, assurances and instruments of sale, transfer, conveyance, assignment and confirmation as are reasonably required, and take all such other action as NCPA may reasonably request in order to more effectively (a) transfer, convey and assign the Facility Assets to NCPA in accordance with the provisions set forth in this Agreement, (b) to the full extent permitted by applicable Requirements of Law, put NCPA in actual possession of and confirm NCPA's title to, all of Developer's right, title and interest in and to any assets related to the Facility, and (c) include within the Facility Assets, and transfer, convey and assign to Developer, free and clear of all Liens other than Liens expressly permitted by NCPA in writing at the closing of the sale of the Facility Assets, any assets necessary for the ownership, operation and

maintenance of the Facility that are held or owned by Developer or an Affiliate of Developer on or before the closing.

5.16 Relationship with PPA; Right of First Offer and Right of First Refusal. Except as otherwise specifically stated herein, this Agreement is independent of the PPA and, as a separate agreement, shall survive the amendment or modification of the PPA. In the event of a conflict between this Agreement and the PPA, this Agreement shall control. Notwithstanding the foregoing, this Agreement shall not be deemed to limit Buyer's Right of First Offer or Right of First Refusal set forth in the PPA.

5.17 Equitable Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Seller and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Purchase
Option
Agreement as of the Effective Date.

SELLER NAME

By: _____
Name:
Title:

NORTHERN CALIFORNIA POWER AGENCY

By: _____
Name:
Title:

Exhibit A

Purchase Price

Contract Year	Purchase Price
1	[Insert Amount]
2	[Insert Amount]
3	[Insert Amount]
4	[Insert Amount]
5	[Insert Amount]
6	[Insert Amount]
7	[Insert Amount]
8	[Insert Amount]
9	[Insert Amount]
10	[Insert Amount]
11	[Insert Amount]
12	[Insert Amount]
13	[Insert Amount]
14	[Insert Amount]
15	[Insert Amount]
16	[Insert Amount]
17	[Insert Amount]
18	[Insert Amount]
19	[Insert Amount]
20	[Insert Amount]

**APPENDIX L-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("*Certification*") of the Construction Start Date is delivered by [Company Name] ("*Seller*") to Northern California Power Agency ("*Buyer*") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("*Agreement*") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the engineering, procurement and construction contract related to the Facility was executed on _____; and
2. the notice provided by Seller to EPC Contractor by which Seller authorizes the EPC Contractor to begin construction of the Facility without any delay or waiting periods was issued on _____ (attached).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the _____ day of _____

SELLER NAME

By: _____

Its: _____

Date: _____

**APPENDIX L-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

FORM OF COMMERCIAL OPERATION DATE CERTIFICATION

This certification ("*Certification*") of the Commercial Operation is delivered by [independent engineer] ("*Engineer*") to Northern California Power Agency ("*Buyer*") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("*Agreement*") by and between [S e l l e r N a m e] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Equipment sufficient to generate one hundred percent (100%) of the Contract Capacity of the Facility has been erected in accordance with the equipment manufacturer's specifications ("*Initial Mechanical Completion*");
2. The electrical collection system related to the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch- list items), functional, and energized for the Facility;
3. The substation for the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Facility Energy;
4. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
5. The Facility is operational and interconnected with the grid operator and released by the grid operator, if applicable, for Commercial Operation and capable of delivering Facility Energy through the permanent interconnection facilities for the Facility.

For purposes of Section 4 above, "*Initial Commissioning Completion*" means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer's specifications.

EXECUTED by [INDEPENDENT ENGINEER]
this _____ day of _____, 20__.

[INDEPENDENT ENGINEER]

By: _____

Its: _____

Date: _____

**APPENDIX M-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

[RESERVED]

DRAFT

**APPENDIX M-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

[RESERVED]

DRAFT

**APPENDIX N
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

SITE CONTROL DOCUMENTS

On or prior to December 31, 2018, Seller may update this Appendix N by Notice to Buyer, to modify Site Control Documents to add parcels to, or remove parcels from, the Site shown on the map set forth in Appendix B-1, in accordance with Section 12.3Cg) to the Agreement.

Site Control Documents:

Prior to such time as the Option Agreement is exercised and the Land Lease is executed: Land Option

After the Land Lease is executed: Land Lease

After the Shared Facilities Agreement is executed: Shared Facilities Agreement

[See Attached Map]

APPENDIX O
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]

FORM OF STORAGE OPTION AGREEMENT

This Storage Option Agreement (this "**Agreement**") is made as of _____ (the "**Effective Date**"), by and between [Seller Name] ("Developer"), and the Northern California Power Agency ("**NCPA**"), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et seq. (the "**Act**"), and that certain Amended and Restated Northern California Power Agency Joint Powers Agreement entered into pursuant to the provisions of the Act among NCPA and NCPA's members, dated as of January 1, 2008. Developer and NCPA are sometimes hereinafter individually or collectively called a "**Party**" or the "**Parties**."

WHEREAS, Developer and NCPA are party to that certain Power Purchase Agreement, dated as of [_____, 20XX (the "**PPA**"). Terms used but not defined herein shall have the respective meanings given in the PPA.

WHEREAS, pursuant to the PPA, Developer is developing the Facility, a solar energy generating facility to be located at the Site.

WHEREAS, in conjunction with the Facility, NCPA may wish to place an energy storage facility (the "**Storage Project**") at the Site, on the terms and conditions set forth in this Agreement.

WHEREAS, Developer has agreed to grant NCPA an option to lease certain land and to provide certain assistance and accommodation for the placement of the Storage Project at the Site.

WHEREAS, pursuant to the PPA, the Parties have agreed to enter into this Agreement. NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, NCPA entering into the PPA, the covenants and agreements herein contained, and other good and valuable consideration, (the receipt and adequacy of which is hereby acknowledged by the Parties), the Parties, intending to be legally bound, hereto agree as follows:

1. Option.

1.1 Grant of Option. Developer hereby grants to NCPA an option (the "**Option**") to lease (a) a portion of the Site (the "**Option Property**") to be determined jointly by Developer and NCPA at the Facility inverter locations or at the Facility Substation location, or any other location

mutually agreed to by the Parties, (b) rights to use Developer's share of the interconnection capacity in an amount equal to 4 MW, or such other amount mutually agreed to by the Parties, under the Generator Interconnection Agreement and pursuant to the terms of the Lease as set forth in Sections 1.3 and below, for use of the Storage Project, if, after the MMR process outlined in Section 12.6 of the PPA, CAISO determines that NCPA's use of Developer's share of the interconnection capacity does not constitute an MMR; and (c) rights under the relevant Permits for the purpose of installing, owning, operating, and maintaining the Storage Project; provided that such rights are obtained pursuant to the process outlined in Section 12.6 of the PPA (such rights, the "**Storage Project Rights**"). The Option Property shall be selected and identified by Developer and NCPA jointly at the Facility inverter locations or at the Facility Substation location, or any other location mutually agreed to by the Parties, taking into consideration the design of the Storage Project, provided that the Option Property shall not exceed 2,000 square feet per MW of the Storage Capacity, unless otherwise agreed to by the Parties.

1.2 Option Period. The option period shall run from the Commercial Operation Date and shall continue through the fifteenth (15th) anniversary thereof (the "**Option Period**") unless terminated earlier pursuant to the terms of this Agreement.

1.3 Exercise of Option. NCPA may exercise the Option at any time during the Option Period by delivering to Developer written notice of exercise of the Option ("**Notice of Exercise**"). The Option may be exercised once or twice, at NCPA's election, provided that if the Option is exercised twice, the combined Storage Project resulting from both exercises shall be subject to all requirements of this Agreement. Upon delivery by NCPA of a Notice of Exercise, NCPA and Developer shall promptly negotiate in good faith to execute a mutually agreeable lease and storage implementation agreement (each such agreement, a "**Lease**") any necessary changes to the Shared Facilities Agreement, if applicable, and such other agreements, as appropriate, to afford NCPA the Storage Project Rights; provided that any Lease shall preserve the economic "benefit of the bargain" to both Parties of the PPA without regard to the operation of such Storage Project Rights and shall not adversely affect any other right, benefit, risk or obligation of the Parties thereunder. Each Lease shall contain terms and conditions consistent with the terms set forth in Section 1.5 of this Agreement, other customary terms and conditions, and such other terms and conditions as the Parties may mutually agree. If the Option is exercised twice, the second Lease shall be in a form substantially identical to the first Lease. Upon execution of a second Lease, this Agreement shall terminate.

1.4 Arbitration/Remedies. If the Parties have failed to agree upon the terms and conditions of a Lease within ninety (90) days after Developer's receipt of a Notice of Exercise, then NCPA shall have the right to initiate arbitration proceedings with respect thereto in accordance with this Section 1.4. Any such arbitration proceedings shall be conducted in Sacramento, California before a single arbitrator under the auspices and then-current Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall have substantial professional experience in electric power purchase and sale transactions, with experience in energy storage projects. Within twenty (20) days following selection of the arbitrator, each Party shall submit to the arbitrator a proposed form of Lease. Thereafter, the arbitrator may conduct such hearings, allow such discovery and make such inquiries as the arbitrator deems appropriate, provided that the arbitrator shall be directed (i) to select one of the submitted forms of Lease as most consistent with this Agreement, without compromise (aka "baseball" arbitration), as his

award, and (ii) to deliver his award within sixty (60) days following his retention. NCPA and the Developer shall give full access to the arbitrator. The Parties shall execute and deliver the Lease selected by the arbitrator within ten (10) days following his award and, if either Party fails to do so, the aggrieved Party may seek specific performance of the award from the court pursuant to Sections 14.12 and 14.13 of the PPA. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award thereon shall be maintained in confidence by the Parties. If the arbitrator selects the Lease submitted by NCPA, Developer shall pay the fees and costs of the arbitrator. If the arbitrator selects the Lease submitted by Developer, NCPA shall pay the fees and costs of the arbitrator. Except for the foregoing, each Party shall pay its own legal fees and other costs of the arbitration.

1.5 Lease Terms.

(a) The annual rent is \$1 for the Storage Project Rights and any and all necessary and desirable equipment reserved for or to accommodate the Storage Project, including the excess capacity of the inverters.

(b) NCPA will be responsible for all engineering, procurement and construction costs of the Storage Project, including Facility modifications necessary to integrate the Storage Project, and operating and maintenance costs of the Storage Project. NCPA will install additional protective devices at Developer's reasonable request to isolate the Storage Project from the Facility inverters in the event of a fault or other event. Developer shall assist with NCPA's efforts as set forth in Section 3.3.

(c) NCPA may elect to engage Developer to operate and maintain the Storage Project. If Developer agrees to be so engaged, the Parties shall enter into a mutually agreeable operation and maintenance agreement and operation and maintenance shall be in accordance with Prudent Utility Practices and in compliance with any equipment warranty requirements or recommendations of the equipment manufacturers and/or vendor.

(d) NCPA shall be entitled to utilize the inverter to flow electricity from the Storage Project on to the grid when the inverter has available capacity subject to the terms and conditions of the Shared Facilities Agreement, Generator Interconnection Agreement, CAISO requirements, including any requirement included in the MMR, and subject to Section 1.3.

(e) NCPA shall be entitled to redirect some of the Energy generated by the Facility into the Storage Project and draw from the Storage Project as it needs, provided that such operations do not conflict with the terms of the Facility's Generator Interconnection Agreement, CAISO requirements, including any requirements included in the MMR, the Lease or the Shared Facilities Agreement.

(f) NCPA shall pay Developer at the Contract Price for Energy the Facility would have otherwise generated and delivered to the Point of Delivery during a redirection of Energy into the Storage Project, but shall not be required to pay Developer for the Storage Project charge/discharge cycle.

(g) The Parties shall agree upon detailed operating procedures for the operation of the Storage Project, including metering protocols and procedures to appropriately measure

the Energy output of the Facility into the inverters and to the Point of Delivery and Energy output of the Facility into the Storage Project.

(h) The Lease shall contain such other terms and conditions as necessary to reflect the financing and ownership structure for the Storage Project, as well as other terms and conditions customary in such leases and storage implementation agreements.

(i) The Lease shall automatically terminate upon the termination or expiration of the PPA for any reason, and NCPA shall, at its own cost and expense, be responsible for removal of the Storage Project from the Facility within a timeframe mutually agreed to by the Parties, unless the PPA is terminated under Section 2.4(i) of the PPA or as otherwise agreed to by the Parties.

1.6 Failure to Exercise Option. If the Option has not been exercised as of 5:00 p.m. Pacific time on the last day of the Option Period, then the Option shall automatically expire and this Agreement automatically terminate, without further action by any Party, and the rights granted to NCPA hereunder shall be of no further force or effect. In the event the last day of the Option Period falls on a Saturday, Sunday or holiday, the Option Period shall be extended to the next Business Day.

2. Access to Option Property. During the Option Period and subject to the Shared Facilities Agreement, Developer shall provide NCPA and its employees, agents, consultants and contractors ("**NCPA Personnel**") with reasonable access to the Option Property, during normal business hours and upon two (2) days prior notice by NCPA, for the purpose of undertaking reasonable feasibility studies and due diligence review. NCPA will cause NCPA Personnel to abide by Developer policies and safety protocols at all times during periods of access to Option Property and shall conduct its activities in such a manner so as to avoid damage to the Site and avoid materially interfering with the operations of the Facility.

3. Storage Project.

3.1 Storage Project Development: Ownership. Except as specifically set forth below, and in a Lease, NCPA shall be solely responsible, at its sole cost and expense, for engaging an EPC contractor, securing financing and constructing and installing the Storage Project. Unless otherwise agreed to by the Parties, upon completion, NCPA shall be the owner of the Storage Project. The foregoing notwithstanding, upon exercise of the Option, Developer shall have the right of first offer to provide financing for the Storage Project, including lease financing, or Storage Project ownership by Developer. NCPA shall reasonably consider any such offer of financing provided by Developer.

3.2 Storage Project Characteristics. The Storage Project shall have a nameplate capacity no greater than 4 MW unless mutually agreed to be the Parties. The Storage Project shall connect to the AC or DC portion of the Facility, as mutually agreed to by the Parties.

3.3 Developer Responsibilities. In addition to and without limiting any of Developer's obligations under the PPA, including Section 12.6, Developer agrees to reasonably cooperate with NCPA's efforts to develop and install the Storage Project, including providing qualified personnel to assist with the activities set forth herein and providing information about the Facility. In

particular, at NCPA's request, Developer shall use commercially reasonable efforts to assist NCPA with the following installation tasks, provided that Developer shall not be required to incur third party costs or expenses in excess of [Insert Amount] Dollars (\$ XX,XXX) in the aggregate in connection with the obligations of Developer set forth in Section 12.6 of the PPA and this Section 3.3:

- (i) preparing an RFP for the Storage Project.
- (ii) selecting a technology and vendor to install the Storage Project.
- (iii) Managing the installation of the Storage Project.
- (iv) Any other related activities, including interconnection and permitting efforts.

4. Miscellaneous.

4.1 Representations and Warranties of NCPA.

(a) NCPA is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by NCPA of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of such NCPA's regulatory or governing bodies, other than that which has been obtained; provided that further authorizations from Buyer's regulatory or governing bodies will be required for NCPA to exercise the Option; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of NCPA enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

4.2 Representations and Warranties of Developer.

(a) Developer is a limited liability company duly organized, validly existing and in good standing under the laws of its respective state of incorporation or organization and is qualified to do business in the State of California, and has the legal power and authority to own or lease its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) Developer has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement, and Developer has delivered to Developer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of Developer as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of Developer certifying as to the names and signatures of the authorized representatives of Developer.

(c) The execution, delivery and performance by Developer of this Agreement have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

4.3 Waiver of Consequential Damages. THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE FACILITY OR THIS AGREEMENT.

4.4 Assignment. NCPA may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, in whole or in part without the consent of Developer to a Qualified Buyer Assignee that is also the assignee of the PPA. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Developer pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of NCPA under this Agreement, thereby relieving the assignor NCPA from its duties and obligations hereunder. Developer shall have the right to assign this Agreement to any permitted assignee of the PPA. Except as set forth in this Section 4.4, neither Party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

4.5 Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by NCPA and Developer.

4.6 Governing Law and Venue. This Agreement and the Exhibits attached hereto shall be governed by and construed under the laws of the State of California. The Parties hereto agree that venue for any action brought to enforce the terms of this Agreement shall be in the applicable courts of the County of Sacramento and the Parties hereby submit to the jurisdiction of such courts.

4.7 Entire Agreement. The terms of this Agreement and the PPA constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior or contemporaneous agreements, representations, negotiations and understandings of the Parties concerning the subject matter hereof, whether oral or written, are hereby superseded and merged herein.

4.8 Notices. All notices, consents, waivers, demands, requests or other instruments or communications to be given by one Party to the other Party shall be given in accordance with the requirements for such instruments or communications set forth in the PPA.

4.9 PPA Termination. If the PPA expires or is terminated for any reason whatsoever, then the Option Period shall automatically end, and this Agreement shall automatically terminate and be of no further force or effect.

4.10 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

4.11 Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories 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 signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

4.12 No Partnership. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

4.13 Recording. No later than ten (10) Business Days after execution of the Land Lease, Developer shall deliver a Memorandum of this Agreement to NCPA, the form and substance of which shall be reasonably acceptable to NCPA, which Memorandum shall be executed by the Parties and shall promptly be recorded by Developer in the Official Public Records of the County in which the Site is located.

4.14 Further Assurances. Upon the reasonable request of the other Party, the applicable Party shall execute and deliver such further documents, instruments or conveyances and take, or cause to be taken, all appropriate action of any kind (subject to applicable Requirements of Law) as may be reasonably necessary or advisable to carry out any of the provisions hereof and to otherwise consummate and effectuate the transactions contemplated by this Agreement, all at the sole cost and expense of the requesting Party.

4.15 Equitable Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Developer and that NCPA may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

4.16 Successors and Assigns. All covenants, promises and agreements by or on behalf of the Parties contained in this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Storage Option Agreement as of the Effective Date.

[Seller Name]

By: _____
Name:
Title:

NORTHERN CALIFORNIA POWER AGENCY

By: _____
Name:
Title:

**SCHEDULE 12.2(h)
TO POWER PURCHASE AGREEMENT,
DATED AS OF [DATE]
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
[SELLER NAME]**

**SPECIFIED UPSTREAM EQUITY OWNERS AND ORGANIZATIONAL AND
OWNERSHIP STRUCTURE OF SELLER AND UPSTREAM EQUITY OWNERS**

DRAFT



Commission Staff Report

November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Approval of Northern California Power Agency's (NCPA) Major Insurance Renewals for Policy Year 2020

AGENDA CATEGORY: Discussion/Action

FROM:	Rui Dai <i>RD</i>	METHOD OF SELECTION:
	Risk Manager	N/A
Division:	Administrative Services	
Department:	Risk Management	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<p><i>If other, please specify</i></p> <p>_____</p> <p>_____</p>		

RECOMMENDATION:

Northern California Power Agency (NCPA) staff recommends that the Commission delegate authority to the General Manager to negotiate and bind property damage and liability coverage amounts as presented (or better) and a not-to-exceed proposed premiums of approximately \$4,740,000.

BACKGROUND:

NCPA utilizes the insurance brokerage services of Aon Risk Solutions, San Francisco, California to market and place NCPA's insurance programs. Each insurance policy and the related insurance market conditions are reviewed prior to the renewal date and remarketed as required to qualified insurers experienced in underwriting the applicable insurance risk. Current property and liability insurance coverage expires on December 15 and December 31, 2019, respectively.

This year NCPA, together with Aon, marketed NCPA's insurance programs to both existing and prospective underwriters, focused on presenting NCPA's proactive enterprise risk management approach and its rigorous loss prevention programs. The property insurance market had been soft for many years. It turned around in 2018, triggered by floods in Texas, hurricanes along the east coast, the devastation of Puerto Rico, and wildfires in California. NCPA management's commitment to loss prevention and the marketing effort successfully improved the insurance underwriters' confidence and knowledge of NCPA's business and risk profile.

Highlights of the Renewal Process

- The insurance market conditions hardened a year ago after many years of soft markets. The members have benefited with reduced (or flat) premiums since 2015.
- On-going exposure to flooding, hurricanes, and catastrophic California wildfires have changed the insurance landscape.
- NCPA had four claims in the past three years: 2015 Geothermal wildfire and Hydro Plant landslide, 2017 storm damage on Hydro Beaver Creek, and 2018 Alameda Unit 1 equipment failure.
- California wildfires have a significant impact on the liability insurance market due to the impacts of the Camp fire and current situation of the Kincadee fire and wildfires in Southern California.
- Some underwriters withdrew from California liability insurance market while others have reduced capacities and/or excluded wildfire coverage altogether.

Insurance Programs Renewal Requests

Due to the current wildfires in California, underwriters are not ready to quote NCPA's program before assessing their potential exposures. While NCPA and Aon are still in the process of securing final quotes, staff requests the Commission grant the authority to the General Manager to negotiate and bind coverages with not-to-exceed rates for the 2020 renewal premiums of \$2,615,000 for property damage coverage (30% increase) and \$2,125,000 for casualty coverage (130% increase). While staff doesn't anticipate premiums coming in that high, this provides the General Manager the ability to bind coverages prior to the expiration of the policies. In addition, our brokers will continue pushing the markets for better rates and a final report will be made available after all the quotes and coverages are secured.

Property Damage / Business Interruption

		CY19	CY20	% chg
	NCPA Assessed Value (2018)	\$785,298,760	\$821,829,403	4.65%
	LEC Assessed Value (2019)	\$381,896,208	\$401,875,050	5.23%
	Total	\$1,167,194,968	\$1,223,704,453	
	Business Interruption	\$80,066,831	\$100,974,421	26.11%
PD Rate	0.1400%	\$1,634,072.96	\$1,713,186.23	
BI Rate	0.4600%	\$368,307.42	\$464,482.34	
		\$2,002,380.38	\$2,177,668.57	8.75%
	20% inc			
PD Rate	0.1680%		\$2,055,823.48	
BI Rate	0.5520%		\$557,378.80	
			\$2,613,202.28	30.50%
		Goal---->	\$2,300,000.00	14.86%

The Assessed Value and Business Interruption totals increased from the prior year. Using the same rates as CY2019, the premium would increase \$175,000 or 8.75%. Given the feedback of a hardening market, we made an assumption that the Property Damage (PD) Rate and Business Interruption (BI) Rate may increase as high as 20%. This would reflect a premium of over \$2.6 million or a 30% increase. Aon will continue to push the markets with a goal of achieving a premium closer to \$2,300,000. For comparative purposes, CY2015 premium was \$2,346,708.

Casualty

The Casualty program mainly consists of Excess Liability, Workers Comp, and Auto. Quotes for Workers Comp and Auto have been received and the net premium for both programs is approximately \$280,000 which is about \$10,000 less than the current premium. This is due to a decrease in NCPA's payroll costs for the Workers Comp premium. However, quotes for Excess Liability are still pending. As mentioned above, Excess Liability coverage in California is challenging from both capacity and premium standpoints due to the devastating California wildfires in 2017, 2018, current ongoing wildfires across California, as well as adverse legal precedent of inverse condemnation and the corresponding strict liability standard. California wildfire liability is quickly reaching the brink of becoming an uninsurable, or not insurable at a price utilities deem reasonable. While NCPA and Aon continue to push the market, we are estimating this premium may triple in cost going from \$640,000 to \$1.8 million to achieve the same level of liability insurance of \$75 million.

FISCAL IMPACT:

The total cost of the policy year 2020 insurance programs is estimated not to exceed \$4,740,000. This is approximately 60% higher than current year premiums and approximately 30% higher than FY20 budget for the underlined programs. Depending on final premiums, a budget augmentation may be required for FY20. Staff will return in January with a final report of coverages and premiums.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation was reviewed by the Lodi Energy Center Project Participant Committee and the Facilities Committee November 4 and November 6, 2019 respectively and was recommended for Commission approval at both meetings.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy S. Howard".

RANDY S. HOWARD
General Manager

RESOLUTION 19-103

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE MAJOR INSURANCE RENEWALS FOR THE POLICY YEAR OF 2020

(reference Staff Report #238:19)

WHEREAS, the Northern California Power Agency (the Agency) is required by various of its contracts and agreements with its members and its generating and transmission project participants to provide for property, casualty and other insurance to protect its interests therein; and

WHEREAS, the Agency utilizes the insurance brokerage services of Aon Risk Solutions, San Francisco, California to market and place the Agency's insurance programs. Each insurance policy and the related insurance market conditions are reviewed prior to the renewal date and remarketed as required to qualified insurers experienced in underwriting the applicable insurance risk; and

WHEREAS, due to the current wildfires in California, underwriters are not ready to quote NCPA's program before assessing their potential exposures; and

WHEREAS, in order to negotiate coverage before expiration of the policies, this action grants the authority to the General Manager to bind coverages with not-to-exceed rates for the 2020 renewal premiums of \$2,615,000 for property damage coverage which includes \$615,000 for LEC and \$2,125,000 for casualty coverage which includes \$135,000 for LEC; and

WHEREAS, LEC PPC reviewed and recommended approval on November 4, 2019. The Facilities Committee reviewed and recommended the not-to-exceed amounts on November 6, 2019; 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 granting the authority to the General Manager to bind coverages at the proposed not-to-exceed rates for the 2020 renewal premiums of \$2,615,000 for property damage coverage and \$2,125,000 for casualty coverage.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019
by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY



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Commission Staff Report

November 18, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Authorizing and Approving the Issuance of up to \$28 Million Capital Facilities Revenue Bonds, 2019 Refunding Series A

AGENDA CATEGORY: Discussion/Action

FROM:	Monty Hanks <i>MH</i> Assistant General Manager/CFO	METHOD OF SELECTION: N/A
Division:	Administrative Services	
Department:	Accounting & Finance	

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		
<hr/>		
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RECOMMENDATION:

Staff is recommending the Northern California Power Agency (NCPA) Commission approve Resolution 19-106 which is authorizing and approving the issuance of up to \$28 million of fixed rate Capital Facilities Revenue Bonds, 2019 Refunding Series A and delegates the General Manager and other NCPA officials the authority to execute related legal documents to issue these bonds.

BACKGROUND:

Policy and RFP

The NCPA Finance Committee, NCPA staff and NCPA's financial advisors, Public Financial Management (PFM), carefully monitor the bond market for potential opportunities to refinance NCPA bonds for debt service savings. According to NCPA's *Debt and Interest Rate Management Policy*, a target of 5% net present value (NPV) savings is desired before considering a bond refunding. In June 2019, a Request for Proposals was issued to over a two dozen banks and investment banks seeking a potential refunding of the 2010 Capital Facilities Bonds, Series A (2010A bonds). Upon evaluation of the various proposals, JP Morgan offered the best approach and understanding of this transaction including competitive pricing. The Finance Committee directed staff to move forward with the refunding using JP Morgan as sole Underwriter (UW).

Outstanding Bonds to be Refunded

The 2010A bonds were originally issued in the aggregate principal amount of \$55,120,000 for the purpose of providing funds to refund all of the 1999 bonds, fund a deposit to the debt service reserve fund and pay the cost of issuance. The 2019 Series A refunding bonds are being issued to redeem the 2010A bonds and pay costs of issuance (COI) of this transaction around the middle of December 2019. The purpose of this refunding is being undertaken to realize debt service savings. In addition, the strategy is to roll the 2010 debt service reserve funds into the refunding since a reserve fund is no longer required.

Documents for Approval

To complete the bond refunding, the Commission will be required to approve Resolution 19-106 authorizing and approving the issuance of the refunding bonds and related documents including the following:

1. Preliminary Official Statement (POS)
2. Indenture of Trust
3. Escrow Deposit Agreement
4. Bond Purchase Contract
5. Continuing Disclosure Agreement
6. And other related documents

Draft copies of these documents are provided for review on [NCPA Connect](#). Upon approval by the Commission, pricing of the refunding bonds will occur around the middle of December with the bond closing shortly thereafter.

FISCAL IMPACT:

With the passage of SB450, the following details of the refunding must be disclosed prior to authorization of the bonds. The numbers reflect rates as of September 23, 2019.

Estimated Amount of Proceeds:	\$23,511,305
Estimated True Interest Cost:	1.242%
Estimated Cost of Issuance:	\$460,455 (includes UW discount)
Estimated Sum of Debt Service Payments:	\$24,224,890

Estimated NPV savings over the current debt service is approximately \$2.1 million or 8.43% of refunded bonds through final maturity in 2025. The estimated average annual debt service savings for a full bond year is approximately \$880k. The breakdown of cost allocation per Participant for debt service savings (net of all fees) is shown below:

Participant	Entitlement Percentage	2010A Cap Fac Debt Service Obligation	Estimated NPV Savings	Est. Annual Debt Service Savings
Alameda	19.00%	19.00%	\$ 407,514	\$ 167,474
Lodi	39.50%	39.50%	\$ 847,201	\$ 348,170
Lompoc	5.00%	5.00%	\$ 107,241	\$ 44,072
Roseville	36.50%	36.50%	\$ 782,857	\$ 321,727
Total	100.00%	100.00%	\$ 2,144,813	\$ 881,443

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.

COMMITTEE REVIEW:

The recommendation was reviewed by the Finance Committee on November 12, 2019 and was unanimously recommended for Commission approval.

Respectfully submitted,



RANDY S. HOWARD
General Manager

Attachments: Resolution 19-106

RESOLUTION 19-106

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY AUTHORIZING AND APPROVING THE ISSUANCE OF CAPITAL FACILITIES REVENUE BONDS, 2019 REFUNDING SERIES A; APPROVING THE INDENTURE OF TRUST PURSUANT TO WHICH SUCH BONDS ARE TO BE ISSUED; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE, SECURING AND SALE OF SUCH BONDS; AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

(Reference Staff Report #242:19)

WHEREAS, the Northern California Power Agency ("NCPA") is a public entity duly organized and existing pursuant to the Amended and Restated Northern California Power Agency Joint Powers Agreement, dated as of January 1, 2008, as supplemented (the "Agreement") and the provisions relating to the Joint Exercise of Powers Act constituting Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California; and

WHEREAS, NCPA is authorized pursuant to the provisions of the Agreement and the Act (capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Indenture mentioned below) to acquire and construct, or cause to be acquired and constructed, and to operate or cause to be operated, a project within the State of California for the generation or transmission of electric energy (including a capacity right in such a project) and to sell the capacity and energy of such project; to enter into agreements with respect to any matters relating to the acquisition, construction and operation of such project and the sale of capacity and energy of such project; and to finance the acquisition, construction and operation of such project through the issuance of bonds, notes and other evidences of indebtedness under the Act; and to issue bonds to refund such bonds, notes or other evidences of indebtedness; and

WHEREAS, NCPA and the cities of Alameda, Lodi, Lompoc and Roseville (the "Unit One Project Participants") have entered into the Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two – Unit One, dated as of August 1, 1992 (the "Unit One Member Agreement"), to provide for the construction, operation, and financing of Combustion Turbine Project Number Two – Unit One ("Unit One"), the sale by NCPA of capacity and energy of Unit One to the Unit One Project Participants, and the security for the bonds, notes and other evidences of indebtedness issued to finance Unit One; and

WHEREAS, NCPA has previously issued its Capital Facilities Revenue Bonds, 2010 Refunding Series A (the "2010 Series A Bonds") payable from and secured by the payments to be made under the Unit One Member Agreement; and

WHEREAS, the 2010 Bonds have been issued under and pursuant to the Indenture of Trust, dated as of January 1, 2010, by and between NCPA and U.S. Bank Trust National Association, as trustee (the "Trustee"); and

WHEREAS, NCPA desires to issue its Capital Facilities Revenue Bonds, 2019 Refunding Series A (the "2019 Series A Bonds"), for the purpose of providing a portion of the funds necessary to refund the outstanding 2010 Series A Bonds (such 2010 Series A Bonds to be refunded, the "Refunded Bonds"); and

WHEREAS, the 2019 Series A Bonds are to be issued under and pursuant to an Indenture of Trust by and between NCPA and the U.S. Bank National Association, as Trustee (such Indenture of Trust, in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the "Indenture"); and

WHEREAS, NCPA desires to provide for the issuance and securing of the 2019 Series A Bonds as provided in the Indenture; and

WHEREAS, NCPA will provide for the refunding of the Refunded Bonds by depositing funds, including certain proceeds of the 2019 Series A Bonds, in an escrow fund established by an Escrow Deposit Agreement with the Trustee (such Escrow Deposit Agreement, in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the "Escrow Deposit Agreement"); and

WHEREAS, J.P. Morgan Securities LLC, as underwriter (the "Underwriter"), has submitted a proposal to purchase the 2019 Series A Bonds in the form of a Contract of Purchase (such Contract of Purchase, in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the "Bond Purchase Contract"); and

WHEREAS, the offer of the 2019 Series A Bonds to the public is to be made pursuant to a Preliminary Official Statement (such Preliminary Official Statement in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the "Preliminary Official Statement"); and

WHEREAS, in order to provide a continuing disclosure undertaking by it pursuant to the requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission in connection with the 2019 Series A Bonds, NCPA intends to enter into a Continuing Disclosure Agreement with the Trustee, as Dissemination Agent (such Continuing Disclosure Agreement, in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the "Continuing Disclosure Agreement"); and

WHEREAS, there have been prepared and submitted to this meeting drafts of the following:

- (1) the Indenture;
- (2) the Escrow Deposit Agreement;
- (3) the Bond Purchase Contract;
- (4) the Preliminary Official Statement; and
- (5) the Continuing Disclosure Agreement.

WHEREAS, after having reviewed and considered the proposal of the Underwriter to purchase the 2019 Series A Bonds on the terms and conditions contained in the Bond Purchase Contract, this Commission now desires to authorize the issuance and sale of the 2019 Series A Bonds, including the execution of such documents and the performance of such acts as may be necessary or desirable to effect such issuance and sale and the other actions contemplated by this Resolution; and

WHEREAS, in compliance with California Government Code Section 5852.1, this Commission has obtained from PFM Financial Advisors LLC, as municipal advisor to NCPA, good faith estimates of the following information: (a) the true interest cost of the 2019 Series A Bonds, (b) the sum of all fees and charges paid to third parties with respect to the 2019 Series A Bonds, (c) the amount of proceeds of the 2019 Series A Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the 2019 Series A Bonds, and (d) the sum total of all debt service payments on the 2019 Series A Bonds calculated to the final maturity of the 2019 Series A Bonds plus the fees and charges paid to third parties not paid with the proceeds of the 2019 Series A Bonds, and such estimates are disclosed and set forth in Staff Report #242:19;

WHEREAS, this bond refunding 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, and therefore no environmental review is necessary; and

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Northern California Power Agency, as follows:

Section 1. The Commission hereby finds and determines that the issuance and sale of the 2019 Series A Bonds that refund the Refunded Bonds, and approval of the other matters referred to in this Resolution, will not result in either a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. As a consequence, such activity is not a "project" as defined by the California Environmental Quality Act (California Public Resources Code section 21000 *et seq.*).

Section 2. The issuance of the 2019 Series A Bonds on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture is hereby authorized and approved. The aggregate principal amount of the 2019 Series A Bonds shall not exceed Twenty-Eight Million Dollars (\$28,000,000). The 2019 Series A Bonds will be dated, will bear interest at the per annum interest rates, will mature on the date or dates, will be issued in the form, will have the Sinking Fund Installments (if any), will be subject to redemption (if applicable), and will have such other terms, as shall be provided in the Indenture as the same is completed as provided in this Resolution.

Section 3. The Indenture, in substantially the form submitted to this meeting and made a part thereof as though set forth in full herein, be and the same is hereby approved. Each of the Chairman of this Commission (the "Chairman"), the General Manager of NCPA (the "General Manager"), the Assistant General Manager, Finance and Administrative Services/Chief Financial Officer, and the Treasurer-Controller of NCPA (each an "Authorized Officer"), acting singly, is hereby authorized to execute and deliver the Indenture, in the name of and on behalf of NCPA, in the form presented to this meeting with such changes, insertions and deletions as may be consistent with this Resolution and the determinations made pursuant hereto and as may be approved by the Authorized Officer executing the Indenture, said execution being conclusive evidence of such approval.

Section 4. The Authorized Officer executing the Indenture is hereby authorized to determine the following: (i) the aggregate principal amount of the 2019 Series A Bonds; (ii) the maturity date or dates of the 2019 Series A Bonds (the final maturity of such 2019 Series A Bonds to be not later than July 1, 2025); (iii) the principal amount of the 2019 Series A Bonds maturing on each maturity date; (iv) the 2019 Series A Bonds which are to be term bonds, if any, and the Sinking Fund Installments for any such term bonds; (v) the redemption provisions

for the 2019 Series A Bonds; and (vi) subject to the provisions of Section 13 hereof, which of the outstanding 2010 Series A Bonds are to be refunded as Refunded Bonds pursuant to this Resolution.

Section 5. The Escrow Deposit Agreement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers, acting singly, is hereby authorized to execute and deliver, in the name of and on behalf of NCPA, the Escrow Deposit Agreement to the Trustee in the form presented to the meeting with such changes, insertions and deletions as may be approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

Section 6. The proceeds of the sale of the 2019 Series A Bonds shall be applied to the refunding of the Refunded Bonds on the terms set forth in the Indenture and the Escrow Deposit Agreement.

Section 7. The Bond Purchase Contract, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers, acting singly, is hereby authorized to execute and deliver the Bond Purchase Contract, in the name of and on behalf of NCPA, in the form presented to this meeting, with such changes, insertions and deletions as may be approved by the Authorized Officer executing said Bond Purchase Contract and as are consistent with the determinations of the terms of the 2019 Series A Bonds made pursuant to this Resolution, said execution being conclusive evidence of such approval.

Each of the Authorized Officers, acting singly, is hereby authorized to determine the purchase price to be paid for the 2019 Series A Bonds under the Bond Purchase Contract; provided, however, that the aggregate underwriter's discount (not including original issue discount) on the 2019 Series A Bonds shall be not more than 0.4% of the principal amount of the 2019 Series A Bonds. The sale of the 2019 Series A Bonds to the Underwriter on the terms and conditions contained in the Bond Purchase Contract, as the same may be completed in accordance with the provisions of this Resolution, with such changes, insertions and deletions as are authorized hereby, is hereby approved and authorized.

Section 8. The Preliminary Official Statement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved and the use of the Preliminary Official Statement in connection with the offering and sale of the 2019 Series A Bonds by the Underwriter is hereby authorized and approved.

Each of the Authorized Officers is hereby authorized and directed to prepare and deliver to the Underwriter a final official statement in connection with the 2019 Series A Bonds (the "Official Statement"). The Official Statement shall be in the form of the Preliminary Official Statement with the addition of the final terms of the 2019 Series A Bonds to be contained in the Indenture and with such other changes, insertions and deletions as may be approved by the officer of NCPA executing the same, said execution being conclusive evidence of such approval. Each of the Chairman and the General Manager of NCPA, acting singly, is hereby authorized to execute the Official Statement and any amendment or supplement thereto contemplated by the Bond Purchase Contract, in the name and on behalf of NCPA, and thereupon to cause the Official Statement and any such amendment or supplement to be delivered to the Underwriter with such execution being conclusive evidence of the approval

thereof. The use of the Official Statement in connection with the offering and sale of the 2019 Series A Bonds by the Underwriter is hereby authorized and approved.

Each of the Authorized Officers, acting singly, is hereby authorized to determine that the Preliminary Official Statement is deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Commission ("Rule 15c2-12"), except for the omission of certain information permitted to be omitted pursuant to Rule 15c2-12.

Section 9. The Continuing Disclosure Agreement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers, acting singly, is hereby authorized to execute and deliver, in the name of and on behalf of NCPA, the Continuing Disclosure Agreement to the Trustee as Dissemination Agent thereunder in the form presented to the meeting with such changes, insertions and deletions as may be approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

Section 10. The refunding of the Refunded Bonds on the terms and conditions specified in the Indenture and the Escrow Deposit Agreement, including the application of moneys for such purposes as therein provided, is hereby approved and authorized.

Section 11. Pursuant to Section 11 of the Unit One Member Agreement, NCPA is hereby directed by the Unit One Project Participants (as conclusively evidenced by the affirmative votes for this Resolution of the representatives of the Unit One Project Participants to the Commission) to refund the Refunded Bonds as provided in the Indenture, to issue the 2019 Series A Bonds, to enter into, and perform its obligations under, the documents and instruments approved or authorized by this Resolution and to take such further actions as herein authorized in connection with the refunding of the Refunded Bonds and the issuance, security and sale of the 2019 Series A Bonds, and NCPA shall comply with such direction, while not stayed or nullified, to the fullest extent authorized by law.

Section 12. The Treasurer-Controller of NCPA and the Administrative Assistant to the Assistant General Manager, Finance and Administrative Services/Chief Financial Officer are each hereby appointed as an Assistant Secretary for the purpose of executing any documents, making any attestation or certification on behalf of NCPA or taking any other action necessary or convenient in carrying out the transactions contemplated by this Resolution.

Section 13. Notwithstanding any other provision or grant of authority to an Authorized Officer in this Resolution to the contrary, none of the documents approved and authorized to be executed and delivered by this Resolution shall be executed and delivered by an Authorized Officer unless as of the date of execution and delivery the Assistant General Manager, Finance and Administrative Services/Chief Financial Officer or the Treasurer-Controller shall certify in writing that the net present value of the savings to be realized by the bond issuance contemplated by this Resolution is not less than five (5%) percent of the principal amount of the Refunded Bonds; and further provided, that any approval or grant of authority in this Resolution shall, without further action of the Commission, expire and be void as of 12:01 a.m. on June 1, 2020 unless exercised prior to that time.

Section 14. The Chairman and the Vice Chairman of the Commission, and the Authorized Officers, acting singly, be and each of them hereby is authorized to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or convenient in carrying out the transactions contemplated by this Resolution or the documents and instruments approved or authorized by this Resolution,

including without limitation, entering into any continuing disclosure undertaking required by Rule 15c2-12, executing and delivering one or more tax certificates, credit enhancement agreements, investment agreements and/or financial guaranty agreements, taking any and all actions to provide for the giving of written directions and notices and the securing of any necessary third party approvals, and making any determinations or submission of any documents or reports which are required by any rule or regulation of any governmental entity, in connection with the issuance and sale of the 2019 Series A Bonds, the refunding of the Refunded Bonds and the authorization, execution, delivery and performance by NCPA of its obligations under the documents and instruments approved or authorized by this Resolution. Without limiting the generality of the foregoing, the Chairman, the Vice Chairman, and the Authorized Officers, acting singly, are hereby authorized and directed to enter into such amendments and supplements to documents and agreements entered into in connection with the 2010 Series A Bonds as shall be necessary or desirable to carry out the purposes of the Resolution. The Secretary or an Assistant Secretary of NCPA is hereby authorized to affix the seal of NCPA and attest to any of the documents approved or authorized pursuant to this Resolution.

Section 15. All actions heretofore taken by any committee of the Commission, or any officer, representative or agent of NCPA, in connection with the issuance and sale of the 2019 Series A Bonds, the refunding of the Refunded Bonds, or the authorization, execution, delivery or performance of NCPA's obligations under the documents and instruments approved or authorized by this Resolution and the other actions contemplated by this Resolution are hereby ratified, approved and confirmed.

Section 16. This Resolution shall take effect immediately upon its adoption.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY

RESOLUTION 19-__

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
AUTHORIZING AND APPROVING THE ISSUANCE OF
CAPITAL FACILITIES REVENUE BONDS, 2019 REFUNDING SERIES A;
APPROVING THE INDENTURE OF TRUST PURSUANT TO WHICH SUCH
BONDS ARE TO BE ISSUED; AUTHORIZING AND APPROVING CERTAIN
DOCUMENTS IN CONNECTION WITH THE ISSUANCE, SECURING AND
SALE OF SUCH BONDS; AND AUTHORIZING CERTAIN OTHER MATTERS
RELATING THERETO**

(Reference Staff Report #__:_)

WHEREAS, the Northern California Power Agency (“NCPA”) is a public entity duly organized and existing pursuant to the Amended and Restated Northern California Power Agency Joint Powers Agreement, dated as of January 1, 2008, as supplemented (the “Agreement”) and the provisions relating to the Joint Exercise of Powers Act constituting Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California; and

WHEREAS, NCPA is authorized pursuant to the provisions of the Agreement and the Act (capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Indenture mentioned below) to acquire and construct, or cause to be acquired and constructed, and to operate or cause to be operated, a project within the State of California for the generation or transmission of electric energy (including a capacity right in such a project) and to sell the capacity and energy of such project; to enter into agreements with respect to any matters relating to the acquisition, construction and operation of such project and the sale of capacity and energy of such project; and to finance the acquisition, construction and operation of such project through the issuance of bonds, notes and other evidences of indebtedness under the Act; and to issue bonds to refund such bonds, notes or other evidences of indebtedness; and

WHEREAS, NCPA and the cities of Alameda, Lodi, Lompoc and Roseville (the “Unit One Project Participants”) have entered into the Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two – Unit One, dated as of August 1, 1992 (the “Unit One Member Agreement”), to provide for the construction, operation, and financing of Combustion Turbine Project Number Two – Unit One (“Unit One”), the sale by NCPA of capacity and energy of Unit One to the Unit One Project Participants, and the security for the bonds, notes and other evidences of indebtedness issued to finance Unit One; and

WHEREAS, NCPA has previously issued its Capital Facilities Revenue Bonds, 2010 Refunding Series A (the “2010 Series A Bonds”) payable from and secured by the payments to be made under the Unit One Member Agreement; and

WHEREAS, the 2010 Bonds have been issued under and pursuant to the Indenture of Trust, dated as of January 1, 2010, by and between NCPA and U.S. Bank Trust National Association, as trustee (the “Trustee”); and

WHEREAS, NCPA desires to issue its Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “2019 Series A Bonds”), for the purpose of providing a portion of the funds necessary to refund the outstanding 2010 Series A Bonds (such 2010 Series A Bonds to be refunded, the “Refunded Bonds”); and

WHEREAS, the 2019 Series A Bonds are to be issued under and pursuant to an Indenture of Trust by and between NCPA and the U.S. Bank National Association, as Trustee (such Indenture of Trust, in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the “Indenture”); and

WHEREAS, NCPA desires to provide for the issuance and securing of the 2019 Series A Bonds as provided in the Indenture; and

WHEREAS, NCPA will provide for the refunding of the Refunded Bonds by depositing funds, including certain proceeds of the 2019 Series A Bonds, in an escrow fund established by an Escrow Deposit Agreement with the Trustee (such Escrow Deposit Agreement, in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the “Escrow Deposit Agreement”); and

WHEREAS, J.P. Morgan Securities LLC, as underwriter (the “Underwriter”), has submitted a proposal to purchase the 2019 Series A Bonds in the form of a Contract of Purchase (such Contract of Purchase, in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the “Bond Purchase Contract”); and

WHEREAS, the offer of the 2019 Series A Bonds to the public is to be made pursuant to a Preliminary Official Statement (such Preliminary Official Statement in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the “Preliminary Official Statement”); and

WHEREAS, in order to provide a continuing disclosure undertaking by it pursuant to the requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission in connection with the 2019 Series A Bonds, NCPA intends to enter into a Continuing Disclosure Agreement with the Trustee, as Dissemination Agent (such Continuing Disclosure Agreement, in the form presented to this meeting with such changes, insertions and deletions as are made pursuant to this Resolution, being referred to herein as the “Continuing Disclosure Agreement”); and

WHEREAS, there have been prepared and submitted to this meeting drafts of the following:

- (1) the Indenture;
- (2) the Escrow Deposit Agreement;
- (3) the Bond Purchase Contract;
- (4) the Preliminary Official Statement; and
- (5) the Continuing Disclosure Agreement.

WHEREAS, after having reviewed and considered the proposal of the Underwriter to purchase the 2019 Series A Bonds on the terms and conditions contained in the Bond Purchase Contract, this Commission now desires to authorize the issuance and sale of the 2019 Series A Bonds, including the execution of such documents and the performance of such acts as may be necessary or desirable to effect such issuance and sale and the other actions contemplated by this Resolution;

WHEREAS, in compliance with California Government Code Section 5852.1, this Commission has obtained from PFM Financial Advisors LLC, as municipal advisor to NCPA, good faith estimates of the following information: (a) the true interest cost of the 2019 Series A Bonds, (b) the sum of all fees and charges paid to third parties with respect to the 2019 Series A Bonds, (c) the amount of proceeds of the 2019 Series A Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the 2019 Series A Bonds, and (d) the sum total of all debt service payments on the 2019 Series A Bonds calculated to the final maturity of the 2019 Series A Bonds plus the fees and charges paid to third parties not paid with the proceeds of the 2019 Series A Bonds, and such estimates are disclosed and set forth in Staff Report #___:___;

WHEREAS, this bond refunding 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, and therefore no environmental review is necessary; and

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Northern California Power Agency, as follows:

Section 1. The Commission hereby finds and determines that the issuance and sale of the 2019 Series A Bonds that refund the Refunded Bonds, and approval of the other matters referred to in this Resolution, will not result in either a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. As a consequence, such activity is not a “project” as defined by the California Environmental Quality Act (California Public Resources Code section 21000 *et seq.*).

Section 2. The issuance of the 2019 Series A Bonds on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture is hereby authorized and approved. The aggregate principal amount of the 2019 Series A Bonds shall not exceed Twenty-Eight Million Dollars (\$28,000,000). The 2019 Series A Bonds will be dated, will bear interest at the per annum interest rates, will mature on the date or dates, will be issued in the form, will have the Sinking Fund Installments (if any), will be subject to redemption (if applicable), and will have such other terms, as shall be provided in the Indenture as the same is completed as provided in this Resolution.

Section 3. The Indenture, in substantially the form submitted to this meeting and made a part thereof as though set forth in full herein, be and the same is hereby approved. Each of the Chairman of this Commission (the “Chairman”), the General Manager of NCPA (the “General Manager”), the Assistant General Manager, Finance and Administrative Services/Chief Financial Officer, and the Treasurer-Controller of NCPA (each an “Authorized Officer”), acting

singly, is hereby authorized to execute and deliver the Indenture, in the name of and on behalf of NCPA, in the form presented to this meeting with such changes, insertions and deletions as may be consistent with this Resolution and the determinations made pursuant hereto and as may be approved by the Authorized Officer executing the Indenture, said execution being conclusive evidence of such approval.

Section 4. The Authorized Officer executing the Indenture is hereby authorized to determine the following: (i) the aggregate principal amount of the 2019 Series A Bonds; (ii) the maturity date or dates of the 2019 Series A Bonds (the final maturity of such 2019 Series A Bonds to be not later than July 1, 2025); (iii) the principal amount of the 2019 Series A Bonds maturing on each maturity date; (iv) the 2019 Series A Bonds which are to be term bonds, if any, and the Sinking Fund Installments for any such term bonds; (v) the redemption provisions for the 2019 Series A Bonds; and (vi) subject to the provisions of Section 13 hereof, which of the outstanding 2010 Series A Bonds are to be refunded as Refunded Bonds pursuant to this Resolution.

Section 5. The Escrow Deposit Agreement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers, acting singly, is hereby authorized to execute and deliver, in the name of and on behalf of NCPA, the Escrow Deposit Agreement to the Trustee in the form presented to the meeting with such changes, insertions and deletions as may be approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

Section 6. The proceeds of the sale of the 2019 Series A Bonds shall be applied to the refunding of the Refunded Bonds on the terms set forth in the Indenture and the Escrow Deposit Agreement.

Section 7. The Bond Purchase Contract, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers, acting singly, is hereby authorized to execute and deliver the Bond Purchase Contract, in the name of and on behalf of NCPA, in the form presented to this meeting, with such changes, insertions and deletions as may be approved by the Authorized Officer executing said Bond Purchase Contract and as are consistent with the determinations of the terms of the 2019 Series A Bonds made pursuant to this Resolution, said execution being conclusive evidence of such approval.

Each of the Authorized Officers, acting singly, is hereby authorized to determine the purchase price to be paid for the 2019 Series A Bonds under the Bond Purchase Contract; provided, however, that the aggregate underwriter's discount (not including original issue discount) on the 2019 Series A Bonds shall be not more than 0.4% of the principal amount of the 2019 Series A Bonds. The sale of the 2019 Series A Bonds to the Underwriter on the terms and conditions contained in the Bond Purchase Contract, as the same may be completed in accordance with the provisions of this Resolution, with such changes, insertions and deletions as are authorized hereby, is hereby approved and authorized.

Section 8. The Preliminary Official Statement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, be and the same

is hereby approved and the use of the Preliminary Official Statement in connection with the offering and sale of the 2019 Series A Bonds by the Underwriter is hereby authorized and approved.

Each of the Authorized Officers is hereby authorized and directed to prepare and deliver to the Underwriter a final official statement in connection with the 2019 Series A Bonds (the “Official Statement”). The Official Statement shall be in the form of the Preliminary Official Statement with the addition of the final terms of the 2019 Series A Bonds to be contained in the Indenture and with such other changes, insertions and deletions as may be approved by the officer of NCPA executing the same, said execution being conclusive evidence of such approval. Each of the Chairman and the General Manager of NCPA, acting singly, is hereby authorized to execute the Official Statement and any amendment or supplement thereto contemplated by the Bond Purchase Contract, in the name and on behalf of NCPA, and thereupon to cause the Official Statement and any such amendment or supplement to be delivered to the Underwriter with such execution being conclusive evidence of the approval thereof. The use of the Official Statement in connection with the offering and sale of the 2019 Series A Bonds by the Underwriter is hereby authorized and approved.

Each of the Authorized Officers, acting singly, is hereby authorized to determine that the Preliminary Official Statement is deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Commission (“Rule 15c2-12”), except for the omission of certain information permitted to be omitted pursuant to Rule 15c2-12.

Section 9. The Continuing Disclosure Agreement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers, acting singly, is hereby authorized to execute and deliver, in the name of and on behalf of NCPA, the Continuing Disclosure Agreement to the Trustee as Dissemination Agent thereunder in the form presented to the meeting with such changes, insertions and deletions as may be approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

Section 10. The refunding of the Refunded Bonds on the terms and conditions specified in the Indenture and the Escrow Deposit Agreement, including the application of moneys for such purposes as therein provided, is hereby approved and authorized.

Section 11. Pursuant to Section 11 of the Unit One Member Agreement, NCPA is hereby directed by the Unit One Project Participants (as conclusively evidenced by the affirmative votes for this Resolution of the representatives of the Unit One Project Participants to the Commission) to refund the Refunded Bonds as provided in the Indenture, to issue the 2019 Series A Bonds, to enter into, and perform its obligations under, the documents and instruments approved or authorized by this Resolution and to take such further actions as herein authorized in connection with the refunding of the Refunded Bonds and the issuance, security and sale of the 2019 Series A Bonds, and NCPA shall comply with such direction, while not stayed or nullified, to the fullest extent authorized by law.

Section 12. The Treasurer-Controller of NCPA and the Administrative Assistant to the Assistant General Manager, Finance and Administrative Services/Chief Financial Officer

are each hereby appointed as an Assistant Secretary for the purpose of executing any documents, making any attestation or certification on behalf of NCPA or taking any other action necessary or convenient in carrying out the transactions contemplated by this Resolution.

Section 13. Notwithstanding any other provision or grant of authority to an Authorized Officer in this Resolution to the contrary, none of the documents approved and authorized to be executed and delivered by this Resolution shall be executed and delivered by an Authorized Officer unless as of the date of execution and delivery the Assistant General Manager, Finance and Administrative Services/Chief Financial Officer or the Treasurer-Controller shall certify in writing that the net present value of the savings to be realized by the bond issuance contemplated by this Resolution is not less than five (5%) percent of the principal amount of the Refunded Bonds; and further provided, that any approval or grant of authority in this Resolution shall, without further action of the Commission, expire and be void as of 12:01 a.m. on June 1, 2020 unless exercised prior to that time.

Section 14. The Chairman and the Vice Chairman of the Commission, and the Authorized Officers, acting singly, be and each of them hereby is authorized to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or convenient in carrying out the transactions contemplated by this Resolution or the documents and instruments approved or authorized by this Resolution, including without limitation, entering into any continuing disclosure undertaking required by Rule 15c2-12, executing and delivering one or more tax certificates, credit enhancement agreements, investment agreements and/or financial guaranty agreements, taking any and all actions to provide for the giving of written directions and notices and the securing of any necessary third party approvals, and making any determinations or submission of any documents or reports which are required by any rule or regulation of any governmental entity, in connection with the issuance and sale of the 2019 Series A Bonds, the refunding of the Refunded Bonds and the authorization, execution, delivery and performance by NCPA of its obligations under the documents and instruments approved or authorized by this Resolution. Without limiting the generality of the foregoing, the Chairman, the Vice Chairman, and the Authorized Officers, acting singly, are hereby authorized and directed to enter into such amendments and supplements to documents and agreements entered into in connection with the 2010 Series A Bonds as shall be necessary or desirable to carry out the purposes of the Resolution. The Secretary or an Assistant Secretary of NCPA is hereby authorized to affix the seal of NCPA and attest to any of the documents approved or authorized pursuant to this Resolution.

Section 15. All actions heretofore taken by any committee of the Commission, or any officer, representative or agent of NCPA, in connection with the issuance and sale of the 2019 Series A Bonds, the refunding of the Refunded Bonds, or the authorization, execution, delivery or performance of NCPA's obligations under the documents and instruments approved or authorized by this Resolution and the other actions contemplated by this Resolution are hereby ratified, approved and confirmed.

Section 16. This Resolution shall take effect immediately upon its adoption.

PASSED, ADOPTED and APPROVED this 5th day of December, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY

**CONTINUING DISCLOSURE AGREEMENT
BY AND BETWEEN THE
NORTHERN CALIFORNIA POWER AGENCY
AND
U. S. BANK NATIONAL ASSOCIATION**

This Continuing Disclosure Agreement (the “Disclosure Agreement”), dated December __, 2019, is executed and delivered by the Northern California Power Agency and U.S. Bank National Association, as Dissemination Agent (the “Dissemination Agent”) in connection with the issuance by Northern California Power Agency (“NCPA”) of \$_____ aggregate principal amount of Northern California Power Agency Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “Bonds”). The Bonds have been issued pursuant to an Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), by and between NCPA and U.S. Bank National Association, as the Trustee. NCPA and the Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by NCPA and the Dissemination Agent for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report with respect to the Bonds provided by NCPA pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who has or shares the power, directly or indirectly, to make investment decisions regarding ownership of any Bonds (including without limitation persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the any of the Chairman, the General Manager, the Assistant General Manager, Finance and Administrative Services/Chief Financial Officer, and the Treasurer-Controller of NCPA or his or her designee, or such other officer or employee as NCPA shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean U.S. Bank National Association, acting solely in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by NCPA and which has filed with the Trustee a written acceptance of such designation.

“EMMA System” shall mean the MSRB’s Electronic Municipal Market Access System or such other electronic system designated by the MSRB.

“Financial Obligation” shall mean a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board, or any successor thereto.

“Participating Underwriter” shall mean the original underwriter of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

SECTION 3. Provision of Annual Reports.

(a) With respect to the Bonds, NCPA shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of each fiscal year of NCPA (which presently ends on June 30), commencing with the report for the Fiscal Year ending June 30, 2020, provide to the MSRB through the EMMA System, in an electronic format and accompanied by identifying information all as prescribed by the MSRB, an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided, that the audited financial statements of NCPA may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the fiscal year changes for NCPA, NCPA shall give notice of such change prior to the next date by which NCPA otherwise would be required to provide its Annual Report pursuant to this Section and in the manner provided for giving notices under Section 5 hereof.

(b) Not later than fifteen (15) business days prior to the date specified in paragraph (a) of this Section 3 for providing the Annual Report to the MSRB, NCPA shall provide its Annual Report to the Dissemination Agent. If by such date, the Dissemination Agent has not received a copy of the Annual Report from NCPA, the Dissemination Agent shall contact NCPA and to determine if NCPA is in compliance with paragraph (a) of this Section 3.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in paragraph (a) of this Section 3, the

Dissemination Agent shall send a notice to the MSRB through the EMMA System in substantially the form attached hereto as Exhibit A.

(d) Upon the provision by the Dissemination Agent of any Annual Report to the MSRB pursuant to paragraph (a) of this Section 3, the Dissemination Agent shall deliver a confirmation in writing to NCPA certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement and stating the date it was provided.

SECTION 4. Content of Annual Reports. NCPA's Annual Report shall contain or include by reference the following:

(i) A summary of the peak generating capability of the Project for the prior Fiscal Year;

(ii) A summary of the average generating capability of the Project for the prior Fiscal Year;

(iii) A summary of total energy generated with respect to the Project for the prior Fiscal Year; and

(iv) The audited financial statements of NCPA for the prior Fiscal Year, prepared in accordance with generally accepted accounting principles for governmental enterprises as prescribed from time to time by any regulatory body with jurisdiction over NCPA and by the Governmental Accounting Standards Board. If NCPA's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to paragraph (a) of Section 3, the Annual Report shall contain unaudited financial statements in a format similar to the audited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of NCPA or public entities related thereto, which have been submitted to the MSRB through the EMMA System or to the SEC. If the document included by reference is a final official statement, it must be available from the MSRB through the EMMA System. NCPA shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, upon the occurrence of any of the following events with respect to the Bonds, NCPA shall give, or cause to be given by so notifying the Dissemination Agent and instructing the Dissemination Agent to give, notice of occurrence of such event not later than ten (10) business days after the occurrence of the event, in each case, pursuant to paragraphs (b) and (c) of this Section 5, as applicable:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or the issuance by the Internal Revenue Service of a proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB), or other material notices or determinations by the Internal Revenue Service with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
- (7) modifications to rights of the holders of the Bonds, if material;
- (8) optional, unscheduled or contingent Bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of NCPA or an obligated person (as defined in the Rule) with respect to the Bonds of which NCPA has actual knowledge;
- (13) the consummation of a merger, consolidation, or acquisition involving NCPA or an obligated person (as defined in the Rule) with respect to the Bonds of which NCPA has actual knowledge or the sale of all or substantially all of the assets of NCPA or any such obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material;

- (15) incurrence of a Financial Obligation of NCPA with respect to the Project, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of NCPA with respect to the Project, any of which affect holders of the Bonds, if material; or
- (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of NCPA with respect to the Project, any of which reflect financial difficulties.

For these purposes, (i) any event described in subparagraph (12) of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person; and (ii) NCPA intends to comply with the provisions hereof for the Listed Events described in subparagraphs (15) and (16) of this Section 5(a), and the definition of “Financial Obligation” in Section 2, with reference to the Rule, any other applicable federal securities laws and the guidance provided by the Commission in its Release No. 34-83885 dated August 20, 2018 (the “2018 Release”), and any further amendments or written guidance provided by the Commission or its staff with respect to the amendments to the Rule effected by the 2018 Release.

(b) Whenever NCPA obtains knowledge of the occurrence of a Listed Event described in paragraph (a) of this Section 5, NCPA shall either (i) promptly notify the Dissemination Agent in writing and instruct the Dissemination Agent to report the occurrence pursuant to Section 5(c) below or (ii) shall itself file a notice of such occurrence with the MSRB through the EMMA System.

(c) If the Dissemination Agent has been instructed by NCPA to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB through the EMMA System.

(d) Any notice required by this Section 5 to be provided to the MSRB shall be provided in an electronic format and accompanied by identifying information as prescribed by the MSRB. Notwithstanding the foregoing provisions of this Section 5, notice of Listed Events described in subparagraphs (8) and (9) of Section 5(a) above need not be given under this Section 5(d) any earlier than the notice (if any) of the underlying event is given to Owners of affected Bonds pursuant to the Indenture.

SECTION 6. Termination of Reporting Obligation. The obligations of NCPA under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds and with respect to any Bonds upon the maturity, defeasance, prior redemption or payment in full of such Bonds.

SECTION 7. Dissemination Agent. NCPA may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by NCPA pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be U. S. Bank National Association. NCPA shall be responsible for all fees and associated expenses of the Dissemination Agent.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, NCPA and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived; provided that such amendment or waiver, in the opinion of nationally recognized bond counsel satisfactory to the Dissemination Agent, such amendment or waiver is permitted by the Rule.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, NCPA shall describe such amendment in its next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by NCPA. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the manner as provided under Section 5, and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent NCPA from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If NCPA chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, NCPA shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of NCPA or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of the Owners of at least 25% aggregate principal amount of Outstanding Bonds and the furnishing by such Owners of indemnity satisfactory to the Trustee against its costs and expenses, including, without limitation, fees and expenses of its attorneys, shall), or any Owner or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause NCPA or the

Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of NCPA or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

No Owner or Beneficial Owner may institute any such action, suit or proceeding to compel performance unless they shall have first filed with the Dissemination Agent and NCPA satisfactory written evidence of their status as such, and a written notice of and request to cure such failure, and NCPA shall have refused to comply therewith within a reasonable time. Any such action, suit or proceeding shall be brought in federal or state courts located in the County of Sacramento, California for the benefit of all Owners and Beneficial Owners of the Bonds.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent.

The Dissemination Agent shall have only such duties as are specifically set forth in this Agreement, and no further duties or responsibilities shall be implied, and the Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent NCPA has provided such information to the Dissemination Agent as required by this Agreement. The Dissemination Agent shall not have any liability under, nor duty to inquire into the terms and provisions of, any agreement or instructions, other than as outlined in this Agreement. The Dissemination Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Dissemination Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Dissemination Agent shall not be liable for any action taken or omitted by it in good faith unless a court of competent jurisdiction determines that the Dissemination Agent's negligence or willful misconduct was the primary cause of any loss to NCPA. The Dissemination Agent shall not incur any liability for following the instructions herein contained or expressly provided for, or written instructions given by NCPA. In the administration of this Agreement, the Dissemination Agent may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Dissemination Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. The Dissemination Agent may resign and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect. Any corporation or association into which the Dissemination Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Dissemination Agent in its individual capacity shall be a party, or any corporation or association to which all or substantially all the corporate trust business of the Dissemination Agent in its individual capacity may be sold or otherwise transferred, shall be the Dissemination Agent under this Agreement without further act. NCPA covenants and agrees to hold the Dissemination Agent and its directors, officers, agents and employees (collectively, the "Indemnitees") harmless from and against any and all liabilities, losses, damages, fines, suits, actions, demands, penalties, costs and expenses, including out-of-pocket, incidental expenses, legal fees and expenses, the

allocated costs and expenses of in-house counsel and legal staff and the costs and expenses of defending or preparing to defend against any claim (“Losses”) that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for following any instruction or other direction upon which the Dissemination Agent is authorized to rely pursuant to the terms of this Agreement. In addition to and not in limitation of the immediately preceding sentence, NCPA also covenants and agrees to indemnify and hold the Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against the Indemnitees or any of them in connection with or arising out of the Dissemination Agent’s performance under this Agreement provided the Dissemination Agent has not acted with negligence or engaged in willful misconduct. Anything in this Agreement to the contrary notwithstanding, in no event shall the Dissemination Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Dissemination Agent has been advised of such loss or damage and regardless of the form of action. The obligations of NCPA under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. The Dissemination Agent shall have no obligation to disclose information about the Bonds except as expressly provided herein. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with NCPA, apart from the relationship created by the Rule, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from NCPA. Nothing in this Agreement shall be construed to require the Dissemination Agent to interpret or provide an opinion concerning any information made public. If the Dissemination Agent receives a request for an interpretation or opinion, the Dissemination Agent may refer such request to NCPA for response. NCPA shall pay or reimburse the Dissemination Agent for its fees and expenses for the Dissemination Agent’s services rendered in accordance with this Agreement. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for NCPA, the Owner or any other party.

SECTION 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of NCPA, the Trustee, the Dissemination Agent, the Participating Underwriters and the Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 13. California Law. This Disclosure Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 14. Notices. All written notices to be given hereunder shall be given in person or by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

To NCPA: Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attention: General Manager
Telephone: (916) 781-3636
Fax: (916) 783-7693

To the Dissemination Agent: U. S. Bank National Association
100 Wall Street, Suite 1600
New York, New York 10005
Attention: Corporate Trust Department
Telephone: (212) 361-4385
Fax: (212) 514-6841

NCPA and the Dissemination Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed the Disclosure Agreement to be executed as of the date set forth above.

NORTHERN CALIFORNIA POWER AGENCY

By: _____
Its: General Manager

U. S. BANK NATIONAL ASSOCIATION,
as Dissemination Agent

By: _____
Authorized Signatory

EXHIBIT A

NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Northern California Power Agency ("NCPA")

Name of Bond Issue: \$_____ aggregate principal amount of Northern California Power Agency Capital Facilities Revenue Bonds, 2019 Refunding Series A (the "Bonds")

Date of Issuance: December __, 2019

NOTICE IS HEREBY GIVEN that NCPA has not provided an Annual Report with respect to the Bonds as required by Section 3 of the Continuing Disclosure Agreement with respect to the Bonds, dated December __, 2019, by and between NCPA and U. S. Bank National Association, as Dissemination Agent. [NCPA anticipates that the Annual Report will be filed by _____.]

Dated: _____

U. S. BANK NATIONAL ASSOCIATION, as
Dissemination Agent on behalf of the Northern
California Power Agency

cc: NCPA

ESCROW DEPOSIT AGREEMENT

By and Between

NORTHERN CALIFORNIA POWER AGENCY

and

U.S. BANK NATIONAL ASSOCIATION, as Trustee

Dated as of December 1, 2019

Relating to

**Capital Facilities Revenue Bonds,
2010 Refunding Series A**

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ESCROW DEPOSIT AGREEMENT

Relating to

Northern California Power Agency
Capital Facilities Revenue Bonds,
2010 Refunding Series A

THIS ESCROW DEPOSIT AGREEMENT, dated as of December 1, 2019 (this “Agreement”), by and between Northern California Power Agency (“NCPA”) and U.S. Bank National Association, New York, New York, as trustee (the “Trustee”) under the Indenture of Trust, dated as of January 1, 2010 (the “2010 Indenture”), by and between NCPA and the Trustee,

W I T N E S E T H:

WHEREAS, NCPA has previously authorized and issued its Capital Facilities Revenue Bonds, 2010 Refunding Series A (the “2010 Series A Bonds”) under the 2010 Indenture; and

WHEREAS, the 2010 Series A Bonds are currently outstanding in the aggregate principal amount of \$25,450,000 and mature on August 1 in each of the years 2020 through 2025, inclusive; and

WHEREAS, the outstanding 2010 Series A Bonds are subject to redemption at the option of NCPA in whole or in part on any date on and after February 1, 2020, at a redemption price equal to one hundred percent (100%) of the principal amount thereof to be redeemed (the “Redemption Price”), plus unpaid accrued thereon to the date fixed for redemption; and

WHEREAS, NCPA has determined to refund all of the outstanding 2010 Series A Bonds (such 2010 Series A Bonds to be refunded as more fully described in Schedule 1 hereto and hereinafter referred to as the “Refunded Bonds”) and to exercise its option to redeem on February 1, 2020 (the “Redemption Date”) the Refunded Bonds; and

WHEREAS, NCPA has determined to provide the Trustee (as Trustee and Paying Agent for the Refunded Bonds and as an escrow agent hereunder) with the funds which, together with the interest thereon as provided herein, will provide amounts necessary to pay the Redemption Price of, and interest accrued and unpaid on, the Refunded Bonds on the Redemption Date (such amounts the “Escrow Requirements” as shown on Schedule 2 hereto); and

WHEREAS, for the purpose of refunding the Refunded Bonds, NCPA has issued pursuant to the Indenture of Trust, dated as of December 1, 2019 (the “2019 Indenture”), by and between NCPA and the Trustee, \$[PAR AMOUNT] aggregate principal amount of its Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “2019 Bonds”); and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, NCPA and the Trustee agree as follows:

SECTION 1. Definitions. Unless otherwise defined herein (including in the recitals above), capitalized terms shall have the meanings herein given such terms in the 2010 Indenture.

In addition, the following terms shall, unless the context otherwise requires, have the meanings set forth below.

“Defeasance Securities” shall mean the direct obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America described in Schedule 3 hereto.

“Escrow Fund” shall mean the fund established pursuant to Section 2(a) of this Agreement.

SECTION 2. The Escrow Fund.

(a) There is hereby established with the Trustee a fund designated the “Capital Facilities Revenue Bonds, 2010 Refunding Series A Escrow Fund” (the “Escrow Fund”) to be held in irrevocable trust by the Trustee for the benefit of the Owners of the Refunded Bonds separate and apart from all other funds of NCPA and the Trustee, subject, nonetheless, to the application thereof as provided in this Agreement.

Subject to the provisions of this Agreement, amounts in the Escrow Fund shall be applied solely to the payment of the Escrow Requirements as specified in Section 4 hereof. All Defeasance Securities purchased with moneys in the Escrow Fund shall be held for the credit of the Escrow Fund and all payments, including without limitation, all principal and interest payments with respect to such Defeasance Securities, shall be deposited upon receipt by the Trustee into the Escrow Fund.

(b) NCPA acknowledges that it has no right, title or interest in or to any of the moneys or Defeasance Securities held in the Escrow Fund. Under no circumstances shall any money or Defeasance Securities held in the Escrow Fund be paid over or delivered to, or upon the order of, NCPA.

(c) There has been deposited with the Trustee for deposit in the Escrow Fund the sum of \$_____, consisting of the following: (i) \$_____, representing a portion of the proceeds of the 2019 Bonds; and (ii) \$_____, representing amounts transferred from the 2010 Bonds Debt Service Account and the 2010 Series Debt Service Reserve Account pursuant to subsection (d) below.

(d) The Trustee is hereby directed to transfer to the Escrow Fund:
(1) \$_____, representing amounts accumulated in the 2010 Bonds Debt Service Account, and
(2) \$_____, representing amounts held in the 2010 Series Debt Service Reserve Account, each with respect to the Refunded Bonds.

(e) The Trustee acknowledges receipt of the moneys described in Section 2(c) and agrees to deposit such moneys in the Escrow Fund and apply such moneys as provided in this Agreement.

SECTION 3. Use and Investment of Moneys.

(a) The Trustee is hereby directed to apply, on [CLOSING DATE], 2019, \$_____ of the moneys deposited in the Escrow Fund pursuant to Section 2(c) to the purchase of the Defeasance Securities at the purchase price set forth in Schedule 3 hereto. Except as provided in this subsection (a), the moneys on deposit in the Escrow Fund or otherwise held by the Trustee under this Agreement shall be held uninvested by the Trustee.

(b) NCPA represents, and the Accountant's Certificate delivered by Samuel Klein and Company, Certified Public Accountants, to the Trustee at the time of execution and delivery of this Agreement verifies, that the moneys to be received from the maturing principal of and interest on the Defeasance Securities shall be sufficient, together with the \$_____ of other funds held in the Escrow Fund, to pay the Escrow Requirements when due.

(c) The moneys held in the Escrow Fund, including receipts of payments of the principal of and interest on the Defeasance Securities, shall not be withdrawn or used for any purpose other than, and shall be held in trust for, the payment to the Owners of the Refunded Bonds of the Escrow Requirements when due as required by Section 4.

(d) The Trustee shall not be held liable for investment losses resulting from compliance with the provisions of this Agreement.

SECTION 4. Payment of Escrow Requirements. From the maturing principal of any Defeasance Securities held in the Escrow Fund and the investment income and other earnings thereon and the uninvested money then held in the Escrow Fund, U.S. Bank National Association, as Trustee and Paying Agent for the Refunded Bonds, shall pay the Redemption Price of the Refunded Bonds on the Redemption Date and unpaid accrued interest thereon.

SECTION 5. Notice of Redemption and Notice of Defeasance.

(a) NCPA irrevocably directs the Trustee to give the notice of redemption of the Refunded Bonds not less than thirty (30) days prior to the Redemption Date (i) to the Owners of such Refunded Bonds by the time and in the manner required by the 2010 Indenture, (ii) to The Depository Trust Company by the time and in the manner required by the 2010 Indenture and (iii) to post such notice to the Electronic Municipal Market Access System (referred to as "EMMA") of the Municipal Securities Rulemaking Board ("MSRB"), at www.emma.msrb.org, linked to all CUSIP Numbers of the Refunded Bonds. Such notice shall be in substantially the form attached hereto as Exhibit A.

(b) NCPA irrevocably directs the Trustee to give the notice of defeasance of the Refunded Bonds within five (5) business days of the date hereof (i) to the Owners of the Refunded Bonds and otherwise in the manner required by the 2010 Indenture and (ii) to post such notice to EMMA linked to all CUSIP Numbers of the Refunded Bonds. Such notice shall be in substantially the form attached hereto as Exhibit B.

SECTION 6. Termination of Obligations. As provided in subsection (b) of Section 13.01 of the 2010 Indenture, upon the deposit of the amounts specified in Section 2(c) and the purchase of Defeasance Securities pursuant to Section 3(a), the Owners of the Refunded Bonds shall cease to be entitled to any lien, benefit or security under the 2010 Indenture with respect to the Refunded Bonds, and all covenants, agreements and obligations of NCPA with respect to the Refunded Bonds under the 2010 Indenture shall thereupon cease, terminate and become void and be discharged and satisfied and the Refunded Bonds shall no longer be Outstanding within the meaning of the 2010 Indenture.

Notwithstanding the provisions for payment of the Refunded Bonds as provided in, and with the effect stated in, subsection (b) of Section 13.01 of the 2010 Indenture, the obligations of the 2010 Indenture relating to the payment of the principal amount of the Refunded Bonds and the interest on the Refunded Bonds solely from the Escrow Fund as provided under this Agreement, and the obligations under the 2010 Indenture to transfer and exchange Refunded Bonds and to give notices of redemption of the Refunded Bonds as provided in Article VI of the 2010 Indenture shall continue to apply to the Refunded Bonds.

SECTION 7. Performance of Duties. The Trustee agrees to perform the duties set forth herein.

SECTION 8. Trustee's Authority to Make Investments. The Trustee shall have no power or duty to invest any funds held under this Agreement except as provided in Section 3 hereof. The Trustee shall have no power or duty to transfer or otherwise dispose of the moneys held hereunder except as provided in this Agreement.

SECTION 9. Indemnity. NCPA hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Trustee and its respective successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Trustee at any time (whether or not also indemnified against the same by NCPA or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant hereto, the retention of such securities or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Trustee in accordance with the provisions of this Agreement; provided, however, that NCPA shall not be required to indemnify the Trustee against the Trustee's own negligence or willful misconduct or the negligence or willful misconduct of the Trustee's respective successors, assigns, agents and employees or the material breach by the Trustee of the terms of this Agreement. In no event shall NCPA or the Trustee be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Agreement.

SECTION 10. Responsibilities of Trustee. The Trustee and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Agreement, the establishment of the Escrow Fund, the acceptance of the moneys or any securities deposited therein, the purchase of the securities to be purchased pursuant hereto, the retention of such securities or the proceeds thereof, the sufficiency of the securities or any uninvested moneys held hereunder to accomplish the redemption of the Refunded Bonds, or any payment, transfer or other application of moneys or securities by the Trustee in accordance with the provisions of this Agreement or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Trustee made in good faith in the conduct of its duties. The recitals of fact contained in the “Whereas” clauses herein shall be taken as the statements of NCPA, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the sufficiency of the securities to be purchased pursuant hereto and any uninvested moneys to accomplish the redemption of the Refunded Bonds pursuant to the Indenture or to the validity of this Agreement as to NCPA and, except as otherwise provided herein, the Trustee shall incur no liability in respect thereof. The Trustee shall not be liable in connection with the performance of its duties under this Agreement except for its own negligence, willful misconduct or default, and the duties and obligations of the Trustee shall be determined by the express provisions of this Agreement. The Trustee may consult with counsel, who may or may not be counsel to NCPA, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Agreement, such matter (except the matters set forth herein as specifically requiring an Accountant’s Certificate or an Opinion of Bond Counsel) may be deemed to be conclusively established by a certificate signed by an Authorized NCPA Representative. Whenever the Trustee shall deem it necessary or desirable that a matter specifically requiring an Accountant’s Certificate or an Opinion of Bond Counsel be proved or established prior to taking, suffering, or omitting any such action, such matter may be established only by such an Accountant’s Certificate or such Opinion of Bond Counsel.

SECTION 11. Compensation. The Trustee’s acts hereunder shall constitute services rendered under the 2010 Indenture for purposes of Section 11.05 of the 2010 Indenture; provided, however, that under no circumstances shall the Trustee be entitled to any lien whatsoever on any moneys or Defeasance Securities in the Escrow Fund for the payment of fees and expenses for services rendered or expenses incurred by the Trustee under this Agreement, the 2010 Indenture or otherwise.

SECTION 12. Amendments. This Agreement is irrevocable and no provision hereof may be amended except as specifically set forth herein. NCPA and the Trustee may, without the consent of, or notice to, the Owners of the Bonds, amend this Agreement or enter into such agreements supplemental to this Agreement as shall not adversely affect the interests of the Owners of the Refunded Bonds. The Trustee shall be entitled to rely conclusively upon an Opinion of Bond Counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the Owners of the Refunded Bonds or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 13. **Term.** This Agreement shall commence upon its execution and delivery and shall terminate on the date the principal of and interest on the Refunded Bonds has been paid to the respective Owners of the Refunded Bonds as required by Section 4 hereof. After such payment, any moneys remaining in the Escrow Fund shall be transferred by the Trustee to the Debt Service Fund established under the 2019 Indenture.

SECTION 14. **Severability.** If any one or more of the covenants or agreements provided in this Agreement on the part of NCPA or the Trustee to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

SECTION 15. **Representations.** NCPA represents and warrants that the statements contained in the preambles to this Agreement are true and correct.

SECTION 16. **Counterparts.** This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as an original but all of which shall constitute and be but one and the same instrument.

SECTION 17. **Governing Law.** This Agreement shall be construed under the laws of the State of California.

SECTION 18. **Assignment.** This Agreement shall not be assigned by the Trustee or any successor thereto without the prior written consent of NCPA.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

**NORTHERN CALIFORNIA POWER
AGENCY**

By: _____
General Manager

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

By: _____
Authorized Signatory

SCHEDULE 1

DESCRIPTION OF THE REFUNDED BONDS

Maturity Date (August 1)	Outstanding Principal Amount to be Refunded	Interest Rate	CUSIP
2020	\$ 4,490,000	5.00%	66484RAM8
2021	4,550,000	5.00	66484RAN6
2022	4,860,000	5.25	66484RAP1
2023	5,150,000	5.25	66484RAQ9
2024	5,390,000	5.25	66484RAR7
2025	<u>1,010,000</u>	5.25	66484RAS5
Total	\$25,450,000		

SCHEDULE 2
ESCROW REQUIREMENTS

<u>Date</u>	<u>Interest</u>	<u>Called Principal</u>	<u>Call Premium</u>	<u>Total Requirements</u>
02/01/2020	[\$656,762.50]	\$25,450,000.00	--	[\$26,106,762.50]

SCHEDULE 3
DEFEASANCE SECURITIES

TYPE	MATURITY DATE	PAR AMOUNT	INTEREST RATE	COST
------	------------------	------------	------------------	------

EXHIBIT A
FORM OF NOTICE OF REDEMPTION TO BE GIVEN

NOTICE OF FULL REDEMPTION
NORTHERN CALIFORNIA POWER AGENCY
CAPITAL FACILITIES REVENUE BONDS,
2010 REFUNDING SERIES A

Maturity Date (August 1)	Outstanding Principal Amount to be Redeemed	Interest Rate	CUSIP*
2020	\$4,490,000	5.00%	66484RAM8
2021	4,550,000	5.00	66484RAN6
2022	4,860,000	5.25	66484RAP1
2023	5,150,000	5.25	66484RAQ9
2024	5,390,000	5.25	66484RAR7
2025	1,010,000	5.25	66484RAS5

TO: The Owners of the above-captioned bonds (the “Bonds”)

U.S. Bank National Association acts as the trustee (the “Trustee”) with respect to the above-referenced Bonds issued on January 29, 2010 pursuant to the Indenture of Trust, dated as of January 1, 2010, (the “Indenture”), by and between the Northern California Power Agency (“NCPA”) and the Trustee.

On behalf of NCPA, you are hereby notified that:

1. NCPA has exercised its option to redeem the Bonds identified above on February 1, 2020 (the “Redemption Date”);

2. on the Redemption Date, there shall become due and payable upon each Bond the Redemption Price thereof, which is 100% of the principal amount of the Bond, together with unpaid accrued interest on such principal amount to the Redemption Date, and that from and after the Redemption Date interest on the Bonds shall cease to accrue and be payable;

3. payment of the Redemption Price of the Refunded Bonds called for redemption will be paid only upon presentation and surrender of such bonds at the address listed below (if delivery is by mail, registered mail with return receipt requested is recommended):

Delivery Instructions:
U.S. Bank National Association
Global Corporate Trust Services
111 Fillmore Avenue E
St. Paul, MN 55107
1-800-934-6802

Important Notice

Federal law requires the Trustee to withhold taxes at the applicable rate from the payment if an IRS Form W-9 or applicable IRS Form W-8 is not provided. Please visit www.irs.gov for additional information on the tax forms and instructions.

For a list of redemption requirements please visit our website at www.usbank.com/corporatetrust and click on the “Bondholder Information” link for redemption instructions. You may also contact our Bondholder Communications team at 1-800-934-6802 Monday through Friday from 8 a.m. to 6 p.m. CST.

** The CUSIP numbers have been assigned by CUSIP Global Services, managed by Standard & Poor’s Financial Services LLC on behalf of The American Bankers Association and are included solely for the convenience of the bondholders. NCPA or the Trustee are not responsible for the accuracy of such numbers.*

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated: December __, 2019

EXHIBIT B
FORM OF NOTICE OF DEFEASANCE TO BE GIVEN

NOTICE OF DEFEASANCE

NORTHERN CALIFORNIA POWER AGENCY CAPITAL FACILITIES REVENUE BONDS, 2010 REFUNDING SERIES A

Maturity Date (August 1)	Principal Amount	Interest Rate	CUSIP*
2020	\$4,490,000	5.00%	66484RAM8
2021	4,550,000	5.00	66484RAN6
2022	4,860,000	5.25	66484RAP1
2023	5,150,000	5.25	66484RAQ9
2024	5,390,000	5.25	66484RAR7
2025	1,010,000	5.25	66484RAS5

TO: The Owners of the above-captioned bonds (the “Bonds”)

U.S. Bank National Association acts as the trustee (the “Trustee”) with respect to the above-referenced Bonds, issued on January 29, 2010, pursuant to the Indenture of Trust, dated as of January 1, 2010 (the “Indenture”), by and between the Northern California Power Agency (“NCPA”) and the Trustee.

NOTICE IS HEREBY GIVEN on behalf of NCPA that there has been deposited in escrow with the Trustee, cash and, direct obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America (“Defeasance Securities”), paying interest and principal in an amount which, together with the amounts held as cash, shall be sufficient to pay, on February 1, 2020, the redemption price (*i.e.*, 100% of the principal amount) of the Bonds identified in the table above, plus unpaid accrued interest thereon. NCPA has instructed the Trustee to call the Bonds for redemption on February 1, 2020.

The Bonds have been defeased pursuant to an Escrow Deposit Agreement, dated as of December 1, 2019 (the “Escrow Agreement”), between NCPA and the Trustee. In accordance with the Indenture, upon the deposit by NCPA of the amounts as provided in the Escrow Agreement and the purchase of the Defeasance Securities pursuant thereto, the Owners of the Bonds shall have ceased to be entitled to any lien, benefit or security under the Indenture with respect to such Bonds, and all covenants, agreements and obligations of NCPA with respect to the Bonds under the Indenture shall have ceased, terminated and become void and been discharged and satisfied. All payments of the interest on, and the principal or redemption price of, the Bonds shall be paid only from moneys on deposit with the Trustee and available under the Escrow Agreement as aforesaid, and the Bonds shall no longer be Outstanding within the meaning of the Indenture.

Capitalized terms used herein not otherwise defined shall have the meaning given such terms in the Indenture.

** The CUSIP numbers have been assigned by CUSIP Global Services, managed by Standard & Poor’s Financial Services LLC on behalf of The American Bankers Association and are included solely for the convenience of the bondholders. NCPA or the Trustee are not responsible for the accuracy of such numbers.*

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated: December __, 2019

INDENTURE OF TRUST

by and between

NORTHERN CALIFORNIA POWER AGENCY

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dates as of December 1, 2019

Relating to
Capital Facilities Revenue Bonds,
2019 Refunding Series A

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INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of December 1, 2019, is entered into by and between the Northern California Power Agency, a joint exercise of powers agency established pursuant to the laws of the State of California, and U.S. Bank National Association, a national banking association authorized to accept and execute trusts of the character herein set out, with its principal corporate trust office in New York currently located at 100 Wall Street, New York, New York.

WHEREAS, NCPA (capitalized terms used herein without definition shall have the meanings given such terms in Section 1.01) is a public entity duly formed and existing pursuant to the provisions relating to the joint exercise of powers found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and the Amended and Restated Northern California Power Agency Joint Powers Agreement, dated as of January 1, 2008, as supplemented (the Joint Powers Agreement); and

WHEREAS, NCPA and the cities of Alameda, Lodi, Lompoc and Roseville have entered into the Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two – Unit One, dated as of August 1, 1992, to provide for (1) the construction, operation, and financing of the Project, (2) the sale by NCPA of capacity and energy of the Project to the cities of Alameda, Lodi, Lompoc and Roseville, and (3) security for the bonds, notes and other evidences of indebtedness issued to finance the Project; and

WHEREAS, to refinance the costs of the Project NCPA issued the 2010 Series A Bonds under and pursuant to the 2010 Indenture; and

WHEREAS, \$25,450,000 aggregate principal amount of the 2010 Series A Bonds remains outstanding under the 2010 Indenture; and

WHEREAS, NCPA desires to issue \$[PAR AMOUNT] aggregate principal amount of its Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “2019 Series A Bonds”) pursuant to this Indenture in order to provide a portion of the funds necessary to refund the 2010 Series A Bonds as provided in this Indenture and the 2010 Bonds Escrow Agreement; and

WHEREAS, NCPA desires to provide for the issuance and securing of the 2019 Series A Bonds as provided in this Indenture; and

WHEREAS, the Trustee has accepted the trust created and established by this Indenture and in evidence thereof has joined in the execution hereof; and

WHEREAS, all acts and things which are necessary to make the 2019 Series A Bonds, when executed and issued by NCPA, authenticated by the Trustee and delivered to the purchasers thereof, the valid and binding legal obligations of NCPA in accordance with their terms have been done and performed in due time, form, and manner;

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE OF TRUST WITNESSETH:

In consideration of the premises, of the acceptance by the Trustee of the trust hereby created, and of the purchase and acceptance of the Bonds by the Owners thereof, and to fix and declare the terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become Owners thereof, and to secure the payment of all the Bonds at any time issued and Outstanding hereunder and the interest thereon according to their tenor, purport and effect, and to secure the performance and observance of all of the covenants, agreements and conditions therein and herein contained, NCPA by these presents does, subject to the application thereof in accordance with the terms of this Indenture, grant a lien on and security interest in, bargain, sell, release, convey, assign, transfer and pledge unto the Trustee the Trust Estate (such grant, bargain, sale, release, conveyance, assignment, transfer and pledge of the Project Revenues and the Unit One Member Agreement being in all respects on a parity with the grant, bargain, sale, release, conveyance assignment, transfer and pledge thereof as security for any Parity Debt issued in accordance with the provisions hereof), and any additional property that may from time to time, by delivery or by writing of any kind, be subjected to the pledge and lien hereof by NCPA or by anyone on its behalf; and the Trustee is hereby authorized to receive the same at any time as additional security hereunder, subject to such permitted encumbrances under this Indenture as may be superior (by operation of law or otherwise) to the pledge and lien hereof.

To have and hold all of the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its successors and assigns forever for the equal and ratable benefit of the Owners from time to time of all the Bonds authenticated hereunder and issued by NCPA and Outstanding without any priority as to the Trust Estate of any one Bond over any other (except as expressly provided in or permitted by this Indenture), upon the trust established hereby and subject to the covenants and conditions hereinafter set forth.

ARTICLE I

DEFINITIONS AND STATUTORY AUTHORITY

Section 1.01 Definitions. The following terms shall, for all purposes of this Indenture, have the following meanings set forth below. All references herein to a particular time of day shall be to New York City time unless otherwise indicated.

“**Account**” shall mean any account, including any Subaccounts therein, in any Fund held and maintained under this Indenture.

“**Accountant’s Certificate**” shall mean a certificate signed by an independent certified public accountant of recognized national standing, or a firm of independent certified public accountants of recognized national standing, selected by NCPA.

“**Act**” shall mean the provisions relating to the joint exercise of powers found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended and supplemented to the date hereof.

“**Additional Bonds**” shall mean all Bonds, whether issued in one or more Series, authenticated and delivered on original issuance pursuant to Section 2.03 to pay Costs of the

Project, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to this Indenture.

“Agent Member” shall mean a member of, or participant in, the Securities Depository.

“Aggregate Debt Service” shall mean, as of any date of calculation and with respect to any period, the sum of the amounts of Debt Service during such period with respect to all Outstanding Bonds.

“Annual Budget” shall mean the annual budget, as amended or supplemented, adopted or in effect for a particular Fiscal Year as provided in Section 9.09.

“Authorized Denominations” shall mean, unless otherwise provided with respect to a Series of Bonds in the Supplemental Indenture authorizing such Series, \$5,000 and any integral multiple thereof.

“Authorized NCPA Representative” shall mean the General Manager, the Assistant General Manager, Finance and Administrative Services and Chief Financial Officer, the Treasurer-Controller, the Secretary, or an Assistant Secretary of NCPA and any other officer or employee of NCPA authorized by resolution duly adopted by NCPA to perform the specific acts or duties to be performed.

“Bond” or **“Bonds”** shall mean any bond or bonds, as the case may be, authenticated and delivered under and pursuant to this Indenture.

“Bond Counsel” shall mean an attorney or firm of attorneys of recognized national standing in the field of law relating to municipal bonds selected by NCPA.

“Bond Register” shall mean the registration books for the ownership of the Bonds maintained by the Bond Registrar pursuant to Section 4.05.

“Bond Registrar” shall mean the Trustee or any other bank or trust company organized under the laws of any state of the United States of America or national banking association appointed by NCPA to perform the duties of Bond Registrar enumerated in Section 9.03.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which the New York Stock Exchange or banks are authorized or obligated by law or executive order to close in New York, New York, or any city in which is located the principal corporate trust office of the Trustee.

“Capital Improvement” shall mean any addition, betterment, replacement, renewal, extension or improvement of the Project, including, without limitation, the acquisition of land or any interests therein, which under generally accepted accounting principles are chargeable to a capital account and capital costs for the extension, reinforcement, enlargement or other improvement of facilities, property or the acquisition of interests therein, whether or not

included as part of the Project, determined by NCPA to be necessary or convenient in connection with the utilization of the Project.

“**Cede & Co.**” shall mean Cede & Co., the nominee of DTC as Securities Depository for any Bonds, and any successor nominee of DTC as such Securities Depository.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Bonds or the use of proceeds thereof, and also includes all amendments and successor provisions unless the context clearly requires otherwise.

“**Cost**” shall mean all costs and expenses of planning, designing, acquiring, constructing, installing and financing the Project, placing the Project in operation, disposal of the Project, decommissioning of the Project and obtaining governmental approvals, certificates, permits and licenses with respect thereto heretofore or hereafter paid or incurred by NCPA. The term Cost shall include, but shall not be limited to, funds required for:

(a) Costs of preliminary investigation and development, the performance or acquisition of feasibility and planning studies, and the securing of regulatory approvals, as well as costs for land and land rights, engineering and contractors’ fees, labor, materials, equipment, utility services and supplies, legal fees, fees incurred pursuant to any lending or credit facility or agreement, and financing expenses.

(b) Working capital and reserves therefor in such amounts as shall be determined by the NCPA Commission.

(c) Interest accruing in whole or in part on Bonds prior to and during construction of the Project or any portion thereof, and for such additional period as the NCPA Commission may determine.

(d) The deposit or deposits from the proceeds of the Bonds in any Funds or Accounts which deposit or deposits are required by this Indenture.

(e) The payment of principal, redemption price, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) of any note or other evidence of indebtedness the proceeds of which were applied to any of the costs of the Project.

(f) Training and testing costs which are properly allocable to the acquisition, placing in operation, or construction of the Project.

(g) All costs of insurance applicable to the period of construction and placing the Project in operation.

(h) All costs relating to injury and damage claims arising out of the acquisition or construction of the Project less proceeds of insurance.

(i) Legally required or permitted federal, state and local taxes and payments in lieu of taxes relating to the Project.

(j) All costs relating to the issuance and sale of Bonds.

(k) Amounts due the United States of America as rebate of investment earnings with respect to the proceeds of the Bonds or as penalties in lieu thereof.

(l) Amounts payable with respect to capital costs for the expansion, reinforcement, enlargement or other improvement of facilities determined by NCPA as necessary in connection with the utilization of the Project and the costs associated with the removal from service or reductions in service of any facilities as a result of the expansion, reinforcement, enlargement or other improvement of such facilities or the construction of the Project.

(m) All other costs incurred by NCPA and properly allocable to the acquisition, construction, or placing in operation of the Project or any portion thereof.

“Cost of Issuance Fund” shall mean the fund so designated established pursuant to Section 6.02.

“Debt Service” shall mean, as of any date of calculation, with respect to any period, an amount equal to the sum of (i) interest accruing during such period on the Outstanding Bonds, except to the extent that such interest is to be paid from deposits into the Debt Service Fund from Bond proceeds or the investment earnings thereon, provided, however that in determining Debt Service with respect to any Bonds during a period that such Bonds bear interest at a variable rate, interest on such Bond during such period shall be the maximum interest rate applicable to such Bond and (ii) that portion of each Principal Installment for the Outstanding Bonds which would accrue during such period if each such Principal Installment were deemed to accrue daily in equal amounts from the next preceding Principal Installment due date for such Bonds (or, if there shall be no such preceding Principal Installment due date, from a date one year preceding the due date of such Principal Installment or from the date of issuance of the Bonds, whichever date is later).

“Debt Service Account” shall mean the account so designated established in the Debt Service Fund pursuant to Section 6.02.

“Debt Service Fund” shall mean the Fund so designated established pursuant to Section 6.02.

“Debt Service Reserve Account” shall mean the account so designated established in the Debt Service Reserve Fund pursuant to Section 6.02.

“Debt Service Reserve Fund” shall mean the Fund so designated established pursuant to Section 6.02.

“Debt Service Reserve Requirement” shall mean, as of the date of calculation: (i) with respect to the Debt Service Reserve Account, an amount equal to the greatest amount of Debt Service for the Participating Bonds coming due in the then current or any future Fiscal

Year; and (ii) with respect to any Series Debt Service Reserve Account established in connection with Future Bonds, the amount, if any, specified as such in the Supplemental Indenture establishing such Series Debt Service Reserve Account. There is no Series Debt Service Reserve Account established in connection with the 2019 Series A Bonds and the Debt Service Reserve Requirement for the 2019 Series A Bonds shall be \$0.

“Defeasance Securities” shall mean direct obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America.

“Depository” shall mean any bank or trust company organized under the laws of any state of the United States, or any national banking association which is willing and able to accept the office on reasonable and customary terms, authorized by law to act in accordance with the provisions of this Indenture.

“DTC” shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns. References herein to DTC shall include any nominee of DTC in whose name any Bonds are then registered.

“Event of Default” shall have the meaning given to such term in Section 10.01.

“Fiduciary” or “Fiduciaries” shall mean the Trustee, the Bond Registrar, the Paying Agents, the Depositories, or any or all of them, as may be appropriate.

“Financial Guaranty” shall mean one or more of the following to be delivered to the Trustee pursuant to subsection (i) of Section 6.08: (i) irrevocable, unconditional and unexpired letters of credit issued by banking institutions; (ii) an irrevocable and unconditional policy or policies of insurance in full force and effect issued by municipal bond insurers; in each case providing for the payment thereunder of sums for the payment of Principal Installments with respect to, and interest on, Bonds as required by this Indenture.

“Fiscal Year” shall mean the twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at the time immediately preceding 12:01 a.m. on the following July 1 or any other period of twelve consecutive months adopted by NCPA as its fiscal year.

“Fitch” shall mean Fitch Ratings, Inc. and its corporate successors.

“Fund” shall mean each of the Funds established pursuant to Section 6.02.

“Future Bonds” shall mean Additional Bonds and Refunding Bonds issued pursuant to Article II of this Indenture after the issuance of the 2019 Series A Bonds.

“Indenture” shall mean this Indenture of Trust as from time to time amended or supplemented by Supplemental Indentures in accordance with the terms hereof.

“Interest Payment Date” shall mean, with respect to the 2019 Series A Bonds, February 1 and August 1 of each year, commencing [August 1], 2020, and with respect to a

Series of Future Bonds the dates specified as such in the Supplemental Indenture authorizing such Bonds.

“Investment Securities” shall mean and include any of the following securities, if and to the extent the same are at the time legal for investment of NCPA’s funds:

(1) Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America);

(2) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any federal agency, which obligations are backed by the full faith and credit of the United States of America;

(3) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any federal agency, including obligations which are not fully guaranteed by the full faith and credit of the United States of America;

(4) Money market funds registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating of “AAAm” by S&P or “Aaa-mf” by Moody’s;

(5) Commercial paper rated, at the time of purchase, “P-1” by Moody’s or “A-1+” by S&P and which matures not more than 270 days after its date of purchase;

(6) U.S. dollar denominated deposit accounts, federal funds or bankers’ acceptances with domestic commercial banks, which have a rating on their short-term certificates of deposit (on the date of purchase) of “A-1” or “A-1+” by S&P and “P-1” by Moody’s and which mature no more than 360 days after their date of purchase (Ratings on holding companies are not considered as the rating of the bank);

(7) General obligations of any state, which are rated “A2/A” or higher by both Moody’s and S&P;

(8) Pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state or any agency, instrumentality or local governmental unit of any state, which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in a notice, and which are:

(a) Rated, based on an irrevocable escrow account or fund, in the highest rating category of S&P and Moody’s; or

(b) Fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (1) hereof, which escrow may be applied only to the payment of such principal or and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to irrevocable

instructions, as appropriate, and which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (8) on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate ;

(9) Investment agreements or guaranteed investment contracts supported by appropriate opinions of counsel, with notice to S&P;

(10) California State Local Agency Investment Fund, a pooled investment fund managed by the State of California Treasurer's office meeting all legal guidelines and requirements for the investment of California public agency funds;

(11) Shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California which invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State of California, as it may be amended; provided that such shares are held in the name and to the credit of the Trustee; and

(12) Any other form of investment (including repurchase agreements) with notice to S&P.

"Members" shall mean the City of Alameda, the City of Biggs, the City of Gridley, the City of Healdsburg, the City of Lodi, the City of Lompoc, the City of Palo Alto, the City of Redding, the City of Roseville, the City of Santa Clara, the City of Shasta Lake, the City of Ukiah, the City of Oakland acting by and through its Board of Port Commissioners, the Truckee Donner Public Utility District and the San Francisco Bay Area Rapid Transit District, as members and the Plumas-Sierra Rural Electric Cooperative, as an associate member.

"Moody's" shall mean Moody's Investors Service, Inc., and its corporate successors.

"NCPA" shall mean the Northern California Power Agency, a joint exercise of powers agency created pursuant to the Act.

"NCPA Commission" shall mean the NCPA Commission, as constituted from time to time, or if said NCPA Commission shall be abolished, such other entity or entities succeeding to the principal functions thereof or to whom the power and duties granted or imposed by this Indenture shall be given.

"NCPA Operating Expenses" shall mean current expenses or obligations required to be paid by NCPA under the provisions of the Unit One Member Agreement or by law, all to the extent properly allocable to the operation or maintenance of the Project or required to be incurred under or in connection with the performance of the Unit One Member Agreement, expenses incurred in connection with the purchase or redemption of Bonds, the amounts required to be paid in the Rebate Fund pursuant to the Rebate Instructions, and all other costs (including overhead) properly allocable to the operation or maintenance of the Project. NCPA Operating

Expenses shall not include any costs or expenses for new construction or any allowance for depreciation of the Project.

“Operating Fund” shall mean the Fund so designated established pursuant to Section 6.02.

“Operating Reserve Account” shall mean the Account in the Operating Fund so designated established pursuant to Section 6.02.

“Opinion of Bond Counsel” shall mean a written opinion signed by Bond Counsel.

“Option Bonds” shall mean Bonds which by their terms may be tendered by and at the option of the Owner thereof for purchase prior to the stated maturity thereof.

“Outstanding,” when used with reference to Bonds, shall mean, as of any date, Bonds theretofore, or thereupon being, authenticated and delivered under this Indenture except:

- (i) Bonds cancelled by the Trustee, or delivered to the Trustee for cancellation, at or prior to such date;
- (ii) Bonds paid or deemed paid pursuant to Section 13.01 of this Indenture;
and
- (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to this Indenture.

“Owner” shall mean the person registered as the owner of a Bond in the Bond Register.

“Parity Debt” shall mean bonds, notes, installment sale obligations, lease obligations or other evidences of indebtedness, and reimbursement agreements and other contracts relating to credit enhancement with respect to any of the foregoing, in each case satisfying the requirements of Section 2.05.

“Participating Bonds” shall mean all Future Bonds other than Bonds authorized by a Supplemental Indenture that provides that such Bonds are not Participating Bonds in accordance with the provisions of Section 2.06 hereof.

“Paying Agent” shall mean the Trustee and any other commercial bank or trust company organized under the laws of any state of the United States of America, or any national banking association, designated as paying agent for the Bonds, and its successor or successors appointed in the manner provided in this Indenture.

“Payment Date” shall mean each Interest Payment Date and Principal Payment Date.

“Principal Installment” shall mean, as of any date of calculation, (i) the principal amount of Outstanding Bonds due on a certain future date for which no Sinking Fund Installments have been established and (ii) the unsatisfied balance (determined as provided in subsection (d) of Section 6.07) of any Sinking Fund Installments due on a certain future date for Outstanding Bonds.

“Principal Payment Date” shall mean each August 1, commencing August 1, [2020].

“Project” shall have the meaning set forth in the Unit One Member Agreement.

“Project Participant” shall mean a party, other than NCPA, to the Unit One Member Agreement.

“Project Revenues” shall mean (i) all revenues, income, rents and receipts derived from or attributable to the Project or to the payment of the Costs thereof received or to be received by NCPA including without limitation payments from Project Participants pursuant to the Unit One Member Agreement and amounts realized pursuant to the security arrangements contemplated by the Unit One Member Agreement, amounts received pursuant to subsection (c) of Section 9.15, and amounts received by NCPA pursuant to any other contract or arrangement for the sale by NCPA of the capacity, use or service of the Project, and (ii) the proceeds of any insurance, including the proceeds of any self-insurance fund, covering business interruption loss relating to NCPA’s interest in the Project, (iii) interest received or to be received on any moneys or securities held pursuant to this Indenture and required to be paid into the Revenue Fund.

“Prudent Utility Practice” shall mean any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior hereto) known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with sound utility business and financial practices approved by the Western Electricity Coordinating Council or the North American Electric Reliability Corporation, reliability, safety and expedition, taking into account the fact that Prudent 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 a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at a reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice includes due regard for manufacturers’ warranties and requirements of governmental agencies of competent jurisdiction and official electric industry reliability organizations and shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project.

“Rebate Fund” shall mean the Fund so designated established in Section 6.02.

“Rebate Instructions” shall mean those calculations and written directions required to be delivered to the Trustee by NCPA pursuant to Section 9.19.

“Rebate Requirement” shall mean the Rebate Requirement as defined in the Tax Certificate.

“Record Date” shall mean with respect to an Interest Payment Date, unless otherwise specified with respect to a Series of Bonds in the Supplemental Indenture authorizing such Series of Bonds, the 15th day of the month preceding the month in which such Interest Payment date occurs.

“Redemption Date” shall mean the date fixed for the redemption of a Bond or a portion thereof as contemplated by Section 5.05.

“Redemption Price” shall mean, with respect to any Bond, the principal amount thereof plus the applicable premium, if any, payable upon redemption thereof.

“Refunding Act” shall mean Articles 10 and 11 of Chapter 3 of Division 2 of Title 5 of the Government Code of California, as amended and supplemented.

“Refunding Bonds” shall mean all Bonds, whether issued in one or more Series, authenticated and delivered on original issuance pursuant to Section 2.04 to refund Bonds or Parity Debt, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to this Indenture.

“Representation Letter” shall mean the letter or letters of representations from NCPA and the Trustee to, or other instrument or agreement among NCPA and the Trustee with, a Securities Depository for the Bonds in which NCPA and the Trustee, among other things, make certain representations to such Securities Depository with respect to the Bonds, the payment thereof, and delivery of notices with respect thereto.

“Reserve and Contingency Fund” shall mean the Fund so designated established pursuant to Section 6.02.

“Revenue Fund” shall mean the Fund so designated established pursuant to Section 6.02.

“S&P” shall mean S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, and its corporate successors.

“Securities Depository” shall mean DTC and its successors and assigns or if (i) the incumbent Securities Depository resigns from its functions as depository of the Bonds or (ii) NCPA discontinues use of the incumbent Securities Depository pursuant to Section 4.10, any other securities depository which agrees to follow the procedures required to be followed by a securities depository in connection with the Bonds and which is selected by NCPA.

“Securities Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Series” when used with reference to the Bonds, shall mean all of the Bonds authenticated and delivered on original issuance and identified pursuant to this Indenture

(including any Supplemental Indenture) as a separate Series of Bonds, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to this Indenture (including any Supplemental Indenture), regardless of variations in maturity, interest rate, Sinking Fund Installments, or other provisions.

“Series Debt Service Reserve Account” shall mean each such Account established within the Debt Service Fund with respect to a Series of Future Bonds that are not Participating Bonds.

“Sinking Fund Installment” shall mean, with respect to the Bonds, each amount so designated which is established pursuant to this Indenture.

“Subaccounts” shall mean any or all subaccounts in any or all of the Accounts held and maintained under this Indenture.

“Supplemental Indenture” shall mean any indenture supplemental to or amendatory of this Indenture as theretofore in effect, entered into by NCPA and the Trustee in accordance with Article XII.

“Surplus Fund” shall mean the Fund so designated established pursuant to Section 6.02.

“Tax Certificate” shall mean the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 signed by NCPA on the date of original issuance of any Bonds relating to the requirements of the Code.

“Trustee” shall mean U.S. Bank National Association, its successor or successors and any other entity which may at any time be substituted in its place as trustee hereunder pursuant to this Indenture.

“Trust Estate” shall mean (a) subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein and the provisions of subsection (b) of Section 6.01, (i) the Project Revenues and (ii) all amounts on deposit in the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund, including the investments, if any, thereof; and (b) all of NCPA’s right, title and interest in and to the Unit One Member Agreement; provided that the pledge of the Project Revenues and amounts in the Revenue Fund and NCPA’s right, title and interest in and to the Unit One Member Agreement shall be on a parity with any pledge thereof securing Parity Debt.

“2010 Indenture” shall mean that certain Indenture of Trust, dated as of January 1, 2010, by and between NCPA and U.S. Bank National Association, as trustee.

“2010 Bonds Escrow Fund” shall mean the escrow fund established pursuant to the 2010 Bonds Escrow Agreement.

“2010 Bonds Escrow Agreement” shall mean that certain Escrow Deposit Agreement, dated as of December 1, 2019, between NCPA and the Trustee, as trustee for the 2010 Series A Bonds and as escrow agent, relating to the refunded 2010 Series A Bonds.

“2010 Series A Bonds” shall mean NCPA’s Capital Facilities Revenue Bonds, 2010 Refunding Series A issued and outstanding under and pursuant to the 2010 Indenture.

“2019 Bonds Debt Service Account” shall mean the account in the Debt Service Fund established pursuant to Section 6.02.

“2019 Continuing Disclosure Agreement” shall mean the Continuing Disclosure Agreement, dated the date of original issuance of the 2019 Series A Bonds, between NCPA and the Trustee, as dissemination agent, in connection with the 2019 Series A Bonds pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

“2019 Series A Bonds” shall mean the Bonds authorized by Article III of this Indenture.

“Unit One Member Agreement” shall mean the Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two – Unit One, dated as of August 1, 1992, among NCPA and the Cities of Alameda, Lodi, Lompoc and Roseville, as the same may be amended and supplemented in accordance with its terms and the terms hereof.

Section 1.02 Rules of Construction. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, districts, agencies and bodies. References herein to subsections, Sections and Articles are to such subsections, Sections and Articles of this Indenture. Unless the context requires otherwise, the terms “herein,” “hereof” and “hereunder” shall refer to this Indenture as a whole and not to any particular provisions of this Indenture.

Section 1.03 Authority for this Indenture. This Indenture is executed by NCPA pursuant to the provisions of the Act and other applicable provisions of law. NCPA is executing this Indenture and issuing the Bonds to finance and refinance the Costs of the Project for the benefit of the Project Participants, each of which is a member of NCPA.

Section 1.04 Indenture to Constitute Contract. In consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued hereunder by those who shall own the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between NCPA and the Trustee and the Owners from time to time of the Bonds; and the pledge and assignment of the Trust Estate made in this Indenture and the covenants and agreements herein set forth to be performed on behalf of NCPA shall be for the equal and ratable benefit, protection and security of the Owners of any and all of the Outstanding Bonds all of which, regardless of the time or times of their authentication and delivery or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or permitted by this Indenture.

ARTICLE II

AUTHORIZATION AND ISSUANCE OF BONDS

Section 2.01 Authorization of Bonds.

(a) This Indenture provides for the authorization of Bonds of NCPA to be designated generally as “Capital Facilities Revenue Bonds.” The aggregate principal amount of the Bonds which may be executed, authenticated and delivered under this Indenture is not limited except as may hereafter be provided herein or as may be limited by law.

(b) The Bonds may be issued in one or more Series, and the designation thereof, in addition to the name “Capital Facilities Revenue Bonds,” shall include such further appropriate particular designation added to or incorporated in such title for the Bonds of any particular Series as NCPA may determine. Each Bond shall bear upon its face the designation so determined for the Series to which it belongs.

Section 2.02 General Provisions for Issuance of Bonds.

(a) All (but not less than all) the Bonds of each Series shall be executed by NCPA for issuance under this Indenture and delivered to the Trustee and thereupon shall be authenticated by the Trustee and by it delivered to NCPA or upon its order, but only upon the receipt by the Trustee of the following items (upon which the Trustee may conclusively rely in determining whether the conditions precedent for the issuance and authentication of such Series of Bonds have been satisfied):

(1) An executed copy of this Indenture, certified by an Authorized NCPA Representative to be in full force and effect;

(2) An Opinion of Bond Counsel to the effect that (i) this Indenture and any Supplemental Indenture pursuant to which such Series of Bonds is to be issued, have been duly executed and delivered by NCPA and constitutes the valid and binding obligation of NCPA; and (ii) the Bonds of such Series constitute the valid and binding special, limited obligations of NCPA, payable solely from the Trust Estate; provided, however, that such Opinion of Bond Counsel may include such exceptions and qualifications as shall be acceptable to the initial purchaser or purchasers of the Bonds of such Series;

(3) A written order as to the delivery of such Bonds, signed by an Authorized NCPA Representative;

(4) Except in the case of the 2019 Series A Bonds, an executed copy of the Supplemental Indenture authorizing such Bonds, certified by an Authorized NCPA Representative to be in full force and effect, which shall, among other provisions, specify: (i) the authorized Principal Amount of the Bonds of such Series, and the Series designation of such Bonds; (ii) the purposes for which such Series of Bonds is being issued, which shall be one of the purposes specified in Section 2.03 or Section 2.04; (iii) the date, and the maturity date or dates, of the Bonds of such Series; (iv) the interest

rate or rates on the Bonds of such Series, and the Interest Payment Dates therefor; (v) Authorized Denominations of, and the manner of dating, numbering and lettering, the Bonds of such Series; (vi) the Paying Agent or Paying Agents and the place or places of payment of the Principal Amount, Redemption Price, if any, of, and interest on, the Bonds of such Series; (vii) the Redemption Price or Prices, if any, and, subject to Article V, the redemption terms for the Bonds of such Series; (viii) the Sinking Fund Installments, if any, for the Bonds of such Series, provided that each Sinking Fund Installment, if any, shall fall upon an Interest Payment Date for such Bonds; (ix) if so determined by NCPA, provisions for the sale of the Bonds of such Series; (x) if any of the Bonds of such Series are Option Bonds, the terms and conditions of the exercise by the Owners of such Bonds of the purchase option granted with respect to such Bonds; (xi) whether the Bonds of such Series are to be registered in the name of a Securities Depository, or its nominee, and any provisions appropriate or necessary with respect to the arrangements made with the Securities Depository for such Bonds in the applicable Representation Letter; (xii) the application of the proceeds of the sale of such Bonds including the amount, if any, to be deposited in the Funds and Accounts; (xiii) the forms of the Bonds of such Series and of the Trustee's certificate of authentication thereon; and (xiv) the appropriate funds and accounts, if any, created under such Supplemental Indenture;

(5) The amount, if any, necessary for deposit in the applicable Account of the Debt Service Reserve Fund so that the amount in such Account shall equal the applicable Debt Service Reserve Requirement calculated immediately after the authentication and delivery of such Series of Bonds;

(6) Except in the case of the 2019 Series A Bonds, a certificate of an Authorized NCPA Representative stating that NCPA is not in default in the performance of any of the covenants, conditions, agreements or provisions contained in this Indenture or in any of the documents or proceedings authorizing or controlling any outstanding Parity Debt and applicable to NCPA; provided, however, that in the case of Refunding Bonds such certificate may state that upon the application of the proceeds of such Refunding Bonds in accordance with the Supplemental Indenture authorizing their issuance, NCPA shall not be in default in the performance of any of the covenants, conditions, agreements or provisions contained in this Indenture and applicable to NCPA; and

(7) Such further documents, moneys and securities as are required by the provisions of Sections 2.03 or 2.04 or any Supplemental Indenture entered into pursuant to Article XII.

(b) All the Bonds of each Series of like maturity shall be identical in all respects, except as to denominations, numbers and letters, Owners, interest rate, and Interest Payment Dates, and except as otherwise provided in Section 12.06. After the original issuance of Bonds of any Series, no Bonds of such Series shall be issued except in lieu of or in substitution for other Bonds of such Series pursuant to this Indenture.

Section 2.03 Additional Bonds.

(a) One or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of paying all or a portion of the Costs of the Project, including any Capital Improvement thereto.

(b) The proceeds, including accrued interest, of the Additional Bonds of each Series shall be applied simultaneously with the delivery of such Bonds as provided in the Supplemental Indenture authorizing such Series of Bonds.

Section 2.04 Refunding Bonds.

(a) One or more Series of Refunding Bonds may be issued, authenticated and delivered upon original issuance (i) to refund all Outstanding Bonds of one or more Series or all or any Outstanding Bonds within a Series or (ii) to refund any Parity Debt. Refunding Bonds shall be issued in a principal amount sufficient, together with other moneys available therefor, to accomplish such refunding including providing amounts for the costs of issuance of such Refunding Bonds, capitalized interest thereon, and the making of any deposits into the Funds and Accounts required by the provisions of the Supplemental Indenture authorizing such Series of Refunding Bonds.

(b) Refunding Bonds of each Series shall be authenticated and delivered by the Trustee only upon receipt by the Trustee (in addition to the documents required by Section 2.02) of an Opinion of Bond Counsel to the effect that the Bonds or Parity Debt, as applicable, to be refunded is deemed paid pursuant to this Indenture or the proceedings authorizing such Parity Debt, as applicable (upon which receipt the Trustee may conclusively rely in determining whether the conditions precedent for the issuance and authentication of such Series of Refunding Bonds have been satisfied).

(c) The proceeds, including accrued interest, of the Refunding Bonds of each Series shall be applied simultaneously with the delivery of such Bonds as provided in the Supplemental Indenture authorizing such Series of Refunding Bonds.

Section 2.05 Parity Debt. Parity Debt may be issued or incurred, secured as to payment by a pledge and assignment of and lien and charge on the Project Revenues on a parity with the payment of Debt Service on the Bonds; provided, that:

(a) Such Parity Debt is issued for one or more of the purposes for which Additional Bonds and Refunding Bonds may be issued.

(b) Any debt service reserve for such Parity Debt shall not exceed the Debt Service Reserve Requirement for the Debt Service Reserve Account.

(c) The Trustee shall have received a copy of the proceedings authorizing such Parity Debt, certified by the Secretary or an Assistant Secretary of NCPA.

(d) The Trustee shall have received a certificate of an Authorized NCPA Representative stating that NCPA is not in default in the performance of any of the covenants,

conditions, agreements or provisions contained in this Indenture or in any of the documents or proceedings authorizing or controlling any outstanding Parity Debt and applicable to NCPA; provided, however, that in the case of any Parity Debt issued for the purposes set forth in Section 2.04, such certificate may state that upon the application of the proceeds of such Parity Debt in accordance with the proceedings authorizing such Parity Debt, NCPA shall not be in default in the performance of any of the covenants, conditions, agreements or provisions contained in this Indenture and applicable to NCPA.

Section 2.06 Debt Service Reserves for Future Bonds. Each Series of Future Bonds shall constitute Participating Bonds unless the Supplemental Indenture authorizing such Series of Future Bonds provides that such Series of Future Bonds shall not be Participating Bonds and, if such Series of Future Bonds is to be secured by a Series Debt Service Reserve Account, provides for the establishment of a Series Debt Service Reserve Account for such Series of Future Bonds and establishes the Debt Service Reserve Requirement (which may be \$0) for said Series Debt Service Reserve Account.

ARTICLE III

AUTHORIZATION AND ISSUANCE OF 2019 SERIES A BONDS

Section 3.01 Principal Amount, Designation and Purpose. Pursuant to the provisions of this Indenture and the provisions of Article 4 of the Act and the Refunding Act, a Series of Bonds entitled to the benefit, protection and security of such provisions is hereby authorized in the aggregate principal amount of \$[PAR AMOUNT]. Such Bonds shall be designated as, and shall be distinguished from all other Bonds of NCPA, by the title, “Capital Facilities Revenue Bonds, 2019 Refunding Series A.” Each of the 2019 Series A Bonds shall be in fully registered form in an Authorized Denomination. The 2019 Series A Bonds shall be in substantially the form set forth in Exhibit A hereto.

The 2019 Series A Bonds shall be dated and shall bear interest from [CLOSING DATE], 2019. The 2019 Series A Bonds shall mature on August 1 in the years and in the principal amounts, and shall bear interest payable semiannually on each Interest Payment Date therefor, at the respective rates per annum, shown below:

Maturity Date (August 1)	Principal Amount	Interest Rate
<hr/>	<hr/>	<hr/>

Section 3.02 Redemption Prices and Terms.

(a) The 2019 Series A Bonds are not subject to optional redemption prior to their stated maturities.

(b) The 2019 Series A Bonds are subject to redemption prior to their stated maturity, at the option of NCPA, in whole or in part (in such amounts as may be specified by NCPA) on any date, from insurance or condemnation proceeds with respect to the Project or from any source of money if all or substantially all of the Project is damaged or destroyed, taken by any public entity in exercise of its powers of eminent domain, or disposed of or abandoned, at a Redemption Price equal to the principal amount of the 2019 Series A Bonds to be redeemed, without premium, plus unpaid accrued interest thereon to the Redemption Date, without premium.

Section 3.03 Application of Bond Proceeds and Other Moneys. The proceeds of the sale of the 2019 Series A Bonds shall be applied simultaneously with the delivery of the 2019 Series A Bonds, as follows:

(a) There shall be deposited in the 2010 Bonds Escrow Fund the sum of \$_____.

(b) There shall be transferred to NCPA for deposit in the Cost of Issuance Fund the sum of \$_____.

ARTICLE IV

GENERAL TERMS AND PROVISIONS OF BONDS

Section 4.01 Medium of Payment; Form and Date; Letters and Numbers.

(a) The Bonds shall be payable, with respect to interest, principal amount, and Redemption Price, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) The Bonds shall be issued in the form of fully registered Bonds without coupons in Authorized Denominations.

(c) Each Bond shall be lettered and numbered as determined by the Trustee so as to be distinguished from every other Bond.

(d) The Bonds shall be dated as provided herein or in any Supplemental Indenture. The Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless: (i) such Bonds are authenticated on an Interest Payment Date, in which event from such Interest Payment Date; and (ii) unless such Bonds are authenticated after a Record Date and before the next succeeding Interest Payment Date, in which event from such Interest Payment Date; provided, however, that if the date of authentication of a Bond shall be prior to the Record Date for the first Interest Payment Date for such Bond, such Bond shall bear interest from its original dated date. Notwithstanding the foregoing, if NCPA shall default in the

payment of interest, then the Bonds shall bear interest from the date to which interest has been paid or if no interest has been paid, from their original dated date.

(e) Except as otherwise provided in a Supplemental Indenture with respect to Additional Bonds or Refunding Bonds, the interest payable on Bonds shall be calculated on the basis of a 360-day year of twelve, thirty-day months.

(f) Except as otherwise provided in the Representation Letter, payment of principal at the maturity or redemption of each of the Bonds, together with any premium due upon the redemption of a Bond and any interest due upon a Bond on other than an Interest Payment Date shall be payable upon the surrender of such Bond at: (i) the principal corporate trust office of the Trustee in New York, New York, as paying agent; and (ii) any other place which may be provided for such payment by the appointment of any other Paying Agent or Paying Agents as permitted by this Indenture. Except as otherwise provided in subsection (d) of Section 10.03 or in the Representation Letter, interest on the Bonds payable on each Interest Payment Date shall be paid by check of the Trustee mailed on such Interest Payment Date to the Owners shown on the Bond Register as of the close of business on the Record Date immediately preceding such Interest Payment Date. Owners of at least \$1,000,000 aggregate principal amount of Bonds may, at any time prior to a Record Date, give the Trustee written instructions for payment of such interest on each succeeding Interest Payment Date by wire transfer or by deposit to an account maintained with a Paying Agent for the Bonds; provided, however, that if NCPA shall default in the payment of interest due on any Interest Payment Date, such interest shall cease to be payable to the person in whose name each Bond was registered on such Record Date and shall be payable, when and if paid by NCPA, to the person in whose name each Bond is registered at the close of business on the record date fixed therefor by the Trustee (each a "Special Record Date"), which shall not be more than 15 days and not less than 10 days prior to the date of the proposed payment.

Section 4.02 Legends. The Bonds may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by NCPA prior to the authentication and delivery thereof.

Section 4.03 Execution and Authentication.

(a) The Bonds shall be executed in the name of NCPA by the manual or facsimile signature of the Chairman or the General Manager of NCPA and its seal (or a facsimile thereof) shall be impressed, imprinted, engraved or otherwise reproduced thereon and attested by the facsimile or manual signature of its Secretary or an Assistant Secretary, or in such other manner as may be required or permitted by law. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer before the Bonds so signed and sealed shall have been authenticated and delivered by the Trustee, such Bonds may, nevertheless, be authenticated and delivered as herein provided, and may be issued as if the persons who signed or sealed such Bonds had not ceased to hold such offices. Any Bond may be signed and sealed on behalf of NCPA by such persons as at the time of the execution of such

Bond shall be duly authorized or hold the proper office in NCPA, although at the date borne by such Bonds such persons may not have been so authorized or have held such office.

(b) The Bonds shall bear thereon a certificate of authentication, in the form set forth in Exhibit A to this Indenture, executed manually by the Trustee. Only such Bonds as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under this Indenture and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of the Trustee upon any Bond executed on behalf of NCPA shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under this Indenture and that the Owner thereof is entitled to the benefits of this Indenture.

Section 4.04 Interchangeability of Bonds. Bonds, upon surrender thereof at the principal corporate trust office of the Bond Registrar, together with a written instrument of transfer satisfactory to the Bond Registrar and duly executed by the Owner or such Owner's attorney duly authorized in writing, may, at the option of the Owner thereof, and upon payment by such Owner of any charges which the Bond Registrar may make as provided in Section 4.06, be exchanged for an equal aggregate principal amount of Bonds of the same terms, and maturity of any other Authorized Denominations.

Section 4.05 Negotiability, Transfer and Registry.

(a) The Bonds shall be transferable only upon the Bond Register which shall be kept for such purpose by the Bond Registrar at its principal corporate trust office, upon surrender thereof, together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Owner or such Owner's duly authorized attorney. Upon the transfer of any such Bond, NCPA shall execute and the Trustee shall authenticate and deliver and the Bond Registrar shall register in the name of the transferee a new Bond or Bonds of the same aggregate principal amount, terms and maturity as the surrendered Bond.

(b) NCPA and each Fiduciary may deem and treat the Owner in whose name any Bond shall be registered upon the Bond Register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of, Redemption Price, if any, of, and interest on, such Bond and for all other purposes, and all such payments so made to any such Owner or upon such Owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither NCPA nor any Fiduciary shall be affected by any notice to the contrary. NCPA agrees to indemnify and save each Fiduciary harmless from and against any and all loss, cost, charge, expense, judgment or liability incurred by it, acting in good faith and without negligence under this Indenture, in so treating such Owner.

Section 4.06 Regulations With Respect to Exchanges and Transfers. Subject to Section 4.10, in all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, NCPA shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchanges or transfers shall forthwith be delivered to the Trustee and cancelled by the Trustee. For every such exchange or transfer of Bonds, whether temporary or definitive, NCPA or the Bond

Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid and any other cost incurred by NCPA or any Fiduciary with respect to such exchange or transfer.

Section 4.07 Bonds Mutilated, Destroyed, Stolen or Lost. Subject to Section 4.10, if any Bond becomes mutilated or is lost, stolen or destroyed, NCPA may execute and the Trustee shall authenticate and deliver a new Bond of like Series, date of issue, maturity date, principal amount and interest rate per annum as the Bond so mutilated, lost, stolen or destroyed; provided that (i) in the case of such mutilated Bond, such Bond is first surrendered to NCPA or the Bond Registrar, (ii) in the case of any such lost, stolen or destroyed Bond, there is first furnished evidence of such loss, theft or destruction satisfactory to NCPA together with indemnity satisfactory to NCPA and the Trustee, (iii) all other reasonable requirements of NCPA and the Trustee are complied with, and (iv) expenses in connection with such transaction are paid by the Owner. Any Bond surrendered for exchange shall be cancelled. Any such new Bonds issued pursuant to this Section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of NCPA, whether or not the Bonds so alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Bonds issued under this Indenture, in any moneys or securities held by NCPA or any Fiduciary for the benefit of the Owners of the Bonds other than moneys held under the circumstances described in Section 13.03.

Section 4.08 Temporary Bonds.

(a) Subject to Section 4.10, until the definitive Bonds are prepared, NCPA may execute, in the same manner as is provided in 4.03, and upon the request of NCPA, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds except as to the denominations thereof and as to exchangeability for Bonds, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, in Authorized Denominations, and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The installments of interest payable on such temporary Bonds shall be payable in the same manner as interest is payable on the definitive Bonds in lieu of which such temporary Bonds were issued. NCPA at its own expense shall prepare and execute and, upon the surrender of such temporary Bonds for exchange and the cancellation of such surrendered temporary Bonds, the Trustee shall authenticate and, without charge to the Owner thereof, deliver in exchange therefor, definitive registered Bonds of the same aggregate principal amount, terms, maturity and date of issue as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds authenticated and issued pursuant to this Indenture.

(b) Temporary Bonds authorized in more than one denomination, upon surrender thereof at the principal corporate trust office of the Bond Registrar, may at the option of the Owner thereof, and upon payment by such Owner of any charges which may be made as provided in Section 4.06, be exchanged for an equal aggregate principal amount of temporary Bonds of the same maturity, and containing the same terms, of any of the Authorized Denominations as shall be requested by such Owner.

(c) All temporary Bonds surrendered in exchange either for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith cancelled by the Trustee.

Section 4.09 Cancellation and Destruction of Bonds. All Bonds paid or redeemed, either at or before maturity, and all Bonds surrendered for transfer or exchange, shall be delivered to the Trustee when such payment, redemption or surrender is made, and such Bonds, together with all Bonds purchased by the Trustee, shall thereupon be promptly cancelled. Bonds so cancelled may at any time be destroyed by the Trustee, who shall execute a certificate of destruction in duplicate by the signature of one of its authorized officers describing the Bonds so destroyed, and one executed certificate shall be filed with NCPA and the other executed certificate shall be retained by the Trustee.

Section 4.10 Book-Entry Form; Securities Depository.

(a) Except as otherwise provided in this Section, the Bonds of each Series shall be issued in the form of one bond certificate for each maturity of the Bonds of such Series and shall be registered in the name of the Securities Depository or its nominee and ownership thereof shall be maintained in book-entry form by the Securities Depository for the account of the Agent Members thereof. Initially, each of the Bonds shall be registered in the name of Cede & Co., as the nominee of DTC. Except as provided in subsection (c) of this Section 4.10, Bonds may be transferred, in whole but not in part, only to the Securities Depository or a nominee of the Securities Depository, or a successor Securities Depository selected by NCPA or to a nominee of such successor Securities Depository. Each book-entry Bond shall bear a legend substantially to the following effect: "Except as otherwise provided in Section 4.10 of the Indenture, this bond may be transferred, in whole but not in part, only to another nominee of the Securities Depository (as defined in the Indenture) or to a successor Securities Depository or to a nominee of a successor Securities Depository."

(b) NCPA, the Trustee, the Bond Registrar and the Paying Agent shall have no responsibility or obligation with respect to:

(i) the accuracy of the records of the Securities Depository, the Securities Depository nominee, or any Agent Member with respect to any beneficial ownership interest in the Bonds;

(ii) the delivery to any Agent Member, any beneficial owner of the Bonds or any other person, other than an Owner as shown in the Bond Register, of any notice with respect to the Bonds, including any notice of redemption;

(iii) the payment to any Agent Member, any beneficial owner of the Bonds or any other person, other than an Owner as shown in the Bond Register of any amount with respect to the principal of, premium, if any, or interest on, the Bonds;

(iv) any consent given by the Securities Depository as registered owner of the Bonds; or

(v) subject to Section 5.04, the selection by the Securities Depository or any Agent Member of any beneficial owners to receive payment if Bonds are redeemed in part.

So long as the certificates for the Bonds are not issued pursuant to subsection (c) of this Section 4.10, NCPA, the Trustee, the Bond Registrar and the Paying Agent may treat the Securities Depository as, and deem the Securities Depository to be, the absolute owner of the Bonds for all purposes whatsoever, including without limitation:

- Bonds; (i) the payment of principal, premium, if any, and interest on the
- Bonds; and (ii) giving notices of redemption and other matters with respect to the
- (iii) registering transfers with respect to the Bonds.

(c) If at any time the incumbent Securities Depository notifies NCPA that it is unwilling or unable to continue as Securities Depository with respect to the Bonds, or if at any time the Securities Depository shall no longer be registered or in good standing under the Securities Exchange Act or other applicable statute or regulation and a successor Securities Depository is not appointed by NCPA within 90 days after NCPA receives notice or becomes aware of such condition, as the case may be, subsections (a) and (b) of this Section 4.10 shall no longer be applicable and NCPA shall execute and the Trustee shall authenticate and deliver certificates representing the Bonds, as the case may be, as provided below.

(d) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of DTC, or its nominee, all payments with respect to principal amount and Redemption Price of, and interest on, such Bond, and all notices with respect to such Bond, shall be made and given, respectively, as provided in the Representation Letter.

(e) In connection with any notice or other communication to be provided to Owners of the Bonds pursuant to this Indenture by NCPA or the Trustee with respect to any consent or other action to be taken by Owners of the Bonds, NCPA or the Trustee, as the case may be, shall use its best efforts to establish a record date for such consent or other action and give DTC notice of such record date not less than 15 calendar days in advance of such record date.

ARTICLE V

REDEMPTION OF BONDS

Section 5.01 Privilege of Redemption and Redemption Price. Bonds subject to redemption prior to maturity pursuant to this Indenture shall be redeemable, upon giving notice as provided in this Article V, at such times, at such Redemption Prices and upon such terms as may be specified, with respect to the 2019 Series A Bonds, Article III and, with respect to any other Series of Bonds, in the Supplemental Indenture authorizing such Series of Bonds.

Section 5.02 Redemption at the Direction of NCPA. In the case of any redemption of any Bonds at the direction of NCPA, NCPA shall give written notice to the Trustee of its direction so to redeem, and of the Redemption Date, principal amounts of the Bonds of each maturity to be redeemed (which maturities and principal amounts to be redeemed shall be in Authorized Denominations and determined by NCPA in its sole discretion, subject to any limitations with respect thereto contained in any applicable provision of this Indenture or any Supplemental Indenture). Such notice shall be given at least 40 days prior to the Redemption Date or such shorter period as shall be acceptable to the Trustee. In the event notice of redemption shall have been given as provided in Section 5.05(a) and subject to the terms of Section 5.05(b), there shall be paid on or prior to the Redemption Date to the appropriate Paying Agent an amount in cash which, in addition to other moneys, if any, available to such Paying Agent for the payment of the Redemption Price of the Bonds to be redeemed, and any unpaid accrued interest payable in connection with such redemption, shall be sufficient to redeem on the applicable Redemption Date all of the Bonds to be redeemed at the applicable Redemption Price thereof, plus any unpaid accrued interest payable on such Bonds on the Redemption Date.

Section 5.03 Redemption Otherwise Than at NCPA's Direction. Whenever by the terms of this Indenture the Trustee is required or authorized to redeem Bonds otherwise than at the direction of NCPA, and this Indenture does not expressly set forth the principal amount of Bonds of each maturity to be redeemed, NCPA may select the principal amounts of the Bonds of each maturity to be redeemed (which maturities and principal amounts to be redeemed shall be in Authorized Denominations and determined by NCPA in its sole discretion, subject to any limitations with respect thereto contained in any applicable provision of this Indenture or any Supplemental Indenture) and in the event NCPA does not notify the Trustee of such maturities, and principal amounts, to be redeemed on or before the 40th day preceding the Redemption Date, the Trustee shall, in its sole discretion, subject to any limitations with respect thereto contained in any applicable provision of this Indenture or any Supplemental Indenture, select the maturities and principal amounts of Bonds to be redeemed, give the notice of redemption and pay out of moneys available therefor the Redemption Price thereof, plus any unpaid accrued interest on the Bonds to be redeemed payable on to Redemption Date, to the appropriate Paying Agents in accordance with the terms of this Article V and, to the extent applicable, Section 6.07.

Section 5.04 Selection of Bonds to be Redeemed. If less than all of the Bonds of like Series and maturity shall be called for prior redemption, except as otherwise provided in the Representation Letter, the particular Bonds or portions of Bonds to be redeemed shall, subject to any limitations with respect thereto contained in any applicable provision of this Indenture or any Supplemental Indenture, be selected at random by the Trustee in such manner as the Trustee in its discretion may deem fair and appropriate; provided, however, that the portion of any Bond of a denomination greater than the minimum Authorized Denomination for the Series of which such Bond is a part shall be redeemed in part only in Authorized Denominations and that, in selecting portions of Bonds for redemption, the Trustee shall treat each Bond of a Series as representing that number of Bonds of the minimum Authorized Denomination for such Series which is obtained by dividing the principal amount of such Bond by the minimum Authorized Denomination for the Bonds of such Series.

Section 5.05 Notice of Redemption.

(a) When the Trustee shall receive notice from NCPA of its direction to redeem Bonds pursuant to Section 5.02, and when redemption of Bonds is authorized or required pursuant to Section 5.03, the Trustee shall give notice, in the name of NCPA, of the redemption of such Bonds, by first-class mail, postage prepaid, to the Owners of any Bonds designated for redemption in whole or in part, at their last address appearing upon the Bond Register, or, in the event the Bonds are held in book-entry pursuant to Section 4.10, by first-class mail, postage prepaid, or by electronic means acceptable to the Securities Depository, no less than 30 days nor more than 60 days prior to the Redemption Date, to the Securities Depository. Each notice of redemption shall specify the Series and maturities of the Bonds to be redeemed, the Redemption Date and the place or places where amounts due upon such redemption shall be payable and, if less than all of the Bonds of any like Series and maturity are to be redeemed, the letters and numbers or other distinguishing marks of such Bonds so to be redeemed, and, in the case of Bonds to be redeemed in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed. Such notice shall further state that, except as provided in subsection (b) of this Section 5.05, on such date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal amount thereof to be redeemed in the case of Bonds to be redeemed in part only, together with any unpaid accrued interest on such principal amount to be redeemed to the Redemption Date, and that, if moneys sufficient to pay the Redemption Price of, and unpaid accrued interest on, the Bonds to be redeemed shall be available for such payment, from and after such Redemption Date interest on such Bonds shall cease to accrue and be payable.

Receipt of such notice shall not be a condition precedent to the redemption of Bonds and failure of any Owner of a Bond to receive any such notice or any defect in such notice shall not affect the validity of the proceedings for the redemption of Bonds.

(b) Unless at the time of giving of notice the Bonds to be redeemed shall be deemed to have been paid within the meaning of Section 13.01(b), the notice with respect to any redemption of Bonds at the option of NCPA shall state that such redemption is conditional upon the receipt by the Trustee, on or prior to the date fixed for such redemption, of moneys sufficient to pay the principal of, and premium, if any, and any unpaid accrued interest to the Redemption Date on, such Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and NCPA shall not be required to redeem such Bonds. In the event a notice of redemption of Bonds contains such a condition and such moneys are not so received, the redemption of Bonds as described in the conditional notice of redemption shall not be made and the Trustee shall, within a reasonable time after the date on which such redemption was to occur, give notice to the persons and in the manner in which the notice of redemption was given, that such moneys were not so received and that there will be no redemption of Bonds pursuant to the notice of redemption.

(c) In addition to the notice of redemption required pursuant to subsection (a) of this Section 5.05, if any of the Bonds are to be redeemed, then, upon the written request of an Authorized NCPA Representative received by the Trustee at least 40 days before the Redemption Date (or such shorter time as shall be acceptable to the Trustee), the Trustee shall

also give the notice of redemption at least 30 days before the Redemption Date, by (i) registered or certified mail, return receipt requested, postage prepaid, or (ii) by electronic means of communication, to the following securities depository (and such other securities depositories as NCPA may from time to time designate in writing to the Trustee):

The Depository Trust Company
570 Washington Boulevard
Jersey City, New Jersey 07310

Upon the written request of an Authorized NCPA Representative received by the Trustee at least 40 days before the Redemption Date (or such shorter time as shall be acceptable to the Trustee), the Trustee shall also give the notice of redemption notice, at least 30 days before the Redemption Date of any Bonds, by electronic means of communication to the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access System website; provided, however, in accordance with then current guidelines of the Securities and Exchange Commission, such notice of redemption shall also be provided to such other organizations providing information services with respect to the Bonds to be redeemed as NCPA may designate in writing to the Trustee.

Failure to give the notices described in this subsection (c), or any defects therein, shall not in any manner affect the proceedings for redemption of any Bonds. Neither NCPA nor the Trustee shall have any responsibility for any defect in the CUSIP number that appears on any Bonds or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither NCPA nor the Trustee shall be liable for any inaccuracy in such numbers.

ARTICLE VI

ESTABLISHMENT OF FUNDS AND APPLICATION THEREOF

Section 6.01 Bonds Special, Limited Obligations.

(a) The Bonds shall be special, limited obligations of NCPA payable only from the Trust Estate and secured as to the payment of the principal and Redemption Price thereof and interest thereon in accordance with their terms and the provisions hereof solely by the pledge and assignment of the Trust Estate, which pledge is subject to the application of the Trust Estate for the purposes and on the terms and conditions contained in this Indenture; provided, however, that such pledge and assignment of the Project Revenues, amounts in the Revenue Fund and NCPA's right, title and interest in and to the Unit One Member Agreement shall be in all respects on a parity with any pledge and assignment thereof as security for Parity Debt.

(b) The Trust Estate shall immediately be subject to the lien of such pledge without any other further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against NCPA, irrespective of whether such parties have notice thereof. Any moneys withdrawn from any Fund or Account and

not deposited into the Revenue Fund, the Debt Service Fund or the Debt Service Reserve Fund, except as otherwise provided in Section 13.01 or Section 13.03, shall be released from the pledge and assignment made pursuant to this Indenture. Upon the payment, or provision for the payment in accordance with Section 13.01, of all of the Bonds, the Unit One Member Agreement shall be released from the pledge and assignment made pursuant to this Indenture and no longer included in the Trust Estate.

(c) The Bonds shall not constitute a charge against the general credit of NCPA and are not secured by a legal or equitable pledge of, or charge or lien upon, any property of NCPA or any of its income or receipts except the Trust Estate to the extent set forth herein, and as to any particular Bonds, any other moneys to be provided therefor pursuant to this Indenture. Neither the faith and credit nor the taxing power of the State of California or any public agency thereof or any Member is pledged to the payment of the principal or Redemption Price of, or interest on, the Bonds. Neither the payment of the principal or Redemption Price of, or interest on, the Bonds constitutes a debt, liability or obligation of the State of California or any public agency thereof (other than NCPA) or any Member.

(d) Nothing contained in this Indenture shall be construed to prevent NCPA from acquiring and financing through the issuance of its bonds, notes or other evidences of indebtedness any facilities or any interest in facilities which do not constitute a part of the Project for the purposes of this Indenture; provided such bonds, notes or other evidences of indebtedness shall not be payable out of or secured by the Trust Estate and neither the cost of such facilities nor any expenditure in connection therewith or with the financing thereof shall be payable from the Trust Estate.

Section 6.02 Funds and Accounts.

The following Funds and Accounts are hereby established:

- (1) Cost of Issuance Fund, to be held by NCPA;
- (2) Revenue Fund, to be held by NCPA;
- (3) Operating Fund, to be held by NCPA, including the Operating Reserve Account;
- (4) Rebate Fund, to be held by the Trustee;
- (5) Debt Service Fund, to be held by the Trustee, which shall consist of (i) the Debt Service Account, (ii) the 2019 Bonds Debt Service Account, and (iii) such Accounts in the Debt Service Fund as shall be established in the Supplemental Indenture authorizing a Series of Future Bonds that are not Participating Bonds;
- (6) Debt Service Reserve Fund, to be held by the Trustee, which shall consist of (i) the Debt Service Reserve Account and (ii) any Series Debt Service Reserve Accounts as shall be established in connection with Future Bonds by NCPA that are not Participating Bonds pursuant to Section 2.06 hereto;

- (7) Reserve and Contingency Fund, to be held by NCPA; and
- (8) Surplus Fund, to be held by NCPA.

Section 6.03 Cost of Issuance Fund. There shall be paid into the Cost of Issuance Fund the amounts required to be so paid by the provisions of this Indenture, including pursuant to subsection (b) of Section 3.03 or as provided in the Supplemental Indenture for any Series of Bonds, and there may be paid into the Cost of Issuance Fund any moneys received for or in connection with the issuance of Bonds by NCPA from any other source, unless required to be otherwise applied as provided by this Indenture. NCPA shall apply, or cause to be applied, the moneys on deposit in the Costs of Issuance Fund to the payment of the costs of issuing the Bonds for which such moneys were so received.

Section 6.04 Project Revenues and Revenue Fund. All Project Revenues shall be deposited, promptly on receipt thereof, to the credit of the Revenue Fund, and applied as provided in this Indenture.

Section 6.05 Payments From the Revenue Fund.

As soon as practicable in each month, but in any case no later than the last Business Day of such month, NCPA shall withdraw moneys from the Revenue Fund and deposit in the following Funds and Accounts, in the following order, the amounts set forth below:

(a) NCPA shall withdraw from the Revenue Fund and deposit in the Operating Fund the amount which, together with any amount therein (other than amounts in the Operating Reserve Account) is equal to the total amount appropriated for NCPA Operating Expenses in such month pursuant to the then current Annual Budget.

(b) NCPA shall withdraw from the Revenue Fund and transfer to the Trustee (or paying agent for Parity Debt, as applicable) for deposit: (i) subject to the provisions of subsection (g) of Section 6.07 and subsection (c) of Section 6.08, in the Debt Service Account the amount necessary so that the balance in said Account shall equal the Debt Service to accrue on the Participating Bonds to the last day of such month; (ii) in the 2019 Bonds Debt Service Account the amount necessary so that the balance in said Account shall equal the Debt Service to accrue on the 2019 Series A Bonds to the last day of such month; (iii) in each Account in the Debt Service Fund established for a Series of Future Bonds that are not Participating Bonds, the amount, if any, required so that the balance in said Account shall equal the Debt Service to accrue on such Series of Future Bonds to the last day of such month; provided that, for the purposes of computing the amount on deposit in any such Account, there shall be excluded from the balance of such Account: (A) the amount, if any, set aside in such Account from the proceeds of Bonds for the payment of the principal, Redemption Price, or interest on Bonds, less the amount of such proceeds to be applied in accordance with this Indenture to the payment of the principal, Redemption Price or interest accrued and unpaid and to accrue on applicable Bonds to the last day of the then current calendar month; and (B) the amount, if any, set aside in any such Account for the payment of Principal Installments or Redemption Price of, or interest on, the applicable Bonds which are then due and payable; and (iv) in any fund or account created to pay debt service on Parity Debt the amount, if any, required so that the balance therein shall equal the

payments coming due therein to the last day of such month; provided that if the amount of Project Revenues available in any month is insufficient to make all deposits required by this subsection (b), then the available Project Revenues shall be deposited in each Account in the Debt Service Fund and the funds or accounts created to pay debt service on Parity Debt pro rata based on the amounts due.

(c) Subject to the provisions of subsection (i) of Section 6.08, NCPA shall withdraw from the Revenue Fund and transfer to the Trustee (or paying agent for Parity Debt, as applicable) for deposit in each Account in the Debt Service Reserve Fund, the amount, if any, required so that the amount in such Account is equal to the applicable Debt Service Reserve Requirement and the amount, if any, necessary to reimburse each drawing on a Financial Guaranty related to each Account in the Debt Service Reserve Fund and to pay any interest or other amounts due with respect to a Financial Guaranty related to each Account in the Debt Service Reserve Fund; and for deposit in the debt service reserve, if any, established for Parity Debt the amount required to be deposited in such debt service reserve pursuant to the instrument or proceedings authorizing such Parity Debt; provided that if the amount of Project Revenues available in any month is insufficient to make all deposits required by this subsection (c), then the available Project Revenues shall be deposited into each Account in the Debt Service Reserve Fund and the debt service reserves for Parity Debt pro rata based on the amounts due.

(d) NCPA shall withdraw from the Revenue Fund and deposit in the Reserve and Contingency Fund the amount, if any, provided for deposit therein during such month pursuant to the then current Annual Budget.

(e) On the last Business Day of each month after making the deposits required by subsection (a) through subsection (d) of this Section, NCPA shall withdraw from the Revenue Fund and deposit in the Surplus Fund the balance, if any, of moneys remaining in the Revenue Fund.

Section 6.06 Operating Fund.

(a) Moneys, including proceeds of Bonds, may be deposited in the Operating Reserve Account or otherwise set aside in the Operating Fund as working capital or a reserve for working capital.

(b) Amounts in the Operating Fund (other than amounts in the Operating Reserve Account, except as provided in subsection (d) of this Section) shall be paid out from time to time by NCPA for reasonable and necessary NCPA Operating Expenses, including making deposits to the Rebate Fund to satisfy the Rebate Requirement.

(c) Amounts in the Operating Fund which NCPA at any time determines to be in excess of the requirements of such Fund, such determination to be evidenced by a written statement to this effect signed by an Authorized NCPA Representative, shall be applied to make up any deficiencies in the following Funds in the order stated: Debt Service Fund; Debt Service Reserve Fund; and the Reserve and Contingency Fund. Any balance of such excess not so applied shall be deposited in the Surplus Fund.

(d) Amounts in the Operating Reserve Account, if any, shall be paid out from time to time by NCPA for reasonable and necessary NCPA Operating Expenses in the event that other moneys in the Operating Fund available for such purpose are insufficient therefor.

Section 6.07 Debt Service Fund.

(a) The Trustee shall transfer from the Debt Service Account in the Debt Service Fund to the Paying Agent: (i) on or before each Interest Payment Date for any of the Outstanding Participating Bonds the interest on such Participating Bonds payable on such due date; (ii) on or before each due date therefor, the Principal Installment on Outstanding Participating Bonds payable on such due date; and (iii) on or before any Redemption Date for Outstanding Participating Bonds, the amount required for payment of the Redemption Price and any accrued interest on the Participating Bonds then to be redeemed. Amounts received by the Paying Agents pursuant to this subsection shall be applied by the Paying Agents to the payment of the principal or Redemption Price, as applicable, of, and interest on, the Participating Bonds on and after the due dates thereof.

(b) The Trustee shall transfer from the 2019 Bonds Debt Service Account in the Debt Service Fund to the Paying Agent: (i) on or before each Interest Payment Date for any of the Outstanding 2019 Series A Bonds the interest on such 2019 Series A Bonds payable on such due date; (ii) on or before each due date therefor, the Principal Installment on Outstanding 2019 Series A Bonds payable on such due date; and (iii) on or before any Redemption Date for Outstanding 2019 Series A Bonds, the amount required for payment of the Redemption Price and any accrued interest on the 2019 Series A Bonds then to be redeemed. Amounts received by the Paying Agents pursuant to this subsection shall be applied by the Paying Agents to the payment of the principal or Redemption Price, as applicable, of, and interest on, the 2019 Series A Bonds on and after the due dates thereof.

(c) The Trustee shall transfer from each Debt Service Account in the Debt Service Fund established for a Series of Future Bonds that are not Participating Bonds to the Paying Agent: (i) on or before each Interest Payment Date for any of the Outstanding Bonds of such Series the interest on such Future Bonds payable on such due date; (ii) on or before each due date therefor, the Principal Installment on Outstanding Bonds of such Series payable on such due date; and (iii) on or before any Redemption Date for Outstanding Bonds of such Series, the amount required for payment of the Redemption Price and any accrued interest on the such Bonds then to be redeemed. Amounts received by the Paying Agents pursuant to this subsection shall be applied by the Paying Agents to the payment of the principal or Redemption Price, as applicable, of, and interest on, the applicable Series of Future Bonds that are not Participating Bonds on and after the due dates thereof.

(d) Amounts accumulated in the applicable Account in the Debt Service Fund with respect to any Sinking Fund Installment (together with amounts accumulated therein with respect to interest on the Bonds for which such Sinking Fund Installment was established) may, and if so directed in writing by an Authorized NCPA Representative shall, be applied by the Trustee, on or prior to the 60th day preceding the due date of such Sinking Fund Installment, to (i) the purchase of Bonds of the maturity for which such Sinking Fund Installment was established, or (ii) the redemption at the applicable sinking fund Redemption Price of such

Bonds, if then redeemable by their terms. All purchases of any Bonds pursuant to this subsection shall be made at prices not exceeding the applicable sinking fund Redemption Price of such Bonds plus accrued interest, and such purchases shall be made by the Trustee as directed by NCPA. The applicable sinking fund Redemption Price (or principal of maturing Bonds) of any Bonds so purchased or redeemed shall be deemed to constitute part of the applicable Account in the Debt Service Fund until such Sinking Fund Installment due date, for the purpose of calculating the amount in such Account.

If directed in writing by an Authorized NCPA Representative on or prior to the 45th day next preceding any Sinking Fund Installment due date, there shall be applied as a credit against such Sinking Fund Installment, and there shall be deemed to constitute part of the Debt Service Fund for the period commencing eleven months from such Sinking Fund Installment due date until such Sinking Fund Installment due date for the purpose of calculating the amount of such Fund, the principal amount of any Bonds of the maturity for which such Sinking Fund Installment was established which have been purchased or redeemed and cancelled or delivered to the Trustee for cancellation on or prior to the 45th day next preceding such Sinking Fund Installment due date and not previously applied as a credit against a Sinking Fund Installment.

No later than the 30th day preceding the due date of any such Sinking Fund Installment, the Trustee shall proceed to call for redemption on such due date, by giving notice as provided in Section 5.05, Bonds of the maturity for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment Date) in such amount as shall be necessary to complete the retirement of Bonds in an amount equal to the unsatisfied balance of such Sinking Fund Installment. The Trustee shall pay out of the Debt Service Fund to the Paying Agent, on or before such Redemption Date (or maturity date), the amount required for the redemption of the Bonds so called for redemption (or for the Bonds then maturing), and such amount shall be applied by the Paying Agent to such redemption (or payment).

(e) The amount, if any, deposited in each applicable Account in the Debt Service Fund from the proceeds of Bonds for the purpose of paying interest on Bonds shall be set aside in such Fund and applied to the payment of interest on Bonds as provided in this Indenture or in any Supplemental Indenture.

(f) In the event of the refunding of one or more Bonds (or portions thereof), the Trustee shall, upon the written direction of an Authorized NCPA Representative, withdraw from the applicable Account or Accounts in the Debt Service Fund amounts accumulated therein with respect to Debt Service on the Bonds being refunded and deposit such amounts with itself as Trustee to be held for the payment of the principal or Redemption Price, as applicable, of, and interest on, the Bonds (or portions thereof) being refunded; provided, that such withdrawal shall not be made unless (i) immediately thereafter the Bonds (or portions thereof) being refunded shall be deemed to have been paid pursuant to subsection (b) of Section 13.01, and (ii) the amount remaining in such applicable Account or Accounts in the Debt Service Fund after such withdrawal shall not be less than the requirement of such Account or Accounts.

(g) Any provision of this Indenture to the contrary notwithstanding, so long as there shall be held in an Account in the Debt Service Fund an amount sufficient to pay in full the

Bonds related to such Account in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), no deposits shall be required to be made into such Account in the Debt Service Fund.

Section 6.08 Debt Service Reserve Fund.

(a) If on the last Business Day of any month the amount in the Debt Service Account shall be less than the amount required to be in such Account pursuant to Section 6.05(c) with respect to the Outstanding Participating Bonds, the Trustee shall apply amounts from the Debt Service Reserve Account to the extent necessary to make good the deficiency with respect to the Participating Bonds. If on the last Business Day of any month the amount in a Debt Service Account established for a Series of Future Bonds that are not Participating Bonds shall be less than the amount required to be in such Account pursuant to Section 6.05(c) with respect to such Series of Future Bonds, the Trustee shall apply amounts from the applicable Series Debt Service Reserve Account (if any) to the extent necessary to make good the deficiency with respect to the Series of Future Bonds secured by such Series Debt Service Reserve Account.

(b) Except as provided in subsection (i) of this Section 6.08, whenever the moneys on deposit in the applicable Account in the Debt Service Reserve Fund shall exceed the applicable Debt Service Reserve Requirement, such excess shall be applied to the reimbursement of each drawing on a Financial Guaranty related to such Account and to the payment of interest or other amounts due with respect to such a Financial Guaranty to the extent payable from such Account and any remaining moneys shall be deposited in the Revenue Fund.

(c) Whenever the amount in the Debt Service Reserve Account (excluding Financial Guaranties), together with the amount in the Debt Service Account and available for such purposes, is sufficient to pay in full all Outstanding Participating Bonds in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), the funds on deposit in the Debt Service Reserve Account shall be transferred to the Debt Service Account and applied to the payment or redemption of the Outstanding Participating Bonds.

(d) In the event of the refunding of one or more Participating Bonds (or portions thereof), the Trustee shall, upon the written direction of an Authorized NCPA Representative, withdraw from the Debt Service Reserve Account any or all of the amounts on deposit therein (excluding Financial Guarantees) and deposit such amounts with itself as Trustee to be held for the payment of the principal or Redemption Price, if any, of, and interest on, the Participating Bonds (or portions thereof) being refunded; provided, that such withdrawal shall not be made unless (i) immediately thereafter the Series or maturities within a Series of Participating Bonds (or portions thereof) being refunded shall be deemed to have been paid pursuant to subsection (b) of Section 13.01 of this Indenture, and (ii) the amount remaining in the Debt Service Reserve Account after such withdrawal, taking into account any deposits to be made to the Debt Service Reserve Account in connection with such refunding, shall not be less than the applicable Debt Service Reserve Requirement.

(e) [Reserved]

(f) [Reserved]

(g) Whenever the amount in a Series Debt Service Reserve Account established for a Series of Future Bonds that are not Participating Bonds, together with the amount in the Debt Service Account established for such Series of Future Bonds available for such purpose, is sufficient to pay in full all Outstanding Future Bonds secured by such Series Debt Service Reserve Account in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), the funds on deposit in the such Series Debt Service Reserve Account shall be transferred to the applicable Account in the Debt Service Fund and applied to the payment or redemption of the Series of Future Bonds that are not Participating Bonds secured by such Series Debt Service Reserve Account. Any provision of the Indenture to the contrary notwithstanding, so long as there shall be held in the appropriate Account in the Debt Service Fund available for such purpose, an amount sufficient to pay in full all Outstanding Future Bonds for which a Series Debt Service Reserve has been established in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), no deposits shall be required to be made into the applicable Series Debt Service Reserve Account.

(h) In the event of the refunding of one or more Future Bonds that are not Participating Bonds, the Trustee may, upon the direction of NCPA with the advice of Bond Counsel, withdraw from the Series Debt Service Reserve Account, if any, with respect to such Future Bonds any or all of the amounts on deposit therein and deposit such amounts with itself as Trustee to be held for the payment of the principal or Redemption Price, if any, and interest on the Future Bonds being refunded; provided that such withdrawal shall not be made unless (i) immediately thereafter the Series or maturities within a Series of Future Bonds being refunded shall be deemed to have been paid pursuant to subsection (b) of Section 13.01(b), and (ii) the amount remaining in such Series Debt Service Reserve Account after such withdrawal shall not be less than the applicable Debt Service Reserve Requirement (if any) with respect to such Series Debt Service Reserve Account.

(i) In lieu of the deposits and transfers to any Account in the Debt Service Reserve Fund required by Section 6.05, NCPA may cause to be deposited in any Account in the Debt Service Reserve Fund a Financial Guaranty or Financial Guaranties with procedural terms satisfactory to the Trustee in an amount equal to the difference between the applicable Debt Service Reserve Requirement and the funds, if any, then on deposit in such Account or being deposited in such Account concurrently with such Financial Guaranty or Guaranties.

No deposit of a Financial Guaranty shall be made in any Account in the Debt Service Reserve Fund pursuant to this subsection (i) unless the Trustee shall have received prior to such deposit (1) an opinion of counsel to the effect that such Financial Guaranty has been duly authorized, executed and delivered by the issuer thereof and is valid, binding and enforceable in accordance with its terms and (2) in the event such issuer is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to NCPA and the Trustee that such Financial Guaranty has been duly authorized, executed and delivered by the issuer thereof and is valid, binding and enforceable in accordance with its terms under the applicable foreign law; provided that such opinion (a) may take exception for limitations imposed by or resulting from

bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors' rights generally and (b) need not express any opinion as to the availability of any specific remedy.

For the purposes of Section 6.05 and Section 6.08 hereof, in computing the amount on deposit in an Account in the Debt Service Reserve Fund, a letter of credit, a surety bond or an insurance policy shall be valued at the amount available to be drawn or payable thereunder on the date of computation. The Trustee shall draw upon or otherwise take such action as is necessary in accordance with the terms of the Financial Guaranties to receive payments with respect to the Financial Guaranties (including the giving of notice as required thereunder): (i) on any date on which moneys will be required to be withdrawn from the Account in the Debt Service Reserve Fund, as applicable, and applied to the payment of a Principal Installment or Redemption Price of, or interest on, any Bonds secured by such Account and such withdrawal cannot be met by amounts on deposit in the Account in the Debt Service Reserve Fund or the Series Debt Service Reserve Account, as applicable; (ii) unless such Financial Guaranty expires on the final maturity date for the then Outstanding Bonds secured by the Account in the Debt Service Reserve Fund or the Series Debt Service Reserve Account to which such Financial Guaranty is credited, as applicable, on the first Business Day which is at least 30 days prior to the expiration date of each Financial Guaranty, in an amount equal to the deficiency which would exist in the Account in the Debt Service Reserve Fund, as applicable, if the Financial Guaranty expired, unless a substitute Financial Guaranty with an expiration date not earlier than 180 days after the expiration date of the expiring Financial Guaranty is acquired prior to such date or NCPA deposits funds in the Account in the Debt Service Reserve Fund, as applicable, on or before such date such that the amount in the Account in the Debt Service Reserve Fund, as applicable, on such date (without regard to such expiring Financial Guaranty) is at least equal to the applicable Debt Service Reserve Requirement.

If at any time a Financial Guaranty is delivered pursuant to this subsection (i) there shall be any amount in the applicable Account in the Debt Service Reserve Fund in excess of the applicable Debt Service Reserve Requirement, such excess amount may be applied to the cost of acquiring such Financial Guaranty and, to the extent not so applied, shall be transferred to the applicable Account in the Debt Service Fund and applied to the purchase or redemption of Bonds as directed in writing by an Authorized NCPA Representative.

Section 6.09 Reserve and Contingency Fund.

(a) Amounts in the Reserve and Contingency Fund shall be applied to the cost of renewals, replacements, extensions, betterments, and improvements to the Project. Amounts in the Reserve and Contingency Fund shall also be applied to the payment of extraordinary operation and maintenance costs and contingencies for the Project, including payments with respect to the prevention or correction of any unusual loss or damage in connection with the Project or to prevent a loss of revenue therefrom, all to the extent not provided in the then current Annual Budget or by reserves in the Operating Fund.

(b) No payments shall be made from the Reserve and Contingency Fund if and to the extent that the proceeds of insurance, including the proceeds of any self-insurance fund, or other moneys recoverable as the result of damage to the Project, if any, are available to pay the costs otherwise payable from such Fund.

(c) If on any date the amount in Debt Service Fund shall be less than the requirement of subsection (c) of Section 6.05, or the amount in Debt Service Reserve Fund shall be less than the Debt Service Reserve Requirement, and there shall not be on deposit in the Surplus Fund available moneys sufficient to cure any such deficiency, then NCPA shall transfer from the Reserve and Contingency Fund and deposit first in the Debt Service Fund and second in the Debt Service Reserve Fund, as the case may be, the amount necessary (or all the moneys in the Reserve and Contingency Fund if less than the amount necessary) to make up a deficiency in the Debt Service Reserve Fund.

(d) Any balance of moneys and securities in the Reserve and Contingency Fund not required to meet any deficiencies in the Debt Service Fund or the Debt Service Reserve Fund or not needed for any of the purposes for which such Funds were established, shall be transferred to the Operating Fund, if and to the extent deemed necessary by NCPA as evidenced by a certificate of an Authorized NCPA Representative, and any remaining excess shall be deposited in the Surplus Fund.

Section 6.10 Surplus Fund.

(a) If on any date the amount in the Debt Service Fund shall be less than the requirement of such Fund, or the amount in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Requirement, or the amount in the Reserve and Contingency Fund shall be less than the requirement of such Fund pursuant to subsection (d) of Section 6.05, then NCPA shall transfer from the Surplus Fund and deposit first in the Debt Service Fund, second in the Debt Service Reserve Fund, third to the Reserve and Contingency Fund, as the case may be, the amount necessary (or all the moneys in Surplus Fund if less than the amount necessary) to make up a deficiency in any of such Fund.

(b) Amounts in the Surplus Fund not required to meet a deficiency as required in subsection (a) of this Section shall, upon a determination of NCPA, be applied to or set aside for any one or more of the following:

- (1) payment of costs and expenses of NCPA in connection with the Project;
- (2) payment into the Revenue Fund;
- (3) the purchase or redemption of any Bonds, expenses in connection with the purchase or redemption of any Bonds, or the establishment or augmentation of any reserves which NCPA determines shall be required in connection with the Bonds;
- (4) payments into the Reserve and Contingency Fund for application to the purposes thereof; and
- (5) any other lawful purpose of NCPA related to the Project.

NCPA agrees that it shall use its best efforts to call Bonds for redemption on the date or dates and in the amount or amounts as shall exhaust, as nearly as practicable, the amounts set aside for the redemption of Bonds pursuant to clause (3) above.

Section 6.11 Rebate Fund. Amounts on deposit in the Rebate Fund shall be applied as provided in Section 9.19.

ARTICLE VII

DEPOSITORIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 7.01 Depositories.

(a) All moneys held by the Trustee under the provisions of this Indenture shall be deposited with the Trustee and the Trustee shall hold such moneys in trust or may deposit such moneys with one or more Depositories in trust. All other moneys held under this Indenture shall be deposited in trust in one or more Depositories selected by NCPA. All moneys deposited under the provisions of this Indenture with the Trustee or any Depository shall be held in trust and applied only in accordance with the provisions of this Indenture, and each of the Funds established by this Indenture shall be a trust fund for the purposes hereof.

Section 7.02 Deposits.

(a) All Project Revenues and other moneys held by any Fiduciary under this Indenture may be placed on demand or time deposit, if and as directed by NCPA, provided that such deposits shall permit the moneys so held to be available for use at the time when reasonably expected to be needed. No Fiduciary shall be liable for any loss or depreciation in value resulting from any investment made pursuant to this Indenture. Any such deposit may be made in the commercial banking department of any Fiduciary which may honor checks and drafts on such deposit with the same force and effect as if it were not such Fiduciary. All moneys held by any Fiduciary, as such, may be deposited by such Fiduciary in its banking department on demand or, if and to the extent directed by NCPA and acceptable to such Fiduciary, on time deposit, provided that such moneys on deposit be available for use at the time when reasonably expected to be needed. Such Fiduciary shall allow and credit on such moneys such interest, if any, as it customarily allows upon similar funds of similar size and under similar condition or as required by law.

(b) All moneys held under this Indenture by any Fiduciary shall be (1) either (A) continuously and fully insured by the Federal Deposit Insurance Corporation, or (B) continuously and fully secured by depositing with the Trustee or any Federal Reserve Bank, as custodian, as collateral security, such securities as are described in clauses (1) through (3), inclusive, of the definition of "Investment Securities" in Section 1.01 having a market value (exclusive of accrued interest) not less than the amount of such moneys, or (2) held in such other manner as may then be required by applicable Federal or State of California laws and regulations and applicable state laws and regulations of the state in which such Fiduciary is located, regarding security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that it shall not be necessary for the Fiduciaries to give security under this subsection for the deposit of any moneys with them held in trust and set aside by them for the payment of the principal amount or Redemption Price of, or interest on, any Bonds or to give

security for any moneys which shall be represented by obligations or certificates of deposit purchased as an investment of such moneys.

(c) All moneys deposited with a Fiduciary shall be credited to the particular Fund or Account to which such moneys belong.

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01 Investment of Certain Funds. Moneys held in the Debt Service Fund shall be invested and reinvested by the Trustee to the fullest extent practicable in securities described in clauses (1), (2), (3), or (9) of the definition of “Investment Securities” in Section 1.01 which mature not later than such times as shall be necessary to provide moneys when reasonably expected to be needed for payments to be made from such Fund. Moneys held in the Debt Service Reserve Fund shall be invested and reinvested by the Trustee to the fullest extent practicable in securities described in clauses (1), (2), (3), or (9) of the definition of “Investment Securities” in Section 1.01 which mature or which may be drawn upon not later than such times as shall be necessary to provide moneys when reasonably expected to be needed for payments to be made from such Fund, but in any event not later than five years from the time of such investment except that the maturity of any security described in clause (9) of the definition of Investment Securities in Section 1.01 may mature not later than 30 years from the time of such investment. Moneys held in the Revenue Fund and in the Costs of Issuance Fund may be invested and reinvested in Investment Securities which mature or which may be drawn upon not later than such times as shall be necessary to provide moneys when reasonably expected to be needed for payments to be made from such Funds. Moneys in the Operating Fund may be invested in Investment Securities which mature within one year from the time of such investment except that amounts in the Operating Reserve Account may also be invested in Investment Securities which mature within five years from the time of such investment. Moneys held in the Reserve and Contingency Fund, the Rebate Fund, and the Surplus Fund may be invested in Investment Securities which mature within five years from the time of such investment, and in every case the Investment Securities in such Funds shall mature not later than such times as shall be necessary to provide moneys when reasonably expected to be needed to provide payments from such Funds. The Trustee shall make all such investments of moneys held by it and shall sell or otherwise liquidate any such investment and take all actions necessary to draw funds under any such investment, including the giving of necessary notices of the drawing of any moneys under any investment in securities described in clause (9) of the definition of “Investment Securities” in Section 1.01, in each case in accordance with directions of an Authorized NCPA Representative, which directions shall be consistent with this Indenture and applicable law, and which directions can either be written or oral; provided, that if such directions are oral they shall be promptly confirmed in writing by such Authorized NCPA Representative.

Except as otherwise provided in the next succeeding paragraph, interest or other income (net of that which (i) represents a return of accrued interest paid in connection with the purchase of any investment or (ii) is required to effect the amortization of any premium paid in connection with the purchase of any investment) earned on any moneys or investments in the Funds created hereunder shall be paid into the Revenue Fund; provided, that all such interest or

other income earned on any moneys or investments in any Fund established pursuant to Section 9.15 shall be applied as provided in Section 9.15; and provided further, that all such interest or other income earned on moneys in the Rebate Fund shall be applied as provided in Section 9.19.

In making any investment in any Investment Securities with moneys in any Fund established under this Indenture, NCPA or any Fiduciary may combine such moneys with moneys in any other Fund or Account but solely for the purposes of making such investment in such Investment Securities and provided that any amount so combined shall be separately accounted for.

Nothing in this Indenture shall prevent any Investment Securities acquired as investments of moneys in any Fund or Account from being issued or held in book-entry form on the books of the Department of the Treasury or the Federal Reserve System of the United States.

Section 8.02 Valuation and Sale of Investments. Obligations purchased as an investment of moneys in any Fund or Account shall be deemed at all times to be a part of such Fund or Account and any profit realized from the liquidation of such investment shall be credited to such Fund or Account and any loss resulting from the liquidation of such investment shall be charged to the respective Fund or Account.

In computing the amount in any Fund for any purpose hereunder, the value of the obligations purchased as an investment of moneys shall be determined every six months and shall be calculated as follows:

(i) As to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(ii) As to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(iii) As to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(iv) As to any investment not specified above: the value thereof established by prior agreement among NCPA and the Trustee.

(v) Notwithstanding any of the foregoing, obligations purchased as an investment of moneys in the Debt Service Reserve Fund are to be valued at the amortized cost thereof.

Except as otherwise provided in this Indenture, the Trustee may sell at the best price reasonably obtainable, or present for redemption, any obligation purchased as an

investment whenever it shall be directed by NCPA so to do or whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund or Account held by it. Any obligation purchased as an investment may be credited on a pro-rata basis to more than one Fund or Account and need not be sold in order to provide for the transfer of amounts from one Fund or Account to another, provided that such obligation is an appropriate Investment Security for the purposes of the Fund or Account to which it is to be transferred. The Trustee shall not be liable or responsible for making any such investment in the manner provided above or for any loss resulting from any such investment.

ARTICLE IX

PARTICULAR COVENANTS OF NCPA

NCPA covenants and agrees with the Trustee and the Owners of the Bonds as follows:

Section 9.01 Payment of Bonds. NCPA shall duly and punctually pay or cause to be paid, but solely from the sources pledged therefor, the principal or Redemption Price, if applicable, of every Bond, and the interest thereon, at the dates and places and in the manner mentioned in the Bonds according to the true intent and meaning thereof.

Section 9.02 Extension of Payment of Bonds. NCPA shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds, or the time of payment of any claims for interest on any Bonds, by the purchase or funding of such Bonds or claims for interest or by any other arrangement and in case the maturity of any of the Bonds, or the time for payment of any claims for interest on any Bonds, shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default under this Indenture, to the benefit of this Indenture or to any payment out of the Trust Estate except subject to the prior payment of (a) the principal of all Bonds Outstanding the maturity of which has not been extended, and (b) such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest.

Section 9.03 Offices for Servicing Bonds. NCPA shall at all times maintain one or more agencies where Bonds may be presented for payment and shall at all times maintain one or more agencies where Bonds may be presented for registration, transfer or exchange, and where notices, demands and other documents may be served upon NCPA in respect of the Bonds or this Indenture. NCPA hereby appoints the Trustee as Bond Registrar to maintain the Bond Register for the registration, transfer or exchange of Bonds, and as the party for the service upon NCPA of such notices, demands and other documents. The Trustee shall continuously maintain or make arrangements to provide such services.

Section 9.04 Further Assurance. At any and all times NCPA shall, as far as it may be authorized by law, comply with any reasonable request of the Trustee to pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, pledging, assigning and confirming in all and singular the Trust Estate and other

property hereby pledged and assigned, or intended so to be, or which NCPA may become bound to pledge and assign.

Section 9.05 Power to Issue Bonds and to Pledge Trust Estate. NCPA represents and warrants that it is duly authorized under all applicable laws to create and issue the Bonds, to enter into this Indenture, to pledge and assign the Trust Estate and the other moneys, securities and funds purported to be pledged as security for the payment of the Bonds in the manner and to the extent provided by such pledge and assignment and all action on the part of NCPA to that end has been duly and validly taken. The Bonds and the provisions of this Indenture are and shall be the valid and legally enforceable obligations of NCPA in accordance with their terms and the terms of this Indenture. NCPA shall at all times, to the extent permitted by law, defend, preserve and protect the pledge and assignment of the Trust Estate and the other moneys, securities and funds pledged as security for the payment of the Bonds and all the rights of the Owners of the Bonds under this Indenture against all claims and demands of all persons whomsoever.

Section 9.06 Power to Establish Charges and Collect Amounts. NCPA has, and shall have as long as any Bonds are Outstanding, good right and lawful power to establish charges and cause to be collected amounts with respect to the Project, subject only to the terms of the Unit One Member Agreement.

Section 9.07 Creation of Liens on Trust Estate.

(a) NCPA shall not issue any bonds, notes, debentures, or other evidences of indebtedness or incur any payment obligations, payable out of or secured by a pledge or assignment of the Trust Estate or any portion thereof nor shall it create or cause to be created any lien or charge on the Trust Estate or any portion thereof prior to or, except for the Bonds with respect to the entire Trust Estate and Parity Debt with respect to Project Revenues and amounts on deposit in the Revenue Fund, on a parity with the lien of the pledge made pursuant to this Indenture; provided, however, that nothing contained in this Indenture shall prevent NCPA from issuing, if and to the extent permitted by law, bonds, notes, or other evidences of indebtedness payable out of, or secured by a pledge and assignment of, Project Revenues to be derived on and after such date as the pledge of the Project Revenues made pursuant to this Indenture shall be discharged and satisfied as provided in Section 13.01 or payable from and secured by a pledge of Project Revenues on a basis which shall be, and shall be expressed to be, in all respects junior and subordinate in all respects to the payment of amounts then due with respect to the Bonds or otherwise payable under this Indenture and to the pledge and lien made pursuant to this Indenture as security for the Bonds.

(b) Nothing in this Indenture shall be deemed to limit NCPA's right to acquire, construct or finance through the issuance of its bonds, notes or other evidences of indebtedness any facilities which do not constitute a part of the Project and may secure such bonds, notes or other evidences of indebtedness by a mortgage of the facilities so financed or by a pledge of, or lien on, the revenues therefrom or any lease or other agreement with respect thereto or any revenues derived from such lease or other agreement; provided that such bonds, notes or other evidences of indebtedness shall not be payable out of or secured by the Trust

Estate and neither the cost of such facilities nor any expenditure in connection therewith or with the financing thereof shall be payable from the Trust Estate.

Section 9.08 Sale of Interest in the Project. Except as provided in the Unit One Member Agreement, so long as any Bonds remain outstanding with respect thereto, NCPA shall not sell, lease, or otherwise dispose of its interest in the Project or any portion thereof. Notwithstanding the foregoing, NCPA may transfer its interest in the Project to a transferee specified by the Project Participants on the following terms and conditions: (i) such transfer is made concurrently with the sale or assignment by the Project Participants of the right to the capacity and energy of the Project in accordance with the Unit One Member Agreement; (ii) the proceeds of the sale or assignment by the Project Participants of the capacity and energy of the Project and of the transfer by NCPA of its interest in the Project shall be applied to the payment (at maturity or prior redemption) of Outstanding Bonds; (iii) such transfer of NCPA's interest in the Project shall be subject to the rights of the Project Participants under the Unit One Member Agreement; (iv) each Project Participant shall deliver an opinion of counsel to NCPA and the Trustee to the effect that such sale or assignment of project capacity and energy by the Project Participants shall not relieve such Project Participant of any of its obligations under the Unit One Member Agreement; and (v) NCPA shall deliver to the Trustee an Opinion of Bond Counsel to the effect that such sale or assignment will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

Section 9.09 Annual Budget. Not less than 30 nor more than 45 days prior to the beginning of each Fiscal Year, NCPA shall adopt and file with the Trustee an Annual Budget for such Fiscal Year prepared in accordance with the provisions of, and in the manner contemplated by, the Unit One Member Agreement. Each such Annual Budget shall set forth in reasonable detail, by month for such Fiscal Year, the estimated Project Revenues, NCPA Operating Expenses and Aggregate Debt Service for all Outstanding Bonds and which shall include monthly appropriations for the estimated amount to be deposited in each month of such Fiscal Year in the Revenue Fund, the Operating Fund, including provision for any reserves for NCPA Operating Expenses, the Debt Service Fund, the Debt Service Reserve Fund, and the amount to be deposited in the Reserve and Contingency Fund, and the requirements, if any, for the amounts estimated to be expended from each Fund and Account established under this Indenture. Such Annual Budget also shall set forth such detail with respect to such Project Revenues, NCPA Operating Expenses and other expenditures and such deposits, as shall be necessary or appropriate so as to comply with the Unit One Member Agreement and may set forth such additional material as NCPA may determine. Following the end of each quarter of each Fiscal Year, NCPA shall review its estimates set forth in the Annual Budget for such Fiscal Year, and in the event such estimates do not substantially correspond with actual Project Revenues, NCPA Operating Expenses or other requirements during such Fiscal Year and the expected Project Revenues, NCPA Operating Expenses and other requirements during the remainder of such Fiscal Year, NCPA shall adopt in accordance with the provisions of the Unit One Member Agreement and file with the Trustee an amended Annual Budget for the remainder of such Fiscal Year. If there are at any time during any such Fiscal Year extraordinary receipts or payments of unusual costs, NCPA shall adopt in accordance with the provisions of the Unit One Member Agreement and file with the Trustee an amended Annual Budget for the remainder of such Fiscal Year. NCPA also may at any time adopt in accordance with the provisions of the Unit One Member Agreement and file with the Trustee an amended Annual Budget for the

remainder of the then current Fiscal Year. The Trustee shall not be charged with knowledge of, and shall not be responsible for the sufficiency of, any such Annual Budget, it being expressly understood and agreed that the Trustee shall hold such Annual Budget solely as a custodian to preserve a record of the transactions contemplated hereby.

Section 9.10 Operation and Maintenance of the Project.

(a) NCPA shall at all times maintain and preserve, or cause to be maintained and preserved, the Project and all buildings, facilities and equipment constituting any part of the Project in conformity with Prudent Utility Practice with respect to facilities of like size and character. NCPA shall from time to time make, or cause to be made, all necessary and proper repairs, renewals, replacements and substitutions to the properties of the Project, so that at all times business carried on in connection with the Project shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and shall operate the Project in an efficient and economical manner, consistent with the protection of the Owners of the Bonds and shall not commit or allow any waste with respect to the Project; provided, however, that any real or personal property included in the Project which has become nonoperative or which is not needed for the efficient and proper operation of the Project, or any material or equipment which has worn out or become obsolete, may be sold, leased or otherwise disposed of by NCPA.

(b) NCPA shall not incur NCPA Operating Expenses in connection with the Project in any Fiscal Year in excess of the reasonable and necessary amount of such expenses and shall not expend any amount from the Operating Fund for NCPA Operating Expenses in connection with the Project in excess of the amounts provided therefor in the Annual Budget as then in effect. Nothing in this Section contained shall limit the amount which NCPA may expend for NCPA Operating Expenses in connection with the Project in any Fiscal Year provided any amounts expended therefor in excess of the amounts provided for in the then current Annual Budget shall be paid from the Reserve and Contingency Fund or the Surplus Fund.

Section 9.11 Charges and Enforcement.

NCPA shall at all times establish rates and charges, and cause to be collected amounts in connection with the Project and the Unit One Member Agreement, as shall be required to provide revenues in the Revenue Fund at least sufficient in each Fiscal Year, together with other available funds, for the payment of all of the following:

- (1) NCPA Operating Expenses during such Fiscal Year;
- (2) Debt Service on the Bonds and debt service on the Parity Debt for such Fiscal Year;
- (3) The amount, if any, to be paid during such Fiscal Year into the Debt Service Reserve Account and each Series Debt Service Reserve Account in the Debt Service Reserve Fund;
- (4) The amount to be paid during such Fiscal Year into the Reserve and Contingency Fund; and

(5) All other charges or other amounts related to the Project, the Unit One Member Agreement or the Bonds howsoever payable during such Fiscal Year.

Section 9.12 Unit One Member Agreement.

(a) NCPA shall receive and forthwith deposit in the Revenue Fund all amounts payable to it pursuant to the Unit One Member Agreement or payable to it pursuant to any other contract related to its interest in the Project or the capacity, use or service of its interest in the Project or any part thereof. NCPA shall enforce or cause to be enforced the provisions of the Unit One Member Agreement and duly perform its covenants and agreements thereunder. NCPA shall not consent or agree to or permit any rescission of or amendment to, or otherwise take any action under or in connection with, the Unit One Member Agreement which shall reduce the aggregate amount of payments required thereunder or which shall in any manner materially impair or materially adversely affect the rights of NCPA thereunder or the rights or security of the Trustee or the Owners of the Bonds; provided, however, nothing herein shall be construed so as to prohibit any other amendment of the Unit One Member Agreement.

(b) A copy of the Unit One Member Agreement certified by an Authorized NCPA Representative shall be filed with the Trustee, and a copy of each amendment thereto, certified by an Authorized NCPA Representative, shall be filed with the Trustee.

Section 9.13 Acquisition and Construction of Project. NCPA shall use its best efforts to acquire and construct the Project, or cause the Project to be acquired and constructed, with due diligence and in a sound and economical manner.

Section 9.14 Maintenance of Insurance.

(a) NCPA shall at all times insure the Project, or cause the Project operator to be insured, against such risks as are customarily insured against with respect to similar facilities and in such relative amounts as are usually obtained. NCPA shall maintain, or cause to be maintained, insurance or reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those with rights and interests in projects similar to the Project.

(b) NCPA shall also use its best efforts to maintain or cause to be maintained any additional or other insurance which it shall deem necessary or advisable to protect its interests in the Project and the interests of the Owners of the Bonds.

(c) Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to NCPA, or may be in the form of self-insurance by NCPA. NCPA agrees that it will, pursuant to a Supplemental Indenture, establish such fund or funds or reserves as are necessary to provide for its share of any such self-insurance. The Supplemental Indenture establishing such fund or funds or reserves shall set forth the amounts to be included in such fund or funds or reserves, the entity to hold such fund or funds or reserves and any other matters and things relative to such fund or funds or reserves which are not contrary to or inconsistent with the Indenture as theretofore in effect.

(d) NCPA shall file or cause to be filed with the Trustee annually, within 120 days after the close of each Fiscal Year, a certificate setting forth (i) a description in reasonable detail of the insurance then in effect, including any self-insurance fund maintained, pursuant to the requirements of this Section and that NCPA has complied in all respects with the requirements of this Section, and (ii) whether during such year any loss has been incurred relating to the Project and, if so, the amount of insurance proceeds, including the proceeds of any self-insurance fund, covering such loss and specifying the reasonable and necessary costs of repair, reconstruction or replacement thereof.

Section 9.15 Reconstruction; Application of Insurance Proceeds.

(a) If any useful portion of the Project shall be damaged or destroyed, NCPA shall as expeditiously as possible undertake, or cause to be undertaken, and continuously and diligently pursue to completion, or cause to be diligently pursued to completion, the repair, reconstruction or replacement thereof. The proceeds of any insurance payable to NCPA, including the proceeds of any self-insurance fund, paid on account of such damage or destruction (other than any business interruption loss insurance) shall be paid over to the Trustee and held by the Trustee in a special Account established by the Trustee for such purposes and made available for, and to the extent necessary be applied to, the cost of such repair, reconstruction or replacement. Pending such application, such proceeds shall, at the direction of an Authorized NCPA Representative given as provided in Section 8.01, be invested by the Trustee in Investment Securities which mature not later than such times as shall be necessary to provide moneys when reasonably expected to be needed to pay such cost of such repair, reconstruction or replacement. Interest earned on the moneys in such Account or such investments shall be deposited into such special Account. Except for reimbursements to the Reserve and Contingency Fund, the proceeds of any insurance, including the proceeds of any self-insurance fund, not applied within 36 months after receipt thereof by NCPA to the cost of such repair, reconstruction or replacement, or which NCPA shall at any time notify the Trustee are not to be so applied, shall be deposited in the Revenue Fund. In the event that payments are made from the Reserve and Contingency Fund for any such cost of such repair, reconstruction or replacement prior to the availability of insurance proceeds, including the proceeds of any self-insurance fund therefor, such proceeds when received shall be deposited in the Reserve and Contingency Fund to the extent of such payments.

(b) If the proceeds of insurance, including the proceeds of any self-insurance fund, authorized by this Section to be applied to the cost of the repair, reconstruction or replacement of any portion of the Project are insufficient for such purpose, the obligations of NCPA to maintain and preserve the Project pursuant to Section 9.10 shall nonetheless continue but such deficiency may be supplied out of moneys in the Reserve and Contingency Fund to the extent, as shown by a certificate of an Authorized NCPA Representative filed with the Trustee, not needed for the purposes of such Fund.

(c) The proceeds of business interruption loss insurance, if any, with respect to the Project shall be paid into the Revenue Fund.

Section 9.16 Accounts and Reports.

(a) NCPA shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Project and each Fund and Account and relating to costs and charges under the Unit One Member Agreement and which, together with the Unit One Member Agreement and all other books and papers of NCPA, including insurance policies, relating to the Project, shall at all times be subject to the inspection of the Trustee and the Owners of an aggregate of not less than 5% in principal amount of the Bonds then Outstanding or their representatives duly authorized in writing.

(b) The Trustee shall advise NCPA promptly after the end of each month of the respective transactions during such month relating to each Fund and Account held by it under this Indenture. NCPA shall have the right upon reasonable notice and during reasonable business hours to audit the books and records of the Trustee with respect to the Funds and Accounts held by the Trustee under this Indenture.

(c) NCPA shall annually, within 120 days after the close of each Fiscal Year, cause to be filed with the Trustee, and otherwise as provided by law, a copy of an annual report for such Fiscal Year, accompanied by an Accountant's Certificate, relating to the Project and including the following statements in reasonable detail: a statement of assets and liabilities as of the end of such Fiscal Year, to the extent relating to the Project; and a statement of Project Revenues and NCPA Operating Expenses for such Fiscal Year. Such Accountant's Certificate (or an accompanying certificate of an Authorized NCPA Representative) shall state whether or not, to the knowledge of the signer, NCPA is in default with respect to any of the covenants, agreements or conditions on its part contained in this Indenture, and if so, the nature of such default. The Trustee shall not be charged with knowledge of the contents of such annual report and shall not be responsible for the accuracy or sufficiency thereof, it being expressly understood that the Trustee shall hold such annual report solely as a custodian to preserve a record of the transactions contemplated hereby.

(d) NCPA shall file with the Trustee forthwith upon becoming aware of any Event of Default or default in the performance by NCPA of any covenant, agreement or condition contained in this Indenture, a certificate of an Authorized NCPA Representative specifying such Event of Default or default and the nature and status thereof.

(e) The reports and certificates required to be furnished to the Trustee pursuant to subsection (c) or subsection (d) of this Section 9.16 shall be available for the inspection of Owners of the Bonds at the principal corporate trust office of the Trustee and shall be mailed to each Owner of an Outstanding Bond which files a written request therefor with the Trustee. The Trustee may charge each party requesting such reports or certificates a reasonable fee to cover reproduction, handling and postage.

Section 9.17 Payment of Taxes and Charges. NCPA shall from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon or relating to its interest in the Project or upon the rights, revenues, income, receipts, and other moneys,

securities and funds of NCPA relating to the Project or the Unit One Member Agreement when the same shall become due (including all rights, moneys and other property transferred, assigned or pledged under this Indenture), and all lawful claims for labor and material and supplies relating to the Project, except those taxes, assessments, charges or claims which NCPA shall in good faith contest by proper legal proceedings if NCPA shall in all such cases have set aside on its books reserves deemed adequate with respect thereto.

Section 9.18 General; Rights of Members.

(a) NCPA shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of NCPA under the provisions of applicable laws of the State of California and this Indenture with respect to the Project, the Trust Estate and the Bonds.

(b) The obligations of each of the Project Participants with respect to the Bonds and the Project set forth in the Unit One Member Agreement shall not be modified or expanded by any provision of this Indenture. So long as not otherwise provided in this Indenture, NCPA shall be suffered and permitted to carry out its obligations under the Unit One Member Agreement.

Section 9.19 Tax Matters.

(a) NCPA covenants that it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion (if applicable) from gross income of the interest on the Bonds under Section 103 of the Code. NCPA shall not directly or indirectly use or permit the use of any proceeds of the Bonds in such a manner as would adversely affect the exclusion (if applicable) of interest on any Bonds from gross income under Section 103 of the Code. NCPA shall not directly or indirectly use or permit the use of any proceeds of any Bonds, or of any facilities financed thereby, or other funds of NCPA, or take or omit to take any action, that would cause any Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code. To that end, NCPA shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Bonds. In the event that at any time NCPA is of the opinion that for purposes of this Section it is necessary to restrict or to limit the yield on the investment of any moneys held by the Trustee under this Indenture, NCPA shall so instruct the Trustee in writing, and the Trustee shall take such action as may be directed in such instructions.

NCPA shall determine the amount of, and cause to be deposited in the Rebate Fund, the Rebate Requirement as provided in the Tax Certificate (which is incorporated herein by reference) and shall pay or cause to be paid the Rebate Requirement as provided in the Tax Certificate. Subject to the provisions of this Section, moneys held in the Rebate Fund are hereby pledged to secure payments to the United States of America and NCPA and the Owners of the Bonds shall have no rights in or claim to such moneys. The Trustee shall invest all amounts held in the Rebate Fund as directed in writing by an Authorized NCPA Representative.

Upon receipt of the Rebate Instructions required to be delivered to the Trustee, the Trustee shall remit part or all of the balance held in the Rebate Fund, together with any completed forms to be filed therewith prepared by NCPA and delivered with such Rebate Instructions, to the United States of America to the extent so directed. In addition, if the Rebate Instructions so direct, the Trustee shall deposit moneys into or transfer moneys out of the Rebate Fund from or into such Accounts or Funds as the Rebate Instructions direct.

The Trustee shall conclusively be deemed to have complied with the provisions of this Section if it follows the directions of NCPA set forth in the Rebate Instructions and shall not be required to take any actions thereunder in the absence of Rebate Instructions from NCPA.

(b) For purposes of this Section, capitalized terms not defined in Section 1.01 shall have the meanings ascribed to such terms in the Tax Certificate.

(c) Notwithstanding any provision of this Section, if NCPA shall provide to the Trustee an Opinion of Bond Counsel that any specified action required under this Section 9.19 is no longer required, or that some further or different action is required, to maintain the exclusion from gross income for federal income tax purposes of interest on Bonds, the Trustee and NCPA may conclusively rely on such opinion in complying with the requirements of this Section, and the covenants hereunder shall be deemed to be modified to that extent.

Section 9.20 Continuing Disclosure. NCPA shall comply with the 2019 Continuing Disclosure Agreement as it may from time to time hereafter be amended or supplemented. Notwithstanding any other provision of the Indenture, failure by NCPA to comply with the requirements of the 2019 Continuing Disclosure Agreement, as it may from time to time hereafter be amended or supplemented, shall not be considered an Event of Default and the Trustee shall have no right to accelerate amounts due under the Indenture as a result thereof; provided, however, that the Trustee and the Owners of not less than 25% in principal amount of the Outstanding 2019 Series A Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause NCPA to comply with its obligations in this Section 9.20 with respect to the 2019 Continuing Disclosure Agreement.

ARTICLE X

EVENTS OF DEFAULT; REMEDIES

Section 10.01 Events of Default. Each of the following shall constitute an Event of Default hereunder:

(i) if default shall be made in the due and punctual payment of Debt Service with respect to the principal or Redemption Price of any Outstanding Bond or any Parity Debt, when and as the same shall become due and payable, whether at maturity, by call for redemption, or otherwise;

(ii) if default shall be made in the due and punctual payment of Debt Service with respect to any installment of interest on any Outstanding Bond or

any Parity Debt, or the unsatisfied balance of any Sinking Fund Installment, when and as the same shall become due and payable;

(iii) if default shall be made by NCPA in the performance or observance of any other of the covenants, agreements or conditions on its part in this Indenture or in the Outstanding Bonds contained, and such default shall continue for a period of 120 days after written notice thereof to NCPA by the Trustee or to NCPA and to the Trustee by the Owners of not less than 10% in principal amount of the Bonds Outstanding; or

(iv) an order or decree, by a court having jurisdiction in the premises, for relief against NCPA in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of NCPA or of any substantial part of the property of NCPA shall be appointed or an order for the winding up or liquidation of the affairs of NCPA shall be entered; or a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall be instituted by NCPA or NCPA shall give its consent to the entry of an order for relief against it in any involuntary case under any such law, or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of NCPA or of any substantial part of the property of NCPA, or the making by NCPA of an assignment for the benefit of creditors, or the failure of NCPA generally to pay its debts as they become due, or the admission by NCPA in writing of such failure, or the taking of any action by NCPA in furtherance of any such action, or if a receiver of the business or of the property or assets of NCPA shall be appointed by any court.

Section 10.02 Accounting and Examination of Records After Default.

(a) NCPA covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and accounts of NCPA and all other records relating to the Project and the Unit One Member Agreement shall at all times be subject to the inspection and use of the Trustee and of its agents and attorneys.

(b) NCPA covenants that if an Event of Default shall have happened and shall not have been remedied, NCPA, upon demand of the Trustee, shall account, as if it were the trustee of an express trust, for all Project Revenues and other moneys, securities and funds pledged or held under this Indenture for such period as shall be stated in such demand.

Section 10.03 Application of NCPA Revenues and Other Moneys After Default.

(a) NCPA covenants that if an Event of Default shall happen and shall not have been remedied, NCPA, upon the demand of the Trustee, shall cause to be paid over to the Trustee (i) forthwith, all moneys and securities then held by NCPA in any Fund under this Indenture, and (ii) all Project Revenues as promptly as practicable after receipt thereof.

(b) Subject to the provisions of Section 13.03, during the continuance of an Event of Default, the Trustee shall apply all moneys, securities, funds and Project Revenues received by the Trustee pursuant to any right given or action taken under the provisions of this Article which are held by the Trustee pursuant and subject to the terms and conditions of this Indenture, as follows and in the following order of priority:

(i) Expenses of Fiduciaries—to the payment of the reasonable and proper charges, expenses and liabilities of the Fiduciaries;

(ii) Principal Amount or Redemption Price and Interest—to the payment of the interest on the Bonds and the principal or Redemption Price then due on the Outstanding Bonds and Parity Debt, as follows:

First: Interest—To the payment to the persons entitled thereto of all installments of interest then due on Outstanding Bonds and Parity Debt in the order of the maturity of such installments, together with accrued and unpaid interest on the Outstanding Bonds and Parity Debt theretofore called for redemption, and, if the amount available shall not be sufficient to pay in full any such interest installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: Principal Amount or Redemption Price—To the payment to the persons entitled thereto of the unpaid principal or Redemption Price of any Outstanding Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the Outstanding Bonds and Parity Debt due on any date, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference;

(iii) NCPA Operating Expenses—to the payment of the amounts required for reasonable and necessary expenses of NCPA in connection with the Project, the Unit One Member Agreement and the Bonds. For this purpose the books of record and accounts of NCPA relating to the Project and the Unit One Member Agreement shall at all times be subject to the inspection of the Trustee and its representatives and agents during the continuance of such Event of Default.

(c) If and whenever all overdue installments of interest on all Outstanding Bonds and Parity Debt, together with the reasonable and proper charges, expenses and liabilities of the Trustee, and all other sums payable for the account of NCPA under this Indenture, including the principal and Redemption Price of all Outstanding Bonds and Parity Debt and unpaid interest on all Outstanding Bonds and Parity Debt which shall then be payable, shall be paid for by the account of NCPA, or provision satisfactory to the Trustee shall be made for such payment, and all defaults under this Indenture or the Outstanding Bonds and Parity Debt shall be made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the Trustee shall pay over all moneys, securities, and funds then

remaining unexpended in the hands of the Trustee (except moneys, securities and funds deposited or pledged, or required by the terms of this Indenture to be deposited or pledged, with the Trustee), and thereupon NCPA and the Trustee shall be restored, respectively, to their former positions and rights under this Indenture. No such payment by the Trustee nor such restoration of NCPA and the Trustee to their former positions and rights shall extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

(d) The Trustee may in its discretion establish special record dates for the determination of the Owners of Bonds for various purposes hereof, including without limitation, payment of defaulted interest and giving direction to the Trustee.

Section 10.04 Right to Accelerate Upon Default. Notwithstanding anything to the contrary in this Indenture or in the Bonds, upon the occurrence of an Event of Default, the Trustee may, and shall at the direction of the Owners of a majority in principal amount of Outstanding Bonds, by written notice to NCPA, declare the principal of the Bonds to be immediately due and payable, whereupon the principal of the Bonds and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable.

Section 10.05 Appointment of Receiver. If an Event of Default shall happen and shall not have been remedied, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners of the Bonds under this Indenture, the Trustee shall be entitled to make application for the appointment of a receiver or custodian of NCPA's interest in the Project, the Unit One Member Agreement and the Project Revenues, pending such proceedings, with such power as the court making such appointment shall confer.

Section 10.06 Enforcement Proceedings.

(a) If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Trustee, by its agents and attorneys, may proceed, and upon the written request of the Owners of not less than a majority in principal amount of the Bonds at the time Outstanding, shall proceed, to protect and enforce its rights and the rights of the Owners of the Outstanding Bonds by a suit or suits in equity or at law, whether for damages or the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted or any remedy granted under applicable provisions of the laws of the State of California, or for an accounting by NCPA as if NCPA were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the Trustee, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under this Indenture. The Trustee shall have the right to initiate and maintain suit to enforce the Unit One Member Agreement.

(b) All rights of action under this Indenture may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in the trial or other proceedings, and any such suit or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust.

(c) The Owners of not less than a majority in principal amount of the Bonds at the time Outstanding may direct, the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, provided that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or be unjustly prejudicial to the Owners of the Bonds not parties to such direction.

(d) Upon commencing a suit in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this Indenture, the Trustee shall be entitled to exercise any and all rights and powers conferred in this Indenture and provided to be exercised by the Trustee upon the occurrence of any Event of Default.

(e) Regardless of the happening of an Event of Default, the Trustee shall have power to, but unless requested in writing by the Owners of a majority in principal amount of the Bonds then Outstanding and furnished with reasonable security and indemnity, shall be under no obligation to, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Indenture by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Owners of the Bonds.

(f) If the Trustee or any Owner or Owners of Outstanding Bonds have instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Owner or Owners, then and in every such case NCPA, the Trustee and the Owners shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Owners shall continue as though no such proceeding had been instituted.

(g) Upon the occurrence of an Event of Default, NCPA shall give notice to each Project Participant and require that such Project Participant shall make the payments due by it under the Unit One Member Agreement directly to the Trustee.

Section 10.07 Restriction on Owner's Action.

(a) Except as otherwise provided in paragraph (b) of this Section, no Owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Indenture or the execution of any trust under this Indenture or for any remedy under this Indenture unless such Owner shall have previously given to the Trustee written notice of the happening of an Event of Default, as provided in this Article, and the Owners of at least 25% in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity, either to exercise the powers granted in this Indenture or by the applicable laws of the State of California or to institute such action, suit or proceeding in its own name, and unless such Owners shall have

offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Indenture, or to enforce any right under this Indenture, except in the manner therein provided; and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner provided in this Indenture and for the ratable benefit of all Owners of the Outstanding Bonds, subject only to the provisions of Section 9.02.

(b) Nothing in this Indenture or in the Bonds contained shall affect or impair the obligation of NCPA, which is absolute and unconditional, to pay on the respective due dates thereof and at the places therein expressed, but solely from the revenues and the other moneys pledged under this Indenture, the principal amount, or Redemption Price if applicable, of the Bonds, and the interest thereon, to the respective Owners thereof, or affect or impair the right, which is also absolute and unconditional, of any Owner to institute suit for the enforcement of any such payment.

Section 10.08 Remedies Not Exclusive. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or the Owners of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Indenture or existing at law or in equity or by statute whether effective on or after the effective date of this Indenture. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 10.09 Effect of Waiver and Other Circumstances.

(a) No delay or omission of the Trustee or any Owner of a Bond to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or be an acquiescence therein; and every power and remedy given by this Article to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Owners of the Bonds.

(b) The Owners of not less than a majority in principal amount of the Bonds at the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the Owners of all of the Bonds, waive any past default described in clause (iii) of Section 10.01 and its consequences. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon unless the provisions of this subsection (b) have been satisfied with respect to such subsequent or other default.

Section 10.10 Notice of Default.

The Trustee shall, within 30 days after obtaining knowledge thereof, mail written notice of the occurrence of any Event of Default of which the Trustee has knowledge to each

Owner of Bonds then Outstanding at such Owner's address, if any, appearing in the Bond Register.

ARTICLE XI

CONCERNING THE FIDUCIARIES

Section 11.01 Trustee; Acceptance of Duties. The Trustee shall signify its acceptance of the duties and obligations imposed upon it by this Indenture, including the duties of Bond Registrar and Paying Agent for the Bonds, by the execution hereof and the delivery of this Indenture to NCPA and by such execution and delivery the Trustee shall be deemed to have accepted such duties and obligations with respect to all the Bonds thereafter to be issued, but only, however, upon the terms and conditions set forth in this Indenture and no implied covenants shall be read into this Indenture against the Trustee.

Section 11.02 Paying Agents; Appointment and Acceptance of Duties.

(a) NCPA shall appoint one or more Paying Agents for the Bonds of each Series, and may at any time or from time to time appoint one or more other Paying Agents having the qualifications set forth in Section 11.13 for a successor Paying Agent. The Trustee is hereby appointed a Paying Agent.

(b) Each Paying Agent other than the Trustee shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to NCPA and to the Trustee a written acceptance thereof.

(c) The principal corporate trust office of the initial Paying Agent for the purpose of the payment of the principal or Redemption Price, if any, of the Bonds and interest on the Bonds is U.S. Bank National Association, 100 Wall Street, 16th Floor, New York, New York 10005.

Section 11.03 Responsibilities of Fiduciaries.

(a) Any recitals of fact herein and in the Bonds contained shall be taken as the statements of NCPA and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of this Indenture or of any Bonds issued hereunder or as to the security afforded by this Indenture, or as to the validity or sufficiency of the Unit One Member Agreement, and no Fiduciary shall incur any liability in respect thereof. No Fiduciary shall be responsible for or have any liability with respect to the Project or any act or omission of NCPA with respect thereto. The Trustee shall, however, be responsible for its representation contained in its certificate of authentication on the Bonds. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys paid by such Fiduciary in accordance with the provisions of this Indenture. No Fiduciary shall be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect thereof, or to advance any of its own moneys, unless properly indemnified. Subject to the provisions of subsection (b) of this Section, no Fiduciary shall be liable in connection with the performance of its duties hereunder except for its own negligence, willful misconduct or default.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Any provision of this Indenture relating to action taken or to be taken by the Trustee or to evidence upon which the Trustee may rely shall be subject to the provisions of this Section.

Without limiting the generality of the foregoing:

(1) the Trustee shall not be liable for any error of judgment made in good faith by any officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the issuer of any Financial Guaranty or the Owners of 25% in aggregate principal amount of the Outstanding Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(3) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;

(4) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Owners, the issuer of any Financial Guaranty pursuant to this Indenture, unless such Owners, the issuer of a Financial Guaranty shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(5) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of NCPA, personally or by agent or attorney;

(6) the Trustee shall not be required to take notice of and shall not be deemed to have knowledge of any Event of Default (other than an Event of Default specified in subsections (i), (ii) or (iii) of Section 10.01) or any event which would, with the passage of time, the giving of notice, or both, constitute an Event of Default, unless

the Trustee shall have been notified of such Event of Default or other event by NCPA, the issuer of any Financial Guaranty, or the Owners of 10% in aggregate principal amount of Bonds Outstanding;

(7) the Trustee shall not be responsible for any moneys or funds held by NCPA (including, without limitation, the Revenue Fund, the Operating Fund, the Reserve and Contingency Fund or the Surplus Fund), or for monitoring the accounting and investment practices of NCPA, other than requiring the delivery of the Annual Budget and annual financial statements and reports pursuant to Sections 9.09 and 9.16 hereof, it being understood that the Trustee shall have no duty to review such Annual Report or annual financial statements or reports; and

(8) The Trustee may perform its duties hereunder through agents and attorneys and the Trustee shall not be liable for the negligence or misconduct on the part of any agent or attorney appointed with due care by it hereunder if NCPA has a right to proceed directly against such agent or attorney for any such negligence or misconduct.

Whether or not therein expressly provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article.

Section 11.04 Evidence on Which Fiduciaries May Act.

(a) Each Fiduciary, upon receipt of any notice, resolution, request, requisition, consent, order, certificate, report, opinion, bond, or other paper or document furnished to it pursuant to any provision of this Indenture, shall examine such instrument to determine whether it conforms to the requirements, if any, hereof and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with counsel, who may or may not be Bond Counsel or counsel to NCPA, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Indenture in good faith and in accordance therewith.

(b) Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an Authorized NCPA Representative, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Indenture upon the faith thereof; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

(c) Except as otherwise expressly provided in this Indenture, any request, requisition, order, notice or other direction required or permitted to be furnished pursuant to any provision hereof by NCPA to any Fiduciary shall be sufficiently executed in the name of NCPA by an Authorized NCPA Representative.

Section 11.05 Compensation. NCPA shall cause to be paid to each Fiduciary from time to time reasonable compensation for all services rendered under this Indenture, and all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties hereunder. Subject to the provisions of Section 11.03 hereof, NCPA further agrees to indemnify and save each Fiduciary harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder or in any way arising out of the Project or the transactions contemplated hereby, and which are not due to its negligence, willful misconduct or default.

Section 11.06 Certain Permitted Acts. Any Fiduciary may become the Owner of any Bonds, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as depositary for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners of the Bonds or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

Section 11.07 Resignation of Trustee. The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than 60 days written notice to NCPA specifying the date when such resignation shall take effect; provided that no such resignation shall take effect until a successor shall have been appointed in accordance with Section 11.09.

Section 11.08 Removal of Trustee. The Trustee may be removed by an instrument in writing, filed with the Trustee at any time when no Event of Default has occurred and is continuing and when no event has occurred which, with notice or the passage of time, would become an Event of Default which has not been cured, signed by an Authorized NCPA Representative or at any time by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the Owners of a majority in principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized, excluding any Bonds held by or for the account of NCPA; provided that no such removal shall be effective until 30 days have lapsed from the filing of such instrument with the Trustee and until a successor shall have been appointed in accordance with Section 11.09. The Trustee may be removed at any time for any breach of trust set forth herein.

Section 11.09 Appointment of Successor Trustee; Financial Qualifications of Trustee and Successor Trustee.

(a) In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, a successor may be appointed by the Owners of a majority in principal amount of the Bonds then Outstanding, excluding any Bonds held by or for the account of NCPA, by an instrument or concurrent instruments in writing signed and acknowledged by such Owners of the Bonds or by their attorneys-in-fact duly authorized and delivered to such successor Trustee, notification thereof

being given to NCPA and the predecessor Trustee; provided, nevertheless, that unless a successor Trustee shall have been appointed by the Owners of the Bonds as aforesaid, NCPA, by a duly executed written instrument signed by an Authorized NCPA Representative shall forthwith appoint a Trustee to replace such resigning Trustee or to fill such vacancy until a successor Trustee shall be appointed by the Owners of the Bonds as authorized in this Section 11.09. Any successor Trustee appointed by NCPA shall, immediately and without further act, be superseded by the Trustee appointed by the Owners of the Bonds.

(b) If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section 11.09 within 45 days after the Trustee shall have given to NCPA written notice as provided in Section 11.07 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, removal, or for any other reason whatsoever, the Trustee (in the case of its resignation under Section 11.07) or the Owner of any Bond (in any case) may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

(c) The Trustee appointed under the provisions of this Article or any successor to the Trustee shall be a bank or trust company organized under the laws of any state of the United States or national banking association, in good standing under the laws of the place of its incorporation, doing business and having its principal corporate trust office in New York, New York, or Chicago, Illinois, or Los Angeles, California, or San Francisco, California, duly authorized to exercise trust powers and subject to examination by federal or state authority. Each successor trustee shall have capital stock and surplus aggregating at least \$75,000,000, or have all of its obligations hereunder guaranteed by a bank or trust company organized under the laws of the United States, or any state thereof, with a capital stock and surplus or net worth of at least \$75,000,000. If such bank, national banking association, or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section 11.09 the combined capital and surplus of such bank, trust company, or national banking association shall be deemed to be its combined capital and surplus set forth in its most recent report of condition so published.

Section 11.10 Transfer of Rights and Property to Successor Trustee. Any successor Trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor Trustee and NCPA an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, power, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee; but the Trustee ceasing to act shall nevertheless, at the written request of NCPA, or of the successor Trustee, execute, acknowledge, deliver, file and record such instrument of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held by it under this Indenture or covered by the pledge of this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trust and conditions herein set forth. Should any deed, conveyance or instrument in writing from NCPA be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such lien, estates, rights, power and duties, any and all such deeds,

conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by NCPA. Any such successor Trustee shall promptly notify the Paying Agents of its appointment as Trustee.

Section 11.11 Merger or Consolidation. Any company into which a Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association, shall satisfy the applicable standards of a successor set forth in this Indenture, and shall be authorized by law to perform all the duties imposed upon it by this Indenture, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

Section 11.12 Adoption of Authentication. In case any of the Bonds contemplated to be issued under this Indenture shall have been authenticated but not delivered, any successor Trustee may adopt the certificate of authentication of any predecessor Trustee so authenticating such Bonds and deliver such Bonds so authenticated; and in case any of the said Bonds shall not have been authenticated, any successor Trustee may authenticate such Bonds in the name of the predecessor Trustee, or in the name of the successor Trustee, and in all such cases such certificate shall have the full force which it is anywhere in said Bonds or in this Indenture provided that the certificate of the Trustee shall have.

Section 11.13 Resignation or Removal of Paying Agent and Appointment of Successor.

(a) Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days written notice to NCPA, the Trustee and the other Paying Agents. Any Paying Agent may be removed at any time by an instrument filed with such Paying Agent and the Trustee and signed by an Authorized NCPA Representative. Any successor Paying Agent shall be appointed by NCPA with the written approval of the Trustee and shall be a commercial bank or trust company organized under the laws of any state of the United States or a national banking association, having capital stock and surplus aggregating at least \$25,000,000, and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture. If such bank, national banking association, or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section 11.13 the combined capital and surplus of such bank, trust company, or national banking association shall be deemed to be its combined capital and surplus set forth in its most recent report of condition so published.

(b) In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

ARTICLE XII

SUPPLEMENTAL INDENTURES OF TRUST

Section 12.01 Amendments Permitted.

(a) This Indenture and the rights and obligations of NCPA and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by a Supplemental Indenture or Indentures, which NCPA and the Trustee may enter into with the written consent of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding shall have been filed with the Trustee or if less than all of the Outstanding Bonds are affected, the written consent of the Owners of at least a majority in aggregate principal amount of all affected Bonds; provided that if such modification or amendment shall, by its terms, not take effect so long as any Bonds of any particular maturity remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any such calculation of Bonds Outstanding under this Section. No such modification or amendment shall (1) extend the fixed maturity of any Bond, or reduce the principal amount or Redemption Price thereof, or reduce the amount of any Sinking Fund Installment, or reduce the rate of interest thereon or extend the time of payment of interest thereon, without the consent of the Owner of each Bond then Outstanding so affected; or (2) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any other lien on the Trust Estate, or deprive the Owners of the Bonds of the lien of the pledge made pursuant to this Indenture on the Trust Estate (except as expressly provided in this Indenture), in each case without the consent of the Owners of all of the Bonds then Outstanding.

It shall not be necessary for the consent of the Owners of the Bonds required by this subsection (a) to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.

If at any time NCPA shall request the Trustee to enter into any Supplemental Indenture for any of the purposes of this subsection (a), the Trustee shall, at the expense of NCPA, cause notice of the proposed execution of such Supplemental Indenture to be mailed, by first-class mail, postage prepaid, to the Owners of all Outstanding Bonds (or the affected Outstanding Bonds) at their addresses appearing on the Bond Register. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Owners of such Outstanding Bonds.

Whenever, at any time after the date of the mailing of such notice, NCPA shall deliver to the Trustee an instrument or instruments in writing purporting to be executed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, or if less than all of the Outstanding Bonds are affected, the Owners of not less than a majority in aggregate principal amount of the affected Bonds which instrument or instruments shall refer to the proposed Supplemental Indenture described in such notice and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Trustee may execute such Supplemental Indenture in

substantially such form, without liability or responsibility to any Owner of any Bond, whether or not such Owner shall have consented thereto.

If the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding, or if less than all of the Outstanding Bonds are affected, the Owners of not less than a majority in aggregate principal amount of the affected Bonds, at the time of the execution of such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to the execution of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or NCPA from executing the same or from taking any action pursuant to the provisions thereof.

(b) This Indenture and the rights and obligations of NCPA, the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture or Supplemental Indentures, which NCPA and the Trustee may enter into without the consent of any Owner of Bonds, but only to the extent permitted by law and so long as such modification or amendment shall not materially, adversely affect the interests of the Owners of the Bonds for any one or more of the following purposes:

(i) to add to the covenants and agreements of NCPA contained in this Indenture other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon NCPA;

(ii) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as NCPA may deem necessary or desirable;

(iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;

(iv) to make modifications or adjustments necessary or desirable to provide for the issuance of variable rate indebtedness, Option Bonds or Parity Debt, subject to the provisions of the Indenture;

(v) to modify, amend or supplement this Indenture in any other respect.

(c) The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by subsections (a) and (b) of this Section 12.01 which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 12.02 Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of NCPA, the Trustee and all Owners of Bonds Outstanding affected by such Supplemental Indenture shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 12.03 General Provisions.

(a) This Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article. Nothing in this Article contained shall affect or limit the right or obligation of NCPA to adopt, make, do, execute, acknowledge or deliver any resolution, act or other instrument pursuant to the provisions of Section 9.04 or the right or obligation of NCPA to execute and deliver to any Fiduciary any instrument which elsewhere in this Indenture it is provided shall be delivered to said Fiduciary.

(b) Every Supplemental Indenture, when delivered to the Trustee for execution, shall be accompanied by an Opinion of Bond Counsel stating that such Supplemental Indenture has been duly and lawfully entered into by NCPA in accordance with the provisions of this Indenture, is authorized or permitted by this Indenture, and (upon due authorization and execution by the Trustee) shall be valid and binding upon NCPA.

(c) No Supplemental Indenture shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto.

Section 12.04 Modifications by Unanimous Consent. Notwithstanding anything in this Indenture to the contrary, the terms and provisions of this Indenture and the rights and obligations of NCPA, the Trustee, and of the Owners of the Bonds Outstanding hereunder may be modified or amended in any respect upon the execution and filing by NCPA of a Supplemental Indenture and the written consent of the Owners of all of the Bonds then Outstanding, such consent to be given as provided in Section 12.01 except that no notice to the Owners of the Bonds shall be required; provided, however, that no such modification or amendment shall change or modify any of the rights or obligations of any Fiduciary without the filing with the Trustee of the written assent thereto of such Fiduciary in addition to the consent of the Owners of the Bonds.

Section 12.05 Exclusion of Bonds. Bonds owned or held by or for the account of NCPA shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, and NCPA shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article. At the time of any consent or other action taken under this Article, NCPA shall furnish the Trustee a certificate of an Authorized NCPA Representative, upon which the Trustee may rely, describing all Bonds so to be excluded.

Section 12.06 Notation on Bonds. Bonds authenticated and delivered after the effective date of any action taken as in this Article provided may, and, if the Trustee so determines, shall bear a notation by endorsement or otherwise in form approved by NCPA and the Trustee as to such action, and in that case upon demand of the Owner of any Bond Outstanding at such effective date and presentation of such Owner's Bond for the purpose at the principal corporate trust office of the Bond Registrar or upon any transfer or exchange of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer or exchange by the Trustee as to any such action. If the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee are necessary to conform to such action shall be prepared, authenticated and delivered, and upon demand of the Owner of any Bond then Outstanding shall be exchanged, without cost to such Owner, for Bonds of the same maturity then Outstanding, upon surrender of such Bonds.

ARTICLE XIII

MISCELLANEOUS

Section 13.01 Defeasance.

(a) If NCPA shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds the principal amount or Redemption Price, if any, of the Bonds, and interest due or to become due on the Bonds, at the times and in the manner stipulated therein and in this Indenture, then the pledge of the Trust Estate under this Indenture and all covenants, agreements and other obligations of NCPA to the Owners (other than the covenants set forth in Section 9.19), shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by NCPA to be prepared and filed with NCPA and, upon the request of NCPA shall execute and deliver to NCPA all such instruments as NCPA may reasonably request to evidence such discharge and satisfaction, and the Fiduciaries shall pay over or deliver, as directed by NCPA, all moneys or securities held by them pursuant to this Indenture which are not required for the payment of the principal amount or Redemption Price, if any, of the Bonds and interest on the Bonds. If NCPA shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of any Outstanding Bonds the principal amount or Redemption Price, if any, of the Bonds and interest due or to become due on the Bonds, at the times and in the manner stipulated therein and in this Indenture, such Bonds shall cease to be entitled to any lien, benefit or security under this Indenture, and all covenants, agreements and obligations of NCPA to the Owners of such Bonds (other than the covenants set forth in Section 9.19) shall thereupon cease, terminate and become void and be discharged and satisfied.

(b) Bonds, or interest installments on Bonds, for the payment or redemption of which moneys shall have been set aside and shall be held in trust by the Paying Agents (through deposit pursuant to this Indenture of funds for such payment or redemption or otherwise) at the maturity, Redemption Date, or interest payment date thereof, as applicable, shall be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section 13.01. Any Outstanding Bond (or any portion thereof in an Authorized Denomination) shall prior to the maturity or Redemption Date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section

13.01 (except that the obligations under this Indenture with respect to the payment of the principal amount of the Bonds and the interest on the Bonds from the sources provided, to transfer and exchange Bonds and to giving the notices of the redemption of Bonds to be redeemed as provided in Article V shall continue) if (1) in case said Bond (or portion thereof) is to be redeemed on any date prior to maturity, NCPA shall have given to the Trustee irrevocable instructions to give notice of redemption of such Bond (or portion thereof) on said date as provided in Article V, (2) there shall have been deposited with the Trustee either moneys (including moneys withdrawn and deposited pursuant to subsection (d) of Section 6.07 or subsection (c), (d), (g) or (h) of Section 6.08 and) in an amount which shall be sufficient, or Defeasance Securities issued or held in book-entry form) the principal of and the interest on which when due shall provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, in each case as evidenced by an Accountant's Certificate, to pay when due the principal amount or Redemption Price, as applicable, of said Bond (or portion thereof) and interest due and to become due on said Bond (or portion thereof) on and prior to the Redemption Date or maturity date thereof, as the case may be, and (3) if such Bond (or portion thereof) is not to be paid or redeemed within 60 days of the date of the deposit required by (2) above, NCPA shall have given the Trustee in form satisfactory to it irrevocable instructions to mail, as soon as practicable, by first-class mail, postage prepaid, to the Owners of such Bond, at the last address, if any, appearing upon the Bond Register, a notice that the deposit required by (2) above has been made with the Trustee and that said Bond (or the applicable portion thereof) is deemed to have been paid in accordance with this Section 13.01 and stating such maturity or Redemption Date upon which moneys are to be available for the payment of the principal amount or Redemption Price, as applicable, of said Bond. Any notice given pursuant to clause (3) of this Section with respect to Bonds which constitute less than all of the Outstanding Bonds of any maturity shall specify the letter and number or other distinguishing mark of each such Bond. Any notice given pursuant to clause (3) of this Section with respect to less than the full principal amount of a Bond shall specify the principal amount of such Bond which shall be deemed paid pursuant to this Section and notify the Owner of such Bond that such Bond must be surrendered. The receipt of any notice required by this Section shall not be a condition precedent to the payment of Bonds in accordance with this Section and the failure of any Owner to receive any such notice shall not affect the validity of the proceedings for the payment of Bonds in accordance with this Section. Neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal amount or Redemption Price, as applicable, of said Bonds and the interest thereon; provided that any cash received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, (A) to the extent such cash shall not be required at any time for such purpose, as evidenced by an Accountant's Certificate, shall be paid over upon the written direction of an Authorized NCPA Representative as received by the Trustee, free and clear of any trust, lien, pledge or assignment securing said Bonds or otherwise existing under this Indenture, and (B) to the extent such cash shall be required for such purpose at a later date, shall, to the extent practicable, at the written direction of an Authorized NCPA Representative, be reinvested in Defeasance Securities maturing at times and in amounts sufficient to pay when due the principal amount or Redemption Price, as applicable, of said Bonds and the interest to become due on said Bonds on and prior to such Redemption Date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be

paid over as received by the Trustee, free and clear of any trust, lien, pledge or assignment securing said Bonds or otherwise existing under this Indenture.

Nothing in this Indenture shall prevent NCPA from substituting for the Defeasance Securities held for the payment or redemption of Bonds (or portions thereof) other Defeasance Securities which, together with the moneys held by the Trustee for such purpose, as evidenced by an Accountant's Certificate, shall be sufficient to pay when due the principal amount or Redemption Price, as applicable, of the Bonds (or portions thereof) to be paid or redeemed, and the interest due and to become due on the Bonds (or portions thereof) to be paid or redeemed at the times established with the initial deposit of Defeasance Securities for such purpose provided that NCPA shall deliver to the Trustee an Opinion of Bond Counsel to the effect that such substitution will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

(c) Anything in this Indenture to the contrary notwithstanding, any moneys held by a Fiduciary in trust for the payment and discharge of any of the Bonds which remain unclaimed for two years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Fiduciary at such date shall, at the written request of an Authorized NCPA Representative be repaid by the Fiduciary to NCPA, as its absolute property and free and clear of any trust, lien, pledge or assignment securing said Bonds or otherwise existing under this Indenture, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to NCPA for the payment of such Bonds; provided, however, that before being required to make any such payment to NCPA the Fiduciary shall, at the expense of NCPA, mail, postage prepaid to the Owners of such Bonds, at the last address, if any, appearing upon the Bond Register a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of the mailing of such notice, the balance of such moneys then unclaimed shall be returned to NCPA.

(d) If there shall be deemed paid pursuant to subsection (b) of this Section 13.01 less than all of the full principal amount of a Bond, NCPA shall execute and the Trustee shall authenticate and the Bond Registrar shall deliver, upon the surrender of such Bond, without charge to the Owner of such Bond, a new Bond or Bonds for the principal amount of the Bond so surrendered which is deemed paid pursuant to subsection (b) of this Section 13.01 and another new Bond or Bonds for the balance of the principal amount of the Bond so surrendered, in each case of like terms, and maturity in any of the Authorized Denominations.

(e) Upon the payment of all Bonds within the meaning and effect expressed in this Section, any funds on deposit in any Funds or Accounts held by the Trustee, other than the Rebate Fund, shall be returned to NCPA.

(f) For purposes of this Section 13.01, the Trustee shall be entitled to obtain an Opinion of Bond Counsel as to the discharge and satisfaction of the lien of this Indenture with respect to any or all Outstanding Bonds (or any portions thereof). Such Opinion of Bond Counsel may rely on the verification of an Accountant's Certificate of the amounts which shall be sufficient to discharge and satisfy the lien of this Indenture with respect to any or all Outstanding Bonds (or any portions thereof).

Section 13.02 Evidence of Signatures of Owners and Ownership of Bonds.

(a) Any request, consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners of the Bonds may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys appointed in writing. Proof of (i) the execution of any such instrument, or of an instrument appointing any such attorney, or (ii) the ownership by any person of the Bonds, shall be sufficient for any purpose of this Indenture (except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable. The fact and date of the execution by any Owner of a Bond or such Owner's attorney of such instruments may be proved by a guarantee of the signature thereon by an eligible guarantor institution or by the certificate of any notary public or other officer authorized to take acknowledgements of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guarantee, certificate or affidavit shall also constitute sufficient proof of such person's or entity's authority.

(b) The ownership of Bonds and the amount, numbers and other identification, and date of owning the same, shall be proved by the Bond Register.

(c) Any request or consent by the Owners of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by NCPA or any Fiduciary in accordance therewith.

Section 13.03 Moneys Held for Particular Bonds. Except as otherwise provided in Section 9.02, the amounts held by any Fiduciary for the payment of the interest, principal or Redemption Price due on any date with respect to particular Bonds shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto. No Fiduciary shall be liable to any Owner, NCPA or any other person for interest on amounts so held in trust.

Section 13.04 Preservation and Inspection of Documents. All documents received by any Fiduciary under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of NCPA, any Fiduciary, and any Owner of a Bond and their agents and their representatives, any of whom may make copies thereof.

Section 13.05 Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or corporation, other than NCPA, the Fiduciaries, each issuer of a Financial Guaranty and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of NCPA shall be for the sole and exclusive benefit of NCPA, the Fiduciaries, each issuer of a Financial Guaranty, and the Owners of the Bonds.

Section 13.06 No Recourse on the Bonds. Neither the commissioners, directors, officers or employees of NCPA shall be individually liable on the Bonds or in respect of any undertakings by NCPA under this Indenture.

Section 13.07 Addresses for Notices. All notices, certificates, requests, complaints, demands or other communications hereunder shall be deemed sufficiently given when delivered by telegram or registered mail, postage prepaid, return receipt requested, addressed as follows: If to NCPA, to Northern California Power Agency, 651 Commerce Drive, Roseville, California 95678, Attention: General Manager; if to the Trustee, to U.S. Bank National Association, Corporate Trust Services, 100 Wall Street, 16th Floor, New York, New York 10005, Attention: Corporate Trust Department; if to Moody's, to Moody's Investors Service, Inc., 7 World Trade Center, 250 Greenwich Street, 23 Floor, New York, New York 10007, Attention: Municipal Department; and if to Fitch, to Fitch Ratings, 33 Whitehall Street, New York, New York 10004, Attention: Public Finance Department. Any such party may by notice given hereunder designate any further or different address to which subsequent notices, certificates, requests, complaints, demands or other communications hereunder shall be sent.

Section 13.08 Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in this Indenture on the part of NCPA or any Fiduciary to be performed should be held to be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Indenture.

Section 13.09 Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Indenture, and, unless otherwise specifically provided in this Indenture, no interest shall accrue for the period after such nominal date.

Section 13.10 Governing Law. This Indenture and each Bond for all purposes shall be interpreted, governed by and construed in accordance with the laws of the State of California, including the Act, as if executed and to be performed wholly within the State of California.

Section 13.11 Headings Not Binding. The headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Northern California Power Agency has caused these presents to be signed in its name and on its behalf by its General Manager, and to evidence its acceptance of the trust hereby created, U.S. Bank National Association has caused these presents to be signed in its name and on its behalf by an authorized officer, in each case all as of the date first above written.

**NORTHERN CALIFORNIA POWER
AGENCY**

By _____
Randy S. Howard
General Manager

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

By _____
Authorized Officer

EXHIBIT A

FORM OF BOND

**NORTHERN CALIFORNIA POWER AGENCY
CAPITAL FACILITIES REVENUE BOND,
2019 REFUNDING SERIES A**

Except as otherwise provided in Section 4.10 of the Indenture, this bond may be transferred, in whole but not in part, only to another nominee of the Securities Depository (as defined in the Indenture) or to a successor Securities Depository or to a nominee of a successor Securities Depository. Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Northern California Power Agency or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. R-_____ \$ _____

<u>Interest Rate</u>	<u>Dated Date</u>	<u>Maturity Date</u>	<u>CUSIP No.</u>
_____%	_____, 2019	August 1, 20__	_____

REGISTERED OWNER: -----CEDE & CO. (TAX I.D. # 013-2555119)-----

PRINCIPAL AMOUNT: _____ MILLION _____ THOUSAND DOLLARS

NORTHERN CALIFORNIA POWER AGENCY (herein called "NCPA"), a joint exercise of powers agency established pursuant to the laws of the State of California, acknowledges itself indebted to, and for value received hereby promises to pay to, the registered Owner specified above, or registered assigns, on the maturity date stated above, unless sooner paid as provided in the Indenture of Trust mentioned below (as the same may be amended and supplemented (the "Indenture")), but solely from the funds pledged therefor, upon presentation and surrender of this bond at the principal corporate trust office of U.S. Bank National Association, in New York, New York, or the specified office of any other paying agent appointed pursuant to the Indenture, the principal amount specified above in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and to pay interest on such principal amount, by check of the Trustee hereafter mentioned mailed to such Owner at such Owner's address as shown on the bond register, at the interest rate per annum (calculated on the basis of a 360-day year of twelve thirty-day months) stated above, payable on February 1 and August 1 of each year, commencing [August 1], 2020 (each an "Interest Payment Date"), until NCPA's obligation with respect to the

payment of such principal amount shall be discharged. Such interest shall be payable from the Interest Payment Date next preceding the date of authentication hereof, unless the date of authentication hereof is an Interest Payment Date, in which event from such Interest Payment Date, or unless the date of authentication hereof is after a Record Date (hereinafter defined) and before the next succeeding Interest Payment Date, in which event from such Interest Payment Date; provided, however, that if the date of authentication hereof shall be prior to the Record Date for the first Interest Payment Date, this bond shall bear interest from its original dated date. Notwithstanding the foregoing, if NCPA shall default in the payment of interest, then this bond shall bear interest from the date to which interest has been paid or if no interest has been paid, from its original dated date. The interest so payable on any Interest Payment Date shall be paid to the person in whose name this bond is registered at the close of business on the fifteenth day of the calendar month next preceding such Interest Payment Date (the "Record Date").

This bond is one of a duly authorized issue of bonds of NCPA designated as its "Capital Facilities Revenue Bonds" (the "Bonds") and of a Series of Bonds designated "Capital Facilities Revenue Bonds, 2019 Refunding Series A" (the "2019 Series A Bonds") issued pursuant to an Indenture of Trust, dated as of December 1, 2019, duly executed and delivered by NCPA to U.S. Bank National Association, New York, New York, as Trustee (the term "Trustee" where used herein refers collectively to said Trustee or its successors in said trust). Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Indenture. The principal amount of Bonds which may be issued under the Indenture is not limited except as provided therein. The 2019 Series A Bonds have been issued in the aggregate principal amount of \$[PAR AMOUNT] under and pursuant to Article 4 of the Act and the provisions of the Refunding Act to provide a portion of the funds to refund certain outstanding bonds of NCPA.

Copies of the Indenture are on file at the office of NCPA and at the principal corporate trust office of the Trustee and reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the Trust Estate, the rights, duties and obligations of NCPA and the Trustee under the Indenture, the terms and conditions upon which the Bonds are issued and secured under the Indenture, the rights and remedies of the registered Owners of the Bonds, and the limitations on such rights and remedies. By purchase and acceptance of this bond, the Owner hereof signifies its assent to all of the provisions of the Indenture.

The Bonds, including this bond, are special, limited obligations of NCPA. The principal amount and redemption price of, and interest on, the Bonds are payable solely from the Trust Estate, including the Project Revenues; provided, however, that the Bonds shall be secured by the Project Revenues and amounts on deposit in the Revenue Fund on a basis which is on a parity with the payment of Parity Debt. The Bonds do not constitute a charge against the general credit of NCPA. The Bonds are not secured by a legal or equitable pledge of, or lien or charge upon, any property of NCPA or any of its income or receipts except the Trust Estate and the other moneys, securities and funds pledged therefor subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein. Neither the faith and credit nor the taxing power of the State of California or any public agency thereof or any member of NCPA is pledged to the payment of the principal or redemption price of, or interest on, the Bonds. Neither the payment of the principal or redemption price of, or

interest on, the Bonds constitutes a debt, liability or obligation of the State of California or any public agency thereof (other than NCPA) or any member of NCPA. Neither the commissioners, directors, officers or employees of NCPA shall be individually liable on the Bonds or in respect of any undertakings by NCPA under the Indenture.

This bond is transferable, as provided in the Indenture, only upon the books of NCPA kept for that purpose at the principal corporate trust office of the Trustee, as Bond Registrar, upon surrender of this bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered Owner or such Owner's duly authorized attorney, whereupon a new registered 2019 Series A Bond or 2019 Series A Bonds, without coupons, and in the same aggregate principal amount and with the same maturity, interest rate and other terms, shall be issued to the transferee in exchange therefor as provided in the Indenture, upon payment of any tax, fee or other governmental charge as therein prescribed. Upon surrender hereof at the principal corporate trust office of the Trustee, as Bond Registrar, together with a written instrument of transfer satisfactory to the Bond Registrar and duly executed by the registered Owner of this bond or such Owner's attorney duly authorized in writing and the payment of such charges as are provided by the Indenture, this bond may be exchanged for an equal aggregate principal amount of 2019 Series A Bonds of the same maturity of any other authorized denominations. NCPA, the Trustee and any paying agent for this bond may deem and treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal amount or redemption price hereof and interest due hereon and for all other purposes.

The 2019 Series A Bonds are issuable in the form of registered bonds without coupons in the denominations of \$5,000 or any integral multiple of \$5,000. Under the circumstances prescribed in the Indenture, the 2019 Series A Bonds shall be available only through a depository.

The 2019 Series A Bonds are subject to redemption, at the option of NCPA, in whole at any time or in part on any date, at a redemption price equal to the principal amount of the 2019 Series A Bonds, or portions thereof, to be redeemed, without premium, plus unpaid accrued interest on the 2019 Series A Bonds, or portions thereof, to be redeemed to the redemption date, from insurance or condemnation proceeds with respect to the Project or from any other source of money if all or substantially all of the Project is damaged or destroyed, taken by any public entity in exercise of its powers of eminent domain, or disposed of or abandoned.

NCPA may select the maturities of the 2019 Series A Bonds and the principal amount of each such maturity to be redeemed in its sole discretion. Subject to the terms of the representation letter with the securities depository for the 2019 Series A Bonds, if less than all of the 2019 Series A Bonds of like maturity are to be redeemed, the particular 2019 Series A Bonds to be redeemed shall be selected at random by the Trustee in such manner as the Trustee in its discretion may deem fair and appropriate.

The 2019 Series A Bonds are payable upon redemption at the above-mentioned office of the Trustee, as Paying Agent for the 2019 Series A Bonds, or at the specified office of any other paying agent for the 2019 Series A Bonds appointed pursuant to the Indenture. Notice of redemption, setting forth the place of payment and the redemption date, shall be mailed, by

first-class mail, postage prepaid (or by electronic means acceptable to the securities depository for the 2019 Series A Bonds), not more than 60 days nor less than 30 days before the redemption date to the registered Owners of any 2019 Series A Bonds or portions thereof to be redeemed; provided, however that receipt of such notice shall not be a condition precedent to such redemption and failure of any Owner of a 2019 Series A Bond to receive any such notice or any defect in such notice shall not affect the validity of the proceedings for the redemption of the 2019 Series A Bonds. Subject to the provisions of the next paragraph, if notice of redemption shall have been given as aforesaid, the 2019 Series A Bonds or portions thereof specified in said notice shall become due and payable on the redemption date therein fixed, and if, on the redemption date, moneys for the redemption of all the 2019 Series A Bonds, or portions thereof to be redeemed, and the accrued and unpaid interest on the 2019 Series A Bonds to the redemption date, shall be available for such payment on said date, then from and after the redemption date interest on such 2019 Series A Bonds or portions thereof so called for redemption shall cease to accrue and be payable.

Unless at the time of giving such notice the 2019 Series A Bonds to be redeemed shall be deemed to have been paid within the meaning of the Indenture, notice with respect to any redemption of 2019 Series A Bonds at the option of NCPA shall state that such redemption is conditional upon the receipt by the Trustee, on or prior to the date fixed for such redemption, of moneys sufficient to pay the principal of, and accrued unpaid interest to the redemption date on, such 2019 Series A Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and NCPA shall not be required to redeem such 2019 Series A Bonds. In the event a notice of redemption of 2019 Series A Bonds contains such a condition and such moneys are not so received, the redemption of the 2019 Series A Bonds as described in the conditional notice of redemption shall not be made and the Trustee shall, within a reasonable time after the date on which such redemption was to occur, give notice to the Owners to whom the notice of redemption was given, that such moneys were not so received and that there will be no redemption of 2019 Series A Bonds pursuant to the notice of redemption.

To the extent and in the manner permitted by the terms of the Indenture, the provisions of the Indenture, or any indenture amendatory thereof or supplemental thereto, may be modified or amended by NCPA with the written consent of the registered Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding. No such modification or amendment shall (1) extend the fixed maturity of any Bond, or reduce the principal amount or redemption price thereof, or reduce the amount of any applicable sinking fund installment, or reduce the rate of interest thereon or extend the time of payment of interest thereon, without the consent of the registered Owner of each Bond so affected; or (2) reduce the aforesaid percentage of Bonds the consent of the registered Owners of which is required to effect any such modification or amendment, or permit the creation of any other lien on the Trust Estate, or deprive the registered Owners of the Bonds of the lien of the pledge made pursuant to the Indenture on the Trust Estate (except as expressly provided in the Indenture), in each such case without the consent of the registered Owners of all Bonds then Outstanding; or (3) shall change or modify any of the rights or obligations of the Trustee or of any paying agent without its written assent thereto.

The Indenture may also be modified or amended without the consent of the registered Owners of any Bonds as provided in the Indenture so long as such modification or amendment shall not materially, adversely affect the interests of the Owners of the Bonds.

The registered Owner of this bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

It is hereby certified and recited that all conditions, acts and things required by law and the Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this bond, exist, have happened and have been performed in due time, form and manner, and that the Bonds, together with all other indebtedness of NCPA, comply in all respects with the applicable laws of the State of California.

This bond shall not be entitled to any benefit under the Indenture or be valid or become obligatory for any purpose until this bond shall have been authenticated by the manual execution by the Trustee of the Trustee's Certificate of Authentication hereon.

IN WITNESS WHEREOF, the **NORTHERN CALIFORNIA POWER AGENCY** has caused this bond to be signed in its name and on its behalf by the manual or facsimile signature of its Chairman or its General Manager and its seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual or facsimile signature of its Secretary or an Assistant Secretary, as of the Dated Date specified above.

**NORTHERN CALIFORNIA POWER
AGENCY**

By: _____
CHAIRMAN

[SEAL]

ATTEST:

ASSISTANT SECRETARY

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds delivered pursuant to the within mentioned Indenture.

Date of Authentication

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

BY: _____
AUTHORIZED OFFICER

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

(Name, Address and Tax Identification or
Social Security Number of Assignee)

the within Bond of the Northern California Power Agency and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Notice: The Signature of this assignment and transfer must correspond with the name as written upon the face of this bond in every particular, without alteration or enlargement or any change whatsoever.

Signature guaranteed by

Notice: Signature must be guaranteed by a by an eligible guarantor institution.

PRELIMINARY OFFICIAL STATEMENT DATED DECEMBER ___, 2019**NEW ISSUE - BOOK-ENTRY ONLY****Rating: See “RATING” herein.**

In the opinion of Nixon Peabody LLP, Special Tax Counsel to NCPA, under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by NCPA described herein, interest on the 2019 Series A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”). Special Tax Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code. Interest on the 2019 Series A Bonds is exempt from personal income taxes of the State of California (the “State”) under present State law. See “TAX MATTERS” herein regarding certain other tax considerations.

\$ _____ *

**NORTHERN CALIFORNIA POWER AGENCY
Capital Facilities Revenue Bonds,
2019 Refunding Series A**

Dated: Date of Delivery**Due: August 1, as shown on the inside cover**

This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of the 2019 Series A Bonds. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision. Capitalized terms used on this cover page not otherwise defined will have the meanings set forth herein.

Northern California Power Agency (“NCPA”) is offering \$ _____* of its Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “2019 Series A Bonds”). The 2019 Series A Bonds are being issued by NCPA pursuant to an Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), by and between NCPA and U.S. Bank National Association, as trustee (the “Trustee”), for the purpose of providing funds, together with other available moneys, to refund all of NCPA’s outstanding Capital Facilities Revenue Bonds, 2010 Refunding Series A and to pay costs of issuance of the 2019 Series A Bonds. See “PLAN OF REFUNDING” herein.

The 2019 Series A Bonds are being issued as fully registered bonds and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the 2019 Series A Bonds, and individual purchases of the 2019 Series A Bonds will be made in book-entry form only. Interest on the 2019 Series A Bonds is payable on each February 1 and August 1, beginning on August 1, 2020. Principal is payable on August 1 of the years and in the amounts set forth on the inside cover page hereof. The 2019 Series A Bonds may be purchased in authorized denominations of \$5,000 and any integral multiple thereof. Principal, premium, if any, and interest on the 2019 Series A Bonds is payable by the Trustee to DTC, which is obligated in turn to remit such principal, premium, if any, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the 2019 Series A Bonds. See “APPENDIX C–BOOK-ENTRY ONLY SYSTEM” hereto.

The 2019 Series A Bonds are not subject to optional redemption prior to maturity. The 2019 Series A Bonds are subject to extraordinary redemption as described herein.

THE 2019 SERIES A BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF NCPA PAYABLE SOLELY FROM, AND SECURED SOLELY BY, THE TRUST ESTATE, CONSISTING PRIMARILY OF PROJECT REVENUES (AS DEFINED HEREIN) AND THE OTHER FUNDS PLEDGED BY NCPA UNDER THE INDENTURE. THE 2019 SERIES A BONDS DO NOT CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF NCPA. THE 2019 SERIES A BONDS ARE NOT DEBTS, LIABILITIES OR OBLIGATIONS OF THE STATE OF CALIFORNIA, ANY PUBLIC AGENCY THEREOF (OTHER THAN NCPA), ANY MEMBER OF NCPA OR ANY PROJECT PARTICIPANT, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF ANY OF THE FOREGOING (INCLUDING NCPA) IS PLEDGED FOR THE PAYMENT OF THE 2019 SERIES A BONDS. NCPA HAS NO TAXING POWER.

**Maturity Schedule
(see inside cover)**

The 2019 Series A Bonds are offered when, as and if issued and delivered to the Underwriter, subject to the approval of legality by Norton Rose Fulbright US LLP, Bond Counsel to NCPA, and certain other conditions. Certain legal matters will be passed upon for NCPA by Jane E. Luckhardt, Esq., General Counsel to NCPA, and by Spiegel & McDiarmid LLP, Washington, D.C., Washington, Counsel to NCPA. Nixon Peabody LLP is serving as Special Tax Counsel to NCPA in connection with the 2019 Series A Bonds. Norton Rose Fulbright US LLP is serving as Disclosure Counsel to NCPA in connection with the 2019 Series A Bonds. Certain legal matters will be passed upon for the Underwriter by Orrick, Herrington & Sutcliffe LLP, Counsel to the Underwriter. It is expected that the 2019 Series A Bonds in definitive form will be available for delivery through the facilities of DTC in New York, New York, by Fast Automated Securities Transfer (FAST) on or about December ___, 2019.

J.P. Morgan

Dated: December ___, 2019

* Preliminary, subject to change.

MATURITY SCHEDULE*

\$ _____ *

NORTHERN CALIFORNIA POWER AGENCY
Capital Facilities Revenue Bonds,
2019 Refunding Series A

Maturity Date (August 1)	Principal Amount	Interest Rate	Yield	Price	CUSIP[†]
2020					
2021					
2022					
2023					
2024					
2025					

* Preliminary, subject to change.

† CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by S&P Capital IQ on behalf of the American Bankers Association. CUSIP numbers have been assigned by an independent company not affiliated with NCPA or the Underwriter and are included solely for the convenience of the owners of the 2019 Series A Bonds. Neither NCPA nor the Underwriter is responsible for the selection or use of these CUSIP numbers and no representation is made as to their correctness on the 2019 Series A Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the 2019 Series A Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the 2019 Series A Bonds.

NORTHERN CALIFORNIA POWER AGENCY
651 Commerce Drive
Roseville, California 95678
Telephone: (916) 781-3636

NCPA Commissioners and Members

Roger Frith, Chair..... Councilmember, City of Biggs	Teresa O'Neill, Vice ChairCouncilmember, City of Santa Clara
Gerald "Jerry" Serventi Board Member, Public Utilities Board of the City of Alameda	[Vacant] San Francisco Bay Area Rapid Transit
Paul Eckert.....City Administrator, City of Gridley	David Hagele Mayor, City of Healdsburg
Mark Chandler..... Mayor, City of Lodi	Jenelle Osbourne..... Mayor, City of Lompoc
Gregory Scharff Representative, City of Palo Alto	Dave Roberti Board President, Plumas-Sierra Rural Electric Cooperative
Jared Carpenter..... Manager of Utilities Admin., Port of Oakland	Kristen Schreder Councilmember, City of Redding
John AllardMayor, City of Roseville	James Takehara..... Utility Director, City of Shasta Lake
Bob Ellis Board Member, Truckee Donner Public Utility District	Doug Crane.....Councilmember, City of Ukiah

Management

General Manager	Randy S. Howard
General Counsel	Jane E. Luckhardt, Esq.
Assistant General Manager, Finance and Administrative Services; Chief Financial Officer	Monty Hanks
Assistant General Manager, Legislative & Regulatory	Jane Dunn Cirrincione
Assistant General Manager, Power Management	Tony Zimmer
Assistant General Manager, Generation Services.....	Joel Ledesma

Project Participants

Participant	Project Participation Percentage
Alameda	19.00%
Lodi	39.50
Lompoc	5.00
Roseville	36.50
	100.00%

Special Services

Bond and Disclosure Counsel
Norton Rose Fulbright US LLP
Los Angeles, California

Special Tax Counsel
Nixon Peabody LLP
Washington, D.C.

Washington Counsel
Spiegel & McDiarmid LLP
Washington, D.C.

Auditor
Baker Tilly Virchow
Krause, LLP
Madison, Wisconsin

Trustee
U.S. Bank National
Association
New York, New York

Verification Agent
Samuel Klein and Company,
Certified Public Accountants
Newark, New Jersey

Municipal Advisor
PFM Financial
Advisors LLC
Los Angeles, California

No dealer, broker, salesperson or any other person has been authorized by NCPA, the Project Participants or the Underwriter to give any information or to make any representation, other than the information and representations contained herein, in connection with the offering of the 2019 Series A Bonds and, if given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor will there be any sale of, the 2019 Series A Bonds in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. This Official Statement is not to be construed as a contract with the purchasers of the 2019 Series A Bonds.

Statements contained in this Official Statement, which include estimates, forecasts or matters of opinion, are intended solely as such and are not to be construed as representations of fact. The information set forth herein has been furnished by NCPA, the Project Participants or other sources which are believed to be reliable. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the matters described herein since the date hereof. This Official Statement, including any supplement or amendment hereto, is intended to be filed with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access (EMMA) website.

U.S. Bank National Association accepts its duties as Trustee for the 2019 Series A Bonds. Notwithstanding the foregoing, however, the Trustee has not reviewed this Official Statement and makes no representations as to the information contained herein, including, but not limited to, any representations as to the financial feasibility of NCPA or its Members, the Project or any related activities.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THE OFFERING OF THE 2019 SERIES A BONDS THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE 2019 SERIES A BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

CAUTIONARY STATEMENTS REGARDING
FORWARD-LOOKING STATEMENTS IN
THIS OFFICIAL STATEMENT

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements.” Such statements are generally identifiable by the terminology used such as “plan,” “expect,” “estimate,” “budget” or other similar words. Such forward-looking statements include, but are not limited to, certain statements contained in the information under the captions “RATE REGULATION” and “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY (including particularly, but not limited to, under the sub-caption “PG&E Bankruptcy”) in this Official Statement and in the description of each of the Significant Share Project Participant’s operations set forth in APPENDIX A hereto. Forward-looking statements in APPENDIX A and elsewhere in this Official Statement are subject to risks and uncertainties, including particularly those relating to natural gas costs and availability, wholesale and retail electric energy and capacity prices, federal and State legislation and regulations, developments in the PG&E bankruptcy proceeding, competition and industry restructuring, and the economies of the service areas of the Project Participants.

The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. NCPA does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

NCPA maintains a website. However, the information presented therein is not part of this Official Statement and should not be relied upon in making investment decisions with respect to the 2019 Series A Bonds.

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OFFICIAL STATEMENT

\$ _____ *

NORTHERN CALIFORNIA POWER AGENCY Capital Facilities Revenue Bonds, 2019 Refunding Series A

INTRODUCTION

This Introduction is qualified in its entirety by reference to the more detailed information included and referred to elsewhere in this Official Statement. The offering of the 2019 Series A Bonds to potential investors is made only by means of the entire Official Statement. Capitalized terms used in this Introduction and not otherwise defined herein will have the respective meanings assigned to them elsewhere in this Official Statement. See “APPENDIX D–SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS.”

Purpose

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to set forth certain information concerning (i) the Northern California Power Agency (“NCPA”); (ii) NCPA’s \$ _____ * Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “2019 Series A Bonds”); and (iii) the four NCPA Members which have entered into the Unit One Member Agreement (defined below) with NCPA (collectively, the “Project Participants”) relating to NCPA’s Combustion Turbine Project Number Two, Unit One facilities (the “Project” or “Unit One”), including in particular the three principal Project Participants (the “Significant Share Project Participants”).

The 2019 Series A Bonds are being issued by NCPA for the purpose of providing funds, together with other available moneys, to refund all of NCPA’s outstanding Capital Facilities Revenue Bonds, 2010 Refunding Series A (the “2010 Series A Bonds”) and to pay costs of issuance of the 2019 Series A Bonds. See “PLAN OF REFUNDING.”

NCPA

NCPA is a joint exercise of powers agency formed under the Joint Exercise of Power Act (Cal. Gov. Code §§ 6500 *et seq.*) (the “Act”) and an Amended and Restated Northern California Power Agency Joint Powers Agreement (the “NCPA Joint Powers Agreement”) now among the City of Alameda (“Alameda”), the City of Biggs (“Biggs”), the City of Gridley (“Gridley”), the City of Healdsburg (“Healdsburg”), the City of Lodi (“Lodi”), the City of Lompoc (“Lompoc”), the City of Palo Alto (“Palo Alto”), the City of Redding (“Redding”), the City of Roseville (“Roseville”), the City of Santa Clara (“Santa Clara”), the City of Shasta Lake (“Shasta Lake”), the City of Ukiah (“Ukiah”), the City of Oakland acting by and through its Board of Port Commissioners (“Port of Oakland”), the Truckee Donner Public Utility District (“Truckee Donner”), and the San Francisco Bay Area Rapid Transit District (“BART”) as members, and the Plumas-Sierra Rural Electric Cooperative (“Plumas-Sierra”), as an associate member (herein collectively referred to as the “Members” and individually as a “Member”). The Project Participants are Alameda, Lodi, Lompoc and Roseville. The Significant Share Project Participants, Alameda, Lodi and Roseville, represent in aggregate 95% in Project Participation Percentages in the Project.

* Preliminary, subject to change.

Authority for Issuance

The 2019 Series A Bonds are being issued pursuant to the provisions of Article 4 of the Act and Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California. The 2019 Series A Bonds are being issued under and in accordance with an Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), by and between NCPA and U.S. Bank National Association, as trustee (the “Trustee”), and the Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two – Unit One, dated as of August 1, 1992 (the “Unit One Member Agreement”), by and among NCPA and the Project Participants.

The 2019 Series A Bonds and any other bonds hereafter issued under and pursuant to the Indenture are herein collectively referred to as the “Bonds.”

The Project

The Project is a combustion turbine unit located in Lodi, California, and owned and operated by NCPA. The capacity and energy of the Project has been sold to the Project Participants (Alameda, Lodi, Lompoc and Roseville) pursuant to the Unit One Member Agreement in the respective Project Participation Percentages set forth on page (a) of this Official Statement.

Unit One Member Agreement

Under the Unit One Member Agreement, NCPA has agreed to provide, and each Project Participant has agreed to take or cause to be taken, the Project Participant’s Project Participation Percentage of the capacity and energy of the Project. The Project Participants pay for such capacity and energy on a cost-of-service basis. Each Project Participant has agreed to make payments for such capacity and energy solely from the revenues of, and as an operating expense of, such Project Participant’s electric system. Such payments must be made regardless of whether or not the Project is operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output or the capacity and energy contracted for in whole or in part for any reason whatsoever. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2019 SERIES A BONDS – Unit One Member Agreement.”

Security and Sources of Payment for the 2019 Series A Bonds

The 2019 Series A Bonds will be special, limited obligations of NCPA payable solely from, and secured as to the payment of the principal and redemption price thereof and interest thereon solely by, the Trust Estate, which includes Project Revenues (which consist primarily of payments received by NCPA from the Project Participants pursuant to the Unit One Member Agreement) pledged and assigned pursuant to the Indenture. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2019 SERIES A BONDS.”

The 2019 Series A Bonds are not debts, liabilities or obligations of the State of California, any public agency thereof (other than NCPA), any Member of NCPA or any Project Participant, and neither the faith and credit nor the taxing power of any of the foregoing (including NCPA) is pledged to the payment of the 2019 Series A Bonds. NCPA has no taxing power.

No Debt Service Reserve Account

No debt service reserve account will be established to secure the 2019 Series A Bonds. Amounts held in or credited to any other debt service reserve account established in connection with any future Series of Bonds will not secure, and will not be available for, the payment of the 2019 Series A Bonds.

See “SECURITY AND SOURCES OF PAYMENT FOR THE 2019 SERIES A BONDS – No Debt Service Reserve Account for 2019 Series A Bonds.”

Risk Factors

For a description of certain risks associated with the purchase of the 2019 Series A Bonds, see “SECURITY AND SOURCES OF PAYMENT FOR THE 2019 SERIES A BONDS – Limitations on Remedies,” “RATE REGULATION,” “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY” and “LITIGATION.”

Other Matters

The summaries of and references to all documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by reference to each document, statute, report or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein indicates that such word is defined in a particular agreement or other document and, as used herein, has the meaning given to it in such agreement or document. In preparing this Official Statement, NCPA has relied upon certain information relating to the Project Participants furnished to NCPA by the Project Participants.

Attached to this Official Statement is a summary of certain provisions of the Indenture and the Unit One Member Agreement. Copies of the Indenture, the Escrow Agreement, the Unit One Member Agreement and the Continuing Disclosure Agreements are available for inspection at the offices of NCPA in Roseville, California, and will be available upon request and payment of duplication costs from the Trustee.

PLAN OF REFUNDING

General

The 2019 Series A Bonds are being issued for the purpose of providing funds, together with other available moneys, to refund all of the outstanding 2010 Series A Bonds and to pay costs of issuance of the 2019 Series A Bonds.

Prior Financing and Refunding Plan

The 2010 Series A Bonds were originally issued on January 29, 2010 in the aggregate principal amount of \$55,120,000 for the purpose of refinancing a portion of the costs of the Project. As of the date hereof, \$25,450,000 principal amount of 2010 Series A Bonds remains outstanding. The outstanding 2010 Series A Bonds mature on August 1 in each of the years 2020 through 2025. The outstanding 2010 Series A Bonds will be called for redemption on February 1, 2020.

The following table details the maturity dates and principal amounts of the 2010 Series A Bonds to be refunded. The refunding of the 2010 Series A Bonds is being undertaken to achieve net present value and debt service savings.

Refunded 2010 Series A Bonds

Maturity Date (August 1)	CUSIP [†]	Outstanding Principal Amount to be Refunded	Interest Rate	Redemption Date	Redemption Price
2020	66484RAM8	\$ 4,490,000	5.00%	February 1, 2020	100%
2021	66484RAN6	4,550,000	5.00	February 1, 2020	100
2022	66484RAP1	4,860,000	5.25	February 1, 2020	100
2023	66484RAQ9	5,150,000	5.25	February 1, 2020	100
2024	66484RAR7	5,390,000	5.25	February 1, 2020	100
2025	66484RAS5	<u>1,010,000</u>	5.25	February 1, 2020	100
Total		\$25,450,000			

[†] CUSIP® is a registered trademark of American Bankers Association. CUSIP® data herein are provided by CUSIP Global Services, managed by S&P Capital IQ on behalf of American Bankers Association. Neither NCPA nor the Underwriter is responsible for the selection or correctness of the CUSIP numbers set forth herein.

Pursuant to an Escrow Deposit Agreement, dated as of December 1, 2019 (the “Escrow Agreement”), to be entered into by NCPA and U.S. Bank National Association, as escrow agent, a portion of the proceeds of the 2019 Series A Bonds, together with certain other available funds, will be deposited into an escrow fund (the “Escrow Fund”) and will either be held as cash or will be used to purchase direct obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America (the “Defeasance Securities”) that will bear interest at such rates and will be scheduled to mature at such times and in such amounts so that, when paid in accordance with their respective terms, and together with the cash held in the Escrow Fund, sufficient moneys will be available to pay the redemption price (100.0% of the principal amount) of the 2010 Series A Bonds and accrued interest thereon to the redemption date, February 1, 2020.

On the date of delivery of the 2019 Series A Bonds, NCPA will receive a report from Samuel Klein and Company, Certified Public Accountants, verifying the adequacy of the cash deposited and held in the Escrow Fund, together with the maturing principal amounts of and interest earned on the Defeasance Securities, to pay the redemption price of the refunded 2010 Series A Bonds and accrued interest thereon on the redemption date therefor. See “VERIFICATION OF MATHEMATICAL COMPUTATIONS.”

Upon such deposit to the Escrow Fund for their payment, the 2010 Series A Bonds will no longer be deemed to be outstanding under the indenture pursuant to which such 2010 Series A Bonds were issued, and all obligations of NCPA with respect to the 2010 Series A Bonds shall cease and terminate, except for the obligation of NCPA to cause the amounts due on the 2010 Series A Bonds to be paid from funds on deposit in the Escrow Fund.

ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the 2019 Series A Bonds and other amounts, rounded to the nearest dollar, are as follows:

Sources of Funds

Principal Amount	\$
Original Issue Premium.....	
Transfer from 2010 Series A Bonds funds and accounts	
Total.....	<u>\$</u>

Uses of Funds

Deposit to Escrow Fund	\$
Costs of Issuance ⁽²⁾	
Total.....	<u>\$</u>

⁽¹⁾ Costs of issuance include legal, financing and consulting fees, Underwriter's discount, fees of the verification agent, trustee and escrow agent, rating agency fees, printing costs and other miscellaneous expenses.

OTHER OBLIGATIONS OF NCPA

Each NCPA project is separately financed. As of September 1, 2019, in addition to the \$25.5 million 2010 Series A Bonds (which are being refunded by the 2019 Series A Bonds), NCPA had outstanding approximately \$20.1 million Geothermal Project Number 3 Revenue Bonds, \$331.1 million Lodi Energy Center Revenue Bonds and \$265.7 million Hydroelectric Project Number One Revenue Bonds. A portion of NCPA's outstanding Hydroelectric Project Number One Revenue Bonds are variable rate bonds in connection with which NCPA has entered into an interest rate swap agreement, as well as a reimbursement agreement relating to the issuance of a letter of credit to provide liquidity and credit support for such variable rate bonds. For further information on NCPA projects and related bond issues, see "OTHER NCPA PROJECTS." Each Project Participant is also a direct or indirect participant in one or more of such other NCPA projects.

See also Note E to NCPA's audited financial statements for the fiscal years ended June 30, 2019 and 2018 included in APPENDIX B.

THE 2019 SERIES A BONDS

The following is a summary of certain provisions of the 2019 Series A Bonds. Reference is made to the Indenture for a more detailed description of such provisions. The discussion herein is qualified by such reference.

General

The 2019 Series A Bonds are being issued in the aggregate principal amount indicated on the inside cover page of this Official Statement, will mature on August 1 in the years and in the amounts, and will bear interest at the rates per annum, as shown on the inside cover page of this Official Statement. The 2019 Series A Bonds will be dated their date of delivery. Interest on the 2019 Series A Bonds is payable on February 1 and August 1 of each year, commencing August 1, 2020 (calculated on the basis of a 360-day year comprised of twelve 30-day months).

The 2019 Series A Bonds are being issued in fully registered form, and, when issued, will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York (“DTC”), such registered owner of 2019 Series A Bonds being hereinafter referred to as the “Owner.” DTC will act as securities depository for the 2019 Series A Bonds. Ownership interests in the 2019 Series A Bonds may be purchased in book-entry form only. Purchasers will not receive securities certificates representing their interests in the 2019 Series A Bonds purchased. Ownership interests in the 2019 Series A Bonds may be purchased in authorized denominations of \$5,000 and any integral multiple thereof. Payments of principal of, premium, if any, and interest on the 2019 Series A Bonds is payable by the Trustee to DTC, which is obligated in turn to remit such principal, premium, if any, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the 2019 Series A Bonds. See “APPENDIX C—BOOK-ENTRY ONLY SYSTEM.”

Redemption of 2019 Series A Bonds

Optional Redemption. The 2019 Series A Bonds are not subject to optional redemption prior to their stated maturities.

Extraordinary Redemption. The 2019 Series A Bonds are subject to redemption prior to their stated maturity, at the option of NCPA, in whole or in part (in such amounts as may be specified by NCPA) on any any date, from insurance or condemnation proceeds with respect to the Project or from any source of money if all or substantially all of the Project is damaged or destroyed, taken by any public entity in the exercise of its powers of eminent domain or disposed of or abandoned, at a redemption price equal to the principal amount of the 2019 Series A Bonds to be redeemed, plus unpaid accrued interest thereon to the date fixed for redemption, without premium.

Selection of 2019 Series A Bonds for Redemption. NCPA may select the maturities of the 2019 Series A Bonds and the principal amount of each such maturity to be redeemed in its sole discretion. Subject to the terms of the representation letter with the securities depository of the 2019 Series A Bonds, whenever provision is made in the Indenture for the redemption of less than all of the 2019 Series A Bonds of like maturity, the Trustee will select the 2019 Series A Bonds to be redeemed from all 2019 Series A Bonds of such maturity subject to redemption and not previously called for redemption, at random in any manner which the Trustee in its sole discretion may deem appropriate and fair.

Notice of Redemption. The Indenture requires the Trustee to give notice of the redemption of any 2019 Series A Bonds not less than 30 days nor more than 60 days prior to the redemption date, to DTC, as the securities depository and the registered Owner of the 2019 Series A Bonds, by electronic means of communication or by first-class mail; or, if the book-entry system as described in Appendix C has been discontinued, such notice is to be given to the Owners of any 2019 Series A Bonds designated for redemption in whole or in part, by first-class mail, postage prepaid, at their last address appearing upon the bond registration books. Such notice is also to be given to EMMA by electronic means of communication, or to such other securities depositories or information services as NCPA may designate in writing to the Trustee.

Among other things, such notice will state that on the redemption date there will become due and payable on each 2019 Series A Bond to be redeemed the redemption price thereof, or the redemption price of the specified portions of the principal thereof in the case of 2019 Series A Bonds to be redeemed in part only, together with unpaid accrued interest to the redemption date, and that, if moneys sufficient to pay the redemption price of, and unpaid accrued interest on, the 2019 Series A Bonds to be redeemed shall be available for such payment, from and after such redemption date, interest on such 2019 Series A Bonds will cease to accrue and be payable. Receipt of such notice will not be a condition precedent to such redemption and failure so to receive such notice or any defect in such notice will not affect the validity of the proceedings for the redemption of 2019 Series A Bonds.

Unless at the time of giving of the notice of redemption of 2019 Series A Bonds to be redeemed at the option of NCPA, such 2019 Series A Bonds shall be deemed to have been paid within the meaning of the Indenture, such redemption notice shall state that the redemption is conditional upon the receipt by the Trustee, on or prior to the date fixed for such redemption, of moneys sufficient to pay the principal of, and premium, if any, and unpaid accrued interest to the redemption date on, such 2019 Series A Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and NCPA shall not be required to redeem such 2019 Series A Bonds. In the event a notice of redemption of 2019 Series A Bonds contains such a condition and such moneys are not so received, the redemption of the 2019 Series A Bonds as described in the conditional notice of redemption shall not be made and the Trustee shall, within a reasonable time after the date on which such redemption was to occur, give notice to the persons and in the manner in which the notice of redemption was given, that such moneys were not so received and that there will be no redemption of 2019 Series A Bonds pursuant to the notice of redemption.

SECURITY AND SOURCES OF PAYMENT FOR THE 2019 SERIES A BONDS

Pledge Effected by the Indenture

The 2019 Series A Bonds and any other Bonds issued under and pursuant to the Indenture will be special, limited obligations of NCPA payable solely from, and secured as to the payment of the principal and redemption price thereof and interest thereon solely by, the Trust Estate, which includes Project Revenues (which consist primarily of payments received by NCPA from the Project Participants pursuant to the Unit One Member Agreement) pledged and assigned pursuant to the Indenture. See “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS – Summary of Certain Provisions of the Indenture – Pledge Effected by the Indenture.”

The Trust Estate includes (a) subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, (i) the Project Revenues and (ii) all amounts on deposit in the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund, including the investments, if any, thereof; and (b) all of NCPA’s right, title and interest in and to the Unit One Member Agreement; provided that the pledge of the Project Revenues and amounts in the Revenue Fund and NCPA’s right, title and interest in and to the Unit One Member Agreement shall be on a parity with any pledge thereof securing Parity Debt (as hereinafter defined), and subject to the release of said right, title and interest in and to the Unit One Member Agreement upon the payment or defeasance of the 2019 Series A Bonds.

Project Revenues include (i) all revenues, income, rents and receipts derived from or attributable to the Project or to the payment of the Costs thereof received or to be received by NCPA, including without limitation payments from the Project Participants pursuant to the Unit One Member Agreement and amounts received by NCPA pursuant to any other contract or arrangement for the sale by NCPA of the capacity, use or service of the Project, (ii) the proceeds of any insurance, including the proceeds of any self insurance fund, covering business interruption loss relating to NCPA’s interest in the Project, and (iii) interest received or to be received on any moneys or securities held pursuant to the Indenture and required to be paid into the Revenue Fund.

The 2019 Series A Bonds and the interest thereon will be payable solely from the funds pledged pursuant to the Indenture, and shall not constitute a charge against the general credit or other funds of NCPA. Neither the faith and credit nor the taxing power of the State of California or any public agency thereof (including NCPA) or any Member of NCPA or any Project Participant is pledged to the payment of the principal of, premium, if any, or interest on the 2019 Series A Bonds. NCPA has no taxing power. Neither the payment of the principal or premium, if any, of, or interest on, the 2019 Series A Bonds constitutes a debt, liability or obligation of the State of California or any

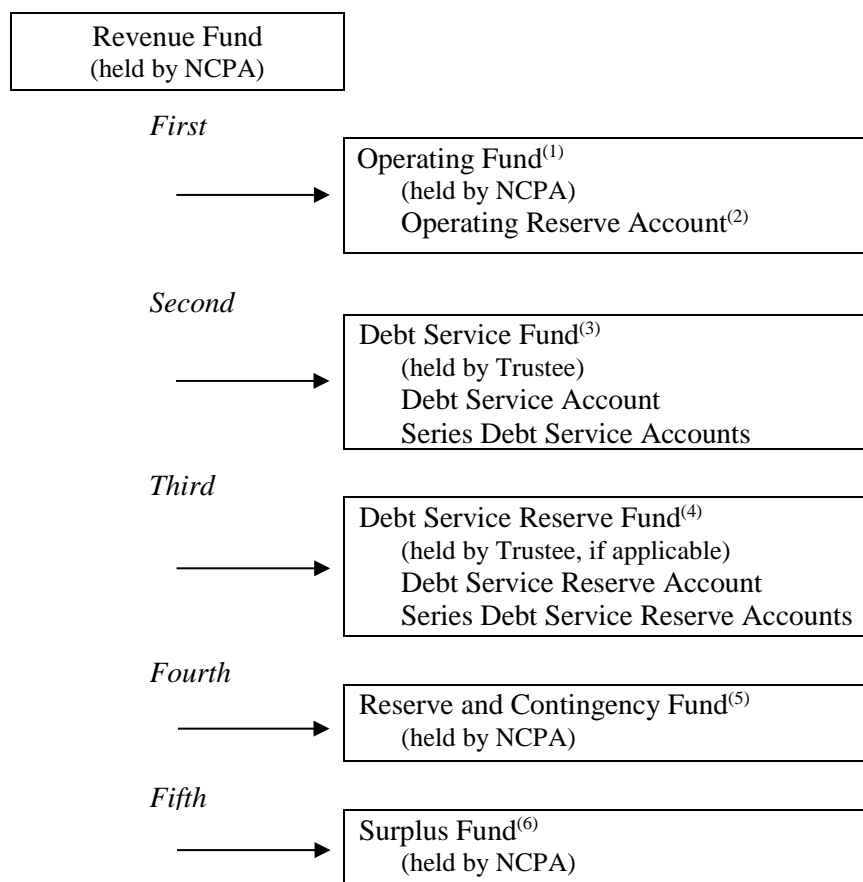
public agency thereof (other than NCPA) or of any member of NCPA or any Project Participant. The Commissioners, directors, officers and employees of NCPA shall not be individually liable on the 2019 Series A Bonds or in respect of any undertakings by NCPA under the Indenture.

See “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS” hereto for further discussion of certain of the terms and provisions of the Indenture.

Order of Application of Project Revenues

Pursuant to the Indenture, all Project Revenues received are to be deposited promptly in the Revenue Fund upon receipt thereof. Amounts in the Revenue Fund are to be paid monthly in the following order of priority for application therefrom as follows:

[Remainder of page intentionally left blank.]



⁽¹⁾ Amounts in the Operating Fund are to be applied for the payment of NCPA Operating Expenses.

⁽²⁾ Moneys may be deposited in the Operating Reserve Account or otherwise set aside in the Operating Fund as working capital or a reserve for working capital. Amounts in the Operating Reserve Account, if any, shall be paid out from time to time by NCPA for reasonable and necessary NCPA Operating Expenses in the event that other moneys in the Operating Fund available for such purpose are insufficient therefor.

⁽³⁾ Within the Debt Service Fund, the Debt Service Account is established for the payment of Bonds that are Participating Bonds. A separate Series Debt Service Account is to be established for the payment of each Series of Bonds that are not Participating Bonds. The 2019 Series A Bonds are not Participating Bonds and a separate 2019 Series Debt Service Account is established for the payment of the 2019 Series A Bonds. The Indenture provides that Future Bonds will be Participating Bonds unless otherwise provided in the Supplemental Indenture authorizing such Future Bonds.

⁽⁴⁾ Within the Debt Service Reserve Fund, the Debt Service Reserve Account is established to secure Bonds that are Participating Bonds. Amounts in the Debt Service Reserve Account are available to fund deficiencies in the Debt Service Account for Participating Bonds. **The 2019 Series A Bonds are Non-Participating Bonds and are not secured by amounts in the Debt Service Reserve Account and no Series Debt Service Reserve Account is being established for the 2019 Series A Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2019 SERIES A BONDS – No Debt Service Reserve Account for 2019 Series A Bonds.”** The Indenture provides that Future Bonds will be Participating Bonds unless otherwise provided in the Supplemental Indenture authorizing such Future Bonds. Future Bonds may be supported by amounts in a Series Debt Service Reserve Account established for such Future Bonds or may be issued with no debt service reserve.

⁽⁵⁾ Amounts in the Reserve and Contingency Fund (currently \$0) shall be applied to the cost of renewals, replacements, extensions, betterments, and improvements to the Project and to the payment of extraordinary operation and maintenance costs and contingencies for the Project. Amounts in the Reserve and Contingency Fund, if any, are available to fund deficiencies in Debt Service Fund or Debt Service Reserve Fund if there are not on deposit in the Surplus Fund available moneys to cure any such deficiency.

⁽⁶⁾ Amounts in the Surplus Fund are to be applied to make up deficiencies in the Debt Service Fund, the Debt Service Reserve Fund and the Reserve and Contingency Fund, and may be applied, upon a determination of NCPA, for other specified purposes, including any other lawful purpose of NCPA related to the Project.

See “APPENDIX D–SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS – Summary of Certain Provisions of the Indenture” for further discussion of certain of the terms and provisions of the Indenture relating to the application of Project Revenues.

NCPA Rate Covenant

Pursuant to the Indenture, NCPA has covenanted to establish rates and charges, and cause to be collected amounts in connection with the Project and the Unit One Member Agreement, as shall be required to provide revenues in the Revenue Fund at least sufficient in each Fiscal Year, together with the other available funds, for the payment of: (i) NCPA Operating Expenses during such Fiscal Year; (ii) Debt Service on the Bonds and debt service on Parity Debt for such Fiscal Year; (iii) if applicable, the amount, if any, to be paid during such Fiscal Year into the Debt Service Reserve Fund (and the Accounts therein); (iv) the amount, if any, to be paid during such Fiscal Year into the Reserve and Contingency Fund; and (v) all other charges or other amounts related to the Project, the Unit One Member Agreement or the Bonds howsoever payable during such Fiscal Year. See “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS – Summary of Certain Provisions of the Indenture – Rate Covenant.”

No Debt Service Reserve Account for 2019 Series A Bonds

No debt service reserve account will be established to secure the 2019 Series A Bonds.

Pursuant to the Indenture, all future Series of Bonds other than Bonds authorized by a Supplemental Indenture that provides that such Bonds are not “Participating Bonds” will be secured by the Debt Service Reserve Account for all Participating Bonds. There may be established for any future Series of Bonds that are not Participating Bonds a separate Series Debt Service Reserve Account for such Series. Amounts on deposit in any Debt Service Reserve Account for any Participating Bonds or on deposit in any other Series Debt Service Reserve Account for any other Series of Bonds shall be used and withdrawn as provided in the Supplemental Indenture of Trust authorizing the issuance of such Participating Bonds or other Series of Bonds. Any amounts on deposit in the Debt Service Reserve Account for Participating Bonds or on deposit in any other Series Debt Service Reserve Account for any other Series of Bonds will not in any manner secure, and will not be available for the payment of, the 2019 Series A Bonds.

See “APPENDIX D–SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS – Summary of Certain Provisions of the Indenture – Application of Debt Service Reserve Fund.”

Additional Bonds

NCPA (i) may issue Bonds under and secured by the Indenture to refund bonds previously issued and Outstanding thereunder; (ii) may, although it does not expect to, issue Additional Bonds to finance all or a portion of the costs of any Capital Improvement to the Project; and (iii) may issue bonds, notes, installment sale obligations, lease obligations or other evidences of indebtedness and reimbursement agreements and other contracts relating to credit enhancement with respect to any of the foregoing (“Parity Debt”) in accordance with the requirements of the Indenture. For further information, “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS – Summary of Certain Provisions of the Indenture – Additional Bonds,” “– Refunding Bonds” and “– Parity Debt.”

Unit One Member Agreement

Project Participants’ Take-or-pay Obligation. The Unit One Member Agreement authorizes NCPA to fix charges to the Project Participants to produce revenues to NCPA equal to the amounts

anticipated to be needed to meet the total costs of NCPA to provide capacity and energy from Unit One, including debt service on the Bonds; operation, maintenance and replacement costs for Unit One; costs and expenses for delivering Project capacity and energy; and all other costs of the Project. The Unit One Member Agreement further provides that, to the extent that the funds provided thereunder and described in the preceding sentence are not sufficient for such purposes, the Project Participants shall pay an amount equal to their Project Participation Percentage of debt service on the Bonds, notes and other evidences of indebtedness, reserves therefor, and all other payments required to be made under the Indenture, whether or not Unit One is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Unit One output or the power and energy contracted for in whole or in part for any reason whatsoever.

Operating Expense. Each Project Participant shall make payments under the Unit One Member Agreement from the Revenues (as defined in the Unit One Member Agreement) of, and as an operating expense of, its electric system. Nothing in the Unit One Member Agreement shall prohibit any Project Participant from using any other funds and revenues to satisfy the provisions thereof.

Project Participants' Rate Covenants. Each Project Participant agrees to establish and collect fees and charges for electric capacity and energy furnished through facilities of its electric system sufficient to provide Revenues adequate to meet its obligations under the Unit One Member Agreement and to pay any and all other amounts payable from or constituting a charge and lien upon any or all such Revenues.

Increase in Non-defaulting Unit One Project Participants' Original Project Participation Percentage. Upon the failure of any Project Participant to make any payment, which failure constitutes a default under the Unit One Member Agreement, and except as sales and transfers are made pursuant thereto, the Unit One Member Agreement provides that the Project Participation Percentage of each non-defaulting Project Participant shall be automatically increased for the remaining term of the Unit One Member Agreement, pro rata with those of the other non-defaulting Project Participants thereunder; provided, however, that the sum of such increases for any non-defaulting Project Participant shall not exceed, without written consent of such non-defaulting Project Participant, an accumulated maximum of 25% of the non-defaulting Project Participant's original Project Participation Percentage in the Project.

Transfer, Sale or Assignment. Each Project Participant has the right to make transfers, sales and/or assignments of its interests in Project capacity and energy and rights thereto; provided that no such transfer, sale or assignment shall adversely affect the tax-exempt status of interest on Bonds issued under the Indenture. No such transfer, sale or assignment shall relieve the Project Participant of its obligations under the Unit One Member Agreement.

For further information regarding the Unit One Member Agreement, see APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS – Summary of Certain Provisions of the Unit One Member Agreement.”

Limitations on Remedies

The rights of the owners of the 2019 Series A Bonds are subject to the limitations on legal remedies against cities and other public agencies in the State. Additionally, enforceability of the rights and remedies of the owners of the 2019 Series A Bonds, and the obligations incurred by the NCPA and the Project Participants, may become subject to the following: the Federal Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor's rights generally, now or hereafter in effect; equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the

interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the owners of the 2019 Series A Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

NORTHERN CALIFORNIA POWER AGENCY

Background

NCPA is a joint exercise of powers agency formed under the Act and the NCPA Joint Powers Agreement now among Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Oakland (acting by and through its Board of Port Commissioners), Palo Alto, Redding, Roseville, Santa Clara, Shasta Lake, Ukiah, Truckee Donner, and BART as members, and Plumas-Sierra, as an associate member (herein collectively referred to as the “Members” and individually as a “Member”).

Under the terms of the NCPA Joint Powers Agreement entered into by all Members, NCPA possesses the general powers to acquire, purchase, generate, transmit, distribute and sell electrical capacity and energy. Specific powers include the power to enter into contracts, acquire and construct electric generating facilities, set rates, issue revenue bonds and notes and acquire property by eminent domain.

The Facilities Agreement, originally executed by the NCPA Members in 1993, and superseded by the Amended and Restated Facilities Agreement, dated as of October 1, 2014 (the “Facilities Agreement”), provides for the development of all projects undertaken by NCPA in three separate phases: (i) the initial phase of general investigation funded by NCPA’s general fund; (ii) the second phase whereby Members of NCPA electing to participate in the project execute a project agreement to provide for the cost of development of the project (now referred to as an “NCPA Project”); and (iii) the third phase during which all remaining aspects, including financing, construction and operation of the NCPA Project are undertaken. Pursuant to the Facilities Agreement and NCPA’s other governing member services agreements, NCPA’s administrative, general and occupancy costs and expenses, including costs and expenses of the employees of NCPA (including salaries, wages and retirement benefits), are paid by NCPA Members based on an agreed upon cost allocation methodology.

Members of NCPA have no financial or other responsibility or liability associated with the acquisition, construction, maintenance, operation or financing of any NCPA project pursuant to the NCPA Joint Powers Agreement. Members become obligated for payments with respect to a NCPA project only as participants with respect to such project as set forth in an agreement with NCPA separate from the NCPA Joint Powers Agreement.

NCPA has supplied many services to its Members in the past and expects to continue to do so in the future. NCPA has been instrumental in litigating and negotiating with Pacific Gas and Electric Company (“PG&E”), the California Independent System Operator (the “CAISO”) and the Western Area Power Administration of the federal government (“Western”) to keep wholesale power and transmission and other ancillary services rates at levels which have resulted in substantial savings when compared to rates sought by each of those suppliers. It is anticipated that NCPA will continue to litigate and/or negotiate on behalf of its Members to maintain rates at levels which will result in continued advantage to its Members.

NCPA’s audited financial statements for the fiscal years ended June 30, 2019 and 2018 are attached as APPENDIX B.

Organization and Management

NCPA's governing body (the "Commission") is composed of one representative from each Member, each such representative being designated a Commissioner. The Commission is given the general management of the affairs, property and business of NCPA and is vested with all powers of NCPA. Under the NCPA Joint Powers Agreement, associate Members generally do not have a voting seat on the Commission, except as may be provided in a project agreement.

The management of NCPA is responsible for various areas of administration and planning of NCPA's operations and affairs. The overall management is under the direction of NCPA's General Manager, who serves at the discretion of the Commission. NCPA is organized into four separate divisions: (i) generation services, (ii) power management, (iii) legislative and regulatory, and (iv) administrative services.

Set forth below is a brief biography of each of NCPA's senior managers.

RANDY S. HOWARD, General Manager, was appointed General Manager of NCPA in January 2015. Prior to accepting the position at NCPA, Mr. Howard was the Senior Assistant General Manager of the Power System at Los Angeles Department of Water and Power ("LADWP"). Mr. Howard has held previous LADWP positions as Executive Director of Customer Services, Director of Power System Planning and Development, and the Chief Compliance Officer in the Power System Executive Office. Mr. Howard is currently leading NCPA forward with several major strategic initiatives to address member issues and opportunities. Mr. Howard presents frequently before governance bodies, including the NCPA Board, and local, State and federal agencies on issues of importance to utilities. Mr. Howard has held many previous engineering and customer service management positions at LADWP. Mr. Howard has an undergraduate degree in Electrical Engineering from California State University, Sacramento and a master's degree in Business Administration from Pepperdine University.

JANE E. LUCKHARDT, Esq., General Counsel, joined NCPA on May 1, 2017. Ms. Luckhardt received her Juris Doctorate from Stanford Law School, and her Bachelor of Science degree in Construction Management from California Polytechnic State University, San Luis Obispo, California. Prior to joining NCPA, Ms. Luckhardt was a partner at the boutique energy law firm of Day Carter Murphy LLP and previously at Downey Brand, LLP, where she served in several leadership roles including Assistant to the Managing Partner, Executive Committee Member and Practice Group Leader for the Energy, Land Use and Mining Practice Group. Ms. Luckhardt also serves as the Vice President of the Power Association of Northern California, an energy trade group located in San Francisco, California. Ms. Luckhardt writes and speaks on issues facing the energy industry for energy trade groups and at legal conferences.

MONTY HANKS, Assistant General Manager, Finance/Administrative Services, Chief Financial Officer received his master's degree in Business Administration and a Bachelor of Science degree in Business Administration (Finance concentration) from California State University, Sacramento. Mr. Hanks has over 20 years of financial experience, including experience working with an electric, water, wastewater and solid waste utilities. Before joining NCPA in February 2017, Mr. Hanks was employed by the City of Roseville for 15 years serving in the role of Finance Director. At NCPA, Mr. Hanks oversees the Administrative Services division which includes finance, accounting, power settlements, information technology, human services, risk management and facilities management.

JANE DUNN CIRRINCIONE, Assistant General Manager, Legislative and Regulatory, received a master's degree in Public Administration from the University of Southern California, and a Bachelor of Science degree in Political Science from the University of Santa Clara in Santa Clara, California and the London School of Economics. Ms. Cirrincione has over 30 years of experience in the energy and environmental policy arena. Prior to joining NCPA, she was a Senior Government Relations Representative

for the American Public Power Association (“APPA”) in Washington, D.C. APPA is the national trade association representing the country’s over 2,000 public power systems. Before joining APPA, she was the Director of Legislative Programs for the National Hydropower Association, representing all sections of the U.S. hydroelectric industry. She also spent several years on Capitol Hill as a Legislative Assistant for Congressman Don Edwards working on environmental and wildlife issues impacting the San Francisco Bay. Before moving to Washington, D.C., she worked for the U.S. Fish and Wildlife Service at the Sacramento National Wildlife Refuge. Ms. Cirrincione was the 2006 recipient of the Robert E. Roundtree Rising Star Award recognizing future leaders of public power systems.

TONY ZIMMER, Assistant General Manager, Power Management, began working at NCPA in July of 2002. Mr. Zimmer received a master’s degree in Business Administration, and a Bachelor of Science degree in Finance from the California State University, Sacramento. Mr. Zimmer’s experience includes contract development and negotiation, policy and procedure development, resource development and integration, settlements, CAISO market design and advocacy, and data analysis and system design. Mr. Zimmer’s primary responsibilities include managing and directing Power Management activities at NCPA, development and authorization of regulatory filings made on behalf of NCPA Members and customers, direction of contract development, maintenance and revision activities required to support NCPA Member/customer interconnection and portfolio management needs, and management of staff assigned to functional areas such as Western advocacy, internal system design and integration, and policy and regulatory requirements.

JOEL LEDESMA, Assistant General Manager, Generation Services, started with NCPA in July 2019. Prior to accepting this position at NCPA, Mr. Ledesma was appointed by California Governor Jerry Brown in July 2017 to serve as Deputy Director of the California Department of Water Resources (“DWR”) with overall responsibility for the State Water Project. The State Water Project is the largest state-owned water project in the nation, including 700 miles of aqueducts, 36 hydro storage reservoirs, 20 pumping plants, four pumping/generating plants; and five hydroelectric power plants with a peak load of 2,200 MW and 1,700 MW installed generating capacity. With 31 years at DWR, Mr. Ledesma held previous positions as Assistant Division Chief of Operations and Maintenance, Chief of State Water Project Operations, and Chief of Delta Field Division. Mr. Ledesma is currently leading Generation Services for NCPA, managing \$1.5 billion of public investment in a diverse generation portfolio on behalf of 16 public power systems throughout Northern California that serve over 700,000 electric customers. Mr. Ledesma has a Bachelor of Science in Electrical Engineering from California State University, Sacramento.

NCPA Power Pool

NCPA operates a power pool that includes the following Members: Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Plumas Sierra, the Port of Oakland and Ukiah (each, an “NCPA Pool Member”). The ten NCPA Pool Members’ service areas are interconnected to the CAISO-controlled grid. NCPA operates a central dispatch facility (the “Central Dispatch Center”) at NCPA’s headquarters. The Central Dispatch Center balances loads and resources pursuant to the Third Amended and Restated NCPA Metered Subsystem Aggregation Agreement (the “MSSA”), as such may be amended from time to time, with the CAISO (as described below) for the ten NCPA Pool Members, and Santa Clara. The Central Dispatch Center separately coordinates with Roseville to schedule Roseville’s entitlement to the Project output across the CAISO-controlled grid as requested by Roseville. The Central Dispatch Center also monitors and controls load and voltage levels of the Project, and enters into buy and sell transactions with other utilities throughout the western United States and Canada and regulates various hydroelectric facilities in coordination with the CAISO to maintain a safe and reliable interconnected system.

NCPA operates according to the terms and conditions of the CAISO tariff and the MSSA, the original form of which was approved by FERC in 2002 and as has been amended and restated as needed from time to time to conform to applicable market rules established by the CAISO and FERC. The MSSA

identifies operational terms and conditions that vary from the CAISO tariff, largely allowing NCPA Members to continue to operate their respective systems as vertically integrated utilities by generally self-providing for resources and services otherwise procured through the CAISO's markets. In conjunction with the execution of the MSSA, NCPA and PG&E are parties to an Interconnection Agreement (the "NCPA-PG&E Interconnection Agreement") that provides for the terms and conditions for connecting NCPA resources and member loads to the CAISO-controlled grid (or PG&E wholesale transmission system), where such CAISO-controlled grid facilities are owned by PG&E and transferred to CAISO operational control through a Transmission Control Agreement between PG&E and the CAISO. Santa Clara has separate agreements for the services provided under the MSSA and NCPA-PG&E Interconnection Agreement.

Wholesale Power Trading and Other Activities

NCPA trades in the Western wholesale electricity markets to maximize the value of its transmission and generation assets and to minimize its cost of power supply for its Members. NCPA has engaged in wholesale market transactions since 1984. See also "LITIGATION – California Energy Market Dysfunction, Refund Dispute and Related Litigation" for certain information regarding past disruptions and related disputes arising in such markets following the partial deregulation of the electricity markets pursuant to AB 1890 enacted in 1996 and subsequent developments.

In addition to the wholesale energy market services NCPA supplies to its Members, NCPA also provides a variety of wholesale energy market services, including wholesale power trading, to certain non-Member customers. Currently, NCPA provides various scheduling, operating, and portfolio management services to Merced Irrigation District and Placer County Water Agency, as well as to three community choice aggregators ("CCAs"): Pioneer Community Energy, East Bay Community Energy, and San Jose Clean Energy. Such services are provided on a fee-for-service basis. NCPA has made an effort to identify and mitigate any potential counterparty risks in its service agreements with the non-Member entities to which it provides wholesale energy market services. NCPA only carries liability to the extent of NCPA's insurance coverage. In addition, NCPA requires these customers to deposit an amount equal to the highest three months of estimated CAISO invoices into a security account held by NCPA.

Investment of NCPA Funds

All funds of NCPA (except bond proceeds which are invested pursuant to the indenture under which such bonds are issued) are invested in accordance with NCPA's investment policy and guidelines (the "Investment Policy") as authorized by Sections 53600 et seq. of the Government Code of the State of California. The Investment Policy and monthly activity reports are reviewed by NCPA's Finance Committee and approved by the NCPA Commission.

The following securities, if and to the extent the same are at the time legal and in compliance with the applicable bond covenants and agreements for investment of NCPA's funds, are authorized investments under the Investment Policy: (i) securities of the U.S. Government, or its agencies, (ii) certificates of deposit (or time deposits) placed with commercial banks and/or savings and loan companies, (iii) negotiable certificates of deposit, (iv) bankers acceptances, (v) Local Agency Investment Fund (State Pool) demand deposits, (vi) repurchase agreements, (vii) passbook savings account demand deposits, (viii) municipal bonds, (ix) commercial paper, (x) medium term corporate notes, and (xi) California Asset Management Program (CAMP).

The Investment Policy provides the following guidelines, among others. All rated securities must be rated by a nationally recognized statistical rating organization (NRSRO) as "A" or its equivalent or better. All certificates of deposit must mature within one year. All collateralized certificates of deposit must mature within one year. Certificates of deposit with a face value in excess of \$100,000 will be collateralized

by Treasury Department securities or first mortgage loans. The Treasury bills or notes must be at least 110% of the face value of the certificate of deposit collateralized in excess of the first \$100,000. The value of first mortgages must be at least 150% of the face value of the certificate of deposit balance secured in excess of the first \$100,000. The portfolio will be diversified with holdings from at least several of the major eligible market sectors. Except for obligations issued or guaranteed by the U.S. Government, federal agencies or government-sponsored corporations and the Local Agency Investment Fund, no more than 10% of an NCPA construction project or of the NCPA operating funds portfolio will be invested in the securities of any one issuer. Unless otherwise restricted, all holdings will be of sufficient size and held in issues which are actively traded to facilitate transactions at a minimum cost and accurate market valuation. Buying and selling securities before settlement or the use of reverse repurchase agreements for speculative purposes is not authorized. A reverse repurchase agreement may be used only in infrequent circumstances and only to prevent a material loss that would otherwise result from the sale of an investment for liquidity purposes. Any reverse repurchase agreements must be specifically reported to the Commission along with the reasons therefor on a timely basis.

The Investment Policy may be changed at any time at the discretion of the Commission subject to the State law provisions relating to authorized investments. Any exception to the Investment Policy must be formally approved by the Commission. There can be no assurance, therefore, that the State law and/or the Investment Policy will not be amended in the future to allow for investments which are currently not permitted under such State law or the Investment Policy, or that the objectives of NCPA with respect to investments will not change.

THE PROJECT

Description

The Project consists of a natural gas-fired combustion turbine power generating station, Unit One, with a design rating of 49.9 MW located in the City of Lodi. Construction of the Project began in September 1993, with commercial operation commencing in 1996. The power generating station consists of a single natural gas-fired steam injected gas turbine (“STIG”), generator, and required auxiliary and electrical interconnection systems.

The Project is owned and operated by NCPA, and the capacity and energy thereof purchased by Alameda, Lodi, Lompoc and Roseville. Alameda, Lodi, Lompoc and Roseville have participation shares in the Project of 19.00%, 39.50%, 5.00%, and 36.50%, respectively. NCPA has entered into arrangements on behalf of the Project Participants to provide for a gas supply for the Project. See “OTHER NCPA PROJECTS – Natural Gas Supply Contracts.” Existing gas supply contracts can provide sufficient gas to operate the unit at up to its full rated capacity. Unit One is economically dispatched to meet the Project Participants’ load, other NCPA Members’ load or to sell power to third parties depending on natural gas prices and electric energy prices. This utilization of the Project is intended to yield the minimum net annual project cost to the Project Participants.

Set forth below are the operating statistics for the Project for fiscal years ended June 30, 2015 through June 30, 2019.

**Combustion Turbine Project, Number Two
Unit One
Operating Statistics**

	Fiscal Year Ended June 30,				
	2015	2016	2017	2018	2019
Total Net Generation (GWh)	4	3	5	9	14
Peak Generating Capacity (MWh)	50	50	50	50	50
Average Generating Capacity (MWh)	40	46	40	42	43
Availability Factor(%) ⁽¹⁾	91	96	92	86	96
Plant Capacity Factor (%) ⁽²⁾	1	1	1	2	4

⁽¹⁾ The Availability Factor is the ratio of hours in the period that the unit is capable of operating at some level to the number of hours in the period.

⁽²⁾ The Plant Capacity Factor is the ratio of the net energy generated to the output if it had operated at full nameplate capacity the entire time. It reflects the unit availability as well as the actual need for power produced by the unit.

NCPA has estimated the average cost of capacity from the Project to be \$11.37/kW-mo. for 2019-20. NCPA has estimated the variable operating cost of the Project to be 1.42 cents/kWh for 2019-20.

The Project directly connects to PG&E's 230,000 volt transmission system under the operational control of the CAISO.

Background

In 1992, NCPA undertook the Project, originally as its "Multiple Capital Facilities Project". The Project originally included three components: (i) one power generating station, Unit One, with a design rating of 49.9 MW located in the City of Lodi, (ii) one power generating station, Unit Two, with a design rating of 49.9 MW located in the City of Ceres for Turlock, and (iii) certain improvements to the electric system of the City of Lodi (the "Lodi Facilities"). NCPA financed the original Multiple Capital Facilities Project through the issuance of \$152.3 aggregate principal amount of Multiple Capital Facilities Revenue Bonds.

In April 1998, Turlock refinanced the costs of its Unit Two project and caused the defeasance of the approximately \$64.3 million of Multiple Capital Facilities Revenue Bonds.

The acquisition and construction of the Lodi Facilities could not be undertaken, as contemplated, by the City of Lodi, and the Lodi Facilities project was abandoned. Payment of the then outstanding Multiple Capital Facilities Revenue Bonds allocable to the Lodi Facilities, in the approximate principal amount of \$11.3 million, was provided for through the deposit of amounts in an irrevocable escrow fund (the "Lodi Facilities Escrow Fund") pursuant to an escrow agreement between NCPA and the trustee for the NCPA Multiple Capital Facilities Revenue Bonds. All of the outstanding Multiple Capital Facilities Revenue Bonds allocable to the Lodi Facilities were paid or redeemed by September 3, 2002.

In February 1999, NCPA issued \$67.8 million of its Capital Facilities Revenue Bonds, 1999 Refunding Series A (the "1999 Capital Facilities Revenue Bonds") for the purpose of effecting the crossover refunding of the portion of the Multiple Capital Facilities Revenue Bonds not previously refunded. As a result of the refunding, all of the outstanding Multiple Capital Facilities Revenue Bonds were paid or redeemed by September 3, 2002. In January 2010, NCPA issued \$55.1 million of its 2010 Refunding Series A Bonds to refund all of the then outstanding 1999 Capital Facilities Revenue Bonds. Approximately \$24.5 million of 2010 Refunding Series A Bonds was outstanding as of September 1, 2019.

The 2010 Refunding Series A Bonds are being refunded with proceeds of the 2019 Series A Bonds. See “PLAN OF REFUNDING.”

THE PROJECT PARTICIPANTS

General

The Project Participants and their Project Participation Percentages are shown on page (a) of this Official Statement.

The governing body of each Project Participant has approved the Unit One Member Agreement. The California Public Utilities Code authorizes the municipal Project Participants to “acquire...any public utility,” including the supply of light and power. In furtherance of such powers, a municipal corporation “may acquire...rights of every nature...when necessary to supply the municipality, or its inhabitants or any portion thereof, with the service desired.”

Members of NCPA have no financial or other responsibility or liability associated with the acquisition, construction, maintenance, operation or financing of a particular project other than as project participants with respect to such project as set forth in the related third phase agreement. The Unit One Member Agreement constitutes the third phase agreement with respect to the Capital Facilities Project.

Descriptions of the Significant Share Project Participants

The three Project Participants with the largest Project Participation Percentages are Alameda (19.00%), Lodi (39.50%) and Roseville (36.50%), which, in the aggregate, comprise 95.0% of the Project. The remaining Project Participant, Lompoc, has a Project Participation Percentage of 5.0%. Alameda, Lodi and Roseville are sometimes referred to herein as the “Significant Share Project Participants.” Brief descriptions of the Significant Share Project Participants, their service areas, existing power supply resources, customers, energy sales and revenues and expenses are set forth in “APPENDIX A – SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE PROJECT PARTICIPANTS.”

Electric Systems

Each Project Participant owns and operates an electric system for distribution of electric power and energy together with the general plant necessary to conduct its business. The electric systems of some of the Project Participants are among the oldest electric utilities in operation in California and some predate the existence of PG&E. The electric systems were founded during the period from 1887 to 1937. The Project Participants are all experienced in operating electric distribution systems.

All of the Project Participants provide, through NCPA projects, for a portion of their own power needs. Each of the Project Participants also obtains a portion of their power needs from Western. Roseville also derives a portion of its power from its own generating facilities. NCPA also purchases power from the market for certain of its Members (including the Project Participants, exclusive of Roseville) for periods of up to 30 days and for periods of up to five years (under separate project agreements) for Lodi and Lompoc. Delivery of all such power is made over the CAISO-controlled grid, the Balancing Area of Northern California (“BANC”), Western transmission facilities, the California-Oregon Transmission Project (“COTP”) or combinations of those transmission facilities and balancing areas.

Service Areas

The Project Participants provide retail electric service within their service areas pursuant to the authority of the Constitution of the State of California, Article XI, Section 9. Under California law, the

Project Participants have authority to acquire, construct, establish, enlarge, improve, maintain, own and operate electric distribution systems.

The retail customers of the Project Participants are located within their respective city boundaries and environs.

OTHER NCPA PROJECTS

Set forth below is a brief description of the NCPA resources in addition to the Project. Each such resource is financed under a separate agreement with the Members participating in such resource. No Member not a party to such agreement has any obligation to make payments in connection with such resources.

Participating NCPA Members occasionally make short-term and long-term assignments of entitlement rights to NCPA resources. Such assignment would not impact the underlying project participant obligations contained in the applicable agreement relating to such NCPA resource and each project participant remains obligated for all payments due from such project participant in the event moneys received from transferees pursuant to such arrangements are insufficient to satisfy all payments.

Lodi Energy Center Project

NCPA owns and operates a natural gas-fired, combined-cycle power generation plant located in the City of Lodi, San Joaquin County, California (the “Lodi Energy Center” or “LEC”). The electric generation components (the “Power Island”) of the Lodi Energy Center consists of the following components: (1) one natural gas-fired Siemens STGS-5000F combustion turbine-generator (CTG), with an evaporative cooling system and dry low-NOx combustors to control air emissions; (2) one 3-pressure heat recovery steam generator (HRSG), (3) a selective catalytic reduction (SCR) and carbon monoxide (“CO”) catalyst to further control NOx and CO emissions, respectively; (4) one Siemens SST-900RH condensing steam turbine generator (“STG”); (5) one natural gas-fired auxiliary boiler; (6) one 7-cell draft evaporative cooling tower; and (7) associated support equipment. The Lodi Energy Center was placed into commercial operation on November 27, 2012.

LEC is currently registered with a Pmax of 302 MW (increased from 280 MW in 2018). (The Pmax is a measure of the maximum normal capability of a generating unit that is utilized by the CAISO in determining the amount of capacity that can be counted toward meeting resource adequacy requirements.) NCPA intends to conduct further testing of the LEC facility in 2019 to increase the Pmax further as a result of transmission reconductoring completed by PG&E in 2018. LEC net generation for the last five fiscal years has been as follows:

Fiscal Year Ended June 30	LEC Net Generation (GWhs)
2015	1,668
2016	1,077
2017	300
2018	1,075
2019	1,382

The generation in the fiscal year ended June 30, 2015 reflects the then ongoing dry weather conditions. During 2015, California was experiencing one the most significant droughts in California recorded hydrologic history. During drought conditions, natural gas plants generally operate at higher output levels to make up for the loss of hydroelectric generation. In the fiscal year ended June 30, 2016,

California returned to normal rainfall amounts and the natural gas generation decreased accordingly. The reduced generation in the fiscal year ended June 30, 2017 was directly attributable to the increase in PG&E gas transportation costs. NCPA negotiated a special rate for gas transmission for LEC which went into effect during Fiscal Year 2017-18. PG&E's 2019 gas transmission rate case that will set rates for the period 2019 to 2021 is currently ongoing. On August 29, 2019, NCPA's Commission authorized the General Manager to execute a Negotiated Rate Contract with PG&E for gas transmission service. The negotiated gas rate was approved by the CPUC in September 2019, with the new rates effective as of October 1, 2019.

Pursuant to the Lodi Energy Center Power Sales Agreement (the "LEC Power Sales Agreement"), by and among NCPA and (i) the NCPA Member project participants: Biggs, Gridley, Healdsburg, Lodi, Lompoc, Plumas-Sierra, Santa Clara, Ukiah and BART; and (ii) the non-NCPA Member project participants: the City of Azusa, the Modesto Irrigation District, the Power and Water Resources Pooling Authority and the California Department of Water Resources (all such entities other than NCPA, collectively the "LEC Project Participants"), NCPA agreed to construct and operate the Lodi Energy Center and has sold the capacity and energy of the Lodi Energy Center to the thirteen LEC Project Participants on a "take-or-pay" basis, in accordance with their respective generation entitlement shares to the capacity and energy of the Lodi Energy Center.

NCPA financed a portion a portion of the costs of construction of the Lodi Energy Center through the issuance of revenue bonds: (i) its Lodi Energy Center Revenue Bonds, Issue One, issued on behalf of eleven of the thirteen participants in the Lodi Energy Center (being all of the above-named LEC Project Participants other than the Modesto Irrigation District and the California Department of Water Resources), of which \$220.9 million is outstanding as of September 1, 2019, and (ii) its Lodi Energy Center Revenue Bonds, Issue Two, issued on behalf of the California Department of Water Resources, of which \$110.2 million is outstanding as of September 1, 2019. The Modesto Irrigation District provided its own financing for its share of the estimated costs of construction of the Lodi Energy Center. See "APPENDIX A—SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE PROJECT PARTICIPANTS" for a discussion of the obligations of Lodi with respect to the Lodi Energy Center Project.

The Lodi Energy Center is operated and maintained by NCPA under the general direction of the LEC Project Participants pursuant to the LEC Power Sales Agreement and the Lodi Energy Center Project Management and Operations Agreement among NCPA and the LEC Project Participants.

Hydroelectric Project

NCPA's Hydroelectric Project Number One (the "Hydroelectric Project") consists of (a) three diversion dams, (b) the 246.86-MW Collierville Powerhouse, (c) the Spicer Meadow Dam with a 6.0-MW powerhouse, and (d) associated tunnels located essentially on the North Fork Stanislaus River in Alpine, Tuolumne and Calaveras Counties, California, together with required transmission and related facilities.

The Hydroelectric Project, with the exception of certain transmission facilities, is owned by the Calaveras County Water District ("Calaveras") and is licensed by FERC, pursuant to a 50-year License (Project No. 2409) issued in 1982 to Calaveras. Pursuant to a Power Purchase Contract, NCPA (i) is entitled to the electric output, including capacity, of the Hydroelectric Project until February 2032, (ii) managed the construction of the Hydroelectric Project, and (iii) operates the generating and recreational facilities of the Hydroelectric Project. Under a separate FERC-issued license with an expiration date coterminous with the Hydroelectric Project No. 2409 license (Project No. 11197), NCPA holds the license and owns the 230 kV Collierville-Bellota and the 21 kV Spicer Meadows-Cabbage Patch transmission lines for Project No. 2409. NCPA also has a separate FERC license for Project No. 11563 (Upper Utica Project), which consists of three storage reservoirs that mainly feed the New Spicer Meadow Reservoir. This license expires in 2033. *Northern California Power Agency*, 104 F.E.R.C. ¶ 62,163 (2003). After the present FERC License for

Project No. 2409 expires in the year 2032, NCPA has the option to continue to purchase project capacity and energy during a subsequent license renewal period. It is currently estimated that the price will be significantly less than the comparable alternatives at that time. The purchase option includes all capacity and energy which is surplus to Calaveras’ needs for power within the boundaries of Calaveras County.

As with any hydroelectric generation project, the operation of the Hydroelectric Project is determined by consideration of its storage capacity, hydrology conditions, and available stream flows and requirements. The Hydroelectric Project has a 105-year record (1913 to 2018) of stream flows. Based upon the record, the Hydroelectric Project’s average production is estimated to be 512 GWh annually. The Hydroelectric Project is optimized together with NCPA’s other resources as determined by NCPA, to economically meet the load requirements of the respective project participants. The load-following characteristics of the Hydroelectric Project gives NCPA a great degree of flexibility in meeting the hourly and daily variations which occur in the project participants’ loads. The net Hydroelectric Project generation for the last five fiscal years has been as follows:

Fiscal Year Ended June 30	Hydroelectric Project Total Net Generation (GWh)
2015	164
2016	397
2017	945
2018	487
2019	852

NCPA financed the Hydroelectric Project through the issuance of Hydroelectric Project Number One Revenue Bonds, of which approximately \$265.7 million aggregate principal amount was outstanding as of September 1, 2019. Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, Santa Clara, Ukiah and Plumas-Sierra are participants in the Hydroelectric Project. See “APPENDIX A–SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE PROJECT PARTICIPANTS” for a discussion of the obligations of each of the Significant Share Project Participants with respect to the Hydroelectric Project.

NCPA has sold the energy and capacity of the Hydroelectric Project to the project participants therein pursuant to a “take-or-pay” power sales contract, which requires payments to be made whether or not the project is completed or operable. Each purchaser is responsible under the power sales contract for paying its entitlement share in the Hydroelectric Project of all of NCPA’s costs of the Hydroelectric Project, including debt service on the aforementioned bonds as well as a “step-up” of up to 25% in the event of the unremedied default of another project participant in the Hydroelectric Project.

Geothermal Project

NCPA has developed a geothermal project (the “Geothermal Project”) located on federal land in certain areas of Sonoma and Lake Counties, California (the “Geysers Area”). In addition to the geothermal leasehold, wells, gathering system and related facilities, the Geothermal Project consists of two electric generating stations (Plant 1 and Plant 2), with combined 165 MW (nameplate rating) turbine generator units utilizing low pressure, low temperature geothermal steam, associated electrical, mechanical and control facilities, a heat dissipation system, a steam gathering system, a transmission tapline and other related facilities. Geothermal steam for the project is derived from the geothermal property, which includes wellpads, access roads, steam wells and reinjection wells. NCPA formed two not-for-profit corporations controlled by its Members to own the generating plants of the Geothermal Project. NCPA manages the Geothermal Project for the corporations and is entitled to all the capacity and energy generated by the Geothermal Project.

As noted above, the Geothermal Project consists of two operating electric generating stations (Plant 1 and Plant 2), where Plant 1 contains two 55 MW (nameplate rating) turbine generator units, and Plant 2 contains one 55 MW (nameplate rating) turbine generator unit. Plant 1 and Plant 2 were originally developed and operated as separate projects referred to as “Geothermal Project Number 2” and “Geothermal Project Number 3,” respectively. Plant 1 became operational in 1983 and Plant 2 became operational in 1986. Plant 1 and Plant 2 are now operated together as the Geothermal Project pursuant to the terms of the Amended and Restated Geothermal Operating Agreement.

Steam for NCPA’s geothermal plants comes from lands in the Geysers Area, which are leased by NCPA from the federal government. NCPA operates these steam-supply areas. Operation of the geothermal plants at high generation levels, together with high steam usage by others in the same area, resulted in a decline in the steam production from the steam wells at a rate greater than expected. As a result, starting in 1988, NCPA has been taking steps to reduce the rate of steam production decline. NCPA entered into agreements with other geothermal operators in the Geysers Area to finance and construct the Southeast Geysers Effluent Pipeline Project, which was completed in September 1997 and began operating soon thereafter. The 26-mile pipeline collects wastewater from Lake County Sanitation District treatment plants at Clearlake and Middletown and delivers the wastewater to NCPA and the other Geysers steam field operator for injection into the steam field. In 2018, NCPA received approximately 40% of the wastewater for reinjections from this effluent pipeline.

NCPA has also implemented and continues to implement various operating strategies and modifications to further reduce the rate of decline in steam production. NCPA has modified all of the steam turbines and the associated steam collection system to enable generation with lower pressure steam and increased conversion efficiencies of the available steam resource.

Average annual generation of the Geothermal Project was approximately 100 MW gross (“MWG”) for calendar year (“CY”) 2018. Based on current operating protocols and forecasted operations, after CY 2018, both the average and peak capacity are expected to continue to decrease, reaching approximately 98.1 MW in CY 2019 and then steadily declining to 68 MWG by CY 2040. Under terms of the federal geothermal leasehold agreements, which became effective August 1, 1974, the leasehold had a 10-year primary term with provision for renewal as long thereafter as geothermal steam is produced or utilized, but not longer than 40 years. At the expiration of that period, if geothermal steam was still being produced, NCPA had a preferential right to renew the leasehold for a second term. In 2013, NCPA renewed the leasehold. The leasehold also requires NCPA to remove its leasehold improvements including the geothermal plants and steam gathering system when and if NCPA abandons the leasehold. Based upon a decommissioning costs study obtained by NCPA in December 2016, these decommissioning costs are currently estimated to total approximately \$64.8 million. NCPA has been collecting monies to pay the expected decommissioning costs since 2007 and holds \$20.2 million in a reserve for such purpose as of June 30, 2019. Collections towards future decommissioning costs are expected to be approximately \$1.7 million for Fiscal Year 2019-20.

Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, Santa Clara, Ukiah and Plumas Sierra, along with non-NCPA Member Turlock Irrigation District, participate in the Geothermal Project. NCPA has sold the capacity and energy of the Geothermal Project to the Geothermal Project participants on a “take-or-pay” basis, in accordance with their respective project entitlement percentages to the capacity and energy of the Geothermal Project. NCPA financed the Geothermal Project with Geothermal Project Number 3 Revenue Bonds, of which \$20.1 million were outstanding as of September 1, 2019. See “APPENDIX A–SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE PROJECT PARTICIPANTS” for a discussion of the obligations of each of the Significant Share Project Participants with respect to the Geothermal Project.

Geysers Transmission Project

In order to meet certain obligations required of NCPA to secure transmission and other support services for the Geothermal Project, NCPA has undertaken a geysers transmission project (the “Geysers Transmission Project”) with the Geysers Transmission Project participants. The Geysers Transmission Project includes (i) a co-tenancy interest in PG&E’s 230 kV line from Castle Rock Junction in Sonoma County to the Lakeville Substation (the “Castle Rock to Lakeville Line”), (ii) additional firm transmission rights in the Castle Rock to Lakeville Line and (iii) the Central Dispatch Facility.

Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, Ukiah and Plumas Sierra, are participants in the Geysers Transmission Project. NCPA financed the Geysers Transmission Project through the issuance of Transmission Project Number One Revenue Bonds, which bonds were retired as of August 15, 2010.

Combustion Turbine Project Number One

The Combustion Turbine Project Number One (the “Combustion Turbine Project”) originally consisted of five combustion turbine units, each nominally rated 25 MW, with two units located in each of Roseville and Alameda and one in Lodi. Sale of the two units located in Roseville to the City of Roseville (an original participant in the Combustion Turbine Project) was effective on September 1, 2010, and the remaining Combustion Turbine Project includes only the two units in Alameda and the one unit in Lodi.

The Combustion Turbine Project provides capacity (i) that is economically dispatched during the peak load period to the extent permitted by air quality restrictions and (ii) to be used to meet the certain capacity reserve requirements (*e.g.*, resource adequacy requirements). This resource provides the capacity below current spot market prices for capacity but as is typical of this type of technology, the average cost for power per kWh of power delivered to the participants in the Combustion Turbine Project is comparatively expensive.

Alameda, Healdsburg, Lodi, Lompoc, Santa Clara, Ukiah and Plumas-Sierra, are the current participants in Combustion Turbine Project. NCPA has sold the capacity and energy of the Combustion Turbine Project to the Combustion Turbine Project participants on a “take-or-pay” basis, in accordance with their respective project entitlement percentages to the capacity and energy of the Combustion Turbine Project. NCPA financed the Combustion Turbine Project through the issuance of Combustion Turbine Project Number One Revenue Bonds, which bonds were retired as of August 15, 2010.

Natural Gas Supply Contracts

NCPA, on behalf of the project participants of the Capital Facilities Project’s Unit One and the Combustion Turbine Project, has entered into a Master Transaction Confirmation that is appended to and made part of a Base Contract for Sale and Purchase of Natural Gas (the “Consolidated Natural Gas Agreement”), effective on October 30, 2012, with EDF Trading North America, LLC (“EDF”). The Consolidated Natural Gas Agreement provides gas supply and management services, including the following:

- Supply of spot market gas for the full daily output of Combustion Turbine Project Number One and Unit One of the Capital Facilities Project (approximately 35,136 MMBtu/day); and
- Scheduling, nomination, balancing and settlement services for NCPA gas supplies from third parties.

The contract with EDF automatically renews each year on January 1, unless terminated earlier by six months written notice by either party.

Pursuant to a 30-year agreement terminating in October 2023 with various natural gas pipeline management companies, NCPA has entitlement rights to natural gas pipeline capacity of approximately 2,743 MMBtu/day sourced at AECO (Alberta) and sinking at PG&E Citygate (California). The four pipeline segments that are included in the contiguous pipeline entitlement include pipeline contained in the following natural gas systems: NOVA Gas Transmission Ltd. (NOVA), Foothills Pipelines (Foothills), Gas Transmission Northwest (GTN), and PG&E's CGT (CGT). NCPA's natural gas pipeline rights are managed by Mercuria Energy America, Inc., pursuant to an Asset Management Agreement for Pipeline Transport Capacity dated January 1, 2015. For release of such natural gas pipeline to Mercuria Energy America, Inc., NCPA is paid the value of the unused pipeline capacity by the pipeline manager.

In addition, NCPA and EDF entered into an agreement to provide the gas supply and the nomination, imbalance and settlement services for NCPA's Lodi Energy Center, which became effective on September 1, 2016. See "– Lodi Energy Center Project" above.

Power Purchase and Natural Gas Contracts

Henwood Power Purchase Agreement. NCPA, on behalf of Alameda, entered into a power purchase agreement with Henwood Associates, Inc. for 440 kW of capacity and energy. The energy source for the facility is hydroelectric and the facility meets the qualifying facilities requirements, established by FERC. The facility output, which varies with hydrological conditions, has averaged about 2,000 megawatt hours ("MWhs") per year. Deliveries under the agreement began February 1, 2010 and will terminate on January 31, 2030.

Antelope Expansion Power Purchase Agreement. NCPA, on behalf of Biggs, Gridley, Healdsburg, Lodi and Port of Oakland, entered into a power purchase agreement with Antelope Expansion 1B, LLC, for a 33.78%, or approximately 17 MW, share of the output of the Antelope Expansion Phase 1 solar facility. The facility is a 51 MW photovoltaic plant under development in the City of Lancaster, Los Angeles County, California. The facility is expected to reach commercial operation on or about June 30, 2021. The term of the power purchase agreement is 20 years.

Market Purchase Program. NCPA, on behalf of Alameda, BART, Biggs, Gridley, Healdsburg, Lodi, Lompoc and Ukiah may enter into supply agreements for terms of up to five years utilizing NCPA Commission approved Edison Electric Institute and WSPP Inc. Purchase Agreements. Procurement terms and conditions are governed by a Market Purchase Program agreement between NCPA and the participating Members listed in the preceding sentence. Purchase amounts are limited to 115% of each participating members forecast net open position associated with the period of the procurement. The Program was approved by the NCPA Commission on July 26, 2007.

Natural Gas Program. NCPA, on behalf of Biggs, Gridley, Healdsburg, Lodi, Lompoc and Ukiah may enter into gas supply agreements using competitive bids submitted in response to a NCPA Request For Proposals ("RFP Process"), or (ii) through direct purchases from the State of California Department of General Services Natural Gas Services Program. Procurement terms and conditions are governed by a Natural Gas Program agreement between NCPA and the participating Members identified in the preceding sentence. Purchases are subject to limits as may be changed from time to time as outlined in the NCPA Energy Risk Management Policy and/or Regulations. The Natural Gas Program was approved by the NCPA Commission on March 24, 2011.

NCPA Services Agreements

BART Services Agreement. NCPA provides power supply and scheduling services to BART pursuant to a Single Member Services Agreement which was executed on December 1, 2005 (as amended from time to time). Under this agreement, NCPA procures power to meet BART's power supply needs utilizing NCPA Commission approved Edison Electric Institute and WSPP Inc. Purchase Agreements.

Non-Member Customer Services Agreements. NCPA, pursuant to individual Services Agreements, supplies a variety of wholesale energy market services to non-member customers, including, but not limited to, scheduling services, operating services, and portfolio management services. NCPA is currently providing non-member services to the Merced Irrigation District, Placer County Water Agency, Pioneer Community Energy, East Bay Community Energy, and San Jose Clean Energy, under Services Agreements that extend for varying terms ranging from December 31, 2019 to June 30 2022. See "NORTHERN CALIFORNIA POWER AGENCY – Wholesale Power Trading and Other Activities."

RATE REGULATION

Each Project Participant and NCPA sets rates, fees and charges for electric service. The authority of the Project Participants or NCPA to impose and collect rates and charges for electric power and energy sold and delivered is not subject to the general regulatory jurisdiction of the California Public Utilities Commission ("CPUC") and presently neither the CPUC nor any other regulatory authority of the State of California nor FERC approves such rates and charges. Although the retail rates of the Project Participants and NCPA are not subject to approval by any federal agency, the Project Participants and NCPA are subject to certain ratemaking provisions of the Federal Public Utility Regulatory Policies Act of 1978 ("PURPA") and Sections 211-213 of the Federal Power Act ("FPA"). It is possible that future legislative and/or regulatory changes could subject the rates and/or service areas of the Project Participants or NCPA to the jurisdiction of the CPUC or to other limitations or requirements.

FERC could potentially assert jurisdiction over rates of licensees of hydroelectric projects and customers of such licensees under Part I of the FPA, although it has not as a practical matter exercised or sought to exercise such jurisdiction to modify rates that would legitimately be charged. If it did assert such jurisdiction, the result might have some significance for NCPA and its Hydroelectric Project participants.

Under provisions of the FPA, FERC has the authority, under certain circumstances and pursuant to certain procedures, to order any utility (municipal or otherwise) to provide transmission access to others at FERC-approved rates. In addition, the Energy Policy Act of 2005 expanded FERC's jurisdiction to require municipal utilities that sell more than eight million MWhs of energy per year to pay refunds under certain circumstances for sales into organized markets. To date, neither NCPA nor any of the Project Participants meet this threshold requirement.

The California Energy Commission (the "CEC") is authorized to evaluate rate policies for electric energy as related to the goals of the Energy Resources Conservation and Development Act and to make recommendations to the Governor, the Legislature and publicly-owned electric utilities.

CONSTITUTIONAL LIMITATIONS IN CALIFORNIA AFFECTING FEES AND CHARGES

The following is a discussion of certain limitations under provisions of the California Constitution that may affect the rates, fees and charges imposed by the Project Participants for the electric services they provide.

Proposition 218 and Proposition 26

Proposition 218, a State ballot initiative known as the “Right to Vote on Taxes Act,” was approved by the voters of the State of California on November 5, 1996. Proposition 218 added Articles XIII C and XIII D to the State Constitution. Article XIII C imposes a majority voter approval requirement on local governments (including the Project Participants) with respect to taxes for general purposes, and a two-thirds voter approval requirement with respect to taxes for special purposes. Article XIII D creates additional requirements for the imposition by most local governments of general taxes, special taxes, assessments and “property-related” fees and charges. Article XIII D explicitly exempts fees for the provision of electric service from the provisions of such article.

Article XIII C expressly extends the people’s initiative power to the reduction or repeal of local taxes, assessments, and fees and charges imposed prior to its effective date (November 1996). The California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006) that, under Article XIII C, local voters by initiative may reduce a public agency’s water rates and delivery charges, as those are property-related fees or charges within the meaning of Article XIII D, and noted that the initiative power described in Article XIII C may extend to a broader category of fees and charges than the property-related fees and charges governed by Article XIII D. Moreover, in the case of *Bock v. City Council of Lompoc*, 109 Cal.App.3d 52 (1980), the Court of Appeal determined that an electric rate ordinance was not subject to the same constitutional restrictions that are applied to the use of the initiative process for tax measures so as to render it an improper subject of the initiative process. Thus, electric service charges (which are expressly exempted from the provisions of Article XIII D) may be subject to the initiative provisions of Article XIII C, thereby subjecting such fees and charges to reduction by the electorate. NCPA and the Project Participants believe that even if the electric rates of the Project Participants are subject to the initiative power, under Article XIII C or otherwise, Article XIII C does not grant to the electorate of a Project Participant the power to repeal or reduce its electric rates and charges in a manner that would impair the payment of the contractual obligations of the Project Participants (including those under the Unit One Member Agreement).

The California electorate approved Proposition 26 at the November 2, 2010 election, amending Article XIII C of the California Constitution. Proposition 26 was designed to supplement tax limitations California voters adopted when they approved Proposition 13 in 1978, and Proposition 218 in 1996. Proposition 26 applies by its terms to any levy, charge or exaction imposed, increased or extended by a local government on or after November 3, 2010. Proposition 26 deems any such levy, charge or fee to be a “tax,” requiring voter approval under Article XIII C unless it comes within one of the listed exceptions. Proposition 26 expressly excludes from its definition of a “tax,” among other things, a “charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.” Proposition 26 is applicable to the electric rates of governmental entities such as the Project Participants; therefore, newly adopted rates must conform to its requirements.

Proposition 26 is subject to interpretation by California courts, including the extent to which it is applicable to pre-existing electric rates and general fund transfers. A number of lawsuits have been filed against public agencies in California under Proposition 26, including particularly with respect to electric utility fund transfers. NCPA and the Project Participants are unable to predict at this time how Proposition 26 will ultimately be interpreted.

Other Initiatives

Articles XIII C and XIII D and the amendments effected thereto by Proposition 26 were adopted as measures that qualified for the ballot pursuant to California’s initiative process. From time to time, including presently, other initiatives have been, and could be, proposed, and if qualified for the ballot, could

be enacted which place limitations on the ability of NCPA and/or the Project Participants to raise rates or otherwise affect NCPA's and/or the Project Participants revenues or operations. Neither the nature and impact of these measures nor the likelihood of qualification for ballot or passage can be anticipated by NCPA and the Project Participants.

CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY

The following discussion of legislative, regulatory and other factors affecting the electric utility industry should be considered when evaluating NCPA, the Project and the Project Participants and considering an investment in the 2019 Series A Bonds. NCPA is unable to predict what impact such factors will have on the business operations and/or financial condition of any individual Project Participant or whether any additional legislation or rules will be enacted which will affect NCPA, the Project or the Project Participant's finances or operations, but the impacts could be significant. This discussion does not purport to be comprehensive or definitive, and these matters are subject to change subsequent to the date hereof. Extensive information on the electric utility industry is available from the legislative and regulatory bodies and other sources in the public domain, and potential purchasers of the 2019 Series A Bonds should obtain and review such information. Such information is not incorporated herein by reference.

State Legislation and Regulatory Proceedings

California energy policy is driven by the State's goal to reduce carbon emissions to 80% below 1990 levels by the year 2050. Current State law requires California to reduce emissions to 40% below 1990 levels by 2030. NCPA, the Project Participants and the electric utility industry are subject to a myriad of clean energy policies that regulate greenhouse gas ("GHG") emissions, providing for greater investment in energy efficiency and environmentally friendly generation and storage alternatives, principally through more stringent renewable resource portfolio standard requirements and more aggressive emissions reduction programs to combat the effects of climate change. Recently enacted legislation has also focused on addressing issues relating to wildfire risks and occurrences in California, including imposing certain requirements on electric utilities in connection with planning for and mitigation of such occurrences and risks. Pursuant to enacted legislation, State regulatory agencies such as the California Air Resources Board ("CARB") and the CEC are also pursuing several programs designed to reduce GHG emissions and encourage or mandate renewable energy generation. Set forth below is a brief summary of certain of these activities.

California Climate Program. The State's climate program was initially codified by Assembly Bill 32, the Global Warming Solutions Act of 2006 (the "GWSA"), which became effective on January 1, 2007. The GWSA prescribed a statewide cap on global warming pollution with a goal of returning to 1990 GHG emission levels by 2020. The GWSA established an annual mandatory reporting requirement for all investor-owned utilities ("IOUs"), POUs, and other load-serving entities (electric utilities providing energy to end-use customers) to inventory and report greenhouse gas emissions to CARB, required CARB to adopt regulations for significant greenhouse gas emission sources, allowing CARB to design a "cap-and-trade" program (discussed below) and gave CARB the authority to enforce such regulations beginning in 2012.

Currently, the policy objectives of California's climate program is governed by Senate Bill 32 ("SB 32"), signed into law in September 2016 and effective as of January 1, 2017. SB 32 requires CARB to take actions to ensure that statewide GHG emissions from within the State are reduced to at least 40% below 1990 levels by 2030.

In addition, Senate Bill 350 ("SB 350"), the Clean Energy and Pollution Reduction Act of 2015, required CARB, in consultation with the CPUC and the CEC, to establish 2030 GHG emission targets for each electric utility in the State. At present, these targets are non-binding, and primarily intended to help the State measure progress toward the 2030 statewide goal outlined in SB 32. The targets, however, are an

input to the development of the Integrated Resource Plans that are required of the State's 16 largest local publicly-owned electric utilities ("POUs"), which include the four largest NCPA member systems (Santa Clara, Roseville, Redding, and Palo Alto). See "*Integrated Resource Plans (IRP)*" below.

Cap-and-Trade Program. CARB has adopted a series of regulations implementing a cap-and-trade program (the "Cap-and-Trade program"). The Cap-and-Trade program is the most significant component of the State climate program that impacts electric utilities. Under the program, all regulated entities are required to obtain and submit to CARB compliance instruments (allowances and/or offsets) with respect to GHG emissions relating to its State generation activities, as well as for imported electricity from dedicated out-of-state resources. NCPA and the Project Participants, like other electric utilities, receive administrative allocations of allowances for some of their expected GHG emissions. Entities that emit GHGs at levels above those for which they receive administrative allocations, if any, must purchase the additional allowances they require at the CARB auctions or from other covered entities with surplus allowances. In addition, NCPA and the Project Participants may indirectly bear compliance costs for independent generators that must purchase allowances for their generation.

The Cap-and-Trade program is presently authorized to continue through 2030. Project Participants are expected to receive more than \$400 million in proceeds from the sale of these allowances between 2021 and 2030, which will substantially minimize the impact of CARB's requirement to purchase allowance on Project Participants' finances and operations.

GHG Emissions Performance Standard and Financial Commitment Limits. Senate Bill 1368 ("SB 1368") became effective as law on January 1, 2007. SB 1368 provided for an emission performance standard ("EPS") restricting new investments in baseload electric generating resources that exceed a specified rate of GHG emissions (1,100 pounds of carbon dioxide (CO₂) per MWh). SB 1368 prohibits POUs from making any "long-term financial commitment" in connection with "baseload generation" that does not satisfy the EPS. Generally, a "long term financial commitment" is any new or renewed power purchase agreement with a term of five years or more, the purchase of an interest in a new power plant or any investment, other than routine maintenance, in an existing power plant that extends the life of the plant by more than five years or results in an increase in its rated capacity. "Baseload generation" means a power plant that is intended to operate at an annualized capacity factor of 60 percent or more.

Energy Procurement and Efficiency Reporting. Senate Bill 1037, chaptered in 2005 ("SB 1037") requires that each POU, including the Project Participants, prior to procuring new energy generation resources, first acquire all available energy efficiency, demand reduction, and renewable resources that are cost-effective, reliable and feasible. SB 1037 also requires each POU to report annually to its customers and to the CEC its investment in energy efficiency and demand reduction programs. The Project Participants are complying with such ongoing reporting requirements.

State law requires that POUs establish, report, and explain the basis of the annual energy efficiency and demand reduction targets once every four years. The Project Participants are complying with such ongoing reporting requirements. The information obtained from the POUs is being used by the CEC to present progress made by the State to double energy efficiency savings in electricity and natural gas final end uses by 2030, to the extent doing so is cost effective, feasible, and does not adversely impact public health and safety, as prescribed in SB 350.

California Renewables Portfolio Standard. California's legislature and executive branch have been active in promoting increasingly stringent renewable energy procurement requirements since 2002. Initial legislative efforts established a renewables portfolio standard ("RPS"), requiring 20% of all renewable electricity retail sales to come from renewable energy generation by 2017. Since then, legislative and executive branch initiatives have raised that standard several times. Senate Bill X1-2, chaptered in 2011 ("SBX 1-2"), requires each POU to adopt and implement a renewable energy resource procurement plan

and established procurement targets for three compliance periods to be implemented by the procurement plan, culminating in the procurement of eligible renewable energy resources sufficient to provide 33% of retail sales by December 31, 2020. SB 350 established an RPS target of 50% by December 31, 2030 for the amount of electricity generated and sold to retail customers from eligible renewable energy resources for retail sellers and POU, including interim targets of (i) 40% by the end of the 2021-2024 compliance period, (ii) 45% by the end of the 2025-2027 compliance period and (iii) 50% by the end of the 2028-2030 compliance period. Current law, enacted by Senate Bill 100 (“SB 100”), the 100 Percent Clean Energy Act of 2018, accelerates the State’s RPS target established by SB 350 and requires all California utilities to meet a 60% RPS requirement by 2030. SB 100 additionally establishes a state policy that calls for eligible renewable energy resources and zero-carbon resources to supply 100% of retail sales of electricity to California end-use customers by December 31, 2045.

The governing boards of POU are responsible for implementing the RPS requirements, rather than the CPUC, as is the case for the IOUs. In addition, the CEC was given certain enforcement authority for POU and CARB was given the authority to set penalties. The CEC has developed detailed rules to implement its RPS program, and has adopted and, from time to time amended, regulations for the enforcement of the RPS program requirements for POU.

See “APPENDIX A–SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE PROJECT PARTICIPANTS” for information regarding the status of compliance of each of the Significant Share Project Participants with RPS targets under current State law.

Integrated Resource Plans (IRP). SB 350 requires that all POU with demand greater than 700 gigawatt hours to develop an IRP at least once every five years, no later than January 1, 2019. Four NCPA members are subject to this requirement (Santa Clara, Roseville, Redding, and Palo Alto). Each member completed its IRP within the required timeline. The next IRPs will be due no later than 2024.

Legislation Relating to Wildfires; Related Risks. SB 1028 (chaptered in 2016), required that each POU and each electric cooperative in the State construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment. SB 1028 required the governing board of each POU to determine, based on historical fire data and local conditions, and in consultation with the fire departments or other entities responsible for the control of wildfires within the geographical area where the utility’s overhead electrical lines and equipment are located, whether any portion of that geographical area has a significant risk of wildfire resulting from those electrical lines and equipment, and if so, to present for board approval wildfire mitigation measures the utility intends to undertake to minimize the risk of its overhead electrical lines and equipment causing a catastrophic wildfire.

SB 901 (chaptered in 2018), amended certain provisions of SB 1028 requiring POU and electric cooperatives to prepare wildfire mitigation measures if the utilities’ overhead electrical lines and equipment are located in an area that has a significant risk of wildfire resulting from those electrical lines and equipment. Under SB 901, each POU or electric cooperative is required to prepare before January 1, 2020 and annually thereafter, a wildfire mitigation plan. SB 901 requires specified information and elements to be considered as necessary, at minimum, in the wildfire mitigation plan. The POU or electric cooperative is required to present each wildfire mitigation plan in an appropriately noticed public meeting, and to accept comments on its wildfire mitigation plan from the public, other local and state agencies, and interested parties. In addition, SB 901 requires the POU or electric cooperative to contract with a qualified independent evaluator with experience in assessing the safe operation of electrical infrastructure to review and assess the comprehensiveness of its wildfire mitigation plan. The report of the independent evaluator is to be made available to the public and to be presented at a public meeting of the POU’s governing board.

AB 1054 was signed into law by Governor Newsom on July 12, 2019. AB 1054 was enacted as an urgency statute to take effect immediately. AB 1054 establishes a Wildfire Fund of approximately \$21 billion to provide liquidity for IOUs (only) to facilitate payment of eligible, uninsured third-party damage claims resulting from future catastrophic wildfires. AB 1054 revises the cost recovery review of wildfire costs and expenses for IOUs before the CPUC, and establishes safety certification protocols that IOUs must meet in order to participate in the Wildfire Fund. The participation by Pacific Gas and Electric Company (“PG&E”) in the Wildfire Fund is subject to the resolution of its bankruptcy by June 30, 2020. See “–PG&E Bankruptcy” below. AB 1054 provides for a cap on an IOU’s obligations to reimburse the Wildfire Fund and a presumption of reasonableness if a utility develops and maintains a valid safety certification from the Wildfire Safety Division, which is established in the CPUC pursuant to companion legislation, Assembly Bill 111, also signed into law on July 12, 2019. To receive the safety certification from the CPUC, the IOU must develop and implement an approved wildfire mitigation plan, implement the findings of its safety culture assessments, establish a safety committee of its board of directors, establish board level reporting to the CPUC on safety issues, and adopt a compensation structure tied to safety performance, among other requirements.

AB 1054 expands on the existing requirements established under SB 901 for POUs to make and implement wildfire mitigation plans. AB 1054 also establishes the California Wildfire Safety Advisory Board (the “Wildfire Advisory Board”), a seven member board to be appointed by the Governor (five members), the Speaker of the State Assembly (one member) and the State Senate Committee on Rules (one member). The Wildfire Advisory Board will provide advice and recommendations related to wildfire safety, including on the content and sufficiency of wildfire mitigation plans. AB 1054 requires that after January 1, 2020, each POU or electrical cooperative submit, by July 1 of each year, its plan to the Wildfire Advisory Board for review and comment. Under AB 1054, the Wildfire Advisory Board is required to provide comments and an advisory opinion to each POU regarding the content and sufficiency of its plan and to make recommendations on how to mitigate wildfire risks. AB 1054 requires each POU to comprehensively revise its plan at least once every three years. NCPA and the Project Participants expect to prepare and submit wildfire mitigation plans in accordance with the requirements of AB 1054 by July 1, 2020 as required.

A lawsuit challenging AB 1054 has been filed in the U.S. District Court for the Northern District of California. The suit alleges the law violates the U.S. and California constitutions with claims of due process violation, illegal “takings” and illegal gift of public funds for a private purpose. The suit also alleges that the law is in violation of the urgency clause and of the right to access information under the California constitution.

A number of wildfires occurred in California in 2017 and 2018. Under the doctrine of inverse condemnation (a legal concept that entitles property owners to just compensation if their property is damaged by a public use), California courts have imposed liability on utilities in legal actions brought by property holders for damages caused by the utility’s infrastructure. Thus, if the facilities of a utility, such as its electric distribution and transmission lines, are determined to be the substantial cause of a fire, and the doctrine of inverse condemnation applies, the utility could be liable for damages without having been found negligent. [In August 2019, in its decision in the case of *City of Oroville v. Superior Court of Butte County*, No. S243247 (Cal. Aug. 15, 2019) involving damages related to sewage overflows from a city sewer system, the California Supreme Court held that to succeed on an inverse condemnation claim, a property owner must demonstrate that the property damage was the probable result or necessary effect of an inherent risk associated with the design, construction or maintenance of the relevant public improvement.] SB 1028, SB 901 or AB 1054 does not address the existing legal doctrine relating to utilities’ liability for wildfires. How any future legislation or judicial decisions addresses California’s inverse condemnation and liability issues for utilities in the context of wildfires in particular could be significant for the electric utility industry.

NCPA's Commission is presently updating its Wildfire Mitigation Plan, which will address more than a dozen activities that are intended to reduce the risks of wildfire occurrences related to the operation of its facilities and equipment, as prescribed in SB 901. The update will be completed in advance of the statutory required January 1, 2020 date. Measures currently undertaken by NCPA include, among others, a program for the physical inspection of its overhead electrical transmission and distribution lines each year, and routine replacement of poles, towers and insulators as needed, as well as established guidance for the operation of specific facilities during emergency conditions, including wildfires. NCPA owns relatively few miles of overhead electrical transmission and distribution lines and conducts a complete inspection of any line that has tripped out of service prior to re-closing the circuit. In addition, NCPA has developed and implemented a transmission and vegetation management program to provide for the inspection, maintenance, documentation and reporting requirements for vegetation located within or adjacent to NCPA's power line right-of-way in accordance with the standards established by the California Department of Forestry and Fire Protection ("Cal Fire"), state statute and/or the North American Electric Reliability Corporation ("NERC").

NCPA also maintains general liability insurance that would include coverage for wildfires. It should be noted, however, that potential liabilities for utilities in connection with wildfires has adversely impacted the market for insurance, leading to a reduction in underwriting capacity and increased premiums, which effects are expected to continue. For information regarding the wildfire mitigation measures of certain of the Significant Share Project Participants, see also "APPENDIX A – SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE PROJECT PARTICIPANTS."

Impact of California Energy Market Developments on NCPA and the Project Participants. The effect of the developments in the California energy markets described above on the Project Participants cannot be fully ascertained at this time. Also, volatility in energy prices in California may return due to a variety of factors that affect both the supply and demand for electric energy in the western United States. These factors include, but are not limited to, the adequacy of generation resources to meet peak demands, the availability and cost of renewable energy, the impact of economy-wide GHG emission legislation and regulations, fuel costs and availability, weather effects on customer demand, the impact of climate change, transmission congestion, the strength of the economy in California and surrounding states and levels of hydroelectric generation within the region (including the Pacific Northwest). This price volatility may contribute to greater volatility in the revenues of the Project Participants' respective electric systems from the sale (and purchase) of electric energy and, therefore, could materially affect each of the Project Participant's financial condition. Each Project Participant undertakes resource planning and risk management activities and manages its resource portfolio to mitigate such price volatility and spot market rate exposure. For a discussion of each of the Significant Share Project Participant's current resource planning activities, see "Power Supply Resources" in each of the Significant Share Project Participants sections in "APPENDIX A–SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE PROJECT PARTICIPANTS."

Federal Energy and Environmental Policies and Legislation

Federal Policy on Cybersecurity. In February 2013, then-President Obama issued an Executive Order "Improving Critical Infrastructure Security." Among other things, such Executive Order called for improved information sharing and processing of security clearances for owners and operators of critical infrastructure. The Executive Order further required the Secretary of Commerce to direct the National Institute of Standards and Technology ("NIST") to lead the development of a framework ("Framework") to reduce cyber risks to critical infrastructure. The voluntary Framework will continue to be updated and improved as the industry provides feedback on implementation.

The Cybersecurity Information Sharing Act of 2015 was signed into law in December 2015. It creates an industry-supported, voluntary cybersecurity information sharing program which facilitates the

secure sharing of cyber-related threat information among both public and private sector entities. NCPA participates in sharing and receiving information about cybersecurity threats in real time through a central hub as a tool to actively manage risk related to potential cyber intrusion.

In September 2018, President Trump signed the “National Cyber Strategy,” which sought to update the nation’s cybersecurity strategy for the first time in 15 years – and identified “energy and power” as one of the seven key areas for protection.

Federal Power Act. Although NCPA and its members are exempt from most federal rate regulation pursuant to Section 201(f) of the FPA (see “RATE REGULATION”), the Federal Energy Policy Act of 2005 (“EPAct 2005”), imposed specific exceptions. In particular, FERC was given authority over the behavior of market participants. Under FERC’s authority it can impose penalties on any seller for using a manipulative or deceptive device, including market manipulation, in connection with the purchase or sale of energy or of transmission service. The Commodity Futures Trading Commission (“CFTC”) also has jurisdiction to enforce certain types of market manipulation or deception claims under the Commodity Exchange Act.

Additionally, pursuant to Section 215 of the FPA, and FERC’s implementing regulations and orders, the North American Electric Reliability Corporation (“NERC”) and its regional affiliates, including the Western Electric Coordinating Council (“WECC”), develop and enforce mandatory electric reliability standards to provide for the reliable operation of the bulk electric system. The reliability standards include requirements related to the cybersecurity of systems that could affect the reliable operation of the grid. Those reliability standards, particularly those related to cybersecurity, are continually being amended to address emerging reliability risks.

NCPA and some its members are required to comply with the applicable reliability standards and are potentially subject to penalties if they are found to have violated any of those standards. Violations that pose minimal risk to the bulk electric system may be resolved without any financial penalties, while violations that pose moderate or serious risk may result in significant penalties.

While the penalties for violations of market manipulation rules or reliability standards can be quite serious, these risks can be mitigated by strong compliance programs, and NCPA has taken proactive measures to assure that it has such compliance programs in place.

Regulatory Actions under the Clean Air Act. The United States Environmental Protection Agency (the “EPA”) regulates GHG emissions under existing law by imposing monitoring and reporting requirements, and through its permitting programs. Like other air pollutants, GHGs are regulated under the Clean Air Act through the Prevention of Significant Deterioration (“PSD”) Permit Program and the Title V Permit Program. A PSD permit is required before commencement of construction of new major stationary sources or major modifications of a major stationary source and requires best available control technologies (“BACT”) to control emissions at a facility. Title V permits are operating permits for major sources that consolidate all Clean Air Act requirements (arising, for example, under the Acid Rain, New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and/or PSD programs) into a single document and the permit process provides for review of the documents by the EPA, state agencies and the public. GHGs from major natural gas-fired facilities are regulated under both permitting programs through performance standards imposing efficiency and emissions standards.

The focus of federal action toward the regulation of GHG emissions has changed significantly in recent years. In October 2015, under the Obama Administration, the EPA published the Clean Power Plan, which would have established carbon pollution standards for new, modified, and reconstructed power plants, and carbon pollution emission guidelines for existing electricity utility generating units. The total national emissions reduction goal under the Clean Power Plan called for a 32 percent reduction in GHG emissions

from 2005 levels by 2030, with incremental interim goals for the years from 2022 through 2029. The program would have allowed states multiple options for measuring reductions and establishes different reduction goals depending upon the regulatory program set forth in the state plan.

A combination of legal challenges and a change in the federal administration led to the repeal of the Clean Power Plan, replaced by the Affordable Clean Energy rule in July 2019. The final Affordable Clean Energy rule: (i) replaces the Clean Power Plan with revised emissions guidelines that inform the development, submittal, and implementation of state plans to reduce GHG emissions from fossil fuel steam electric generating units, primarily coal-fired plants; and (ii) implements new regulations that provide direction to both the EPA and the states on the implementation of emission guidelines. The final rule identifies heat rate improvements as the best system of emission reduction from coal-fired power plants, to be made at the individual facilities. The final rule became effective on September 6, 2019. Under the Affordable Clean Energy rule, states will have three years to submit implementation plans. The EPA will have 12 months thereafter to approve or disapprove a state's plan.

A number of environmental advocates and state attorneys general have filed lawsuits in the D.C. Circuit Court challenging the Affordable Clean Energy rule.

NCPA and the Project Participants are unable to predict at this time the outcome of any ongoing legal challenges to EPA rulemaking with respect to GHG emissions. Further, given the legal uncertainty regarding the status of the Affordable Clean Energy rule, it is too early to determine the effect that any final rules promulgated by the EPA regulating GHG emissions from electric generating units will have on the NCPA and the Project Participants or their respective electric systems. However, if the current form of the final Affordable Clean Energy is ultimately upheld, NCPA and Project Participants will not be directly affected by this proceeding since its focus is on coal.

Ongoing Environmental Regulation. Electric utilities are subject to continuing environmental regulation. Federal, State and local standards and procedures which regulate the environmental impact of electric utilities are subject to change. These changes may arise from continuing legislative, regulatory and judicial action regarding such standards and procedures. Consequently, there is no assurance that any facilities or projects of NCPA or a Project Participant will remain subject to the laws and regulations currently in effect, will always be in compliance with future laws and regulations or will always be able to obtain all required operating permits. In addition, the election of a new administration in the upcoming 2020 presidential election could substantially impact the current environmental standards and regulations and other matters described herein. An inability to comply with environmental standards could result in, for example, additional capital expenditures, reduced operating levels or the shutdown of individual units not in compliance. In addition, increased environmental laws and regulations may create certain barriers to new facility development, may require modification of existing facilities and may result in additional costs for affected resources.

Changing Laws and Requirements Generally

On both the State and federal levels, legislation is introduced frequently addressing domestic energy policies and various environmental matters and impacts relating to energy, including the generation of energy using conventional and unconventional technologies. Issues raised in recent legislative proposals have included implementation of energy efficiency and renewable energy standards, addressing transmission planning, siting and cost allocation to support the construction of renewable energy facilities, cybersecurity legislation that would allow FERC to issue interim measures to protect critical electric infrastructure, a federal cap-and-trade program to reduce GHG emissions, and renewable energy incentives that could provide grants and credits to municipal utilities to invest in renewable energy infrastructure. Congress has also considered other bills relating to energy supplies and development (such as expedited permitting for natural gas drilling projects, reducing regulatory burdens, climate change and water quality.

Neither NCPA nor any Project Participant is able to predict at this time whether any of these or other legislative proposals will be enacted into law and, if so, the impact they may have on the operations and finances of such entities or on the electric utility industry in general.

PG&E Bankruptcy

The following statements in this section regarding PG&E's financial condition, potential wildfire liabilities, and its actions and developments in connection with PG&E's voluntary bankruptcy filing have been obtained from public sources that NCPA believes to be reliable, but such statements have not been independently verified by NCPA and NCPA assumes no responsibility for the accuracy or completeness thereof.

On January 14, 2019, PG&E and its parent company, PG&E Corporation, announced their intention to file, on or about January 29, 2019, for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). On January 29, 2019, PG&E and PG&E Corporation filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. A Chapter 11 case under the Bankruptcy Code is utilized to accomplish either a restructuring and/or liquidation of businesses. On September 9, 2019, PG&E and PG&E Corporation filed a reorganization plan with the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court") in San Francisco. The filed reorganization plan provides for an exit from bankruptcy prior to the June 30, 2020 deadline established by AB 1054. The plan requires approval by a majority of the impaired creditors (*i.e.*, those creditors who would not be receiving the full amount of their claims under the reorganization plan) and the CPUC before it can be confirmed. On September 13, 2019, a group of insurers whose customers lost their homes in the 2017 and 2018 Northern California wildfires and PG&E reached an agreement to settle the insurers' claims against PG&E. The settlement amount, which remains subject to court approval, was higher than the amount that PG&E and PG&E Corp. had included in the reorganization plan. The plan filed on September 9, 2019 was amended to reflect this increase. On September 20, 2019, a competing reorganization plan was submitted to the Bankruptcy Court by the holders of PG&E Corporation's bonds and a committee representing fire victims. On September 26, 2019, the CPUC opened a formal proceeding to consider the ratemaking and other implications of the proposed plan of reorganization filed by PG&E in the bankruptcy proceeding. On October 9, 2019, the bankruptcy judge terminated PG&E's exclusive right to file a Chapter 11 reorganization plan, allowing the competing reorganization plan to move forward concurrently with PG&E's plan. As noted above, as the primary state regulator of PG&E, by law, the CPUC must review and approve any proposed reorganization plan and related transactions, before PG&E's bankruptcy can be resolved.

In its bankruptcy filings, PG&E indicated that its voluntary bankruptcy filing was initiated to address extraordinary financial challenges. These are largely attributed to its potential liabilities associated with a number of wildfires which occurred in Northern California in 2017 and 2018. In its Form 8-K filing with the Securities and Exchange Commission (the "SEC") (date of report: January 13, 2019) reporting its intent to file voluntary bankruptcy and its subsequent bankruptcy filings, PG&E estimated if it were found liable for certain or all of the costs, expenses and other losses with respect to the 2017 and 2018 Northern California wildfires, the amount of such liability (exclusive of potential putative damages, fines and penalties or damages related to future claims) could exceed \$30 billion. SB 901, which was enacted by the California legislature in September 2018, addressed a portion of the liabilities PG&E faced in connection with the 2017 wildfires. That legislation, however, expressly excluded any similar relief for wildfires occurring in 2018. AB 1054, which was enacted by the legislature in July 2019 (described above) addresses certain liabilities for eligible future wildfire costs but will not cover any liabilities arising from previous 2017 and 2018 wildfires. See also "– State Legislation and Regulatory Proceedings – *Legislation Relating to Wildfires; Related Risks*" above.

NCPA is a party to a number of interconnection agreements with PG&E that provide the terms and conditions for connecting NCPA resources and member loads to the CAISO-controlled grid or PG&E's wholesale transmission system. Each of NCPA's generating facilities, including the geothermal, hydroelectric and gas-fired resources, are interconnected within the CAISO Balancing Authority Area through PG&E's transmission system. The geothermal facilities also use rights of access to a transmission line (the co-tenancy line) wherein PG&E is the majority owner of the transmission line. In addition, NCPA receives all of the natural gas fuel supply required to operate its Lodi Energy Center Project, Combustion Turbine Project Number One and Capital Facilities Project, Unit One through PG&E's natural gas pipeline system. See "THE PROJECT" and "OTHER NCPA PROJECTS." The electric systems of the Project Participants, but for Roseville, are interconnected to the PG&E transmission system (including through the CAISO controlled grid), and Roseville also receives fuel supply for its gas-fired generation resources through PG&E's natural gas pipeline system. See also "APPENDIX A – SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE PROJECT PARTICIPANTS" for information regarding the Significant Share Project Participants' electric systems and power and fuel resources. NCPA has no long-term contracts currently in place for the purchase of energy, energy-related commodities, or natural gas from PG&E, and NCPA currently does not have any accounts receivable due from PG&E in connection with wholesale market activities. NCPA is participating in the PG&E bankruptcy proceedings in order to protect its interests in connection with claims related to certain refunds and settlement amounts to be ordered or owed from PG&E in FERC proceedings. See "LITIGATION – PG&E Bankruptcy Proceeding."

PG&E requested, and has received, approval from the Bankruptcy Court to continue operations of both its electric and gas systems. In its SEC filings, PG&E stated that it expected to operate in the ordinary course of business following the Chapter 11 filing, including providing uninterrupted electric and natural gas service to customers. In its bankruptcy filings, PG&E indicated that it had obtained approximately \$5.5 billion in secured debtor-in-possession financing ("DIP Financing") from several financial institutions that would provide liquidity to fund its operations during the Chapter 11 process. PG&E subsequently received final approval from the Bankruptcy Court to access the full \$5.5 billion in DIP financing. To date, neither NCPA nor the Project Participants have experienced any operational disruptions as a result of the PG&E bankruptcy filing.

Although it is too early to assess, PG&E's bankruptcy could have broader effects on the electric markets generally. Subject to Bankruptcy Court approval, Chapter 11 debtors have the power to assume or reject contractual arrangements. Chapter 11 debtors may seek to reject contracts that are uneconomic or otherwise burdensome to the debtor. PG&E has indicated in its reorganization plan filed with the Bankruptcy Court that it intends to retain all of its existing power purchase contracts. In the event, however, that PG&E were to seek to reject some power purchase agreements, and if the court orders this, there may be further market impacts. In addition, other electric utilities, including the other major IOUs in California, Southern California Edison Company and San Diego Gas & Electric Company, have experienced credit rating downgrades as a result of potential wildfire liabilities exposure, which may have implications for the electric market generally.

In addition, it is possible that one or more other entities may ultimately assume or acquire all or a portion of PG&E's operations and activities in the future. In December 2018, the CPUC issued a Scoping Memo and Ruling initiating a second phase of an ongoing investigation proceeding (I.15-08-019), in which it is examining PG&E's and PG&E Corporation's current corporate governance, structure, and operations to determine if the utility is positioned to provide safe electrical and gas service, and will review alternatives to the current management and operational structures of providing electric and gas service in Northern California. Further, in its SEC filing, PG&E stated that it expected that the Chapter 11 case would, among other things, allow it to work with regulators and policymakers to determine the most effective way for customers to receive natural gas and electric service, and that one of the factors considered by its board of directors in determining to seek bankruptcy relief is the opportunity that such proceedings would provide to maximize the value of PG&E's assets and businesses, including through the possible sale or other

disposition of such assets and businesses. At least three public agencies have submitted non-binding indications of interest to PG&E to purchase a portion of PG&E's electric transmission and distribution assets in connection with PG&E's bankruptcy proceedings. PG&E has generally rejected such offers. On November 1, 2019, Governor Newsom announced the appointment of an administration policy team on utility and energy matters that would review actions that the State may take to restructure PG&E in the event that a consensual resolution to the PG&E bankruptcy is not reached by the stakeholders in a timely manner.

There are a number of uncertainties surrounding the PG&E bankruptcy and the proceedings could continue for many months and potentially a number of years. As a result, NCPA and the Project Participants are unable to predict the full effects of the PG&E bankruptcy on NCPA, any of the Project Participants or the California electric markets at this time. NCPA will continue to monitor the PG&E bankruptcy proceedings to assess any developments that may impact its interests.

CAISO Markets

General. Any electricity sales or purchases NCPA makes in the wholesale energy markets operated by the CAISO are subject to the CAISO tariff, which is a FERC-jurisdictional tariff. CAISO's tariff includes rules governing how sellers may bid electricity (*i.e.*, offer for sale) into the energy markets and rules governing market power mitigation of sellers. CAISO regularly proposes changes to its tariff, subject to FERC approval. Additionally, FERC can, and does, order changes to CAISO's tariff if FERC (on its own initiative or prompted by a complaint) determines that CAISO's tariff is unjust, unreasonable, or unduly discriminatory. Such regulatory changes can impact prices for electricity and capacity.

During portions of 2000 and 2001, shortly after CAISO's energy markets were first established, wholesale electricity prices were highly volatile and subject to market manipulation. That market dysfunction resulted in deterioration of credit ratings of many market participants and the first bankruptcy of PG&E. CAISO's energy markets have since been redesigned, and Congress has established mechanisms for policing wholesale markets. Price volatility has since decreased compared to the 2000-2001 period. See also, however, “– State Legislation and Regulatory Proceedings – Impact of State Developments on NCPA and the Project Participants.”

CAISO Market Initiatives. The CAISO markets are subject to continued change in response to FERC orders, the increased integration of intermittent renewable resources, changing environmental constraints, the ongoing efforts to combat market manipulation and evolving reliability requirements. CAISO Tariff changes related to these and other issues are currently under discussion in CAISO stakeholder processes and in ongoing FERC proceedings. In most cases, these proposals are not sufficiently final in order to determine their likely impact on NCPA or the Project Participants. However, the following issues and proposed CAISO operational and market changes may have significant impacts on NCPA, the Project Participants or electric utilities generally. NCPA will continue to monitor the various initiatives proposed by the CAISO and participate in its stakeholder processes to ensure that its interests are protected.

Increased Integration of Renewables. As part of the effort to integrate increased levels of intermittent renewable resources into the grid, the CAISO has proposed an array of changes to existing markets and to the resource adequacy structure that assures that sufficient resources are available to the markets. These proposals could affect the value of energy sold and purchases in the wholesale markets.

Resource Adequacy Requirements. Resource Adequacy requirements apply to NCPA and its members, including the Project Participants, to ensure that market participants have contracted for sufficient amounts of the right types of capacity to be available in the markets. To the extent that a load serving entity (“LSE”) fails to procure sufficient capacity resources to meet its loads, it is subject to payment of CAISO procurement costs of replacement capacity. To the extent that a shortfall cannot be attributed to a specific

LSE, the costs will be spread as part of market uplift charges. These risks apply in the same manner to all LSEs. Due to the increased integration of renewables, discussed above, the CAISO is contemplating what could be significant changes to the Resource Adequacy framework, with the potential for impacts on market participant costs. It is still too early to assess the potential impacts on NCPA. The CPUC has an ongoing docket that could also result in changes to the Resource Adequacy and CAISO's markets, including the potential establishment of a state agency as a residual capacity buyer. However, the details of such changes remain to be established.

Transmission Access Charge Review. The CAISO undertook a review of its Transmission Access Charge, with a view to potentially changing the methodology used for allocating transmission costs. Although the current proposal should not adversely impact NCPA or its members, any change of this nature raises concerns and NCPA is unable to predict the outcome of the tariff revisions process at FERC.

Extension of Day Ahead Markets to Energy Imbalance Market. The CAISO began financially binding operation of the western Energy Imbalance Market ("EIM") on November 1, 2014. An EIM is a voluntary market that provides a sub-hourly economic dispatch of participating resources for balancing supply and demand every five minutes. CAISO has announced its intention to propose changes to the EIM structure that would extend the CAISO's day ahead market into the EIM, rather than leaving it as only a real time market. While these proposals have not yet been published, much less analyzed, such a change has the impact to affect prices paid in the CAISO markets.

Redesigned Day-Ahead Markets. As the fleet of supply resources within the CAISO balancing authority area evolves to reflect a greater proportion of intermittent renewable resources, there is the concomitant increase in uncertainty between the CAISO's day-ahead and real-time markets for the efficient commitment of resources required to respond to increased CAISO net load variability. The CAISO has undertaken an initiative to redesign its day-ahead market structure that will provide for the co-optimized commitment of both upward and downward reserve capacity in the day-ahead timeline so that sufficient capacity will be available for real-time dispatch. While the details of the CAISO's redesigned day-ahead market structure have not yet been finalized, the CAISO indicates that its redesigned day-ahead market structure is intended to complement and be deployed in unison with the CAISO's Resource Adequacy initiative and extension of EIM.

Other Factors

The electric utility industry in general has been, or in the future may be, affected by a number of other factors which could impact the financial condition and competitiveness of many electric utilities and the level of utilization of generating and transmission facilities. In addition to the factors discussed above, such factors include, among others, (a) effects of compliance with rapidly changing environmental, safety, licensing, regulatory and legislative requirements other than those described above (including those affecting nuclear power plants or potential new energy storage requirements), (b) changes resulting from conservation and demand-side management programs on the timing and use of electric energy, (c) effects on the integration and reliability of power supply from the increased usage of renewables, (d) changes resulting from a national energy policy, (e) effects of competition from other electric utilities (including increased competition resulting from a movement to allow direct access or from mergers, acquisitions, and "strategic alliances" of competing electric and natural gas utilities and from competitors transmitting less expensive electricity from much greater distances over an interconnected system) and new methods of, and new facilities for, producing low-cost electricity, (f) the repeal of certain federal statutes that would have the effect of increasing the competitiveness of many IOUs, (g) increased competition from independent power producers and marketers, brokers and federal power marketing agencies, (h) "self-generation" or "distributed generation" (such as microturbines, fuel cells and solar installations) by industrial and commercial customers and others, (i) issues relating to the ability to issue tax-exempt obligations, including restrictions on the ability to sell to nongovernmental entities electricity from generation projects and

transmission service from transmission line projects financed with outstanding tax-exempt obligations, (j) effects of inflation on the operating and maintenance costs of an electric utility and its facilities, (k) changes from projected future load requirements, (l) increases in costs and uncertain availability of capital, (m) shifts in the availability and relative costs of different fuels (including the cost of natural gas and nuclear fuel), (n) sudden and dramatic increases in the price of energy purchased on the open market that may occur in times of high peak demand in an area of the country experiencing such high peak demand, such as has occurred in the past in California, (o) issues relating to risk management procedures and practices with respect to, among other things, the purchase and sale of natural gas, energy and transmission capacity, (p) other legislative changes, voter initiatives, referenda and statewide propositions, (q) effects of the changes in the economy, population and demand of customers within a utility's service area, (r) effects of possible manipulation of the electric markets, (s) acts of terrorism or cyber-terrorism impacting a utility and/or significant load customers, (t) changes to the climate; (u) natural disasters or other physical calamities, including, but not limited to, earthquakes, droughts, severe weather, floods and wildfires, and potential liabilities of electric utilities in connection therewith, and (v) adverse impacts to the market for insurance relating to recent wildfires and other calamities, leading to higher costs or prohibitively expensive coverage, or limited or unavailability of coverage for certain types of risk. Any of these factors (as well as other factors) could have an adverse effect on the financial condition of any given electric utility and likely will affect individual utilities in different ways.

LITIGATION

There is no controversy or litigation of any nature now pending or threatened restraining or enjoining the issuance, sale, execution or delivery of the 2019 Series A Bonds, or in any way contesting or affecting the validity of the 2019 Series A Bonds or any proceedings of NCPA taken with respect to the issuance or sale thereof.

Upon the basis of information presently available, NCPA and its General Counsel believe that there is no litigation pending or threatened against NCPA which will materially adversely affect the Project or the respective sources of payment for the 2019 Series A Bonds.

California Energy Market Dysfunction, Refund Dispute and Related Litigation

Following the 1998 operation of the CAISO and the California Power Exchange (the "PX"), the deregulated electricity and natural gas markets in California became increasingly dysfunctional, with very high prices in 2000-2001, resulting in the eventual bankruptcy of the PX, PG&E (and others) and a number of orders from FERC. The IOUs (PG&E, Southern California Edison Company ("Edison") and San Diego Gas & Electric Company ("SDG&E")) and the State of California and the CPUC have been pursuing claims for refunds against all sellers into the market, including NCPA and other power-producing municipally owned utilities.

Those claims for refunds against varying groups of sellers have been pursued in a number of *fora* since early Fall, 2000, and have been through numerous FERC proceedings, State and Federal court decisions, and the U.S. Supreme Court. Some of those claims are still being pursued both at FERC and in the Courts of Appeal. While NCPA considered the claims against it to be lacking in legal merit, NCPA entered into a settlement with the plaintiffs which provides the terms of a final resolution of all of these claims and of the bankruptcy claims held by NCPA against PG&E and the PX. The settlement agreement was approved by FERC on April 29, 2010. That approval by FERC was the last regulatory step necessary to resolve these disputes between those parties in their entirety, as well as a separate lawsuit filed by the State of California. The state court proceeding against NCPA was dismissed with prejudice on May 20, 2010.

The proceedings at FERC and in the Court of Appeals remain ongoing, but the remaining parties to those proceedings have not asserted any claims against NCPA. NCPA continues to monitor the proceedings to protect its interests.

FERC and CAISO Proceedings: Market Redesign

Most of the matters being contested at FERC or being discussed in CAISO stakeholder processes involving NCPA or the Project Participants concern the current operation or potential changes to the CAISO market. For a discussion of potential changes in the CAISO market, see “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – CAISO Markets.”

PG&E Bankruptcy Proceeding

NCPA is participating in the PG&E bankruptcy litigation (United States Bankruptcy Court for the Northern District of California Case Nos. 19-30088 (DM) and 19-30089 (DM)) as a creditor. NCPA does not believe it has contracts that PG&E will seek to reject, but it does have claims on sums related to refunds to be ordered by FERC in ongoing rate case proceedings and sums owed in settlement of other FERC litigation.

Other Proceedings

NCPA is involved in various other state court proceedings incidental to its operations. Based on its review of those proceedings with its General Counsel, NCPA believes that the ultimate aggregate liability, if any, resulting from those proceedings will not have a material adverse effect on its financial position.

TAX MATTERS

Federal Income Taxes

The Internal Revenue Code of 1986, as amended (the “Code”), imposes certain requirements that must be met subsequent to the issuance and delivery of the 2019 Series A Bonds for interest thereon to be and remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the 2019 Series A Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of the 2019 Series A Bonds. Pursuant to the Indenture and the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 executed by NCPA in connection with the issuance of the 2019 Series A Bonds (the “Tax Certificate”), NCPA has covenanted not to take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the 2019 Series A Bonds under Section 103 of the Code. In addition, NCPA has made certain representations and certifications in the Indenture and Tax Certificate. Special Tax Counsel will not independently verify the accuracy of those representations and certifications.

In the opinion of Nixon Peabody LLP, Special Tax Counsel, under existing law and assuming compliance with the aforementioned covenant, and the accuracy of certain representations and certifications made by NCPA described above, interest on the 2019 Series A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code. Special Tax Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code.

State Taxes

Special Tax Counsel is also of the opinion that interest on the 2019 Series A Bonds is exempt from personal income taxes of the State of California under present State law. Special Tax Counsel expresses no opinion as to other state or local tax consequences arising with respect to the 2019 Series A Bonds nor as to the taxability of the 2019 Series A Bonds or the income therefrom under the laws of any state other than California.

Original Issue Discount

Special Tax Counsel is further of the opinion that the excess of the principal amount of a maturity of the 2019 Series A Bonds over its issue price (*i.e.*, the first price at which price a substantial amount of such maturity of the 2019 Series A Bonds was sold to the public, excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) (each, a “Discount Bond” and collectively the “Discount Bonds”) constitutes original issue discount which is excluded from gross income for federal income tax purposes to the same extent as interest on the 2019 Series A Bonds. Further, such original issue discount accrues actuarially on a constant interest rate basis over the term of each Discount Bond and the basis of each Discount Bond acquired at such issue price by an initial purchaser thereof will be increased by the amount of such accrued original issue discount. The accrual of original issue discount may be taken into account as an increase in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Discount Bonds, even though there will not be a corresponding cash payment. Owners of the Discount Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Discount Bonds.

Original Issue Premium

2019 Series A Bonds sold at prices in excess of their principal amounts are “Premium Bonds.” An initial purchaser with an initial adjusted basis in a Premium Bond in excess of its principal amount will have amortizable bond premium which is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Premium Bond based on the purchaser’s yield to maturity (or, in the case of Premium Bonds callable prior to their maturity, over the period to the call date, based on the purchaser’s yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, an initial purchaser who acquires such obligation with an amortizable bond premium is required to decrease such purchaser’s adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning such Premium Bonds. Owners of the Premium Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Premium Bonds.

Ancillary Tax Matters

Ownership of the 2019 Series A Bonds may result in other federal tax consequences to certain taxpayers, including, without limitation, certain S corporations, foreign corporations with branches in the United States, property and casualty insurance companies, individuals receiving Social Security or Railroad Retirement benefits, and individuals seeking to claim the earned income credit, and taxpayers (including banks, thrift institutions, and other financial institutions) who may be deemed to have incurred or continued indebtedness to purchase or to carry the 2019 Series A Bonds. Prospective investors are advised to consult their own tax advisors regarding these rules.

Interest paid on tax-exempt obligations such as the 2019 Series A Bonds is subject to information reporting to the Internal Revenue Service (“IRS”) in a manner similar to interest paid on taxable obligations. In addition, interest on the 2019 Series A Bonds may be subject to backup withholding if such interest is paid to a registered owner that (a) fails to provide certain identifying information (such as the registered owner’s taxpayer identification number) in the manner required by the IRS, or (b) has been identified by the IRS as being subject to backup withholding.

Special Tax Counsel are not rendering any opinions as to any federal tax matters other than those described in the their opinion attached in Appendix F. Prospective investors, particularly those who may be subject to special rules described above, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the 2019 Series A Bonds, as well as any tax consequences arising under the laws of any state or other taxing jurisdiction.

Changes in Law and Post Issuance Events

Legislative or administrative actions and court decisions, at either the federal or state level, could have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the 2019 Series A Bonds for federal or state income tax purposes, and thus on the value or marketability of the 2019 Series A Bonds. This could result from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), repeal of the exclusion of the interest on the 2019 Series A Bonds from gross income for federal or state income tax purposes, or otherwise. It is not possible to predict whether any legislative or administrative actions or court decisions having an adverse impact on the federal or state income tax treatment of holders of the 2019 Series A Bonds may occur. Prospective purchasers of the 2019 Series A Bonds should consult their own tax advisors regarding the impact of any change in law on the 2019 Series A Bonds.

Special Tax Counsel has not undertaken to advise in the future whether any events after the date of issuance and delivery of the 2019 Series A Bonds may affect the tax status of interest on the 2019 Series A Bonds. Special Tax Counsel expresses no opinion as to any federal, state or local tax law consequences with respect to the 2019 Series A Bonds, or the interest thereon, if any action is taken with respect to the 2019 Series A Bonds or the proceeds thereof upon the advice or approval of other counsel.

CONTINUING DISCLOSURE

General

NCPA and the Significant Share Project Participants have each agreed, pursuant to Continuing Disclosure Agreements with the Trustee, to provide to the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access System (the “EMMA System”) a copy of their respective annual audited financial statements, as well as certain operating data relating to the Project and the Significant Share Project Participants’ respective electric systems. Such audited financial statements are required to be prepared in accordance with generally accepted accounting principles. NCPA has agreed to provide such Project information and its financial statements (unaudited if audited financial statements are not then available) within 180 days after the end of its fiscal year, and each Significant Share Project Participants has agreed to provide their respective financial statements (unaudited if audited financial statements are not then available) and operating data relating to their respective electric systems within 210 days after the end of their respective fiscal years. If unaudited financial statements are provided, audited financial statements will be provided as soon as available. In addition, NCPA and the Significant Share Project Participants have agreed to give timely notice to the MSRB through the EMMA System, of the occurrence of certain specified events. These agreements are being made in order to assist the Underwriter in complying with Securities and Exchange Commission (“SEC”) Rule 15c2-12(b)(5) (the “Rule”). See “APPENDIX E—PROPOSED FORMS OF CONTINUING DISCLOSURE AGREEMENTS.”

A review of NCPA's and the Significant Share Project Participants' compliance with prior continuing disclosure undertakings during the last five years indicates that:

(1) NCPA did not timely file specified event notices for certain rating changes and did not file specified event notices for rating changes of certain insured bonds resulting from changes in the bond insurer's credit rating.

(2) In certain instances, Alameda filed its annual continuing disclosure report after the date required for such filing and/or filed a report which omitted certain information Alameda had covenanted to provide in prior undertakings. Specifically, Alameda's annual reports for Fiscal Years 2014 in connection with its electric system obligations, including in connection with bonds issued by NCPA, were not filed, or were not filed with all required information, until ranging from approximately 16 days to up to approximately 86 days after the respective dates required for such filings. In addition, Alameda did not always provide rating change notices in a timely manner, and did not provide, in a timely manner after the annual filing dates, any notices of the failure to provide annual financial information.

(3) For Fiscal Year 2015, the financial and operating data to be filed as part of Lodi's continuing disclosure annual report in connection with certain of Lodi's obligations, including in connection with NCPA bonds and Lodi's direct electric system obligations, was not filed until approximately 9 to 14 days after the date required for certain of such filings. In addition, on several occasions, most recently in 2014, Lodi failed to make "significant event" filings with respect to changes in the ratings of bond insurers of certain electric system and other City of Lodi obligations, as well as upgrades of the underlying ratings for certain obligations.

(4) The annual reports required for Fiscal Year 2015 for certain of Roseville's then-outstanding obligations were not filed, or were not filed with all required information, until up to approximately 48 days after the dates required for such filings. Roseville has not in a timely manner filed all significant event notices, including, but not limited to, notices of changes in the ratings of certain then-outstanding obligations resulting from changes in ratings to the bond insurers who insured such obligations or the underlying ratings for such obligations. Roseville has engaged contract support for the preparation and filing of its continuing disclosure reports in order to ensure compliance with future continuing disclosure obligations.

(5) Finally, all filings made by NCPA and each of the Significant Share Project Participants have not always been associated, or associated by the required filing deadline, with all CUSIPs for each of the related outstanding obligations.

NCPA and the Significant Share Project Participants (as applicable) believe they have made corrective filings to address the known instances during the last five years of past delayed or failure to file annual reports, omissions of required information and/or rating changes to be filed under their respective prior continuing disclosure undertakings (except with respect to certain bonds or other obligations that are no longer outstanding) and are currently in compliance in all material respects with such prior continuing disclosure undertakings.

City of Alameda Settlement with Securities and Exchange Commission

In connection with an Offer of Settlement by the City of Alameda dated June 27, 2016, and an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order of the United States Securities and Exchange Commission dated August 24, 2016 (the "SEC Order"), the City of Alameda has undertaken to:

(i) Within 180 days of the entry of the SEC Order, establish appropriate written policies and procedures and periodic training regarding continuing disclosure obligations to effect compliance with the federal securities laws, including the designation of an individual or officer at Alameda responsible for ensuring compliance by Alameda with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

(ii) Within 180 days of the entry of the SEC Order, comply with existing continuing disclosure undertakings, including updating past delinquent filings if Alameda is not currently in compliance with its continuing disclosure obligations.

For good cause shown, the SEC staff may extend any of the procedural dates relating to the Alameda's undertakings. Deadlines for procedural dates are to be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

(iv) Disclose in a clear and conspicuous fashion the terms of the settlement in any final official statement for an offering by Alameda within five years of the institution of the SEC's proceedings.

(v) Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The SEC staff may make a reasonable request for further evidence of compliance, and Alameda has agreed to provide such evidence. The certification and supporting material shall be submitted to certain specified SEC personnel no later than the one-year anniversary of an institution of the SEC's proceedings.

(vi) Cooperate with any subsequent investigation by the SEC regarding the false statement(s) and/or material omission(s), including the roles of individuals and/or other parties involved.

Alameda has established procedures to ensure compliance with their continuing disclosure undertakings in the future for Alameda and for all entities that are created or controlled by Alameda; and, as stated above, has made remedial filings of all delinquent or missing information in its prior undertakings for issues currently outstanding. Alameda fully intends to comply with all other requirements of the SEC Order.

RATING

Moody's Investors Service has assigned to the 2019 Series A Bonds the credit rating of "___." No application has been made to any other rating agency in order to obtain additional ratings on the 2019 Series A Bonds. Such credit rating reflects only the view of the organization furnishing the same and is not a recommendation to buy, sell or hold the 2019 Series A Bonds. An explanation of the significance of such rating may be obtained only from such rating agency at: Moody's Investors Service, 1 World Trade Center, 250 Greenwich Street, 23rd Floor, New York, New York 10007. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance that a rating will continue for any given period or that it will not be revised downward or withdrawn entirely by the applicable rating agency, if in the judgment of such rating agency, circumstances so warrant. NCPA undertakes no responsibility to oppose any such revision or withdrawal. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the 2019 Series A Bonds.

UNDERWRITING

J.P. Morgan Securities LLC (“J.P. Morgan” or the “Underwriter”), has agreed to purchase the 2019 Series A Bonds from NCPA at a price of \$_____ (which reflects the \$_____ par amount of the 2019 Series A Bonds, plus original issue premium of \$_____, and less an Underwriter’s discount of \$_____), subject to certain conditions set forth in the Contract of Purchase between NCPA and the Underwriter.

The Underwriter may offer and sell the 2019 Series A Bonds to certain dealers and others at prices lower than the offering prices or at yields higher than the offering yields stated on the inside cover page. The offering prices and yields may be changed from time to time by the Underwriter. The Contract of Purchase for the 2019 Series A Bonds provides that the Underwriter will purchase all of the 2019 Series A Bonds, if any are purchased, the obligation to make such purchases being subject to certain terms and conditions set forth in the Contract of Purchase.

The following information has been provided by the Underwriter for inclusion in this Official Statement:

J.P. Morgan has entered into negotiated dealer agreements (each, a “Dealer Agreement”) with each of Charles Schwab & Co., Inc. (“CS&Co.”) and LPL Financial LLC (“LPL”) for the retail distribution of certain securities offerings at the original issue prices. Pursuant to each Dealer Agreement, each of CS&Co. and LPL may purchase 2019 Series A Bonds from J.P. Morgan at the original issue price less a negotiated portion of the selling concession applicable to any 2019 Series A Bonds that such firm sells.

CERTAIN RELATIONSHIPS

The Underwriter and its affiliates comprise a full service securities firm and a commercial bank engaged in securities trading and brokerage activities, as well as providing investment banking, asset management, financing, and financial advisory services and other commercial and investment banking products and services to a wide range of corporations and individuals. In addition, the Underwriter and its affiliates may currently have and may in the future have investment and commercial banking, trust and other relationships with parties that may relate to assets of, or be involved in the issuance of securities and/or instruments by, NCPA and/or its members.

In the ordinary course of their respective businesses, the Underwriter and its affiliates have engaged, and may in the future engage, in transactions with, and perform services for, NCPA and/or its members for which they received or will receive customary fees and expenses. Under certain circumstances, the Underwriter and its affiliates may have certain creditor and/or other rights against NCPA and/or its members in connection with such transactions and services. In the ordinary course of their various business activities, the Underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and may actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. Such investment and trading activities may involve or relate to assets, securities and/or instruments of NCPA and/or its members (whether directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with (or that are otherwise involved with transactions by) NCPA. The Underwriter and its affiliates may enter into hedging transactions with respect to exposures (including as a counterparty to one or more derivative or other transactions) either it or its affiliates may have with respect to NCPA and/or its members. The Underwriter and its affiliates may also communicate independent investment recommendations, market advice or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

The Underwriter and its affiliates have certain inter-company compensation arrangements that relate to transactions that may occur from time to time between the Underwriter and its affiliates, on the one hand, with NCPA and/or its members, on the other, as the case may be. Such inter-company compensation may be determined in part based on the size of the relevant transaction.

MUNICIPAL ADVISOR

PFM Financial Advisors LLC (the “Municipal Advisor”) has assisted NCPA with various matters relating to the planning, structuring and delivery of the 2019 Series A Bonds. The Municipal Advisor is a financial advisory firm and is not engaged in the business of underwriting or distributing municipal securities or other public securities. The Municipal Advisor assumes no responsibility for the accuracy, completeness or fairness of this Official Statement. The Municipal Advisor will receive compensation from NCPA contingent upon the sale of the delivery of the 2019 Series A Bonds.

APPROVAL OF LEGAL PROCEEDINGS

The issuance of the 2019 Series A Bonds is subject to the approval of legality of Norton Rose Fulbright US LLP, Bond Counsel to NCPA. Certain legal matters will be passed upon for NCPA by Jane E. Luckhardt, Esq., General Counsel to NCPA, and by Spiegel & McDiarmid LLP, Washington, D.C., Washington Counsel to NCPA. Nixon Peabody LLP is serving as Special Tax Counsel to NCPA in connection with the 2019 Series A Bonds. Norton Rose Fulbright US LLP is serving as Disclosure Counsel to NCPA in connection with the 2019 Series A Bonds. Certain legal matters will be passed upon for the Underwriter by Orrick, Herrington & Sutcliffe LLP, Counsel to the Underwriter.

VERIFICATION OF MATHEMATICAL COMPUTATIONS

On the date of delivery of the 2019 Series A Bonds, NCPA will receive a report from Samuel Klein and Company, Certified Public Accountants (the “Verification Agent”), verifying the adequacy of the cash deposited and held in the Escrow Fund, together with the maturing principal amounts of and interest earned on the Defeasance Securities, to pay on the date due, the redemption price of the refunded 2010 Series A Bonds and accrued interest thereon.

The report of the Verification Agent will include the statement that the scope of their engagement was limited to verifying the mathematical accuracy of the computations contained in the schedules provided to them and that they have no obligations to update their report because of events occurring, or data or information coming to their attention, subsequent to the date of their report.

INDEPENDENT AUDITORS

The combined financial statements of Northern California Power Agency and Associated Power Corporations as of and for the years ended June 30, 2019 and 2018 have been audited by Baker Tilly Virchow Krause, LLP, independent auditors, as stated in their report appearing therein. Baker Tilly Virchow Krause, LLP has not been engaged to perform and has not performed, since the date of its report included therein, any procedures on the financial statements addressed in such report. Baker Tilly Virchow Krause, LLP has also not performed any procedures relating to this Official Statement.

INCLUSION BY SPECIFIC REFERENCE

When delivered by the Underwriter, in its capacity as such, this Official Statement shall be deemed to include by specific reference all documents previously provided to the MSRB (through its EMMA System) by NCPA or a Significant Share Project Participant with respect to its electric system to the extent that statements in such documents are material to the offering made hereby. Any statements in a document

included by specific reference herein shall be modified or superseded for purposes of this Official Statement to the extent that it is modified or superseded by statements contained in this Official Statement or in any other subsequently provided document included by specific reference herein.

MISCELLANEOUS

This Official Statement includes descriptions of the terms of the 2019 Series A Bonds, the Indenture, the Unit One Member Agreement, the Escrow Agreement, the Continuing Disclosure Agreements, certain other agreements and certain provisions of state and federal legislation. Such descriptions do not purport to be complete and all such descriptions and references thereto are qualified in their entirety by references to each such document, copies of which may be obtained from NCPA or, during the period of the offering, from the Underwriter.

Any statements herein involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact.

NORTHERN CALIFORNIA POWER AGENCY

By: _____
Randy S. Howard
General Manager

APPENDIX A

**SELECTED INFORMATION RELATING TO THE SIGNIFICANT SHARE
PROJECT PARTICIPANTS**

The following information has been supplied by the respective Project Participants, and includes selected historical operating data and data taken from their electric system balance sheets. Neither NCPA nor any Project Participant makes any representation as to the accuracy or completeness of this information with respect to any other Project Participants.

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CITY OF ALAMEDA

Introduction

The City of Alameda (“Alameda”) is a charter city in the State of California. Alameda is an island community of 22.8 square miles located across the bay from San Francisco and to the west of the City of Oakland. Alameda was incorporated in 1854.

Alameda provides electric utility service through its Department of Public Utilities – Bureau of Electricity. The Alameda Bureau of Electricity began operation in 1887. The Bureau of Electricity did business as “Alameda Power & Telecom” beginning in 1999. On January 26, 2009, the name was changed to “Alameda Municipal Power.” The Alameda electric utility was the first municipal electric utility in California and is one of the oldest in the nation.

Alameda Municipal Power (hereinafter, “AMP”) serves the entire area of the City of Alameda and has about 86 pole miles of overhead distribution lines and 181 circuit miles of underground distribution lines, 6.8 pole miles of overhead transmission lines, 1.9 circuit miles of underground transmission lines and 6,415 streetlights. During fiscal year 2018-19, AMP served an average of 34,809 customers, comprised of an average of 30,650 residential customers, an average of 3,789 commercial customers and an average of 370 public authority and other customers, with a peak demand of approximately 61.5 MW.

AMP joined the Northern California Power Agency (“NCPA”) in 1968, is a participant in most NCPA projects, and has procured other power supply resources independently. In addition, NCPA has developed electric scheduling, dispatch and transmission capabilities that are utilized in the provision of AMP’s electric utility services. All of AMP’s rights to electric energy, capacity, environmental attributes and transmission are scheduled by NCPA and AMP participates in the NCPA power pool. See “NORTHERN CALIFORNIA POWER AGENCY – NCPA Power Pool” in the front part of this Official Statement.

From June 2001 until November 21, 2008, AMP also provided cable television and internet services through its telecommunications system. On November 18, 2008, the City Council of the City of Alameda unanimously authorized the sale of the telecommunications business line effective November 21, 2008. See “– Condensed Operating Results and Selected Balance Sheet Information – Interfund Transfers” below.

Only the revenues of AMP’s electric system will be available to pay amounts owed by Alameda under the Unit One Member Agreement.

AMP is under the policy control of the Alameda Public Utilities Board, in accordance with the Alameda City Charter. The Alameda Public Utilities Board consists of four commissioners appointed by the Mayor with concurrence of the City Council, and the City Manager of Alameda (as an ex-officio member), who may not hold any office on the Board.

Pursuant to the Alameda City Charter, the Alameda Public Utilities Board has the power to control and manage the electric system, including the power to set rates for the services of the electric system. The Alameda Public Utilities Board also establishes goals and policies, approves major purchases and creates the framework for local control of the utility.

AMP’s main office is located at 2000 Grand Street, Alameda, California 94501, (510) 748-3900. For more information about AMP and its electric system, contact Nicolas Procos, General Manager at the above address and telephone number. A copy of the most recent comprehensive annual financial report of AMP (the “Annual Report”) is available on AMP’s website at <http://www.alamedamp.com> and on the

Municipal Securities Rulemaking Board's Electronic Municipal Market Access system at <http://emma.msrb.org/>. The Annual Report is incorporated herein by this reference. However, the information presented on such website or referenced therein other than the Annual Report is not part of this Official Statement and is not incorporated by reference herein.

Power Supply Resources

The following table sets forth information concerning AMP's power supply resources and the energy supplied by each during the fiscal year ended June 30, 2019.

**CITY OF ALAMEDA
ALAMEDA MUNICIPAL POWER
POWER SUPPLY RESOURCES
For the Fiscal Year Ended June 30, 2019**

Source	Capacity Available (MW) ⁽¹⁾	Actual Energy (GWh)	% of Total Energy
Purchased Power ⁽²⁾ :			
Western Hydroelectric	18.7	42.1	12.0%
Landfill Gas ⁽⁴⁾	10.2	29.9	8.5
High Winds	4.8	20.7	5.9
Silicon Valley Power	--	36.3	10.3
NCPA			
Hydroelectric Project	25.3	85.1	24.2
Combustion Turbine Project No. 1 & 2 ⁽³⁾	24.8	5.3	1.5
Geothermal Plant 1 ⁽⁴⁾	10.0	--	0.0
Geothermal Plant 2 ⁽⁴⁾	8.9	--	0.0
Graeagle	--	2.0	0.6
Other Purchases (Net)	--	130.0	37.0
Total Capacity and Total Purchased Energy	[78.7]	351[.2]	[105.7%]
Less Line Losses	N/A	(18.8)	(5.7)
AMP's Capacity and Retail Sales Requirements	62.1	332.[4]	100.0%

⁽¹⁾ Non-coincident, maximum net qualifying capacity available for CAISO.

⁽²⁾ Entitlements, firm allocations and contract amounts.

⁽³⁾ Combustion Turbine Project No. 2 is also referred to as Unit One or the Project in the front part of this Official Statement. See "THE PROJECT" in the front part of this Official Statement.

⁽⁴⁾ AMP sold its share of eligible renewable energy generated by the NCPA Geothermal Project and one of its landfill power purchase agreements. See "– Energy Efficiency and Conservation. Renewable Resources."

Source: Alameda Municipal Power.

In the fiscal year ended June 30, 2019, AMP's average cost of power for 332.4 GWh of energy sales was 8.90 cents per kWh, and its average cost of power for the 351.2 GWh purchased was 8.42 cents per kWh.

Purchased Power

Western. AMP has power purchase agreements ("PPAs") with the Western Area Power Administration ("Western") that continue through December 31, 2024. AMP's Western power is assigned

to NCPA for scheduling and delivery to AMP. Power purchased under these agreements is generated by the Central Valley Project (“CVP”), a series of federal hydroelectric facilities in Northern California operated by the United States Bureau of Reclamation.

On October 5, 2000, AMP signed a 20-year Base Resource agreement with Western with initial service beginning January 1, 2005. Service under the Western contract will continue through December 31, 2024, with AMP receiving a “slice of the system” allocation from Western. AMP’s allocation is currently 1.08075% of the CVP output. Power provided to AMP under the Western contract is on a take-or-pay basis; AMP is obligated to pay its share of Western costs whether or not it receives any power.

Western began its new marketing plan process whereby AMP has the opportunity to evaluate the potential additional acquisition or surrender of base resource power from the CVP. Western has indicated it anticipates new 30-year contracts are to be executed by customers choosing to do so in April 2020 with an effective date of January 1, 2025. *{monitor for update if determination made on continuing or terminating}*

Other Purchases. AMP has also entered into certain other PPAs: (1) a PPA with Avangrid Renewables LLC (formerly Iberdrola Renewables, Inc.) for power supplied from the High Winds Project in Solano County, California under which AMP receives 6.17% (approximately 10 MW of the 162 MW project) until June 30, 2028; (2) five long-term PPAs for power supplied by multiple existing generating facilities utilizing combustible gaseous emissions from landfills located in or near the San Francisco Bay area, under which AMP has received approximately 3.2 MW of baseload power from two facilities since early 2006, approximately 7.1 MW of baseload output from two additional facilities since 2009, and approximately 1.9 MW of baseload power from a fifth facility since 2013; and (3) a PPA with the City of Santa Clara (Silicon Valley Power) under which AMP receives an additional 10 MW of renewable energy from Silicon Valley Power during the months of January, February, October, November, and December beginning January 2018 through December 2027. In addition, AMP makes short-term market purchases as necessary to meet its native load requirements.

Generally, AMP has entered into power purchase agreements solely or primarily for use within its own system.

Joint Powers Agency Resources

NCPA. AMP does not independently own any generation assets but, in addition to power purchased from Western and others, AMP is a participant in most NCPA projects. AMP has purchased from NCPA: a 19.00% entitlement share in the Combustion Turbine Project Number Two (referred to as Unit One or the Project in this Official Statement); a 10.00% entitlement share in the NCPA Hydroelectric Project; a 21.820% entitlement share in the NCPA Combustion Turbine Project Number One; and a 16.8825% entitlement share in the NCPA Geothermal Project. AMP additionally participates in the NCPA Geysers Transmission Project, in which it has a 30.36% entitlement share. For a description of such resources, see “THE PROJECT” and “OTHER NCPA PROJECTS” in the front part of this Official Statement. For each of these NCPA projects in which AMP participates, AMP is obligated to pay, on an unconditional take-or-pay basis, as an operation and maintenance cost of its electric system, its entitlement share of the debt service on NCPA bonds issued for the project (as applicable), as well as its share of the operation and maintenance expenses of the project. See also “– Indebtedness; Joint Powers Agency Obligations” below.

Through NCPA, AMP also participates in certain PPAs entered into by NCPA, including a PPA with Henwood Associates, Inc. to purchase 100% of the power produced by the Graeagle Hydroelectric Project, a small 440 kW hydroelectric project (replacing a prior agreement under which AMP received 50% of the project output). The energy source for the facility is hydroelectric and the facility meets the qualifying facilities requirements established by FERC. The facility output, which varies with hydrological conditions,

has averaged about 2,000 MWh per year. Deliveries under the agreement began on February 1, 2010 and will terminate on January 31, 2030. See also “OTHER NCPA PROJECTS – Power Purchase and Natural Gas Contracts” in the front part of this Official Statement. Additionally, AMP participates in NCPA’s Market Purchase Program when contracted resources cannot meet load.

TANC California-Oregon Transmission Project. AMP, together with fourteen other northern California cities and districts and one rural electric cooperative, is a member, or associate member, of a California joint powers agency known as the Transmission Agency of Northern California (“TANC”). TANC, together with the City of Redding (“Redding”), Western, two California water districts and PG&E (collectively, the “COTP Participants”) own the California–Oregon Transmission Project (“COTP”), a 339-mile long, 1,600 MW, 500 kV transmission project between southern Oregon and central California. The COTP was placed in service on March 24, 1993, at an original cost of approximately \$430 million. TANC financed its interest in the COTP through the issuance of California-Oregon Transmission Project Revenue Bonds, of which approximately \$191.8 million principal amount of revenue bonds was outstanding as of September 1, 2019. See “– Indebtedness.”

Pursuant to Project Agreement No. 3 for the COTP (the “TANC Agreement”), TANC has agreed to provide to AMP and 12 other members of TANC (the “TANC Member-Participants”) a participation percentage of TANC’s entitlement of COTP transfer capability. In return, each TANC Member-Participant has severally agreed to pay TANC a corresponding percentage of TANC’s share of the COTP construction costs, including debt service on TANC’s outstanding revenue bonds and other obligations issued by TANC to finance its ownership share of the COTP. A TANC Member-Participant’s obligations to make payments to TANC are not dependent upon the operation of the COTP and are not subject to reduction. Upon an unremedied default by one TANC Member-Participant in making a payment required under the TANC Agreement, the non-defaulting TANC Member-Participants are required to increase pro-rata their participation percentage by the amount of the defaulting TANC Member-Participant’s entitlement share, provided that no such increase can result in a greater than 25% increase in the participation percentage of the non-defaulting TANC Member-Participants.

Pursuant to the TANC Agreement, AMP is obligated to pay 1.23% of TANC’s COTP operating and maintenance expenses and 1.33% of TANC’s COTP debt service (on bonds other than TANC’s 2009 Series A Bonds on which it is obligated for 1.45% of debt service) and is entitled to 1.23% of TANC’s share of COTP transfer capability (approximately 17 MW net of third-party layoffs of TANC) on an unconditional take-or-pay basis. AMP’s share of annual operating and maintenance expenses and debt service for the COTP is approximately \$0.7 million per year. However, Alameda has laid off its COTP entitlement through 2039 as described under “– COTP Long-Term Layoff” below.

To utilize the full transfer capability of the COTP and the Intertie (described below) on a firm basis between the Pacific Northwest and California, it is necessary to coordinate the operation of all three transmission lines. The Pacific AC Intertie (the “Intertie”) is a two line system which, like the COTP, connects California utilities with those in the Pacific Northwest. The Intertie lines are owned by Pacific Gas & Electric Company (“PG&E”), PacifiCorp and Western and are operated by the CAISO. Rate schedules are on file with the Federal Energy Regulatory Commission (“FERC”) to accomplish this coordination. The three-line system comprised of the COTP and the Intertie is collectively referred to as the California-Oregon Intertie (“COI”). See also “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – PG&E Bankruptcy” in the front part of this Official Statement.

In December 2005, the COTP became part of the Sacramento Municipal Utility District (“SMUD”) balancing authority area within the Western sub-balancing area authority. In 2011, the operations of the SMUD balancing authority were transferred to the Balancing Authority of Northern California (“BANC”). As a result, the TANC Member-Participants are able to undertake direct scheduling of energy transactions

over the COTP within the balancing authority area, free of the CAISO tariff, charges, congestion and encumbrances.

COTP Long-Term Layoff. Due to situational and economic changes in value of power deliveries over the COTP, AMP and six other TANC members laid off their participation shares in the COTP to other TANC members for a period of 25 years with the option to extend for an additional five years upon all parties' approval. The enabling agreement among the parties became effective on July 1, 2014. The agreement transfers the use and associated rights of AMP's project participation shares to the receiving parties (the Modesto Irrigation District, the Turlock Irrigation District and SMUD). The receiving parties agree to pay the debt service and operating and maintenance costs associated with those shares and an additional value payment after the debt service is retired. Under the agreement, AMP continues to be a member of TANC and remains ultimately responsible for its allocated share of the costs of the COTP in the event of a default by a receiving party during the term of the agreement.

TANC Tesla–Midway Transmission Service. The southern physical terminus of the COTP is near the Tesla Substation of PG&E, located near Tracy, California. The COTP is connected to Western's Tracy and Olinda Substations. PG&E provides TANC and its members with 300 MW of firm bi-directional transmission capacity in its transmission system between its Tesla Substation and its Midway Substation near Buttonwillow, California (the "Tesla-Midway Transmission Service") under a long-term agreement known as the South of Tesla Principles. AMP's share of Tesla-Midway Transmission Service is 6.0 MW. AMP may utilize its full allocation of Tesla–Midway Transmission Service for firm and non-firm power transactions when economic to do so and if available. See also "CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – PG&E Bankruptcy" in the front part of this Official Statement.

Energy Efficiency and Conservation; Renewable Resources

State laws enacted in 2005 and 2006 require publicly-owned utilities ("POUs"), such as AMP, in procuring energy, to first implement all available energy efficiency and demand reduction resources that are cost-effective, reliable and feasible, and to provide annual reports to customers and to the California Energy Commission (the "CEC") describing their investment in energy efficiency and demand reduction programs. California Assembly Bill 2021, which became law in 2007, requires investor-owned utilities ("IOUs") and POUs to identify energy efficiency potential and establish annual efficiency targets so that the State can meet the goal of reducing total forecasted electricity consumption by 10% over the ten years.

AMP has a full portfolio of public benefits programs, addressing four areas of concentration: low income assistance programs, renewable energy production, advanced electric technology demonstration, and research and development, as well as energy efficiency programs. It has continually funded new renewable resources including geothermal, wind, landfill gas, and hydroelectric generation.

AMP has had energy efficiency programs in place since the 1990s. These energy efficiency programs focus on the unique end-uses in Alameda with its coastal climate, and the resulting lack of air conditioning load. AMP offers energy efficiency programs for all of its customer classes and has established an aggressive target for reducing future consumption by nearly 12% during the next ten years.

California Senate Bill ("SB") X1-2 requires POUs to adopt and implement a renewable energy resource procurement plan to achieve specified targets for serving their retail energy loads from California-eligible renewable energy resources, culminating in a target of serving 33% of their loads with California-eligible renewable energy resources by December 31, 2020. State law enacted in 2015, SB 350, increased California's renewable electricity procurement goal from 33% by 2020 to 50% by 2030 based on Renewables Portfolio Standard ("RPS") eligible resources. State law enacted in 2018, SB 100, accelerates the State's RPS target as established by SB 350 from 50% by 2030 to 60% by 2030 and sets a goal of 100% "clean energy" by the year 2045. See "CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY

INDUSTRY – State Legislation and Regulatory Proceedings – *California Renewables Portfolio Standard*” in the front part of this Official Statement for more information on SBX1-2, SB 350 and SB 100.

AMP’s renewables portfolio consists of its share of NCPA’s geothermal and hydroelectric projects as well as PPAs for the purchase of landfill gas-to-energy, wind, and additional hydroelectric generation. All of this generation is considered California-eligible renewable generation with the exception of generation from large (>30 MW) hydroelectric facilities, which do not count towards the State’s RPS compliance obligations. SBX1-2 regulations include an RPS target of an average of 20% California-eligible renewable resources used to meet retail sales for Compliance Period 1 (calendar year (“CY”) 2011 through CY 2013) which AMP exceeded with an actual average of 25%. AMP also satisfied the RPS targets for Compliance Period 2 (CY 2014 through CY 2016) by meeting the RPS target of a total equal to 20% of retail sales in 2014 and 2015, and 25% of retail sales in 2016. AMP has met or does not currently anticipate any difficulty in meeting the RPS target for Compliance Period 3 (CY 2017 through CY 2020) of a total equal to 27% of retail sales in 2017, 29% in 2018, 31% in 2019 and 33% in 2020. AMP’s current portfolio is expected to fulfill its RPS compliance requirements under current law through 2030 and beyond.

In January 2012 and again in January 2015, the Alameda Public Utilities Board adopted a Renewable Energy Sales and Use of Resulting Revenues Policy stating that through 2019, AMP may sell eligible renewable energy not required to comply with the Board approved RPS Policy. AMP subsequently entered into two sales agreements, the first from October 15, 2012 through December 31, 2016 to the California Department of Water Resources (“CDWR”), and a subsequent sale from January 1, 2017 through December 31, 2019 to Shell Energy North America (“Shell”). For both agreements, AMP sold its share of eligible renewable energy generated by NCPA’s geothermal project and generation from one of its landfill gas PPAs. The resulting revenues from these sales are to be used to support initiatives to reduce greenhouse gas (“GHG”) emissions associated with electricity use by AMP’s customers. AMP has established a Board designated reserve in accordance with this policy into which all revenues associated with these sales are deposited. Through these sales AMP has been able to fund a variety of GHG emissions reductions programs, like energy efficiency, without raising rates.

To comply with California Senate Bill 1305, passed in 1997, which created the Power Source Disclosure program (as subsequently modified), AMP must annually disclose the fuel sources of the electricity it sold to customers the previous CY in the CEC’s Power Source Disclosure Report, from which a Power Content Label (“PCL”) is generated. For the years prior to AMP entering into the CDWR and Shell sales agreements, AMP typically reported mid-sixties percentages of electricity coming from California-eligible renewable resources on the PCL. However, during the sales years, which will end on December 31, 2019, those percentages have been in the low twenties. For example, had the sales not occurred, AMP would have reported 73% for 2017 instead of 21%, and an estimated 88% for 2018 instead of an estimated 32%.

Per California Assembly Bill (“AB”) 32, the Global Warming Solutions Act, AMP is subject to the California Air Resources Board’s (“CARB”) cap-and-trade program regulations. Each year CARB distributes freely allocated allowances to AMP, which AMP must allocate to the cap-and-trade auction process. Current Alameda Public Utilities Board policy requires AMP to allocate allowances to each quarterly auction, deposit the proceeds into a designated reserve account and use the proceeds to benefit retail ratepayers consistent with the goals of AB 32. See “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings – *California Climate Program*” and “– *Cap-and-Trade Program*” in the front part of this Official Statement.

Future Power Supply Resources

AMP is currently investigating options to meet future resource requirements in an environmentally beneficial manner including additional renewable resources and energy efficiency savings.

Interconnections, Transmission and Distribution Facilities

Facilities Description. AMP’s electric system is interconnected with PG&E’s system at two PG&E substations. AMP owns facilities for the distribution of electric power within the city limits of Alameda, which includes approximately 8.70 miles of 115 kV power lines, approximately 265.1 miles of 12 kV distribution lines (approximately 68% of which are underground) and eight substations. AMP’s electric system experienced approximately 60.17 minutes of outage time per customer in fiscal year 2017-18. *{update for FY 2019 when available}*

Wildfire Risks. AMP does not own or operate any transmission or generation assets. The service area of AMP, which is coterminous with the municipal boundaries of the City of Alameda, is largely an urban area and has no urban wildland interface. Alameda is located in a geographical area classified by the California Public Utilities Commission Fire Threat Map as a “Tier 1” fire-threat area (*i.e.*, not in an area of elevated or extreme risk from utility-associated wildfires). By resolution, on September 17, 2018, the Alameda Public Utilities Board made a wildfire risk determination pursuant to the requirements of California Senate Bill 1028, and determined that AMP’s overhead electrical lines and equipment are located within a geographical area that does not have a significant risk of catastrophic wildfire resulting from AMP’s electrical lines and equipment. Pursuant to the requirements of California Senate Bill 901 and Assembly Bill 1054, AMP expects to prepare a wildfire mitigation plan to be completed prior to January 1, 2020. See also “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings – *Legislation Relating to Wildfires; Related Risks*” in the front part of this Official Statement.

Rates and Charges

AMP has the exclusive jurisdiction to set electric rates within its service area by action of the Alameda Public Utilities Board. These rates are not subject to review by any state or federal agency.

{please update for FY 2018-19} AMP’s fiscal year 2018-19 average rate per kWh sold for all electric service was [17.70] cents per kWh. The average rate per kWh sold for residential service in fiscal year 2018-19 was [19.19] cents. The average rates for commercial service were [16.67] cents per kWh. AMP’s average rate for municipal and public authority service for fiscal year 2018-19 was [19.13] cents per kWh. On April 15, 2019, the Alameda Public Utilities Board approved a 2.50% overall average rate increase for residential and commercial customers for fiscal year 2019-20. [In general, the rate adjustment for fiscal year 2019-20 was designed to increase revenue by approximately __ cents per kWh.] Currently, AMP management estimates that AMP’s electric rates are approximately 16.5% below those of PG&E on average. *{please confirm – consistent with 4/16/19 press release on rate increase}*

The following table presents a recent history of AMP’s rate changes.

[Remainder of page intentionally left blank.]

**CITY OF ALAMEDA
ALAMEDA MUNICIPAL POWER
ELECTRIC RATE CHANGES**

Date	Percent Change (Average)
July 1, 2019	2.50%
July 1, 2018	1.00
July 1, 2017	5.00
July 1, 2016	5.00
July 1, 2015	4.60

Source: Alameda Municipal Power.

Largest Customers

AMP's ten largest electric customers in terms of kWh sales for the fiscal year ended June 30, 2019 accounted for 14.36% of total kWh sales and 12.95% of total revenues. The largest customer accounted for 4.21% of total kWh sales and 3.60% of total revenues. The smallest of the ten largest customers accounted for 0.77% of total kWh sales and 0.70 % of revenues.

Customers, Sales, Revenues and Demand

The average numbers of customers, kWh sales, revenues derived from sales by classification of service and peak demand during the five fiscal years 2014-15 through 2018-19, are listed below.

[Remainder of page intentionally left blank.]

**CITY OF ALAMEDA
ALAMEDA MUNICIPAL POWER
ELECTRIC CUSTOMERS, SALES, REVENUES AND DEMAND**

	Fiscal Years Ended June 30,				
	2015	2016	2017	2018	2019
Number of Customers:					
Residential	30,307	30,377	30,495	30,625	31,201
Commercial Small	3,834	3,735	3,764	3,778	3,808
Commercial Medium	8	8	12	12	8
Public Authority	361	363	362	363	358
Other	15	11	15	12	13
Total Customers	34,525	34,494	34,648	34,790	35,388
Kilowatt-Hour Sales:					
Residential	125,431,220	125,831,929	126,850,402	124,589,523	125,510,907
Commercial Small	174,257,771	176,575,883	172,520,353	168,873,305	164,807,447
Commercial Medium	26,587,830	31,490,040	30,127,960	28,321,180	28,712,440
Public Authority	12,801,245	12,375,517	11,428,198	10,723,565	11,064,277
Other	3,124,117	2,546,494	2,838,825	2,518,330	2,324,054
Total kWh sales	342,202,183	348,819,863	343,765,738	335,025,903	332,419,125
Revenues from Sale of Energy:					
Residential	\$18,849,656	\$19,869,104	\$21,510,126	\$23,902,788	\$24,414,010
Commercial Small	25,660,869	27,071,358	27,177,335	28,500,186	28,354,299
Commercial Medium	3,435,518	4,278,240	4,366,885	4,338,898	4,580,711
Public Authority	2,047,549	1,973,689	1,958,154	1,965,664	2,225,142
Other	797,198	1,028,631	913,247	793,870	419,603
Total Revenues from Sale of Energy	\$50,790,790	\$54,221,022	\$55,925,747	\$59,501,406	\$59,993,766
Peak Demand (kW)	63,372	64,283	63,738	59,624	62,131

Source: Alameda Municipal Power.

Service Area

Population. The City of Alameda is located in Alameda County just west of the City of Oakland and approximately 12 miles east of San Francisco. The service area of the AMP electric system is coterminous with the city boundaries. Shown below is certain population data for the City of Alameda, the County of Alameda and the State of California.

**CITY OF ALAMEDA, COUNTY OF ALAMEDA,
STATE OF CALIFORNIA POPULATION
(1970-2010 as of April 1; 2011-2019 as of January 1)**

Year	City of Alameda	County of Alameda	State of California
1970	70,968	1,071,446	19,971,069
1980	63,852	1,105,379	23,667,764
1990	76,459	1,279,182	29,760,021
2000	72,259	1,443,741	33,871,653
2010	73,812	1,510,271	37,253,956
2011	74,517	1,525,845	37,594,781
2012	75,272	1,546,992	37,971,427
2013	75,911	1,570,384	38,321,459
2014	76,468	1,590,603	38,622,301
2015	77,254	1,613,168	38,952,462
2016	78,750	1,631,008	39,214,803
2017	78,945	1,646,156	39,504,609
2018	78,980	1,656,884	39,740,508
2019	79,316	1,669,301	39,927,315

Sources: 1970-2010, as of April 1, based on historical U.S. Census population data compiled by the California State Department of Finance. 2011-2019, as of January 1, State of California, Department of Finance, E-4 Population Estimates for Cities, Counties and the State, with 2010 Census Benchmark. Sacramento, California, May 2019.

Employment. Alameda is part of the highly urbanized East Bay, which consists of Alameda and Contra Costa counties. A highly skilled labor force, excellent transportation facilities, renowned educational institutions and available advanced research and development resources contribute to the area's economy. The largest employers in Alameda as of June 30, 2019 are as follows:

**CITY OF ALAMEDA
2017-18 LARGEST EMPLOYERS**

Employer	Business	Number of Employees
Penumbra	Med. Device Developer/Manufacturer	1,839
Alameda Unified School district	Public School	1,025
Allegis Group Services, Inc	Recruiting & Talent Mgmt	950
Alameda Hospital	Health Care/Hospital	754
Oakland Raiders	Sports Team	694
Abbott Diabetes Care	Med. Device Developer/Manufacturer	600
City of Alameda	Local Government	533
U.S. Department of Transportation	Federal Government	400
Kaiser Foundation Health Plan	Health Care/Clinic	425
Performance Contracting	Speciality Contractors	380

Source: City of Alameda Finance Department.

The Oakland-Hayward-Berkeley Metropolitan Division, as defined by the State Employment Development Department, includes all cities within Alameda and Contra Costa Counties. According to the California Employment Development Department, the County of Alameda's unemployment rate was 3.0% for the year 2018. The following table sets forth certain information regarding employment in the City of Alameda from 2014 through 2018.

**CITY OF ALAMEDA
CIVILIAN LABOR FORCE, EMPLOYMENT AND UNEMPLOYMENT
2014 TO 2018⁽¹⁾**

	2014⁽²⁾	2015⁽²⁾	2016⁽²⁾	2017⁽³⁾	2018⁽³⁾
Civilian Labor Force	40,300	41,000	41,800	39,700	42,100
Employment	38,300	39,300	40,300	38,400	40,900
Unemployment	2,000	1,700	1,500	1,300	1,200
Unemployment Rate	5.0%	4.1%	3.6%	3.3%	2.8%

⁽¹⁾ Annual averages; not seasonally adjusted. Data may not add due to rounding. Unemployment rates calculated using unrounded data.

⁽²⁾ Reflects March 2016 benchmark.

⁽³⁾ Reflects March 2017 benchmark.

Source: State of California Employment Development Department, Labor Market Information Division, Monthly Labor Force Data for Cities and Census Designated Places, Annual Averages – Revised.

Assessed Valuation. The five-year history of assessed valuations in Alameda is as follows. *{update for FY 2018-19 when available from Finance Dept.}*

**CITY OF ALAMEDA
TOTAL ASSESSED VALUATIONS
(Fiscal Years 2013-14 through 2017-18)**

2013-14	2014-15	2015-16	2016-17	2017-18
\$9,949,194,280	\$10,531,584,610	\$11,155,282,233	\$11,858,309,875	\$12,544,972,055

Source: City of Alameda Finance Department.

Forecast of Capital Expenditures

AMP's current five-year capital plan for electric facilities contemplates capital expenditures in the following years and amounts: *{confirm no current financial forecast beyond 2023?}*

**CITY OF ALAMEDA
ALAMEDA MUNICIPAL POWER
ESTIMATED CAPITAL EXPENDITURES**

Fiscal Year Ended June 30,				
2020	2021	2022	2023	2024
\$4,917,400	\$3,751,250	\$3,736,400	\$2,471,400	

Source: Alameda Municipal Power.

The capital expenditures are for distribution system improvements and extensions, the underground conversion program, additions for new loads, replacements and maintenance, computer equipment and software and vehicles. AMP anticipates funding the majority of such costs from current year revenues and designated reserves.

Indebtedness; Joint Powers Agency Obligations

As of September 1, 2019, AMP had outstanding obligations under an Installment Sale Agreement, dated as of August 1, 2010 (the “Electric System Installment Sale Agreement”), by and between the Alameda Public Financing Authority and AMP, in the aggregate principal amount of \$22,795,000. The installment payments payable by AMP under the Electric System Installment Sale Agreement are payable from and secured solely by a pledge of and lien on net revenues of the electric system of AMP. These obligations are subordinate to the payments required to be made with respect to AMP’s obligations to NCPA and TANC as described below.

As previously discussed, AMP participates in certain joint powers agencies, including NCPA and TANC. Obligations of AMP with respect to TANC and NCPA constitute operating expenses of the AMP electric system payable prior to any of the payments required to be made by AMP under the Electric System Installment Sale Agreement described above. The agreements with NCPA and TANC are on a “take-or-pay” basis, which requires payments to be made whether or not projects are completed or operable, or whether output from such projects is suspended, interrupted or terminated. Certain of these agreements contain “step up” provisions obligating AMP to pay a share of the obligations of a defaulting participant. AMP’s participation and share of debt service obligation (without giving effect to any “step up” provisions) for each of the joint powers agency projects in which it participates are shown in the following table.

**CITY OF ALAMEDA
ALAMEDA MUNICIPAL POWER
OUTSTANDING DEBT OF JOINT POWERS AGENCIES
(Dollar Amounts in Millions)
(As of September 1, 2019)**

	Outstanding Debt⁽¹⁾	AMP’s Participation⁽²⁾	AMP’s Share of Outstanding Debt⁽¹⁾
NCPA			
Geothermal Project	\$ 20.1	16.8825%	\$ 3.4
Hydroelectric Project	265.7	10.0000	26.6
Capital Facilities Project Unit One	25.5	19.0000	4.9
TANC – South of Tesla	[2.6]	2.104%	[0.1] ⁽³⁾
TOTAL *	[\$313.9]		[\$35]

* Columns may not add to totals due to independent rounding.

(1) Principal only. Does not include obligation for payment of interest on such debt.

(2) Participation obligation is subject to increase upon default of another project participant. Such increase shall not exceed, without written consent of a non-defaulting participant, an accumulated maximum of 25% of such non-defaulting participant’s original participation.

(3) AMP’s 1.23% participation share of TANC COTP entitlement has been assigned to other TANC Members. Excludes associated debt obligation. Alameda remains contractually obligated for its share to the extent not paid by assignees. Obligation shown represents portion of TANC COTP debt allocated to Tesla-Midway Transmission Service.

Source: Alameda Municipal Power.

AMP estimates its payment obligations for debt service on its joint powers agency debt obligations to be approximately \$2.6 million for the fiscal year ended June 30, 2019, and approximately \$___ million for the fiscal year ended June 30, 2020. *{please update}* A portion of the joint powers agency debt

obligations are variable rate debt, liquidity support for which is provided through liquidity arrangements with banks. Unreimbursed draws under liquidity arrangements supporting joint powers agency variable rate debt obligations bear interest at a maximum rate substantially in excess of the current interest rates on such obligations. Moreover, in certain circumstances, the failure to reimburse draws on the liquidity agreements may result in the acceleration of scheduled payment of the principal of such variable rate joint powers agency obligations. In connection with certain of such joint power agency obligations, the respective joint powers agency has entered into interest rate swap agreements relating thereto for the purposes of substantially fixing the interest cost with respect thereto. There is no guarantee that the floating rate payable to the respective joint powers agency pursuant to each of the interest rate swap agreements relating thereto will match the variable interest rate on the associated variable rate joint powers agency debt obligations to which the respective interest rate swap agreement relates at all times or at any time. Under certain circumstances, the swap providers may be obligated to make payments to the applicable joint powers agency under their respective interest rate swap agreement that is less than the interest due on the associated variable rate joint powers agency debt obligations to which such interest rate swap agreement relates. In such event, such insufficiency will be payable as a debt service obligation from the obligated joint powers agency members (a corresponding amount of which proportionate to its debt service obligations to such joint powers agency could be due from AMP). In addition, under certain circumstances, each of the swap agreements is subject to early termination, in which event the joint powers agency could be obligated to make a substantial payment to the applicable swap provider (a corresponding amount of which proportionate to its debt service obligations to such joint powers agency could be due from AMP).

Transfers to the General Fund

The Alameda City Charter provides that AMP transfer to the Alameda General Fund certain excess earnings of the electric system after payment of bond interest and sinking fund requirements and operating expenses (exclusive of depreciation) and certain amounts authorized to be retained by AMP from earnings of the electric system, all as defined in and provided pursuant to the terms of the City Charter. In the absence of such transfer of excess earnings as determined under the City Charter, the Alameda Public Utilities Board has authorized by resolution certain contributions from the electric system to the City General Fund in accordance with the provisions of the City Charter.

The following table sets out the transfers from the AMP electric system to the Alameda General Fund for the five fiscal years 2014-15 through 2018-19.

**CITY OF ALAMEDA
ALAMEDA MUNICIPAL POWER
TRANSFERS TO THE GENERAL FUND
(Dollar Amounts in Thousands)**

Fiscal Year	Transfer Amount
2014-15	\$2,800,000
2015-16	2,800,000
2016-17	2,800,000
2017-18	3,700,000
2018-19	3,818,400

Source: Alameda Municipal Power.

Employees

Labor Relations. As of June 30, 2019, approximately 87 City of Alameda employees were assigned specifically to the Alameda electric utility. AMP’s management personnel are represented by the Electric Utility Professionals of Alameda (“EUPA”). Non-management personnel are represented either by the International Brotherhood of Electrical Workers (“IBEW”) or the Alameda City Employees Association (“ACEA”). The current Memoranda of Understanding (“MOU”) with each of EUPA and ACEA expires June 30, 2022. The MOU with the IBEW expired December 31, 2018 and is in negotiations. Until the successor agreement is executed, the terms of the expired MOU will continue to govern. There have been no strikes or other work stoppages at the City of Alameda, including AMP, since the early 1970s.

Pension Plans. Retirement benefits to City of Alameda employees, including those assigned to AMP, are provided through the City of Alameda’s participation in the California Public Employees Retirement System (“CalPERS”), an agent multiple employer defined benefit pension plan which acts as a common investment and administrative agent for its participating plan members. Copies of the CalPERS annual financial report may be obtained from the CalPERS Executive Office, 400 Q Street, Sacramento, California 95814.

Alameda’s defined benefit pension plans, the Miscellaneous Plan and the Safety Plan of the City of Alameda, provide retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries for substantially all Alameda employees. Benefit provisions under the plans are established by State statute and City resolution. No employees assigned to AMP participate in the Safety Plan. Alameda allocates a portion of the net pension liability, net pension expense and related deferred inflows and outflows of resources to AMP on a cost-sharing basis.

Active Miscellaneous Plan members hired prior to January 1, 2013 are required to contribute 7.00% of their annual covered salary and those hired on or after January 1, 2013 are required to contribute 6.75% of their annual covered salary. Alameda’s employer contribution rate is determined annually by the actuary effective on the July 1 following notice of a change in rate. Funding contribution amounts are determined annually on an actuarial basis as of June 30 by CalPERS. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. Alameda is required to contribute the difference between the actuarially determined rate and the contribution rate of employees. The actuarial methods and assumptions used are those adopted by the CalPERS Board of Administration. The employer contribution rates are established, and may be amended, by CalPERS.

The table below sets forth AMP’s allocated share of Alameda’s city-wide required contributions to the Miscellaneous Plan for the four fiscal years 2014-15 through 2017-18. AMP’s estimated allocated share of Alameda’s city-wide budgeted contributions to the Miscellaneous Plan for the fiscal year ended June 30, 2019 was \$1,752,722. AMP’s estimated allocated share of Alameda’s city-wide budgeted contributions to the Miscellaneous Plan for the fiscal year ending June 30, 2020 is \$1,840,510. *{confirm FY 2020 number – from April 15 Board budget workshop materials; monitor for FY 2019 data availability}*

Fiscal Year Ended June 30	City of Alameda Miscellaneous Plan		
	AMP Allocated Share	Total City Required Contribution Amount	AMP Contributions as a % of Covered Payroll
2015	\$1,016,782	\$ 3,713,053	13.61%
2016	1,312,978	4,525,123	16.84
2017	1,631,011	5,273,062	20.15
2018 ⁽¹⁾	1,739,297	5,710,914	20.12

⁽¹⁾ Most recent fiscal year information available.
Source: Alameda Municipal Power.

Alameda's required contributions to CalPERS fluctuate each year and include a normal cost component and a component equal to an amortized amount of the unfunded liability. Many assumptions are used to estimate the ultimate liability of pensions and the contributions that will be required to meet those obligations. The CalPERS Board of Administration has adjusted and may in the future further adjust certain assumptions used in the CalPERS actuarial valuations, which adjustments may increase Alameda's required contributions to CalPERS in future years. Accordingly, Alameda cannot provide any assurances that Alameda's required contributions to CalPERS in future years will not significantly increase (or otherwise vary) from any past or current projected levels of contributions.

On December 21, 2016, the CalPERS Board of Administration voted to lower the pension plan's assumed rate of return for purposes of its actuarial valuations from 7.5% to 7.0% by 2020 (which reduction has been phased in over the period from fiscal year 2017-18 to 2019-20). CalPERS has estimated that with a reduction in the rate of return to 7.0%, most employers could expect a 1% to 3% increase in the percentage of payroll contribution for the normal cost for miscellaneous plans. In addition, CalPERS has estimated that employers could expect gradual increases in their unfunded accrued liability payment, reaching an approximate increase in such payment (relative to the unfunded accrued liability payments projected in the June 30, 2015 valuation report) of 30% to 40% by fiscal year 2024-25 for miscellaneous plans. As a result, required contributions of employers, including Alameda, toward unfunded accrued liabilities, and as a percentage of payroll for normal costs, are expected to increase.

Effective for the fiscal year ended June 30, 2015, Alameda adopted Governmental Accounting Standards Board ("GASB") Statement No. 68 ("GASB No. 68"), affecting the reporting of pension liabilities for accounting purposes. Under GASB No. 68, Alameda is required to report the Net Pension Liability (*i.e.*, the difference between the Total Pension Liability and the Pension Plan's Net Position or market value of assets) in its financial statements.

The table below summarizes certain information relating to AMP's proportionate share of the Net Pension Liability of Alameda's Miscellaneous Plan as of the June 30, 2014 through June 30, 2017 measurement dates, as reported in AMP's audited financial statements for the fiscal year ended June 30, 2018. AMP's proportion of Alameda's net pension liability was based on AMP's fiscal year 2016-17 contributions to the pension plan relative to the total contributions of the City of Alameda as a whole.
{Monitor for available update}

Alameda Municipal Power Proportionate Share of the Net Pension Liability – Miscellaneous Plan				
Measurement Date ⁽¹⁾ (June 30)	Proportionate Share of the Net Pension Liability ⁽²⁾	Electric Enterprise Fund Share of the Net Pension Liability ⁽²⁾	Share of Net Position as a % of Share of Total Pension Liability	Share of Net Pension Liability as a % of Its Covered Payroll
2014	29.00%	\$13,657,795	81.01%	188.02%
2015	29.00	16,040,814	77.96	214.70
2016	29.84	21,006,196	72.92	269.35
2017 ⁽³⁾	30.19	24,557,226	71.50	303.40

⁽¹⁾ Measured using prior fiscal year annual actuarial valuation rolled forward to measurement date using standard update procedures.

⁽²⁾ Reflects AMP's share of the City of Alameda's Miscellaneous Plan Net Pension Liability of \$47,095,846, \$55,313,151, \$70,405,741 and \$81,333,405 as of June 30, 2014, June 30, 2015, June 30, 2016 and June 30, 2017 measurement date, respectively.

⁽³⁾ Most recent measurement date information available.

Source: Alameda Municipal Power.

In the June 30, 2016 actuarial valuation utilized for measuring the pension liability as of the June 30, 2017 measurement date, the Entry Age Normal Actuarial Cost Method was used. The actuarial valuation assumptions used for determining pension liabilities included (a) a 7.15% discount rate (net of

administrative expense); (b) projected salary increases ranging from 3.2% to 12.2% depending on age, service and type of employment; (c) an inflation component of 2.75% per year; and (d) payroll growth of 3.0%.

Retiree Health Benefits. Alameda also provides medical and dental benefits to eligible city employees, including those assigned to AMP, who retire from Alameda, through the City of Alameda Other Post Employment Benefit Plan (the “OPEB Plan”), offered by CalPERS, an agent multi-employer defined benefit healthcare plan. AMP only has miscellaneous employees participating in Alameda’s plan.

Alameda contracts with CalPERS to administer its retiree health benefit plan. A menu of benefit provisions as well as other requirements is established by State statute within the Public Employees’ Retirement Law. Alameda chooses among the menu of benefit provisions and adopts certain benefit provisions of Alameda City Council resolution. Alameda is responsible for establishing and amending the funding policy of the OPEB Plan.

In order to be eligible for benefits, an employee must retire directly from Alameda under CalPERS. Alameda created a trust with Public Agency Retirement Services; however the trust is only for safety employees (police and fire) of Alameda. For eligible miscellaneous employees, Alameda pays the Public Employees’ Medical and Hospital Care Act minimum employer contribution on their behalf, which is \$136 per month for 2019 and \$139 per month for 2020. These employees receive no other post-employment benefits from Alameda. Contributions to the OPEB Plan for miscellaneous employees are generally based on pay-as-you go financing.

For fiscal years prior to fiscal year 2017-18, Alameda’s reported annual OPEB cost (expense) was calculated based upon the annual required contribution (“ARC”), an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents the level of funding that, if paid on an ongoing basis, is projected to cover normal cost each year and amortize any unfunded liabilities over a closed period not to exceed 30 years. As noted above, Alameda does not currently pre-fund any portion of the OPEB plan for miscellaneous employees.

The table below sets forth certain information regarding Alameda’s annual OPEB cost and approximate portion of such amount funded by AMP, the percentage of annual OPEB cost contributed and Alameda’s Net OPEB obligation for the three fiscal years 2014-15 through 2016-17.

City of Alameda OPEB Plan – Miscellaneous Employees				
Fiscal Year Ended June 30	Alameda Annual OPEB Cost	Amount Funded by AMP	% of Annual OPEB Cost Contributed	Net OPEB Obligation
2015	\$ 8,010,000	\$57,708	34%	\$31,654,120
2016	10,373,000	57,708	84	33,297,060
2017	10,869,882	57,996	41	39,668,326

Source: Alameda Municipal Power.

Effective beginning in fiscal year 2017-18, Alameda follows the provisions of GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* (“GASB No. 75”) affecting the reporting of OPEB liabilities for accounting purposes. GASB No. 75 replaces the requirements of GASB Statement No. 45. GASB No. 75 establishes standards for employers with other postemployment liabilities for recognizing and measuring net OPEB liabilities, along with deferred inflows and outflows of resources, and expenses/expenditures related to the other postemployment liability. GASB No. 75 does not establish requirements for funding.

AMP's allocated share of Alameda's city-wide annual contributions to the OPEB Plan for fiscal year 2017-18 was \$71,130. The amount budgeted for AMP's share of OPEB Plan contributions for fiscal year 2018-19 was \$[65,000]. *{update for FY 2019 actual available?}* The amount budgeted for AMP's share of the city-wide annual contributions to the OPEB Plan for fiscal year 2019-20 is \$100,000. *{confirm FY 2020 number – from April 15 Board budget workshop materials}*

Pursuant to GASB No. 75, for the fiscal year ended June 30, 2018 [(the most recent fiscal year information available)], Alameda reported a total OPEB liability of \$1,979,781 for its share of the City of Alameda's total OPEB liability. AMP's proportionate share of the City of Alameda's total OPEB liability as a percentage of covered-employee payroll was 16.51%. AMP's proportion of the City of Alameda's total OPEB liability was based on AMP's fiscal year 2017-18 contributions to the City of Alameda's OPEB Plan relative to the total contributions of the City of Alameda as a whole. AMP's proportionate share of the City's total OPEB liability for the OPEB Plan as of the June 30, 2018 measurement date was 1.92%. The total OPEB liability of the OPEB Plan was measured as of June 30, 2018 and the total OPEB liability for the plan used to calculate the OPEB liability was determined by an actuarial valuation as of June 30, 2016. AMP's proportion of the City of Alameda's total OPEB liability in the June 30, 2016 actuarial valuation was determined using the following actuarial assumptions: (a) a discount rate of 3.98%; (b) payroll growth of 3.00%, plus merit increases; (c) a 2.75% inflation rate; (d) an annual health care cost trend rate of 6.50% initially, declining to 5.0% in 2022 and later years, for PPO plans, and 6.00% initially, declining to 5.0% in 2022 and later years, for HMO plans. *{monitor for update for FY 2019 and 6/30/18 valuation availability}*

Additional information regarding the City of Alameda's retirement plans and other post-employment benefits can be found in Alameda's comprehensive annual financial reports, which may be obtained at <http://www.cityofalamedaca.gov>.

Insurance

As a member of the California Joint Powers Risk Management Authority ("CJPRMA") and the Local Agency Workers' Compensation Excess Joint Powers Authority ("LAWCX"), Alameda carries both liability and property coverage in excess of self-insurance at varying levels. Through CJPRMA, Alameda carries \$40 million in general liability coverage subject to a \$500,000 self-insured retention. As a member of CJPRMA, Alameda is a participant in both the vehicle physical damage and property programs. Alameda carries physical damage coverage for vehicles worth \$25,000 or more, subject to a \$10,000 deductible. With respect to the property and boiler and machinery coverage, Alameda carries "all risk" (excluding flood and earthquake) replacement cost coverage for both real and personal property, subject to a \$25,000 deductible. Finally, Alameda carries workers' compensation coverage with statutory limits, in excess of a \$350,000 self-insured retention through LAWCX.

Litigation

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining Alameda in the execution or delivery of, or in any way contesting or affecting the validity of any proceedings of Alameda taken with respect to, the Unit One Member Agreement.

City of Alameda Settlement with Securities and Exchange Commission. As described below, Alameda has entered into a settlement order with the United States Securities and Exchange Commission (the "SEC") pursuant to the SEC's Division of Enforcement's Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative.

In connection with an Offer of Settlement by the City of Alameda dated June 27, 2016, and an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order of the United States Securities and Exchange Commission dated August 24, 2016 (the “SEC Order”), the City of Alameda has undertaken to:

(i) Within 180 days of the entry of the SEC Order, establish appropriate written policies and procedures and periodic training regarding continuing disclosure obligations to effect compliance with the federal securities laws, including the designation of an individual or officer at Alameda responsible for ensuring compliance by Alameda with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

(ii) Within 180 days of the entry of the SEC Order, comply with existing continuing disclosure undertakings, including updating past delinquent filings if Alameda is not currently in compliance with its continuing disclosure obligations.

For good cause shown, the SEC staff may extend any of the procedural dates relating to the Alameda’s undertakings. Deadlines for procedural dates are to be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

(iv) Disclose in a clear and conspicuous fashion the terms of the settlement in any final official statement for an offering by Alameda within five years of the institution of the SEC’s proceedings.

(v) Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The SEC staff may make a reasonable request for further evidence of compliance, and Alameda has agreed to provide such evidence. The certification and supporting material shall be submitted to certain specified SEC personnel no later than the one-year anniversary of an institution of the SEC’s proceedings.

(vi) Cooperate with any subsequent investigation by the SEC regarding the false statement(s) and/or material omission(s), including the roles of individuals and/or other parties involved.

Alameda has established procedures to ensure compliance with its continuing disclosure undertakings in the future for Alameda and for all entities that are created or controlled by Alameda; and has made remedial filings of all delinquent or missing information in its prior undertakings for issues currently outstanding. Alameda fully intends to comply with all other requirements of the SEC Order.

Present lawsuits and claims concerning AMP’s electric system are incidental to the ordinary course of operations of the electric system and are largely covered by Alameda’s self-insurance program. In the opinion of AMP’s management and, with respect to such litigation, the Alameda City Attorney, such claims and litigation will not have a materially adverse effect upon the financial position of AMP.

Significant Accounting Policies

AMP’s most recent Component Unit Financial Statements for the fiscal years ended June 30, 2018 and 2017 were audited by Vavrinek, Trine, Day & Company, LLP, Pleasanton, California, in accordance with generally accepted auditing standards. The audited financial statements contain opinions that the

financial statements present fairly the financial position of AMP. The reports include certain notes to the financial statements which are not described herein. Such notes constitute an integral part of the audited financial statements. Copies of these reports are available upon request from the City of Alameda, Alameda Municipal Power, 2000 Grand Street, Alameda, California 94501 and from their website at www.AlamedaMP.com. It is the policy of Alameda to periodically bid, select and retain independent auditors.

Governmental accounting systems are organized and operated on a fund basis. A fund is defined as an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein. Funds are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

AMP's operations are accounted for as an Enterprise Fund. Enterprise funds are used by municipalities to account for operations which are financed and operated similar to private business enterprises, where the intent of the governing body is that the costs and expenses, including depreciation, of providing goods and services to the public on a continuing basis be recovered primarily through user charges.

AMP's accounting records and financial statements are on the accrual basis and are substantially in accordance with the Uniform System of Accounts for Class A and B Electric Utilities prescribed by the FERC, as required by the Alameda City Charter.

Condensed Operating Results and Selected Balance Sheet Information

The following table sets forth summaries of operating results and selected balance sheet information of AMP's electric utility for the five fiscal years 2014-15 through 2018-19. The information for the fiscal years ended June 30, 2015 through June 30, 2018 was prepared by AMP on the basis of its audited financial statements for such years. However, the figures shown and the historical debt service coverage ratios are calculated in accordance with AMP's Electric System Installment Sale Agreement pursuant to which AMP's outstanding electric system revenue obligations were incurred, which may or may not be on the same basis as GAAP, and as such, do not match the line item designations in AMP's audited financial statements. The information for the fiscal year ended June 30, 2019 was prepared from AMP's preliminary, unaudited results for fiscal year 2018-19.

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**CITY OF ALAMEDA
ALAMEDA MUNICIPAL POWER
CONDENSED OPERATING RESULTS AND SELECTED BALANCE SHEET INFORMATION**

	Fiscal Years Ended June 30				
	2015	2016	2017	2018	Preliminary 2019
Electric System Revenues					
Sales of Electricity	\$50,790,790	\$54,221,022	\$55,925,748	\$59,501,406	\$61,027,633
Other Revenues ⁽¹⁾	1,390,534	1,852,516	3,159,383	1,890,185	2,203,594
REC, LCSF & C&T Sales ⁽⁶⁾	6,824,069	6,363,950	5,071,175	3,435,082	4,159,357
Total Electric System Revenues	\$59,005,393	\$62,437,488	\$64,156,306	\$64,827,185	\$67,390,584
Operation and Maintenance Costs (by FERC categories)					
Purchased Power ⁽²⁾	\$27,517,599	\$29,781,270	\$28,201,607	\$28,618,484	\$29,586,832
Energy Efficiency, Solar and Other	1,605,608	1,684,963	1,504,629	1,172,615	1,773,249
Operations & Maintenance	4,328,813	4,573,500	4,674,307	4,814,122	5,047,171
Customer Service, Information Systems	2,113,922	2,226,364	2,170,617	2,296,001	2,625,056
Administrative & General	6,115,467	7,732,884	7,425,117	10,527,575	7,823,690
Customer Relations	531,550	540,214	530,544	505,711	548,723
Jobbing Sales Expense	202,796	315,472	993,580	367,624	--
Balancing Account Adjustment	(660,241)	1,010,084	1,425,636	2,821,087	5,214,845
Total Operation and Maintenance Costs⁽³⁾	\$41,755,514	\$47,864,751	\$46,926,037	\$51,123,219	\$52,619,566
Net Revenues	\$17,249,879	\$14,572,737	\$17,230,269	\$13,703,966	\$14,771,018
Rate Stabilization Fund					
Transfers	(\$6,824,069)	(\$6,363,950)	(\$5,071,175)	(\$3,435,082)	(\$4,159,357)
Use of Reserves	1,411,438	2,281,580	1,020,393	5,652,517	2,240,289
Adjusted Annual Net Revenues	\$11,837,248	\$10,490,367	\$13,179,487	\$15,921,401	\$12,851,950
Debt Service	2,712,637	2,640,325	2,631,044	2,626,368	2,617,703
Debt Service Coverage ⁽⁴⁾	4.36	3.97	5.01	6.06	4.91
Amount Available After Debt Service	\$9,124,611	\$7,850,042	\$10,548,443	\$13,295,033	\$10,234,248
Selected Balance Sheet Information					
Total Unrestricted					
Cash & Investments ⁽⁵⁾	\$42,094	\$41,909	\$39,422	\$48,058	\$56,310
Rate Stabilization Fund Balance ⁽⁶⁾	16,505	20,583	24,633	21,431	23,399
Net Plant in Service	35,669	38,470	36,275	38,333	35,852
Construction Work in Progress	4,519	1,736	6,452	2,873	3,862
Electric Utility Plant-Net	40,188	40,206	42,727	41,206	39,715
Outstanding Electric System Debt	\$27,590	\$26,460	\$25,290	\$24,070	\$22,795

⁽¹⁾ Other Revenues includes operating and non-operating sources such as solar surcharge, interest income, lease income, account establishment, reconnection and late fees, jobbing sales and other miscellaneous items.

⁽²⁾ Includes purchased power costs and payments to NCPA and TANC. Also includes prior year budget settlements from NCPA.

⁽³⁾ Excluding Payments in lieu of taxes and depreciation.

⁽⁴⁾ Adjusted Annual Net Revenues divided by debt service.

⁽⁵⁾ Includes General Reserve balance held at NCPA. See also "Available Funds" below.

⁽⁶⁾ Includes renewable energy credit sales and cap and trade auction sales placed into reserve for Rate Stabilization Fund. See "Energy Efficiency and Conservation; Renewable Resources" above.

Source: Alameda Municipal Power.

Interfund Transfers. During the fiscal year 2008-09, \$1,095,614 in interfund transfers (*i.e.*, no repayment expected) from the Electric System enterprise fund to the telecommunications system enterprise fund were recorded for expenses due to the sale of the Alameda's telecommunications system on November 21, 2008. During the fiscal years 2009-10 through 2015-16, additional interfund transfers from the Electric System enterprise fund to the telecommunications system enterprise fund amounted to \$2,734,279, \$2,929,410, \$987,222, \$206,429, \$581,343, \$574,818, and \$2,190,230, respectively, for expenses. In June 2016, AMP made the final payment to the City of Alameda for approximately \$2.2 million terminating the telecommunications enterprise fund.

Available Funds. Of the total unrestricted cash and investments, as of June 30, 201[9], the balance in cash and cash equivalents available at AMP was [\$25,980,675]. In addition, AMP had available in reserve accounts held by NCPA an additional [\$4,550,080] as of such date. *{update for FY 2019}*

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CITY OF LODI

Introduction

The City of Lodi (“Lodi”) is a general law city in the State of California incorporated in 1906. Lodi is located in the San Joaquin Valley of California, 35 miles south of the State capital of Sacramento, and 90 miles east of San Francisco. Lodi’s boundaries encompass approximately 14 square miles.

Lodi provides electric utility service through an electric utility department. The legal responsibilities and powers of the electric utility department, including the establishment of rates and charges, are exercised through the five-member Lodi City Council. Commencing with the November 2018 election, the City has changed to the election of councilmembers by district. Each Councilmember is elected for four years with staggered terms. The Lodi electric utility department is under the direction of the Electric Utility Director who is appointed by the City Manager.

Lodi joined NCPA at its founding in 1968. Lodi participates in several NCPA generation projects and member service programs. In addition, Lodi is an NCPA Pool Member and NCPA’s Central Dispatch Center in Roseville provides real-time dispatching and scheduling of most available resources to serve Lodi’s electric load.

The Lodi electric system serves the entire area of the City of Lodi (approximately 14 square miles) and has approximately 131 miles of overhead lines and approximately 129 miles of underground lines. During the fiscal year ended June 30, 2019, the Lodi electric system served 26,798 customers, comprised of 23,480 residential customers, 3,145 commercial/industrial customers and 173 other customers. On July 24, 2006, an all-time, historical high peak demand of 140.4 MW was reached.

Only the revenues of the Lodi electric system will be available to pay amounts owed by Lodi under the Unit One Member Agreement.

The Lodi electric department’s main office is located at 1331 South Ham Lane, Lodi, California 95242, (209) 333-6762. For more information about Lodi and its electric system, contact Jeff Berkheimer, Electric Utility Director, at the above address and telephone number. A copy of the most recent comprehensive annual financial report of the City of Lodi (the “CAFR” or “Annual Report”) is available on Lodi’s website at <http://www.lodi.gov> and on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system at <http://emma.msrb.org/>. The Annual Report is incorporated herein by this reference. However, the information presented on such website or referenced therein other than the Annual Report is not part of this Official Statement and is not incorporated by reference herein.

Power Supply Resources

The following table sets forth information concerning Lodi’s power supply resources and the energy supplied by each during the fiscal year ended June 30, 2019.

CITY OF LODI
ELECTRIC UTILITY DEPARTMENT
POWER SUPPLY RESOURCES
For the Fiscal Year Ended June 30, 2019

Source	Capacity Available (MW)⁽¹⁾	Actual Energy (MWh)	% of Total Energy
Purchased Power ⁽²⁾ :			
Western Area Power Administration	5.4	25,006	5.6%
NCPA			
Geothermal Project	14.8	77,689	17.4
Hydroelectric Project	26.2	88,243	19.7
Combustion Turbine Project No. 1	9.5	1,507	0.3
Capital Facilities, Unit One	19.6	5,827	1.3
Lodi Energy Center	28.7	131,319	29.4
Contracts and Exchanges ⁽³⁾	31.7	117,815	26.3
Total	135.9	447,406	100.0%
Total Capacity and Energy Sold at Wholesale	N/A	22,223	
Lodi System Requirement for Retail Load ⁽⁴⁾	117.9	425,183	

(1) Information compiled from NCPA Annual Resource Adequacy Filings.

(2) Entitlements, firm allocations and contract amounts.

(3) Includes participation in Astoria 2 Solar Project and purchases procured through NCPA for Lodi.

(4) Information compiled from NCPA All Resources Bill. Includes supply from line losses.

Source: City of Lodi.

In the fiscal year ended June 30, 2019, Lodi's average cost of power delivered to the Lodi electric system was 9.4 cents per kWh.

Purchased Power

Western. Lodi is a party to the Contract for Electric Service Base Resource (the "Base Resource Contract") with the Western Area Power Administration ("Western"), under which Lodi takes delivery of 0.569% share of the base resource output of the Central Valley Project ("CVP"). The CVP consists of a series of federal hydroelectric facilities located and interconnected in Northern California. The amount of energy delivered to Lodi under the Base Resource Contract is subject to hydrology variability and water storage levels within the CVP. The Base Resource Contract is structured on a take-or-pay basis; whereby Lodi is obligated to pay its share of Western's costs whether or not it receives any power. Energy under the Base Resource Contract is scheduled for delivery to Lodi by NCPA. Service under the Base Resource Contract is scheduled to expire on December 31, 2024. Western has begun its new marketing plan process whereby Lodi has the opportunity to evaluate the potential additional acquisition or surrender of base resource power from the CVP. At this time, Lodi is evaluating its options by participating in power customer engagement workshops. Western has indicated it anticipates new 30-year contracts are to be executed by customers choosing to do so in April 2020, with an effective date of January 1, 2025.

Other Purchases. Lodi had a 25 MW participation share in the Capacity and Energy Exchange Agreement between NCPA and Seattle City Light (the "SCL Exchange Agreement"), pursuant to which energy was exchanged between the parties based on seasonal requirements. The SCL Exchange expired on May 31, 2018. Other power purchases for fiscal year 2018-19, as reflected in the Contracts and Exchanges

figures listed in the table above, are associated with short-term purchases and the Astoria 2 Solar Project. NCPA transacts and schedules daily and hourly (spot) power purchases and sales to balance and serve Lodi's native load requirements.

Joint Powers Agency Resources

NCPA. Lodi does not independently own any generation assets but, in addition to power purchased from Western and others, Lodi is a participant in various NCPA projects. Lodi has a 39.5% project participation entitlement share of the Combustion Turbine Project Number Two (referred to as Unit One or the Project in this Official Statement); a 10.37% project participation entitlement share of the NCPA Hydroelectric Project; a 14.56% project participation entitlement share of the Geothermal Generating Unit 2 Project and a 6.0% project participation entitlement share of the Geothermal Generating Project Number 3 (which are jointly operated as a single project, the NCPA Geothermal Project); a 13.39% project participation entitlement share in the NCPA Combustion Turbine Project Number One (exclusive of the portion acquired by the City of Roseville); and a 9.5% generation entitlement share in NCPA's Lodi Energy Center Project. Lodi additionally participates in the NCPA Geysers Transmission Project, in which it has a 20.61% entitlement share, pursuant to which NCPA, on behalf of Lodi, delivers output from the geothermal generating assets pursuant to the agreement of co-tenancy in the Castle Rock Junction-Lakeville 230-kV Transmission Line. For a description of such resources, see "THE PROJECT" and "OTHER NCPA PROJECTS" in the front part of this Official Statement. For each of these NCPA projects in which Lodi participates, Lodi is obligated pursuant to contract, to pay, on an unconditional take-or-pay basis, as an operation and maintenance cost of its electric system, its entitlement share of the debt service on NCPA bonds issued for the projects, as well as its share of all operation and maintenance expenses of the projects. See also "– Indebtedness; Joint Powers Agency Obligations" below.

TANC California-Oregon Transmission Project. Lodi is a member of the Transmission Agency of Northern California ("TANC") and has executed an agreement (the "TANC Agreement") to acquire a participation percentage share of TANC's entitlement of the California-Oregon Transmission Project ("COTP") transfer capability. Lodi participated in the acquisition of an increased share of transfer capability of the COTP in connection with the acquisition by TANC in April 2008 of the COTP transmission assets of the City of Vernon, California ("Vernon"), one of the original owners of the COTP, which acquisition was financed by TANC through the issuance of additional TANC debt (the "Vernon acquisition debt"). Lodi has a participation share of 26.7 MW of TANC's entitlement to transfer capability of the COTP and is responsible for 1.92% of TANC's COTP operating and maintenance expenses and 1.89% of TANC's COTP debt service (non-Vernon) and 2.62% of the Vernon acquisition debt. See "CITY OF ALAMEDA – Transmission Resources – TANC California-Oregon Transmission Project" for a further description of the COTP and the TANC Agreement.

On April 2, 2014, the Lodi City Council approved a 25-year layoff of Lodi's 26.7 MW share of COTP transfer capability, effective July 1, 2014, whereby Lodi and all of the TANC Members who are in the balancing authority area of the CAISO laid off their interests to certain other COTP participants (*i.e.*, Modesto Irrigation District ("MID"), Turlock Irrigation District ("TID") and Sacramento Municipal Utility District ("SMUD")) (subject to certain rights of Lodi and the other layoff entities to recall, and certain rights of MID, TID, and/or SMUD to return, up to 50% of their respective shares of the entitlement amount laid off). In exchange for their respective increased right to use of COTP transfer capability, MID, TID and SMUD will pay Lodi's (and the other layoff entities') current allocated share of COTP costs. This layoff arrangement does not change Lodi's membership status in TANC and does not relieve Lodi of its obligations under the TANC Agreement in the event of any default in payment by an acquiring party. See also "– Indebtedness; Joint Powers Agency Obligations" below.

TANC Tesla-Midway Transmission Service. TANC and certain TANC Members have arranged for Pacific Gas & Electric Company ("PG&E") to provide TANC and its members with 300 MW of firm

bi-directional transmission capacity on its transmission system between its Midway Substation near Buttonwillow, California, and its Tesla Substation near Tracy, California, near the southern physical terminus of the COTP (the “Tesla–Midway Transmission Service”) under an agreement known as the South of Tesla Principles. Lodi’s share of this Tesla–Midway Transmission Service is 6.21 MW. Lodi has utilized its full allocation of Tesla–Midway Transmission Service for firm and non-firm power transactions in the past. See “CITY OF SANTA CLARA – Transmission Resources – *TANC California-Oregon Transmission Project*” for a further description of the COTP and the TANC Agreement. See also “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – PG&E Bankruptcy” in the front part of this Official Statement.

Renewable Resources

Lodi expects to procure, either on its own or through NCPA, a renewable power resource portfolio that satisfies applicable State requirements, the main provisions of which are currently contained in the California Renewable Energy Resources Act (“SBX1-2”) enacted in 2011, the Clean Energy and Pollution Reduction Act of 2015 (“SB 350”) and the 100 Percent Clean Energy Act of 2018 (“SB 100”). See “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings” in the front part of this Official Statement.

Lodi’s power mix in calendar years 2018 and 2017 consisted of 35% and 31% of eligible renewable resources, respectively. Pursuant to SBX1-2, during Compliance Period 1 (January 1, 2011 through December 31, 2013), an average of 20% of the electric system’s retail sales were required to be procured from eligible renewable energy resources. Lodi exceeded the RPS target under SBX1-2 for Compliance Period 1, with an average of approximately 21.7% of Lodi’s energy portfolio supplied from renewable resources over such period. During Compliance Period 2 (January 1, 2014 through December 31, 2016) under SBX1-2, the electric system was required to procure electricity products from eligible renewable energy resources representing a total equal to 20% of 2014 retail sales, 20% of 2015 retail sales and 25% of 2016 retail sales. Lodi also exceeded the RPS target for Compliance Period 2, with approximately 21.1% of the City’s energy portfolio supplied from renewable resources in calendar year 2014, approximately 21% of Lodi’s energy portfolio supplied from eligible renewable resources in calendar 2015, and approximately 24% of Lodi’s energy portfolio supplied from eligible renewable resources in calendar year 2016. With its existing power resources, participation in a new solar energy project (described below), and historic carryover, Lodi anticipates meeting its Renewable Portfolio Standard (“RPS”) requirements through 2024.

In addition to geothermal and small hydroelectric resources through NCPA, Lodi’s current renewable power resources include solar resources, which are described below.

The Astoria 2 Solar Project, which reached commercial operation on December 9, 2016, is a 75 MW photovoltaic plant developed by Recurrent Energy, located in the southeastern portion of Kern County. Lodi entered into a power purchase agreement with Recurrent Energy for a 13.3333%, or 10 MW, share of the output of the Astoria 2 Solar Project, which is enough energy to meet approximately 7% of Lodi’s retail load. The contract term for the Astoria 2 Solar Project is 20 years. Energy from this project qualifies as Portfolio Content Category 1 energy under RPS. Combined with existing generation resources and historic carryover, this project will enable Lodi to meet its RPS obligations through 2024.

The cost of power from the Astoria 2 Solar Project is fixed at \$63/MWh for the 20-year life of the project. The price is only paid for energy actually delivered. Lodi does not have any ownership interest in the project and will not incur any capital expenditures related to the project.

The Antelope Expansion Phase 1 Solar Facility (“Antelope Expansion Project”), is a 51 MW photovoltaic plant being developed by Antelope Expansion 1B, LLC, located in the City of Lancaster, Los Angeles County, California. The Antelope Expansion Project is expected to reach commercial operation on

or about June 30, 2021. NCPA, on behalf of Lodi and other NCPA members, entered into a power purchase agreement with Antelope Expansion 1B, LLC for a 33.78%, or 17 MW, share of the output of the Antelope Expansion Project. Lodi has a 58.82%, or 10 MW, project participation percentage share of the Antelope Expansion Project. The contract term for the Antelope Expansion Project is 20 years. Energy from this project will qualify as Portfolio Content Category 1 energy under RPS. The output produced from the project will contribute to Lodi's compliance with RPS obligations beyond the 2020 compliance period.

The cost of power from the Antelope Expansion Project is fixed at \$39.00/MWh for the 20-year life of the project. The price is only paid for energy actually delivered. Lodi does not currently have any ownership interest in the project, and as such will not incur any capital expenditures related to the project.

Future Power Supply Resources

Based upon its current forecasted sales growth, resource mix and market prices, Lodi expects its annual balance-of-month, day-ahead, and hour-ahead purchases will on average be less than 25% of total energy requirements over the next two years. Lodi's interest in multiple NCPA generation projects provides substantial capacity toward covering Lodi's net short position in the event that market prices rise above the respective unit's cost of production. Lodi has developed medium-term hedging strategies to reduce volatility associated with market purchases and the seasonal nature of its loads and resources. In addition, due to the long lead time in acquiring certain resources, including renewable resources, Lodi, through NCPA, is pursuing, and will continue to consider, additional projects that may be included in its future resource mix in coordination with NCPA and other NCPA members.

Energy Efficiency and Conservation

Since 1998, Lodi has maintained a public benefits program as required by State law, a component of which is demand-side management (commonly referred to as energy efficiency and conservation). Under this program, Lodi offers customers rebates to incentivize investment in energy efficient products and improvements, including insulation, replacement windows, improvements to air duct systems, high-efficiency air conditioners, heat pumps, attic and whole-house fans, refrigeration efficiency improvements, EnergyStar appliances, web-enabled smart thermostats, pump/motor/process equipment improvements and lighting retrofits.

Lodi also provides energy education for residential and non-residential customers, including on-site energy audits, and hosts a number of programs to promote energy education and customer outreach. As part of its education and customer outreach efforts, Lodi provides a school-based energy efficiency education program for 6th grade elementary school students, offers free energy efficiency measures through its direct install program and is a sponsor of the annual NorCal Science Festival. Lodi provides low-income and disadvantaged persons and families with emergency energy assistance credits on utility bills with limitations, and utility bill discounts which are based on an income-eligibility process.

Lodi utility customers continue to be positively impacted by one or more of Lodi's public benefits programs, either in the form of a direct utility rebate or via one of its outreach and educational programs.

Interconnections, Transmission and Distribution Facilities

Facilities Description. Lodi's electric system is interconnected with the system of PG&E (three 60 kV lines). Lodi owns facilities for the distribution of electric power within the city limits of Lodi, which includes approximately 14 miles of 60 kV power lines, approximately 246 miles of 12 kV distribution lines (approximately 50% of which are underground) and four substations. Lodi's system experiences approximately 56.5 minutes of outage time per customer per year.

Wildfire Risks. Lodi does not own or operate any transmission assets, and the service area of the Lodi electric system is not located in a designated wildfire area. In connection with the operation of its facilities and equipment, Lodi currently has in place a number of safety and emergency response measures. Lodi conducts a visual inspection of its distribution system each year. Lodi also performs ongoing vegetation management activities, including both preventive measures to control vegetation growth and actions to address reports of potentially hazardous conditions. Through its SCADA operations and control system, Lodi has the ability to remotely operate equipment on its system as needed. Lodi maintains an Electric Emergency Plan to establish response protocols in the event of an emergency, including fire. The Electric Emergency Plan is reviewed and updated annually. Pursuant to the requirements of California Senate Bill 901 and Assembly Bill 1054, Lodi expects to prepare a wildfire mitigation plan to be completed prior to January 1, 2020. See also “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings – *Legislation Relating to Wildfires; Related Risks*” in the front part of this Official Statement.

Rates and Charges

Lodi has the exclusive jurisdiction to set electric rates within its service area. These rates are not subject to review by any State or federal agency.

Lodi’s fiscal year 2018-19 average rate per kWh for residential service was 18.8 cents. Lodi’s fiscal year 2018-19 average rate for commercial and industrial service was 15.3 cents per kWh. Lodi’s fiscal year 2019-20 average rate per kWh for residential service is projected to be 17.2 cents. Lodi’s fiscal year 2019-20 average rate for commercial and industrial service is projected to be 15.4 cents per kWh.

The following table presents a recent history of Lodi’s rate increases since 2013. The last base rate increase took effect July 1, 2017.

CITY OF LODI ELECTRIC UTILITY DEPARTMENT RATE CHANGES

Effective Date	Percent Change
December 2018	Update to Economic Development rates
July 2018	Revision of Power Factor charge for non-residential customers
December 2017	Elimination of Solar Surcharge
July 2017	Average 2% increase across all rate classes Electric Vehicle rate restructure replacing minimum charge with customer charge and aligning energy charges with residential rates; City rate restructure replacing minimum charge with customer charge
November 2016	Residential rate restructure replacing minimum charge with customer charge and reduction to 3 energy tiers; Mobile home park rate restructure replacing minimum charge with customer charge, reducing pad discount and reduction to 3 energy tiers
September 2015	Extended Economic Development rates
January 2015	Average 5% increase across all rate classes
July 2013	Established Electric Vehicle and Industrial Equipment Charging Rates

Source: City of Lodi.

The Lodi City Council reviews electric system rates periodically and makes adjustments as necessary. All customers pay rates in accordance with the standard rate tariffs published in the Lodi Municipal Code.

Lodi implemented an Energy Cost Adjustment (“ECA”) in August 2007. The purpose of the ECA is to recover market power costs due to the fluctuations in power market conditions and energy sales. The ECA is reviewed monthly and is either increased or decreased as market conditions and energy sales change. The historic, average ECA is listed below.

**CITY OF LODI
AVERAGE ENERGY COST ADJUSTMENT
For Fiscal Years 2014-15 through 2018-19**

Fiscal Year	ECA (\$/kWh)
2014-15	0.0057
2015-16	0.0064
2016-17	0.0056
2017-18	0.0123
2018-19	0.0103

Largest Customers

The ten largest customers of Lodi’s electric system in terms of kWh sales, as of June 30, 2019, accounted for 25% of total kWh sales and 20% of revenues. The largest customer accounted for 4.6% of total kWh sales and 3.1% of total revenues.

Customers, Sales, Revenues and Demand

The number of customers, kWh sales, revenues derived from sales by classification of service and peak demand during the five fiscal years 2014-15 through 2018-19, are listed below.

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CITY OF LODI
ELECTRIC UTILITY DEPARTMENT
CUSTOMERS, SALES, REVENUES AND DEMAND⁽¹⁾

	Fiscal Years Ended June 30,				
	2015	2016	2017	2018	2019
Number of Customers:					
Residential	22,355	22,459	22,870	23,145	23,480
Commercial	3,264	3,296	3,071	3,075	3,104
Industrial	40	44	41	41	41
Other	253	213	170	169	173
Total	25,912	26,012	26,152	26,430	26,798
Kilowatt Hour (kWh)					
Sales:					
Residential	148,950,428	151,137,940	146,192,111	155,539,509	147,116,802
Commercial	149,380,413	150,522,357	149,882,241	144,244,913	148,133,314
Industrial	128,814,673	125,018,845	118,900,040	115,066,917	104,931,881
Other	11,635,397	10,567,193	10,436,182	10,306,535	10,384,817
Total	438,780,911	437,246,335	425,410,574	425,157,874	410,566,814
Revenues from Sale of Energy ⁽²⁾					
Residential	\$25,165,194	\$26,525,558	\$26,021,916	\$27,967,919	\$27,702,390
Commercial	23,780,354	24,693,195	24,432,075	25,105,915	25,081,515
Industrial	14,418,921	14,469,390	13,852,860	14,877,597	13,908,500
Other	1,871,470	1,819,036	1,540,730	1,295,279	1,268,949
Total	\$65,235,939	\$67,507,179	\$65,847,581	\$69,246,709	\$67,961,354
Peak Demand (MW)	134.0	124.3	128.7	130.9	117.9

⁽¹⁾ Columns may not add to totals due to rounding.

⁽²⁾ Excludes revenues from California Energy Commission Tax.

Sources: City of Lodi Customer Information System reports.

Service Area

Population. Lodi is located in the San Joaquin Valley, adjacent to State Highway 99, between the City of Stockton, 10 miles to the south, and the City of Sacramento, 35 miles to the north. The service area of Lodi's electric system is coterminous with the city boundaries. The local economy is diverse among residential, agricultural, commercial and industrial sectors.

The following chart indicates the growth in the population of the City of Lodi, the County of San Joaquin and the State of California since 1970.

**CITY OF LODI, COUNTY OF SAN JOAQUIN,
STATE OF CALIFORNIA POPULATION ESTIMATES
(1970–2010 as of April 1; 2011-2019 as of January 1)**

Year	City of Lodi	County of San Joaquin	State of California
1970	28,691	291,073	19,971,069
1980	35,221	347,342	23,667,764
1990	51,874	480,628	29,760,021
2000	56,999	563,598	33,871,653
2010	62,134	685,306	37,253,956
2011	62,598	693,114	37,594,781
2012	63,113	700,519	37,971,427
2013	63,400	706,418	38,321,459
2014	63,700	713,315	38,622,301
2015	64,503	724,859	38,952,462
2016	65,074	736,027	39,214,803
2017	65,981	747,579	39,504,609
2018	67,042	757,279	39,740,508
2019	68,272	770,385	39,927,315

Source: 1970-2010, as of April 1, based on historical U.S. Census population data compiled by the California State Department of Finance. 2011-2019, as of January 1, State of California, Department of Finance, E-4 Population Estimates for Cities, Counties and the State, with 2010 Census Benchmark. Sacramento, California, May 2019.

Employment. Lodi is a worldwide agricultural shipping center for the San Joaquin Valley. The surrounding prime agricultural land is a major producer of wine grapes.

The City's employment base is diverse with industry that includes agribusiness, biotechnology, distribution, food and beverage product manufacturing, general service, government, health care, heavy manufacturing, and wine-based tourism and lodging.

The largest employers in Lodi as of June 30, 2019 are as follows:

CITY OF LODI LARGEST EMPLOYERS

Employer	Business	Number of Employees
Lodi Unified School District	Education	3,359
Pacific Coast Producers	Canning	1,663
Lodi Health Hospital	Healthcare	1,390
Blue Shield	Healthcare	848
TreeHouse	Specialty Food	496
Walmart	Retail	484
City of Lodi	Government	390
Farmers & Merchants Bank	Banking	358
Costco	Retail	227
Target	Retail	145

Source: City of Lodi, City Manager's Office.

The following table sets forth certain information regarding employment in the City of Lodi, the County of San Joaquin and the State from 2014 through 2018.

**CITY OF LODI
UNEMPLOYMENT RATES 2013 TO 2018⁽¹⁾**

Year	City of Lodi	County of San Joaquin	State of California
2014	9.90%	10.50%	7.50%
2015	8.30	8.90	6.20
2016	7.60	8.10	5.50
2017	6.76	7.20	4.80
2018	5.80	6.00	4.20

⁽¹⁾ Unemployment rates not seasonally adjusted, average annual rates.

Source: U.S. Bureau of Labor Statistics.

Assessed Valuation. A five-year history of assessed valuations in Lodi is as follows:

**CITY OF LODI
ASSESSED VALUATIONS
For Fiscal Years 2014-15 through 2018-19
(Dollar Amounts in Thousands)**

Fiscal Year	Land	Improvements	Personal Property	Total	Less Exemptions	Net Assessed Value
2014-15	\$1,469,347	\$3,610,391	\$338,312	\$5,418,050	\$326,833	\$5,091,217
2015-16	1,601,581	3,736,867	309,861	5,648,309	331,562	5,316,747
2016-17	1,711,208	3,854,604	294,457	5,860,269	334,485	5,525,784
2017-18	1,873,216	4,286,480	275,439	6,435,135	345,179	6,089,956
2018-19	1,971,712	4,614,261	229,719	6,815,692	338,170	6,477,522

Source: San Joaquin County Auditor-Controller's Office.

Forecast of Capital Expenditures

Lodi's five-year capital projection for electric facilities contemplates potential capital expenditures for substation upgrades, streetlight improvements, ongoing overhead and underground maintenance, and related system reliability projects. As reflected in the five-year capital improvement program forecast prepared in connection with the City of Lodi fiscal year 2019-20 budget, which was approved by the City Council on June 5, 2019, capital expenditures for the electric utility system over the next five years (not including the project described in the next paragraph) are estimated to cost approximately \$20.7 million. Lodi anticipates funding such capital costs from rate revenues, special development fees and Greenhouse Gas Free Allowance proceeds.

In addition, approved in March 2018 by the CAISO, the Northern San Joaquin 230 kV Transmission Project will help address the area's reliability and capacity needs. The project includes connecting PG&E's existing Brighton-Bellota 230 kV Transmission Line into PG&E's Lockeford Substation and building a new 230 kV double circuit transmission line from PG&E's Lockeford Substation to a new PG&E 230 kV switching station in Lodi. Lodi's 230/60kV Substation Project consists of two 230/60kV transformers along with site improvements, facilities and equipment required for the interconnection to PG&E's new 230 kV switching station and to Lodi's existing 60/12kV Industrial

Substation. The estimated completion date is 2024. The cost to Lodi is currently estimated to be approximately \$30 million, which Lodi expects to be funded by electric system revenue debt financing. The project is anticipated to realize a cost savings of approximately \$4.5 million annually by eliminating the low voltage transmission access charge.

Indebtedness; Joint Powers Agency Obligations

As of September 1 2019, Lodi had outstanding \$39.9 million principal amount of obligations payable from net revenues of Lodi's electric utility system. These obligations are subordinate to the payments required to be made with respect to the Lodi's obligations to NCPA and TANC described below. In addition, Lodi has an outstanding loan with F&M Bank in the amount of \$886,688 associated with an LED Streetlight Improvement Project. The annual loan payments will be paid from the Greenhouse Gas Free Allowance proceeds. Lodi has no variable rate or auction rate direct debt.

As previously discussed, Lodi participates in certain joint powers agencies, including NCPA and TANC, which have issued indebtedness to finance the costs of certain projects on behalf of the respective project participants. Obligations of Lodi under its agreements with respect to TANC and NCPA constitute operating expenses of Lodi. Such agreements are on a "take-or-pay" basis, which requires payments to be made whether or not projects are completed or operable, or whether output from such projects is suspended, interrupted or terminated. Certain of these agreements contain "step up" provisions obligating Lodi to pay a share of the obligations of a defaulting participant. Lodi's participation and share of debt service obligation (without giving effect to any "step up" provisions) for each of such joint powers agency projects in which it participates are shown in the following table.

**CITY OF LODI
ELECTRIC UTILITY DEPARTMENT
OUTSTANDING DEBT OF JOINT POWERS AGENCIES
(Dollar Amounts in Millions)
(As of September 1, 2019)**

	Outstanding Debt⁽¹⁾	Lodi's Participation⁽²⁾	Lodi's Share of Outstanding Debt⁽¹⁾
NCPA			
Geothermal Project Three	\$ 20.1	10.28%	\$ 2.1
Hydroelectric Project	265.7	10.37 ⁽³⁾	27.6 ⁽³⁾
Capital Facilities Project	25.5	39.50	10.1
Lodi Energy Center, Issue One	220.9	17.03	37.6
TANC			
COTP Bonds	191.8	0.0 ⁽⁴⁾	0.0 ⁽⁴⁾
TOTAL	\$724.0	100.00%	\$77.4

⁽¹⁾ Source: NCPA. Outstanding debt does not include unamortized premium/discount.

⁽²⁾ Participation obligation is subject to increase upon default of another participant. Such increase shall not exceed, without the written consent of a non-defaulting participant, an accumulated maximum of 25% of such non-defaulting participant's original participation.

⁽³⁾ Lodi's actual payments represent approximately 10.64% of outstanding debt service as a result of credit to non-participating members with respect to portion of debt obligation.

⁽⁴⁾ Excludes Lodi's 3.68% participation share of TANC COTP entitlement which has been assigned to other TANC members. Lodi remains contractually obligated for its share to the extent not paid by the assignees. See "– Joint Powers Agency Resources – TANC California-Oregon Transmission Project."

Lodi estimates its payment obligations for debt service on its joint powers agency debt obligations aggregated approximately \$9.5 million for the fiscal year ended June 30, 2019 and aggregate approximately \$9.18 million for the fiscal year ending June 30, 2020. It should be noted that these amounts do not include any COTP amount as Lodi's share of the debt was laid off effective July 1, 2014. A portion of the joint powers agency debt obligations are variable rate debt, liquidity support for which is provided through liquidity arrangements with banks. Unreimbursed draws under liquidity arrangements supporting joint powers agency variable rate debt obligations bear interest at a maximum rate substantially in excess of the current interest rates on such obligations. Moreover, in certain circumstances, the failure to reimburse draws on the liquidity agreements may result in the acceleration of scheduled payment of the principal of such variable rate joint powers agency obligations. In connection with certain of such joint power agency obligations, the respective joint powers agency has entered into interest rate swap agreements relating thereto for the purposes of substantially fixing the interest cost with respect thereto. There is no guarantee that the floating rate payable to the respective joint powers agency pursuant to each of the interest rate swap agreements relating thereto will match the variable interest rate on the associated variable rate joint powers agency debt obligations to which the respective interest rate swap agreement relates at all times or at any time. Under certain circumstances, the swap providers may be obligated to make payments to the applicable joint powers agency under their respective interest rate swap agreement that is less than the interest due on the associated variable rate joint powers agency debt obligations to which such interest rate swap agreement relates. In such event, such insufficiency will be payable as a debt service obligation from the obligated joint powers agency members (a corresponding amount of which proportionate to its debt service obligations to such joint powers agency could be due from Lodi). In addition, under certain circumstances, each of the swap agreements is subject to early termination, in which event the joint powers agency could be obligated to make a substantial payment to the applicable swap provider (a corresponding amount of which proportionate to its debt service obligations to such joint powers agency could be due from Lodi).

Employees

Labor Relations. As of July 1, 2019, 45 full-time City of Lodi employees were assigned specifically to the electric utility department. Contract/temporary employees are hired as necessary. Substantially all of the non-management Lodi personnel assigned to the electric utility department are represented by the International Brotherhood of Electrical Workers, Union 1245 ("IBEW"). The City's contract with IBEW expired on December 31, 2018. A new contract with IBEW and the City was finalized and approved by Council on August 21, 2019. The new contract will expire on December 31, 2021.

Pension Plans. Retirement benefits to City of Lodi employees, including those assigned to the electric utility department, are provided through the City of Lodi's participation in the California Public Employees Retirement System ("CalPERS"), an agent multiple-employer plan administered by CalPERS, which acts as a common investment and administrative agent for participating public employers within the State. Copies of the CalPERS annual financial report may be obtained from the CalPERS Executive Office, 400 Q Street, Sacramento, California 95814.

Lodi's defined benefit pension plans, the Miscellaneous Plan and the Safety Plan of the Lodi, provide retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries for all Lodi employees. Benefit provisions under the plans are established by State statute and local government resolution. No employees assigned to electric utility department participate in the Safety Plan.

Active Miscellaneous Plan members hired prior to January 1, 2013 are required to contribute 7.00% of their annual covered salary and those hired on or after January 1, 2013 are required to contribute 6.75% of their annual covered salary. Lodi's employer contribution rate is determined annually by the actuary effective on the July 1 following notice of a change in rate. Funding contribution amounts are determined annually on an actuarial basis as of June 30 by CalPERS. The actuarially determined rate is the estimated

amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. Lodi is required to contribute the difference between the actuarially determined rate and the contribution rate of employees. The actuarial methods and assumptions used are those adopted by the CalPERS Board of Administration. In early 2019, the City finalized a contract amendment with CalPERS for all bargaining units except IBEW. For Miscellaneous Plan members, all non-IBEW employees are contributing between 1% and 3% of salary towards the City's employer cost. As part of the recently approved contract between IBEW and the City, IBEW will begin to contribute 2% of salary towards the City's employer cost as part of the cost sharing agreement already in place. The 2% contribution will be implemented on a tier basis with 1% cost sharing starting July 2020 and 1% in January 2021. The contribution requirements of the plan members are established by State statute and the employer contribution rates are established, and may be amended, by CalPERS.

California Assembly Bill 340, the Public Employee's Pension Reform Act ("PEPRA"), implemented new benefit formulas and final compensation periods, as well as new contribution requirements for new employees hired on or after January 1, 2013, who meet the definition of a new member under PEPRA. As of January 31, 2019, there are 13 PEPRA members in the electric utility and 32 classic members. As more PEPRA members are hired in the future, the annual normal cost of the pension plan should be reduced. Because the unfunded accrued liability of the plan is tied to current shortfalls in the pension system it is not directly impacted by the hiring of PEPRA members.

The table below sets forth Lodi's electric utility department's allocated share of Lodi's required contributions to the Miscellaneous Plan for the past four fiscal years and the amount budgeted for its allocated share of the Lodi's estimated required contributions to such plans for the current fiscal year.

City of Lodi Miscellaneous Plan			
Fiscal Year Ended June 30	Electric Utility Department Allocated Share	Total City Required Contribution Amount	Contributions as a % of Covered Payroll
2016	\$ 834,026	\$3,500,179	20.09%
2017	958,028	3,880,495	21.80
2018	1,097,633	3,950,727	21.98
2019	1,281,978	5,060,143	26.50
2020 ⁽¹⁾	1,512,010	5,946,025	29.54

⁽¹⁾ Fiscal year 2019-20 is budgeted numbers.

Source: City of Lodi.

Lodi's required contributions to CalPERS fluctuate each year and, as noted, include a normal cost component and a component equal to an amortized amount of the unfunded liability. Many assumptions are used to estimate the ultimate liability of pensions and the contributions that will be required to meet those obligations. The CalPERS Board of Administration has adjusted and may in the future further adjust certain assumptions used in the CalPERS actuarial valuations, which adjustments may increase Lodi's required contributions to CalPERS in future years. Accordingly, Lodi cannot provide any assurances that Lodi's required contributions to CalPERS in future years will not significantly increase (or otherwise vary) from any past or current projected levels of contributions. The assumptions used to determine the actuarial accrued liabilities may be found in Lodi's most recent audited financial statements which are available on Lodi's website at <http://www.lodi.gov>.

On December 21, 2016, the CalPERS Board of Administration voted to lower the pension plan's assumed rate of return for purposes of its actuarial valuations from 7.5% to 7.0% by 2020 (which reduction has been phased in over the period from fiscal year 2017-18 to 2019-20). The impact of each reduction in

the rate of return will be phased in over five years, with the full impact realized in the 2024-25 fiscal year. CalPERS has estimated that with a reduction in the rate of return to 7.0%, most employers could expect a 1% to 3% increase in the percentage of payroll contribution for the normal cost for miscellaneous plans. In addition, CalPERS has estimated that employers could expect gradual increases in their unfunded accrued liability payment, reaching an approximate increase in such payment (relative to the unfunded accrued liability payments projected in the June 30, 2015 valuation report) of 30% to 40% by fiscal year 2024-25 for miscellaneous plans. As a result, required contributions of employers, including Lodi, toward unfunded accrued liabilities, and as a percentage of payroll for normal costs, are expected to increase.

The City of Lodi anticipates total pension costs approximately doubling as compared to fiscal year 2017-18 during this time. To address the issue, the City has adopted a Pension Stabilization Policy (“PSP”) and created a Pension Stabilization Fund (“PSF”). As of June 30, 2019, \$13,937,524.14 was set aside in the PSF, an Internal Revenue Service Section 115(c) trust fund established for the purposes of paying future pension liabilities. The PSP requires 100% of General Fund reserves in excess of the 16% General Fund reserve target be deposited into the PSF, and all other funds invest a proportional share based on the budgeted pension obligations in that fiscal year. Based on this policy, it is anticipated that an additional \$2.0 million will be invested in the PSF based on final results for the fiscal year ending June 30, 2019. The PSP remains in effect until the funded status of the Lodi’s two pension plans for Miscellaneous and Safety employees are at a combined 80% funded status when considering the Market Value of Assets at CalPERS and in the PSF. As of the June 30, 2018 actuarial report (the most recent available report), the funded status for the Miscellaneous Plan was 69%, the funded status for the Safety plan was 58.6% and the funded status for the combined plans was 63.8%. As of December 31, 2018, the combined funded status when considering the PSF assets increases to 66.5%. Based on fiscal year ending June 30, 2019 combined normal cost and UAL pension payments, the electric utility is responsible for approximately 11.2% of the total pension liability for the Lodi.

Effective for the fiscal year ended June 30, 2015, Lodi adopted Governmental Accounting Standards Board (“GASB”) Statement No. 68 (“GASB No. 68”), affecting the reporting of pension liabilities for accounting purposes. Under GASB 68, Lodi is required to report the Net Pension Liability (*i.e.*, the difference between the Total Pension Liability and the Pension Plan’s Net Position or market value of assets) in its financial statements.

The table below summarizes certain information relating to the Net Pension Liability of the Miscellaneous Plan as of June 30, 2014 through June 30, 2018, as reported in Lodi’s audited financial statements. The electric utility department’s allocable share of Lodi’s net pension liability was not separately determined.

City of Lodi Miscellaneous Plan			
Measurement Date ⁽¹⁾ (June 30)	Net Pension Liability	Net Position as a % of Total Pension Liability	Net Pension Liability as a % of Covered Payroll
2014	\$37,725,601	77.16%	226.32%
2015	40,723,811	75.59	245.73
2016	50,998,449	70.65	292.64
2017	58,225,070	69.44	324.01
2018	58,379,934	70.37	307.33

⁽¹⁾ Measured using prior fiscal year annual actuarial valuation rolled forward to measurement date using standard update procedures.

Source: City of Lodi.

As of the June 30, 2018 measurement date, the total pension liability for the Miscellaneous Plan for the City of Lodi was \$197,038,896 and the plan fiduciary net position was \$138,658,962, resulting in a city-wide Miscellaneous Plan net pension liability of \$58,379,934. In the June 30, 2017 actuarial valuation utilized for measuring the pension liability as of the June 30, 2018 measurement date, the Entry Age Normal Actuarial Cost Method was used. The actuarial valuation assumptions used for determining pension liabilities included (a) a 7.5% investment rate of return (net of pension plan investment expenses); (b) an inflation rate of 2.75% per year; and (c) a discount rate of 7.15%.

Retiree Health Benefits. Lodi also provides medical benefits to eligible city employees, including those assigned to Lodi's electric utility department, who retire from Lodi, through the City of Lodi Other Post Employment Benefit Plan (the "OPEB Plan"), through the CalPERS healthcare programs. Lodi's electric utility department only has miscellaneous employees participating in Lodi's plan.

Lodi contributes the minimum provided under California Government Code Section 22825 of the Public Employees Medical and Hospital Care Act. In general, retirees must contribute any premium amount in excess of Lodi's contribution. However, a closed group of certain active employees and retirees receive additional postemployment benefits. Certain employees hired prior to certain dates (depending on the employee bargaining unit) not later than December 6, 1995 are allowed to convert their accumulated sick leave into postemployment medical benefits as long as they have 10 or more years of service with Lodi.

Lodi's contributions to the OPEB Plan are generally based on pay-as-you-go financing. In fiscal year 2016-17, the Lodi City Council authorized the City Manager to deposit an additional \$1,000,000 with CalPERS in an OPEB trust fund to pre-fund future benefit payments (the "OPEB Trust Fund").

For fiscal years prior to fiscal year 2017-18, Lodi's reported annual OPEB cost (expense) was calculated based upon the annual required contribution ("ARC"), an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents the level of funding that, if paid on an ongoing basis, is projected to cover normal cost each year and amortize any unfunded liabilities over a closed period not to exceed 30 years. Except as noted above in fiscal year 2016-17, contributions to the OPEB Plan have been made on a pay-as-you-go basis and Lodi did not pre-fund any portion of the plan.

The table below sets forth certain information regarding Lodi's annual OPEB cost and the approximate portion of such amount funded by the electric utility department, the percentage of annual OPEB cost contributed and Lodi's Net OPEB obligation for the three fiscal years 2014-15 through 2016-2017.

City of Lodi OPEB Plan				
Fiscal Year Ended June 30	Annual OPEB Cost	Amount Funded by Electric Utility	% of Annual OPEB Cost Contributed⁽¹⁾	Net OPEB Obligation
2015	\$1,276,201	\$134,344	54.83%	\$5,343,727
2016	3,024,169	184,903	26.70	7,560,300
2017	3,150,716	219,010	56.24 ⁽¹⁾	8,939,061

⁽¹⁾ As noted above, in fiscal year 2016-17 Lodi made an additional \$1,000,000 contribution to the OPEB Trust Fund.
Source: City of Lodi.

Effective beginning in fiscal year 2017-18, Lodi follows the provisions of GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* ("GASB No. 75") affecting the reporting of OPEB liabilities for accounting purposes. GASB No. 75 replaces the requirements of GASB Statement No. 45. GASB No. 75 establishes standards for employers with other postemployment liabilities for recognizing and measuring net OPEB liabilities, along with deferred inflows

and outflows of resources, and expenses/expenditures related to the other postemployment liability. GASB No. 75 does not establish requirements for funding.

For fiscal year 2018-19, Lodi contributed \$1,144,166 to its OPEB Plan. The electric utility department's allocated share of Lodi's fiscal year 2018-19 contribution was \$261,630. The amount budgeted for Lodi electric utility department's share of OPEB Plan contributions for fiscal year 2019-20 is \$259,590.

Pursuant to GASB No. 75, for the fiscal year ended June 30, 2019, Lodi reported a net OPEB liability of \$33,422,021 (reflecting a total OPEB liability of \$34,566,187 and a fiduciary net position of \$1,144,166 for the OPEB Plan). The net OPEB liability as a percentage of covered-employee payroll was 100.7%. The OPEB Plan Net Position as a percentage of Lodi's total OPEB liability was 3.3%. The net OPEB liability was measured as of June 30, 2018 and the total OPEB liability used to calculate the net OPEB liability was determined by a June 30, 2018 actuarial valuation, based on actuarial methods and assumptions. The actuarial assumptions include: (a) a 6.73% investment rate of return; (b) payroll growth of 3.00%; (c) a 2.75% inflation rate; (d) an annual health care cost trend rate of 6.8% initially, reducing in decrements to 4.40%; and (e) a discount rate of 3.66%.

Additional information regarding the City of Lodi's retirement plans and other post-employment benefits can be found in the City's comprehensive annual financial reports, which may be obtained at <http://www.lodi.gov>.

Insurance

Lodi's boiler and machinery operations (including those parts of the electric system) are insured by the Alliant Property Insurance Program (APIP) which is a group purchase property program through the Lloyd's of London marketplace and Hallmark Financial Services for up to \$100 million in coverage. Lodi (including the electric system), is self-insured for general liability losses for up to \$500,000 and has pooled excess coverage through the California Joint Powers Risk Management Authority for up to \$40 million per occurrence. Lodi (including the electric system) is self-insured for workers' compensation losses for up to \$250,000 and has excess coverage through the Local Agency Workers' Compensation Excess Joint Powers Authority for statutory coverage.

Litigation

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining Lodi in the execution or delivery or performance of, or in any way contesting or affecting the validity of any proceedings of Lodi taken with respect to, the Unit One Member Agreement.

There is no litigation pending, or to the knowledge of Lodi, threatened, questioning the existence of Lodi, or the title of the officers of Lodi to their respective offices. There is no litigation pending, or to the knowledge of Lodi, threatened, questioning or affecting in any material respect the financial condition of Lodi's electric system.

Present lawsuits and other claims against Lodi's electric system are incidental to the ordinary course of operations of the electric system and are largely covered by Lodi's self-insurance program. In the opinion of Lodi's management and the Lodi City Attorney, such claims and litigation will not have a materially adverse effect upon the financial position of Lodi.

Lodi's Operations Since Industry Restructuring

Since the deregulation of the California energy markets, Lodi has implemented revenue enhancements, cost containment measures and changes in operating procedures to help mitigate financial risks associated with changes in market power costs. See "CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings" in the front part of this Official Statement. These actions include:

- **Energy Cost Recovery.** Implemented an ECA for all customers. This rate action guarantees coverage of bulk power purchase costs. See "– Rates and Charges" above.
- **Risk Management Program.** Lodi established an Energy Risk Management Policy, most recently updated in September 2018. Consistent with the policy Lodi has established guidelines which provide a time and price triggered tier approach to closing open positions as long as five years into the future. The table below illustrates this approach:

Month	Covered Position As % of Forecasted Load					
0 designates current month	>60 th	60 th	50 th -Median	25 th	<25 th	<10 th
1-3	80-90%	85-95%	95%	95%	95%	100%
3+	80-90%	85-95%	85-95%	95%	95%	100%
6+	70-80%	75-85%	80-90%	85-95%	95%	100%
9+	60-70%	65-75%	70-80%	75-85%	85-95%	90%
12+ months	60-70%	65-75%	70-80%	75-85%	85-95%	90%

The above guidelines were updated in March 2019 to expand hedging efforts when forecasted prices are historically low to mitigate future price risk/volatility.

The Energy Risk Management Policy applies to all aspects of Lodi's wholesale procurement and sales activities, long-term contracting associated with energy supplies, and associated financing related to generation, transmission, transportation, storage, Renewable Energy Credits (RECs), Greenhouse Gas (GHG) offsets, Resource Adequacy (RA) capacity, ancillary services and participation in Joint Powers Agencies (JPAs).

Significant Accounting Policies

Lodi's most recent CAFR for the fiscal year ended June 30, 2018 was audited by The Pun Group, Walnut Creek, California, in accordance with generally accepted auditing standards, and contains opinions that the financial statements present fairly the financial position of the various funds maintained by Lodi. The reports include certain notes to the financial statements which may not be fully described below. Such notes constitute an integral part of the audited financial statements. Copies of these reports are available on request from the City of Lodi, Finance Department, 310 West Elm Street, Lodi, California 95240 or at <http://www.lodi.gov>. Governmental accounting systems are organized and operated on a fund basis. A fund is defined as an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein. Funds are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

The electric system is accounted for as an enterprise fund. Enterprise funds are used to account for operations (i) that are financed and operated in a manner similar to private business enterprises (where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or

services to the general public on a continuing basis be financed or recovered primarily through user charges) or (ii) where the governing body has decided that periodic determination of revenues earned, expenses incurred and/or net income is appropriate for capital maintenance, public policy, management control, accountability or other purposes.

The accounting policies of Lodi conform to generally accepted accounting principles (GAAP) as applicable to governments.

Condensed Operating Results and Selected Balance Sheet Information

The following table sets forth summaries of operating results and selected balance sheet information of Lodi's electric utility for the five fiscal years 2014-15 through 2018-19. The information for the fiscal years ended June 30, 2015 through June 30, 2018 was prepared by Lodi on the basis of its audited financial statements for such years. However, the figures shown are calculated in accordance with the documents pursuant to which Lodi's outstanding electric system revenue obligations were issued, which may or may not be on the same basis as GAAP, and as such, do not match the line item designations in Lodi's audited financial statements. The information for the fiscal year ended June 30, 2019 was prepared from Lodi's preliminary, unaudited results for Fiscal Year 2018-19.

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CITY OF LODI
ELECTRIC UTILITY DEPARTMENT
SUMMARY OF OPERATING RESULTS AND SELECTED
BALANCE SHEET INFORMATION⁽¹⁾
(\$ in 000s)

	Fiscal Year ended June 30,				Preliminary
	2015	2016	2017	2018	2019
OPERATING REVENUES:					
Rate Revenue	\$63,370	\$65,265	\$64,114	\$65,054	\$63,776
ECA Revenue	1,867	2,242	1,734	4,192	4,186
Other Revenue	1,895	2,933	1,967	3,475	4,155
Total Operating Revenues	67,132	70,440	67,815	72,721	72,117
OPERATING EXPENSES:					
Purchased Power ⁽²⁾	38,512	37,788	35,650	39,519	37,043
Non-Power Costs ⁽³⁾	13,604	13,417	16,609	16,422	14,289
Total Operating Expenses	52,116	51,205	52,259	55,941	51,332
NET REVENUE AVAILABLE FOR DEBT SERVICE:	15,016	19,235	15,556	16,780	20,785
Debt Service – 2018 Bonds	--	--	--	--	1,497 ⁽⁵⁾
Debt Service – 2008 A Bonds	8,318	8,289	5,288	5,298	0
Remaining After Debt Service	6,698	10,946	10,268	11,482	19,288
OTHER REVENUES (EXPENSES):					
Greenhouse gas allowance	2,323	1,571	2,370	559	94
Impact Fees	--	--	--	138	245
PERS Stabilization Contribution	--	--	--	(603)	(204)
Payments in Lieu of Taxes ⁽⁴⁾	(7,033)	(7,082)	(7,131)	(7,159)	(7,197)
Net Cash Flow Before Capital Expenditure	\$ 1,988	\$ 5,435	\$ 5,507	\$ 4,417	\$ 12,226
SELECTED BALANCE SHEET INFORMATION:					
Net Plant in Service	\$ 8,585	\$ 8,271	\$ 7,957	\$ 7,808	\$ 7,495
Land and Construction Work in Progress	\$ 764	\$ 764	\$ 764	\$ 764	\$ 764
Long-Term Debt	\$66,303	\$61,084	\$58,669	\$48,291	\$48,291
Debt Service Coverage Ratio ⁽¹⁾	1.81	2.32	2.94	3.17	13.88 ⁽⁵⁾

(1) Figures shown are calculated in accordance with the documents pursuant to which Lodi's outstanding electric system revenue obligations were issued, which may or may not be on the same basis as GAAP. See "-- Indebtedness; Joint Powers Agency Obligations."

(2) Purchased Power includes joint powers agency payment obligations.

(3) Non-power costs include costs of services provided by other departments and does not include depreciation or amortization expense.

(4) Payments in-lieu of taxes are made by the Electric System to the City's general fund. The City's in-lieu payment is based upon a based transfer amount established by the City Council in 2017 adjusted annually by the number of electric customers served.

(5) Debt service was reduced in fiscal year 2018-19 as a result of the refunding of outstanding electric system obligations effected by the referenced 2018 Bonds. Scheduled debt on Lodi's currently outstanding direct electric system obligations is approximately \$3.7 million service in fiscal year 2019-20 and approximately \$4.0 million annually thereafter.

Source: City of Lodi.

CITY OF ROSEVILLE

Introduction

The City of Roseville (“Roseville” or the “City”) is a charter city in the State of California. Roseville is located in Placer County, in California’s Sacramento Valley near the foothills of the Sierra Nevada mountain range, about 16 miles northeast of Sacramento and 110 miles east of San Francisco. Roseville, with a population estimated to be approximately 139,643 at January 1, 2019, is the largest city in Placer County, as well as the residential and industrial center of the County.

Roseville, through its electric system (the “Electric System”), has been providing electrical power to its residents, businesses, and Roseville’s street and traffic lighting systems since 1912. In 1956, Roseville entered into a contract with the Federal Bureau of Reclamation for 54 megawatts (“MW”) (a megawatt equals 1 million watts) of electric capacity from the Central Valley Project (the “CVP”), which consists of a system of dams, reservoirs and hydroelectric power plants within central and northern California (the contract is currently administered through the Western Area Power Administration (“Western”). In the early 1970s, Roseville’s demand for electricity exceeded the Western resource allocation. To help meet this additional need, in 1968 Roseville became a charter member in NCPA. Roseville participates in several resources developed by NCPA, including its geothermal, steam-injected gas turbine (including the Project), and hydroelectric projects. In October of 2007, Roseville completed construction of a 160 MW natural gas-fired combined cycle power plant (the “Roseville Energy Park” or “REP”). REP was built as a reliable, economic alternative to bulk power purchases. REP has a base operating capacity of 120 MW with the ability to peak-fire up to 160 MW. On September 1, 2010, Roseville completed the purchase from NCPA, and assumed full title and ownership, of two of the five 24 MW simple cycle combustion turbines originally part of the NCPA Combustion Turbine Project Number One (for a total of 48 MW of capacity), which are connected to the Roseville electric distribution system (and now referred to as “Roseville Power Plant 2” or “RPP2”) to meet reserve and capacity requirements.

Roseville’s Electric System is under the supervision of the Roseville City Council. A seven-member Roseville Public Utilities Commission serves as an advisory board to the City Council on matters relating to all utilities owned and operated by the City. The City Council appoints all seven members of the Roseville Public Utilities Commission. The Electric Utility Director oversees operations of the electric utility and reports to the City Manager.

Only the revenues of the Roseville Electric System will be available to pay amounts owed by Roseville under the Unit One Member Agreement.

The Roseville electric department’s main office is located at 2090 Hilltop Circle, Roseville, California 95747, (916) 797-6937. For more information about Roseville and its Electric System, contact Michelle Bertolino, Electric Utility Director, at the above address and telephone number. A copy of the most recent comprehensive annual financial report of the City of Roseville (the “Annual Report”) is available on Roseville’s website at <https://www.roseville.ca.us/> and on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system at <http://emma.msrb.org/>. The Annual Report is incorporated herein by this reference. However, the information presented on such website or referenced therein other than the Annual Report is not part of this Official Statement and is not incorporated by reference herein.

Service Area, Customer Base and Demand

Service Area. The Roseville Electric System serves an area of approximately 43 square miles, virtually coterminous with the City’s borders. As of June 30, 2019, the Electric System served an estimated 60,752 customers.

Customer Base. In Fiscal Years 2014-15 through 2018-19, the Electric System's customer base increased by over 1.8% per year. Anticipated residential growth includes over 22,065 new residences associated with approved projects upon build-out of current and developing specific plans. Recent commercial growth includes a McKesson Medical-Surgical distribution center and health care industry expansions for Kaiser Permanente and Adventist Health.

Shown below is certain population data for the City of Roseville, the County of Placer and the State of California:

**CITY OF ROSEVILLE, COUNTY OF PLACER,
STATE OF CALIFORNIA POPULATION
(1970-2010 as of April 1; 2011-2019 as of January 1)**

	City of Roseville	County of Placer	State of California
1970	18,221	77,632	19,971,069
1980	24,347	117,247	23,667,764
1990	44,685	172,796	29,760,021
2000	79,921	248,399	33,871,653
2010	118,788	348,432	37,253,956
2011	121,351	354,359	37,594,781
2012	123,757	359,790	37,971,427
2013	126,068	363,618	38,321,459
2014	127,873	368,141	38,622,301
2015	129,120	371,326	38,952,462
2016	132,000	376,443	39,214,803
2017	134,110	383,719	39,504,609
2018	136,260	389,480	39,740,508
2019	139,643	396,691	39,927,315

Source: 1970-2010, as of April 1, based on historical U.S. Census population data compiled by the California State Department of Finance. 2011-2019, as of January 1, State of California, Department of Finance, E-4 Population Estimates for Cities, Counties and the State, with 2010 Census Benchmark. Sacramento, California, May 2019.

The largest employers in Roseville as of June 30, 2019 are set forth in the table on the following page:

[Remainder of page intentionally left blank.]

**CITY OF ROSEVILLE
LARGEST EMPLOYERS**

Employer	Business	Number of Employees
Kaiser Permanente	Health Care	5,200
Sutter Roseville Medical Center	Health Care	2,202
City of Roseville	Government	1,896
Roseville Joint Union High School District	Education	1,626
Adventist Health	Health Care	1,320
Union Pacific Railroad	Railroad	1,150
Roseville City School District	Education	1,133
PRIDE Industries	Employment Service	1,062
Wal-Mart	Retail	625
Consolidated Communications	Cable Television	320

Source: City of Roseville.

Historical Customers Sales and Peak Demand. The average number of customers, electricity sales measured in megawatt hours (“MWh”) and in revenues, and peak demand during the past five Fiscal Years, is listed below.

**CITY OF ROSEVILLE
ELECTRIC SYSTEM
CUSTOMERS, SALES, REVENUES AND PEAK DEMAND⁽¹⁾**

	2015	2016	2017	2018	2019
Number of Customers: ⁽²⁾					
Residential	49,851	50,784	51,638	52,789	53,868
Commercial	6,673	6,700	6,759	6,812	6,884
Total	56,524	57,484	58,397	59,601	60,752
MWh Sales					
Residential	428,824	439,495	439,598	454,795	441,823
Commercial	748,913	750,482	737,843	728,497	705,575
Total MWh Sales	1,177,737	1,189,977	1,177,441	1,183,292	1,147,398
Revenues (\$ in 000s):					
Residential	\$ 67,660	\$ 68,853	\$ 68,543	\$ 70,803	\$ 69,551
Commercial	96,028	95,078	93,011	91,495	89,727
Total Revenues from Sale of Energy	\$163,688	\$163,930	\$161,554	\$162,298	\$159,278
Peak Demand (MW)	340	331	355	354	340

⁽¹⁾ Revenues listed are as billed. For realized revenues, see the table under “Historical Revenues, Expenses and Debt Service Coverage” below.

⁽²⁾ Customer counts reported as fiscal year average annual values.

Note: Totals may not add due to rounding.

Source: City of Roseville.

Ten Largest Customers

As of June 30, 2019, the ten largest customers of Roseville’s Electric System by usage accounted for an estimated 24% of total kWh sales and 19% of total Electric System revenues. The largest customer accounted for an estimated 9% of total kWh sales and 6% of total Electric System revenues. The smallest of the ten largest customers accounted for an estimated 0.7% of total kWh sales and 0.5% of total Electric System revenues.

Sources of Power Supply

General

Roseville has a diverse portfolio of resources that includes large hydroelectric, geothermal, natural gas, system power contracts, and additional contracts for renewable energy. In addition, Roseville purchases its incremental needs through open market purchases. Roseville owns and operates the Roseville Energy Park and the two units constructed under NCPA Combustion Turbine Project Number One (subsequently renamed Roseville Power Plant 2) connected to the Roseville electric distribution system. Roseville has a long-term contract with Western for a share of the CVP net generation and entitlements to the output of several NCPA projects, including the Project.

The table on the following page provides an estimated summary of Roseville's sources of power supply for Fiscal Year 2018-19.

CITY OF ROSEVILLE ELECTRIC SYSTEM SOURCES OF POWER SUPPLY Fiscal Year 2018-19

Source	Type	Capacity Available (MW) ⁽¹⁾	Actual Energy (GWh) ⁽²⁾	% of Total
Generation:				34%
Roseville Energy Park	Natural Gas	155	403	
Roseville Power Plant 2	Natural Gas	48	3	
Purchased Power:				
Western	Hydro	67	162	14
NCPA				
Geothermal Project	Geothermal	8	60	5
Hydroelectric Project	Hydro	30	107	9
Steam Injected Gas Turbine ⁽³⁾	Natural Gas	18	5	
Market Purchases:				
Renewable Purchases	Various	32	269	22
Non-Renewable Purchases	Various	75	186	16
TOTAL*		433	1,195	100%
Peak Demand (MW)		340		
Capacity Reserve Percent ⁽⁴⁾		22%		

(1) Capacity in MW and available for system peak (July 25, 2018).

(2) One gigawatt hour (GWh) equals 1 million kilowatt hours (kWh).

(3) Referred to as Unit One or the Project in the front part of this Official Statement. See "THE PROJECT" in the front part of this Official Statement.

(4) Capacity includes resources and contracts for long-term and seasonable purchases. Capacity reserve planning target is 15% of the forecasted peak. Actual peak exceeded forecasted peak (335 MW).

* Numbers may not total due to rounding.

Source: City of Roseville

Roseville Energy Park

Roseville Energy Park (“REP”), is a 120 MW base load combined cycle, natural gas fueled power plant with duct firing capability up to 160 MW. The REP is located in the City of Roseville and is directly connected to Roseville’s distribution system. REP is comprised of two Siemens SGT 800 combustion turbine units and a Siemens STG 900 steam turbine. The plant has been in commercial operation since October 2007 and is owned and operated by Roseville.

Roseville Power Plant 2

The Roseville Power Plant 2 consists of two 24 MW simple cycle combustion turbines (“CT1” and “CT2”), for a total of 48 MW of capacity. These units were previously part of the NCPA Combustion Turbine Project Number One in which Roseville was a participant. See “OTHER NCPA PROJECTS” in the front part of this Official Statement. On September 1, 2010, Roseville took ownership of the two units which provide peaking capacity and reserves for Roseville.

Western Area Power Administration

Roseville has various long-term contracts with Western that provide energy, interconnection, and transmission services. Roseville has a 4.85333% share of the net output of the CVP, which provides varying amounts of capacity and energy depending upon hydrologic conditions. The output is reduced by Western’s project use, first preference customer allocations, environmental, and control area obligations. Roseville is directly connected to Western’s transmission system and acquires reserves under contract that include regulation and frequency response and operational reserves. The term of the power supply contract extends through December 31, 2024. Western began its new marketing plan process whereby Roseville has the opportunity to evaluate the potential additional acquisition or surrender of base resource power from the CVP. Western has indicated it anticipates new 30-year contracts are to be executed by customers choosing to do so in Spring 2020 with an effective date of January 1, 2025.

Joint Powers Agency Resources

NCPA. In addition to generating and purchasing power from other sources, Roseville is a participant in a number of NCPA projects. Roseville has a 36.50% entitlement share in the Combustion Turbine Project Number Two (referred to as Unit One or the Project in this Official Statement), a 12.00% entitlement share in the NCPA Hydroelectric Project and a 7.88% entitlement share in the NCPA Geothermal Project. For a description of such resources, see “THE PROJECT” and “OTHER NCPA PROJECTS” in the front part of this Official Statement. For each of these generation projects in which Roseville participates, Roseville is obligated to pay on an unconditional take-or-pay basis, as an operating expense of its electric system, its entitlement share of the debt service on NCPA bonds issued for the project as well as its share of the operation and maintenance expenses of the project. See also “– Indebtedness; Joint Powers Agency Obligations” below.

In order to meet certain obligations required of NCPA to secure transmission and other support services for the NCPA Geothermal Project, NCPA and its transmission project participants (including Roseville) undertook the “Geysers Transmission Project,” which includes (a) an ownership interest in PG&E’s 230 kilovolt (“kV;” 1 kilovolt equals 1,000 volts) line from Castle Rock Junction in Sonoma County to the Lakeville Substation, (b) additional firm transmission rights in this line, and (c) a Central Dispatch Center (see “Dispatch and Scheduling” below). Roseville is entitled to a 14.18% share of the Geysers Transmission Project transfer capability, and is responsible for 14.18% of the costs of such project. For a description of the Geysers Transmission Project, see “OTHER NCPA PROJECTS” in the front part of this Official Statement. See also “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – PG&E Bankruptcy” in the front part of this Official Statement.

Renewable Purchases

With the passage of California Senate Bill X1-2, the California Renewable Energy Resources Act (“SBX1-2”), California Senate Bill 350, the Clean Energy and Pollution Reduction Act of 2015 (“SB350”), and California Senate Bill 100, the 100 Percent Clean Energy Act of 2018 (“SB 100”), Roseville must comply with the State’s renewable energy targets to achieve renewable energy procurement of 33% by 2020, 50% by 2025, and 60% by 2030. Roseville has an additional incentive to enter into long-term contracts, as certain contracts at least ten years in duration have the ability to carry forward renewable energy credits to be used to meet future compliance periods. Starting in 2020, 65% of RPS procurement must be derived from long-term contracts of 10 or more years. Roseville satisfied the RPS target for Compliance Period 1 (from 2011 through 2013), with approximately 20% renewable energy procured, as well as Compliance Period 2 (from 2014 through 2016), with approximately 25% renewable energy procured. Currently in the Compliance Period 3 (2017-2020), Roseville has procured 25% of its energy supply from renewable resources for 2017-2018, and is on target to meet the 33% target by 2020. Further, Roseville’s RPS contracts are forecasted to fulfill compliance requirements under current law through 2024, including contracts with Silicon Valley Power, Powerex Corporation, Avangrid Renewables, Lost Hills Solar, Blackwell Solar, as well as grandfathered resources including geothermal and small hydroelectric projects. See also “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings – *California Renewables Portfolio Standard*” in the front part of this Official Statement for more information on SBX1-2, SB 350 and SB 100.

Open Market Term Purchase and Sale Agreements

Roseville enters into various fixed-price purchase or sale contracts on the open market at various times to meet its power supply requirements and hedge its portfolio costs consistent with its risk management policies. Purchases include transactions to hedge natural gas and electricity, physically or financially, over various tenors authorized in Roseville’s Trading Authority Policy. Electricity and gas products are generally purchased or sold on a seasonal or annual basis, to comply with Roseville’s Energy Hedge Policy (described below). Roseville transacts through a competitive bid process with a number of counterparties in line with its Credit Risk Policy. See “– Power Supply Risk Management” below.

Future Power Supply Resources

In addition to the above supply sources, Roseville expects that it will obtain additional resources from market purchases or investment in generation facilities, either independently, through NCPA or through other agencies. In accordance with current State law, Roseville expects that future energy purchases will increasingly be made from renewable energy sources. See “– Energy Efficiency and Conservation” below. See also “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings” in the front part of this Official Statement.

Power Supply Risk Management

The Electric System’s risk management strategies and procedures are monitored by a risk oversight committee (“ROC”) established by Roseville. The ROC meets on a regular basis and includes two members of the City Council, two members of the Roseville Public Utilities Commission, the City Manager, the Assistant City Manager, the Chief Financial Officer, the City Attorney, and the Electric Utility Director. The ROC oversees Roseville’s risk management procedures relating to the Electric System and ensures that Electric System’s risk profile is within the parameters set forth in the risk management policies.

Roseville’s risk management activities for the Electric System are reviewed and monitored on a more regular basis by Roseville’s risk management committee (“RMC”). The RMC meets quarterly and is comprised of one delegate from the Finance Department, one delegate from the City Attorney’s office, the

Electric Utility Director, and three Assistant Electric Utility Directors. The RMC discusses risk mitigation strategies, impacts of various strategies on Roseville’s strategic goals for the Electric System and makes recommendations to the ROC, or City Council, as appropriate.

All energy purchases are made in accordance to Roseville’s energy risk policies. The Energy Hedge Policy is designed to reduce energy rate volatility and to maintain rates within reasonable tolerances. The Energy Hedge Policy establishes financial and volumetric hedge limits to mitigate market price exposure. Specifically, the policy requires the following fixed price energy contracts to be procured in advance on a rolling three-year horizon, as a percentage of overall energy supply forecast:

Rolling Year	Minimum Hedged Supply	Maximum Hedged Supply
1	90%	110%
2	70%	100%
3	45%	80%

The policy requires that Roseville purchase forward electric contracts and/or forward gas contracts to fulfill its long-term hedged supply requirement. In the event of decreases in expected sales levels, the policy may require that Roseville sell forward electric gas and/or electric contracts. Authorized electric and gas transactions are defined in Roseville’s Energy Trading Authority Policy, and executed within its Energy Credit Risk Policy. For the period January 1, 2018 through December 31, 2020, Roseville has fixed the price of approximately 4.8 million MMBtu of natural gas and over 1,250 GWh of electricity. These financial contracts are divided among Bonneville Power Administration, Conoco Philips, J Aron and Company, Macquarie Energy, United Energy Trading, Exelon, and Shell Energy.

Fuel Supply; Natural Gas Prepayment

Natural gas is the primary fuel of Roseville’s REP and RPP2. See “– Sources of Power Supply.” The REP at its optimal output can require delivery of up to 22,000 MMBtu of natural gas per day, with current average daily requirements of approximately 6,500 MMBtu. In early 2007, Roseville undertook a prepaid gas procurement arrangement through the Roseville Natural Gas Financing Authority, pursuant to which such Authority entered into a 20-year pre-paid natural gas supply contract with Merrill Lynch Commodities Inc. (“MLCI”) for the supply of natural gas to Roseville. The natural gas Roseville is obligated to purchase under the pre-paid gas supply agreement with the Roseville Natural Gas Financing Authority provides all of Roseville’s current gas requirements for the REP. The natural gas supply contract provides Roseville with seasonally adjusted fixed monthly quantities of gas at a discounted monthly index price. To hedge Roseville’s natural gas price exposure, Roseville forecasts its expected monthly natural gas requirements and enters into forward natural gas contracts consistent with its risk management policies as noted above.

The fuel supply for Roseville’s gas-fired generation facilities is delivered to Roseville through PG&E’s natural gas pipeline system. See “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – PG&E Bankruptcy” in the front part of this Official Statement.

Regional Transmission Facilities

Western Network Integrated Transmission Service Agreement (“NITS”). Roseville’s electric system interconnects with the transmission system of Western. The Western transmission system is part of the Balancing Authority of Northern California (“BANC”) balancing authority area and interconnects with the CAISO Controlled Grid. Roseville imports all of its requirements not met by the Roseville Energy Park and the Roseville Power Plant 2 over the Western transmission system. Roseville contracts for transmission service to meet its load under a NITS contract that expires on December 31, 2024. This contract provides

for imports of electricity from various delivery points to provide delivery into Roseville's electric system. Roseville pays a proportionate share of Western's cost for operating and maintaining the system, which is currently \$3.7 million per year. In 2020, Western and Roseville intend to begin negotiations on a new contract to be effective on January 1, 2025.

Balancing Authority of Northern California. BANC is a joint powers authority consisting of Roseville, the Sacramento Municipal Utility District ("SMUD"), the Modesto Irrigation District, the City of Redding, the Trinity Public Utility District, and the City of Shasta Lake. A balancing authority performs a balancing function in which customer usage and resources are matched on a moment-by-moment basis. In addition, a balancing authority operates the transmission system, monitoring power lines to ensure they are operated within the reliable limits of the system in addition to coordinating the operation with neighboring balancing authorities. SMUD acts as the balancing authority operator for BANC under contract. With a peak electricity demand of around 5,000 MW, BANC is the third largest balancing authority in California, serving approximately 763,000 retail customers, and includes more than 1,700 miles of high voltage transmission lines. Roseville represents approximately 7% of the total BANC member load.

On April 3, 2019, SMUD, the largest BANC member, began its participation in the CAISO Energy Imbalance Market ("EIM"), a real-time wholesale power trading market that operates in parts of eight western states, including Washington, Oregon, California, Nevada, Idaho, Wyoming, Utah, and Arizona. In addition to modest economic benefits, participation in the EIM is expected to increase BANC members' ability to integrate the renewable energy needed to meet California's environmental goals, provide additional sources of real-time supply to augment reliability resources, allow participants to demonstrate support for regional markets, and retain transaction access to a robust pool of resources.

Roseville has made the decision to participate in the EIM and is pursuing a participation agreement with BANC with the goal of entering EIM sometime in 2021.

California Independent System Operator Controlled Grid. The CAISO provides a market for Roseville to purchase its incremental energy needs, and in which to sell the output of its entitlements in NCPA's generating units, and contract purchases. Under current CAISO operating protocols, Roseville pays per MWh charges for uses of the transmission system for exports from CAISO.

TANC California-Oregon Transmission Project ("COTP"). Roseville is a member of the Transmission Agency of Northern California ("TANC") and has executed an agreement (the "TANC Agreement") for a participation percentage of TANC's entitlement of COTP transfer capability. Pursuant to the TANC Agreement, Roseville has a participation share of 2.313% of TANC's entitlement to transfer capability of the COTP (approximately 29.35 MW) and is responsible for 2.313% of TANC's COTP operating and maintenance expenses and 2.295% of TANC's aggregate debt service on a take-or-pay basis. Roseville's share of annual debt service continues to the year 2039 and is approximately \$850,000 per year. See also "CITY OF ALAMEDA – Transmission Resources – *TANC California-Oregon Transmission Project*" for a further description of the COTP and the TANC Agreement.

TANC Tesla-Midway Transmission Service. The southern physical terminus of the COTP is near PG&E's Tesla Substation in the San Francisco Bay Area. The COTP is connected to Western's Tracy and Olinda Substations. TANC has arranged for PG&E to provide TANC and its members with 300 MW of firm bi-directional transmission capacity in its transmission system between its Tesla Substation and the Midway Substation (the "Tesla-Midway Service") under an agreement known as the South of Tesla Principles. Roseville's share of the Tesla-Midway Transmission Service is 5 MW. This service has not proven valuable to the City and the City has laid off its rights to this services to other TANC members through 2024.

Roseville Distribution System

Roseville owns and operates the electrical distribution system serving retail customers within the City of Roseville boundaries. The distribution system is connected to the Western transmission system at two connection points, the 230-kV Berry Street Receiving Station and the 230-kV Fiddymont Station. The distribution system consists of over 145 miles of overhead lines, over 771 miles of underground lines, 58 fiber circuit miles, and 17 substations. Roseville performs continued maintenance on its distribution system to sustain service reliability.

Dispatch and Scheduling

Roseville contracts with ACES Power Marketing (“ACES”) to provide scheduling services and has discontinued its participation in the NCPA Power Pool. NCPA continues to dispatch the NCPA power plants to meet the schedules of energy delivery prepared and submitted by ACES on Roseville’s behalf. NCPA provides dispatch service from its Central Dispatch Center located at its headquarters in Roseville.

Energy Efficiency and Conservation

In 1996, California Assembly Bill 1890 (“AB 1890”), the California electric utility deregulation law, required the establishment of public benefit programs for investor-owned and public power utilities through 2001. In 2006, Assembly Bill 2021 further required power utilities to set yearly goals for the actual amount of energy efficiency savings (in kWh) to be procured. These requirements have been further codified as part of the California Public Utilities Code. The California Public Utilities Code does not set an expiration/sunset date on these requirements for public power utilities. Roseville funds these programs at a minimum of 2.85% of budgeted yearly revenues (approximately \$4.6 million in Fiscal Year 2019-20).

Roseville has developed a full portfolio of public benefits programs for the Electric System since 1996, addressing the following areas of concentration required by State law: energy efficiency programs, renewable energy production, demand reduction, advanced electric technology demonstration, research and development, and low income assistance programs. Residential and commercial energy efficiency offerings focus primarily on summer period consumption reduction and include programs for both existing facilities and new construction.

Under California Assembly Bill 2021, Roseville is required to develop ten-year plans for energy efficiency goals and report on these goals to the California Energy Commission (“CEC”) with updates every four years. The CEC has the obligation to develop energy efficiency goals for the entire State, after consultation with utilities and others. The Roseville Electric System participates in the State effort, and the Roseville City Council approved the ten-year energy efficiency goals most recently in March 2017.

California Senate Bill 1037, signed into law in September 2005, established several important policies regarding energy efficiency. Among the many provisions of the law is a Statewide commitment to cost-effective and feasible energy efficiency, with the expectation that all utilities consider energy efficiency before investing in any other resources to meet growing demand. Roseville is required to report annually to its customers and to the CEC, its investment in energy efficiency and demand reduction programs. Roseville continues its commitment to energy efficiency and is in compliance with these requirements.

For a more detailed discussion of certain California legislation in recent years relating to the electric energy market, see “CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings” in the front part of this Official Statement.

Employees

General. As of June 30, 2019, 153 City of Roseville authorized positions were assigned specifically to the Electric System. Certain functions supporting the Electric System operations, including meter reading, customer billing, collections and accounting, are performed by the Finance Department of the City of Roseville.

Most of the non-management City personnel working at the Electric System are represented by the International Brotherhood of Electrical Workers (“IBEW”). The current IBEW contract will expire on April 30, 2022. There have been no strikes or other work stoppages at the City, including at the Electric System.

Pension Plans. Substantially all permanent Roseville employees, including those employees assigned to the Electric System, are eligible to participate in pension plans offered by the California Public Employees Retirement System (“CalPERS”), an agent multiple employer defined benefit pension plan. CalPERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members, who must be public employees and beneficiaries. CalPERS acts as a common investment and administrative agent for participating public employers within the State. CalPERS issues a separate comprehensive annual financial report. Copies of the CalPERS annual financial report may be obtained from the CalPERS Executive Office, 400 Q Street, Sacramento, California 95814.

CalPERS is a contributory plan deriving funds from employee contributions as well as from employer contributions and earnings from investments. Employees of the Electric System participate in the CalPERS Miscellaneous Plan, and the Electric System pays a percentage of Roseville’s Miscellaneous Plan expenses based on the number of employees. Active Miscellaneous Plan members hired prior to January 1, 2013 are required to contribute 8.00% of their annual covered salary and those hired on or after January 1, 2013 are required to contribute 6.25% of their annual covered salary. The member contribution can be paid by the employee or by Roseville on the employee’s behalf in accordance with applicable labor agreements. The required member contributions are currently paid by the employees. Roseville’s employer contribution rate is determined annually by the actuary effective on the July 1 following notice of a change in rate. Funding contribution amounts are determined annually on an actuarial basis as of June 30 by CalPERS. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. Roseville is required to contribute the difference between the actuarially determined amount and the contribution rate of employees. The actuarial methods and assumptions used are those adopted by the CalPERS Board of Administration. The contribution requirements of the plan members are established by State statute and the employer contribution rates are established, and may be amended, by CalPERS.

The table below sets forth Electric System’s allocated share of Roseville’s required contributions to the Miscellaneous Plan for the past five Fiscal Years. The Electric System’s estimated allocated share of Roseville’s budgeted contributions to the Miscellaneous Plan for the Fiscal Year ending June 30, 2020 is \$5,718,113.

City of Roseville Miscellaneous Plan			
Fiscal Year	Electric System Allocated Share of Contributions	Total City Contribution Amount	Contributions as a % of Covered Payroll
2014-15	\$3,375,790	\$15,872,491	22.49%
2015-16	3,884,489	17,564,085	23.69
2016-17	4,699,119	19,896,723	26.54
2017-18	4,463,913	18,499,075	23.96
2018-19	4,919,633	20,601,494	23.88

Source: City of Roseville.

Roseville's required contributions to CalPERS fluctuate each year and include a normal cost component and a component equal to an amortized amount of the unfunded liability. Many assumptions are used to estimate the ultimate liability of pensions and the contributions that will be required to meet those obligations. The CalPERS Board of Administration has adjusted and may in the future further adjust certain assumptions used in the CalPERS actuarial valuations, which adjustments may increase Roseville's required contributions to CalPERS in future years. Accordingly, Roseville cannot provide any assurances that Roseville's required contributions to CalPERS in future years will not significantly increase (or otherwise vary) from any past or current projected levels of contributions.

On December 21, 2016, the CalPERS Board of Administration voted to lower the pension plan's assumed rate of return for purposes of its actuarial valuations from 7.5% to 7.0% by 2020 (which reduction has been phased in over the period from Fiscal Year 2017-18 to 2019-20). CalPERS estimated that with a reduction in the rate of return to 7.0%, most employers could expect a 1% to 3% increase in the percentage of payroll contribution for the normal cost for miscellaneous plans. In addition, CalPERS has estimated that employers could expect gradual increases in their unfunded accrued liability payment, reaching an approximate increase in such payment (relative to the unfunded accrued liability payments projected in the June 30, 2015 valuation report) of 30% to 40% by Fiscal Year 2024-25 for miscellaneous plans. As a result, required contributions of employers, including Roseville, toward unfunded accrued liabilities, and as a percentage of payroll for normal costs, are expected to increase.

Effective for the Fiscal Year ended June 30, 2015, Roseville adopted Governmental Accounting Standards Board ("GASB") Statement No. 68 ("GASB No. 68"), affecting the reporting of pension liabilities for accounting purposes. Under GASB No. 68, Roseville is required to report the Net Pension Liability (*i.e.*, the difference between the Total Pension Liability and the Pension Plan's Net Position or market value of assets) in its financial statements.

The table below summarizes certain information relating to the Net Pension Liability of the Miscellaneous Plan as of June 30, 2014 through June 30, 2018, as reported in Roseville's audited financial statements. The Electric System's allocable share of Roseville's net pension liability was not separately determined.

City of Roseville Miscellaneous Plan					
Measurement Date ⁽¹⁾ (June 30)	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability	Net Position as a % of Total Pension Liability	Net Pension Liability as a % of Covered Payroll
2014	\$513,101,070	\$346,951,083	\$166,149,987	67.62%	245.63%
2015	532,751,723	356,786,987	175,964,736	66.97	249.33
2016	565,400,677	361,251,067	204,149,610	63.89	275.38
2017	632,299,916	403,695,744	228,604,172	63.85	304.95
2018	667,324,796	435,184,425	232,140,371	65.21	291.57

⁽¹⁾ Measured using prior fiscal year annual actuarial valuation rolled forward to measurement date using standard update procedures.
Source: City of Roseville.

In the June 30, 2017 actuarial valuation utilized for measuring the pension liability as of the June 30, 2018 measurement date, the Entry Age Normal Actuarial Cost Method was used. The actuarial valuation assumptions used for determining total pension liabilities included (a) a 7.5% investment rate of return (net of pension plan investment and administrative expense); (b) projected salary increases that range from 3.3% to 14.2% annually; (c) an inflation component of 2.75% per year; (d) payroll growth of 3.0%; and (e) a discount rate of 7.15%.

Retiree Health Benefits. Roseville also provides post-employment medical benefits (“OPEB benefits”) to substantially all retirees, including those assigned to the Electric System, under the City of Roseville Retiree Healthcare Plan, a sole employer defined healthcare plan administered by the Trust Investment Review Committee. Roseville is responsible for establishing and amending the funding policy of the plan. Roseville manages the plan by investing assets in a Retiree Health Plan Trust (the “OPEB Trust”), established pursuant to a Trust Agreement, and managed by the OPEB’s Trust Administrator, PFM Asset Management LLC. As of June 30, 2019, there were 769 participants receiving OPEB benefits under the plan.

The contribution requirements of plan members and Roseville are established and may be amended by the Roseville City Council. The City Council establishes rates based on an actuarially determined rate.

For Fiscal Years prior to Fiscal Year 2017-18, the City’s reported annual OPEB cost (expense) was calculated based upon the annual required contribution (“ARC”), an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents the level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and amortize any unfunded actuarial liabilities over 30 years.

The table below sets forth certain information regarding Roseville’s annual OPEB cost and the approximate portion of such amount funded by the Electric System, the percentage of annual OPEB cost contributed and Roseville’s Net OPEB obligation for the three Fiscal Years 2014-15 through 2016-17.

City of Roseville OPEB Plan				
Fiscal Year Ended June 30	Roseville Annual OPEB Cost⁽¹⁾	Amount Funded by Electric System	% of Annual OPEB Cost Contributed	Net OPEB Obligation
2015	\$ 8,994,201	\$648,594	64%	\$44,461,929
2016	11,471,000	723,472	69	49,633,184
2017	13,717,275	811,548	91	50,971,148

⁽¹⁾ Amounts include both pay-as-you-go contributions and contributions to the OPEB Trust.

Source: City of Roseville.

Effective beginning in Fiscal Year 2017-18, Roseville follows the provisions of GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* (“GASB No. 75”) affecting the reporting of OPEB liabilities for accounting purposes. GASB No. 75 replaces the requirements of GASB Statement No. 45. GASB No. 75 establishes standards for employers with other postemployment liabilities for recognizing and measuring net OPEB liabilities, along with deferred inflows and outflows of resources, and expenses/expenditures related to the other postemployment liability. GASB No. 75 does not affect funding requirements.

The table below sets forth certain information regarding the Electric System’s allocated share of Roseville’s annual contributions to the OPEB Plan for the Fiscal Years ended June 30, 2018 and 2019, including the relation of Roseville’s contributions to the actuarially determined contribution amount for such fiscal year. The Electric System’s estimated allocated share of Roseville’s budgeted contributions to the OPEB Plan for the Fiscal Year ending June 30, 2020 is [\$1,903,117]. *{update for FY 2020 to come when available}*

City of Roseville OPEB Plan

Fiscal Year Ended June 30	Contribution Funded by Electric System	Total City Contribution	Actuarially Determined Contribution Amount	Contribution Deficiency (Excess) to Actuarially Determined Contribution
2018	\$2,016,000	\$14,213,477	\$14,213,477	\$0
2019	2,079,000	15,226,000	15,226,000	0

Source: City of Roseville.

The City's net OPEB liability was measured as of June 30, 2019, and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as of June 30, 2017. The total OPEB liability was \$238,670,000 and the OPEB Plan fiduciary net position was \$97,800,000, resulting in a net OPEB liability of \$140,870,000 as of June 30, 2019. Plan fiduciary net position as a percentage of the total OPEB liability was 40.97%. The net OPEB liability as a percentage of covered payroll was 115.0%. In the June 30, 2017 actuarial valuation utilized in determining the OPEB liability, the Entry Age Normal Actuarial Cost Method was used with a 24-year fixed amortization period and level percentage of pay. The actuarial valuation assumptions used include (a) a 6.25% investment rate of return (net of administrative expense); (b) projected salary increases of 3% annually; (c) an inflation component of 2.75% per year; and (d) a healthcare trend 7.5% for 2019, decreasing to an ultimate rate of 4% in 2076 for non-medicare participants, and 6.5% in 2019, decreasing to an ultimate rate of 4.0% in 2076 for medicare participants.

Additional information regarding the City of Roseville's retirement plans and other post-employment benefits can be found in Roseville's comprehensive annual financial reports, which may be obtained at www.roseville.ca.us.

Insurance

Roseville is a member of the California Joint Powers Risk Management Authority ("CJPRMA"), which covers general liability claims, property, and boiler and machinery losses. Once Roseville's deductible is met, CJPRMA becomes responsible for payment of all claims up to the limit. General liability claims are covered up to \$40,000,000 with a self-insured retention of \$500,000 per claim. For Fiscal Year 2019-20, Roseville's premium was \$1,008,371. CJPRMA has purchased commercial insurance against property damage and boiler and machinery claims. Property damage is covered up to \$400,000,000 with a self-insured retention of \$500,000 per claim. Boiler and Machinery damage is covered up to \$21,250,000 with a self-insured retention of \$5,000. For Fiscal Year 2019-20, the annual premium cost for both was \$528,646.

Additionally, Roseville maintains insurance coverage for liabilities arising from the Roseville Energy Park property. The policy has a self-insured retention of \$250,000 per claim up to a \$200,000,000 limit. For the policy term of October 13, 2019 through October 13, 2020, Roseville's premium is \$668,697. Roseville has also purchased fiduciary insurance specifically to cover the OPEB Trust; see "Employees – Other Post-Employment Health Benefits" above. The self-insured retention was \$15,000 per claim up to a \$3,000,000 limit. For the policy term of January 15, 2019 through January 15, 2020, Roseville's premium was \$35,419.

Roseville is a member of the Local Agency Workers' Compensation Excess Joint Powers Authority ("LAWCX"), which covers workers' compensation claims up to \$5,000,000 and provides additional coverage up to statutory limit. Roseville has a self-insured retention of up to \$500,000 per claim. For Fiscal Year 2019-20, Roseville's premium cost is \$838,381 for current year coverage.

Wildfire Mitigation Measures

Roseville does not independently own any transmission lines, and its owned or co-owned transmission or distribution facilities have not been the cause of any recent wildfires experienced in California. The municipal boundaries of the City of Roseville, the primary geographical area in which the Roseville Electric System's overhead electrical lines and equipment are located, is not currently within a California Public Utilities Commission ("CPUC") designated fire-threat area nor a United States Forest Service/California Department of Forestry and Fire Protection (Cal Fire) designated high hazard zone. In 2018, Roseville staff determined, in consultation with the City of Roseville Fire Department, and based upon historical data, local experience and reference to the CPUC's High Fire Threat District Maps, that there were no portions of the geographical area in which the utility's overhead electrical lines and equipment are located that posed a significant risk of wildfire resulting from those electrical lines and equipment. As a precautionary measure, Roseville has developed and implemented a utility preparedness plan to address wildland fire sensitive areas and other possible utility emergency events. Elements of the 2018 utility preparedness plan include bolstered inspection practices for overhead electrical assets within the designated city wildland fire sensitive areas, ongoing vegetation management activities, and established protocols and procedures for operations for emergency preparedness and response. Roseville is preparing a wildfire mitigation plan in accordance with the requirements of SB 901 by January 1, 2020. See also "CERTAIN FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – State Legislation and Regulatory Proceedings – Legislation Relating to Wildfires; Related Risks" in the front part of this Official Statement.

Projected Capital Improvements

Roseville's currently anticipated capital improvements for the Electric System encompasses both improvements to Roseville's electricity distribution system and rehabilitation projects for assets that can no longer provide the necessary service. As shown in the Capital Improvement Summary below, Roseville has planned Electric System capital spending of approximately \$80.3 million over the five Fiscal Years 2019-20 through 2023-24, of which \$21.4 million is included in the Fiscal Year 2019-20 budget. Funds for the additional \$58.8 million will be requested when necessary.

CITY OF ROSEVILLE ELECTRIC SYSTEM CAPITAL IMPROVEMENT SUMMARY

Fiscal Year Ending June 30	Capital Improvement Projects
2019-20	\$21,440,000
2020-21	16,212,000
2021-22	11,974,000
2022-23	12,846,000
2023-24	<u>17,794,000</u>
Total:	\$80,266,000

Source: City of Roseville.

Roseville currently expects to fund the capital expenditures primarily with revenues collected from rates and development fees.

Electric Rates

Rate Setting Procedure. Under the City Charter and State law, Roseville has the exclusive jurisdiction to set electric rates within its service area by ordinance, which requires a majority vote of the

City Council. These rates are not currently subject to review by the CPUC or any State or federal agency. The City Council reviews Electric System rates periodically and makes adjustments as necessary.

The City Council is also authorized by the City Charter to set charges, pay for and supply all electric power to be furnished to customers according to such schedules, tariffs, rules and regulations as are adopted by the City Council. The City Charter provides that the City Council will have the power to charge equitable rates for the electric services furnished and for building up the electric properties so as to conserve their value and increase their capacity as needed by Roseville. In addition, the City Charter provides for the maintenance of the electric funds for the Electric System into which is deposited receipts from the operations of the Electric System and from which the costs and expenses of the Electric System are payable.

Service Charges and Demand Charge. Roseville's monthly residential electric rates currently include a \$26.00 basic service charge, the Renewable Energy Surcharge of \$0.0056 per kWh, the Greenhouse Gas Surcharge of \$0.0002 per kWh, plus \$0.0931 per kWh consumed up to 500 kWh, and \$0.1435 per kWh for consumption in excess of 500 kWh. Residential customers meeting certain criteria can apply for special residential rates such as an Electric Rate Assistance Program and Medical Support Rate Reduction.

For small and medium business customers, the monthly basic service charge ranges from \$38.00 to \$65.00, the Renewable Energy Surcharge of \$0.0056 per kWh, the Greenhouse Gas Surcharge of \$0.0002 per kWh, plus \$0.0974 to \$0.1235 per kWh consumed. Medium business customers are also subject to a demand charge of \$6.16 per kW per month.

For large business customers, the monthly basic service charge is \$521.00, the Renewable Energy Surcharge of \$0.0056 per kWh, the Greenhouse Gas Surcharge of \$0.0002 per kWh; and depending on the season, day and hour, time of use energy charges vary from \$0.0682 to \$0.1408 per kWh. Large business customers are also subject to a seasonal demand charge of \$6.60 per kW per month in winter and \$11.57 per kW per month in summer.

For very large business customers, the monthly basic service charge is \$591.00, the Renewable Energy Surcharge of \$0.0056 per kWh, the Greenhouse Gas Surcharge of \$0.0002 per kWh; and depending on the season, day and hour, time of use energy charges vary from \$0.0674 to \$0.1397 per kWh. Very large business customers are also subject to a seasonal demand charge of \$6.71 per kW per month in winter and \$11.51 per kW per month in summer.

A hydroelectric adjustment formula was adopted by the City Council in March 2009, to reflect deviations of precipitation from average conditions that significantly change hydroelectric production. This surcharge may change annually, based on annual hydroelectric conditions, up to a maximum of 5% of total electric charges. As a result of above average precipitation levels from July 2018 through June 2019 there is no surcharge currently in effect.

Recent History of Electric Rate Adjustments. From Fiscal Year 2014-15 through 2018-19, Roseville's retail electric rates have increased an average of approximately 0.4% annually. The following table sets forth Roseville's recent rate change history and the effective date.

**CITY OF ROSEVILLE
RATE ADJUSTMENTS
Fiscal Years 2014-15 through 2018-19**

Date	Percent Change (Average)
January 1, 2019	0.00%
January 1, 2018	0.00
January 1, 2017	0.00
January 1, 2016	0.00
January 1, 2015	0.00
July 1, 2014	2.00

Source: City of Roseville.

Rate Stabilization Fund

On May 8, 1996, the City Council adopted Resolution No. 96-148, which provides for, among other policies, the establishment of a rate stabilization fund (the “RSF” or “Rate Stabilization Fund”), in order to remain competitive under the then occurring industry-wide restructuring of the electric industry. Such policies also provide for the recovery of capital costs of Roseville’s electric generating assets. On March 18, 2009, the City Council reviewed the financial policy that defines the range of the Rate Stabilization Fund balance, reducing the minimum balance from 60% to 40% of operating expenses. This action was taken in conjunction with the implementation of a hydroelectric rate adjustment mechanism that adjusts electric rates up to 5% without further City Council action when hydroelectric conditions increase or decrease electric operating expenses. See also “– Electric Rates.” The Rate Stabilization Fund has a balance of \$65.9 million as of June 30, 2019. Roseville estimates that under current revenue estimates, the Rate Stabilization Fund is expected to be sufficient to pay for currently anticipated contingencies related to power supply costs.

Indebtedness; Joint Powers Agency Obligations

Roseville Electric System Revenue Certificates and Bonds. As of September 1, 2019, Roseville had outstanding approximately \$200,595,000 principal amount of certificates of participation and refunding revenue bonds (the “Outstanding Electric System Certificates and Bonds”) that were executed and delivered to finance and refinance improvements to the Electric System. The Outstanding Electric System Certificates and Bonds are payable from certain payments to be made by Roseville under an installment purchase contract (the “Installment Purchase Contract”), the payments under which are payable from and secured by the Net Revenues of the Electric System (“Net Revenues” are defined generally as revenues of the Electric System less the maintenance and operation costs of the Electric System during any 12-month period). These obligations are subordinate to the payments required to be made with respect to Roseville’s obligations to NCPA and TANC described below.

Roseville’s Outstanding Electric System Certificates and Bonds are summarized in the table below.

CITY OF ROSEVILLE
OUTSTANDING ELECTRIC SYSTEM INDEBTEDNESS
(as of September 1, 2019)

Name of Issue	Principal Amount Outstanding
Roseville Electric Utility System Revenue Certificates	
Series 2004 Certificates	\$ 5,000
Series 2009 Refunding Certificates	1,215,000
Series 2012 Refunding Certificates ⁽¹⁾	90,000,000
 Roseville Finance Authority	
Electric Utility System Bonds	
Refunding Revenue Bonds, Series 2010	545,000
Refunding Revenue Bonds, Series 2013	30,195,000
Refunding Revenue Bonds, Series 2014	16,485,000
Refunding Revenue Bonds, Series 2017A	56,210,000
Refunding Revenue Bonds, Taxable Series 2017B	5,940,000
Total	\$200,595,000

⁽¹⁾ Variable rate obligations issued in a private placement transaction. [Roseville intends to retire [\$36,000,000] principal amount of the Series 2012 Refunding Certificates on or about November 1, 2019.]

Source: City of Roseville.

Roseville's Series 2012 Refunding Certificates reflected in the table above are variable rate obligations which were purchased by U.S. Bank National Association (the "Bank") in a direct purchase transaction. Such variable rate obligations bear interest at a per annum rate determined monthly based upon a spread to a percentage of the one-month London InterBank Offering Rate ("LIBOR") and are subject to mandatory tender for purchase on the scheduled mandatory tender date of November 1, 2019 ***{monitor for update following 11/01 transaction; any change to swap as part of the transaction}***, or, if directed by the Bank upon the occurrence and continuance of an event of default under the related continuing covenant agreement, seven calendar days after receipt of such direction. On or before the scheduled mandatory purchase date, Roseville may request the Bank to purchase such variable rate obligations in another index rate period or another interest rate mode, or Roseville may seek to remarket such variable rate obligations to another bank or in the public debt markets. Prior to the issuance of such variable rate obligations, Roseville entered into two interest rate swap agreements. As of September 1, 2019, the notional amount of the swaps was \$90,000,000. Pursuant to the interest rate swap agreements, the floating rate interest payments that Roseville is obligated to make with respect to the variable rate Outstanding Electric System Certificates and Bonds were converted into substantially fixed rate payments. In general, the terms of the interest rate swap agreements provide that on same-day net payment basis, Roseville will pay a fixed interest rate determined based upon the notional amount of the respective swap and in return the applicable swap counterparty will pay a variable rate of interest on a like notional amount. The City's obligation to make any net regularly scheduled payments due to the swap counterparties under the interest rate swap agreements is payable on parity with the Outstanding Electric System Certificates and Bonds and are subordinate to the payments required to be made with respect to Roseville's obligations to NCPA and TANC described below. Under certain circumstances, the interest rate swap agreements are subject to termination and Roseville may be required to make a substantial termination payment to the counterparty thereunder. Any termination payments due from Roseville under the interest rate swap agreements upon early termination thereof are payable on a basis that is junior and subordinate to the payment of Roseville's Outstanding Electric System Certificates and Bonds.

Joint Powers Agency Obligations. As previously discussed, Roseville participates in certain joint powers agencies, including NCPA and TANC. The obligations of Roseville under its agreements with NCPA and TANC constitute operating expenses of the Electric System payable on a senior basis to any of the payments required to be made on Roseville's Outstanding Electric System Certificates and Bonds. The agreements with NCPA and TANC are on a "take-or-pay" basis, which requires payments to be made whether or not projects are operable, or whether output from such projects is suspended, interrupted or terminated. These agreements contain "step up" provisions obligating Roseville to pay a share of the obligations of a defaulting participant and granting Roseville a corresponding increased entitlement to electricity (generally, Roseville's "step-up" obligation is limited to 25% of Roseville's scheduled payments on such obligations). Roseville's participation and share of debt service obligation (without giving effect to any "step-up" provisions) for each of the joint powers agency projects in which it participates are shown in the following table.

**CITY OF ROSEVILLE
ELECTRIC SYSTEM
OUTSTANDING DEBT OF JOINT POWERS AGENCIES⁽¹⁾
(Dollar Amounts in Millions)
(As of September 1, 2019)**

	Outstanding Debt⁽²⁾	Roseville Participation⁽³⁾	Roseville Share of Outstanding Debt⁽²⁾
NCPA			
Geothermal Project	\$ 20.1	7.88%	\$ 1.6
Hydroelectric Project	265.7	12.00 ⁽⁴⁾	26.3
Capital Facilities Project	25.5	36.50	9.3
TANC			
COTP	191.8	2.32	4.5
TOTAL*	\$503.1		\$41.7

(1) Excludes Roseville Natural Gas Financing Authority. See "Natural Gas Prepayment" above.

(2) Principal only. Does not include obligation for payment of interest on such debt.

(3) Participation based on actual debt service obligation. Participation obligation is subject to increase upon default of another project participant. Such increase shall not exceed, without written consent of a non-defaulting participant, an accumulated maximum of 25% of such non-defaulting participant's original participation.

(4) Roseville's actual payments represent approximately 9.9% of outstanding debt service as a result of credit received by it as a non-participating member with respect to portion of debt obligation.

Note: Numbers may not total due to rounding.

Source: City of Roseville.

A portion of the joint powers agency debt obligations are variable rate bonds, liquidity support for which is provided through liquidity arrangements with banks. Unreimbursed draws under liquidity arrangements supporting joint powers agency variable rate debt obligations bear interest at a maximum rate substantially in excess of the current interest rates on such obligations. Moreover, in certain circumstances, the failure to reimburse draws on the liquidity agreements may result in the acceleration of scheduled payment of the principal of such variable rate joint powers agency obligations. In connection with certain of such joint powers agency obligations, the respective joint powers agency has entered into interest rate swap agreements relating thereto for the purposes of substantially fixing the interest cost with respect thereto. There is no guarantee that the floating rate payable to the respective joint powers agency pursuant to each of the interest rate swap agreements relating thereto will match the variable interest rate on the associated variable rate joint powers agency debt obligations to which the respective interest rate swap agreement relates at all times or at any time. Under certain circumstances, the swap providers may be

obligated to make payments to the applicable joint powers agency under their respective interest rate swap agreement that is less than the interest due on the associated variable rate joint powers agency debt obligations to which such interest rate swap agreement relates. In such event, such insufficiency will be payable as a debt service obligation from the obligated joint powers agency members (a corresponding amount of which proportionate to its debt service obligations to such joint powers agency could be due from Roseville). In addition, under certain circumstances, each of the swap agreements is subject to early termination, in which event the joint powers agency could be obligated to make a substantial payment to the applicable swap provider (a corresponding amount of which proportionate to its debt service obligations to such joint powers agency could be due from Roseville).

Litigation

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining Roseville in the execution or delivery or performance of, or in any way contesting or affecting the validity of any proceedings of Roseville taken with respect to, the Unit One Member Agreement.

There is no litigation pending, or to the knowledge of Roseville, threatened, questioning the existence of Roseville, or the title of the officers of Roseville to their respective offices. There is no litigation pending, or to the knowledge of Roseville, threatened, questioning or affecting in any material respect the financial condition of Roseville's Electric System.

Present lawsuits and other claims against Roseville's Electric System are incidental to the ordinary course of operations of the Electric System and are largely covered by Roseville's self-insurance program. In the opinion of Roseville's management and the Roseville City Attorney, such claims and litigation will not have a materially adverse effect upon the financial position of Roseville.

Financial Information

Significant Accounting Policies. Governmental accounting systems are organized and operated on a fund basis. A fund is defined as an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein. Funds are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

The Electric System is accounted for as an enterprise fund. Enterprise funds are used to account for operations (i) that are financed and operated in a manner similar to private business enterprises (where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges) or (ii) where the governing body has decided that periodic determination of revenues earned, expenses incurred and/or net income is appropriate for capital maintenance, public policy, management control, accountability or other purposes.

The Electric Fund uses the accrual method of accounting. Revenues are recognized when they are earned and expenses are recognized when they are incurred.

Investments are stated at cost. Inventories are valued at weighted average method. Capital assets are recorded at historical cost. Donated fixed assets are valued at their estimated fair market value on the date donated.

Audited Financial Statements. Roseville's most recent Comprehensive Annual Financial Report for Fiscal Year 2017-18 was audited by Vavrinek, Trine, Day & Co., LLP, Sacramento, California, in accordance with generally accepted auditing standards. The audited financial statements contain opinions

that the financial statements present fairly the financial position of the various funds maintained by Roseville. The reports include certain notes to the financial statements which are not fully described below. Such notes constitute an integral part of the audited financial statements. Copies of these reports are available on Roseville's website, www.roseville.ca.us.

Historical Revenues, Expenses and Debt Service Coverage

The following table presents a summary of the revenues, expenses, and debt service coverage for Roseville's Electric Fund for Fiscal Years 2014-15 through 2018-19 on a historical basis. The information is derived from Roseville's audited financial statements for Fiscal Years 2014-15 through 2017-18 and from Roseville's preliminary, unaudited results for Fiscal Year 2018-19. This table is based on historic operating results of the Electric System, but is presented on a cash basis consistent with the definitions of revenues and maintenance and operation costs as defined in the Installment Purchase Contract relating to Roseville's Outstanding Electric System Certificates and Bonds, and as such, does not match the audited financial statements of the Electric System. The table also includes a five-year history of balances in the Rate Stabilization Fund, and calculates debt service coverage both with and without taking into account the Rate Stabilization Fund balance.

The table below as it is presented is not available in Roseville's audited financial statements for the Electric System; it has been designed to reflect revenues and coverage in a manner which meets GAAP standards and is reflective of the definitions of revenues and maintenance and operation costs as defined in the Installment Purchase Contract relating to Roseville's Outstanding Electric System Certificates and Bonds. The figures shown in the table for Fiscal Years 2014-15 through 2017-18 are accounted for in Roseville's audited financial statements for such years (Fiscal Year 2018-19 data is based on preliminary, unaudited operating results) but the presentation in the audited financial statements may not necessarily correlate to the line item designations in the table.

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**CITY OF ROSEVILLE
ELECTRIC FUND
STATEMENT OF REVENUES AND EXPENSES
Fiscal Years 2014-15 through 2018-19
(Dollars in Thousands)**

	2014-15	2015-16	2016-17	2017-18	Preliminary 2018-19
Revenues					
Charges for Services	\$164,822	\$164,409	\$161,515	\$162,501	\$158,383
Other	3,508	2,147	4,169	5,735	9,336
Total Revenues	\$168,330	\$166,556	\$165,684	\$168,236	\$167,719
Operating Expenses					
Power Supply ⁽¹⁾	\$ 90,285	\$ 84,068	\$ 81,204	\$ 77,090	\$ 70,693
Non-Power Costs ⁽²⁾	20,933	27,345	36,771	37,470	33,194
Indirect Costs and Transfers ⁽³⁾	8,869	6,975	8,297	3,146	3,970
Total Operating Expenses	\$120,087	\$118,388	\$126,272	\$117,706	\$107,857
Net Revenue	\$ 48,243	\$ 48,168	\$ 39,412	\$ 50,530	\$ 59,862
Debt Service	\$ 16,176	\$ 16,185	\$ 15,950	\$ 16,672	\$ 15,432
Adjusted Net Revenue					
Net Revenue	\$ 48,243	\$ 48,168	\$ 39,412	\$ 50,530	\$ 59,862
Interest Revenue (excluding unrealized gain/loss)	\$ 795	\$ 1,212	\$ 1,887	\$ 2,497	\$ 3,474
Adjusted Net Revenue	\$ 49,038	\$ 49,380	\$ 41,299	\$ 53,027	\$ 63,336
Debt Service Coverage Ratio	3.03	3.06	2.61	3.11	4.10
Rate Stabilization Fund Balance ⁽⁴⁾	\$ 50,768	\$ 58,381	\$ 58,943	\$ 58,811	\$ 65,858
Transfers from/(to) Rate Stabilization Fund	(3,400)	(7,000)	0	0	(5,000)
Debt Service Coverage ratio, including Rate Stabilization Fund ⁽⁵⁾	6.17	6.66	6.28	6.71	8.37

⁽¹⁾ Includes joint powers agency payment obligations.

⁽²⁾ Includes distribution operations and administration expenses, including the Electric System's share of CalPERS costs.

⁽³⁾ Through Fiscal Year 2016-17, includes operating payments to the City General Fund as reimbursement for the Electric System's share of certain overhead expenses such as information technology, meter reading, traffic signals, payroll, human resources, facility lease payments, utility exploration center operations, retired employees' health costs, OPEB costs, citywide rehabilitation costs, etc. As of Fiscal Year 2017-18, most of such costs were moved to Non-Power costs with retired employees' health costs, OPEB costs, and citywide rehabilitation costs remaining on this line. The increase to Non-Power costs was offset by other operational savings.

⁽⁴⁾ Represents available resources as of June 30.

⁽⁵⁾ Pursuant to the Installment Purchase Contract relating to Roseville's Outstanding Electric System Certificates and Bonds, funds on deposit in the Rate Stabilization Fund may be included in Adjusted Annual Revenues for purposes of determining compliance with the Rate Covenant. See "Rate Setting – Rate Stabilization Fund."

Source: City of Roseville.

APPENDIX B

NCPA AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEARS ENDED JUNE 30, 2019 AND 2018

The combined financial statements of Northern California Power Agency and Associated Power Corporations as of and for the years ended June 30, 2019 and 2018 have been audited by Baker Tilly Virchow Krause, LLP, independent auditors, as stated in their report. Baker Tilly Virchow Krause, LLP has not been engaged to perform and has not performed, since the date of its report included therein, any procedures on the financial statements addressed in such report. Baker Tilly Virchow Krause, LLP has also not performed any procedures relating to this Official Statement.

APPENDIX C

BOOK-ENTRY ONLY SYSTEM

The information in this Appendix C regarding DTC and its book-entry system has been obtained from DTC's website, for use in securities offering documents, and NCPA takes no responsibility for the accuracy or completeness thereof or for the absence of material changes in such information after the date hereof.

The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the 2019 Series A Bonds. The 2019 Series A Bonds will be issued as fully-registered securities, registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the 2019 Series A Bonds, each in the aggregate principal amount of such maturity and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of the 2019 Series A Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2019 Series A Bonds on DTC's records. The ownership interest of each actual purchaser of each 2019 Series A Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2019 Series A Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the 2019 Series A Bonds, except in the event that use of the book-entry system for the 2019 Series A Bonds is discontinued.

To facilitate subsequent transfers, all 2019 Series A Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of 2019 Series A Bonds with DTC and their

registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2019 Series A Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2019 Series A Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners, will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of 2019 Series A Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2019 Series A Bonds, such as redemptions, tenders, defaults and proposed amendments to the 2019 Series A Bond documents. For example, Beneficial Owners of 2019 Series A Bonds may wish to ascertain that the nominee holding the 2019 Series A Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the 2019 Series A Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the 2019 Series A Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to NCPA as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2019 Series A Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the 2019 Series A Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from NCPA or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, nor its nominee, the Trustee, or NCPA, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of NCPA or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the 2019 Series A Bonds at any time by giving reasonable notice to NCPA or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, 2019 Series A Bond certificates are required to be printed and delivered.

NCPA may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, 2019 Series A Bond certificates will be printed and delivered to DTC.

APPENDIX D

SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS

Summary of Certain Provisions of the Indenture

The following is a summary of certain provisions of the Indenture. This summary is not to be considered a full statement of the terms of the Indenture and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not defined in this summary or elsewhere in the Official Statement have the respective meanings set forth in the Indenture.

Certain Definitions

“Account” shall mean any account, including any Subaccounts therein, in any Fund held and maintained under the Indenture.

“Accountant’s Certificate” shall mean a certificate signed by an independent certified public accountant of recognized national standing, or a firm of independent certified public accountants of recognized national standing, selected by NCPA.

“Act” shall mean the provisions relating to the joint exercise of powers found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended and supplemented.

“Additional Bonds” shall mean all Bonds, whether issued in one or more Series, authenticated and delivered on original issuance pursuant to the Indenture to pay costs of the Project, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Indenture.

“Aggregate Debt Service” shall mean, as of any date of calculation and with respect to any period, the sum of the amounts of Debt Service during such period with respect to all Outstanding Bonds.

“Annual Budget” shall mean the annual budget, as amended or supplemented, adopted or in effect for a particular Fiscal Year as provided in the Indenture.

“Authorized Denominations” shall mean, unless otherwise provided with respect to a Series of Bonds is the Supplemental Indenture authorizing such Series, \$5,000 and any integral multiple thereof.

“Authorized NCPA Representative” shall mean the General Manager, the Assistant General Manager - Finance and Administrative Services and Chief Financial Officer, the Treasurer-Controller, the Secretary, or an Assistant Secretary of NCPA and any other officer or employee of NCPA authorized by resolution duly adopted by NCPA to perform the specific acts or duties to be performed.

“Bond” or **“Bonds”** shall mean any bond or bonds, as the case may be, authenticated and delivered under and pursuant to the Indenture.

“Bond Counsel” shall mean an attorney or firm of attorneys of recognized national standing in the field of law relating to municipal bonds selected by NCPA.

“Bond Register” shall mean the registration books for the ownership of the Bonds maintained by the Bond Registrar pursuant to the Indenture.

“Bond Registrar” shall mean the Trustee or any other bank or trust company organized under the laws of any state of the United States of America or national banking association appointed by NCPA to perform the duties of Bond Registrar enumerated in the Indenture.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which the New York Stock Exchange or banks are authorized or obligated by law or executive order to close in New York, New York, or any city in which is located the principal corporate trust office of the Trustee.

“Capital Improvement” shall mean any addition, betterment, replacement, renewal, extension or improvement of the Project, including, without limitation, the acquisition of land or any interests therein, which under generally accepted accounting principles are chargeable to a capital account and capital costs for the extension, reinforcement, enlargement or other improvement of facilities, property or the acquisition of interests therein, whether or not included as part of the Project, determined by NCPA to be necessary or convenient in connection with the utilization of the Project.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time. Each reference to a section of the Code in the Indenture shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Bonds or the use of proceeds thereof, and also includes all amendments and successor provisions unless the context clearly requires otherwise.

“Cost” shall mean all costs and expenses of planning, designing, acquiring, constructing, installing and financing the Project, placing the Project in operation, disposal of the Project, decommissioning of the Project and obtaining governmental approvals, certificates, permits and licenses with respect thereto heretofore or hereafter paid or incurred by NCPA. The term Cost shall include, but shall not be limited to, funds required for:

- (a) Costs of preliminary investigation and development, the performance or acquisition of feasibility and planning studies, and the securing of regulatory approvals, as well as costs for land and land rights, engineering and contractors’ fees, labor, materials, equipment, utility services and supplies, legal fees, fees incurred pursuant to any lending or credit facility or agreement, and financing expenses.

- (b) Working capital and reserves therefor in such amounts as shall be determined by the NCPA Commission.

- (c) Interest accruing in whole or in part on Bonds prior to and during construction of the Project or any portion thereof, and for such additional period as the NCPA Commission may determine.

- (d) The deposit or deposits from the proceeds of the Bonds in any Funds or Accounts which deposit or deposits are required by the Indenture.

- (e) The payment of principal, redemption price, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) of any note or other evidence of indebtedness the proceeds of which were applied to any of the costs of the Project.

- (f) Training and testing costs which are properly allocable to the acquisition, placing in operation, or construction of the Project.

(g) All costs of insurance applicable to the period of construction and placing the Project in operation.

(h) All costs relating to injury and damage claims arising out of the acquisition or construction of the Project less proceeds of insurance.

(i) Legally required or permitted federal, state and local taxes and payments in lieu of taxes relating to the Project.

(j) All costs relating to the issuance and sale of Bonds.

(k) Amounts due the United States of America as rebate of investment earnings with respect to the proceeds of the Bonds or as penalties in lieu thereof.

(l) Amounts payable with respect to capital costs for the expansion, reinforcement, enlargement or other improvement of facilities determined by NCPA as necessary in connection with the utilization of the Project and the costs associated with the removal from service or reductions in service of any facilities as a result of the expansion, reinforcement, enlargement or other improvement of such facilities or the construction of the Project.

(m) All other costs incurred by NCPA and properly allocable to the acquisition, construction, or placing in operation of the Project or any portion thereof.

“Cost of Issuance Fund” shall mean the fund so designated established pursuant to the Indenture.

“Debt Service” shall mean, as of any date of calculation, with respect to any period, an amount equal to the sum of (i) interest accruing during such period on the Outstanding Bonds, except to the extent that such interest is to be paid from deposits into the Debt Service Fund from Bond proceeds or the investment earnings thereon, provided, however that in determining Debt Service with respect to any Bonds during a period that such Bonds bear interest at a variable rate, interest on such Bond during such period shall be the maximum interest rate applicable to such Bond and (ii) that portion of each Principal Installment for the Outstanding Bonds which would accrue during such period if each such Principal Installment were deemed to accrue daily in equal amounts from the next preceding Principal Installment due date for such Bonds (or, if there shall be no such preceding Principal Installment due date, from a date one year preceding the due date of such Principal Installment or from the date of issuance of the Bonds, whichever date is later).

“Debt Service Account” shall mean the account so designated established in the Debt Service Fund pursuant to the Indenture.

“Debt Service Fund” shall mean the Fund so designated established pursuant to the Indenture.

“Debt Service Reserve Account” shall mean the account so designated established in the Debt Service Reserve Fund pursuant to the Indenture.

“Debt Service Reserve Fund” shall mean the Fund so designated established pursuant to the Indenture.

“Debt Service Reserve Requirement” shall mean, as of the date of calculation: (i) with respect to the Debt Service Reserve Account, an amount equal to the greatest amount of Debt Service for the

Participating Bonds coming due in the then current or any future Fiscal Year; and (ii) with respect to any Series Debt Service Reserve Account established in connection with Future Bonds, the amount, if any, specified as such in the Supplemental Indenture establishing such Series Debt Service Reserve Account. There is no Series Debt Service Reserve Account established in connection with the 2019 Series A Bonds and the Debt Service Reserve Requirement for the 2019 Series A Bonds shall be \$0.

“Defeasance Securities” shall mean direct obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America.

“DTC” shall mean The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns. References in the Indenture to DTC shall include any nominee of DTC in whose name any Bonds are then registered.

“Event of Default” shall have the meaning given to such term under the caption “Events of Default” in this summary.

“Fiduciary” or “Fiduciaries” shall mean the Trustee, the Bond Registrar, the Paying Agents, the Depositories, or any or all of them, as may be appropriate.

“Financial Guaranty” shall mean one or more of the following to be delivered to the Trustee pursuant to the Indenture: (i) irrevocable, unconditional and unexpired letters of credit issued by banking institutions; (ii) an irrevocable and unconditional policy or policies of insurance in full force and effect issued by municipal bond insurers; in each case providing for the payment thereunder of sums for the payment of Principal Installments with respect to, and interest on, Bonds as required by the Indenture.

“Fiscal Year” shall mean the twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at the time immediately preceding 12:01 a.m. on the following July 1 or any other period of twelve consecutive months adopted by NCPA as its fiscal year.

“Fitch” shall mean Fitch Ratings, Inc. and its corporate successors.

“Fund” shall mean each of the Funds established pursuant to the Indenture.

“Future Bonds” shall mean Additional Bonds and Refunding Bonds issued pursuant to the Indenture after the issuance of the 2019 Series A Bonds.

“Indenture” shall mean the Indenture of Trust, dated as of December 1, 2019, by and between NCPA and the Trustee.

“Interest Payment Date” shall mean, with respect to the 2019 Series A Bonds, February 1 and August 1 of each year, commencing August 1, 2020, and with respect to a Series of Future Bonds the dates specified as such in the Supplemental Indenture authorizing such Bonds.

“Investment Securities” shall mean and include any of the following securities, if and to the extent the same are at the time legal for investment of NCPA’s funds:

- (1) Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America);

- (2) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any federal agency, which obligations are backed by the full faith and credit of the United States of America;
- (3) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any federal agency, including obligations which are not fully guaranteed by the full faith and credit of the United States of America;
- (4) Money market funds registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating of “AAAm” by S&P or “Aaa-mf” by Moody’s;
- (5) Commercial paper rated, at the time of purchase, “P-1” by Moody’s or “A-1+” by S&P and which matures not more than 270 days after its date of purchase;
- (6) U.S. dollar denominated deposit accounts, federal funds or bankers’ acceptances with domestic commercial banks, which have a rating on their short-term certificates of deposit (on the date of purchase) of “A-1” or “A-1+” by S&P and “P-1” by Moody’s and which mature no more than 360 days after their date of purchase (Ratings on holding companies are not considered as the rating of the bank);
- (7) General obligations of any state, which are rated “A2/A” or higher by both Moody’s and S&P;
- (8) Pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state or any agency, instrumentality or local governmental unit of any state, which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in a notice, and which are:
 - (a) Rated, based on an irrevocable escrow account or fund, in the highest rating category of S&P and Moody’s; or
 - (b) Fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (1) hereof, which escrow may be applied only to the payment of such principal or and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to irrevocable instructions, as appropriate, and which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (8) on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;
- (9) Investment agreements or guaranteed investment contracts, supported by appropriate opinions of counsel, with notice to S&P;
- (10) California State Local Agency Investment Fund, a pooled investment fund managed by the State of California Treasurer’s office meeting all legal guidelines and requirements for the investment of California public agency funds;

(11) Shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California which invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State of California, as it may be amended; provided that such shares are held in the name and to the credit of the Trustee; and

(12) Any other form of investment (including repurchase agreements) with notice to S&P.

“Members” shall mean the City of Alameda, the City of Biggs, the City of Gridley, the City of Healdsburg, the City of Lodi, the City of Lompoc, the City of Palo Alto, the City of Redding, the City of Roseville, the City of Santa Clara, the City of Shasta Lake, the City of Ukiah, the City of Oakland acting by and through its Board of Port Commissioners, the Truckee Donner Public Utility District, and the San Francisco Bay Area Rapid Transit District, as members and the Plumas-Sierra Rural Electric Cooperative, as an associate member.

“Moody’s” shall mean Moody’s Investors Service, Inc., and its corporate successors.

“NCPA” shall mean the Northern California Power Agency, a joint exercise of powers agency created pursuant to the Act.

“NCPA Commission” shall mean the NCPA Commission, as constituted from time to time, or if said NCPA Commission shall be abolished, such other entity or entities succeeding to the principal functions thereof or to whom the power and duties granted or imposed by the Indenture shall be given.

“NCPA Operating Expenses” shall mean current expenses or obligations required to be paid by NCPA under the provisions of the Unit One Member Agreement or by law, all to the extent properly allocable to the operation or maintenance of the Project or required to be incurred under or in connection with the performance of the Unit One Member Agreement, expenses incurred in connection with the purchase or redemption of Bonds, the amounts required to be paid in the Rebate Fund pursuant to the Rebate Instructions, and all other costs (including overhead) properly allocable to the operation or maintenance of the Project. NCPA Operating Expenses shall not include any costs or expenses for new construction or any allowance for depreciation of the Project.

“Operating Fund” shall mean the Fund so designated established pursuant to the Indenture.

“Operating Reserve Account” shall mean the Account in the Operating Fund so designated established pursuant to the Indenture.

“Opinion of Bond Counsel” shall mean a written opinion signed by Bond Counsel.

“Option Bonds” shall mean Bonds which by their terms may be tendered by and at the option of the Owner thereof for purchase prior to the stated maturity thereof.

“Outstanding,” when used with reference to Bonds, shall mean, as of any date, Bonds theretofore, or thereupon being, authenticated and delivered under the Indenture except:

(i) Bonds cancelled by the Trustee, or delivered to the Trustee for cancellation, at or prior to such date;

(ii) Bonds paid or deemed paid pursuant to the Indenture; and

(iii) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to the Indenture.

“Owner” shall mean the person registered as the owner of a Bond in the Bond Register.

“Parity Debt” shall mean bonds, notes, installment sale obligations, lease obligations or other evidences of indebtedness, and reimbursement agreements and other contracts relating to credit enhancement with respect to any of the foregoing, in each case satisfying the requirements of the Indenture.

“Participating Bonds” shall mean all Future Bonds other than Bonds authorized by a Supplemental Indenture that provides that such Bonds are not Participating Bonds in accordance with the provisions of the Indenture.

“Paying Agent” shall mean the Trustee and any other commercial bank or trust company organized under the laws of any state of the United States of America, or any national banking association, designated as paying agent for the Bonds, and its successor or successors appointed in the manner provided in the Indenture.

“Principal Installment” shall mean, as of any date of calculation, (i) the principal amount of Outstanding Bonds due on a certain future date for which no Sinking Fund Installments have been established and (ii) the unsatisfied balance (determined as provided in the Indenture) of any Sinking Fund Installments due on a certain future date for Outstanding Bonds.

“Project” shall have the meaning set forth in the Unit One Member Agreement.

“Project Participant” shall mean a party, other than NCPA, to the Unit One Member Agreement.

“Project Revenues” shall mean (i) all revenues, income, rents and receipts derived from or attributable to the Project or to the payment of the Costs thereof received or to be received by NCPA including without limitation payments from Project Participants pursuant to the Unit One Member Agreement and amounts realized pursuant to the security arrangements contemplated by the Unit One Member Agreement, amounts received pursuant to the Indenture, and amounts received by NCPA pursuant to any other contract or arrangement for the sale by NCPA of the capacity, use or service of the Project, and (ii) the proceeds of any insurance, including the proceeds of any self-insurance fund, covering business interruption loss relating to NCPA’s interest in the Project, (iii) interest received or to be received on any moneys or securities held pursuant to the Indenture and required to be paid into the Revenue Fund.

“Prudent Utility Practice” shall mean any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior hereto) known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with sound utility business and financial practices approved by the Western Electricity Coordinating Council or the North American Electric Reliability Corporation, reliability, safety and expedition, taking into account the fact that Prudent 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 a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at a reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice includes due regard for manufacturers’ warranties and requirements of governmental agencies of

competent jurisdiction and official electric industry reliability organizations and shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project.

“Rebate Fund” shall mean the Fund so designated established in the Indenture.

“Rebate Instructions” shall mean those calculations and written directions required to be delivered to the Trustee by NCPA pursuant to the Indenture.

“Rebate Requirement” shall mean the Rebate Requirement as defined in the Tax Certificate.

“Redemption Date” shall mean the date fixed for the redemption of a Bond or portion thereof as contemplated by the Indenture.

“Redemption Price” shall mean, with respect to any Bond, the principal amount thereof plus the applicable premium, if any, payable upon redemption thereof.

“Refunding Bonds” shall mean all Bonds, whether issued in one or more Series, authenticated and delivered on original issuance pursuant to the Indenture to refund Bonds or Parity Debt, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Indenture.

“Representation Letter” shall mean the letter or letters of representations from NCPA and the Trustee to, or other instrument or agreement among NCPA and the Trustee with, a Securities Depository for the Bonds in which NCPA and the Trustee, among other things, make certain representations to such Securities Depository with respect to the Bonds, the payment thereof, and delivery of notices with respect thereto.

“Reserve and Contingency Fund” shall mean the Fund so designated established pursuant to the Indenture.

“Revenue Fund” shall mean the Fund so designated established pursuant to the Indenture.

“S&P” shall mean S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC and its corporate successors.

“Securities Depository” shall mean DTC and its successors and assigns or if (i) the incumbent Securities Depository resigns from its functions as depository of the Bonds or (ii) NCPA discontinues use of the incumbent Securities Depository pursuant to the Indenture, any other securities depository which agrees to follow the procedures required to be followed by a securities depository in connection with the Bonds and which is selected by NCPA.

“Series” when used with reference to the Bonds, shall mean all of the Bonds authenticated and delivered on original issuance and identified pursuant to the Indenture (including any Supplemental Indenture) as a separate Series of Bonds, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Indenture (including any Supplemental Indenture), regardless of variations in maturity, interest rate, Sinking Fund Installments, or other provisions.

“Series Debt Service Reserve Account” shall mean each such Account established within the Debt Service Fund with respect to a Series of Future Bonds that are not Participating Bonds.

“Sinking Fund Installment” shall mean, with respect to the Bonds, each amount so designated which is established pursuant to the Indenture.

“Subaccounts” shall mean any or all subaccounts in any or all of the Accounts held and maintained under the Indenture.

“Supplemental Indenture” shall mean any indenture supplemental to or amendatory of the Indenture as theretofore in effect, entered into by NCPA and the Trustee in accordance with the Indenture.

“Surplus Fund” shall mean the Fund so designated established pursuant to the Indenture.

“Tax Certificate” shall mean the Tax Certificate signed by NCPA on the date of original issuance of any Bonds relating to the requirements of the Code.

“Trustee” shall mean U.S. Bank National Association, its successor or successors and any other entity which may at any time be substituted in its place as trustee pursuant to the Indenture.

“Trust Estate” shall mean (a) subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein and the provisions of the Indenture, (i) the Project Revenues and (ii) all amounts on deposit in the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund, including the investments, if any, thereof; and (b) all of NCPA’s right, title and interest in and to the Unit One Member Agreement; provided that the pledge of the Project Revenues and amounts in the Revenue Fund and NCPA’s right, title and interest in and to the Unit One Member Agreement shall be on a parity with any pledge thereof securing Parity Debt.

“2019 Bonds Debt Service Account” shall mean the Account in the Debt Service Fund established pursuant to the Indenture.

“2019 Continuing Disclosure Agreement” shall mean the Continuing Disclosure Agreement, dated the date of original issuance of the 2019 Series A Bonds, between NCPA and the Trustee as Dissemination Agent, in connection with the 2019 Series A Bonds pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

“2019 Series A Bonds” shall mean NCPA’s Capital Facilities Revenue Bonds, 2019 Refunding Series A authorized pursuant to the Indenture.

“Unit One Member Agreement” shall mean the Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two - Unit One, dated as of August 1, 1992, among NCPA and the Cities of Alameda, Lodi, Lompoc and Roseville, as the same may be amended and supplemented in accordance with its terms and the terms of the Indenture.

Pledge Effected by the Indenture

The Bonds shall be special, limited obligations of NCPA payable only from the Trust Estate and secured as to the payment of the principal and Redemption Price thereof and interest thereon in accordance with their terms and the provisions of the Indenture solely by the pledge and assignment of the Trust Estate, which pledge is subject to the application of the Trust Estate for the purposes and on the terms and conditions contained in the Indenture; provided, however, that such pledge and assignment of the Project Revenues, amounts in the Revenue Fund and NCPA’s right, title and interest in and to the Unit One Member Agreement shall be in all respects on a parity with any pledge and assignment thereof as security for Parity Debt.

The Trust Estate shall immediately be subject to the lien of such pledge without any other further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against NCPA, irrespective of whether such parties have notice thereof. Any moneys withdrawn from any Fund or Account and not deposited into the Revenue Fund, the Debt Service Fund or the Debt Service Reserve Fund, except as otherwise provided in the Indenture, shall be released from the pledge and assignment made pursuant to the Indenture. Upon the payment, or provision for the payment in accordance with the Indenture, of the Bonds, the Unit One Member Agreement shall be released from the pledge and assignment made pursuant to the Indenture and no longer included in the Trust Estate.

The Bonds shall not constitute a charge against the general credit of NCPA and are not secured by a legal or equitable pledge of, or charge or lien upon, any property of NCPA or any of its income or receipts except the Trust Estate to the extent set forth in the Indenture, and as to any particular Bonds, any other moneys to be provided therefor pursuant to the Indenture. Neither the faith and credit nor the taxing power of the State of California or any public agency thereof or any Member is pledged to the payment of the principal or Redemption Price of, or interest on, the Bonds. Neither the payment of the principal or Redemption Price of, or interest on, the Bonds constitutes a debt, liability or obligation of the State of California or any public agency thereof (other than NCPA) or any Member.

Nothing contained in the Indenture shall be construed to prevent NCPA from acquiring and financing through the issuance of its bonds, notes or other evidences of indebtedness any facilities or any interest in facilities which do not constitute a part of the Project for the purposes of the Indenture; provided such bonds, notes or other evidences of indebtedness shall not be payable out of or secured by the Trust Estate and neither the cost of such facilities nor any expenditure in connection therewith or with the financing thereof shall be payable from the Trust Estate.

Establishment of Funds and Application Thereof

Funds and Accounts. The Indenture establishes the following Funds and Accounts:

- (1) Cost of Issuance Fund, to be held by NCPA;
- (2) Revenue Fund, to be held by NCPA;
- (3) Operating Fund, to be held by NCPA, including the Operating Reserve Account;
- (4) Rebate Fund, to be held by the Trustee;
- (5) Debt Service Fund, to be held by the Trustee, which shall consist of (i) the Debt Service Account, (ii) the 2019 Bonds Debt Service Account, and (iii) such Accounts in the Debt Service Fund as shall be established in the Supplemental Indenture authorizing a Series of Future Bonds that are not Participating Bonds;
- (6) Debt Service Reserve Fund, to be held by the Trustee, which shall consist of (i) the Debt Service Reserve Account, and (ii) any Series Debt Service Reserve Accounts as shall be established in connection with Future Bonds by NCPA that are not Participating Bonds pursuant to the Indenture;
- (7) Reserve and Contingency Fund, to be held by NCPA; and
- (8) Surplus Fund, to be held by NCPA.

Project Revenues and Revenue Fund. All Project Revenues shall be deposited, promptly on receipt thereof, to the credit of the Revenue Fund, and applied as provided in the Indenture.

Payments From the Revenue Fund. As soon as practicable in each month, but in any case no later than the last Business Day of such month, NCPA shall withdraw moneys from the Revenue Fund and deposit in the following Funds and Accounts, in the following order, the amounts set forth below:

(a) NCPA shall withdraw from the Revenue Fund and deposit in the Operating Fund the amount which, together with any amount therein (other than amounts in the Operating Reserve Account) is equal to the total amount appropriated for NCPA Operating Expenses in such month pursuant to the then current Annual Budget.

(b) NCPA shall withdraw from the Revenue Fund and transfer to the Trustee (or paying agent for Parity Debt, as applicable) for deposit: (i) subject to the provisions of the Indenture, in the Debt Service Account the amount necessary so that the balance in said Account shall equal the Debt Service to accrue on the Participating Bonds to the last day of such month; (ii) in the 2019 Bonds Debt Service Account the amount necessary so that the balance in said Account shall equal the Debt Service to accrue on the 2019 Series A Bonds to the last day of such month; (iii) in each Account in the Debt Service Fund established for a Series of Future Bonds that are not Participating Bonds the amount, if any, required so that the balance in said Account shall equal the Debt Service to accrue on such Series of Future Bonds to the last day of such month; provided that, for the purposes of computing the amount on deposit in any such Account, there shall be excluded from the balance of such Account: (A) the amount, if any, set aside in such Account from the proceeds of Bonds for the payment of the principal, Redemption Price, or interest on Bonds, less the amount of such proceeds to be applied in accordance with the Indenture to the payment of the principal, Redemption Price or interest accrued and unpaid and to accrue on applicable Bonds to the last day of the then current calendar month; and (B) the amount, if any, set aside in any such Account for the payment of Principal Installments or Redemption Price of, or interest on, the applicable Bonds which are then due and payable; and (iv) in any fund or account created to pay debt service on Parity Debt the amount, if any, required so that the balance therein shall equal the payments coming due therein to the last day of such month; provided that if the amount of Project Revenues available in any month is insufficient to make all required deposits described in this paragraph (b), then the available Project Revenues shall be deposited in each Account in the Debt Service Fund and the funds or accounts created to pay debt service on Parity Debt pro rata based on the amounts due.

(c) Subject to the provisions of the Indenture, NCPA shall withdraw from the Revenue Fund and transfer to the Trustee (or paying agent for Parity Debt, as applicable) for deposit in each Account in the Debt Service Reserve Fund, the amount, if any, required so that the amount in such Account is equal to the applicable Debt Service Reserve Requirement and the amount, if any, necessary to reimburse each drawing on a Financial Guaranty related to each Account in the Debt Service Reserve Fund and to pay any interest or other amounts due with respect to a Financial Guaranty related to each Account in the Debt Service Reserve Fund; and for to deposit in the debt service reserve, if any, established for Parity Debt the amount required to be deposited in such debt service reserve pursuant to the instrument or proceedings authorizing such Parity Debt; provided that if the amount of Project Revenues available in any month is insufficient to make all required deposits described in this paragraph (c), then the available Project Revenues shall be deposited into each Account in the Debt Service Reserve Fund and the debt service reserves for Parity Debt pro rata based on the amounts due.

(d) NCPA shall withdraw from the Revenue Fund and deposit in the Reserve and Contingency Fund the amount, if any, provided for deposit therein during such month pursuant to the then current Annual Budget.

(e) On the last Business Day of each month after making the deposits required by the Indenture, NCPA shall withdraw from the Revenue Fund and deposit in the Surplus Fund the balance, if any, of moneys remaining in the Revenue Fund.

Application of Operating Fund.

(a) Moneys, including proceeds of Bonds, may be deposited in the Operating Reserve Account or otherwise set aside in the Operating Fund as working capital or a reserve for working capital.

(b) Amounts in the Operating Fund (other than amounts in the Operating Reserve Account, except as provided in paragraph (d) of below) shall be paid out from time to time by NCPA for reasonable and necessary NCPA Operating Expenses, including making deposits to the Rebate Fund to satisfy the Rebate Requirements.

(c) Amounts in the Operating Fund which NCPA at any time determines to be in excess of the requirements of such Fund, such determination to be evidenced by a written statement to this effect signed by an Authorized NCPA Representative, shall be applied to make up any deficiencies in the following Funds in the order stated: Debt Service Fund; Debt Service Reserve Fund; and the Reserve and Contingency Fund. Any balance of such excess not so applied shall be deposited in the Surplus Fund.

(d) Amounts in the Operating Reserve Account, if any, shall be paid out from time to time by NCPA for reasonable and necessary NCPA Operating Expenses in the event that other moneys in the Operating Fund available for such purpose are insufficient therefor.

Application of Debt Service Fund.

(a) The Trustee shall transfer from the Debt Service Account in the Debt Service Fund to the Paying Agent: (i) on or before each Interest Payment Date for any of the Outstanding Participating Bonds the interest on such Participating Bonds payable on such due date; (ii) on or before each due date therefor, the Principal Installment on Outstanding Participating Bonds payable on such due date; and (iii) on or before any Redemption Date for Outstanding Participating Bonds, the amount required for payment of the Redemption Price and any accrued interest on the Participating Bonds then to be redeemed. Amounts received by the Paying Agents as described in this paragraph shall be applied by the Paying Agents to the payment of the principal or Redemption Price, as applicable, of, and interest on, the Participating Bonds on and after the due dates thereof.

(b) The Trustee shall transfer from the 2019 Debt Service Account in the Debt Service Fund to the Paying Agent: (i) on or before each Interest Payment Date for any of the Outstanding 2019 Series A Bonds the interest on such 2019 Series A Bonds payable on such due date; (ii) on or before each due date therefor, the Principal Installment on Outstanding 2019 Series A Bonds payable on such due date; and (iii) on or before any Redemption Date for Outstanding 2019 Series A Bonds, the amount required for payment of the Redemption Price and any accrued interest on the 2019 Series A Bonds then to be redeemed. Amounts received by the Paying Agents as described in this paragraph shall be applied by the Paying Agents to the payment of the principal or Redemption Price, as applicable, of, and interest on, the 2019 Series A Bonds on and after the due dates thereof.

(c) The Trustee shall transfer from each Debt Service Account in the Debt Service Fund established for a Series of Future Bonds that are not Participating Bonds to the Paying Agent: (i) on or before each Interest Payment Date for any of the Outstanding Bonds of such Series the interest on such Future Bonds payable on such due date; (ii) on or before each due date therefor, the Principal Installment on Outstanding Bonds of such Series payable on such due date; and (iii) on or before any Redemption

Date for Outstanding Bonds of such Series, the amount required for payment of the Redemption Price and any accrued interest on the such Bonds then to be redeemed. Amounts received by the Paying Agents as described in this paragraph shall be applied by the Paying Agents to the payment of the principal or Redemption Price, as applicable, of, and interest on, the applicable Series of Future Bonds that are not Participating Bonds on and after the due dates thereof.

(d) Amounts accumulated in the applicable Account in the Debt Service Fund with respect to any Sinking Fund Installment (together with amounts accumulated therein with respect to interest on the Bonds for which such Sinking Fund Installment was established) may, and if so directed in writing by an Authorized NCPA Representative shall, be applied by the Trustee, on or prior to the 60th day preceding the due date of such Sinking Fund Installment, to (i) the purchase of Bonds of the maturity for which such Sinking Fund Installment was established, or (ii) the redemption at the applicable sinking fund Redemption Price of such Bonds, if then redeemable by their terms. All purchases of any Bonds made pursuant to the provisions described in this paragraph shall be made at prices not exceeding the applicable sinking fund Redemption Price of such Bonds plus accrued interest, and such purchases shall be made by the Trustee as directed by NCPA. The applicable sinking fund Redemption Price (or principal of maturing Bonds) of any Bonds so purchased or redeemed shall be deemed to constitute part of the applicable Account in the Debt Service Fund until such Sinking Fund Installment due date, for the purpose of calculating the amount in such Account.

If directed in writing by an Authorized NCPA Representative on or prior to the 45th day next preceding any Sinking Fund Installment due date, there shall be applied as a credit against such Sinking Fund Installment, and there shall be deemed to constitute part of the Debt Service Fund for the period commencing eleven months from such Sinking Fund Installment due date until such Sinking Fund Installment due date for the purpose of calculating the amount of such Fund, the principal amount of any Bonds of the maturity for which such Sinking Fund Installment was established which have been purchased or redeemed and cancelled or delivered to the Trustee for cancellation on or prior to the 45th day next preceding such Sinking Fund Installment due date and not previously applied as a credit against a Sinking Fund Installment.

No later than the 30th day preceding the due date of any such Sinking Fund Installment, the Trustee shall proceed to call for redemption on such due date, by giving notice as provided in the Indenture, Bonds of the maturity for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment Date) in such amount as shall be necessary to complete the retirement of Bonds in an amount equal to the unsatisfied balance of such Sinking Fund Installment. The Trustee shall pay out of the Debt Service Fund to the Paying Agent, on or before such Redemption Date (or maturity date), the amount required for the redemption of the Bonds so called for redemption (or for the Bonds then maturing), and such amount shall be applied by the Paying Agent to such redemption (or payment).

(e) The amount, if any, deposited in each applicable Account in the Debt Service Fund from the proceeds of Bonds for the purpose of paying interest on Bonds shall be set aside in such Fund and applied to the payment of interest on Bonds as provided in the Indenture or in any Supplemental Indenture.

(f) In the event of the refunding of one or more Bonds (or portions thereof), the Trustee shall, upon the written direction of an Authorized NCPA Representative, withdraw from the applicable Account or Accounts in the Debt Service Fund amounts accumulated therein with respect to Debt Service on the Bonds being refunded and deposit such amounts with itself as Trustee to be held for the payment of the principal or Redemption Price, as applicable, of, and interest on, the Bonds (or portions thereof) being refunded; provided, that such withdrawal shall not be made unless (i) immediately thereafter the

Bonds (or portions thereof) being refunded shall be deemed to have been paid pursuant to the Indenture, and (ii) the amount remaining in such applicable Account or Accounts in the Debt Service Fund after such withdrawal shall not be less than the requirement of such Account or Accounts.

(g) Any provision of the Indenture to the contrary notwithstanding, so long as there shall be held in an Account in the Debt Service Fund an amount sufficient to pay in full the Bonds related to such Account in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), no deposits shall be required to be made into such Account in the Debt Service Fund.

Application of Debt Service Reserve Fund.

(a) If on the last Business Day of any month the amount in the Debt Service Account shall be less than the amount required to be in such Account pursuant to the Indenture with respect to the Outstanding Participating Bonds, the Trustee shall apply amounts from the Debt Service Reserve Account to the extent necessary to make good the deficiency with respect to the Participating Bonds. If on the last Business Day of any month the amount in a Debt Service Account established for a Series of Future Bonds that are not Participating Bonds shall be less than the amount required to be in such Account pursuant to the Indenture with respect to such Series of Future Bonds, the Trustee shall apply amounts from the applicable Series Debt Service Reserve Account (if any) to the extent necessary to make good the deficiency with respect to the Series of Future Bonds secured by such Series Debt Service Reserve Account.

(b) Except as provided in paragraph (g) below, whenever the moneys on deposit in the applicable Account in the Debt Service Reserve Fund shall exceed the applicable Debt Service Reserve Requirement, such excess shall be applied to the reimbursement of each drawing on a Financial Guaranty related to such Account and to the payment of interest or other amounts due with respect to such a Financial Guaranty to the extent payable from such Account and any remaining moneys shall be deposited in the Revenue Fund.

(c) Whenever the amount in the Debt Service Reserve Account (excluding Financial Guaranties), together with the amount in the Debt Service Account and available for such purposes, is sufficient to pay in full all Outstanding Participating Bonds in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), the funds on deposit in the Debt Service Reserve Account shall be transferred to the Debt Service Account and applied to the payment or redemption of the Outstanding Participating Bonds.

(d) In the event of the refunding of one or more Participating Bonds (or portions thereof), the Trustee shall, upon the written direction of an Authorized NCPA Representative, withdraw from the Debt Service Reserve Account any or all of the amounts on deposit therein (excluding Financial Guarantees) and deposit such amounts with itself as Trustee to be held for the payment of the principal or Redemption Price, if any, of, and interest on, the Participating Bonds (or portions thereof) being refunded; provided, that such withdrawal shall not be made unless (i) immediately thereafter the Series or maturities within a Series of Participating Bonds (or portions thereof) being refunded shall be deemed to have been paid pursuant to the Indenture, and (ii) the amount remaining in the Debt Service Reserve Account after such withdrawal, taking into account any deposits to be made to the Debt Service Reserve Account in connection with such refunding, shall not be less than the applicable Debt Service Reserve Requirement.

(e) Whenever the amount in a Series Debt Service Reserve Account established for a Series of Future Bonds that are not Participating Bonds, together with the amount in the Debt Service Account established for such Series of Future Bonds available for such purpose, is sufficient to pay in full all

Outstanding Future Bonds secured by such Series Debt Service Reserve Account in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), the funds on deposit in the such Series Debt Service Reserve Account shall be transferred to the applicable Account in the Debt Service Fund and applied to the payment or redemption of the Series of Future Bonds that are not Participating Bonds secured by such Series Debt Service Reserve Account. Any provision of the Indenture to the contrary notwithstanding, so long as there shall be held in the appropriate Account in the Debt Service Fund available for such purpose, an amount sufficient to pay in full all Outstanding Future Bonds for which a Series Debt Service Reserve has been established in accordance with their terms (including principal or applicable sinking fund Redemption Price and interest thereon), no deposits shall be required to be made into the applicable Series Debt Service Reserve Account.

(f) In the event of the refunding of one or more Future Bonds that are not Participating Bonds, the Trustee may, upon the direction of NCPA with the advice of Bond Counsel, withdraw from the Series Debt Service Reserve Account, if any, with respect to such Future Bonds any or all of the amounts on deposit therein and deposit such amounts with itself as Trustee to be held for the payment of the principal or Redemption Price, if any, and interest on the Future Bonds being refunded; provided that such withdrawal shall not be made unless (i) immediately thereafter the Series or maturities within a Series of Future Bonds being refunded shall be deemed to have been paid pursuant to the Indenture, and (ii) the amount remaining in such Series Debt Service Reserve Account after such withdrawal shall not be less than the applicable Debt Service Reserve Requirement (if any) with respect to such Series Debt Service Reserve Requirement.

(g) In lieu of the deposits and transfers to any Account in the Debt Service Reserve Fund required by the Indenture, NCPA may cause to be deposited in any Account in the Debt Service Reserve Fund a Financial Guaranty or Financial Guaranties with procedural terms satisfactory to the Trustee in an amount equal to the difference between the applicable Debt Service Reserve Requirement and the funds, if any, then on deposit in such Account or being deposited in such Account concurrently with such Financial Guaranty or Guaranties.

No deposit of a Financial Guaranty shall be made in any Account in the Debt Service Reserve Fund pursuant to the preceding paragraph unless the Trustee shall have received prior to such deposit (1) an opinion of counsel to the effect that such Financial Guaranty has been duly authorized, executed and delivered by the issuer thereof and is valid, binding and enforceable in accordance with its terms and (2) in the event such issuer is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to NCPA and the Trustee that such Financial Guaranty has been duly authorized, executed and delivered by the issuer thereof and is valid, binding and enforceable in accordance with its terms under the applicable foreign law; provided that such opinion (a) may take exception for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization or other laws affecting creditors' rights generally and (b) need not express any opinion as to the availability of any specific remedy.

For the purposes of the Indenture, in computing the amount on deposit in an Account in the Debt Service Reserve Fund, a letter of credit, a surety bond or an insurance policy shall be valued at the amount available to be drawn or payable thereunder on the date of computation. The Trustee shall draw upon or otherwise take such action as is necessary in accordance with the terms of the Financial Guaranties to receive payments with respect to the Financial Guaranties (including the giving of notice as required thereunder): (i) on any date on which moneys will be required to be withdrawn from the Account in the Debt Service Reserve Fund, as applicable, and applied to the payment of a Principal Installment or Redemption Price of, or interest on, any Bonds secured by such Account and such withdrawal cannot be met by amounts on deposit in the Account in the Debt Service Reserve Fund or the Series Debt Service Reserve Account, as applicable; (ii) unless such Financial Guaranty expires on the final maturity date for

the then Outstanding Bonds secured by the Account in the Debt Service Reserve Fund or the Series Debt Service Reserve Account to which such Financial Guaranty is credited, as applicable, on the first Business Day which is at least 30 days prior to the expiration date of each Financial Guaranty, in an amount equal to the deficiency which would exist in the Account in the Debt Service Reserve Fund, as applicable, if the Financial Guaranty expired, unless a substitute Financial Guaranty with an expiration date not earlier than 180 days after the expiration date of the expiring Financial Guaranty is acquired prior to such date or NCPA deposits funds in the Account in the Debt Service Reserve Fund, as applicable, on or before such date such that the amount in the Account in the Debt Service Reserve Fund, as applicable, on such date (without regard to such expiring Financial Guaranty) is at least equal to the applicable Debt Service Reserve Requirement.

If at any time a Financial Guaranty is delivered pursuant to the foregoing provisions there shall be any amount in the applicable Account in the Debt Service Reserve Fund in excess of the applicable Debt Service Reserve Requirement, such excess amount may be applied to the cost of acquiring such Financial Guaranty and, to the extent not so applied, shall be transferred to the applicable Account in the Debt Service Fund and applied to the purchase or redemption of Bonds as directed in writing by an Authorized NCPA Representative.

Application of Reserve and Contingency Fund.

(a) Amounts in the Reserve and Contingency Fund shall be applied to the cost of renewals, replacements, extensions, betterments, and improvements to the Project. Amounts in the Reserve and Contingency Fund shall also be applied to the payment of extraordinary operation and maintenance costs and contingencies for the Project, including payments with respect to the prevention or correction of any unusual loss or damage in connection with the Project or to prevent a loss of revenue therefrom, all to the extent not provided in the then current Annual Budget or by reserves in the Operating Fund.

(b) No payments shall be made from the Reserve and Contingency Fund if and to the extent that the proceeds of insurance, including the proceeds of any self-insurance fund, or other moneys recoverable as the result of damage to the Project, if any, are available to pay the costs otherwise payable from such Fund.

(c) If on any date the amount in Debt Service Fund shall be less than the requirement set forth in the Indenture, or the amount in Debt Service Reserve Fund shall be less than the Debt Service Reserve Requirement, and there shall not be on deposit in the Surplus Fund available moneys sufficient to cure any such deficiency, then NCPA shall transfer from the Reserve and Contingency Fund and deposit first in the Debt Service Fund and second in the Debt Service Reserve Fund, as the case may be, the amount necessary (or all the moneys in the Reserve and Contingency Fund if less than the amount necessary) to make up a deficiency in the Debt Service Reserve Fund.

(d) Any balance of moneys and securities in the Reserve and Contingency Fund not required to meet any deficiencies in the Debt Service Fund or the Debt Service Reserve Fund or not needed for any of the purposes for which such Funds were established, shall be transferred to the Operating Fund, if and to the extent deemed necessary by NCPA as evidenced by a certificate of an Authorized NCPA Representative, and any remaining excess shall be deposited in the Surplus Fund.

Application of Surplus Fund.

(a) If on any date the amount in the Debt Service Fund shall be less than the requirement of such Fund, or the amount in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Requirement, or the amount in the Reserve and Contingency Fund shall be less than the requirement of

such Fund pursuant to the Indenture, then NCPA shall transfer from the Surplus Fund and deposit first in the Debt Service Fund, second in the Debt Service Reserve Fund, third to the Reserve and Contingency Fund, as the case may be, the amount necessary (or all the moneys in Surplus Fund if less than the amount necessary) to make up a deficiency in any of such Fund.

(b) Amounts in the Surplus Fund not required to meet a deficiency as required in paragraph (a) above shall, upon a determination of NCPA, be applied to or set aside for any one or more of the following:

- (1) payment of costs and expenses of NCPA in connection with the Project;
- (2) payment into the Revenue Fund;
- (3) the purchase or redemption of any Bonds, expenses in connection with the purchase or redemption of any Bonds, or the establishment or augmentation of any reserves which NCPA determines shall be required in connection with the Bonds;
- (4) payments into the Reserve and Contingency Fund for application to the purposes thereof; and
- (5) any other lawful purpose of NCPA related to the Project.

NCPA agrees that it shall use its best efforts to call Bonds for redemption on the date or dates and in the amount or amounts as shall exhaust, as nearly as practicable, the amounts set aside for the redemption of Bonds pursuant to clause (3) above.

Application of Rebate Fund. Amounts on deposit in the Rebate Fund shall be applied as provided in the Tax Certificate and the Rebate Instructions.

Application of Costs of Issuance Fund. NCPA shall apply, or cause to be applied, the moneys on deposit in the Costs of Issuance Fund to the payment of the costs of issuing the Bonds for which such moneys were so received.

Certain Requirements of and Conditions to Issuance of Bonds

All (but not less than all) the Bonds of each Series shall be executed by NCPA for issuance under the Indenture and delivered to the Trustee and thereupon shall be authenticated by the Trustee and by it delivered to NCPA or upon its order, but only upon the receipt by the Trustee of the following items (upon which the Trustee may conclusively rely in determining whether the conditions precedent for the issuance and authentication of such Series of Bonds have been satisfied):

- (1) An executed copy of the Indenture, certified by an Authorized NCPA Representative to be in full force and effect;
- (2) An Opinion of Bond Counsel to the effect that (i) the Indenture and any Supplemental Indenture pursuant to which such Series of Bonds is to be issued, have been duly executed and delivered by NCPA and constitutes the valid and binding obligation of NCPA; and (ii) the Bonds of such Series constitute the valid and binding special, limited obligations of NCPA, payable solely from the Trust Estate; provided, however, that such Opinion of Bond Counsel may include such exceptions and qualifications as shall be acceptable to the initial purchaser or purchasers of the Bonds of such Series;

(3) A written order as to the delivery of such Bonds, signed by an Authorized NCPA Representative;

(4) Except in the case of the 2019 Series A Bonds, an executed copy of the Supplemental Indenture authorizing such Bonds, certified by an Authorized NCPA Representative to be in full force and effect, which shall, among other provisions, specify: (i) the authorized Principal Amount of the Bonds of such Series, and the Series designation of such Bonds; (ii) the purposes for which such Series of Bonds is being issued, which shall be one of the purposes specified in the Indenture; (iii) the date, and the maturity date or dates, of the Bonds of such Series; (iv) the interest rate or rates on the Bonds of such Series, and the Interest Payment Dates therefor; (v) Authorized Denominations of, and the manner of dating, numbering and lettering, the Bonds of such Series; (vi) the Paying Agent or Paying Agents and the place or places of payment of the Principal Amount, Redemption Price, if any, of, and interest on, the Bonds of such Series; (vii) the Redemption Price or Prices, if any, and, subject to Article V of the Indenture, the redemption terms for the Bonds of such Series; (viii) the Sinking Fund Installments, if any, for the Bonds of such Series, provided that each Sinking Fund Installment, if any, shall fall upon an Interest Payment Date for such Bonds; (ix) if so determined by NCPA, provisions for the sale of the Bonds of such Series; (x) if any of the Bonds of such Series are Option Bonds, the terms and conditions of the exercise by the Owners of such Bonds of the purchase option granted with respect to such Bonds; (xi) whether the Bonds of such Series are to be registered in the name of a Securities Depository, or its nominee, and any provisions appropriate or necessary with respect to the arrangements made with the Securities Depository for such Bonds in the applicable Representation Letter; (xii) the application of the proceeds of the sale of such Bonds including the amount, if any, to be deposited in the Funds and Accounts; (xiii) the forms of the Bonds of such Series and of the Trustee's certificate of authentication thereon; and (xiv) the appropriate funds and accounts, if any, created under such Supplemental Indenture;

(5) The amount, if any, necessary for deposit in the applicable Account of the Debt Service Reserve Fund so that the amount in such Account shall equal the applicable Debt Service Reserve Requirement calculated immediately after the authentication and delivery of such Series of Bonds;

(6) Except in the case of the 2019 Series A Bonds, a certificate of an Authorized NCPA Representative stating that NCPA is not in default in the performance of any of the covenants, conditions, agreements or provisions contained in the Indenture or in any of the documents or proceedings authorizing or controlling any outstanding Parity Debt and applicable to NCPA; provided, however, that in the case of Refunding Bonds such certificate may state that upon the application of the proceeds of such Refunding Bonds in accordance with the Supplemental Indenture authorizing their issuance, NCPA shall not be in default in the performance of any of the covenants, conditions, agreements or provisions contained in the Indenture and applicable to NCPA; and

(7) Such further documents, moneys and securities as are required by the provisions of the Indenture or any Supplemental Indenture entered into pursuant thereto.

All the Bonds of each Series of like maturity shall be identical in all respects, except as to denominations, numbers and letters, Owners, interest rate, and Interest Payment Dates. After the original issuance of Bonds of any Series, no Bonds of such Series shall be issued except in lieu of or in substitution for other Bonds of such Series pursuant to the Indenture.

Additional Bonds

One or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of paying all or a portion of the Costs of the Project, including any Capital Improvement thereto.

The proceeds, including accrued interest, of the Additional Bonds of each Series shall be applied simultaneously with the delivery of such Bonds as provided in the Supplemental Indenture authorizing such Series of Bonds.

Refunding Bonds

One or more Series of Refunding Bonds may be issued, authenticated and delivered upon original issuance (i) to refund all Outstanding Bonds of one or more Series or all or any Outstanding Bonds within a Series or (ii) to refund any Parity Debt. Refunding Bonds shall be issued in a principal amount sufficient, together with other moneys available therefor, to accomplish such refunding including providing amounts for the costs of issuance of such Refunding Bonds, capitalized interest thereon, and the making of any deposits into the Funds and Accounts required by the provisions of the Supplemental Indenture authorizing such Series of Refunding Bonds.

Refunding Bonds of each Series shall be authenticated and delivered by the Trustee only upon receipt by the Trustee (in addition to the documents required by the Indenture) of an Opinion of Bond Counsel to the effect that the Bonds or Parity Debt, as applicable, to be refunded is deemed paid pursuant to the Indenture or the proceedings authorizing such Parity Debt, as applicable (upon which receipt the Trustee may conclusively rely in determining whether the conditions precedent for the issuance and authentication of such Series of Refunding Bonds have been satisfied).

The proceeds, including accrued interest, of the Refunding Bonds of each Series shall be applied simultaneously with the delivery of such Bonds as provided in the Supplemental Indenture authorizing such Series of Refunding Bonds.

Parity Debt

Parity Debt may be issued or incurred, secured as to payment by a pledge and assignment of and lien and charge on the Project Revenues on a parity with the payment of Debt Service on the Bonds; provided, that:

(a) Such Parity Debt is issued for one or more of the purposes for which Additional Bonds or Refunding Bonds may be issued or, as to a contract relating to credit enhancement, relate to Bonds or other Parity Debt issued for one or more of the purposes for which Additional Bonds or Refunding Bonds may be issued.

(b) Any debt service reserve for such Parity Debt shall not exceed the Debt Service Reserve Requirement for the Debt Service Reserve Account.

(c) The Trustee shall have received a copy of the proceedings authorizing such Parity Debt, certified by the Secretary or an Assistant Secretary of NCPA.

(d) The Trustee shall have received a certificate of an Authorized NCPA Representative stating that NCPA is not in default in the performance of any of the covenants, conditions, agreements or provisions contained in the Indenture or in any of the documents or

proceedings authorizing or controlling any outstanding Parity Debt and applicable to NCPA; provided, however, that in the case of any Parity Debt issued for the purposes set forth in the Indenture, such certificate may state that upon the application of the proceeds of such Parity Debt in accordance with the proceedings authorizing such Parity Debt, NCPA shall not be in default in the performance of any of the covenants, conditions, agreements or provisions contained in the Indenture and applicable to NCPA.

Debt Service Reserves for Future Bonds

Each Series of Future Bonds shall constitute Participating Bonds unless the Supplemental Indenture authorizing such Series of Future Bonds provides that such Series of Future Bonds shall not be Participating Bonds and, if such Series of Future Bonds is to be secured by a Series Debt Service Reserve Account, provides for the establishment of a Series Debt Service Reserve Account for such Series of Future Bonds and establishes the Debt Service Reserve Requirement (which may be \$0) for said Series Debt Service Reserve Account.

Investment of Certain Funds

Moneys held in the Debt Service Fund shall be invested and reinvested by the Trustee to the fullest extent practicable in securities described in clauses (1), (2), (3), or (9) of the definition of "Investment Securities" in the Indenture which mature not later than such times as shall be necessary to provide moneys when reasonably expected to be needed for payments to be made from such Fund. Moneys held in the Debt Service Reserve Fund shall be invested and reinvested by the Trustee to the fullest extent practicable in securities described in clauses (1), (2), (3), or (9) of the definition of "Investment Securities" in the Indenture which mature or which may be drawn upon not later than such times as shall be necessary to provide moneys when reasonably expected to be needed for payments to be made from such Fund, but in any event not later than five years from the time of such investment except that the maturity of any security described in clause (9) of the definition of Investment Securities in the Indenture may mature not later than 30 years from the time of such investment. Moneys held in the Revenue Fund may be invested and reinvested in Investment Securities which mature or which may be drawn upon not later than such times as shall be necessary to provide moneys when reasonably expected to be needed for payments to be made from such Funds. Moneys in the Operating Fund may be invested in Investment Securities which mature within one year from the time of such investment except that amounts in the Operating Reserve Account may also be invested in Investment Securities which mature within five years from the time of such investment. Moneys held in the Reserve and Contingency Fund, the Rebate Fund, and the Surplus Fund may be invested in Investment Securities which mature within five years from the time of such investment, and in every case the Investment Securities in such Funds shall mature not later than such times as shall be necessary to provide moneys when reasonably expected to be needed to provide payments from such Funds. The Trustee shall make all such investments of moneys held by it and shall sell or otherwise liquidate any such investment and take all actions necessary to draw funds under any such investment, including the giving of necessary notices of the drawing of any moneys under any investment in securities described in clause (9) of the definition of "Investment Securities" in the Indenture, in each case in accordance with directions of an Authorized NCPA Representative, which directions shall be consistent with the Indenture and applicable law, and which directions can either be written or oral; provided, that if such directions are oral they shall be promptly confirmed in writing by such Authorized NCPA Representative.

Except as otherwise provided in the Indenture, interest or other income (net of that which (i) represents a return of accrued interest paid in connection with the purchase of any investment or (ii) is required to effect the amortization of any premium paid in connection with the purchase of any investment) earned on any moneys or investments in the Funds created under the Indenture shall be paid

into the Revenue Fund; provided, that all such interest or other income earned on any moneys or investments in any Fund established pursuant to the Indenture shall be applied as provided in the Indenture; and provided further, that all such interest or other income earned on moneys in the Rebate Fund shall be applied as provided in the Indenture.

In making any investment in any Investment Securities with moneys in any Fund established under the Indenture, NCPA or any Fiduciary may combine such moneys with moneys in any other Fund or Account but solely for the purposes of making such investment in such Investment Securities and provided that any amount so combined shall be separately accounted for.

Nothing in the Indenture shall prevent any Investment Securities acquired as investments of moneys in any Fund or Account from being issued or held in book-entry form on the books of the Department of the Treasury or the Federal Reserve System of the United States.

Covenants

Payment of Bonds. NCPA shall duly and punctually pay or cause to be paid, but solely from the sources pledged therefor, the principal or Redemption Price, if applicable, of every Bond, and the interest thereon, at the dates and places and in the manner mentioned in the Bonds according to the true intent and meaning thereof.

Extension of Payment of Bonds. NCPA shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds, or the time of payment of any claims for interest on any Bonds, by the purchase or funding of such Bonds or claims for interest or by any other arrangement and in case the maturity of any of the Bonds, or the time for payment of any claims for interest on any Bonds, shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default under the Indenture, to the benefit of the Indenture or to any payment out of the Trust Estate except subject to the prior payment of (a) the principal of all Bonds Outstanding the maturity of which has not been extended, and (b) such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest.

Offices for Servicing Bonds. NCPA shall at all times maintain one or more agencies where Bonds may be presented for payment and shall at all times maintain one or more agencies where Bonds may be presented for registration, transfer or exchange, and where notices, demands and other documents may be served upon NCPA in respect of the Bonds or the Indenture. NCPA appoints the Trustee as Bond Registrar to maintain the Bond Register for the registration, transfer or exchange of Bonds, and as the party for the service upon NCPA of such notices, demands and other documents. The Trustee shall continuously maintain or make arrangements to provide such services.

Further Assurance. At any and all times NCPA shall, as far as it may be authorized by law, comply with any reasonable request of the Trustee to pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, pledging, assigning and confirming in all and singular the Trust Estate and other property pledged and assigned, or intended so to be, or which NCPA may become bound to pledge and assign.

Power to Issue Bonds and to Pledge Trust Estate. NCPA represents and warrants that it is duly authorized under all applicable laws to create and issue the Bonds, to enter into the Indenture, to pledge and assign the Trust Estate and the other moneys, securities and funds purported to be pledged as security for the payment of the Bonds in the manner and to the extent provided by such pledge and assignment and all action on the part of NCPA to that end has been duly and validly taken. The Bonds and the provisions

of the Indenture are and shall be the valid and legally enforceable obligations of NCPA in accordance with their terms and the terms of the Indenture. NCPA shall at all times, to the extent permitted by law, defend, preserve and protect the pledge and assignment of the Trust Estate and the other moneys, securities and funds pledged as security for the payment of the Bonds and all the rights of the Owners of the Bonds under the Indenture against all claims and demands of all persons whomsoever.

Power to Establish Charges and Collect Amounts. NCPA has, and shall have as long as any Bonds are Outstanding, good right and lawful power to establish charges and cause to be collected amounts with respect to the Project, subject only to the terms of the Unit One Member Agreement.

Creation of Liens on Trust Estate. NCPA shall not issue any bonds, notes, debentures, or other evidences of indebtedness or incur any payment obligations, payable out of or secured by a pledge or assignment of the Trust Estate or any portion thereof nor shall it create or cause to be created any lien or charge on the Trust Estate or any portion thereof prior to or, except for the Bonds with respect to the entire Trust Estate and Parity Debt with respect to Project Revenues and amounts on deposit in the Revenue Fund, on a parity with the lien of the pledge made pursuant to the Indenture; provided, however, that nothing contained in the Indenture shall prevent NCPA from issuing, if and to the extent permitted by law, bonds, notes, or other evidences of indebtedness payable out of, or secured by a pledge and assignment of, Project Revenues to be derived on and after such date as the pledge of the Project Revenues made pursuant to the Indenture shall be discharged and satisfied as provided in the Indenture or payable from and secured by a pledge of Project Revenues on a basis which shall be, and shall be expressed to be, in all respects junior and subordinate in all respects to the payment of amounts then due with respect to the Bonds or otherwise payable under the Indenture and to the pledge and lien made pursuant to the Indenture as security for the Bonds.

Nothing in the Indenture shall be deemed to limit NCPA's right to acquire, construct or finance through the issuance of its bonds, notes or other evidences of indebtedness any facilities which do not constitute a part of the Project and may secure such bonds, notes or other evidences of indebtedness by a mortgage of the facilities so financed or by a pledge of, or lien on, the revenues therefrom or any lease or other agreement with respect thereto or any revenues derived from such lease or other agreement; provided that such bonds, notes or other evidences of indebtedness shall not be payable out of or secured by the Trust Estate and neither the cost of such facilities nor any expenditure in connection therewith or with the financing thereof shall be payable from the Trust Estate.

Sale of Interest in the Project. Except as provided in the Unit One Member Agreement, so long as any Bonds remain Outstanding with respect thereto, NCPA shall not sell, lease, or otherwise dispose of its interest in the Project or any portion thereof. Notwithstanding the foregoing, NCPA may transfer its interest in the Project to a transferee specified by the Project Participants on the following terms and conditions: (i) such transfer is made concurrently with the sale or assignment by the Project Participants of the right to the capacity and energy of the Project in accordance with the Unit One Member Agreement; (ii) the proceeds of the sale or assignment by the Project Participants of the capacity and energy of the Project and of the transfer by NCPA of its interest in the Project shall be applied to the payment (at maturity or prior redemption) of Outstanding Bonds; (iii) such transfer of NCPA's interest in the Project shall be subject to the rights of the Project Participants under the Unit One Member Agreement; and (iv) each Project Participant shall deliver an opinion of counsel to NCPA and the Trustee to the effect that such sale or assignment of project capacity and energy by the Project Participants shall not relieve such Project Participant of any of its obligations under the Unit One Member Agreement.

Annual Budget. Not less than 30 nor more than 45 days prior to the beginning of each Fiscal Year, NCPA shall adopt and file with the Trustee an Annual Budget for such Fiscal Year prepared in accordance with the provisions of, and in the manner contemplated by, the Unit One Member Agreement.

Each such Annual Budget shall set forth in reasonable detail, by month for such Fiscal Year, the estimated Project Revenues, NCPA Operating Expenses and Aggregate Debt Service for all Outstanding Bonds and which shall include monthly appropriations for the estimated amount to be deposited in each month of such Fiscal Year in the Revenue Fund, the Operating Fund, including provision for any reserves for NCPA Operating Expenses, the Debt Service Fund, the Debt Service Reserve Fund, and the amount to be deposited in the Reserve and Contingency Fund, and the requirements, if any, for the amounts estimated to be expended from each Fund and Account established under the Indenture. Such Annual Budget also shall set forth such detail with respect to such Project Revenues, NCPA Operating Expenses and other expenditures and such deposits, as shall be necessary or appropriate so as to comply with the Unit One Member Agreement and may set forth such additional material as NCPA may determine. Following the end of each quarter of each Fiscal Year, NCPA shall review its estimates set forth in the Annual Budget for such Fiscal Year, and in the event such estimates do not substantially correspond with actual Project Revenues, NCPA Operating Expenses or other requirements during such Fiscal Year and the expected Project Revenues, NCPA Operating Expenses and other requirements during the remainder of such Fiscal Year, NCPA shall adopt in accordance with the provisions of the Unit One Member Agreement and file with the Trustee an amended Annual Budget for the remainder of such Fiscal Year. If there are at any time during any such Fiscal Year extraordinary receipts or payments of unusual costs, NCPA shall adopt in accordance with the provisions of the Unit One Member Agreement and file with the Trustee an amended Annual Budget for the remainder of such Fiscal Year. NCPA also may at any time adopt in accordance with the provisions of the Unit One Member Agreement and file with the Trustee an amended Annual Budget for the remainder of the then current Fiscal Year. The Trustee shall not be charged with knowledge of, and shall not be responsible for the sufficiency of, any such Annual Budget, it being expressly understood and agreed that the Trustee shall hold such Annual Budget solely as a custodian to preserve a record of the transactions contemplated by the Indenture.

Operation and Maintenance of the Project. NCPA shall at all times maintain and preserve, or cause to be maintained and preserved, the Project and all buildings, facilities and equipment constituting any part of the Project in conformity with Prudent Utility Practice with respect to facilities of like size and character. NCPA shall from time to time make, or cause to be made, all necessary and proper repairs, renewals, replacements and substitutions to the properties of the Project, so that at all times business carried on in connection with the Project shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and shall operate the Project in an efficient and economical manner, consistent with the protection of the Owners of the Bonds and shall not commit or allow any waste with respect to the Project; provided, however, that any real or personal property included in the Project which has become nonoperative or which is not needed for the efficient and proper operation of the Project, or any material or equipment which has worn out or become obsolete, may be sold, leased or otherwise disposed of by NCPA.

NCPA shall not incur NCPA Operating Expenses in connection with the Project in any Fiscal Year in excess of the reasonable and necessary amount of such expenses and shall not expend any amount from the Operating Fund for NCPA Operating Expenses in connection with the Project in excess of the amounts provided therefor in the Annual Budget as then in effect. Nothing in the Indenture contained shall limit the amount which NCPA may expend for NCPA Operating Expenses in connection with the Project in any Fiscal Year provided any amounts expended therefor in excess of the amounts provided for in the then current Annual Budget shall be paid from the Reserve and Contingency Fund or the Surplus Fund.

Charges and Enforcement. NCPA shall at all times establish rates and charges, and cause to be collected amounts in connection with the Project and the Unit One Member Agreement, as shall be required to provide revenues in the Revenue Fund at least sufficient in each Fiscal Year, together with other available funds, for the payment of all of the following:

- (1) NCPA Operating Expenses during such Fiscal Year;
- (2) Debt Service on the Bonds and debt service on the Parity Debt for such Fiscal Year;
- (3) The amount, if any, to be paid during such Fiscal Year into the Debt Service Reserve Account and each Series Debt Service Reserve Account in the Debt Service Reserve Fund;
- (4) The amount to be paid during such Fiscal Year into the Reserve and Contingency Fund; and
- (5) All other charges or other amounts related to the Project, the Unit One Member Agreement or the Bonds howsoever payable during such Fiscal Year.

Unit One Member Agreement. NCPA shall receive and forthwith deposit in the Revenue Fund all amounts payable to it pursuant to the Unit One Member Agreement or payable to it pursuant to any other contract related to its interest in the Project or the capacity, use or service of its interest in the Project or any part thereof. NCPA shall enforce or cause to be enforced the provisions of the Unit One Member Agreement and duly perform its covenants and agreements thereunder. NCPA shall not consent or agree to or permit any rescission of or amendment to, or otherwise take any action under or in connection with, the Unit One Member Agreement which shall reduce the aggregate amount of payments required thereunder or which shall in any manner materially impair or materially adversely affect the rights of NCPA thereunder or the rights or security of the Trustee or the Owners of the Bonds; provided, however, nothing in the Indenture shall be construed so as to prohibit any other amendment of the Unit One Member Agreement.

Acquisition and Construction of Project. NCPA shall use its best efforts to acquire and construct the Project, or cause the Project to be acquired and constructed, with due diligence and in a sound and economical manner.

Maintenance of Insurance. NCPA shall at all times insure the Project, or cause the Project operator to be insured, against such risks as are customarily insured against with respect to similar facilities and in such relative amounts as are usually obtained. NCPA shall maintain, or cause to be maintained, insurance or reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those with rights and interests in projects similar to the Project.

NCPA shall also use its best efforts to maintain or cause to be maintained any additional or other insurance which it shall deem necessary or advisable to protect its interests in the Project and the interests of the Owners of the Bonds.

Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to NCPA, or may be in the form of self-insurance by NCPA. NCPA agrees that it will, pursuant to a Supplemental Indenture, establish such fund or funds or reserves as are necessary to provide for its share of any such self-insurance. The Supplemental Indenture establishing

such fund or funds or reserves shall set forth the amounts to be included in such fund or funds or reserves, the entity to hold such fund or funds or reserves and any other matters and things relative to such fund or funds or reserves which are not contrary to or inconsistent with the Indenture as theretofore in effect.

Reconstruction; Application of Insurance Proceeds. If any useful portion of the Project shall be damaged or destroyed, NCPA shall as expeditiously as possible undertake, or cause to be undertaken, and continuously and diligently pursue to completion, or cause to be diligently pursued to completion, the repair, reconstruction or replacement thereof. The proceeds of any insurance payable to NCPA, including the proceeds of any self-insurance fund, paid on account of such damage or destruction (other than any business interruption loss insurance) shall be paid over to the Trustee and held by the Trustee in a special Account established by the Trustee for such purposes and made available for, and to the extent necessary be applied to, the cost of such repair, reconstruction or replacement. Except for reimbursements to the Reserve and Contingency Fund, the proceeds of any insurance, including the proceeds of any self-insurance fund, not applied within 36 months after receipt thereof by NCPA to the cost of such repair, reconstruction or replacement, or which NCPA shall at any time notify the Trustee are not to be so applied, shall be deposited in the Revenue Fund.

If the proceeds of insurance, including the proceeds of any self-insurance fund, authorized by the Indenture to be applied to the cost of the repair, reconstruction or replacement of any portion of the Project are insufficient for such purpose, the obligations of NCPA to maintain and preserve the Project pursuant to the Indenture shall nonetheless continue but such deficiency may be supplied out of available moneys in the Reserve and Contingency Fund.

The proceeds of business interruption loss insurance, if any, with respect to the Project shall be paid into the Revenue Fund.

Accounts and Reports. NCPA shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Project and each Fund and Account and relating to costs and charges under the Unit One Member Agreement and which, together with the Unit One Member Agreement and all other books and papers of NCPA, including insurance policies, relating to the Project, shall at all times be subject to the inspection of the Trustee and the Owners of an aggregate of not less than 5% in principal amount of the Bonds then Outstanding or their representatives duly authorized in writing.

NCPA shall annually, within 120 days after the close of each Fiscal Year, cause to be filed with the Trustee, and otherwise as provided by law, a copy of an annual report for such Fiscal Year, accompanied by an Accountant's Certificate, relating to the Project and including the following statements in reasonable detail: a statement of assets and liabilities as of the end of such Fiscal Year, to the extent relating to the Project; and a statement of Project Revenues and NCPA Operating Expenses for such Fiscal Year. Such Accountant's Certificate (or an accompanying certificate of an Authorized NCPA Representative) shall state whether or not, to the knowledge of the signer, NCPA is in default with respect to any of the covenants, agreements or conditions on its part contained in the Indenture, and if so, the nature of such default. The Trustee shall not be charged with knowledge of the contents of such annual report and shall not be responsible for the accuracy or sufficiency thereof, it being expressly understood that the Trustee shall hold such annual report solely as a custodian to preserve a record of the transactions contemplated by the Indenture.

NCPA shall file with the Trustee forthwith upon becoming aware of any Event of Default or default in the performance by NCPA of any covenant, agreement or condition contained in the Indenture, a certificate of an Authorized NCPA Representative specifying such Event of Default or default and the nature and status thereof.

The reports and certificates described above shall be available for the inspection of Owners of the Bonds at the principal corporate trust office of the Trustee and shall be mailed to each Owner of an Outstanding Bond which files a written request therefor with the Trustee. The Trustee may charge each party requesting such reports or certificates a reasonable fee to cover reproduction, handling and postage.

Payment of Taxes and Charges. NCPA shall from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon or relating to its interest in the Project or upon the rights, revenues, income, receipts, and other moneys, securities and funds of NCPA relating to the Project or the Unit One Member Agreement when the same shall become due (including all rights, moneys and other property transferred, assigned or pledged under the Indenture), and all lawful claims for labor and material and supplies relating to the Project, except those taxes, assessments, charges or claims which NCPA shall in good faith contest by proper legal proceedings if NCPA shall in all such cases have set aside on its books reserves deemed adequate with respect thereto.

General; Rights of Members. NCPA shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of NCPA under the provisions of applicable laws of the State of California and the Indenture with respect to the Project, the Trust Estate and the Bonds.

The obligations of each of the Project Participants with respect to the Bonds and the Project set forth in the Unit One Member Agreement shall not be modified or expanded by any provision of the Indenture. So long as not otherwise provided in the Indenture, NCPA shall be suffered and permitted to carry out its obligations under the Unit One Member Agreement.

Tax Matters. NCPA covenants that it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion (if applicable) from gross income of the interest on the Bonds under Section 103 of the Code. NCPA shall not directly or indirectly use or permit the use of any proceeds of the Bonds in such a manner as would adversely affect the exclusion (if applicable) of interest on any Bonds from gross income under Section 103 of the Code. NCPA shall not directly or indirectly use or permit the use of any proceeds of any Bonds, or of any facilities financed thereby, or other funds of NCPA, or take or omit to take any action, that would cause any Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

If NCPA shall provide to the Trustee an Opinion of Bond Counsel that any specified action required under the provisions of the Indenture relating to the preservation of the exclusion of interest on the Bonds from gross income for federal income tax purposes is no longer required, or that some further or different action is required, to maintain the exclusion from gross income for federal income tax purposes of interest on Bonds, the Trustee and NCPA may conclusively rely on such opinion in complying with the requirements of such provisions of the Indenture.

Continuing Disclosure. NCPA shall comply with the 2019 Continuing Disclosure Agreement as it may from time to time hereafter be amended or supplemented. Notwithstanding any other provision of the Indenture, failure by NCPA to comply with the requirements of the 2019 Continuing Disclosure Agreement, as it may from time to time hereafter be amended or supplemented, shall not be considered an Event of Default and the Trustee shall have no right to accelerate amounts due under the Indenture as a result thereof; provided, however, that the Trustee and the Owners of not less than 25% in principal amount of the Outstanding 2019 Series A Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause NCPA to comply with its obligations in the Indenture Section with respect to the 2019 Continuing Disclosure Agreement.

Events of Default and Remedies

Events of Default. Each of the following shall constitute an Event of Default under the Indenture:

(i) if default shall be made in the due and punctual payment of Debt Service with respect to the principal or Redemption Price of any Outstanding Bond or any Parity Debt, when and as the same shall become due and payable, whether at maturity, by call for redemption, or otherwise;

(ii) if default shall be made in the due and punctual payment of Debt Service with respect to any installment of interest on any Outstanding Bond or any Parity Debt, or the unsatisfied balance of any Sinking Fund Installment, when and as the same shall become due and payable;

(iii) if default shall be made by NCPA in the performance or observance of any other of the covenants, agreements or conditions on its part in the Indenture or in the Outstanding Bonds contained, and such default shall continue for a period of 120 days after written notice thereof to NCPA by the Trustee or to NCPA and to the Trustee by the Owners of not less than 10% in principal amount of the Bonds Outstanding; or

(iv) an order or decree, by a court having jurisdiction in the premises, for relief against NCPA in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of NCPA or of any substantial part of the property of NCPA shall be appointed or an order for the winding up or liquidation of the affairs of NCPA shall be entered; or a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall be instituted by NCPA or NCPA shall give its consent to the entry of an order for relief against it in any involuntary case under any such law, or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of NCPA or of any substantial part of the property of NCPA, or the making by NCPA of an assignment for the benefit of creditors, or the failure of NCPA generally to pay its debts as they become due, or the admission by NCPA in writing of such failure, or the taking of any action by NCPA in furtherance of any such action, or if a receiver of the business or of the property or assets of NCPA shall be appointed by any court.

Accounting and Examination of Records After Default. NCPA covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and accounts of NCPA and all other records relating to the Project and the Unit One Member Agreement shall at all times be subject to the inspection and use of the Trustee and of its agents and attorneys.

NCPA covenants that if an Event of Default shall have happened and shall not have been remedied, NCPA, upon demand of the Trustee, shall account, as if it were the trustee of an express trust, for all Project Revenues and other moneys, securities and funds pledged or held under the Indenture for such period as shall be stated in such demand.

Application of NCPA Revenues and Other Moneys After Default.

(a) NCPA covenants that if an Event of Default shall happen and shall not have been remedied, NCPA, upon the demand of the Trustee, shall cause to be paid over to the Trustee (i) forthwith, all moneys and securities then held by NCPA in any Fund under the Indenture, and (ii) all Project Revenues as promptly as practicable after receipt thereof.

(b) Subject to the provisions of the Indenture, during the continuance of an Event of Default, the Trustee shall apply all moneys, securities, funds and Project Revenues received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture which are held by the Trustee pursuant and subject to the terms and conditions of the Indenture, as follows and in the following order of priority:

(i) Expenses of Fiduciaries—to the payment of the reasonable and proper charges, expenses and liabilities of the Fiduciaries;

(ii) Principal Amount or Redemption Price and Interest—to the payment of the interest on the Bonds and the principal or Redemption Price then due on the Outstanding Bonds and Parity Debt, as follows:

First: Interest—To the payment to the persons entitled thereto of all installments of interest then due on Outstanding Bonds and Parity Debt in the order of the maturity of such installments, together with accrued and unpaid interest on the Outstanding Bonds and Parity Debt theretofore called for redemption, and, if the amount available shall not be sufficient to pay in full any such interest installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: Principal Amount or Redemption Price—To the payment to the persons entitled thereto of the unpaid principal or Redemption Price of any Outstanding Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the Outstanding Bonds and Parity Debt due on any date, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference;

(iii) NCPA Operating Expenses—to the payment of the amounts required for reasonable and necessary expenses of NCPA in connection with the Project, the Unit One Member Agreement and the Bonds. For this purpose the books of record and accounts of NCPA relating to the Project and the Unit One Member Agreement shall at all times be subject to the inspection of the Trustee and its representatives and agents during the continuance of such Event of Default.

(c) If and whenever all overdue installments of interest on all Outstanding Bonds and Parity Debt, together with the reasonable and proper charges, expenses and liabilities of the Trustee, and all other sums payable for the account of NCPA under the Indenture, including the principal and Redemption Price of all Outstanding Bonds and Parity Debt and unpaid interest on all Outstanding Bonds and Parity Debt which shall then be payable, shall be paid for by the account of NCPA, or provision satisfactory to the Trustee shall be made for such payment, and all defaults under the Indenture or the Outstanding Bonds and Parity Debt shall be made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the Trustee shall pay over all moneys, securities, and funds then remaining unexpended in the hands of the Trustee (except moneys, securities and funds deposited or pledged, or required by the terms of the Indenture to be deposited or pledged, with the Trustee), and thereupon NCPA and the Trustee shall be restored, respectively, to their former positions and rights under the Indenture. No such payment by the Trustee nor such restoration of NCPA and the Trustee to their former positions and rights shall extend to or affect any subsequent default under the Indenture or impair any right consequent thereon.

(d) The Trustee may in its discretion establish special record dates for the determination of the Owners of Bonds for various purposes of the Indenture, including without limitation, payment of defaulted interest and giving direction to the Trustee.

Right to Accelerate Upon Default. Upon the occurrence of an Event of Default, the Trustee may, and shall, at the direction of the Owners of a majority in principal amount of Outstanding Bonds, by written notice to NCPA, declare the principal of the Bonds to be immediately due and payable, whereupon the principal of the Bonds and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable.

Appointment of Receiver. If an Event of Default shall happen and shall not have been remedied, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners of the Bonds under the Indenture, the Trustee shall be entitled to make application for the appointment of a receiver or custodian of NCPA's interest in the Project, the Unit One Member Agreement and the Project Revenues, pending such proceedings, with such power as the court making such appointment shall confer.

Enforcement Proceedings.

(a) If an Event of Default shall happen and shall not have been remedied, then the Trustee, by its agents and attorneys, may proceed, and upon the written request of the Owners of not less than a majority in principal amount of the Bonds at the time Outstanding, shall proceed, to protect and enforce its rights and the rights of the Owners of the Outstanding Bonds by a suit or suits in equity or at law, whether for damages or the specific performance of any covenant in the Indenture contained, or in aid of the execution of any power in the Indenture granted or any remedy granted under applicable provisions of the laws of the State of California, or for an accounting by NCPA as if NCPA were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the Trustee, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under the Indenture. The Trustee shall have the right to initiate and maintain suit to enforce the Unit One Member Agreement.

(b) The Owners of not less than a majority in principal amount of the Bonds at the time Outstanding may direct, the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, provided that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or be unjustly prejudicial to the Owners of the Bonds not parties to such direction.

(c) Upon commencing a suit in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under the Indenture, the Trustee shall be entitled to exercise any and all rights and powers conferred in the Indenture and provided to be exercised by the Trustee upon the occurrence of any Event of Default.

(d) Regardless of the happening of an Event of Default, the Trustee shall have power to, but unless requested in writing by the Owners of a majority in principal amount of the Bonds then Outstanding and furnished with reasonable security and indemnity, shall be under no obligation to, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under the Indenture by any acts which may be unlawful or in violation of the Indenture, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Owners of the Bonds.

(e) If the Trustee or any Owner or Owners of Outstanding Bonds have instituted any proceeding to enforce any right or remedy under the Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Owner or Owners, then and in every such case NCPA, the Trustee and the Owners shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions under the Indenture, and thereafter all rights and remedies of the Trustee and the Owners shall continue as though no such proceeding had been instituted.

(f) Upon the occurrence of an Event of Default, NCPA shall give notice to each Project Participant and require that such Project Participant shall make the payments due by it under the Unit One Member Agreement directly to the Trustee.

Restriction on Owner's Action. Except as otherwise provided in the next paragraph, no Owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of the Indenture or the execution of any trust under the Indenture or for any remedy under the Indenture unless such Owner shall have previously given to the Trustee written notice of the happening of an Event of Default, and the Owners of at least 25% in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity, either to exercise the powers granted in the Indenture or by the applicable laws of the State of California or to institute such action, suit or proceeding in its own name, and unless such Owners shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by the Indenture, or to enforce any right under the Indenture, except in the manner therein provided; and that all proceedings at law or in equity to enforce any provision of the Indenture shall be instituted, had and maintained in the manner provided in the Indenture and for the ratable benefit of all Owners of the Outstanding Bonds, subject only to the application of funds held for the payment of particular Bonds.

Nothing in the Indenture or in the Bonds contained shall affect or impair the obligation of NCPA, which is absolute and unconditional, to pay on the respective due dates thereof and at the places therein expressed, but solely from the revenues and the other moneys pledged under the Indenture, the principal amount, or Redemption Price if applicable, of the Bonds, and the interest thereon, to the respective Owners thereof, or affect or impair the right, which is also absolute and unconditional, of any Owner to institute suit for the enforcement of any such payment.

Remedies Not Exclusive. No remedy by the terms of the Indenture conferred upon or reserved to the Trustee or the Owners of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Indenture or existing at law or in equity or by statute whether effective on or after the effective date of the Indenture. The assertion or employment of any right or remedy under the Indenture, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Effect of Waiver and Other Circumstances. No delay or omission of the Trustee or any Owner of a Bond to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or be an acquiescence therein; and every power and remedy given by the Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Owners of the Bonds.

The Owners of not less than a majority in principal amount of the Bonds at the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the Owners of all of the Bonds, waive any past default described in clause (iii) under the caption "Events of Default" above and its consequences. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon unless the provisions of the Indenture have been satisfied with respect to such subsequent or other default.

Notice of Default. The Trustee shall, within 30 days after obtaining knowledge thereof, mail written notice of the occurrence of any Event of Default of which the Trustee has knowledge to each Owner of Bonds then Outstanding at such Owner's address, if any, appearing in the Bond Register.

Trustee

The Trustee shall be deemed to have accepted only the duties and obligations imposed on it by the Indenture but only, however, upon the terms and conditions set forth in the Indenture and no implied covenants shall be read into the Indenture against the Trustee. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Any provision of the Indenture relating to action taken or to be taken by the Trustee or to evidence upon which the Trustee may rely shall be subject to the provisions of the Indenture.

The Trustee may at any time resign and be discharged of the duties and obligations created by the Indenture by giving not less than 60 days written notice to NCPA specifying the date when such resignation shall take effect; provided that no such resignation shall take effect until a successor shall have been appointed in accordance with the Indenture.

The Trustee may be removed by an instrument in writing, filed with the Trustee at any time when no Event of Default has occurred and is continuing and when no event has occurred which, with notice or the passage of time, would become an Event of Default which has not been cured, signed by an Authorized NCPA Representative or at any time by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the Owners of a majority in principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized, excluding any Bonds held by or for the account of NCPA; provided that no such removal shall be effective until 30 days have lapsed from the filing of such instrument with the Trustee and until a successor shall have been appointed in accordance with the Indenture.

In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, a successor, may be appointed by the Owners of a majority in principal amount of the Bonds then Outstanding, excluding any Bonds held by or for the account of NCPA, by an instrument or concurrent instruments in writing signed and acknowledged by such Owners of the Bonds or by their attorneys-in-fact duly authorized and delivered to such successor Trustee, notification thereof being given to NCPA and the predecessor Trustee; provided, nevertheless, that unless a successor Trustee shall have been appointed by the Owners of the Bonds as aforesaid, NCPA, by a duly executed written instrument signed by an Authorized NCPA Representative shall forthwith appoint a Trustee, to replace such resigning Trustee or to fill such vacancy until a successor Trustee shall be appointed by the Owners of the Bonds as authorized in the Indenture. Any successor Trustee appointed by NCPA shall, immediately and without further act, be superseded by the Trustee appointed by the Owners of the Bonds.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of the Indenture within 45 days after the Trustee shall have given to NCPA written notice as provided in the Indenture or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, removal, or for any other reason whatsoever, the Trustee (in the case of its resignation under the Indenture) or the Owner of any Bond (in any case) may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

The Trustee appointed under the provisions of the Indenture or any successor to the Trustee shall be a bank or trust company organized under the laws of any state of the United States or national banking association, in good standing under the laws of the place of its incorporation, doing business and having its principal corporate trust office in New York, New York, or Chicago, Illinois, or Los Angeles, California, or San Francisco, California, duly authorized to exercise trust powers and subject to examination by federal or state authority. Each successor trustee shall have capital stock and surplus aggregating at least \$75,000,000, or have all of its obligations under the Indenture guaranteed by a bank or trust company organized under the laws of the United States, or any state thereof, with a capital stock and surplus or net worth of at least \$75,000,000. If such bank, national banking association, or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of the Indenture the combined capital and surplus of such bank, trust company, or national banking association shall be deemed to be its combined capital and surplus set forth in its most recent report of condition so published.

Amendments and Supplemental Indentures

(a) The Indenture and the rights and obligations of NCPA and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by a Supplemental Indenture or Indentures, which NCPA and the Trustee may enter into with the written consent of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding shall have been filed with the Trustee or if less than all of the Outstanding Bonds are affected, the written consent of the Owners of at least a majority in aggregate principal amount of all affected Bonds; provided that if such modification or amendment shall, by its terms, not take effect so long as any Bonds of any particular maturity remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any such calculation of Bonds Outstanding under the Indenture. No such modification or amendment shall (1) extend the fixed maturity of any Bond, or reduce the principal amount or Redemption Price thereof, or reduce the amount of any Sinking Fund Installment, or reduce the rate of interest thereon or extend the time of payment of interest thereon, without the consent of the Owner of each Bond then Outstanding so affected; or (2) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any other lien on the Trust Estate, or deprive the Owners of the Bonds of the lien of the pledge made pursuant to the Indenture on the Trust Estate (except as expressly provided in the Indenture), in each case without the consent of the Owners of all of the Bonds then Outstanding.

(b) The Indenture and the rights and obligations of NCPA, the Trustee and the Owners of the Bonds may also be modified or amended in any respect from time to time and at any time by a Supplemental Indenture or Supplemental Indentures, which NCPA and the Trustee may enter into without the consent of any Owner of Bonds, but only to the extent permitted by law and so long as such modification or amendment shall not materially, adversely affect the interests of the Owners of the Bonds for any one or more of the following purposes:

(i) to add to the covenants and agreements of NCPA contained in the Indenture other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon NCPA;

(ii) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in the Indenture, or in regard to matters or questions arising under the Indenture, as NCPA may deem necessary or desirable;

(iii) to modify, amend or supplement the Indenture in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;

(iv) to make modifications or adjustments necessary or desirable to provide for the issuance of variable rate indebtedness, Option Bonds or Parity Debt, subject to the provisions of the Indenture;

(v) to modify, amend or supplement the Indenture in any other respect.

The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by as described in paragraphs (a) and (b) above which materially adversely affects the Trustee's own rights, duties or immunities under the Indenture or otherwise.

Notwithstanding anything in the Indenture to the contrary, the terms and provisions of the Indenture and the rights and obligations of NCPA, the Trustee, and of the Owners of the Bonds Outstanding thereunder may be modified or amended in any respect upon the execution and filing by NCPA of a Supplemental Indenture and the written consent of the Owners of all of the Bonds then Outstanding.

Defeasance

If NCPA shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds the principal amount or Redemption Price, if any, of the Bonds, and interest due or to become due on the Bonds, at the times and in the manner stipulated therein and in the Indenture, then the pledge of the Trust Estate under the Indenture and all covenants, agreements and other obligations of NCPA to the Owners (other than the covenants set forth in the Indenture), shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds, or interest installments on Bonds, for the payment or redemption of which moneys shall have been set aside and shall be held in trust by the Paying Agents (through deposit pursuant to the Indenture of funds for such payment or redemption or otherwise) at the maturity, Redemption Date, or interest payment date thereof, as applicable, shall be deemed to have been paid within the meaning and with the effect expressed in the Indenture. Any Outstanding Bond (or any portion thereof in an Authorized Denomination) shall prior to the maturity or Redemption Date thereof be deemed to have been paid within the meaning and with the effect expressed in the Indenture (except that the obligations under the Indenture with respect to the payment of the principal amount of the Bonds and the interest on the Bonds from the sources provided, to transfer and exchange Bonds and to giving the notices of the redemption of Bonds to be redeemed as provided in the Indenture shall continue) if (1) in case said Bond (or portion thereof) is to be redeemed on any date prior to maturity, NCPA shall have given to the Trustee

irrevocable instructions to give notice of redemption of such Bond (or portion thereof) on said date as provided in the Indenture, (2) there shall have been deposited with the Trustee either moneys (including moneys withdrawn and deposited pursuant to the Indenture) in an amount which shall be sufficient, or Defeasance Securities issued or held in book-entry form) the principal of and the interest on which when due shall provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, in each case as evidenced by an Accountant's Certificate, to pay when due the principal amount or Redemption Price, as applicable, of said Bond (or portion thereof) and interest due and to become due on said Bond (or portion thereof) on and prior to the Redemption Date or maturity date thereof, as the case may be, and (3) if such Bond (or portion thereof) is not to be paid or redeemed within 60 days of the date of the deposit required by (2) above, NCPA shall have given the Trustee in form satisfactory to it irrevocable instructions to mail, as soon as practicable, by first-class mail, postage prepaid, to the Owners of such Bond, at the last address, if any, appearing upon the Bond Register, a notice that the deposit required by (2) above has been made with the Trustee and that said Bond (or the applicable portion thereof) is deemed to have been paid in accordance with the Indenture and stating such maturity or Redemption Date upon which moneys are to be available for the payment of the principal amount or Redemption Price, as applicable, of said Bond. Any notice given pursuant to the Indenture with respect to Bonds which constitute less than all of the Outstanding Bonds of any maturity shall specify the letter and number or other distinguishing mark of each such Bond. Any notice given pursuant to the Indenture with respect to less than the full principal amount of a Bond shall specify the principal amount of such Bond which shall be deemed paid pursuant to the Indenture and notify the Owner of such Bond that such Bond must be surrendered. The receipt of any notice required by the Indenture shall not be a condition precedent to the payment of Bonds in accordance with the Indenture and the failure of any Owner to receive any such notice shall not affect the validity of the proceedings for the payment of Bonds in accordance with the Indenture. Neither Defeasance Securities nor moneys deposited with the Trustee pursuant to the Indenture nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal amount or Redemption Price, as applicable, of said Bonds and the interest thereon; provided that any cash received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, (A) to the extent such cash shall not be required at any time for such purpose, as evidenced by an Accountant's Certificate, shall be paid over upon the written direction of an Authorized NCPA Representative as received by the Trustee, free and clear of any trust, lien, pledge or assignment securing said Bonds or otherwise existing under the Indenture, and (B) to the extent such cash shall be required for such purpose at a later date, shall, to the extent practicable, at the written direction of an Authorized NCPA Representative, be reinvested in Defeasance Securities maturing at times and in amounts sufficient to pay when due the principal amount or Redemption Price, as applicable, of said Bonds and the interest to become due on said Bonds on and prior to such Redemption Date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over as received by the Trustee, free and clear of any trust, lien, pledge or assignment securing said Bonds or otherwise existing under the Indenture.

Nothing in the Indenture shall prevent NCPA from substituting for the Defeasance Securities held for the payment or redemption of Bonds (or portions thereof) other Defeasance Securities which, together with the moneys held by the Trustee for such purpose, as evidenced by an Accountant's Certificate, shall be sufficient to pay when due the principal amount or Redemption Price, as applicable, of the Bonds (or portions thereof) to be paid or redeemed, and the interest due and to become due on the Bonds (or portions thereof) to be paid or redeemed at the times established with the initial deposit of Defeasance Securities for such purpose provided that NCPA shall deliver to the Trustee an Opinion of Bond Counsel to the effect that such substitution will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

Anything in the Indenture to the contrary notwithstanding, any moneys held by a Fiduciary in trust for the payment and discharge of any of the Bonds which remain unclaimed for two years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Fiduciary at such date shall, at the written request of an Authorized NCPA Representative be repaid by the Fiduciary to NCPA, as its absolute property and free and clear of any trust, lien, pledge or assignment securing said Bonds or otherwise existing under the Indenture, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Owners of such Bonds shall look only to NCPA for the payment of such Bonds; provided, however, that before being required to make any such payment to NCPA the Fiduciary shall, at the expense of NCPA, mail, postage prepaid to the Owners of such Bonds, at the last address, if any, appearing upon the Bond Register a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of the mailing of such notice, the balance of such moneys then unclaimed shall be returned to NCPA.

If there shall be deemed paid pursuant to the Indenture less than all of the full principal amount of a Bond, NCPA shall execute and the Trustee shall authenticate and the Bond Registrar shall deliver, upon the surrender of such Bond, without charge to the Owner of such Bond, a new Bond or Bonds for the principal amount of the Bond so surrendered which is deemed paid pursuant to the Indenture and another new Bond or Bonds for the balance of the principal amount of the Bond so surrendered, in each case of like terms, and maturity in any of the Authorized Denominations.

Moneys Held for Particular Bonds

Except as otherwise provided in the Indenture, the amounts held by any Fiduciary for the payment of the interest, principal or Redemption Price due on any date with respect to particular Bonds shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto. No Fiduciary shall be liable to any Owner, NCPA or any other person for interest on amounts so held in trust.

Interested Parties

Nothing in the Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or corporation, other than NCPA, the Fiduciaries, each issuer of a Financial Guaranty and the Owners of the Bonds, any right, remedy or claim under or by reason of the Indenture or any covenant, condition or stipulation thereof; and all the covenants, stipulations, promises and agreements in the Indenture contained by and on behalf of NCPA shall be for the sole and exclusive benefit of NCPA, the Fiduciaries, each issuer of a Financial Guaranty, and the Owners of the Bonds.

No Recourse on the Bonds

Neither the commissioners, directors, officers or employees of NCPA shall be individually liable on the Bonds or in respect of any undertakings by NCPA under the Indenture.

Summary of Certain Provisions of the Unit One Member Agreement

The following is a summary of certain provisions of the Unit One Member Agreement. This summary is not to be considered a full statement of the terms of the Unit One Member Agreement and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not defined in this summary or elsewhere in the Official Statement have the respective meanings set forth in the Unit One Member Agreement.

Defined Terms

“Bond Resolution” means an instrument providing for the issuance of bonds and the terms thereof and may be a resolution, indenture of trust, order, agreement or other instrument.

“Bonds” means bonds, notes or other evidences of indebtedness of NCPA (including, without limitation, contracts relating to letters of credit or other credit enhancement devices, interest rate swap and other agreements relating to interest rate or other cash-flow exchanges such as those authorized by the Public Finance Contracts Law, and other contracts which are characterized as debt by NCPA at or prior to the execution thereof) issued to finance or refinance the Project and to finance or refinance any contributions-in-aid-of-construction for construction necessary for the adjacent electric system to interconnect with the Project and includes additional bonds to complete the Project and may consist of that portion of an issue of NCPA bonds, notes or other evidences of indebtedness issued to finance the Costs of the Project, which is specifically identified as Bonds for purposes of the Unit One Member Agreement in the applicable Bond Resolution. For purposes of the Unit One Member Agreement, Bonds will be considered outstanding as of any date if such Bonds have not been paid or if provision for the payment of the principal, premium, if any, and interest on such Bonds has not been made in accordance with the Bond Resolution pursuant to which such Bonds have been authorized.

“Electric System” means, with respect to each Project Participant, all properties and assets, real and personal, tangible and intangible, of the Project Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Project Participant 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 electric purposes, only the Project Participant’s ownership interest in such asset or property or only the part of the asset or property so used for electric purposes will be considered to be part of its Electric System.

“Project” means a combustion turbine, electric generating resource with a nameplate capacity of approximately 49 megawatts located in the City of Lodi, California and related facilities and interests, including electric facilities necessary for the Project to interconnect with the adjacent electric system and all rights, properties and improvements necessary therefor, including fuel and water facilities and resources and rights thereto or therein, and capital improvements thereto (including replacement of the generating unit presently included in the Project but excluding any additional generating units unless specifically approved by each of the Project Participants) that may be constructed from time to time.

“Project Participation Percentage” means, with respect to each Project Participant, the percentage of the total capacity of the Project, and the energy associated with such capacity, to which such Project Participant is entitled pursuant to the terms of the Unit One Member Agreement.

“Project Participant” means each of the NCPA members executing the Unit One Member Agreement, together in each case with their respective successors or assigns.

“Public Finance Contracts Law” means Chapter 12 of Division 6 of Title 1 of the Government Code of the State of California, as the same may be amended and supplemented from time to time, and shall include any successors to such statute.

“Revenues” means, with respect to each Project Participant, all income, rents, rates, fees charges, and other moneys derived by the Project Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) 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, (ii) 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 (iii) the proceeds derived by the Project Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System as permitted by the Unit One Member Agreement, but the term “Revenues” shall not include (y) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the Project Participant or (z) contributions from customers for the payment of costs of construction of facilities to serve them.

“**Trustee**” means the entity or entities designated by NCPA as the Trustee under any Bond Resolution.

Purpose

The purpose of the Unit One Member Agreement is to provide the terms and conditions of the financing, construction and operation of the Project by NCPA and the sale by NCPA, and the purchase by the Project Participants, of the capacity and associated energy of the Project.

Construction and Financing of the Project

NCPA will use its best efforts to cause or accomplish the construction and financing of the Project, including obtaining all necessary authority and rights, and the performance of all things necessary and convenient therefor.

Each Project Participant will cooperate with NCPA to that end and will give any and all clarifying assurances by executing supplemental agreements that may be requested by NCPA’s legal counsel to make the obligations therein more specific, to satisfy legal requirements and provide security for the Bonds.

Obligation to Make Project Capacity and Energy Available

(a) Pursuant to the terms of the Unit One Member Agreement, NCPA will make available or cause to be made available and each Project Participant will be entitled to receive such Project Participant’s Project Participation Percentage of the capacity and energy of the Project. Subject to the terms of the Unit One Member Agreement, and any directions of the Project Participants pursuant thereto, NCPA will operate the Project, or cause the Project to be operated, in accordance with the principles contained in the any applicable NCPA Facilities Agreement of the parties.

(b) NCPA will remain available to do all things necessary and practical to deliver or cause to be delivered to or for the Project Participants, in accordance with their respective Project Participation Percentages of the capacity and energy of the Project. Such delivery will be at points mutually agreed upon by NCPA and each Project Participant. NCPA will remain available to make or cause to be made all necessary and practical arrangements for transmission of such capacity and energy to such points over the lines of NCPA or others. Wheeling or delivery services by NCPA with related energy sales to the Project Participants will be as provided in service schedules as provided in the NCPA member service agreement applicable to the respective Project Participants.

Rates and Charges

(a) NCPA will fix charges to the Project Participants under the Unit One Member Agreement to produce revenues to NCPA for capacity and energy of the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service on the Bonds and other payments required under the Bond Resolutions other than payments described in (ii) and (iii) below; (ii) any other operation, maintenance and replacement costs of the Project, including the cost of fuel, a reasonable reserve for contingencies, and all other Project costs other than costs not described in (i) above or (iii) below; and (iii) costs and expenses of NCPA for delivering Project capacity and energy pursuant to the Unit One Member Agreement. NCPA will fix charges to the Project Participants to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on Project Participation Percentages. If NCPA delivers Project capacity and energy to or for any Project Participant pursuant to the Indenture, NCPA will fix charges to each such Project Participant so that such Project Participant will pay only the costs described in (iii) above which are attributable to such Project Participant.

(b) To the extent that the funds provided as described under paragraph (a) above at any time and for any reason are not sufficient for such purposes, each Project Participant will pay to NCPA an amount equal to such Project Participant's Project Participation Percentage of the total cost to pay the debt service on the Bonds and all other payments required under the Bond Resolutions. The obligations described in this paragraph (b) are incurred by each Project Participant for the benefit of future holders of Bonds, and will commence and continue to exist and be honored by Project Participants whether or not capacity or energy from the Project is furnished to them at all times or at all and constitutes an obligation to pay all costs whether or not such capacity and energy is made available or delivered or provided.

(c) Each Project Participant will make payments under the Unit One Member Agreement solely from the Revenues of, and as an operating expense of, its Electric System. Nothing in the Unit One Member Agreement will be construed as prohibiting any Project Participant from using any other funds and revenues for purposes of satisfying any provisions of the Unit One Member Agreement.

(d) Each Project Participant will make payments under the Unit One Member Agreement whether or not the Project or any part thereof is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output or the Project capacity and energy contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by NCPA or any other Project Participant under the Unit One Member Agreement or any other agreement.

(e) No Project Participant will be liable under the Unit One Member Agreement for the obligations of any other Project Participant. Each Project Participant will be solely responsible and liable for performance of its obligations under the Unit One Member Agreement and for the maintenance and operation of its respective Electric System. The obligation of each Project Participant to make payments under the Unit One Member Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

(f) Each Project Participant covenants that it will, at all times, operate the properties of its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and will maintain its Electric System in good repair, working order and condition.

(g) Each Project Participant covenants to establish and collect fees and charges for electric capacity and energy furnished through facilities of its Electric System sufficient to provide Revenues

adequate to meet its obligations under the Unit One Member Agreement and to pay any and all other amounts payable from or constituting a charge and lien or encumbrance upon any or all such Revenues; provided that the obligation of the Project Participant to make payments under the Unit One Member Agreement will not constitute a legal or equitable pledge, lien or encumbrance upon any property of the Project Participant or upon any of its income, receipts or revenues; and further provided that neither the Project Participants nor the State of California or any agency or political subdivision thereof will ever be obligated or compelled to levy ad valorem taxes to make the payments provided for in the Unit One Member Agreement.

Budgets and Billing Statements

The Commission of NCPA is required to establish an annual budget, and to give notice to each Project Participant of its projected share of costs and expenses. Project Participants' costs for amounts due are pursuant to the Unit One Member Agreement and in such amounts that NCPA will receive moneys in time to make all payments required by the Bond Resolutions when due.

Obligation in the Event of Default

(a) Upon the failure of any Project Participant to make any payment in full when due under the Unit One Member Agreement, NCPA will make written demand upon such Project Participant, and if said failure is not remedied within 30 days from the date of such demand, such failure will constitute a default at the expiration of such 30-day period.

(b) Upon the failure of any Project Participant to perform any of its obligations under the Unit One Member Agreement, except for the obligation to make any payment in full when due under the Unit One Member Agreement, NCPA will give such Project Participant written notice of such failure and if such failure is not remedied within 60 days from the date of such notice, such failure will constitute a default at the expiration of such 60-day period. A copy of any such notice will be provided to each other Project Participant by NCPA.

(c) In addition to the rights and remedies available to NCPA described in paragraph (d) below, NCPA may protect and enforce its rights under the Unit One Member Agreement by suit or suits in equity or at law, whether for the specific performance of any covenant in the Unit One Member Agreement or for damages or in aid of the execution of any power granted under the Unit One Member Agreement or any other remedy available under any provision of applicable law. No remedy by the terms of the Unit One Member Agreement conferred upon or reserved to NCPA is intended to be exclusive of any other remedy, but each and every such remedy will be cumulative and will be in addition to every other remedy given under the Unit One Member Agreement or existing at law or in equity or by statute on or after the effective date of the Unit One Member Agreement.

(d) Upon the failure of any Project Participant to make any payment which failure constitutes a default described under paragraph (a) above, each Project Participant severally agrees that, (i) the Project Participation Percentage of each nondefaulting Project Participant will be automatically increased for the remaining term of the Unit One Member Agreement pro rata with those of the other nondefaulting Project Participants and (ii) the defaulting Project Participant's Project Participation Percentage will be reduced correspondingly; provided, however, that the sum of such increases for any nondefaulting Project Participant will not exceed, without written consent of such nondefaulting Project Participant, an accumulated maximum of 25% of the nondefaulting Project Participant's original Project Participation Percentage.

(e) Each nondefaulting Project Participant which has its Project Participation Percentage increased as described in paragraph (d) above will be entitled to the rights which the defaulting Project Participant loses upon the default with respect to such Project Participation Percentage and will assume, subject to the terms of the Unit One Member Agreement, all of the obligations of the defaulting Project Participant with respect to such Project Participation Percentage under the Unit One Member Agreement. Increases in the Project Participation Percentages of the nondefaulting Project Participants will be applicable to any payments due and not paid by the defaulting Project Participant at the time of the increase and all subsequent payments due and not paid by the defaulting Project Participant.

(f) If any Project Participant's Project Participation Percentage is increased as described in paragraph (d) above, the defaulting Project Participant will not be relieved of any of its obligations or liabilities under the Unit One Member Agreement and each Project Participant whose Project Participation Percentage is so increased will have a right of recovery from the defaulting Project Participant to the extent of any damages sustained as a result of such default and the respective increase in Project Participation Percentage caused by the defaulting Project Participant.

(g) NCPA may pledge and assign the Unit One Member Agreement and any or all of its right, title and interest in, to and under the Unit One Member Agreement, including without limitation NCPA's rights to receive all or any portion of the payments under the Unit One Member Agreement from Project Participants, to secure the payment of Bonds. Notwithstanding any other provision of the Unit One Member Agreement, upon notice from NCPA each Project Participant will make payments due by it under the Unit One Member Agreement directly to a Trustee for Bonds specified in such notice. Such pledge and assignment by NCPA will be made effective for such time will be provided in the applicable Bond Resolution.

(h) Any Trustee for Bonds will have the right, as a third party beneficiary, to initiate and maintain suit to enforce the Unit One Member Agreement to the extent provided in the applicable Bond Resolution.

Transfers, Sales and Assignments of Capacity

Each Project Participant has full and unfettered rights to make transfers, sales, assignments and exchanges (collectively, "transfers") of such Project Participant's Project Participation Percentage of Project capacity, energy, and rights thereto except as expressly provided otherwise in the applicable NCPA Facilities Agreement of the parties and the Unit One Member Agreement. Except as provided in the Unit One Member Agreement, such transfers will not affect any of the obligations of the Project Participants under the Unit One Member Agreement.

Surplus Capacity and Energy

When a Project Participant has surplus capacity and/or energy from the Project, NCPA will, if requested by such Project Participant to do so, use its best efforts to sell such surplus capacity and/or energy on behalf of such Project Participant in the manner set forth in the Unit One Member Agreement.

Notwithstanding the sale by NCPA of all or a portion of a Project Participant's surplus Project capacity and/or energy, the Project Participant will remain liable to NCPA to pay the full amount of its share of Project costs, determined as provided in the Unit One Member Agreement, as if such sale had not been made, except that such liability will be reduced to the extent that NCPA shall receive payment from the purchaser of such surplus Project capacity and/or energy.

Insurance and Indemnification

NCPA will obtain and continue in force, or cause to be obtained and continued in force, property insurance for the Project and liability insurance with respect to the Project, covering such risks (including earthquakes) in such amounts and with such deductibles as will be determined by NCPA. NCPA will indemnify and hold harmless each Project Participant from any liability for personal injury or property damage resulting from any accident or occurrence arising out of or in any way related to the construction or operation of the Project; provided, however, that such indemnification by NCPA will be limited to the extent the proceeds of insurance and other moneys are available to NCPA for such purposes.

Project Participant Direction and Review

NCPA will comply with all lawful directions of the Project Participants with respect to the Project, while not stayed or nullified, to the fullest extent authorized by law and to the extent such directions are not inconsistent with, and do not impair NCPA's ability to perform its obligations under, any Bond Resolution.

While NCPA will own, operate and maintain the Project in accordance with the Unit One Member Agreement, in recognition of the Project Participants' interest in the Project, NCPA agrees that it will take no action with respect to the Project pursuant to the authorization or approval of its Commission if an authorized representative of a Project Participant requests that such authorization or approval be based upon Project Participation Percentages and such authorization or approval does not receive the affirmative vote of authorized representatives representing Project Participants then having a combined Project Participation Percentage of at least 65%.

An Project Participant may veto any authorization or approval of the Commission relating to the Project that was not taken by a 65% or greater Project Participation Percentage vote within 10 days following the mailing of notice of such Commission action, by delivering a written notice of veto to NCPA, unless at a meeting of the Commission called for the purpose of considering the veto and held within 30 days after delivery of such written notice of veto, the Commissioners representing Project Participants having a combined Project Participation Percentage of at least 65% at such time shall vote to override the veto.

The 65% of Project Participation Percentage specified in the two preceding paragraphs shall be reduced by the amount that the Project Participation Percentage of any Project Participant shall exceed 35% but such 65% shall not be reduced below a majority of the Project Participation Percentages of all Project Participants.

Term

The term of the Unit One Member Agreement will continue until the later of (i) the expectation of the useful life of the Project or (ii) the date on which no Bonds remain outstanding.

Termination and Amendments

The Unit One Member Agreement will not be subject to termination by any party under any circumstances prior to the term specified above, whether based upon the default of any other party under the Unit One Member Agreement, the release of any party of any of its obligations under the Unit One Member Agreement or for any other cause whatsoever.

So long as any Bonds are outstanding an unpaid and funds are not set aside for the payment or retirement thereof in accordance with the applicable Bond Resolution, the Unit One Member Agreement will not be amended, modified or otherwise changed or rescinded by agreement of the parties without the consent of each Trustee for Bonds whose consent is required under the applicable Bond Resolution.

Member Service Agreement

The Unit One Member Agreement is a service schedule and a third phase agreement and shall be construed in accordance with the more specific terms governing the general relationship between NCPA and its members set out in the applicable NCPA Member Service Agreement in connection with the Project.

Tax Covenant

Neither NCPA nor any Project Participant will transfer, assign, sell or exchange any portion of the capacity and/or energy of the Project, or any other interest in the Project or the capacity and/or energy related thereto, directly or indirectly, in any manner, or will take, or to the extent it can control the same permit to be taken, any other action or actions, which would adversely affect the exclusion of the interest on any of the Bonds from gross income for federal income tax purposes under Section 103 of the Code, including without limitation, by reason of classification of any of such Bonds as a “private activity bond” within the meaning of said Code.

APPENDIX E

PROPOSED FORMS OF CONTINUING DISCLOSURE AGREEMENTS

CONTINUING DISCLOSURE AGREEMENT
BY AND BETWEEN THE
NORTHERN CALIFORNIA POWER AGENCY
AND
U. S. BANK NATIONAL ASSOCIATION

This Continuing Disclosure Agreement (the “Disclosure Agreement”), dated December ___, 2019, is executed and delivered by the Northern California Power Agency and U.S. Bank National Association, as Dissemination Agent (the “Dissemination Agent”) in connection with the issuance by Northern California Power Agency (“NCPA”) of \$_____ aggregate principal amount of Northern California Power Agency Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “Bonds”). The Bonds have been issued pursuant to an Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), by and between NCPA and U.S. Bank National Association, as the Trustee. NCPA and the Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by NCPA and the Dissemination Agent for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report with respect to the Bonds provided by NCPA pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who has or shares the power, directly or indirectly, to make investment decisions regarding ownership of any Bonds (including without limitation persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the any of the Chairman, the General Manager, the Assistant General Manager, Finance and Administrative Services/Chief Financial Officer, and the Treasurer-Controller of NCPA or his or her designee, or such other officer or employee as NCPA shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean U.S. Bank National Association, acting solely in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by NCPA and which has filed with the Trustee a written acceptance of such designation.

“EMMA System” shall mean the MSRB’s Electronic Municipal Market Access System or such other electronic system designated by the MSRB.

“Financial Obligation” shall mean a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that

“financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board, or any successor thereto.

“Participating Underwriter” shall mean the original underwriter of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

SECTION 3. Provision of Annual Reports.

(a) With respect to the Bonds, NCPA shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of each fiscal year of NCPA (which presently ends on June 30), commencing with the report for the Fiscal Year ending June 30, 2020, provide to the MSRB through the EMMA System, in an electronic format and accompanied by identifying information all as prescribed by the MSRB, an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided, that the audited financial statements of NCPA may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the fiscal year changes for NCPA, NCPA shall give notice of such change prior to the next date by which NCPA otherwise would be required to provide its Annual Report pursuant to this Section and in the manner provided for giving notices under Section 5 hereof.

(b) Not later than fifteen (15) business days prior to the date specified in paragraph (a) of this Section 3 for providing the Annual Report to the MSRB, NCPA shall provide its Annual Report to the Dissemination Agent. If by such date, the Dissemination Agent has not received a copy of the Annual Report from NCPA, the Dissemination Agent shall contact NCPA and to determine if NCPA is in compliance with paragraph (a) of this Section 3.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in paragraph (a) of this Section 3, the Dissemination Agent shall send a notice to the MSRB through the EMMA System in substantially the form attached hereto as Exhibit A.

(d) Upon the provision by the Dissemination Agent of any Annual Report to the MSRB pursuant to paragraph (a) of this Section 3, the Dissemination Agent shall deliver a confirmation in writing to NCPA certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement and stating the date it was provided.

SECTION 4. Content of Annual Reports. NCPA's Annual Report shall contain or include by reference the following:

- (i) A summary of the peak generating capability of the Project for the prior Fiscal Year;
- (ii) A summary of the average generating capability of the Project for the prior Fiscal Year;
- (iii) A summary of total energy generated with respect to the Project for the prior Fiscal Year; and
- (iv) The audited financial statements of NCPA for the prior Fiscal Year, prepared in accordance with generally accepted accounting principles for governmental enterprises as prescribed from time to time by any regulatory body with jurisdiction over NCPA and by the Governmental Accounting Standards Board. If NCPA's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to paragraph (a) of Section 3, the Annual Report shall contain unaudited financial statements in a format similar to the audited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of NCPA or public entities related thereto, which have been submitted to the MSRB through the EMMA System or to the SEC. If the document included by reference is a final official statement, it must be available from the MSRB through the EMMA System. NCPA shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, upon the occurrence of any of the following events with respect to the Bonds, NCPA shall give, or cause to be given by so notifying the Dissemination Agent and instructing the Dissemination Agent to give, notice of occurrence of such event not later than ten (10) business days after the occurrence of the event, in each case, pursuant to paragraphs (b) and (c) of this Section 5, as applicable:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or the issuance by the Internal Revenue Service of a proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB), or other material notices or determinations

by the Internal Revenue Service with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;

- (7) modifications to rights of the holders of the Bonds, if material;
- (8) optional, unscheduled or contingent Bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of NCPA or an obligated person (as defined in the Rule) with respect to the Bonds of which NCPA has actual knowledge;
- (13) the consummation of a merger, consolidation, or acquisition involving NCPA or an obligated person (as defined in the Rule) with respect to the Bonds of which NCPA has actual knowledge or the sale of all or substantially all of the assets of NCPA or any such obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15) incurrence of a Financial Obligation of NCPA with respect to the Project, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of NCPA with respect to the Project, any of which affect holders of the Bonds, if material; or
- (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of NCPA with respect to the Project, any of which reflect financial difficulties.

For these purposes, (i) any event described in subparagraph (12) of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of

the assets or business of the obligated person; and (ii) NCPA intends to comply with the provisions hereof for the Listed Events described in subparagraphs (15) and (16) of this Section 5(a), and the definition of “Financial Obligation” in Section 2, with reference to the Rule, any other applicable federal securities laws and the guidance provided by the Commission in its Release No. 34-83885 dated August 20, 2018 (the “2018 Release”), and any further amendments or written guidance provided by the Commission or its staff with respect to the amendments to the Rule effected by the 2018 Release.

(b) Whenever NCPA obtains knowledge of the occurrence of a Listed Event described in paragraph (a) of this Section 5, NCPA shall either (i) promptly notify the Dissemination Agent in writing and instruct the Dissemination Agent to report the occurrence pursuant to Section 5(c) below or (ii) shall itself file a notice of such occurrence with the MSRB through the EMMA System.

(c) If the Dissemination Agent has been instructed by NCPA to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB through the EMMA System.

(d) Any notice required by this Section 5 to be provided to the MSRB shall be provided in an electronic format and accompanied by identifying information as prescribed by the MSRB. Notwithstanding the foregoing provisions of this Section 5, notice of Listed Events described in subparagraphs (8) and (9) of Section 5(a) above need not be given under this Section 5(d) any earlier than the notice (if any) of the underlying event is given to Owners of affected Bonds pursuant to the Indenture.

SECTION 6. Termination of Reporting Obligation. The obligations of NCPA under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds and with respect to any Bonds upon the maturity, defeasance, prior redemption or payment in full of such Bonds.

SECTION 7. Dissemination Agent. NCPA may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by NCPA pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be U. S. Bank National Association. NCPA shall be responsible for all fees and associated expenses of the Dissemination Agent.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, NCPA and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived; provided that such amendment or waiver, in the opinion of nationally recognized bond counsel satisfactory to the Dissemination Agent, such amendment or waiver is permitted by the Rule.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, NCPA shall describe such amendment in its next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by NCPA. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the manner as provided under Section 5, and (ii) the Annual Report for the year in which the change is made should present a

comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent NCPA from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If NCPA chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, NCPA shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of NCPA or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of the Owners of at least 25% aggregate principal amount of Outstanding Bonds and the furnishing by such Owners of indemnity satisfactory to the Trustee against its costs and expenses, including, without limitation, fees and expenses of its attorneys, shall), or any Owner or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause NCPA or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of NCPA or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

No Owner or Beneficial Owner may institute any such action, suit or proceeding to compel performance unless they shall have first filed with the Dissemination Agent and NCPA satisfactory written evidence of their status as such, and a written notice of and request to cure such failure, and NCPA shall have refused to comply therewith within a reasonable time. Any such action, suit or proceeding shall be brought in federal or state courts located in the County of Sacramento, California for the benefit of all Owners and Beneficial Owners of the Bonds.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Agreement, and no further duties or responsibilities shall be implied, and the Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent NCPA has provided such information to the Dissemination Agent as required by this Agreement. The Dissemination Agent shall not have any liability under, nor duty to inquire into the terms and provisions of, any agreement or instructions, other than as outlined in this Agreement. The Dissemination Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Dissemination Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Dissemination Agent shall not be liable for any action taken or omitted by it in good faith unless a court of competent jurisdiction determines that the Dissemination Agent's negligence or willful misconduct was the primary cause of any loss to NCPA. The Dissemination Agent shall not incur any liability for following the instructions herein contained or expressly provided for, or written instructions given by NCPA. In the administration of this Agreement, the Dissemination Agent may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Dissemination Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or

other skilled persons. The Dissemination Agent may resign and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect. Any corporation or association into which the Dissemination Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Dissemination Agent in its individual capacity shall be a party, or any corporation or association to which all or substantially all the corporate trust business of the Dissemination Agent in its individual capacity may be sold or otherwise transferred, shall be the Dissemination Agent under this Agreement without further act. NCPA covenants and agrees to hold the Dissemination Agent and its directors, officers, agents and employees (collectively, the "Indemnitees") harmless from and against any and all liabilities, losses, damages, fines, suits, actions, demands, penalties, costs and expenses, including out-of-pocket, incidental expenses, legal fees and expenses, the allocated costs and expenses of in-house counsel and legal staff and the costs and expenses of defending or preparing to defend against any claim ("Losses") that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for following any instruction or other direction upon which the Dissemination Agent is authorized to rely pursuant to the terms of this Agreement. In addition to and not in limitation of the immediately preceding sentence, NCPA also covenants and agrees to indemnify and hold the Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against the Indemnitees or any of them in connection with or arising out of the Dissemination Agent's performance under this Agreement provided the Dissemination Agent has not acted with negligence or engaged in willful misconduct. Anything in this Agreement to the contrary notwithstanding, in no event shall the Dissemination Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Dissemination Agent has been advised of such loss or damage and regardless of the form of action. The obligations of NCPA under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. The Dissemination Agent shall have no obligation to disclose information about the Bonds except as expressly provided herein. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with NCPA, apart from the relationship created by the Rule, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from NCPA. Nothing in this Agreement shall be construed to require the Dissemination Agent to interpret or provide an opinion concerning any information made public. If the Dissemination Agent receives a request for an interpretation or opinion, the Dissemination Agent may refer such request to NCPA for response. NCPA shall pay or reimburse the Dissemination Agent for its fees and expenses for the Dissemination Agent's services rendered in accordance with this Agreement. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for NCPA, the Owner or any other party.

SECTION 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of NCPA, the Trustee, the Dissemination Agent, the Participating Underwriters and the Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 13. California Law. This Disclosure Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 14. Notices. All written notices to be given hereunder shall be given in person or by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

To NCPA: Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attention: General Manager
Telephone: (916) 781-3636
Fax: (916) 783-7693

To the Dissemination Agent: U. S. Bank National Association
100 Wall Street, Suite 1600
New York, New York 10005
Attention: Corporate Trust Department
Telephone: (212) 361-4385
Fax: (212) 514-6841

NCPA and the Dissemination Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed the Disclosure Agreement to be executed as of the date set forth above.

NORTHERN CALIFORNIA POWER AGENCY

By: _____
Its: General Manager

U. S. BANK NATIONAL ASSOCIATION,
as Dissemination Agent

By: _____
Authorized Signatory

EXHIBIT A

NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Northern California Power Agency ("NCPA")

Name of Bond Issue: \$_____ aggregate principal amount of Northern California Power Agency Capital Facilities Revenue Bonds, 2019 Refunding Series A (the "Bonds")

Date of Issuance: December __, 2019

NOTICE IS HEREBY GIVEN that NCPA has not provided an Annual Report with respect to the Bonds as required by Section 3 of the Continuing Disclosure Agreement with respect to the Bonds, dated December __, 2019, by and between NCPA and U. S. Bank National Association, as Dissemination Agent. [NCPA anticipates that the Annual Report will be filed by _____.]

Dated: _____

U. S. BANK NATIONAL ASSOCIATION, as
Dissemination Agent on behalf of the Northern
California Power Agency

cc: NCPA

**CONTINUING DISCLOSURE AGREEMENT
BY AND BETWEEN THE
[SIGNIFICANT SHARE PROJECT PARTICIPANT]
AND
U. S. BANK NATIONAL ASSOCIATION**

This Continuing Disclosure Agreement (the “Disclosure Agreement”), dated December ___, 2019, is executed and delivered by the [SIGNIFICANT SHARE PROJECT PARTICIPANT] (the “Project Participant”) and U.S. Bank National Association, as dissemination agent (the “Dissemination Agent”) in connection with the issuance by Northern California Power Agency (“NCPA”) of \$_____ aggregate principal amount of Northern California Power Agency Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “Bonds”). The Bonds have been issued pursuant to an Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), by and between NCPA and the U.S. Bank National Association, as the Trustee. The Project Participant and the Dissemination Agent covenant and agree as follows:

SECTION 16. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Project Participant and the Dissemination Agent for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with the Rule.

SECTION 17. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report with respect to the Bonds provided by the Project Participant pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who has or shares the power, directly or indirectly, to make investment decisions regarding ownership of any Bonds (including without limitation persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the [Electric Utility Director] [General Manager] of the Project Participant, or his or her designee, or such other officer or employee as the Project Participant shall designate in writing to NCPA and the Trustee from time to time.

“Dissemination Agent” shall mean U.S. Bank National Association, acting solely in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Project Participant and which has filed with NCPA and the Trustee a written acceptance of such designation.

“EMMA System” shall mean the MSRB’s Electronic Municipal Market Access System or such other electronic system designated by the MSRB.

“Financial Obligation” shall mean a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument, in each case, which “financial obligation” is payable from revenues of the Project Participant’s electric system; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board, or any successor thereto.

“Participating Underwriter” shall mean the original underwriter of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

SECTION 18. Provision of Annual Reports.

(a) With respect to the Bonds, the Project Participant shall, or shall cause the Dissemination Agent to, not later than 210 days after the end of each fiscal year of the Project Participant (which presently ends on June 30), commencing with the report for the Fiscal Year ending June 30, 20[19], provide to the MSRB through the EMMA System, in an electronic format and accompanied by identifying information all as prescribed by the MSRB, an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided, that the audited financial statements of the Project Participant may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the fiscal year changes for the Project Participant, the Project Participant shall give notice of such change prior to the next date by which the Project Participant otherwise would be required to provide its Annual Report pursuant to this Section and in the manner provided for giving notices under Section 5 hereof.

(b) Not later than fifteen (15) business days prior to the date specified in paragraph (a) of this Section 3 for providing the Annual Report to the MSRB, the Project Participant shall provide its Annual Report to the Dissemination Agent. If by such date, the Dissemination Agent has not received a copy of the Annual Report from the Project Participant, the Dissemination Agent shall contact the Project Participant to determine if the Project Participant is in compliance with paragraph (a) of this Section 3.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in paragraph (a) of this Section 3, the Dissemination Agent shall send a notice to the MSRB through the EMMA System in substantially the form attached hereto as Exhibit A.

(d) Upon the provision by the Dissemination Agent of any Annual Report to the MSRB pursuant to paragraph (a) of this Section 3, the Dissemination Agent shall deliver a confirmation in writing to the Project Participant certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement and stating the date it was provided.

SECTION 19. Content of Annual Reports. The Project Participant's Annual Report shall contain or include by reference the following:

- (i) A summary of the operating results and selected balance sheet information for the Project Participant's electric system for the most recently completed fiscal year;
- (ii) A summary of power supply resources of the Project Participant's electric system in tabular form for the most recently completed fiscal year;
- (iii) A summary of customers, energy sales, revenues and peak demand of the Project Participant's electric system in tabular form for the most recently completed fiscal year; and
- (iv) The audited financial statements of the Project Participant's electric utility fund for the most recently completed fiscal year, prepared in accordance with generally accepted accounting principles for governmental enterprises as prescribed from time to time by any regulatory body with jurisdiction over the Project Participant and by the Governmental Accounting Standards Board. If the Project Participant's electric utility fund audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the audited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Project Participant or public entities related thereto, which have been submitted to the MSRB through the EMMA System or to the SEC. If the document included by reference is a final official statement, it must be available from the MSRB through the EMMA System. The Project Participant shall clearly identify each such other document so included by reference.

SECTION 20. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, upon the occurrence of any of the following events with respect to the Project Participant, the Project Participant shall give, or cause to be given by so notifying the Dissemination Agent and instructing the Dissemination Agent to give, notice of occurrence of such event not later than ten (10) business days after the occurrence of the event, in each case, pursuant to paragraphs (b) and (c) of this Section 5, as applicable:

- (1) bankruptcy, insolvency, receivership or similar event of the Project Participant;
- (2) the consummation of a merger, consolidation, or acquisition involving the Project Participant or the sale of all or substantially all of the electric system assets of the Project Participant, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (3) incurrence of a Financial Obligation of the Project Participant payable from revenues of the Project Participant's electric system, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Project Participant

payable from revenues of the Project Participant's electric system, any of which affect holders of the Bonds, if material; or

- (4) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Project Participant, any of which reflect financial difficulties.

For these purposes, (i) any event described in subparagraph (1) of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Project Participant in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Project Participant or its electric system, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Project Participant or its electric system; and (ii) the Project Participant intends to comply with the provisions hereof for the Listed Events described in subparagraphs (3) and (4) of this Section 5(a), and the definition of "Financial Obligation" in Section 2, with reference to the Rule, any other applicable federal securities laws and the guidance provided by the Commission in its Release No. 34-83885 dated August 20, 2018 (the "2018 Release"), and any further amendments or written guidance provided by the Commission or its staff with respect to the amendments to the Rule effected by the 2018 Release.

(b) Whenever the Project Participant obtains knowledge of the occurrence of a Listed Event described in paragraph (a) of this Section 5, the Project Participant shall either (i) promptly notify the Dissemination Agent in writing and instruct the Dissemination Agent to report the occurrence pursuant to Section 5(c) below or (ii) shall itself file a notice of such occurrence with the MSRB through the EMMA System.

(c) If the Dissemination Agent has been instructed by the Project Participant to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB through the EMMA System.

(d) Any notice required by this Section 5 to be provided to the MSRB shall be provided in an electronic format and accompanied by identifying information as prescribed by the MSRB.

SECTION 21. Termination of Reporting Obligation. The obligations of the Project Participant under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds and with respect to any Bonds upon the maturity, defeasance, prior redemption or payment in full of such Bonds.

SECTION 22. Dissemination Agent. The Project Participant may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Project Participant pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be U.S. Bank National Association. The Project Participant shall be responsible for all fees and associated expenses of the Dissemination Agent.

SECTION 23. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Project Participant and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived; provided that such amendment or waiver, in the opinion of nationally recognized bond counsel satisfactory to the Dissemination Agent, such amendment or waiver is permitted by the Rule.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Project Participant shall describe such amendment in its next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Project Participant. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the manner as provided under Section 5, and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 24. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Project Participant from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Project Participant chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Project Participant shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 25. Default. In the event of a failure of the Project Participant or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of the Owners of at least 25% aggregate principal amount of Outstanding Bonds and the furnishing by such Owners of indemnity satisfactory to the Trustee against its costs and expenses, including, without limitation, fees and expenses of its attorneys, shall), or any Owner or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Project Participant or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the Project Participant or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

No Owner or Beneficial Owner may institute any such action, suit or proceeding to compel performance unless they shall have first filed with the Dissemination Agent and the Project Participant satisfactory written evidence of their status as such, and a written notice of and request to cure such failure, and the Project Participant shall have refused to comply therewith within a reasonable time. Any such action, suit or proceeding shall be brought in federal or state courts located in the County of Sacramento, California for the benefit of all Owners and Beneficial Owners of the Bonds.

SECTION 26. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Agreement, and no further duties or responsibilities shall be implied, and the Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Project Participant has provided such information to the Dissemination Agent as required by this Agreement. The

Dissemination Agent shall not have any liability under, nor duty to inquire into the terms and provisions of, any agreement or instructions, other than as outlined in this Agreement. The Dissemination Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Dissemination Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Dissemination Agent shall not be liable for any action taken or omitted by it in good faith unless a court of competent jurisdiction determines that the Dissemination Agent's negligence or willful misconduct was the primary cause of any loss to the Project Participant. The Dissemination Agent shall not incur any liability for following the instructions herein contained or expressly provided for, or written instructions given by the Project Participant. In the administration of this Agreement, the Dissemination Agent may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Dissemination Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. The Dissemination Agent may resign and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect. Any corporation or association into which the Dissemination Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Dissemination Agent in its individual capacity shall be a party, or any corporation or association to which all or substantially all the corporate trust business of the Dissemination Agent in its individual capacity may be sold or otherwise transferred, shall be the Dissemination Agent under this Agreement without further act. The Project Participant covenants and agrees to hold the Dissemination Agent and its directors, officers, agents and employees (collectively, the "Indemnitees") harmless from and against any and all liabilities, losses, damages, fines, suits, actions, demands, penalties, costs and expenses, including out-of-pocket, incidental expenses, legal fees and expenses, the allocated costs and expenses of in-house counsel and legal staff and the costs and expenses of defending or preparing to defend against any claim ("Losses") that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for following any instruction or other direction upon which the Dissemination Agent is authorized to rely pursuant to the terms of this Agreement. In addition to and not in limitation of the immediately preceding sentence, the Project Participant also covenants and agrees to indemnify and hold the Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against the Indemnitees or any of them in connection with or arising out of the Dissemination Agent's performance under this Agreement provided the Dissemination Agent has not acted with negligence or engaged in willful misconduct. Anything in this Agreement to the contrary notwithstanding, in no event shall the Dissemination Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Dissemination Agent has been advised of such loss or damage and regardless of the form of action. The obligations of the Project Participant under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. The Dissemination Agent shall have no obligation to disclose information about the Bonds except as expressly provided herein. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with the Project Participant, apart from the relationship created by the Rule, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from the Project Participant. Nothing in this Agreement shall be construed to require the Dissemination Agent to interpret or provide an opinion concerning any information made public. If the Dissemination Agent receives a request for an interpretation or opinion, the Dissemination Agent may refer such request to the Project Participant for response. The Project Participant shall pay or reimburse the Dissemination Agent for its fees and expenses for the Dissemination Agent's services rendered in accordance with this Agreement. The Dissemination Agent shall have no duty or obligation to review any information

provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the Project Participant, the Owner or any other party.

SECTION 27. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Project Participant, the Trustee, the Dissemination Agent, the Participating Underwriters and the Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 28. California Law. This Disclosure Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 29. Notices. All written notices to be given hereunder shall be given in person or by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

To the Project Participant:

To the Dissemination Agent:

U. S. Bank National Association
100 Wall Street, Suite 1600
New York, New York 10005
Attention: Corporate Trust Department
Telephone: (212) 361-4385
Fax: (212) 514-6841

The Project Participant and the Dissemination Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 30. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed the Disclosure Agreement to be executed as of the date set forth above.

**[SIGNIFICANT SHARE PROJECT
PARTICIPANT]**

By: _____
Name: _____
Title: _____

U. S. BANK NATIONAL ASSOCIATION,
as Dissemination Agent

By: _____
Authorized Signatory

EXHIBIT A

NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Northern California Power Agency ("NCPA")

Name of Bond Issue: \$_____ aggregate principal amount of Northern California Power Agency Capital Facilities Revenue Bonds, 2019 Refunding Series A (the "Bonds")

Name of Obligated Party: [SIGNIFICANT SHARE PROJECT PARTICIPANT] (the "Project Participant")

Date of Issuance: December __, 2019

NOTICE IS HEREBY GIVEN that the Project Participant has not provided an Annual Report with respect to the Bonds as required by Section 3 of the Continuing Disclosure Agreement with respect to the Bonds, dated December __, 2019, by and between the Project Participant and U. S. Bank National Association, as Dissemination Agent. [The Project Participant anticipates that the Annual Report will be filed by _____.]

Dated: _____

U. S. BANK NATIONAL ASSOCIATION, as
Dissemination Agent on behalf of the Northern
California Power Agency

cc: NCPA
Project Participant

APPENDIX F

PROPOSED FORMS OF BOND COUNSEL OPINION AND SPECIAL TAX COUNSEL OPINION

PROPOSED FORM OF BOND COUNSEL OPINION

Upon the delivery of the 2019 Series A Bonds, Norton Rose Fulbright US LLP, Los Angeles, California, proposes to render its final approving opinion with respect to the 2019 Series A Bonds in substantially the following form:

[Closing Date]

Commission
Northern California Power Agency
Roseville, California

Re: \$_____ Northern California Power Agency
 Capital Facilities Revenue Bonds,
 2019 Refunding Series A

Ladies and Gentlemen:

We have acted as bond counsel to the Northern California Power Agency (the “Agency”) in connection with the issuance of \$_____ aggregate principal amount of its Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “2019 Series A Bonds”). The 2019 Series A Bonds are being issued pursuant to the provisions of Article 4 of Chapter 5 of Division 7 of Title 1, and Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5, of the Government Code of the State of California (collectively, the “Bond Law”), and the Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), by and between the Agency and U.S. Bank National Association, as trustee (the “Trustee”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

The 2019 Series A Bonds are being issued to provide the funds necessary to refund the Agency’s outstanding Capital Facilities Revenue Bonds, 2010 Refunding Series A and related purposes.

In our capacity as bond counsel, we have reviewed the Bond Law, the Indenture, the Unit One Member Agreement, certifications of the Agency, the Trustee, the Project Participants and others, opinions of counsel to the Agency, the Trustee and to each Project Participant, and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein.

We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Agency, and, with respect to the Unit One Member Agreement, the Project Participants. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions referred to in the third paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Unit One Member Agreement. In addition, we call attention to the fact that the rights and obligations under the 2019 Series A Bonds, the Indenture and the Unit One Member Agreement, and the enforceability thereof, may be subject to bankruptcy, insolvency, receivership, reorganization, debt adjustment, fraudulent conveyance, moratorium, and other similar laws affecting creditors’ rights generally, to the application of general principles of equity,

including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, to the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and to the limitations on legal remedies against governmental entities in California (including, but not limited to, rights of indemnification).

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The 2019 Series A Bonds constitute the valid and binding special, limited obligations of the Agency payable solely from, and secured solely by, the Trust Estate.

2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Agency. The Indenture creates a valid pledge of the Trust Estate to secure the payment of the principal and redemption price of, and the interest on, the Bonds, including the 2019 Series A Bonds, to the extent set forth in the Indenture, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

3. The 2019 Series A Bonds are payable solely from the funds provided in the Indenture and shall not constitute a charge against the general credit of the Agency. The 2019 Series A Bonds are not secured by a legal or equitable pledge of, or charge or lien upon, any property of the Agency or any of its income or receipts except the Trust Estate. Neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof, any member of the Agency or any Project Participant is pledged to the payment of the principal or redemption price of, or interest on, the 2019 Series A Bonds. The 2019 Series A Bonds are not a debt of the State of California, and said State or any public agency thereof (other than the Agency), any member of the Agency or any Project Participant is not liable for the payment thereof.

4. The Unit One Member Agreement has been duly executed and delivered by the Agency and the Project Participants and constitutes a valid and binding agreement of the parties thereto.

We express no opinion as to any federal, state or local tax consequences of the ownership or disposition of the 2019 Series A Bonds or the receipt of interest thereon.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the 2019 Series A Bonds.

Respectfully submitted,

PROPOSED FORM OF OPINION OF SPECIAL TAX COUNSEL

Upon the delivery of the 2019 Series A Bonds, Nixon Peabody LLP, Special Tax Counsel to NCPA, proposes to render its tax opinion with respect to the 2019 Series A Bonds in substantially the following form:

[Closing Date]

Commission
Northern California Power Agency
Roseville, California

Re: \$_____ Northern California Power Agency
 Capital Facilities Revenue Bonds,
 2019 Refunding Series A

Ladies and Gentlemen:

We have acted as special tax counsel to the Northern California Power Agency (the “Agency”) in connection with the issuance of \$_____ aggregate principal amount of its Capital Facilities Revenue Bonds, 2019 Refunding Series A (the “2019 Series A Bonds”). The 2019 Series A Bonds are being issued pursuant to the provisions of Article 4 of Chapter 5 of Division 7 of Title 1, and Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5, of the Government Code of the State of California (collectively, the “Bond Law”), and the Indenture of Trust, dated as of December 1, 2019 (the “Indenture”), by and between the Agency and U.S. Bank National Association, as trustee (the “Trustee”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture. In rendering the opinions set forth below, we have relied upon the approving opinions of Norton Rose Fulbright US LLP, Bond Counsel to the Agency, delivered on even date herewith, relating among other things to the validity of the 2019 Series A Bonds.

The 2019 Series A Bonds are being issued to provide the funds necessary to refund the Agency’s outstanding Capital Facilities Revenue Bonds, 2010 Refunding Series A and related purposes.

In our capacity as special tax counsel, we have reviewed the Bond Law, the Indenture, the Unit One Member Agreement, the Agency’s Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 with respect to the 2019 Series A Bonds (the “Tax Certificate”), certifications of the Agency, the Trustee, the Project Participants and others, opinions of counsel to the Agency, the Trustee and to each Project Participant, and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein.

We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Agency, and, with respect to the Unit One Member Agreement, the Project Participants. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions referred to in the third paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Unit One Member Agreement. Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

The Internal Revenue Code of 1986 (the “Code”) sets forth certain requirements which must be met subsequent to the issuance and delivery of the 2019 Series A Bonds for interest thereon to be and remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the 2019 Series A Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of the 2019 Series A Bonds. Pursuant to the Indenture and the Tax Certificate, the Agency has covenanted to comply with each applicable requirement of the Code necessary to qualify the 2019 Series A Bonds as obligations described in section 103(a) of the Code. In addition, the Agency has made certain representations and certifications in the Tax Certificate. We have not independently verified the accuracy of those certifications and representations.

Under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by the Agency described above, interest on the 2019 Series A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code. We are also of the opinion that such amounts are not treated as a preference item in calculating the alternative minimum tax imposed under the Code.

We are also of the opinion that interest on the 2019 Series A Bonds is exempt from personal income taxes of the State of California under present law.

Except as stated in the preceding two paragraphs, we express no opinion as to any other federal, state or local tax consequences of the ownership or disposition of the 2019 Series A Bonds. Furthermore, we express no opinion as to any federal, state or local tax law consequences with respect to the 2019 Series A Bonds, or the interest thereon, if any action is taken with respect to the 2019 Series A Bonds or the proceeds thereof upon the advice or approval of other counsel

Very truly yours,

APPENDIX G

DEBT SERVICE REQUIREMENTS ON THE CAPITAL FACILITIES REVENUE BONDS

The following table shows the annual debt service required for the 2019 Series A Bonds, which are the only Capital Facilities Revenue Bonds to be Outstanding upon their delivery.

Bond Year Ending August 1	2019 Series A Bonds		
	Principal	Interest	Total ⁽¹⁾
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
Total ⁽¹⁾			

⁽¹⁾ Columns may not add to totals due to independent rounding.



Commission Staff Report

Date November 19, 2019

COMMISSION MEETING DATE: December 5, 2019

SUBJECT: Approval of the Services Agreement between Northern California Power Agency and Nevada Irrigation District.

AGENDA CATEGORY: Discussion/Action

FROM:	Tony Zimmer <i>TZ</i>	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Power Management	<i>If other, please describe:</i>
Department:	Power Management	

IMPACTED MEMBERS:		
All Members <input checked="" type="checkbox"/>	City of Lodi <input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
Alameda Municipal Power <input type="checkbox"/>	City of Lompoc <input type="checkbox"/>	City of Ukiah <input type="checkbox"/>
San Francisco Bay Area Rapid Transit <input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>	Plumas-Sierra REC <input type="checkbox"/>
City of Biggs <input type="checkbox"/>	City of Redding <input type="checkbox"/>	Port of Oakland <input type="checkbox"/>
City of Gridley <input type="checkbox"/>	City of Roseville <input type="checkbox"/>	Truckee Donner PUD <input type="checkbox"/>
City of Healdsburg <input type="checkbox"/>	City of Santa Clara <input type="checkbox"/>	Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Commission approval of the Services Agreement between the Northern California Power Agency (NCPA) and Nevada Irrigation District (NID) (the Service Agreement), pursuant to which NCPA will supply scheduling, control center, and reliability standards compliance services to NID, including any non-substantive modifications to the Services Agreement as may be approved by NCPA's General Counsel. Staff also recommends that the Commission authorize NCPA's General Manager to execute the Services Agreement, acting on behalf of NCPA, including any non-substantive modifications to the Services Agreement as may be approved by NCPA's General Counsel.

BACKGROUND:

NID issued a Request for Information on April 9, 2019, seeking proposals for scheduling and dispatch services for NID's Deer Creek Powerhouse. In response to NID's Request for Information, NCPA submitted a Statement of Qualifications and proposal to supply scheduling, control center, and reliability standards compliance services for NID's Deer Creek Powerhouse. On September 3, 2019, NID formally selected NCPA's proposal.

DISCUSSION:

Staff, in coordination with NID, has developed a Services Agreement under which NCPA will supply scheduling, control center, and reliability standards compliance services for NID's Deer Creek Powerhouse. The key provisions contained in the Services Agreement included a defined scope of services, terms for compensation, and terms to limit NCPA's liability.

A copy of the Services Agreement is attached to this staff report for your reference.

FISCAL IMPACT:

In consideration for NCPA's provision of services, NID shall pay NCPA an amount equal to Thirty Thousand Dollars (\$30,000.00) for Services rendered during the first one (1) year period. For each subsequent one (1) year period during the term of the Agreement, the amount charged to NID will be escalated at a rate of two percent (2%) per year.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation provided herein was presented to the Facilities Committee on November 6, 2019. No formal action was taken by the Facilities Committee due to the lack of a quorum, however, the Members present at the meeting voiced their support for the recommendation provided herein and no other meeting attendees had any objections.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Randy S. Howard", is written over the typed name.

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 19-107
- NID Services Agreement

RESOLUTION 19-107

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVAL OF THE SERVICES AGREEMENT BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND NEVADA IRRIGATION DISTRICT

(reference Staff Report #243:19)

WHEREAS, Nevada Irrigation District (NID) issued a Request for Information on April 9, 2019, seeking proposals for scheduling and dispatch services for NID's Deer Creek Powerhouse; and

WHEREAS, in response to NID's Request for Information, Northern California Power Agency (NCPA) submitted a statement of qualifications and proposal to supply scheduling, control center, and reliability standards compliance services for NID's Deer Creek Powerhouse; and

WHEREAS, on September 3, 2019, NID formally selected NCPA's proposal; and

WHEREAS, NCPA staff, in coordination with NID, has developed a Services Agreement under which NCPA will supply scheduling, control center, and reliability standards compliance services for NID's Deer Creek Powerhouse; and

WHEREAS, the key provisions contained in the Services Agreement included a defined scope of services, terms for compensation, and terms to limit NCPA's liability; and

WHEREAS, in consideration for NCPA's provision of services, NID shall pay NCPA an amount equal to Thirty Thousand Dollars (\$30,000.00) for Services rendered during the first one (1) year period, and for each subsequent one (1) year period during the term of the Agreement, the amount charged to NID will be escalated at a rate of two percent (2%) per year; 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 adopts and approves the Services Agreement between the NCPA and NID, pursuant to which NCPA will supply scheduling, control center, and reliability standards compliance services to NID, including any non-substantive modifications to the Services Agreement as may be approved by NCPA's General Counsel. Furthermore, the Commission of Northern California Power Agency authorizes NCPA's General Manager to execute the Services Agreement, acting on behalf of NCPA, including any non-substantive modifications to the Services Agreement as may be approved by NCPA's General Counsel.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2019 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

ROGER FRITH
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY

SERVICES AGREEMENT
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
NEVADA IRRIGATION DISTRICT

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This SERVICES AGREEMENT ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency of the State of California ("NCPA"), and Nevada Irrigation District, an independent special district formed under the Irrigation Code of the State of California ("Customer"). NCPA and Customer are together sometimes referred to herein individually as a "Party" and collectively as the "Parties".

This Agreement is made as of _____, 20__ (the "Effective Date") in Roseville, California.

Section 1. RECITALS

This Agreement is entered into based on the following facts, among others:

1.1 NCPA has heretofore been duly established as a joint powers agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale.

1.2 Customer has heretofore been duly established as an irrigation district, pursuant to the Irrigation District Law (California Water Code section 20500 *et seq.*), and owns and operates certain generating facilities for the benefit of its customers.

1.3 NCPA is a certified Scheduling Coordinator in accordance with the CAISO Tariff.

1.4 NCPA has established facilities, staff and the capability for the provision of Services to Customer.

1.5 Customer desires NCPA to provide Services to Customer.

1.6 NCPA is willing to provide Customer with Services pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, NCPA and Customer agree as follows:

Section 2. DEFINITIONS

2.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 2 of this Agreement shall have the meaning indicated in Appendix A Master Definition Supplement of the CAISO Tariff:

2.1.1 "Agreement" means this Services Agreement, including all Appendices, attached hereto.

2.1.2 "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. local time.

2.1.3 "Calendar Day" means all days, including Saturdays, Sundays or Federal Reserve Bank holidays.

2.1.4 "California Independent System Operator Corporation" or "CAISO" means the non-profit public benefit corporation responsible for the provision of fair and open transmission access, and maintaining reliable and efficient operation of that portion of the electric grid contained within its defined balancing authority area, pursuant to the California Public Utilities Code, or its successor entity.

2.1.5 "CAISO Tariff" means the CAISO FERC Electric Tariff.

2.1.6 "Commission" means the NCPA Commission established by the Joint Powers Agreement.

2.1.7 "Customer" has the meaning set forth in the preamble hereto.

2.1.8 "Effective Date" has the meaning set forth in the preamble hereto.

2.1.9 "Electric System" means all properties and assets, real and personal, tangible and intangible, of the Customer now or hereafter existing, used or pertaining to the generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to

the extent the Customer is not the sole owner of an asset or property or to the extent that an asset or property is used in part for generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, only the Customer's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.

2.1.10 "Event of Default" has the meaning set forth in Section 10.1 of this Agreement.

2.1.11 "FERC" means the Federal Energy Regulatory Commission, or its regulatory successor.

2.1.12 "General Manager" means the General Manager of NCPA.

2.1.13 "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry within the United States of America during the relevant time period, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with NERC or WECC approved business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the electric utility industry within the United States of America.

2.1.14 "Joint Powers Agreement" means the Amended and Restated Northern California Power Agency Joint Exercise of Powers Agreement dated as of January 31, 2008.

2.1.15 "NCPA" has the meaning set forth in the preamble hereto.

2.1.16 "NERC" means the North American Electric Reliability Corporation, or its successor.

2.1.17 "Party" or "Parties" has the meaning set forth in the recitals hereto; provided that "Third Parties" are entities that are not party to this Agreement.

2.1.18 “Reliability Standards” means requirements approved by FERC under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system.

2.1.19 “Scheduling Coordinator” means an entity certified by the CAISO for the purposes of undertaking the functions of a Scheduling Coordinator specified in the CAISO Tariff, including, but not limited to, submitting and settling bids, self-schedules, and trades in the CAISO markets.

2.1.20 “Security Account” means an account established at NCPA pursuant to this Agreement. The Security Account is established to: (1) make timely payments to the CAISO under the CAISO Tariff, and protect NCPA from potential Customer default by providing funds and time to cure, (2) provide working capital for NCPA’s provision of Services and to bridge timing differences between the receipt of payments from Customer and the date payments are due to the CAISO, (3) satisfy CAISO security deposit requirements, if any, and (4) provide security against Customer default.

2.1.21 “Significant Operational Change” shall have the meaning as set forth in Section 15.20 of this Agreement.

2.1.22 “Significant Regulatory Change” shall have the meaning as set forth in Section 15.20 of this Agreement.

2.1.23 “Third Party” means an entity that is not a Party to this Agreement.

2.1.24 “Uncontrollable Forces” means storm, flood, lightning, earthquake, tsunami, fire, explosion, failure of facilities not due to lack of proper care or maintenance, civil disturbance, labor dispute, sabotage, war, national emergency, restraint by court or public authority, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or other causes beyond the control of the affected Party which such Party could not reasonably have been expected to avoid by exercise of Good Utility Practice, due diligence and foresight.

2.1.25 “WECC” means the Western Electricity Coordinating Council, or its successor(s).

2.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms “herein,” “hereto,” “herewith” and “hereof” are references to this Agreement taken as a whole and not to any particular provision; the term “include,” “includes” or “including” shall mean “including, for example and without limitation;” and references to a “Section,” “subsection,” “clause,” “Appendix,” “Schedule”, or “Exhibit” shall mean a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law, regulation or ordinance shall be a reference to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended from time to time, or its successor. A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. A reference to a “day” shall mean a Calendar Day unless otherwise specified. The singular shall include the plural and the masculine shall include the feminine, and vice versa.

Section 3. PURPOSE OF AGREEMENT

The purpose of this Agreement is to set forth the terms and conditions under which NCPA will supply Customer with Services.

Section 4. SERVICES TO BE PROVIDED AND STANDARDS OF PERFORMANCE

4.1 NCPA Duties. The duties of NCPA under this Agreement are to provide services to Customer as fully described in Appendix A hereto (“Services”).

4.2 Customer Duties. The duties of the Customer under this Agreement are to:

4.2.1 Timely provide certain information to NCPA that is required for NCPA to perform Services, as fully described in Appendix A hereto.

4.2.2 Make timely payments to NCPA for all CAISO charges and credits for services invoiced by NCPA to Customer in accordance with Section 8 of this Agreement.

4.2.3 Provide staff and other assistance as may be required from time to time to the extent necessary for NCPA to fulfill its duties as described in Section 4.1 of this Agreement.

4.2.4 Comply with all requirements of the CAISO Tariff, as applicable, in respect to the operation and maintenance of its Electric System and other facilities covered under this Agreement.

4.2.5 Provide security or other deposits required by the CAISO, if any, to NCPA in accordance with Section 11 of this Agreement.

4.2.6 Initially fund and maintain sufficient deposits in its Security Account, if any, in accordance with Section 12 of this Agreement.

4.2.7 Make timely payment of all costs associated with NCPA's provision of Services, as set forth in this Agreement.

4.2.8 Defend and indemnify NCPA in regard to Services provided to Customer by NCPA.

4.3 Standard of Performance. NCPA will perform Services using the level of skill and attention reasonably required to complete the services in a competent and timely manner.

4.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement.

4.5 Time. NCPA shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 4.3, and to satisfy NCPA's obligations hereunder.

Section 5. TERM AND TERMINATION

5.1 Term. The initial term of this Agreement shall begin on the Effective Date and shall continue uninterrupted through _____, 20__ (the "Initial Term"). At the end of the

initial term of this Agreement, or any subsequent term of this Agreement, the term of this Agreement shall automatically extend for an additional one (1) year period unless a Party provides written Notice of Termination pursuant to Section 5.2, of its election not to automatically extend the term of the agreement.

5.2 Termination. This Agreement may be terminated by either Party at the end of the Initial Term, or at the end of any subsequent one (1) year extension, by providing written notice to the other Party at least ninety (90) days prior to the end of the current term of the Agreement (“Notice of Termination”).

5.3 No Effect on Prior Liabilities. Termination of this Agreement will not terminate any Customer ongoing or un-discharged liabilities, credits or obligations of Customer, including any contingent liabilities, credits or obligations, resulting from this Agreement until they are satisfied in full, or for which Customer has provided a mechanism acceptable to NCPA, for the satisfaction in full thereof.

Section 6. INDEMNITY

6.1 Limitation of Liability. Neither NCPA nor Customer shall at any time be liable for any injury or damage occurring to the other, or any third person or property, from any cause whatsoever arising out of this Agreement. Each Party agrees to indemnify, defend and hold harmless the other Party, including their respective governing boards, officials, agents and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys’ fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Party, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

6.2 Notice. The Parties agree to give each other prompt notice of the making of any claim or the commencement of any action, suit or proceeding covered by the provisions of this Section 6.

6.3 Notice of Tender. Each Party will provide the other Party prompt notice of any claim or liability that would trigger the obligation to indemnify and defend the other Party under Section 6.1. Any such notice must be in writing and delivered consistent with the notice provisions of this Agreement.

Section 7. COMPENSATION

7.1 Compensation for Services. Customer shall pay NCPA the amounts set forth in Appendix B for NCPA's provisions of Services to Customer in accordance with the terms and conditions of this Agreement. Such amount shall be billed to Customer in accordance with Section 8 of this Agreement.

7.2 CAISO Charges and Credits. All charges and credits invoiced by the CAISO to NCPA associated with services provided under this Agreement will be charged or credited to Customer, and shall be paid to NCPA by Customer in addition to the compensation stated in Section 7.1. Such CAISO charges and credits shall be billed to Customer in accordance with Section 8 of this Agreement.

Section 8. BILLING AND PAYMENT

8.1 Invoices. NCPA will issue a monthly invoice to Customer for estimated and actual CAISO charges and credits, costs associated with NCPA's provision of Services, and all other costs for services provided in accordance with this Agreement. Such invoices will be made pursuant to the requirements and procedures provided for in this Agreement. At NCPA's discretion, invoices may be issued to Customer using electronic media or physical distribution.

8.2 Payment of Invoices. All non-emergency invoices delivered by NCPA to Customer are due and payable thirty (30) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the next following Business Day. NCPA may apply Customer's Security Account to the payment of all or any portion of an invoice to Customer, provided that application of such funds from the Security Account shall not relieve Customer from any late payment charges pursuant to Section 8.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by Customer, NCPA shall deposit

the relevant portion of the payment into the Security Account and credit such deposit to Customer. Emergency invoices delivered by NCPA shall be due and payable on the date indicated on such invoice, or as indicated in Section 12.4.

8.3 Late Payments. Any amount due and not paid by Customer in accordance with Sections 8.2, Section 11 and Section 12 shall be considered late and bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

8.4 Billing Disputes. Customer may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days of the date of such invoice; nonetheless Customer shall pay the full amount billed when due. If Customer does not timely question or dispute the accuracy of any invoice in writing the invoice shall be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, NCPA shall issue a corrected invoice and refund any amounts that may be due to Customer. If NCPA and Customer fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after Customer has disputed it, the General Manager shall promptly submit the dispute to the Commission for resolution. If the Commission and Customer fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days of its submission to the Commission, the dispute may then be resolved under the dispute resolution procedures set forth in Section 13 of this Agreement. Provided, however, that prior to resorting to alternative dispute resolution procedures, the full amount of the disputed invoice must have been paid.

8.5 Billing/Settlement Data. NCPA shall make billing and settlement data available to Customer upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Customer using electronic media (e.g. electronic data portal). Procedures and formats for the provision of such electronic data submission may be as established by the NCPA Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require Customer to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

8.6 Examination of Books and Records. Customer shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files or other documents or material, in electronic or any other form, that NCPA prepares or obtains pursuant to this Agreement and that relate to the Services provided hereunder, shall be stored and maintained by NCPA in accordance with NCPA's records retention policies and procedures, as such may be modified from time to time.

Section 9. COOPERATION AND FURTHER ASSURANCES

Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

Section 10. DEFAULTS

10.1 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Party (the "Defaulting Party"):

(i) the failure of Customer to make any payment (other than an emergency addition to the Security Account pursuant to Section 12.4) in full to NCPA when due, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure;

(ii) the failure of Customer to make any payment of an emergency addition to the Security Account when due pursuant to Section 12.4;

(iii) the failure of a Party to perform any covenant or obligation of this Agreement where such failure is not cured within thirty (30) Calendar Days following receipt of

a notice from the other Party demanding cure. Provided, that this subsection shall not apply to any failure to make payments specified by subsection 10.1 (i) or (ii)); or

(iv) if any representation or warranty of a Party material to the Services provided hereunder shall prove to have been incorrect in any material respect when made and the Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days of the date of receipt of notice from a Party demanding cure.

10.2 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces. Provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager, or in the case of Customer, to the representative selected by Customer, using telephone communication within two (2) Business Days of the onset of the Uncontrollable Force, and subsequently provide written notice to the Party's representative within ten (10) Business Days of the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch. Provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

10.3 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 10.1 above, as may be applicable.

10.4 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 10.1, without limiting other

rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action a non-defaulting Party may have against the defaulting Party, a non-defaulting Party may take any or all of the following actions:

(i) NCPA may suspend the provision of services under this Agreement to Customer;

(ii) NCPA may demand that Customer provide further assurances to guarantee the correction of the default;

(iii) The non-defaulting Party may terminate this Agreement as to the defaulting Party, on ten (10) Calendar Days prior written notice to the Defaulting Party;

(iv) NCPA may utilize the funds available in Customer's Security Account to cure and default under Section 10.1(i) and thereafter demand replenishment of the Security Account.

10.5 Special Covenants Regarding Security Account. In the event that Customer's Security Account is insufficient to cover all invoices for costs incurred under this Agreement delivered to Customer, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, Customer shall cooperate in good faith with NCPA and shall cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary to replenish its Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default with all due haste.

10.6 Effect of Termination or Suspension.

10.6.1 Generally. The termination or suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

10.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA in accordance with Section 10.4 (i), Customer shall pay 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, or other reasonable and necessary costs associated with such suspension and any portion of the costs associated with NCPA's provision of Services that were not recovered from Customer as a result of such suspension.

10.6.3 Termination. If this Agreement is terminated by a Party in accordance with Section 10.4 (iii), the Defaulting Party shall pay any and all costs incurred by the other Party 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 as to Customer, any portion of costs associated with NCPA's provision of Services that were not, or will not be, recovered from Customer as a result of such termination.

Section 11. CAISO SECURITY DEPOSIT AND CREDIT REQUIREMENTS

Any credit requirements, including, but not limited to, security, collateral, unsecured credit, or other deposits required by the CAISO, if any, shall be provided by Customer prior to NCPA providing Services under this Agreement, and shall be maintained as may be required thereafter pursuant to the CAISO Tariff. Failure to maintain sufficient credit, security, collateral, unsecured credit, or other deposits may impact NCPA's ability to perform certain Services under this agreement. NCPA shall maintain a detailed accounting of Customers credit, security, collateral, unsecured credit or other deposits. Any changes in credit, security, unsecured credit or other deposits required by the CAISO Tariff may be provided by NCPA from Customer's Security Account, and NCPA shall invoice Customer within two (2) Business Days for such required amounts, and will use the funds collected from Customer to fund the Security Account.

Section 12. SECURITY ACCOUNT

Any Customer deposits into the Security Account pursuant to this Agreement shall be separate from and in addition to any security accounts maintained pursuant to any other agreements between NCPA and the Customer, NCPA and any Third Person, or any other such security account required of Customer.

12.1 Initial Amounts. Prior to NCPA providing Services, Customer shall deposit into a Security Account held by NCPA an amount equal to the highest three (3) months of estimated CAISO invoices for the succeeding twelve (12) months; provided, however, that such deposit may be satisfied in whole or in part either in cash or through a clean, irrevocable letter of credit satisfactory to the General Manager. NCPA shall maintain a detailed accounting of Customer's deposit in the Security Account. For the purpose of clarity, as of the Effective Date of this Agreement the initial amount to be deposited by Customer, as required pursuant to Section 12.1, shall be deemed to be zero dollars (\$0.00).

12.2 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of all costs Customer shall be obligated to pay under this Agreement. Following such review, NCPA shall determine whether Customer has a sufficient balance in the Security Account. To the extent that Customer's balance in the Security Account is greater than one hundred and ten percent (110%) of the amount required by Section 12.1, NCPA shall credit such amount as soon as practicable to Customer's next All Resources Bill. To the extent that Customer's balance in the Security Account is less than ninety percent (90%) of the amount required by Section 12.1, NCPA shall add such amount as soon as practicable to Customer's next All Resources Bill, or as necessary, to a special invoice to Customer. Credits or additions shall not be made if Customer satisfies these Security Account requirements in whole through the use of a letter of credit, provided that the amount of the letter of credit shall be adjusted by Customer as necessary in a like manner to assure an amount equal to the highest three (3) months of CAISO invoices is available to NCPA.

12.3 Use of Security Account Funds.

12.3.1 NCPA may use any and all funds deposited into the Security Account (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder,

irrespective of whether NCPA has issued an invoice for such costs to Customer or whether Customer has made timely payments of invoices. Should Customer satisfy its Security Account requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy obligations hereunder.

12.3.2 If funds deposited into the Security Account, or provided through a letter of credit, are used by NCPA to pay any costs it incurs hereunder, NCPA, pursuant to Section 8.5, will maintain a detailed accounting of Customer's shares of funds withdrawn from the Security Account or letter of credit.

12.4 Emergency Additions. In the event that the funds are withdrawn pursuant to Section 12.3 of this Agreement, or if the Security Account is insufficient to allow payment of a CAISO invoice, NCPA shall notify Customer and then prepare and send a special or emergency assessment to Customer. Customer shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment or consent to and direct NCPA to draw on any existing letter of credit Customer has established for such purposes.

12.5 Accounting and Interest. NCPA shall maintain a detailed accounting of Customer's deposits into and withdrawals from the Security Account. Monies on deposit in the Security Account shall be invested by NCPA along with the other funds of NCPA in accordance with policies set by the Commission from time to time in its sole discretion. Interest, if any, earned on the Security Account shall be credited to Customer's Security Account. Any losses in the Security Account caused by early termination of investments or otherwise shall be charged to Customer's Security Account. NCPA makes no representation that the Security Account will earn any particular amount of interest or any interest, and Customer acknowledges that the amounts in the Security Account may lose value. NCPA shall not be liable for any investment losses to Customer's funds held in the Security Account.

12.6 Return of Funds. On the termination of this Agreement Customer's Security Account funds shall be paid to Customer ninety (90) days after the effective date of such termination. NCPA shall, in its sole discretion, as determined by the General Manager, estimate

the then outstanding liabilities of Customer, including any estimated contingent liabilities, and shall retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. After such determination by the General Manager, the balance of Customer's Security Account will be refunded to Customer within sixty (60) days.

Section 13. SETTLEMENT OF DISPUTES

13.1 Settlement of Disputes. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Customer and NCPA agree to resolve the dispute in accordance with the following:

13.1.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute.

13.1.2 The representative shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

13.1.3 If the issue remains unresolved after sixty (60) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

13.1.4 This informal resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, *et seq.*

Section 14. STATUS OF NCPA

At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of Customer. Customer shall have the right to control NCPA only insofar as the results of NCPA's Services rendered pursuant to this Agreement; however, otherwise Customer shall not have the right to control the means by which NCPA accomplishes Services rendered 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 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 Customer, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Customer and entitlement to any contribution to be paid by Customer for employer contributions and/or employee contributions for PERS benefits.

Section 15. MISCELLANEOUS

15.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. Confidential or trade secret information shall be marked or expressly identified as such.

If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any of the other Party's (the "Supplying Party") confidential data or information ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party's costs reasonably incurred with respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, and the Receiving Party's attorney's fees; or

(ii) the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

15.2 Indemnification and Hold Harmless. Subject to the provisions of Sections 6 and 15.4, each Party agrees to indemnify, defend and hold harmless the other Party, including their respective governing boards, officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Party, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

15.3 Survival of Obligations. The defense and indemnity obligations of Section 15.2 shall survive the termination of this Agreement.

15.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL A PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

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.

15.5 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the other Party. Any such waiver by the other Party in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

15.6 Amendments. Unless otherwise provided for in this Agreement, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.6.1 Amendments of Appendices. The Appendices that are attached to and made part of this Agreement include detailed principles, descriptions and procedures for NCPA's provision of Services to Customer. Upon mutual written consent of the Designated Representative of each Party, the Appendices of this Agreement may be amended from time to time, without the requirement of an approval as required pursuant to Section 15.6; provided, however, Appendix A, Appendix B and Appendix E may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.7 Assignment of Agreement.

15.7.1 Binding Upon Successors. This Agreement, including the Appendices attached hereto, shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

15.7.2 No Assignment. This Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, where such consent shall not be unreasonably withheld.

15.8 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as

to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

15.9 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

15.10 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

15.11 Notices. Any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered to the person specified below (the "Designated Representative"):

NCPA:
Tony Zimmer
Assistant General Manager, Power Management
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

Customer:
Rem Scherzinger
General Manager
Nevada Irrigation District
1036 West Main Street
Grass Valley, CA 95945

All notices shall be deemed delivered when personally delivered, two (2) Business Days after deposit in the United States mail first class postage prepaid, or on the first Business Day following delivery through electronic communication. A Party may change its Designated Representative by providing notice to the other Party, and such change shall not constitute an amendment to this Agreement.

15.12 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that

this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms.

15.13 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

15.14 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

15.15 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

15.16 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 15.2 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

15.17 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor

shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

15.18 Integration; Incorporation. This Agreement, including all the appendices attached hereto, represents the entire and integrated agreement between Customer and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral. All appendixes attached hereto are incorporated by reference herein.

15.19 Reliability Requirements. Unless otherwise specifically provided for herein, the Parties acknowledge that Customer and NCPA are both individually responsible for compliance with the WECC and NERC Reliability Standards and criteria applicable to the functions for which each Party are respectively registered with NERC. The references to WECC and NERC Reliability Standards, if any, throughout this Agreement do not make any alteration or enlargement of the requirements or standards applicable to each Party beyond their individual registrations with NERC.

15.20 Significant Regulatory Change or Operational Change.

15.20.1 A “Significant Regulatory Change” shall be deemed to occur if FERC, the CPUC, the CAISO or any other court, public authority, governmental, or other lawfully established civilian authorities having jurisdiction, issues an order or decision or adopts or modifies a tariff or filed contract, or enacts a law that materially interferes with the ability of any Party to perform any of its obligations under this Agreement.

15.20.2 A “Significant Operational Change” shall be deemed to occur due to (i) material amendments and/or revisions to any tariffs, contracts or other applicable documents referenced in this Agreement that directly affect a Party’s obligations under this Agreement, (ii) an action taken by the Balancing Authority that may have a material detrimental impact on the way a Party operates or must operate its Electric System, or that directly affects a Party’s obligations under this Agreement, or (iii) a significant change in Customer’s supply and resource portfolio that may result in material increase in the scale

and scope of services contemplated at the Effective Date of this Agreement (e.g., Customer's generation size increases by ten percent).

15.20.3 Notification of Significant Regulatory Change or Operational Change. At any time during the term of this Agreement, if any Party anticipates the occurrence of a Significant Regulatory Change or Significant Operational Change that may reasonably be expected to materially interfere with the ability of any Party to perform any of its obligations under this Agreement, or such Significant Regulatory Change or Significant Operational Change occurs, such Party shall provide written notice to the other Party as soon as practicable. The notice shall contain a description of the Significant Regulatory Change or Significant Operational Change, including expected time schedules, and of the effect of the significant change to the Parties. If the Party giving notice believes that it will be necessary to amend this Agreement to address the anticipated change or change when it has occurred, then the notice to the other Party may include a proposal that the Parties meet to negotiate an appropriate amendment to this Agreement. The Parties shall promptly enter into good faith negotiations and attempt to achieve a mutually agreeable modification to this Agreement to address any such Significant Regulatory Change or Significant Operational Change, striving to maintain the original intent of the Agreement.

15.20.4 Amendment of Agreement. If the Parties agree that an amendment to this Agreement is necessary to address a Significant Regulatory Change or Significant Operational Change, the Parties will proceed to negotiate such amendment in good faith. If the Parties have not reached agreement within 120 calendar days of the date of the first meeting, either Party may terminate this Agreement pursuant to Section 5.2.

IN WITNESS WHEREOF, NCPA and Customer have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.

Northern California Power Agency

Nevada Irrigation District

RANDY S. HOWARD, General Manager

REM SCHERZINGER, General Manager

Attest:

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Approved as to Form:

General Counsel

Counsel

APPENDIX A

SCOPE OF SERVICES

All services provided by NCPA to Customer pursuant to this Agreement are described in this Appendix A (collectively referred to herein as “Services”).

Section 1. Scheduling Coordination Services

1.1 Description of Service. NCPA shall provide Scheduling Coordination Services to Customer in accordance with this Agreement, the CAISO Tariff, and other rules and requirements, as applicable. Scheduling Coordination Services include the following duties, and are furthermore described in Appendix C of this Agreement:

1.1.1 NCPA will assist Customer with the process of transferring Customer’s resources from the Scheduling Coordinator portfolio in which they currently reside, to NCPA’s Scheduling Coordinator portfolio.

1.1.2 Development and submission of schedules and Bids for Customer’s resources, trades, ancillary services and/or other CAISO products in the CAISO energy and ancillary services markets, or other markets, as applicable. All schedules and Bids will be made and submitted to the CAISO in accordance with Appendix C and the CAISO Tariff, or other balancing authority areas in accordance with the applicable rules and requirements. Customer’s owned and operated generation facilities for which NCPA supplies Scheduling Coordination Services on behalf of are listed in Appendix E.

1.1.3 NCPA shall perform outage coordination and management for Customer’s generating resource planned and unplanned outages in accordance with applicable rules and requirements, including, but not limited to, the CAISO Tariff and associated operational procedures.

1.1.4 Obtain and maintain settlement quality meter data in accordance with the CAISO Tariff, the MSA CAISO ME or MSA SC, as applicable, to be used for multiple purposes, including, but not limited to settlement validation.

1.1.5 Submit Resource Adequacy supply plans and compliance filings.

1.1.6 Review, validate, and reconcile CAISO settlement charges and credits for services, file timely disputes and pursuant dispute resolution.

1.1.7 Provide access to/develop and deliver operational reports describing CAISO market awards, settlement outcomes, outage reports and/or other performance metrics; such reports shall be described in the applicable scheduling and operating procedures set forth in Appendix C and Appendix D.

1.1.8 Providing pre-scheduling, real-time scheduling and optimization (including development of Bidding strategies) services for Customer's resources.

1.1.9 Coordination of daily and intra-daily operational communications with Customer's operational counterparts.

1.1.10 Performing transactional and bilateral checkouts and settlements for physical and financial energy, and energy related product transactions, and initiating and processing related disputes.

Section 2. Control Center Services

2.1 Description of Service. NCPA shall provide control center services ("Control Center Services") for Customer's owned and operated generation facilities for which NCPA supplies Scheduling Coordination Services. Such duties shall include the following, and are furthermore described in Appendix D of this Agreement:

2.1.1 Monitoring and dispatching of Customer generation facilities.

2.1.2 Management of unplanned outages and system emergencies.

2.1.3 Monitor real time telemetry, data flow and manage system data.

2.1.4 Call-out field and emergency service personnel in response to certain operational conditions.

2.1.5 Monitor alarms and operate Customer generation facilities in accordance with Operating Procedures and applicable requirements, including regulatory and/or environmental requirements.

2.1.6 Operational coordination, communication and monitoring in coordination with Customer's generation facility personnel and Third Parties. Activities associated with Reliability Standards compliance are performed in accordance with Section 3 of this Appendix A.

Section 3. Reliability Standards Compliance Services.

3.1 Description of Service. NCPA shall act on behalf of, or in coordination with Customer, regarding compliance activities and requirements associated with certain Reliability Standards ("Reliability Standards Compliance Services") for Customer's owned and operated generation facilities for which NCPA supplies Scheduling Coordination Services. Such duties shall include the following, and are furthermore described in Appendix F of this Agreement:

3.1.1 NCPA shall maintain its functional registration with NERC and WECC, to enable NCPA to act on behalf of, or in coordination with Customer, for performing compliance activities to manage and comply with certain WECC and NERC Reliability Standards and criteria. The functions and requirements for which NCPA shall act on behalf of, or in coordination with Customer, are described and listed in Appendix F.

3.1.2 Any violation reporting, including any self-reported violations, shall be made by Customer.

Section 4. Information Requirements

4.1 Information Requirements. To enable NCPA to perform the duties associated with Services provided to Customer in accordance with this Agreement, Customer shall timely provide the following information, instructions, and communications to NCPA:

4.1.1 Meter Data. Customer shall provide NCPA access to settlement quality meter data from resources scheduled and Bid by NCPA for Customer under this Agreement, and to maintain such meters and metering equipment in accordance with the standards and requirements as set forth in the CAISO Tariff.

4.1.2 Operational Data. Customer shall provide NCPA access to certain real-time operational systems and information (as mutually determined by NCPA and

Customer) including, but is not limited to: (i) Supervisory Control and Data Acquisition ("SCADA") systems, (ii) Programmable Logic Controllers ("PLC"), (iii) Real-time telemetry and recording devices, and (iv) information required to enable NCPA to provide Reliability Standards Compliance Services.

4.1.3 Scheduling and Operating Procedures. Customer, in coordination with NCPA, shall prepare written scheduling procedures ("Scheduling Procedures") and operating procedures ("Operating Procedures") related to Customer generation resources that convey Customer's guidelines for how NCPA is to perform certain Scheduling Coordination Services and Control Center Services under this Agreement. Such Scheduling Procedures and Operating Procedures shall be conveyed to NCPA sufficiently in advance of their application so as to reasonably enable NCPA to perform such activities.

Section 5. The Parties acknowledge that prior to the date on which specific Services shall be supplied by NCPA for a specific Customer generating resource, the Parties may be required to perform certain work and other activities to establish and enable the systems and processes that are required to perform Services as of the date on which Services for a specific Customer generating resource is to commence. Such activities may include establishing common business practices, developing business requirements, establishing connectivity of systems and equipment, collection of operating parameters (e.g., SCADA points), coordinated training of staff, and other activities that may be required to enable NCPA to provide, and Customer to receive, Services. During this transition period (the "Transition Period"), the Parties agree to cooperate in good faith to establish and enable the systems and processes that are required to perform Services. All activities to be performed by NCPA during the Transition Period are included as part of the comprehensive Services provided to Customer, pursuant to this Agreement, even though such work and activities may be performed by NCPA prior to the date on which specific Services shall be supplied by NCPA for a specific Customer generating resource.

APPENDIX B

COMPENSATION SCHEDULE

Pursuant to Section 7.1 of this Agreement, Customer shall pay NCPA the amounts listed in this Appendix B (the "Compensation Schedule") in consideration for Services provided under this Agreement.

Section 1. Compensation Schedule

1.1 In consideration for NCPA's provision of all Services, Customer shall pay NCPA an amount equal to Thirty Thousand Dollars (\$30,000.00) for Services rendered during the first one (1) year period in which NCPA is supplying Services to Customer; more specifically, the first completed one (1) year period shall begin on January 1, 2020, and shall continue through December 31, 2020. For each subsequent one (1) year period of the term of this Agreement, Customer shall pay NCPA an amount equal to: (i) the sum of the annual amount charged to Customer during the prior year escalated at a rate of 2.0% per year. Such annual amount shall be billed to Customer in twelve (12) equal monthly installments, in accordance with Section 8 of this Agreement.

1.2 In addition to the amounts of compensation set forth in Section 1.1 of this Appendix B, Customer shall also pay NCPA an amount equal to the actual cost for any direct costs NCPA incurs, if any, for developing, establishing and installing the telecommunications, or other operational data communications connections, that are required for NCPA to provide Services under this Agreement. The compensation contemplated in this Section 1.2 of Appendix B is intended to be limited in scope, and is intended to apply only to any required installation of physical equipment (e.g., communications lines) that may be required to enable NCPA to collect data from, or to transmit data to, Customer's generation facilities. For clarity, the compensation contemplated in this Section 1.2 is not intended for recovery of general costs that NCPA may incur which are considered to be included in the scope of Services, including activities contemplated during the Transition Period, and whereby such costs are compensated pursuant to Section 1.1 of this Appendix B. Prior to incurring any actual costs for such connections, such expenditures shall be discussed and mutually agreed to by the Parties.

APPENDIX C

SCHEDULING PROCEDURES

The following Scheduling Procedures are separately attached to this Agreement as Appendix C:

1. NID-PM-401 (Scheduling and Bidding)
2. RESERVED

APPENDIX D

OPERATING PROCEDURES

The following Operating Procedures are separately attached to this Agreement as Appendix D:

1. NID-PM-101 (Voice and Data Communications Procedure)
2. NID-PM-102 (Outage Coordination and Operational Reliability Data Procedure)
3. NID-PM-107 (Event Reporting Operating Plan Procedure)
4. NID-PM-108 (Operating Instructions and Emergency Assistance Procedure)
5. NID-PM-302 (Voltage Control, AVR and PSS Operations Procedure)
6. NID-PM-304 (Project Operations and Controls Procedure)
7. NID-PM-404 (Loading Orders Procedure)

APPENDIX E

CUSTOMER RESOURCES

The following is a list of Customer's resources for which NCPA provides Services pursuant to this Agreement.

- Deer Creek Powerhouse
 - Resource ID: DEERCR_6_UNIT 1
 - CAISO P-Node: POD_DEERCR_6_UNIT 1-APND
 - Resource Type: Hydroelectric
 - Resource Owner: Nevada Irrigation District
 - Resource Capacity: 5.7 MW
 - CEC-RPS-ID#: 60040A

Appendix E may be amended to add and/or remove Customer resources pursuant to Section 15.6.1 of this Agreement.

APPENDIX F

RELIABILITY STANDARDS COMPLIANCE SERVICES MATRIX

Pursuant to Section 3 of Appendix A, NCPA shall provide Reliability Standard Compliance Services to Customer for the Reliability Standards and criteria listed in the Reliability Standards Compliance Services Matrix included in this Appendix F. NCPA and Customer shall meet and confer at least once every six (6) month to review the coordinated functional registration of tasks assigned to each Party, as reflected in the Reliability Standards Compliance Services Matrix, to determine if the Reliability Standards Compliance Services Matrix needs to be updated or revised based on any changes to the respective Reliability Standards contained therein.

Reliability Standards Compliance Services Matrix

RESERVED FOR ATTACHMENT OF COMPLIANCE SERVICES MATRIX

RESOLUTION NO. 19-109
RESOLUTION OF THE COMMISSION OF THE
NORTHERN CALIFORNIA POWER AGENCY

COMMENDING

KEN SPEER

WHEREAS, Ken Speer has provided 12 years of dedicated service to the Northern California Power Agency (Agency) as the Assistant General Manager for the Generation Services Business Unit; and

WHEREAS, Ken was key to the development of the Lodi Energy Center Project and earned the respect of NCPA Members for his praiseworthy management of their projects; and

WHEREAS, Ken held the respect and trust of his employees and kept a strong relationship with Labor Union Leadership; and

WHEREAS, Ken delivered exemplary safety, production and performance for the Agency's Generation Services Business Unit; and

WHEREAS, Ken was a great storyteller and was particularly fond of the one about his participation in the 1985 Plastic Classic Sailboat Regatta in San Francisco and the Very Special Master of Ceremonies; and

WHEREAS, Ken played a key role in the "Alta Rock Fish Taco Wager" to buy fish tacos for Jane Cirrincione and Dave Dockham if the Alta Rock Project was not approved by the Commission, or if it was approved, Jane and Dave were to buy fish tacos for Ken; and

WHEREAS, Ken was a significant member of the Executive Team and could be seen roaming the Agency hallways drinking from his "paper" coffee cup and carrying his "concealed" Agency badge; and

WHEREAS, Ken diligently battled unjust PG&E gas rate cases and osprey nests with equal aplomb; and

WHEREAS, Ken spent hours driving to the generating facilities for meetings and activities and still demonstrated to Agency employees how to have the cleanest and shiniest car; and

WHEREAS, Ken had no shortage of Duke Energy and PG&E stories, opinions, and ideas to share with all, as he was an expert in many fields, just ask him; and

NOW, THEREFORE BE IT RESOLVED by the Commission of the Northern California Power Agency, that this Agency, its Members, and its employees heartily commend and thank Ken Speer for his 12 years of dedicated service to this Agency.

PASSED AND ADOPTED BY ACCLAMATION, on this 5th day of December 2019.

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY

