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Agenda

Date: Wednesday, February 3, 2021

Subject: Facilities Committee Meeting

Location: NCPA Headquarters, 651 Commerce Drive, Roseville, CA

Time: 9:00 am

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Act, Governor Gavin Newsom's Emergency Declaration related to COVID-19, and Governor Newsom's Executive Order N-29-20 issued March 17, 2020 that allows attendance by NCPA Facilities Committee Members, staff, and the public to participate and conduct the meeting by teleconference.

Dial: 1-312-757-3121

Meeting ID: 600-474-613#

Hosted through GoToMeeting

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The Facilities (Committee) may take action on any of the items listed on this Agenda regardless of whether the matter is described as an Action Item, or an Informational Item. This agenda is often supplemented by various documents which are available to the public upon request. Pursuant to Government Code Section 54957.5, the following is the location at which the public can view agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or www.ncpa.com.

Persons requiring accommodation in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916.781.3636 in advance of the meeting to arrange for such accommodations.

REVIEW SAFETY PROCEDURES

1. Call Meeting to Order and Roll Call

PUBLIC FORUM

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

OPEN SESSION

DISCUSSION / ACTION ITEMS

2. **Approval of Minutes** – Approve the January 6, 2021 Facilities Committee meeting minutes.
3. **All NCPA Facilities, Members, SCPPA – SEL Engineering Services, Inc. MTPSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Professional Services Agreement with SEL Engineering Services, Inc. for protective relay and automation design, installation, testing, and commission services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CT's*)
4. **All NCPA Facilities, Members, SCPPA – GEI Consultants, Inc. First Amendment to MTPSA** – Staff is seeking a recommendation for Commission approval of a First Amendment to the five-year Multi-Task Professional Services Agreement with GEI Consultants, Inc. for dam safety engineering services to increase the not to exceed amount from \$1,000,000 to \$3,000,000, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: Hydro*)
5. **All NCPA Facilities (Except LEC) – d'Heurle Systems, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with d'Heurle Systems, Inc. for general mechanical, electrical, and control system engineering and consulting, with a not to exceed amount of \$2,500,000, for use at all facilities owned and/or operated by NCPA (except LEC). All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: Hydro*)
6. **NCPA Geothermal Facility – Granite Construction Company MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Granite Construction Company, miscellaneous maintenance services including grading, excavation, paving, and concrete sealing, with a not to exceed amount of \$1,000,000, for use at NCPA's Geothermal Plant only. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: Geo*)
7. **NCPA Geothermal Facility – Biegel Property Grant of Easement and Easement Agreement** – Staff is seeking a recommendation for Commission Approval for a five-year Grant of Easement and Easement Agreement with Patricia C. Biegel, granting NCPA easement over existing private roads, for use at NCPA's Geothermal Plant only. (*Commission Category: Consent; Sponsor: Geo*)
8. **Nexant Cost Allocation Model Billing Determinants** – Staff is seeking a recommendation for Commission approval of the billing determinants that will be used in the FY 2022 Nexant Cost Allocation Model. (*Commission Category: Consent; Sponsor: Power Settlements*)

INFORMATIONAL ITEMS

9. **Replacement Capacity for Collierville Dual Unit Outage** – Staff will present a recommendation to the Facilities Committee to authorize NCPA to purchase replacement

Resource Adequacy capacity for the Collierville dual unit outage scheduled in CY 2021.
(Sponsor: Power Management)

10. SFWPA PPA and Member Third Phase Agreement – Staff will review a draft Power Purchase Agreement (PPA) and Third Phase Agreement for the South Feather Water and Power Hydroelectric project. (Sponsor: Power Management)

11. San Jose Clean Energy (SJCE) Power Management Services Agreement Extension – Staff will provide an update regarding an extension to the San Jose Clean Energy Power Management Services Agreement to extend the term of services through August 1, 2022. (Sponsor: Power Management)

12. New Business Opportunities – Staff will provide an update regarding new business opportunities. (Sponsor: Power Management)

13. NCPA Hydroelectric Facility – McKays Point Reservoir Sediment Removal Project – Staff will provide an informational update on ongoing project design, planning, and permitting activities. (Sponsor: Hydro)

14. NCPA Generation Services Plant Updates – Plant Staff will provide the Committee with an informational update on current plant activities and conditions. (Sponsor: Generation Services)

15. Planning and Operations Update – Staff will provide an update on issues related to planning and operations. (Sponsor: Power Management)

16. Next Meeting – A Special Facilities Committee meeting is scheduled for February 10, 2021 to review the FY 2022 annual budget. The next regular Facilities Committee meeting is scheduled for March 3, 2021.

ADJOURNMENT

BW/cp



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Minutes – Draft

Date: January 21, 2021
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: January 6, 2021 Facilities Committee Meeting Minutes

- 1. Call Meeting to Order & Roll Call** – The meeting was called to order by Committee Chair Basil Wong, Santa Clara, at 9:02 am. A sign-in sheet was passed around. Attending via teleconference and/or on-line presentation were Alan Harbottle, and Vidhi Chawla (Alameda), Mark Sorensen (Biggs), Paul Eckert (Gridley), Jiayo Chiang (Lodi), Shiva Swaminathan (Palo Alto), Mike Brozo (Plumas-Sierra), Nick Rossow (Redding) Brian Schinstock (Roseville) and Steve Hance (Santa Clara). Owen Goldstrom (non-voting Member with TID) also attended via teleconference. Those attending in person are listed on the attached Attendee Sign-in Sheet. Committee Representatives from BART, Healdsburg, Lompoc, Port of Oakland, TID, and Ukiah were absent. A quorum of the Committee was established.

PUBLIC FORUM

No public comment.

OPEN SESSION

DISCUSSION / ACTION ITEMS

- 2. Approval of Minutes from the December 2, 2020 Facilities Committee meeting.**

Motion: A motion was made by Brian Schinstock and seconded by Jiayo Chiang recommending approval of the December 2, 2020 Facilities Committee meeting minutes. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 3. All NCPA Facilities – Pacific Star Chemical, LLC dba Northstar Chemical, Inc. MTEMS** – Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task Agreement for Purchase of Equipment, Materials, and Supplies with Pacific Star Chemical, LLC dba Northstar Chemical, Inc. for the purchase of miscellaneous chemicals, with a not to exceed amount of \$2,500,000, for use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures.

NCPA had a previous agreement in place with Pacific Star Chemical LLC dba Northstar Chemical, which is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. This is an enabling agreement with no commitment of funds. 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. Other agreements in place for similar purchases include Apex Engineering Products, Brenntag Pacific, Hill Brothers, Thatcher Chemical and Univar USA, Inc. It is recommended that this item be placed on the Commission Consent calendar.

Motion: A motion was made by Mike Brozo and seconded by Brian Schinstock recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Pacific Star Chemical, LLC dba Northstar Chemical 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. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. ABSTAIN = Port of Oakland. The motion passed.

- 4. All NCPA Facilities – Basic Energy Services, LP MTGSA –** Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Basic Energy Services, LP for well maintenance services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a new vendor in which NCPA has not utilized in the past. Because of the nature of well drilling work, NCPA has had difficulty obtaining contracts with multiple vendors. This is an enabling agreement with no commitment of funds. 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. Other agreements in place for similar services include Halliburton Energy Services, Inc., and C&J Well Services, Inc. (pending). However, Halliburton's DIR registration had lapsed, and they were not eligible to work at the time the services were bid. Numerous other vendors have refused to negotiate NCPA terms and conditions. It is recommended that this item be placed on the Commission Consent calendar.

Motion: A motion was made by Mike Brozo and seconded by Jiayo Chiang recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Basic Energy Services LP for injection well related 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. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 5. All NCPA Facilities – C&J Well Services, Inc. MTGSA –** Staff provided background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with C&J Well Services, Inc. for well maintenance services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a new vendor in which NCPA has not utilized in the past. Because of the nature of well drilling work, NCPA has had difficulty obtaining contracts with multiple vendors. This is an enabling agreement with no commitment of funds. 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. Other agreements in place for similar services include Halliburton Energy Services, Inc., and Basic

Energy Services, LP (pending). However, Halliburton's DIR registration had lapsed, and they were not eligible to work at the time the services were bid. Numerous other vendors have refused to negotiate NCPA terms and conditions. It is recommended that this item be placed on the Commission Consent calendar.

Motion: A motion was made by Brian Schinstock and seconded by Jiayo Chiang recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with C&J Well Services, Inc. for injection well related 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. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 6. All NCPA Facilities – Petro-Analytical Inc. MTGSA** – Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Petro-Analytical, Inc. for routine, recurring, and miscellaneous fuel tank storage maintenance services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a new agreement with an existing vendor. It is an enabling agreement with no commitment of funds. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into a multi-task enabling agreement with Petro-Analytical, Inc., so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA currently one other agreement in place for similar services with Stroupe Petroleum Maintenance, Inc. It is recommended that this item be placed on the Commission Consent calendar.

Motion: A motion was made by Jiayo Chiang and seconded by Paul Eckert recommending Commission approval authorizing the General Manager or his designee to enter into a Five Year Multi-Task General Services Agreement with Petro-Analytical, Inc. for general fuel tank storage maintenance services, including UST system leak detection, monthly designated operator services, tank, piping, apparatus system, etc., with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 for use at the all facilities owned and/or operated by NCPA. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 7. NCPA Geothermal Facility – 2021 Amendment to the Second Amendment and Restatement of the Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project (SEGEP)** – Staff presented background information and was seeking a recommendation for Commission approval of the 2021 Amendment to the Second Amendment and Restatement of the Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project (SEGEP) with Calpine Corporation, updating the Cost Responsibility calculation used and extending the agreement expiration date for an additional two years.

The Southeast Geysers Effluent Pipeline (SEGEP) Project is a cooperative project between Lake County Sanitation District, Calpine, and NCPA that has been in operation since September 23, 1997. The project provides wastewater to The Geysers for the purposes of maintaining the reservoir pressure and increasing steam reserves of the geothermal field. Calpine and NCPA share in the operating and maintenance costs for SEGEP, as detailed in the Steam Suppliers Joint Operating Agreement (JOA). Per the JOA, Electrical power to operate the pumps stations can be supplied by either Calpine or NCPA. The value of the electrical power is based on the Local Market

Price. Calpine and NCPA either pays or reimburses the other entity for their share of electrical power. The payment or reimbursement is based on the volume of water each receive during a calendar year.

In addition, both Calpine and NCPA receive Bucket 0 Renewable Energy Credits (REC's) for the electrical power supplied to the effluent pipeline. Calpine as a private corporation is allowed to convert the Bucket 0 REC's into Bucket 3 REC's that are typically valued at \$0.50 to \$1.00 per MWh. Members of NCPA, as a Public Agency, are allowed to convert the Bucket 0 REC's into Bucket 1 REC's that are typically valued around \$15 per MWh. A Fourth Amendment to the Steam Suppliers Joint Operating Agreement SEGEP Project was signed on March 2, 2018, which required NCPA to provide the entire power supply for the Bear Canyon Pump Stations except in outage situations. This allowed Calpine to sell power normally reserved for SEGEP on the Day Ahead market and receive higher valued Bucket 1 REC's. In return, Calpine compensated NCPA for its relative share of the electricity costs at the Local Market Price and further paid NCPA one half the value of a Bucket 1 REC or \$7.50 per MWh for all electricity supplied to SEGEP. This 2021 Amendment extends the term of the underlying agreement through March 1, 2022, and also clarifies the term "Electricity Percentage" for purposes of calculating the value of Bucket 1 REC's that Calpine will owe NCPA each month. It is recommended that this item be placed on the Commission Consent calendar.

Motion: A motion was made by Brian Schinstock and seconded by Mike Brozo recommending Commission approval delegating authority to the NCPA General Manager or his designee to enter into a 2021 Amendment to the Second Amendment and Restatement of the Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project (SEGEP) between NCPA and Geysers Power Company, LLC, with any non-substantial changes recommended and approved by NCPA General Counsel, for use at NCPA's Geothermal facility. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 8. All NCPA Facilities, Members, SCPPA – GreatBlue Research MTCSA –** Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task Consulting Services Agreement with GreatBlue Research for market research and surveys, with a not to exceed amount of \$250,000 for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a new agreement with a new vendor. It is an enabling agreement with no commitment of funds. GreatBlue Research is a Hometown Connections partner providing innovative solutions in a cost-effective manner to meet the unique needs of community-owned utilities. GreatBlue Research is a full-service market research firm using quantitative and qualitative research methodologies and offer studies on customer perception and satisfaction, employee satisfaction, product awareness and interest, market visibility, needs assessment, and marketing effectiveness. Utilities receive statistically reliable data with thoughtful, concise insights, and detailed recommendations. GreatBlue Research is considered a leader in tracking customer opinion data across the public power sector, able to show individual utilities how they compare to peer organizations nationwide. Other agreements in place for similar services include RKS Market Research, TMG Utility Advisory Services, and Hometown Connections. It is recommended that this item be placed on the Commission Consent calendar.

Motion: A motion was made by Jiayo Chiang and seconded by Basil Wong recommending Commission approval authorizing the General Manager or his designee to enter into a Five-Year Multi-Task Consulting Services Agreement with GreatBlue Research for market research and

surveys, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$250,000 over five years, for use at any facilities owned and/or operated by NCPA, its Members, the Southern California Public Power Authority (SCPPA), or SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 9. All NCPA Facilities, Members, SCPPA – RFI Communication & Security Systems MTGSA –** Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with RFI Communication & Security Systems for integrated security services, with a not to exceed amount of \$500,000 for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

This is an existing vendor, but the current agreement with RFI Communications has reached the not-to-exceed limit of the contract (expiration was March 2023). It is an enabling agreement with no commitment of funds. In September 2020, staff issued a RFP soliciting proposals from integrated security solution providers to perform all manner of security services, including but not limited to intrusion, door access, CCTV systems, 24/7 monitoring, design and engineering. Proposals were sent to six qualified firms. RFI Communications was determined as the recommended vendor due to past performance. NCPA has a good working relationship with this vendor. NCPA desires to enter into a five-year, multi-task agreement with RFI Communications & Security Systems providing ongoing comprehensive maintenance at each NCPA property and facility. These activities are intended to provide a safe, and secure environment for NCPA employees and properties. It is recommended that this item be placed on the Commission Consent calendar.

Motion: A motion was made by Brian Schinstock and seconded by Jiayo Chiang recommending Commission approval authorizing the General Manager or his designee to enter into a Five-Year Multi-Task General Services Agreement with RFI Enterprises Inc., dba RFI Communications & Security Systems for integrated security 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 any facilities owned and/or operated by NCPA, its Members, the Southern California Public Power Authority (SCPPA), or SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 10. Resolution Commending Brian Schinstock –** Adopt a resolution by all Facilities Committee Members commending the service of Brian Schinstock, acting in the role of Facilities Committee Chair during Calendar Year 2020.

Motion: A motion was made by Mike Brozo and seconded by Basil Wong recommending Facilities Committee approval of the Resolution commending Brian Schinstock and the 2020 Facilities Committee Chair. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, and Santa Clara. ABSTAIN = Brian Schinstock. The motion passed.

INFORMATIONAL ITEMS

- 11. Nexant Cost Allocation Model Billing Determinants for FY 2022 –** Staff presented and reviewed preliminary results of the Nexant Cost Allocation Model for Fiscal Year 2022. The Nexant Model is the Commission-approved methodology used to allocate Power Management and certain Administrative Services budget costs to Members and participants. Staff identified and reviewed the source of changes to Members' respective costs from the change in underlying calendar year 2020 operating data used as allocators in the model. The final version of the Nexant Cost

Allocation Model and associated underlying operational data are scheduled to be finalized by January 18, 2021, and published to NCPA Connect for Member review and feedback.

The initial allocated results for FY 2022 indicate the biggest increases to Gridley, Plumas-Sierra, and Lompoc, by approximately 32.08%, 29.21%, and 25.04% respectively, with the updated CY 2020 determinants. Members with the biggest decreases include Port of Oakland, and BART at 20.21% and 11.44% respectively. Staff reviewed the underlying operational data, and provided an analysis regarding the cost drivers that resulted in the relative percentage changes in the allocations to Members.

The final proposed modifications for the FY 2022 Nexant Cost Allocation Model determinants results will be presented at the next Facilities Committee meeting February 3, 2021. Staff will seek a recommendation for Commission approval at that time.

12. New Business Opportunities – Staff provided an update regarding new business opportunities.

South Sutter Water District (Camp Far West) – NCPA submitted a proposal which was accepted. Staff is currently developing a draft PPA.

Eldorado Irrigation District (P184 Powerhouse) – Five NCPA Members are interested in this project. Staff is working to develop and indicative offer.

SFWPA (South Feather Hydroelectric) – A PPA has been developed which is being reviewed by SFWPA. The Legal Committee will be reviewing the PPA tomorrow, January 7, 2021. Development of a Third Phase Agreement should be completed in the next week or two. Member subscriptions will follow after that. Staff will bring this item back to the Committee for review and final approval once completed.

Glover Solar – A draft PPA has been sent, and is currently being reviewed by Glover Solar. Staff will bring this item back to the Committee for final review and approval before moving forward.

NCPA Renewables RFP – Palo Alto is interested in the Northwest Wind Project. An additional proposal has been received. Staff will provide the information soon.

13. NCPA Generation Services Plant Updates – Plant Staff provided the Committee with an informational update on current plant activities and conditions.

Hydro – December was a very busy month with several FERC regulatory filings including the Revised Owner's Dam Safety Program, Upper Utica Dam Safety Surveillance Monitoring Report, Upper Utica Revised Dam Safety Surveillance Monitoring Plans, Emergency Action Plan updates and annual filing, Security Plan update and annual filing, and an update of the USGA Water Year Records. New Spicer Meadows Reservoir ended the year with 70,977 acre-feet with water levels still decreasing due to a dry water year so far. Precipitation has only been half of average so far this year, with the snow level at 56%. This year is being compared to the water years of 1976-1977, and 2014-2015, which were extremely dry years. Developing trends include more regulations, more staff time, and more money for dam safety requirements. As well, watershed scale forest management is now gaining momentum. Multiple regulatory agencies are doing deep dives into very technical areas and asking a lot of questions. Regulatory oversight fees for DSOD and FERC continue to escalate. The NCPA Hydro Plant Engineer is spending considerably more time on dam safety and regulatory compliance. The watershed scale forest management includes multi-agency partnerships, with joint action initiatives. Agencies include CalFire, USFS, NGOs, Foothill Counties, Water Districts, and Hydro Projects. Goals for this include storing carbon,

decreasing wildfire risk, increasing water yield, and decreasing post-wildfire erosion. North Fork Stanislaus Watershed interested parties include Calaveras County Water District, Calaveras County, CHPs, USFS, and others.

CTs – December operations included 28 actual starts for CT1, of 13 forecasted, plus an additional 2 ghost starts, bringing the FYTD total to 186. CT2 had 3 actual starts of 4 forecasted, bringing the FYTD total to 80. There were no forced or planned outages. A BAAQMD inspector identified the diesel starters in Alameda are not on a permit. These permits will limit hours to approximately 20 hours each, which is approximately 100 starts. Options for this include accepting the results, test and use test data to increase the starts, or install electric starters. During a quarterly CT2 predictive maintenance to inspect the magnetic plug metal particles were discovered. No other indications were present. Next actions include inspecting the plug more frequently, additional vibration monitor, evaluate service options that are available, and an evaluation of the particles.

Geo – There were no safety recordables in the month of December. CalFire declared the official end to the fire season on December 28, 2020. Damage was done to the solar panels at the Bear Canyon Zero site. This is currently under investigation, and could have been a hunting accident. The average net generation for December was 93.3 MW. The CY 2020 net generation total was 739.1 GWh, which exceeded the goal of 726.6 GWh by 1.7%. The Geo Plant 1 Fire Protection System Modernization Project is underway with bi-weekly project meetings and deliveries starting in December. ORR Protection Systems, Inc. is under contract and Coffman Engineers has been hired at the engineer. Bi-weekly meetings have been started with CEC staff, establishing relationships with the CEC CBO for design reviews. The SiteLogIQ agreement is being processed for signatures to start the Geo Plant 1 HVAC Renovation Project. The upcoming PG&E Geysers #9 Lakeville transmission line outage will be March 1 – May 7, 2021. PG&E needs to make repairs to the damage caused by the Glass Fire. This will require a one-week Geo outage from March 1 – March 7, 2021, on Plant 1 for PG&E to install a shoe-fly “jumper” to support Geo generation for duration of the outage. The plan is to jumper from Geysers #9 Lakeville 230 kV line to Geysers #17 Fulton 230 kV Line. The SEGEF line is currently down due to a pipeline leak, which started December 15, 2020 until further notice.

14. Planning and Operations Update –

- NCPA Renewables RFP – Staff is seeking member feedback regarding interest in projects. Review of additional proposals underway
- COVID-19 Update – Operations continue in dual mode of NCPA dispatch and scheduling functions. Ongoing efforts to protect the health and safety of all staff continue.
- SCP Integration Activities – Integration of SCP services was completed successfully January 1, 2021.
- New Resource Integration – Altamont Wind (EBCE), Central 40 (SVP), Golden Hills (EBCE)
- Key Focus on Resource Adequacy Policy – CAISO RA Enhancements and CPUC Central Procurement.
- Insurance Renewal for 2020-2021 – The final total amount for insurance premiums is \$4,755,454. These premiums will exceed the FY 2021 budget. Staff believes NCPA should be able to absorb increases offset by savings in other areas similar to last year, and is not recommending a budget augmentation, but will continue to monitor.

15. Next Meeting – The next regular Facilities Committee meeting is scheduled for February 3, 2021.

ADJOURNMENT

The meeting was adjourned at 11:55 am by the Committee Chair.



Commission Staff Report – *DRAFT*

Date: January 27, 2021

COMMISSION MEETING DATE: February 25, 2021

SUBJECT: SEL Engineering Services, Inc. – Five Year Multi-Task Professional Services Agreement for Protective Relay and Automation Design; 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	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>		
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RECOMMENDATION:

Approve Resolution XX-XX authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with SEL Engineering Services, Inc. for protective relay and automation design 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.

It is recommended that this item be placed on the Commission Consent Calendar.

BACKGROUND:

Protective relay and automation design services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members. NCPA currently has an agreement in place with SEL Engineering Services, Inc., which is running low on funds and is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. 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 does not have any other agreements for similar services with additional vendors at this time.

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 best overall 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:

Pending Committee Review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task Professional Services Agreement with SEL Engineering Services, Inc.

RESOLUTION 21-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK PROFESSIONAL SERVICES AGREEMENT WITH SEL ENGINEERING SERVICES, INC.

(reference Staff Report #XXX:21)

WHEREAS, protective relay and automation design services are required from time to time for the operation and maintenance of 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, SEL Engineering Services, Inc. is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task Professional Services Agreement with SEL Engineering Services, 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 SEL Engineering Services, Inc., for protective relay and automation design services, with any non-substantial changes as 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.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2021 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	_____	_____	_____

DAVID HAGELE
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND SEL ENGINEERING SERVICES, 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 SEL Engineering Services, Inc., a corporation with its office located at 2350 NE Hopkins Court, Pullman, WA 99163 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 20__ ("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.

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. All quoted prices are exclusive of any sales, use, value-added or similar taxes, which will be added, if applicable, at the statutory rate(s) at the time of invoicing as long as the taxes are reasonably estimated and provided to Agency when Consultant

responds to a request for a bid or quote, or in writing in response to a request for Services from Consultant.

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 \$2,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

4.2.2 Automobile Liability. Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$2,000,000 per each accident, with

a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

4.3 Professional Liability Insurance. Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least three (3) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within three (3) 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 three (3) 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, SCPA 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 ("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 Limitation of Liability. Notwithstanding any other term in this Agreement, Consultant's liability to Agency or its insurers for any loss or damage regarding this Agreement shall be limited as follows: (i) for those claims covered by an

insurance certificate required under Section 4 of this Agreement, Consultant's liability shall be limited to the amount of the applicable insurance; and (ii) for all other claims, except those arising as a result of Consultant's violation of applicable law or patent infringement, Consultant's liability shall in no event exceed \$1,000,000 for each claim whether as a result of breach of contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. In no event, whether as a result of breach of contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall either party be liable for any special, incidental, consequential or punitive damages, including without limitation any loss of profit or revenues, loss of use of associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs or claims of Agency's customers for such damages.

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 are 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. Notwithstanding the above, Consultant's Confidential Information (as defined below) and all intellectual property, including patents, copyrights, trademarks, trade secrets, and other proprietary information incorporated into, or provided in conjunction with, the Services (collectively, "Consultant IP") shall not be deemed "works made for hire" for Agency, Agency members, SCPPA, and SCPPA members (each a "Licensee"), and shall remain the exclusive property of Consultant. Consultant hereby grants to each Licensee a perpetual, worldwide, royalty-free, non-exclusive, non-transferable, personal, irrevocable, limited license to use, copy and modify Consultant IP for Licensee's internal business purposes, including the use, operation, maintenance, and repair of the Services and all parts or portions thereof, and including such work by Licensee's employees, agents, contractors, or consultants on such Licensee's behalf ("License"). Consultant IP shall not be used for any other purpose without first obtaining Consultant's written consent. For the avoidance of doubt, a Licensee may assign its License in connection with the sale or other disposition of substantially all of the assets of Licensee's business or substantially all of the goods or other deliverables obtained by such Licensee under this Agreement. Notwithstanding any other provision of this Agreement, each License shall survive the termination or expiration of this Agreement. Subject to this Section 9, Consultant shall provide Agency relay settings and supporting documentation, including supporting calculations, pertinent fault study results, overcurrent coordination curves, and similar information, in Microsoft Word, Adobe Acrobat, and/or SEL-5030 ACSELERATOR QuickSet format, as applicable.

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. Please note: As Consultant is a privately held company it can allow audits of time and expense projects, however, as long as such restriction is allowed under California law, Consultant does not provide breakdown of its fixed price or lump sum contracts, and does not reveal the components that make up its hourly rate.

9.4 Confidential Information and Disclosure.

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

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

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

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

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

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

9.4.4 Handling of Confidential Information. Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested

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

Section 10. MISCELLANEOUS PROVISIONS.

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

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

10.7 Contract Administrator. This Agreement shall be administered by 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:

SEL Engineering Services, Inc.
Attention: Contracts & Risk
2350 NE Hopkins Court
Pullman, WA 99163-5603
selcontracts@selinc.com
509-332-1890

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.

Section 11. WARRANTY FOR GOODS. Consultant warrants that goods, equipment, supplies, or other materials provided pursuant to this Agreement (for purposes of this Section 11, "Goods") are free from defects in material, design, and workmanship for ten (10) years after completion or delivery of the Goods, including Consultant-manufactured control enclosure structures and panels. Such warranty shall be for ten (10) years after delivery for Fault Indicator and Sensor Division goods. This warranty is conditioned upon storage, installation, connection, operation and maintenance of Goods consistent with Consultant's manual provided to Agency in writing. If during the term of this Agreement or the applicable warranty period specified above, any Goods used or provided by Consultant under this Agreement fail due to defects in material, design, and/or workmanship or other breach of this Agreement, Consultant shall, upon any reasonable written notice from Agency, replace, reperform, or repair the same to Agency's satisfaction. This warranty shall be void in its entirety if Agency modifies the Goods without prior written consent to and subsequent approval of any such modifications by Consultant. If any Goods fail to conform to this warranty, Agency properly notifies Consultant of such failure and Agency returns the Goods to Consultant factory for diagnosis (and pays all expenses for such return), Consultant shall correct any such failure by, at its sole discretion, either repairing any defective or damaged Goods or part(s) thereof, or making available, freight prepaid, by Consultant (Carriage Paid To (CPT) customer's place of business) any necessary replacement part(s) or Good(s). Any Goods repair or upgrade shall be covered by this warranty for the longer of one (1) year from date of repair or the remainder of the original warranty period.

11.2 Warranty for Services. Consultant shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant shall reperform (or, at Consultant's option, pay a third party to reperform) any defective services at no cost upon receipt of notice detailing the defect(s) within one (1) year of performance of the original services.

11.3 General Warranty Provisions. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE OR DEALING OR USAGE OF TRADE), EXCEPT TITLE AND PATENT INFRINGEMENT. Consultant shall, whenever possible, pass the original manufacturer warranty to Agency for non-Consultant products.

SIGNATURES ON FOLLOWING PAGE

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///

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

NORTHERN CALIFORNIA POWER AGENCY

SEL ENGINEERING SERVICES, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

JOSEPH NESTEGARD,
Treasurer

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

SEL Engineering Services, Inc. ("Consultant") shall provide protective relay and automation design, testing and commissioning services as requested by the Northern California Power Agency ("Agency") at any Facilities owned or operated by NCPA, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Protective Relay and Automation Design
- Testing Services
- Commissioning Services
- Training

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Time and Expense Additional Work

SEL Engineering Services, Inc. (SEL ES) will perform additional work on a time and expense (T&E) basis, unless the Customer and SEL ES agree on other arrangements. The party identifying a potential change in scope will request the change of scope to the other in writing (fax, email, or letter). SEL ES will identify any budget or schedule impact and submit it for approval. SEL ES will proceed with the work as soon as SEL ES receives written approval, in accordance with established contract provisions.

Work performed on a T&E basis will be in accordance with the schedule of charges shown in the T&E Rate Tables (below), **unless specifically modified in a Purchase Order.**

T&E Rate Tables (USD) - SEL ES reserves the right to review and increase SEL ES hourly rates by up to 3% annually after providing no less than 60 days' notice to Agency.

Role	Weekday (per hour)	Weekday Overtime (per hour)	Saturday (per hour)	Sunday/ Holiday (per hour)	Travel (per hour)	Travel Expenses
Consultant Principal Engineer	\$285	\$428	\$428	\$570	\$285	Cost + 10%
Senior Engineer	\$210	\$315	\$315	\$420	\$210	Cost + 10%
Project Engineer III	\$175	\$263	\$263	\$350	\$175	Cost + 10%
Project Engineer II Senior Specialist Senior Relay Commissioning Technician	\$160	\$240	\$240	\$320	\$160	Cost + 10%
Project Engineer I Specialist III Relay Commissioning Technician III Project Controller II & III Senior Designer	\$140	\$210	\$210	\$280	\$140	Cost + 10%
Designer III Specialist II Project Controller I	\$125	\$188	\$188	\$250	\$125	Cost + 10%
Associate Project Engineer Relay Commissioning Technician II Field Service Technician III	\$120	\$180	\$180	\$240	\$120	Cost + 10%
Designer II Specialist I	\$115	\$173	\$173	\$230	\$115	Cost + 10%
Designer I Relay Commissioning Technician I	\$95	\$143	\$143	\$190	\$95	Cost + 10%
Drafter Account Administrator III Field Service Technician II	\$85	\$128	\$128	\$170	\$85	Cost + 10%
Account Administrator I & II Administrative Field Service Technician I Engineering Intern	\$75	\$113	\$113	\$150	\$75	Cost + 10%

Cybersecurity and Networking T&E Rates (USD)						
Role	Weekday (per hour)	Weekday Overtime (per hour)	Saturday (per hour)	Sunday/ Holiday (per hour)	Travel (per hour)	Travel Expenses
Security Engineer	\$220	\$330	\$330	\$440	\$220	Cost + 10%
Senior Security Specialist	\$185	\$278	\$278	\$370	\$185	Cost + 10%
Security Specialist	\$175	\$263	\$263	\$350	\$175	Cost + 10%

For projects in the U.S., all quoted prices are exclusive of any sales, use, value-added, or similar taxes, which will be added, if applicable, at the statutory rate(s) at the time of invoicing.

The following details apply to the T&E Rate Tables:

- The Customer is to reimburse SEL ES for travel expenses at cost plus 10% for expenses such as airline tickets, meals, lodging, rental car, parking, and fuel (where applicable). Airline tickets are at the coach rate to the commercial airport nearest the work site; business rates apply for international travel.
- The T&E rate is the charge per person, per hour. Typical working hours are 8 a.m. to 6 p.m., Monday through Friday. Lunch shall be up to 60 minutes with two 15-minute breaks each day. Onsite work outside of typical working hours shall be agreed upon between the Customer and SEL ES in advance and be subject to additional charges.
- Overtime is defined as time in excess of 8 hours per day or any hours worked Saturday or Sunday. Overtime will be billed at the rates shown in the T&E Rate Tables (above).
- Time spent by SEL ES personnel on site while waiting standby, training, or traveling to and from the site will be considered billable time.
- Onsite T&E invoices will include billable project administration and project management time not performed on site.
- The hourly rates quoted include the use of personal computers loaded with Microsoft Office, Lotus Notes, MATLAB, Mathcad, AutoCAD, MicroStation, and SEL software used in the preparation, documentation, and processing of settings for SEL products.
- SEL ES does not bill for long-distance telephone, fax, low-volume copying, and document shipping charges.
- Hourly rates are valid for work performed within one year of the proposal date.
- Holidays observed for U.S. Offices include: New Year's Day (observed), Memorial Day, Independence Day (observed), Labor Day, Thanksgiving Day, Thanksgiving Friday, and Christmas Day (observed).

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

SEL Engineering Services, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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



Commission Staff Report – *DRAFT*

Date: February 3, 2021

COMMISSION MEETING DATE: February 25, 2021

SUBJECT: **GEI Consultants, Inc.** – First Amendment to Five Year Multi-Task Professional 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.

AGENDA CATEGORY: Consent

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

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>		
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RECOMMENDATION:

Approve Resolution 21-XX authorizing the General Manager or his designee to enter into a First Amendment to the Multi Task Professional Services Agreement with GEI Consultants, Inc., with any non-substantial changes as recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$1,000,000 to \$3,000,000, for continued use at any facilities owned and/or operated by Agency, its Members, SCPPA, or SCPPA Members.

It is recommended that this item be placed on the Commission Consent Calendar.

BACKGROUND:

Dam Safety engineering; geology, hydrology, hydraulics, geotechnical and structural consulting and preparation of signed stamped construction documents are services 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 entered into an MTPSA with GEI Consultants, Inc. effective May 1, 2019 for an amount not to exceed \$1,000,000 over five years. This agreement has been used for multiple NCPA Hydroelectric Projects where GEI was consistently the lowest bidder. Projects including, but not limited to, the McKays Sediment Removal Basis of Design Report, Emergency Action Plan dam-break modeling / inundation mapping, and 5-Year Part 12 Inspections for FERC Project 11563 were broadly announced to qualified engineering firms and competitively bid in accordance with the purchasing policy. This agreement is now running low on funds and the amendment will increase the not to exceed amount from \$1,000,000 to \$3,000,000 to cover the remainder of the contract. This agreement is still available for use at any facility owned and/or operated by the Agency, its Members, SCPPA, and SCPPA Members. NCPA currently has agreements in place with HDR Engineering, Condor Earth Technologies, AECOM, Black & Veatch, Gannett Fleming, GHD, and other engineering consultants for similar services.

FISCAL IMPACT:

Upon execution, the total cost of the agreement will increase from not to exceed \$1,000,000 to not to exceed \$3,000,000 over the remaining approximately three years, to be used out of 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 seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the best overall 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:

Pending Committee review

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- MTPSA between NCPA and GEI Consultants, Inc.
- First Amendment to MTPSA between NCPA and GEI Consultants, Inc.

RESOLUTION 21-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE MULTI-TASK PROFESSIONAL SERVICES AGREEMENT WITH GEI CONSULTANTS, INC.

(reference Staff Report #xxx:21)

WHEREAS, Northern California Power Agency and GEI Consultants, Inc. entered into a Multi-Task Professional Services Agreement effective May 1, 2019, for GEI Consultants, Inc. to provide dam safety engineering and other engineering consulting services for the Agency, Agency Members, the Southern California Public Power Authority (SCPPA), or SCPPA members; and

WHEREAS, the NCPA Hydroelectric Facility has awarded multiple competitively bid jobs to GEI Consultants, Inc. for various engineering and regulatory projects that have consumed the majority of funds on the contract; and

WHEREAS, the Parties now desire to amend Section 2 - "Compensation" to increase the not-to-exceed amount from \$1,000,000 to \$3,000,000 over the remaining 3.5 years of the contract to ensure sufficient funds for the rest of the contract period and additional funds for usage by other Agency facilities, Agency Members, SCPPA or SCPPA members; and

WHEREAS, the Parties also desire to amend Exhibit B – Compensation Schedule and Hourly Fees to include routine rate increases since the contract was executed in 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 authorizes the General Manager or his designee to enter into a First Amendment to Multi-Task Professional Services Agreement with GEI Consultants, Inc increasing the not-to-exceed amount from \$1,000,000 to \$3,000,000 and amending the compensation schedule to ensure sufficient funds to cover the remainder of the contract period, with any non-substantial changes as approved by the NCPA General Counsel, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA and SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2021 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	_____	_____	_____

DAVID HAGELE
CHAIR

ATTEST:

CARY PADGETT
ASSISTANT SECRETARY



MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND GEI CONSULTANTS, 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 GEI Consultants, Inc., a corporation with its office located at 180 Grand Avenue, Oakland, CA 94612 ("Consultant") (together sometimes referred to as the "Parties") as of MAY 1, 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) 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. 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, SCPA 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;

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 are 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 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 Rettberg, Vice President
GEI Consultants, Inc.
180 Grand Avenue, Suite 1410
Oakland, CA 94612

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-signatory third parties. However, should Consultant provide services to an Agency member, SCPA or SCPA 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

Date 5/1/2019

Walter Haul for
RANDY HOWARD, General Manager

Attest:

[Signature]
Assistant Secretary of the Commission

Approved as to Form:

[Signature]
Jane E. Luckhardt, General Counsel

GEI CONSULTANTS, INC.

Date 3/27/19

[Signature]
WILLIAM RETTBERG, Vice President

EXHIBIT A

SCOPE OF SERVICES

GEI Consultants, Inc. ("Consultant") shall provide the following services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by the Agency, its Members, SCPPA, or SCPPA Members, including:

- Dam Safety engineering in accordance with 18 CFR12D;
- Geology, hydrology, hydraulics, geotechnical and structural engineering; and
- Preparation of signed stamped construction documents.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, 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:

FEE SCHEDULE AND PAYMENT TERMS



FEE SCHEDULE

Personnel Category	Hourly Billing Rate \$ per hour
Staff Professional – Grade 1	\$ 118
Staff Professional – Grade 2	\$ 130
Project Professional – Grade 3	\$ 142
Project Professional – Grade 4	\$ 160
Senior Professional – Grade 5	\$ 188
Senior Professional – Grade 6	\$ 214
Senior Professional – Grade 7	\$ 255
Senior Consultant – Grade 8	\$ 286
Senior Consultant – Grade 9	\$ 348
Senior Principal – Grade 10	\$ 348

Senior CADD Drafter and Designer	\$ 142
CADD Drafter / Designer and Senior Technician	\$ 130
Field Professional	\$ 107
Technician, Word Processor, Administrative Staff	\$ 106
Office Aide	\$ 83

These rates are billed for both regular and overtime hours in all categories. Rates will increase up to 5% annually, at GEI's option, for all contracts that extend beyond twelve (12) months after the date of the contract. Rates for Deposition and Testimony are increased 1.5 times.

OTHER PROJECT COSTS

Subconsultants, Subcontractors and Other Project Expenses - All costs for subconsultants, subcontractors and other project expenses will be billed at cost plus a 15% service charge. Examples of such expenses ordinarily charged to projects are subconsultants; subconsultants: chemical laboratory charges; rented or leased field and laboratory equipment; outside printing and reproduction; communications and mailing charges; reproduction expenses; shipping costs for samples and equipment; disposal of samples; rental vehicles; fares for travel on public carriers; special fees for insurance certificates, permits, licenses, etc.; fees for restoration of paving or land due to field exploration, etc.; state sales and use taxes and state taxes on GEI fees.

Billing Rates for Specialized Technical Computer Programs - Computer usage for specialized technical programs will be billed at a flat rate of \$10.00 per hour in addition to the labor required to operate the computer.

Field and Laboratory Equipment Billing Rates - GEI-owned field and laboratory equipment such as pumps, sampling equipment, monitoring instrumentation, field density equipment, portable gas chromatographs, etc. will be billed at a daily, weekly, or monthly rate, as needed for the project. Expendable supplies are billed at a unit rate.

Transportation and Subsistence - Automobile expenses for GEI or employee owned cars will be charged at the rate per mile set by the Internal Revenue Service for tax purposes plus tolls and parking charges or at a day rate negotiated for each project. When required for a project, four-wheel drive vehicles owned by GEI or the employees will be billed at a daily rate appropriate for those vehicles. Per diem living costs for personnel on assignment away from their home office will be negotiated for each project.

PAYMENT TERMS

Invoices will be submitted monthly or upon completion of a specified scope of service, as described in the accompanying contract (proposal, project, or agreement document that is signed and dated by GEI and CLIENT).

Payment is due upon receipt of the invoice. Interest will accrue at the rate of 1% of the invoice amount per month, for amounts that remain unpaid more than 30 days after the invoice date. All payments will be made by either check or electronic transfer to the address specified by GEI and will include reference to GEI's invoice number.

Fee Schedule 2019

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, WILLIAM A. RETTBERG, SN.VP

(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

GEI CONSULTANTS, INC.

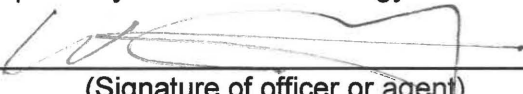
(Company name)

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 27 day of MARCH 20 19.

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.



FIRST AMENDMENT TO MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND GEI CONSULTANTS, INC.

This First Amendment (“Amendment”) to the Multi-Task Professional Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and GEI Consultants, Inc. (“Consultant”) (collectively referred to as “the Parties”) as of _____, 2021.

WHEREAS, the Parties entered into a Multi-Task Professional Services Agreement dated effective May 1, 2019, (the “Agreement”) for GEI Consultants, Inc. to provide dam safety engineering services for NCPA, NCPA Members, SCPPA and SCPPA Members; 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 \$1,000,000 to a “NOT TO EXCEED” amount of \$3,000,000; 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** three million dollars (\$3,000,000) 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 Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

The remainder of Section 2 of the Agreement is unchanged.

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

SIGNATURES ON FOLLOWING PAGE

///

///

Date:_____

NORTHERN CALIFORNIA POWER AGENCY

RANDY S. HOWARD, General Manager

Date:_____

GEI CONSULTANTS, INC.

WILLIAM RETTBERG, Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT B

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:

FEE SCHEDULE AND PAYMENT TERMS



FEE SCHEDULE

Personnel Category	Hourly Billing Rate \$ per hour
Staff Professional – Grade 1	\$ 123
Staff Professional – Grade 2	\$ 135
Project Professional – Grade 3	\$ 148
Project Professional – Grade 4	\$ 166
Senior Professional – Grade 5	\$ 196
Senior Professional – Grade 6	\$ 223
Senior Professional – Grade 7	\$ 265
Senior Consultant – Grade 8	\$ 297
Senior Consultant – Grade 9	\$ 362
Senior Principal – Grade 10	\$ 362

Senior Drafter and Designer	\$ 148
Drafter / Designer and Senior Technician	\$ 135
Field Professional	\$ 111
Technician, Word Processor, Administrative Staff	\$ 110
Office Aide	\$ 86

These rates are billed for both regular and overtime hours in all categories.

Rates will increase up to 5% annually, at GEI's option, for all contracts that extend beyond twelve (12) months after the date of the contract. Rates for Deposition and Testimony are increased 1.5 times.

OTHER PROJECT COSTS

Subconsultants, Subcontractors and Other Project Expenses - All costs for subconsultants, subcontractors and other project expenses will be billed at cost plus a 15% service charge. Examples of such expenses ordinarily charged to projects are subcontractors; subconsultants: chemical laboratory charges; rented or leased field and laboratory equipment; outside printing and reproduction; communications and mailing charges; reproduction expenses; shipping costs for samples and equipment; disposal of samples; rental vehicles; fares for travel on public carriers; special fees for insurance certificates, permits, licenses, etc.; fees for restoration of paving or land due to field exploration, etc.; state and local sales and use taxes and state taxes on GEI fees. The 15% service charge will not apply to GEI-owned equipment and vehicles or in-house reproduction expenses.

Field and Laboratory Equipment Billing Rates – GEI-owned field and laboratory equipment such as pumps, sampling equipment, monitoring instrumentation, field density equipment, portable gas chromatographs, etc. will be billed at a daily, weekly, or monthly rate, as needed for the project. Expendable supplies are billed at a unit rate.

Transportation and Subsistence - Automobile expenses for GEI or employee owned cars will be charged at the rate per mile set by the Internal Revenue Service for tax purposes plus tolls and parking charges or at a day rate negotiated for each project. When required for a project, four-wheel drive vehicles owned by GEI or the employees will be billed at a daily rate appropriate for those vehicles. Per diem living costs for personnel on assignment away from their home office will be negotiated for each project.

PAYMENT TERMS

Invoices will be submitted monthly or upon completion of a specified scope of service, as described in the accompanying contract (proposal, project, or agreement document that is signed and dated by GEI and CLIENT).

Payment is due upon receipt of the invoice. Interest will accrue at the rate of 1% of the invoice amount per month, for amounts that remain unpaid more than 30 days after the invoice date. All payments will be made by either check or electronic transfer to the address specified by GEI and will include reference to GEI's invoice number.

Fee Schedule 2020



Commission Staff Report – *DRAFT*

Date: January 27, 2021

COMMISSION MEETING DATE: February 25, 2021

SUBJECT: d'Heurle Systems, Inc. Five Year Multi-Task General Services Agreement for General Engineering Services; Applicable to the following projects: All NCPA locations (except Lodi Energy Center)

AGENDA CATEGORY: Consent

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

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/>		
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RECOMMENDATION:

Approve Resolution 21-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with d'Heurle Systems, Inc. for general mechanical, electrical and control system engineering and support, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not to exceed \$2,500,000 over five years, for use at all facilities owned and/or operated by NCPA, except the Lodi Energy Center.

It is recommended that this item be placed on the Commission Consent Calendar.

BACKGROUND:

General mechanical, electrical and control system engineering and support is required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NCPA has worked with d'Heurle Systems, Inc. (dHSI) for many years. Some of the projects that dHSI supported over the last ten (10) years include being the lowest cost bidder for the programmable logic controller upgrades at Collierville Powerhouse and New Spicer Meadow Powerhouse, and hydraulic upgrades at New Spicer Meadow Powerhouse. As such, dHSI is very familiar with NCPA Hydro's hardware and control system logic as it exists currently. Other engineering firms are capable of performing these same services; however, d'Heurle Systems specializes in control systems, including sourcing materials, system integration, and commissioning and has an unparalleled understanding of hydroelectric systems in particular. In addition, dHSI is based locally and has a relatively low overhead business model which often results in dHSI submitting very competitive bids that provide good value to NCPA. This agreement will be available for use at all facilities owned and/or operated by NCPA, except the Lodi Energy Center. NCPA currently has agreements in place for similar services with ABB, GE, Andritz Hydro, Siemens, and Wunderlich-Malec.

FISCAL IMPACT:

The total cost of the agreement will not exceed \$2,500,000 over the five-year term. 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 best overall 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:

Pending Committee review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with d'Heurle Systems, Inc.

RESOLUTION 21-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH D'HEURLE
SYSTEMS, INC. (DHSI)**

(reference Staff Report #XXX:21)

WHEREAS, general mechanical, electrical and control system engineering and support is required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA); and

WHEREAS, d'Heurle Systems, Inc. is a provider of these services; and

WHEREAS, d'Heurle Systems, Inc. has worked alongside NCPA for over 10 years and is familiar with NCPA systems and locations; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with d'Heurle Systems, Inc. to provide these services in an amount not to exceed \$2,500,000 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 d'Heurle Systems, Inc., for general mechanical, electrical and control system engineering and support, 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.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2021, 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	_____	_____	_____

DAVID HAGELE
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
D'HEURLE SYSTEMS, INCORPORATED**

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 d'Heurle Systems, Incorporated, a corporation with its mailing address of P.O. Box 1219, Colfax, CA 95713 ("dHSI") (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, dHSI 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 dHSI 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.** dHSI shall perform the Work in the manner and according to the standards observed by a competent practitioner of the profession in which dHSI is engaged and for which dHSI is providing the Work. dHSI represents that it is licensed, qualified and experienced to provide the Work set forth herein.
- 1.3 Assignment of Personnel.** dHSI shall assign only competent personnel to perform any Work in connection with this agreement.
- 1.4 Work Provided.** Work provided under this Agreement by dHSI may include Work directly to the Agency.
- 1.5 Request for Work to be Performed.** At such time that Agency determines to have dHSI perform Work under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Work to be performed ("Requested Work") or Materials to be provided ("Requested Materials"), may include a not-to-exceed cap on monetary cap on Requested Work or Requested Materials and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Work shall be completed or Requested Materials shall be delivered. dHSI shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that dHSI chooses not to perform the Requested Work. If dHSI agrees to perform the Requested Work, or begins to perform the Requested Work, within the seven day period specified, then dHSI will have agreed to perform the Requested Work on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Project authorization by the Agency via Purchase Orders shall not imply that dHSI work constitutes provision or the sale of products for which strict liability may apply.

- 1.6 Charges and Extra Services.** Provided that Agency gives reasonable advance notice to dHSI, Agency may propose in writing changes to dHSI's work within the Scope of Services described in any particular Purchase Order. If dHSI is of the opinion that any proposed change causes an increase or decrease in the cost, or a change in the schedule for performance, of the Services under such Purchase Order, dHSI shall notify Agency in writing of that fact within five (5) days after receipt of written proposal for changes. dHSI may also initiate such notification, upon identifying a condition which may change the Scope of Services as agreed at the time of execution of the Purchase Order covering such Scope of Services. When and if Agency and dHSI reach agreement on any such proposed change and its effect on the cost and time for performance under any Purchase Order, they shall confirm such agreement in writing as an amendment or supplement to Purchase Order. In the event the Parties cannot reach agreement as to the proposed change, dHSI shall have no obligation perform such work and Agency shall have no obligation to pay dHSI for any work associated with the proposed change.

Agency shall not be liable for payment of any changes to the Scope of Services, nor shall dHSI be obligated to perform any such changes, except upon such written amendment or supplement; provided that if, upon agency's written request, dHSI begins work in accordance with a proposed change, Agency shall be liable to dHSI for the amounts due with respect to dHSI's work pursuant to such change, unless and until Agency notifies dHSI to stop work on such change.

Section 2. COMPENSATION. Agency hereby agrees to pay dHSI an amount **NOT TO EXCEED** Two Million, Five Hundred Thousand dollars (\$2,500,000) for the Work and/or Materials, which shall include all fees, costs, expenses, shipping, taxes (if applicable), insurance delivery charges and other reimbursables, as set forth in dHSI's fee schedule, attached hereto and incorporated herein as Exhibit B. dHSI's fee schedule per Exhibit B shall be valid for two years from the date of this contract, and shall thereupon be re-negotiable one time during the term of this Agreement. This dollar amount is not a guarantee that Agency will pay that full amount to the dHSI, but is merely a limit of potential Agency expenditures under this Agreement.

- 2.1 Invoices.** dHSI 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 dHSI and each employee, agent, and subcontractor of dHSI 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 pay in full the invoices received by dHSI, for Work satisfactorily performed by dHSI, 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 dHSI.
- 2.3 Payment of Taxes.** dHSI 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 dHSI 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.** dHSI shall have ninety (90) days after completion of the Requested Work to submit its final invoice for the Requested Work or Materials Provided. In the event dHSI fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, dHSI 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, dHSI 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, dHSI, 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 dHSI employs any person, dHSI shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by dHSI 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. dHSI 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 dHSI. 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 the operations of dHSI, with a self-insured retention or deductible of no more than \$100,000.

4.2.2 Automobile Liability. dHSI 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 dHSI, 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 of dHSI.

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. dHSI shall maintain professional liability insurance appropriate to dHSI'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 dHSI'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.

4.5 All Policies Requirements.

4.5.1 Verification of coverage. Prior to beginning any work under this Agreement, dHSI 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 if such coverage is not included in the policy or policies.

4.5.2 Notice of Reduction in or Cancellation of Coverage. dHSI 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 dHSI maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the dHSI.

4.5.4 Additional Certificates and Endorsements. Intentionally omitted.

4.5.5 Waiver of Subrogation. dHSI agrees to waive subrogation which any insurer of dHSI may acquire from dHSI by virtue of the payment of any loss. dHSI 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 dHSI, its employees, agents and subcontractors.

4.6 Contractor's Obligation. dHSI 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. dHSI 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 dHSI from liability under this indemnification and hold harmless clause. By execution of this Agreement, dHSI acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

5.2 Scope. dHSI shall indemnify and hold harmless the Agency and its officials, commissioners, officers and employees from and against any and all losses, liability, and damages arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by the willful misconduct or negligent acts or omissions of dHSI or its employees, subcontractors, or agents, and for acts for

which they are liable.

The foregoing obligations of dHSI shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the negligence or willful misconduct of the Agency or its officers, employees, or agents, and (2) the actions of dHSI or its employees, subcontractors, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law.

It is understood that the duty to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of Insurance certificates and endorsements required under this Agreement does not relieve dHSI from liability under this indemnification and hold harmless clause. By execution of this Agreement, dHSI acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

dHSI liability and duty to defend shall be limited to the policy limit amounts detailed in Section 4 above, as well as any coverage positions or determinations made or taken by dHSI's insurance carriers, as it relates to specific claims by the Agency, as long as dHSI maintains in effect and applicability the insurance, including but not limited to the amounts, deductibles, and scope, referenced herein.

As to any professional services subject to Civil Code section 2782.8, dHSI's liability shall be further limited as set forth in Section 2782.8 of the California Civil Code.

Section 6. STATUS OF CONTRACTOR.

6.1 Independent Contractor. dHSI is an independent contractor and not an employee of Agency. Agency shall have the right to control dHSI only insofar as the results of dHSI's Work and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which dHSI accomplishes Work rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, dHSI 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.

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

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

dHSI 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, dHSI 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 dHSI.

6.2 Contacting Not Agent. Except as Agency may specify in writing, dHSI shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. dHSI 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 dHSI and is based upon a determination of dHSI'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 dHSI. dHSI may not assign this Agreement or any interest therein without the prior written approval of the Agency. dHSI 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, dHSI shall supervise all work subcontracted by dHSI in performing the Work and shall be responsible for all work performed by a subcontractor as if dHSI itself had performed such work. The subcontracting of any work to subcontractors shall not relieve dHSI from any of its obligations under this Agreement with respect to the Work and dHSI 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. Not applicable.

6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors. Not applicable.

6.6 Maintenance Labor Agreement. Not applicable.

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.** dHSI 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.** dHSI represents and warrants to Agency that dHSI 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, dHSI 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, dHSI must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. dHSI 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.

dHSI 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 dHSI's receipt of Agency's written request therefor. dHSI's failure to timely comply with this provision may subject the dHSI to penalties pursuant to state law.

dHSI shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, dHSI 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 dHSI or by any subcontractor under dHSI 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 dHSI.

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 dHSI.

dHSI may cancel this agreement at any time and without cause upon ten (10) days prior written notice to Agency.

In the event of termination, dHSI shall be entitled to compensation for Work satisfactorily completed and materials purchased if such materials are provided to Agency as of the effective date of termination; Agency, however, may condition payment of such compensation upon dHSI 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 dHSI shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Contractor.** If dHSI 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 dHSI pursuant to this Agreement;
 - 8.4.3** Retain a different contractor to complete the Work not finished by dHSI; and/or
 - 8.4.4** Charge dHSI 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 dHSI pursuant hereto if dHSI 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 dHSI prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. dHSI hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and dHSI agree that, unless approved by Agency in writing, dHSI 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.** dHSI shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements or materials 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 dHSI under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires dHSI 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. dHSI shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency 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, dHSI shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to dHSI's Work.

- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** dHSI shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Agency will not be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at dHSI'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 dHSI. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall not have liability therefor. dHSI 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 dHSI on the Project site. All materials and supplies used by dHSI in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** dHSI shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency for the performance of Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, dHSI warrants that all Work shall be free from defects in design and workmanship, and that dHSI 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.

Services Warranty: If during the term of this Agreement (or during the one (1) year period following the term hereof), any Services used or provided by dHSI under this Agreement fail due to defects in workmanship or other breach of this Agreement, dHSI, shall, upon any reasonable notice from Agency, replace or repair the same to Agency's satisfaction.

Materials Warranty: If during the one (1) year period following delivery of materials, any equipment, goods or other materials provided by dHSI under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, dHSI, shall, upon any reasonable notice from Agency, replace or repair the same to Agency's satisfaction.

For materials supplied by manufacturers including warranties longer than one year, dHSI will extend the warranty to match the manufacturer's terms.

Unless otherwise expressly permitted by the applicable Purchase Order, all materials and supplies to be used by dHSI in the performance of the Services shall be new and utility grade equipment.

- 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 dHSI shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from dHSI'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 dHSI under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, dHSI shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** dHSI 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.
- 11.4 Substantial Completion, Warranties and Claims.** Any and all warranties, claims and all statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued, in any and all events, on the date of Substantial Completion of Contractor's Work.

Section 12. HEALTH AND SAFETY PROGRAMS. dHSI 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.

- 12.1** dHSI is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** dHSI 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. dHSI shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** dHSI 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 dHSI performing the Work. dHSI 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 dHSI under this Agreement at any time when, or for any Work performed when, dHSI is not in full compliance with this Section 12.

- 12.5** dHSI shall immediately report any injuries to the Agency site safety representative. Additionally, dHSI 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** dHSI shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. dHSI 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** dHSI shall develop a plan to properly handle and dispose of any hazardous wastes, if any, dHSI generates in performing the Work.
- 12.8** dHSI 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** dHSI 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 dHSI.

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, each party shall be responsible for its own attorneys' fees.
- 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.** dHSI may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place dHSI in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

dHSI 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 dHSI shall be sent to:

Al d’Heurle
d’Heurle Systems Incorporated
P.O. Box 1219
Colfax, CA 95713

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 dHSI 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 dHSI 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 dHSI's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the dHSI's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the dHSI'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-signatory third parties.

13.16 Fiduciary Responsibility. dHSI assumes no fiduciary responsibility towards the Agency in connection with this work.

13.17 Mutual Waiver of Consequential Damages. Unless specifically identified in this Agreement, in no event shall the parties to this Agreement be liable to each other, whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any special, indirect, incidental or consequential damages of any kind or nature whatsoever, beyond the limits of any applicable liability insurance.

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

NORTHERN CALIFORNIA POWER AGENCY

D'HEURLE SYSTEMS, INCORPORATED

Date_____

Date_____

RANDY S. HOWARD, General Manager

ALAIN F. d'HEURLE, President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

d'Heurle Systems Incorporated ("dHSI") shall provide the following services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by the Agency, including:

- Design and recommendation for new or refurbished existing systems;
- Preparation of engineering plans and specifications;
- Phone consultation and/or attendance at on-site meetings;
- Electrical contracting;
- Materials ordering and delivery;
- Control systems integration, configuration and programming;
- Equipment and/or system commissioning;
- Troubleshooting; and
- General mechanical, electrical and control system engineering and consulting.

D'HEURLE SYSTEMS INCORPORATED is not a signatory to the Maintenance Labor Agreement for the Lodi Energy Center Project and therefore will not perform any such work at that NCPA facility.

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:

Sr. Engineer/Technician	\$240.00	per hour
Sr. Engineer/Technician onsite normal business hours	\$240.00	per hour
Sr. Engineer/Technician onsite outside normal business hours	\$360.00	per hour
Sr. Engineer/Technician travel time	\$120.00	per hour
Engineering Associate (including travel time)	\$100.00	per hour
CAD drafting	\$100.00	per hour
Journeyman Electrician (prevailing wage, no travel time)	\$140.00	per hour
Electrician - dHSI shop panel assembly *	\$90.00	per hour
Per Diem	\$250.00	per day
Subcontracted services	DHSI Cost + 10%	
Misc. expensed (mail, reproduction, freight)	DHSI Cost	
Materials resale	DHSI Cost + 20% + CA sales tax	
Mileage	IRS standard mileage rate	

* dHSI shop panel assembly labor is subject to CA sales tax

NOTE: As a public agency, NCPA shall not reimburse dHSI for travel, food and related costs in excess of those permitted by the Internal Revenue Service. In addition, NCPA policies prohibit reimbursement for alcohol.



Commission Staff Report – *DRAFT*

DATE: January 27, 2021

COMMISSION MEETING DATE: February 25, 2021

SUBJECT: Granite Construction Company – Five Year Multi-Task General Services Agreement for Miscellaneous Maintenance General Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, except the Lodi Energy Center facility.

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma	METHOD OF SELECTION:
	Assistant General Manager	N/A
Division:	Generation Services	
Department:	Geothermal	

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

RECOMMENDATION:

Approve Resolution 21-XX authorizing the General Manager or his designee to enter into a Five Year Multi-Task General Services Agreement with Granite Construction Company for general maintenance services, including grading, excavation, and paving, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000, for use at any facilities owned and/or operated by NCPA, except the Lodi Energy Center facility.

It is recommended that this item be placed on the Commission Consent Calendar.

BACKGROUND:

General maintenance services, including grading, excavation, and paving, are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. 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. This agreement will be available for use at all facilities owned and/or operated by NCPA, except the Lodi Energy Center. NCPA has in place agreements for similar services with Brian Davis dba Northern Industrial Construction, Gifford's Backhoe Services, Inc., Epidendio Construction, Inc, and Rege Construction.

FISCAL IMPACT:

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 best overall 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:

Pending Committee review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with Granite Construction Company

RESOLUTION 21-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIVE YEAR MULTI-TASK GENERAL SERVICES AGREEMENT WITH GRANITE CONSTRUCTION COMPANY

(reference Staff Report #XXX:21)

WHEREAS, general maintenance services, including grading, excavation, and paving, are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA), except the Lodi Energy Center facility; and

WHEREAS, Granite Construction Company is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with Granite Construction Company to provide such services as needed at the NCPA Geothermal Facility 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 Five Year Multi-Task General Services Agreement with Granite Construction Company, for general maintenance services, including grading, excavation, and paving, 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 any facilities owned and/or operated by NCPA, except the Lodi Energy Center facility.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2021 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	_____	_____	_____

DAVID HEGELE
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Granite Construction Company, a California corporation with its office located at P.O. Box 50085, Watsonville, CA 95076 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2021 ("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, which is subject to mutual agreement as evidence by a fully executed 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. If a not-to-exceed cap is specified, Contractor shall be entitled to stop Work under a Purchase Order once the cap is met unless the Parties mutually agree to increase the cap unless Contractor has agreed to complete any Work under a Purchase Order for a fixed price.

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. Notwithstanding the foregoing, in the event that the Requested Work includes hazardous material remediation services, Contractor shall have one hundred eighty (180) days after completion of said services to submit its final invoice. In the event Contractor fails to submit an invoice to Agency for hazardous remediation services for any amounts due within the one hundred eighty (180) day period, Contractor is deemed to have waived its right to collect its final payment for said services 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 to the extent specified in an applicable Purchase Order.

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

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

4.5 All Policies Requirements.

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

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

4.5.3 Higher Limits. If Contractor maintains higher limits than the minimums specified herein, the Agency shall not 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 reasonable 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 active, sole, or gross negligence or willful misconduct of Agency or others within its authority or control. 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 brought on to the Site by Contractor, 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 to the extent caused by Contractor. Contractor shall not be responsible for any pre-existing hazardous materials.

- 5.4 Waiver of Consequential Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT OR OTHERWISE FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, AND BUSINESS INTERRUPTION, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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. Not applicable.

6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors. Not applicable.

6.6 Maintenance Labor Agreement. Not applicable.

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,

qualifications, and approvals of whatever nature that are legally required to practice their respective professions. Contractor shall not be responsible for the procurement or payment of any permits, fees, royalties, or licenses, except for transportation and safety permits and business and contractor's licenses that can only be acquired by Contractor.

- 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 for Convenience.** 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 for convenience, Contractor shall be entitled to compensation for Work satisfactorily completed as of the effective date of termination, costs to make the Site safe, and reasonable costs to demobilize; 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 for default;

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; 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. Agency will not be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. 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 shall be solely as an accommodation and Agency shall have no liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition, unless specified otherwise.
- 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.
- 10.4 Investigation.** Contractor shall have no responsibility for any site condition unless it was ascertainable through a visual pre-bid examination of the Project Site or disclosed in writing to Contractor prior to the execution of the Agreement or applicable Purchase Order. Contractor shall be entitled to rely on the design documents and specifications as being accurate and complete and shall not be responsible for error or deficiencies in such documents. Contractor's required review of any contract documents is strictly for the purpose of facilitating construction by the Contractor and is made in Contractor's capacity as a contractor and not as a design professional, but any nonconformity or deficiency discovered by or made known to Contractor shall be reported promptly to Agency.

Section 11. WARRANTY.

- 11.1 Nature of Work.** Contractor warrants that all Work shall be free from defects in materials and workmanship, and that the Work will conform to the applicable plans and specifications provided by Agency or others on behalf of Agency. Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including construction codes and 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.

- 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:

Justin Ingram
North Coast Area Manager
Granite Construction Company
1324 South State Street
Ukiah, CA 95482

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.

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

NORTHERN CALIFORNIA POWER AGENCY

GRANITE CONSTRUCTION COMPANY

Date_____

Date_____

RANDY S. HOWARD, General Manager

JIGISHA DESAI, Vice President
CSLB: No. 89

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Granite Construction Company ("Contractor") shall provide routine, recurring, and usual maintenance services which include, but are not limited to grading, excavation, paving concrete, gravel hauling, water hauling, seal coating services as requested by Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, except the Lodi Energy Center facility. **No work under this Agreement shall be performed at NCPA's Lodi Energy Center facility.**

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:



Northern California 2020-2021 LABOR AND EQUIPMENT RENTAL RATES

HOURLY LABOR RATES			
CRAFT LABOR	ST	OT	DT
OPERATOR FOREMAN	\$155	\$198	\$246
OPERATOR / GRADSETTER	\$143	\$181	\$223
LABOR FOREMAN	\$115	\$147	\$182
LABORER	\$105	\$128	\$156
CARPENTER FOREMAN	\$157	\$210	\$262
CARPENTER	\$140	\$184	\$227
TEAMSTER	\$115	\$137	\$167
PROJECT MANAGER	\$250	NA	NA

HOURLY EQUIPMENT RATES			
LOADER JD 210C 4X4/BOBCAT	\$46	ROLLER 4-6 TON	\$53
LOADER/BACKHOE JD 710	\$74	ROLLER 7-9 TON	\$109
EXCAVATOR CAT 330L	\$175	ROLLER 10+ TON	\$127
EXCAVATOR CAT 345	\$225	COMPACTOR CAT 815	\$142
EXCAVATOR CAT 365	\$372	POWER KICK BROOMS	\$206
LOADER CAT 950	\$129	WATER TRUCKS	\$71
LOADER CAT 966	\$153	PICKUP	\$34
DOZER/RIPPER CAT D6	\$145	FLATRACK	\$47
MOTOR GRADER CAT 140H/143H	\$114	AIR COMPRESSORS	\$24
ASPHALT PAVER	\$331		

- * The above prices are based upon availability of Granite owned equipment.
- * Minimum charge of 4 hours. There is a minimum charge of 8 hours for equipment worked over 4 hours.
- * Rates do not include working at night. Project specific pricing can be provided for night work.
- * Overtime will be charged for work in excess of 8 hours per shift and Saturdays.
- * Double-time will be charged for work in excess of 12 hours per shift and Sundays.
- * Move-in/out not included in rates and will be charged at cost plus 15%.
- * Rental equipment and on-road dump trucks will be charged at cost plus 15%.
- * Materials will be charged at 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.



Commission Staff Report – *DRAFT*

Date: January 28, 2021

COMMISSION MEETING DATE: February 25, 2021

SUBJECT: Grant of Easement and Easement Agreement with the Beigel Family; Applicable to the following projects: Northern California Power Agency Geothermal facility.

AGENDA CATEGORY: Consent

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

RECOMMENDATION:

Approve Resolution 21-XX delegating authority to the General Manager or his designee to enter into a Grant of Easement and Easement Agreement with the Beigel family, with any non-substantial changes recommended and approved by the NCPA General Counsel, for use at NCPA's Geothermal facility.

It is recommended that this item be placed on the Commission Consent Calendar.

BACKGROUND:

NCPA entered into a Grant of Easement and Easement Agreement with the Beigel family on December 17, 1980. This agreement allowed NCPA employees to cross private property owned by the Beigel family to access NCPA-owned transmission towers. NCPA has paid a nominal fee every five years to the Beigel family for these easement access rights.

NCPA needs to execute a new Grant of Easement and Easement Agreement to replace the previous agreement. This new agreement will allow NCPA easement access rights for an initial term of five years (through the year 2025), with the option to extend the agreement for three successive periods of five years each (through the year 2045). The existing easement access agreement has expired with the last payment of \$6,399 made on January 12, 2016 for access rights through September 30, 2020.

FISCAL IMPACT:

Upon execution, a payment of \$6,934 will be made to the current Beigel family landowners, as calculated based on the Consumer Price Index (CPI), which covers NCPA's easement access for the initial five year term. For the successive five year extensions, the payment will continue to be calculated based on increases in the CPI.

Funds for this easement access agreement were included in the current fiscal year budget and are available in the Generation Services account. Cost allocation will be based on the Project Participant percentages.

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:

Pending Committee Review

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Beigel Lease Easement Agreement

RESOLUTION 21-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A GRANT OF EASEMENT AND EASEMENT AGREEMENT WITH THE BEIGEL FAMILY

(reference Staff Report #xxx:21)

WHEREAS, Northern California Power Agency originally entered into a Grant of Easement and Easement Agreement on December 17, 1980 with the Beigel family landowners to allow NCPA to cross their property to access NCPA-owned transmission towers; and

WHEREAS, NCPA has paid a nominal fee every five years to the Beigel family landowners for these easement access rights; and

WHEREAS, NCPA wishes to execute a new Grant of Easement and Easement Agreement with the Beigel family to replace the previous agreement; and

WHEREAS, the new agreement will be for an initial term of five years (through the year 2025), and will allow for extension of the Grant of Easement and Easement Agreement for three successive five-year terms (through the year 2045); and

WHEREAS, NCPA will continue to pay the Beigel family for these easement access rights for each five-year term, the amount of which will be calculated based upon the Consumer Price Index (CPI), as described in the Easement 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 NCPA General Manager or his designee to enter into a Grant of Easement and Easement Agreement with Beigel family, with any non-substantial changes recommended and approved by the NCPA General Counsel, for use at NCPA's Geothermal Facility.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2021, 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	_____	_____	_____

DAVID HAGELE
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Northern California Power Agency
Attn: General Manager
651 Commerce Drive
Roseville, CA 95678
Phone: (916) 781-3636

APNs: 141-030-007-000 – Sonoma County
141-040-031-000 – Sonoma County

EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF EASEMENT AND EASEMENT AGREEMENT

This Grant of Easement and Easement Agreement (this “**Agreement**”) by and among the Northern California Power Agency, a California joint powers agency (the “**Agency**”), and Patricia C. Beigel, Trustee of the Ronald and Patricia Beigel Family Trust as to a 50% interest; LeAnne Beigel Scott, as to a 25% interest; and Lynda Beigel Barros, as to a 25% interest, owners of the Property (collectively referred to as “**Grantor**”) is entered into this ____ day of _____, 2021, with an effective date of October 1, 2020. The parties to this Agreement may be referred to herein individually as a “**Party**” or collectively as the “**Parties.**”

RECITALS

A. Grantor is the owner of that certain real property situated in Sonoma County, California, known as Assessor’s Parcel Numbers 141-030-007-000 and 141-040-031-000, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the “**Property**”).

B. The Agency has requested, and Grantor has agreed to grant to Agency, an easement over the existing private roads which traverse the Property, as more particularly described in Exhibit B, attached hereto and incorporated herein by reference (the “**Easement Area**”).

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Easement Area. The Easement Area subject to the easement granted by Grantors to Agency pursuant to the terms of this Agreement is depicted on Exhibit B, and consists of the private roads traversing the Property, and which is indicated by a map outlining the Property and associated roads.

2. Grant of Easement. For valuable consideration of **\$6,934.00** (“**Initial Payment**”), the receipt of which is hereby acknowledged, and future Regular Payments, as defined below, Grantor hereby grants and conveys to Agency, its successors and assigns, a nonexclusive easement on and over the Easement Area for the purpose of ingress to and egress from any and all of Agency’s present and future geothermal electric generation and steam field facilities, including electric transmission and distribution

facilities (the “**Facilities**”), by Agency and its employees, invitees, contractors and agents as the Agency may reasonably see fit (the “**Easement**”).

3. Term. This Agreement shall have an initial term of five (5) years, commencing on October 1, 2020, and terminating on September 30, 2025 (the “Initial Term”). The term of this Agreement shall be extended beyond the Initial Term for three (3) successive periods of five (5) years each (each being a “Renewal Term”), provided that neither Party has delivered a written notice of termination of this Agreement to the other Party prior to that date which is six (6) months prior to the expiration of the then-expiring term, and provided further that the Agency:

(a) has fully and faithfully performed all the terms, covenants, and conditions of this Agreement as of the end of the then-expiring term; and

(b) has paid Grantor the Regular Payments (as defined below).

Regular Payments. Agency shall make a payment to Grantor every five (5) years during the term of this Agreement, payable on October 1 of each payment year (“**Regular Payment**”). The amount of each Regular Payment shall be in an amount which is the same percentage greater than the previous Regular payment as the percentage by which the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, of the United States Department of Labor, Bureau of Labor Statistics (the Index”), for April of the current Regular Payment year is greater than the Index was for April of the previous Regular Payment year, rounded to the nearest whole dollar. In determining the amount of the first Regular Payment, the Initial Payment shall be used as the base amount.

4. No Public Access. The grant of the Easement is not a public dedication and will not and does not give the public access, but is, and will be, limited to use by the Agency, its employees, invitees, agents, and contractors for ingress to and egress from the Facilities.

5. Term; Early Termination. The Easement granted under this Agreement shall be effective as of the effective date written above and shall terminate on September 30, 2040. The Agency may, at any time, and in its sole discretion, surrender the Easement to Grantor by executing and delivering to the Grantor, and placing a record in the county in which the lands are located, a quit claim deed for the Easement Area.

6. Title and Lease Warranty. Grantor represents and warrants that Grantor is the sole fee owner of the Property, that Grantor is not under any contract with any other party for the purchase and sale of the Property, and that there are no oral or written leases in effect with respect to any portion of the Property except to Calpine (formerly Unocal). NCPA acknowledges that Calpine has the sole right to drill for, produce, extract, take, remove and sell steam and steam power and that Calpine or its predecessors in interest, as lessee, constructed and now maintains and uses the private roads comprising the Easement Area.

7. Indemnification. The Agency agrees to indemnify, defend and hold harmless Grantor from and against any and all claims, causes of action, liability, costs and expenses (“**Claims**”) arising out of injuries to, or deaths of, any person, and for loss of, or damage to, all property including the Easement Area and the lands of Grantor, caused by use of the Easement by the Agency or its employees, invitees, contractors and agents, except that Agency shall not be required to indemnify or defend Grantor for any

Claims attributable to the negligence or willful misconduct of Grantor. The terms of this indemnification, defense and hold harmless provision shall survive the termination of this Agreement.

8. General Terms.

A. Successor and Assigns. All rights, title and privileges granted pursuant to this Agreement, and all benefits and burdens relating thereto, shall run with the land and shall be and inure to the benefit of and bind the successors and assigns of the Parties hereto.

B. Governing Law; Venue. This Agreement shall be governed by and construed according to the laws of the State of California, and in the event that either Party brings any action against the other under this Agreement, the Parties agree that the venue of such action shall be vested exclusively in the state courts of California in the County of Sonoma or in the United States District Court for the Northern District of California.

C. Attorney's Fees and Costs. If any dispute or controversy arises, or if any legal action relating to this Agreement is commenced by Agency or Grantor, such that legal counsel must be retained by either party, the prevailing party (as determined by a court of competent jurisdiction) shall be entitled to collect its attorney's fees and costs from the losing party in such amount as the court determines reasonable.

D. 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.

E. Notice. Any written notice to the Grantor shall be sent via first-class mail postage prepaid to:

Patricia C. Beigel,
Trustee of the Ronald and Patricia Beigel Family Trust (as to 50% interest)
854 Butternut Drive
San Rafael, CA 94903-3150
Telephone: (415) 479-4850
Cell No.: (415) 233-2922

LeAnne Beigel Scott (as to 25% interest)
965 Darlyn Way
Santa Rosa, CA 95407
Telephone: (209) 489-9258

Lynda Beigel Barros (as to 25% interest)
130 Camino del Sol
Martinez, CA 94553
Telephone: (925) 313-9293

Any written notice to the Agency shall be sent to:

Northern California Power Agency
Attn: General Manager
651 Commerce Drive
Roseville, CA 95678
Phone: (916) 781-3636

With a copy to:

General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

F. Entire Agreement; Modification. This Agreement, including Exhibits A and B attached hereto, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, concerning the subject of this Agreement. This Agreement may only be modified by a written amendment duly executed by the Parties to this Agreement.

G. Counterparts. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same Agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

H. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement except as specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

GRANTOR

NORTHERN CALIFORNIA POWER AGENCY,
a California Joint Powers Agency

By: _____
PATRICIA C. BEIGEL, Trustee of the
Ronald and Patricia Beigel Family Trust
(as to a 50% interest)

By: _____
RANDY S. HOWARD
General Manager

By: _____
LeAnne Beigel Scott (as to a 25% interest)

Attest: _____
Assistant Secretary of the Commission

By: _____
Lynda Beigel Barros (as to a 25% interest)

Approved as to form:
By: _____
Jane E. Luckhardt, General Counsel

EXHIBIT A

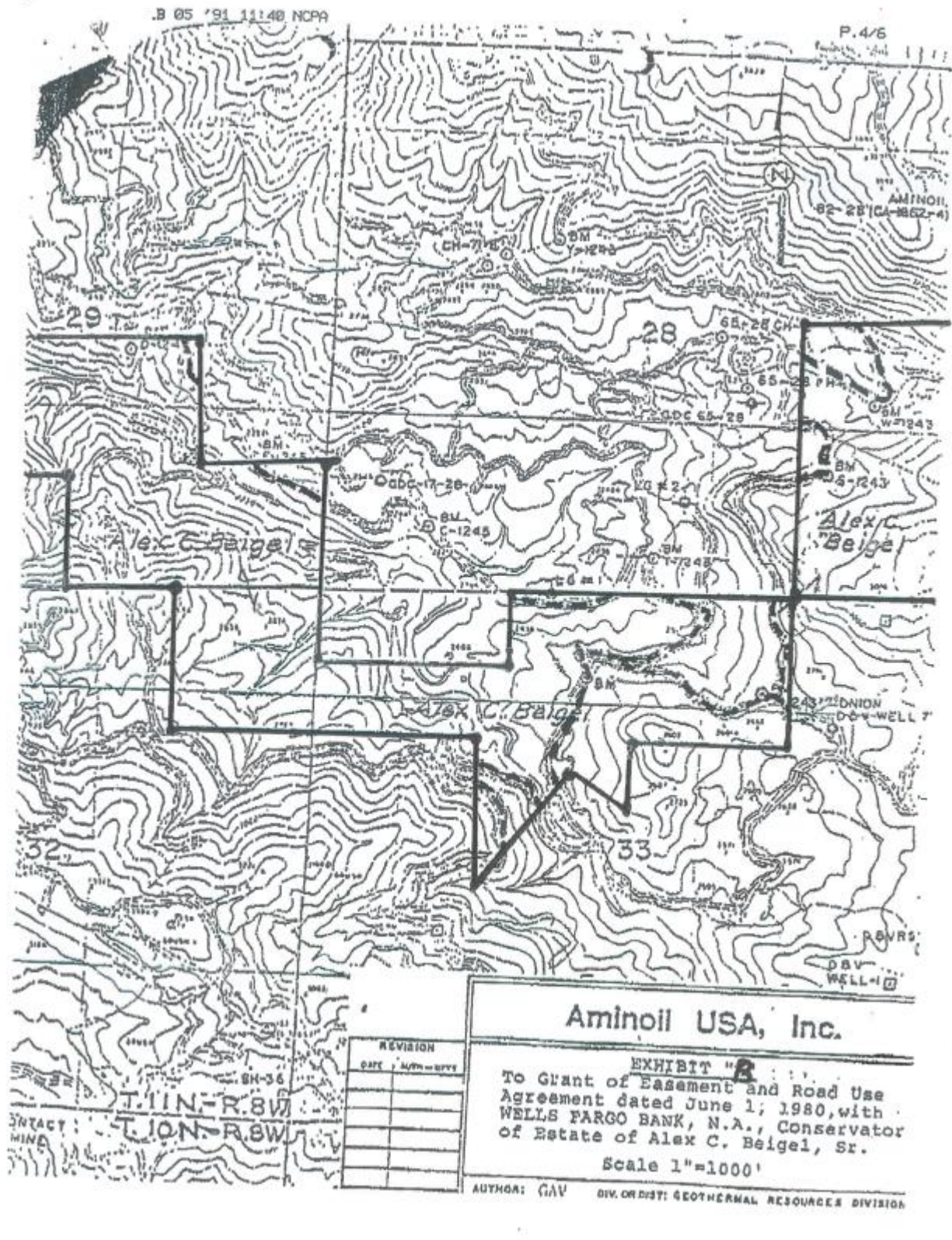
DESCRIPTION OF GRANTOR'S PROPERTY

The east one-half of the southeast one-quarter ($E \frac{1}{2} SE \frac{1}{4}$) of Section 28, the southeast one-quarter of the southeast one-quarter ($SE \frac{1}{4} SE \frac{1}{4}$) and the northwest one-quarter of the southeast one-quarter ($NW \frac{1}{4} SE \frac{1}{4}$) of Section 29, and Lots 3 and 12, and the northwest one-quarter of the northeast one-quarter ($NW \frac{1}{4} NE \frac{1}{4}$) of Section 33, Township 11 North, Range 8 West M.D.B.&M., excepting from said Lot 3 the portion thereof lying within the boundary lines of the parcel of land described in the deed from Alex C. Beigel and wife to Helen V. Dillingham and Frances W. Vought dated March 20, 1962 and recorded in Book 1891 of Official Records at page 703, Sonoma County Records.

EXHIBIT B

DESCRIPTION OF EASEMENT AREA

The easement area refers to the private roads located on the Grantor's Property and informally called Big Sulfur Creek Road and Pine Flat Road. The attached map labelled Aminoil USA, Inc., Exhibit B, shows the location of the roads.



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

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Signature _____

ACKNOWLEDGMENT

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State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____