



651 Commerce Drive  
Roseville, CA 95678

phone (916) 781-3636  
fax (916) 783-7693  
web [www.ncpa.com](http://www.ncpa.com)

# Memo

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**Date:** March 7, 2018  
**To:** Facilities Committee  
**From:** Michael Brozo, Chair  
**Subject:** March 13, 2018, NCPA Facilities Committee Special Meeting Notice

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PLEASE TAKE NOTICE that, pursuant to Government code section 54956, a Special Meeting of the Northern California Power Agency Facilities Committee is hereby called for March 13, 2018, at 9:00 am to discuss those matters listed on the attached Agenda. The meeting will be held at NCPA's Roseville Offices, 651 Commerce Drive, Roseville, California, 95678.

If you are unable to attend the meeting in person at the NCPA Offices and wish to attend via teleconference, in accordance with The Brown Act, **you must attend at one of the locations listed on the Agenda and post the Agenda at that location by 9:00 am, Monday, March 12, 2018, in a location that is accessible to the public until the completion of the meeting.**

A handwritten signature in blue ink that reads "Michael Brozo".

Michael Brozo  
Facilities Committee Chair

MB:cp



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March 7, 2018

TO: Facilities Committee

FROM: Carrie Pollo

SUBJECT: Notice of the Facilities Committee Special Meeting

Facilities Committee: **In compliance with the Brown Act, if participating on the conference call **and/or online presentation**, please attend at one of the locations listed below and post this notice at a publicly accessible location at the participation location 24-hours before the call begins.**

Date:	<b>Tuesday, March 13, 2018</b>
Time:	<b>9:00 am</b>
Where:	<b>NCPA Headquarters 651 Commerce Drive Roseville, CA 95678</b>
Contact at NCPA:	Carrie Pollo (916) 781-4282

ALAMEDA MUNICIPAL PWR 2000 Grand St., Alameda 510.748.3901	BAY AREA RAPID TRANSIT 300 Lakeside Drive, Oakland 510.464.6435	CITY OF BIGGS 465 "C" Street, Biggs 530.868.5493
CITY OF GRIDLEY 685 Kentucky Street, Gridley 530.846.5695	CITY OF HEALDSBURG 435 Allen Ct., Healdsburg 707.431.3317	CITY OF LODI 1331 S. Ham Lane, Lodi 209.333.6762
CITY OF LOMPOC 100 Civic Ctr Plaza, Lompoc 805.875.8299	CITY OF PALO ALTO 250 Hamilton Ave, Palo Alto 650.329.2273	PORT OF OAKLAND 530 Water Street, Oakland 510.627.1100
PLUMAS-SIERRA REC 73233 Hwy 70, Portola 530.832.4261	CITY OF ROSEVILLE 2090 Hilltop Cir, Roseville 916.774.5602	CITY OF SANTA CLARA 881 Martin Avenue, Santa Clara 408.615.2300
TURLOCK IRR. DISTRICT 333 E. Canal Drive, Turlock 209.883.8300	CITY OF UKIAH 300 Seminary Ave, Ukiah 707.463.6200	



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# Agenda

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**Date:** Tuesday, March 13, 2018  
**Subject:** Facilities Committee Special Meeting  
**Location:** NCPA Headquarters, 651 Commerce Drive, Roseville, CA  
**Time:** 9:00 am

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*The Committee may take action on any of the items listed on this Agenda regardless of whether the matter appears on the Consent Calendar or is described as an Action Item, a Report 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](http://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.*

## 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.

- 2. Hydroelectric Facilities – Andritz Hydro Multi-Year Field Services Agreement** – Staff is seeking a recommendation for Commission approval of a Multi-Year Field Services Terms and Conditions Agreement with Andritz Hydro for engineering support and field services related to major electromechanical equipment and plant operations, with a not to exceed amount of \$10,000,000, for use at NCPA Hydroelectric Facilities. All purchase orders issued pursuant to the agreement will be charged against approved Annual Operating Budgets. (*Commission Category: Consent; Sponsor: Hydro*)
- 3. Hydroelectric Facility – Collierville Gantry Crane Maintenance** – Staff is seeking a recommendation for Commission approval authorizing the General Manager to enter into one or more contracts and to issue purchase orders for a total not-to-exceed amount of \$550,000 for Collierville crane maintenance. (*Commission Category: Consent; Sponsor: Hydro*)

4. **Hydroelectric Facilities – Pending Insurance Claims** – Staff is seeking a recommendation for Commission approval authorizing the General Manager to execute Proof of Loss forms for \$1,770,036 (gross) for the Beaver Creek Reservoir Storm Damage Claim and \$2,600,000 (gross) for the Adit 4 Landslide Claim to settle and close both claims. (*Commission Category: Discussion/Action Item; Sponsor: Hydro*)
5. **All Generation Services Facilities, Members, SCPPA – HRST, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five year Multi-Task General Services Agreement with HRST, Inc. for inspection services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, SCPPA Members. All purchase orders issued pursuant to the agreement will be charged against approved Annual Operating Budgets. (*Commission Category: Consent; Sponsor: CT's*)
6. **Approval of Services Agreement with San Jose Community Energy** – Staff will present and seek a recommendation for approval of a Services Agreement between NCPA and San Jose Community Energy (SJCE), under which NCPA will supply certain wholesale power supply services to SJCE. (*Commission Category: Discussion/Action Item; Sponsor: Power Management*)
7. **Generation Services FY2019 Budget Review and Approval** – Staff will present and review the final budget for FY2019 for Generation Services, and will be seeking a recommendation for Commission approval of the budget. (*Commission Category: Discussion/Action Item; Sponsor: Gen Services*)
8. **Administrative Services FY2019 Budget Review and Approval** – Staff will present and review the final budget for FY2019 for Administrative Services, and will be seeking a recommendation for Commission approval of the budget. (*Commission Category: Discussion/Action Item; Sponsor: Administrative Services*)
9. **Power Management FY2019 Budget Review and Approval** – Staff will present and review the final budget for FY2019 for Power Management, and will be seeking a recommendation for Commission approval of the budget. (*Commission Category: Discussion/Action Item; Sponsor: Power Management*)

#### **ADJOURNMENT**

/cp



# Commission Staff Report - *DRAFT*

Date: March 8, 2018

**COMMISSION MEETING DATE:** March 22, 2018

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

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

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

It is recommended to place this item on the Commission Consent Calendar.

## **BACKGROUND:**

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

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Committee review pending.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

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

## RESOLUTION 18-XX

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

(reference Staff Report #xxx:18)

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

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

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

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

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

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

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

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

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



## FIELD SERVICES ADVISORY AGREEMENT

This Agreement with attached Amendment is made as of \_\_\_\_\_, between

ANDRITZ HYDRO:

and the Client:

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

Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

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

ANDRITZ HYDRO and the Client agree as follows.

### ARTICLE 1 SCOPE AND DURATION OF SERVICES

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

### ARTICLE 2 ANDRITZ HYDRO'S RESPONSIBILITIES

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

### ARTICLE 3 CLIENT'S RESPONSIBILITIES

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

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

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

### ARTICLE 4 COMPENSATION AND PAYMENTS

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

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

**4.2 Time Charges.** Time for Services performed away from ANDRITZ HYDRO's home office, including Stand-by and Travel time, will be charged on a per-day basis for each full day and any part thereof, with a minimum charge of one day; provided, however, that Overtime will be charged on a per-hour basis for each full hour and any part thereof, with a minimum charge of one hour. Time for Services performed at ANDRITZ HYDRO's home office will be charged on a per-hour basis for each full hour and any part thereof, with a minimum charge of one hour.

**4.3 Time Definitions.** Hours of work for Services performed away from ANDRITZ HYDRO's home office will be by mutual agreement of the parties. "Overtime" is time, during the course of ANDRITZ HYDRO's Services away from ANDRITZ HYDRO's home office, when ANDRITZ HYDRO personnel work, are traveling, are on stand-by, or any combination of the three (1) in excess of eight hours in any calendar day Monday through Friday or (2) on a Saturday, Sunday, or holiday. "Stand-by time" is time, during the course of ANDRITZ HYDRO's Services away from ANDRITZ HYDRO's home office, when ANDRITZ HYDRO personnel are available for work but are not working due to circumstances beyond ANDRITZ HYDRO's control. "Travel time" is time spent by ANDRITZ HYDRO personnel to travel to and from the Facility or in furtherance of the Services and includes any travel delays.

**4.4 Reimbursable Expenses.** Reimbursable Expenses are in addition to the fees described in **Paragraph 4.1**, will be billed at the cost incurred by ANDRITZ HYDRO plus the Administrative Mark-up identified in the Rate Schedule, and may include, but are not limited to:

- .1 travel expenses incurred in furtherance of the Services including, but not limited to, the rate-per-mile set forth in the Rate Schedule for and on account of the use of privately owned vehicles; cost of air or rail transportation; local bus and taxi fares; automobile rental costs; road tolls; and transportation of tools and equipment owned by ANDRITZ HYDRO;
- .2 living and incidental expenses, including, but not limited to, lodging, meals and other expenses incidental to the assignment such as telephone, postage, freight charges, etc., while ANDRITZ HYDRO is at the Facility, and while traveling to the Facility and returning;
- .3 home-office incidental expenses such as long-distance telephone calls, postage, freight charges, office supplies, copying, etc.;
- .4 rental expenses of tools, devices, or equipment supplied by ANDRITZ HYDRO, whether owned by ANDRITZ HYDRO or not;
- .5 communications expenses such as fax and telephone service unless the Client makes its fax and telephone systems available for the use of ANDRITZ HYDRO; and
- .6 general expenses including, but not limited to, incidental expenses, printing, photography, and other expenses incurred by ANDRITZ HYDRO in the performance of the Services.

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

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

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

## **ARTICLE 5 GENERAL PROVISIONS**

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

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

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

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

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

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

**5.6 Taxes.** The prices quoted for Services do not include any sales, privilege, use, turnover, excise, or other similar tax. The Client must reimburse ANDRITZ HYDRO the amount of any such tax, which ANDRITZ HYDRO pays on account of the Services, upon presentation of an invoice therefor.

**5.7 Governing Law; Jurisdiction; Venue; Mediation; Joinder; Limitations Period.** This Agreement shall be governed by the substantive laws of the state of North Carolina, USA, without reference to such state's choice-of-law rules. All litigation arising out of or relating to this Agreement must be brought and held only in the United States District Court for the Western District of North Carolina, Charlotte Division, or the Superior Court of the 26<sup>th</sup> Judicial District of North Carolina; and ANDRITZ HYDRO and the Client consent to the exclusive jurisdiction of and venue in those courts. However, prior to the initiation of any legal proceeding by either party, ANDRITZ HYDRO, in its sole discretion, may elect that any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof, shall be first submitted to mediation after written notice of the dispute by the disputing party. If ANDRITZ HYDRO elects in its sole discretion, to submit the matter to mediation then both parties agree to select a neutral mediator who is a licensed attorney and conduct said mediation promptly. The costs of the mediation, including the compensation of the mediator and all other fees and expenses, shall be borne equally by the parties. The mediation shall be conducted in Charlotte, NC or any other mutually agreed upon venue. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof not resolved through mediation OR any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach thereof that ANDRITZ HYDRO elected not to submit to mediation shall be settled through Litigation per this paragraph. Except with ANDRITZ HYDRO's prior written consent, no litigation arising out of or relating to this Agreement will include, by consolidation or joinder or in any other manner, any entities other than the Client and ANDRITZ HYDRO. Causes of action between the Parties will have accrued and the applicable statute of limitations will commence to run not later than the earlier of the date the Services are substantially complete, this Agreement is breached, or this Agreement is terminated.

**5.8 Waiver of Subrogation.** To the extent damages are covered by property insurance, the Client and ANDRITZ HYDRO waive all rights against each other for damages, except such right as they may have to the proceeds of such insurance.

**5.9 Extent of Contract.** ANDRITZ HYDRO is an independent contractor of the Client and nothing contained in this Agreement shall be construed as creating any other relationship between ANDRITZ HYDRO and the Client. Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of any third party against either the Client or ANDRITZ HYDRO.

**5.10 Survivability.** The terms and conditions of this Agreement will survive the completion of the Services and the payment of the compensation provided herein.

**5.11 Waiver.** The failure of either Party to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Agreement or to exercise any right herein contained or provided by law is not to be construed as a waiver or relinquishment of such provision or

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

**5.12 Captions.** The captions of this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope, meaning, or intent of this Agreement.

**5.13 Severability.** The invalidity of any provision or provisions of this Agreement will not affect the other provisions, and this Agreement will be construed in all respects as if any invalid provisions were omitted.

**5.14 Successors and Assigns.** Each Party, respectively, binds itself, its partners, successors, assigns, and legal representatives to the other Party, and to the partners, successors, assigns, and legal representatives of the other Party with respect to all covenants of this Agreement. Neither Party may assign or transfer any interest in this Agreement without the written consent of the other.

**5.15 Integration.** This Agreement constitutes the entire agreement between the Parties and there exist no other agreements, oral or written, between them relating to any matters covered by this Agreement or relating to any other matter whatsoever, whether or not within the knowledge or contemplation of either of them at the time of execution of this Agreement.

**5.16 Equal Employment Opportunity.** This Agreement incorporates by reference applicable provisions and requirements of Executive Order 11246 and the Federal Acquisition Regulations including FAR § 52.222-26 (covering race, color, religion, sex and national origin); the Vietnam Era Veterans Readjustment Assistance Act of 1974 and FAR § 52.222-35 (covering special disabled and Vietnam era veterans) and; the Rehabilitation Act of 1973 and FAR § 52.222-36 (covering handicapped individuals). The Client certifies that it does not and will not maintain any facilities in a segregated manner, or permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Client further certifies that appropriate physical facilities are maintained for both sexes. The Client must obtain a similar certificate prior to award of any nonexempt lower-tier subcontracts.

**5.17 Indemnification.** To the maximum extent permitted by law, the Client must indemnify and hold harmless ANDRITZ HYDRO from and against all claims, damages, losses, and expenses, including, but not limited to, attorneys and consultant fees, arising out of or related to the performance of the Services, including, but not limited to, any claims for bodily injury, sickness, disease, or death, or to injuries or claims related to the removal, handling, or use of any hazardous materials; except to the extent that such claims, damages, losses, and expenses are the result of ANDRITZ HYDRO's sole negligence.

**5.18 Limited Warranty.** ANDRITZ HYDRO warrants that it will perform the Services consistent with (1) recognized and sound industry practices, procedures, and techniques; (2) applicable laws and regulations; and (3) the standard of care exercised by other hydropower firms which regularly perform similar services. **The foregoing warranty is exclusive and in lieu of all other warranties.** ANDRITZ HYDRO assumes no responsibility with respect to the suitability of the Client's equipment or with respect to any latent defects in it.

**5.19 Limitation of Liability.** ANDRITZ HYDRO shall not be liable, whether in contract or in tort, or under any other legal theory, for loss of use, revenue, or profit, or for cost of capital or of substitute use or performance or for any other incidental, indirect, special or consequential damages, or for any other

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

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

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

ANDRITZ HYDRO Corp.	CLIENT: Northern California Power Agency
Name: Darren A. Houghton	Name: Randy S. Howard
Title: Vice President – Sales and Marketing USA	Title: General Manager
Signature:_____	Signature:_____

## EXHIBIT A

### FIELD SERVICE RATE SCHEDULE (EFFECTIVE FOR 2017)

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

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

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

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

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

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

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

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

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

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

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

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

#### 4. GENERAL PROVISIONS:

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

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

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

**1. Duration of Agreement.**

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

**2. Applicability.**

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

**3. Compensation.**

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

**4. Written Authorizations from Client.**

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

**5. Safety.**

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

## **6. Time Charges.**

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

## **7. Invoice and Pay Procedure.**

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

## **8. Replacement of Andritz Hydro Personnel.**

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

## **9. Instruments of Service.**

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

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

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

## **11. Indemnification.**

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

#### **12. Insurance.**

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

#### **13. Monitoring by DIR.**

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

#### **14. Registration with DIR.**

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

#### **15. Prevailing Wage Rates.**

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



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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

ANDRITZ HYDRO CORP.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

Attest:

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

Approved as to Form:

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



# Commission Staff Report – *DRAFT*

Date: March 8, 2018

**COMMISSION MEETING DATE:** March 22, 2018

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

**AGENDA CATEGORY:** Consent

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

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

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

It is recommended to place this item on the Commission Consent Calendar.

## **BACKGROUND:**

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

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

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

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

**COMMITTEE REVIEW:**

Pending committee review

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (1):

- Resolution

## RESOLUTION 18-XX

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

(reference Staff Report #xxx:18)

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

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

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

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

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

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

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

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

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

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

ATTEST:

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



# Commission Staff Report - *DRAFT*

Date: March 8, 2018

**COMMISSION MEETING DATE:** March 22, 2018

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

**AGENDA CATEGORY:** Discussion/Action

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

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

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

This item is recommended as a Discussion/Action Item for the Commission meeting.

**BACKGROUND:****Adit 4:**

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

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

**Beaver Creek:**

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

**ENVIRONMENTAL ANALYSIS:**

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

**FISCAL IMPACT:****Adit 4:**

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

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

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

- Maintenance and betterment related work
- Salaried NCPA staff time

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

Staff recommends the settlement for the following reasons:

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

#### **Beaver Creek:**

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

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

Staff believes that the proposed reimbursement is straightforward and reasonable.

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

#### **COMMITTEE REVIEW:**

Pending Committee review.



Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachment (1):

- Resolution

## RESOLUTION 18-XX

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

(reference Staff Report #xxx:18)

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

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

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

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

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

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

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

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

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

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



# Commission Staff Report – *DRAFT*

Date: March 8, 2018

**COMMISSION MEETING DATE:** March 22, 2018

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

**AGENDA CATEGORY:** Consent

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

<b>IMPACTED MEMBERS:</b>		
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:**

Approval of Resolution XX-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with HRST, Inc. for inspection services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA Members.

It is recommended to place this item on the Commission Consent Calendar.

## **BACKGROUND:**

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

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$500,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

## **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 multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending committee approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

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

## RESOLUTION XX-XX

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

(reference Staff Report #XXX:XX)

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

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

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with HRST, Inc. to provide such services as needed at all NCPA Generation facility locations, Member, SCPPA, and SCPPA Member facilities in an amount not to exceed \$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 HRST, Inc. with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for inspection services for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

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

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

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

ATTEST:

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



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and HRST Inc., a corporation with its office located at 6557 City West Parkway, Eden Prairie, MN 55344 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2018 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable  
[AcctsPayable@ncpa.com](mailto:AcctsPayable@ncpa.com)

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

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

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



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

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

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

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

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

**4.2.1 Commercial General Insurance.** Contractor shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

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

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

- 4.3 Professional Liability Insurance.** Contractor shall maintain professional liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and one million dollars (\$1,000,000) aggregate covering the Contractor's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.
- 4.4 Pollution Insurance.** Not Applicable.
- 4.5 All Policies Requirements.**
- 4.5.1 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.
- 4.5.2 Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.
- 4.5.3 Higher Limits.** If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.
- 4.5.4 Additional Certificates and Endorsements.** If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Agency shall have the right to require Contractor to provide the certificates of insurance and/or policy endorsements, as referenced in Section 4.5.1, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.
- 4.6 Waiver of Subrogation.** Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary

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

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

## **Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.**

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims which are attributable to personal injury or death or physical damage to tangible property that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Contractor in its performance of Work under this Agreement. Contractor shall bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency. Anything in this Agreement to the contrary notwithstanding, Contractor shall not be liable to Agency for any special, indirect, incidental or consequential damages (whether in contract, in tort or otherwise, including negligence and product liability) including but not limited to damages for loss of anticipated profits, loss of use, loss of revenue generated or loss of good will, by reason of anything done or omitted to be done by Contractor in connection with the performance of its obligations under this Agreement. Anything in this Agreement to the contrary notwithstanding, Contractor's total liability to Agency for breaches of this Agreement, other than any liability resulting from a willful or grossly negligent refusal by Contractor to perform its obligations hereunder, shall in no event exceed the greater of the amounts of insurance required by this Agreement or the amount specified in Section 2 of this Agreement.

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

**Section 6.     STATUS OF CONTRACTOR.**

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

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

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

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

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

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

## **Section 7. LEGAL REQUIREMENTS.**

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

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

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

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

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

## **Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

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

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

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

- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.
- 9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.
- 9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:



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

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

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

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

## **Section 10. PROJECT SITE.**

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

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

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

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

## **Section 11. WARRANTY.**

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

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

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

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

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

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

### **Section 13. MISCELLANEOUS PROVISIONS.**

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

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

- 13.7 Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's

representative. All correspondence shall be directed to or through the representative.

**13.8 Notices.** Any written notice to Contractor shall be sent to:

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

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement

by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

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

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

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

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

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

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

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

///

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

NORTHERN CALIFORNIA POWER AGENCY

HRST, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**ANDREW KUBLY,**  
**Chief Financial Officer**

Attest:

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

Approved as to Form:

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

**EXHIBIT A**

**SCOPE OF WORK**

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

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

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

Contractor may provide services at all Project Site Locations.

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



## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

#### 2018 SERVICE RATES

Effective January 1, 2018 to December 31, 2018

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

##### Rates:

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

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

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

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

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

##### Expenses:

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

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

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

##### Equipment Rental & Subcontract Professional Service Rates:

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

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

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

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

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

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

\_\_\_\_\_  
(Name of person signing affidavit)(Title)

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

HRST, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

\_\_\_\_\_  
(Signature of officer or agent)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

\_\_\_\_\_

(Signature of officer or agent)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

**NOT APPLICABLE**

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)

**SERVICES AGREEMENT**

**BETWEEN**

**NORTHERN CALIFORNIA POWER AGENCY**

**AND**

**SAN JOSE CLEAN ENERGY**

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

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

## **Section 1. RECITALS**

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

1.1 NCPA has heretofore been duly established as a joint powers agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale.

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

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

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

1.5 Customer desires NCPA to provide Services to Customer.

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

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

## **Section 2. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

2.1.14 “General Manager” means the General Manager of NCPA.

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

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

2.1.17 “Material Adverse Effect” means an error, penalty, unexpected charge, event, circumstance or condition with a detrimental cost of \$\_\_\_\_\_ to Customer that is not due to Uncontrolled Forces.

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

2.1.19 “NCPA” has the meaning set forth in the preamble hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Section 3. PURPOSE OF AGREEMENT**

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

#### **Section 4. SERVICES TO BE PROVIDED AND STANDARDS OF PERFORMANCE**

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

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

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

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

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

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

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

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

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

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

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

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

4.3 Standard of Performance. NCPA will perform Services using the level of skill and attention reasonably required to complete the Services in a competent and timely manner, in accordance with Good Utility Practices. NCPA shall perform all Services in accordance with the CAISO Tariff, as such may be applicable.

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

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

## **Section 5. TERM AND TERMINATION**

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

5.2 Termination. This Agreement may be terminated by Customer on or subsequent to the first anniversary of service by providing written notice to NCPA at least ninety (90) Calendar Days prior to the date on which service under this Agreement shall be terminated. For the purpose of clarity, the first anniversary of service provided under this agreement shall be August 31, 2019. This Agreement may be terminated by NCPA at the end of the Initial Term, or at the end of any subsequent term, by providing written notice to Customer at least one hundred and eighty (180) Calendar Days prior to the end of the current term of the Agreement. A written notice of termination ("Notice of Termination") provided by either Party shall be provided to the other Party in accordance with Section 15.10 of this Agreement. Upon

termination of this Agreement, NCPA shall return all Records to Customer within a reasonable period of time, and without any additional costs.

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

## **Section 6. INDEMNITY AND INSURANCE**

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

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

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

## **Section 7.      COMPENSATION**

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

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

## **Section 8.      BILLING AND PAYMENT**

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

8.2      Payment of Invoices. All non-emergency invoices delivered by NCPA to Customer are due and payable forty-five (45) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the next following Business Day. NCPA may apply Customer's Security Account to the payment of all or any portion of an invoice to Customer, provided that application of such funds from the Security Account will not relieve Customer from any late payment charges pursuant to Section 8.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by Customer, NCPA shall deposit the relevant portion of the payment into the Security Account and credit such deposit to Customer. Emergency invoices delivered by NCPA shall be due and payable on the date indicated on such invoice, or as indicated in Section 12.5.



8.3 Late Payments. Any amount due and not paid by Customer in accordance with Sections 8.2, Section 11 and Section 12 will be considered late and will bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America N.A. then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

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

8.5 Billing/Settlement Data. NCPA must make billing and settlement data available to Customer as part of all invoices delivered by NCPA, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Customer using electronic media (e.g. electronic data portal). Procedures and formats for the provision of such electronic data submission may be as established by the NCPA Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require Customer to execute a reasonable non-disclosure agreement prior to providing access to the

NCPA electronic data portal for the purpose of protecting confidential information, consistent with the provisions contained in Section 15.1 of this Agreement.

#### **8.6     Examination of Books and Records.**

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

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

### **Section 9.     COOPERATION AND FURTHER ASSURANCES**

Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

### **Section 10.    DEFAULTS**

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

(i) the failure of Customer to make any payment (other than an emergency addition to the Security Account pursuant to Section 12.5) in full to NCPA when due, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure;

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

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

(iv) if any representation or warranty of a Party material to the Services provided hereunder shall prove to have been incorrect in any material respect when made and the Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days of the date of receipt of notice from a Party demanding cure; or

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

**10.2 Uncontrollable Forces.** A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces. Provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager, or in the case of Customer, to the representative selected by Customer, using telephone communication within one (1) Business Day of the onset of the Uncontrollable Force, and subsequently provide written notice to the Party's representative within ten (10) Business Days of the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the

anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch. Provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

10.3 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 10.1 above, as may be applicable.

10.4 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 10.1, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action a non-defaulting Party may have against the defaulting Party, a non-defaulting Party may take any or all of the following actions:

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

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

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

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

10.5 Special Covenants Regarding Security Account. In the event that Customer's Security Account is insufficient to cover all invoices for costs incurred under this Agreement delivered to Customer, then, without limiting NCPA's other rights or remedies available under

this Agreement, at law or in equity, Customer agrees to cooperate in good faith with NCPA and will work to cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary to replenish its Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default with all due haste.

#### 10.6 Effect of Termination or Suspension.

10.6.1 Generally. The termination or suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

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

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

### **Section 11. CAISO SECURITY DEPOSIT AND CREDIT REQUIREMENTS**

Any credit requirements, including, but not limited to, security, collateral, unsecured credit, or other deposits required by the CAISO, shall be provided by Customer prior to NCPA providing Services under this Agreement, and shall be maintained as may be required thereafter pursuant to the CAISO Tariff. Failure to maintain sufficient credit, security, collateral, unsecured credit, or other deposits may impact NCPA's ability to perform certain Services under this agreement. NCPA shall maintain a detailed accounting of Customer's credit, security, collateral, unsecured credit or other deposits. Any changes in credit, security, unsecured credit or other deposits required by the CAISO Tariff may be provided by NCPA from Customer's Security Account, and NCPA shall invoice Customer within two (2) Business Days for such required amounts, and will use the funds collected from Customer to fund the Security Account.

## **Section 12. SECURITY ACCOUNT**

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

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

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

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

12.4 Use of Security Account Funds.

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

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

12.5 Emergency Additions. In the event that the funds are withdrawn pursuant to Section 12.4 of this Agreement, or if the Security Account is insufficient to allow payment of a CAISO invoice, NCPA shall notify Customer and then prepare and send a special or emergency assessment to Customer. Customer shall pay to NCPA such assessment when and if assessed by

NCPA within two (2) Business Days of the invoice date of the assessment or consent to and direct NCPA to draw on any existing letter of credit Customer has established for such purposes.

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

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

### **Section 13. SETTLEMENT OF DISPUTES**

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

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

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

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



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

#### **Section 14. STATUS OF NCPA**

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

#### **Section 15. MISCELLANEOUS**

15.1 Confidentiality. To the maximum extent allowed by law, including the Public Records Act, the Parties agree to keep confidential all confidential or trade secret information made available to them in connection with this Agreement. Confidential or trade secret information must be marked or expressly identified as such.

If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any of the other Party's (the "Supplying Party") confidential data or information ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request and will seek a protective order or other judicial determination to protect the confidential information. In such case, the Supplying Party will

cover all of its own costs and further agrees to indemnify and pay any and all costs incurred by Receiving Party as a result of the Supplying Party's attempts to protect from disclosure the information; or

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

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

15.3 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL A PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

15.4 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this

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

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

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

15.6 Assignment of Agreement.

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

15.6.2 No Assignment. This Agreement, nor any interest herein, may be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, where such consent shall not be unreasonably withheld.

15.7 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, are held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application will not be affected thereby, but will remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

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

15.9 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

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

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

Customer: City of San Jose  
Name: Lori Mitchell  
Title: Director  
Address: 200 East Santa Clara Street, 14<sup>th</sup> Floor  
San Jose, CA 95013  
E-mail: Lori. [Mitchell@Sanjoseca.gov](mailto:Mitchell@Sanjoseca.gov)

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

15.11 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms.

15.12 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

15.13 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each Party will be responsible for its own fees and costs, including attorneys' fees, associated with the action.

15.14 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 6 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

15.15 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor will any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor will any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

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

15.17 Reliability Requirements. Unless otherwise specifically provided for herein, the Parties acknowledge that Customer and NCPA may be both individually responsible for

compliance with the WECC and NERC Reliability Standards and criteria applicable to the functions for which each Party are respectively registered with NERC. The references to WECC and NERC Reliability Standards, if any, throughout this Agreement do not make any alteration or enlargement of the requirements or standards applicable to each Party beyond their individual registrations with NERC.

15.18 Significant Regulatory Change or Operational Change.

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

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

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

the significant change to the Parties. If the Party giving notice believes that it will be necessary to amend this Agreement to address the anticipated change or change when it has occurred, then the notice to the other Party may include a proposal that the Parties meet to negotiate an appropriate amendment to this Agreement. The Parties agree to promptly enter into good faith negotiations and attempt to achieve a mutually agreeable modification to this Agreement to address any such Significant Regulatory Change or Significant Operational Change.

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

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

**Northern California Power Agency**

**City of San Jose**

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

\_\_\_\_\_  
**TONI TABER**  
City Clerk

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Approved as to Form:

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

\_\_\_\_\_



## **APPENDIX A**

### **SCOPE OF SERVICES**

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

#### **Section 1. SCHEDULING SERVICES**

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

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

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

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

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

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

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

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

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

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

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

## **Section 2. CONTROL CENTER SERVICES**

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

2.1.1 Monitoring and dispatching of Customer generation facilities.

2.1.2 Management of unplanned outages and system emergencies.

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

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

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

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

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

### **Section 3. PORTFOLIO MANAGEMENT AND OPTIMIZATION SERVICES**

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

3.1.1 Acting as an Operating Entity on behalf of Customer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Section 4. INFORMATION REQUIREMENTS**

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

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

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

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

## **Section 5. SUPPLEMENTAL SERVICES IN ACCORDANCE WITH TASK ORDER PROCESS**

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

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

## **Section 6. SERVICE TRANSITION**

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

## **APPENDIX B**

### **COMPENSATION SCHEDULE**

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

#### **Section 1. COMPENSATION SCHEDULE**

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

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

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

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



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

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

## **Section 2. SUPPLEMENTAL SERVICES**

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

### **SUPPLEMENTAL SERVICES RATE SCHEDULE**

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

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

## **APPENDIX C**

### **SCHEDULING PROCEDURES**

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

#### **SJCE-PM-401 – Scheduling and Bidding**

## **APPENDIX D**

### **OPERATING PROCEDURES**

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

**RESERVED**

## **APPENDIX E**

### **CUSTOMER RESOURCES**

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

**RESERVED**

## APPENDIX F

### TASK ORDER PROCESS

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

#### **Section 1. Task Order Process**

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

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

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

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

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

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

# Northern California Power Agency

## Task Order Request Form

Attention: Contract Administration  
651 Commerce Drive  
Roseville, CA 95678  
Phone: 916-781-4229  
Email: tony.zimmer@ncpa.com

Dated As: \_\_\_\_\_  
Date of Completion: \_\_\_\_\_

---

### Customer Information:

Customer Name: \_\_\_\_\_  
Designated Representative: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Task Details

### Additional Notes:

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\_\_\_\_\_  
[Customer Designated Representative]



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

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

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

## **Section 1. RECITALS**

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

1.1 NCPA has heretofore been duly established as a joint powers agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale.

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

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

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

1.5 Customer desires NCPA to provide Services to Customer.

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

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

## **Section 2. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1.14 “General Manager” means the General Manager of NCPA.

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

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

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

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

2.1.19 “NCPA” has the meaning set forth in the preamble hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Section 3. PURPOSE OF AGREEMENT**

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



#### **Section 4. SERVICES TO BE PROVIDED AND STANDARDS OF PERFORMANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Section 5. TERM AND TERMINATION**

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

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

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

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

## **Section 6. INDEMNITY-AND-INSURANCE**

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

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

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

## **Section 7.     COMPENSATION**

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

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

## **Section 8.     BILLING AND PAYMENT**

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

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

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

8.3 Late Payments. Any amount due and not paid by Customer in accordance with Sections 8.2, Section 11 and Section 12 will be considered late and will bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America N.A. then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

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

8.5 Billing/Settlement Data. NCPA must make billing and settlement data available to Customer as part of all invoices delivered by NCPA, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Customer using electronic media (e.g. electronic data portal). Procedures and formats for the provision of such

electronic data submission may be as established by the NCPA Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require Customer to execute a reasonable non-disclosure agreement prior to providing access to the NCPA electronic data portal for the purpose of protecting confidential information, consistent with the provisions contained in Section 15.1 of this Agreement.

#### **8.6     Examination of Books and Records.**

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

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

### **Section 9.     COOPERATION AND FURTHER ASSURANCES**

Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

## **Section 10. DEFAULTS**

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

(i) the failure of Customer to make any payment (other than an emergency addition to the Security Account pursuant to Section 12.5) in full to NCPA when due, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure;

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

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

(iv) if any representation or warranty of a Party material to the Services provided hereunder shall prove to have been incorrect in any material respect when made and the Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days of the date of receipt of notice from a Party demanding cure; or

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

10.2 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces. Provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager, or in the case of Customer, to the representative selected by Customer, using telephone communication within one (1)

Business Day of the onset of the Uncontrollable Force, and subsequently provide written notice to the Party's representative within ten (10) Business Days of the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch. Provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

10.3 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 10.1 above, as may be applicable.

10.4 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 10.1, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action a non-defaulting Party may have against the defaulting Party, a non-defaulting Party may take any or all of the following actions:

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

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

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

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



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

10.6 Effect of Termination or Suspension.

10.6.1 Generally. The termination or suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

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

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

**Section 11. CAISO SECURITY DEPOSIT AND CREDIT REQUIREMENTS**

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

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

## **Section 12. SECURITY ACCOUNT**

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

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

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

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

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

12.4 Use of Security Account Funds.

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

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

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

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

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

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

### **Section 13. SETTLEMENT OF DISPUTES**

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

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

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

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

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

#### **Section 14. STATUS OF NCPA**

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

#### **Section 15. MISCELLANEOUS**

15.1 Confidentiality. To the maximum extent allowed by law, including the Public Records Act, the Parties agree to keep confidential all confidential or trade secret information made available to them in connection with this Agreement. Confidential or trade secret information must be marked or expressly identified as such.

If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any of the other Party's (the "Supplying Party") confidential data or information ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

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

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

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

15.3 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL A PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

~~The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release~~

~~provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.~~

15.4 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement will be effective unless given by the other Party. Any such waiver by the other Party in any particular instance will not be deemed a waiver with respect to any subsequent performance, default or matter.

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

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

15.6 Assignment of Agreement.

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

15.6.2 No Assignment. This Agreement, nor any interest herein, may be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, where such consent shall not be unreasonably withheld.

15.7 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, are held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or

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

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

15.9 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

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

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

Customer: City of San Jose  
Name: Lori Mitchell  
Title: Director  
Address: 200 East Santa Clara Street, 14<sup>th</sup> Floor  
San Jose, CA 95013  
E-mail: Lori. [Mitchell@Sanjoseca.gov](mailto:Mitchell@Sanjoseca.gov)

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

15.11 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that



this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms.

15.12 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

15.13 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each Party will be responsible for its own fees and costs, including attorneys' fees, associated with the action.

15.14 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 6 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

15.15 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor will any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor will any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

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

15.17 Reliability Requirements. Unless otherwise specifically provided for herein, the Parties acknowledge that Customer and NCPA may be both individually responsible for compliance with the WECC and NERC Reliability Standards and criteria applicable to the functions for which each Party are respectively registered with NERC. The references to WECC and NERC Reliability Standards, if any, throughout this Agreement do not make any alteration or enlargement of the requirements or standards applicable to each Party beyond their individual registrations with NERC.

15.18 Significant Regulatory Change or Operational Change.

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

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

15.18.3 Notification of Significant Regulatory Change or Operational Change. At any time during the term of this Agreement, if any Party anticipates the occurrence of a Significant Regulatory Change or Significant Operational Change that may reasonably be expected to materially interfere with the ability of any Party to perform any of its obligations under this Agreement, or such Significant Regulatory Change or Significant Operational Change occurs, such Party will provide written notice to the other Party as soon

as practicable. The notice must contain a description of the Significant Regulatory Change or Significant Operational Change, including expected time schedules, and of the effect of the significant change to the Parties. If the Party giving notice believes that it will be necessary to amend this Agreement to address the anticipated change or change when it has occurred, then the notice to the other Party may include a proposal that the Parties meet to negotiate an appropriate amendment to this Agreement. The Parties agree to promptly enter into good faith negotiations and attempt to achieve a mutually agreeable modification to this Agreement to address any such Significant Regulatory Change or Significant Operational Change.

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

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

**Northern California Power Agency**

**City of San Jose**

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

\_\_\_\_\_  
**TONI TABER**  
City Clerk

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Approved as to Form:

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

\_\_\_\_\_

## **APPENDIX A**

### **SCOPE OF SERVICES**

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

#### **Section 1. SCHEDULING SERVICES**

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

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

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

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

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

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

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

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

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

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

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

## **Section 2. CONTROL CENTER SERVICES**

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

2.1.1 Monitoring and dispatching of Customer generation facilities.

2.1.2 Management of unplanned outages and system emergencies.

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

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

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

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

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

### **Section 3. PORTFOLIO MANAGEMENT AND OPTIMIZATION SERVICES**

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

3.1.1 Acting as an Operating Entity on behalf of Customer.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

#### **Section 4. INFORMATION REQUIREMENTS**

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

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

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

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

## **Section 5. SUPPLEMENTAL SERVICES IN ACCORDANCE WITH TASK ORDER PROCESS**

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

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

## **Section 6. SERVICE TRANSITION**

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

## **APPENDIX B**

### **COMPENSATION SCHEDULE**

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

#### **Section 1. COMPENSATION SCHEDULE**

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

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

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

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

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

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

## **Section 2. SUPPLEMENTAL SERVICES**

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

### **SUPPLEMENTAL SERVICES RATE SCHEDULE**

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

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

## **APPENDIX C**

### **SCHEDULING PROCEDURES**

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

#### **SJCE-PM-401 – Scheduling and Bidding**

## **APPENDIX D**

### **OPERATING PROCEDURES**

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

**RESERVED**



## **APPENDIX E**

### **CUSTOMER RESOURCES**

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

**RESERVED**

## APPENDIX F

### TASK ORDER PROCESS

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

#### **Section 1. Task Order Process**

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

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

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

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

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

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

# Northern California Power Agency

## Task Order Request Form

Attention: Contract Administration  
651 Commerce Drive  
Roseville, CA 95678  
Phone: 916-781-4229  
Email: tony.zimmer@ncpa.com

Dated As: \_\_\_\_\_  
Date of Completion: \_\_\_\_\_

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### Customer Information:

Customer Name: \_\_\_\_\_  
Designated Representative: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Task Details

### Additional Notes:

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\_\_\_\_\_  
[Customer Designated Representative]