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Facilities Committee Meeting Agenda

Date: April 5, 2023
Subject: NCPA Facilities Committee Meeting
Location: NCPA, 651 Commerce Drive, Roseville, California 95678 // Conference Call
Time: 9:00 am

****In compliance with the Brown Act, you may participate via teleconference at one of the meeting locations listed below or attend at NCPA Headquarters. In either case, please: (1) post this Agenda at a publicly accessible location at the participation location no later than 72-hours before the meeting begins, and (2) have a speaker phone available for any member of the public who may wish to attend at your location.****

NCPA, 651 Commerce Drive, Roseville, CA 95678 (916) 781-3636

| | | |
|--|---|--|
| ALAMEDA MUNICIPAL PWR 2000 Grand St., Alameda, CA | BAY AREA RAPID TRANSIT 2150 Webster Street, 10 th Floor, Oakland, CA | CITY OF BIGGS 3016 Sixth Street, Biggs, CA |
| CITY OF GRIDLEY 685 Kentucky Street, Gridley, CA | CITY OF HEALDSBURG 401 Grove Street, Healdsburg, CA | CITY OF LODI 1331 S. Ham Lane, Lodi, CA |
| CITY OF LOMPOC 100 Civic Ctr. Plaza, Lompoc, CA | CITY OF PALO ALTO 250 Hamilton Avenue, 3 rd Floor Palo Alto, CA | PLUMAS-SIERRA REC 3524 Mulholland Way, Sacramento CA |
| PORT OF OAKLAND 530 Water Street, Oakland, CA | CITY OF REDDING 3611 Avtech Pkwy., Redding, CA | CITY OF ROSEVILLE 2090 Hilltop Circle, Roseville, CA |
| CITY OF SHASTA LAKE 4332 Vallecito St., Shasta Lake, CA | SILICON VALLEY POWER 881 Martin Ave., Santa Clara, CA | TURLOCK IRRIGATION DISTRICT 333 E. Canal Drive, Turlock, CA |
| CITY OF UKIAH 300 Seminary Ave., Ukiah, CA | | |

The Facilities Committee may take action on any of the items listed on this Agenda regardless of whether the matter appears as a Discussion/Action Item or a Report or an Information Item. When this Agenda is supplemented by Staff Reports, they are available to the public upon request. Pursuant to California Government Code Section 54957.5, the following is the location at which the public can view Agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or www.ncpa.com.

Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at (916)781-3636 in advance of the meeting to arrange for such accommodations.

REVIEW SAFETY PROCEDURES

1. Call Meeting to Order and Roll Call

PUBLIC FORUM

Any member of the public who 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. Any member of the public who desires to address the Committee on any item within the jurisdiction of the Committee and not listed on the Agenda may do so at this time.

OPEN SESSION

DISCUSSION / ACTION ITEMS

2. **Approval of Minutes** – Approve minutes from the March 1, 2023 Facilities Committee meeting, and the March 15, 2023 Special Facilities Committee meeting.
3. **All NCPA Facilities, Members, SCPPA – Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy First Amendment MTGSA** – Staff is seeking a recommendation for Commission approval of a First Amendment to the Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy for chiller, HVAC, and boiler related maintenance services, modifying Exhibit A and Exhibit B to add to the scope of work and modify pricing, with no changes to the contract term or not-to-exceed amount, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CTs*)
4. **All NCPA Facilities, Members, SCPPA – OST Trucks and Cranes, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with OST Trucks and Cranes, Inc. for crane related services, with a not to exceed amount of \$1,500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Category: Consent; Sponsor: CTs*)
5. **All NCPA Facilities, Members, SCPPA – Tetra Engineering Group, Inc. MTPSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Professional Services Agreement with Tetra Engineering Group, Inc. for HRSG inspection, steam plant assessments, root cause failures, and consulting engineering related services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CTs*)
6. **All NCPA Facilities, Members, SCPPA – Baker Tilly US, LLP First Amendment to MTPSA** – Staff is seeking a recommendation for Commission approval of a First Amendment to the Multi-Task Professional Services Agreement with Baker Tilly US, LLP for auditing services, recognizing the name change to Baker Tilly US, LLP; elect to extend the agreement for three more years, and increase the not to exceed amount from \$500,000 to \$1 million for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. (*Commission Category: Consent; Sponsor: Administrative Services*)

7. **All NCPA Facilities, Members, SPCPA – Parker Landscape Development, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of Five Year Multi-Task General Services Agreement between NCPA and Parker Landscape Development, Inc. for commercial landscape maintenance and services, in an amount not to exceed \$300,000 for use at all facilities owned and/or operated by NCPA, its Members, SPCPA, and SPCPA Members. *(Commission Category: Consent; Sponsor: Administrative Services)*
8. **NCPA Cyber Security Insurance Renewal** – Staff is seeking a recommendation for Commission approval to renew the Agency's Cyber Security insurance program for April 2023 – April 2024. *(Commission Category: Consent; Sponsor: Risk Management)*
9. **Plumas-Sierra REC Admission to MPP** – Staff is seeking a recommendation for Commission approval of admission of Plumas-Sierra REC as a new Participant to the Amended and Restated Market Purchase Program Agreement (MPP). *(Commission Category: Consent; Sponsor: Power Management)*
10. **Approval of Letter of Agreement 23-SNR-XXXXX** – Staff will present and seek a recommendation for approval of Letter of Agreement 23-SNR-XXXXX (WAPA 2023 REC Program) between Western Area Power Administration (WAPA) and Northern California Power Agency (NCPA). *(Commission Category: Consent; Sponsor: Power Management)*
11. **Approval of Exhibit C, Revision 25 to Contract 96-SNR-00110 (WAPA O&M Funding Commitment)** – Staff is seeking a recommendation for Commission approval of Exhibit C, Revision 25 to Contract 96-SNR-00110, and authorizing the General Manager of NCPA to execute Exhibit C, Revision 25 to Contract 96-SNR-00110, on behalf of NCPA. *(Commission Category: Discussion/Action; Sponsor: Power Management)*
12. **Approval of General Services Agreement Between NCPA and Ulteig Engineers, Inc. for Meter Maintenance and Approval of an Amendment to the Pooling Agreement adding Pooling Schedule 14** – Staff is seeking a recommendation for Commission approval of (i) a General Services Agreement between NCPA and Ulteig Engineers, Inc. for Meter Maintenance, and (ii) an amendment to the Second Amended and Restated Pooling Agreement adding a new Pooling Schedule 14 for meter maintenance services, and authorize the General Manager of NCPA to execute the General Services Agreement between NCPA and Ulteig Engineers, Inc. for Meter Maintenance, on behalf of NCPA. *(Commission Category: Discussion/Action; Sponsor: Power Management)*
13. **NCPA Combustion Turbine and Geothermal Facilities, City of Redding, City of Roseville – Siemens Energy, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Siemens Energy, Inc. for T3000 maintenance and support services, with a not to exceed amount of \$6,000,000, for use at NCPA Combustion Turbine and Geothermal facilities, and for use at the City of Redding and the City of Roseville. All purchase orders will be issued following NCPA procurement policies and procedures. *(Category: Discussion/Action; Sponsor: CTs)*
14. **NCPA Geothermal Facility – Second Amendment to Resolution 21-109 for the NCPA Geothermal Plant 2 Unit 4 Overhaul Project** – Staff is seeking a recommendation for Commission approval of a Second Amendment to Resolution 21-109 for the NCPA Geothermal Plant 2 Unit 4 Overhaul Project: 1) delegating authority to the General Manager or his designee to execute Proof of Loss forms for \$3,559,999 (gross) for the Plant 2 Unit 4 Steam Turbine Damage Claim and deposit the balance back into the Maintenance Reserve account; 2) amending the SOW

to include the overhaul of the spare rotor; and 3) authorizing an increase in the total not-to-exceed amount of this project from \$5,000,000 to \$6,409,275, with \$1,409,275 to come from the Maintenance Reserve Fund. (*Category: Discussion/Action; Sponsor: Geo*)

- 15. FY2024 Annual Budget Review and Approval** – Staff will present and review the final budget for FY2024, and will be seeking a recommendation for Commission approval of the budget. (*Commission Category: Discussion/Action; Sponsor: Administrative Services*)

INFORMATIONAL ITEMS

- 16. New Business Opportunities** – Staff will provide an update regarding new business opportunities. (*Sponsor: Power Management*)
- 17. NCPA 2023 Wildfire Mitigation Plan** – Staff will present the draft NCPA 2023 Wildfire Mitigation Plan for review and comment, including an overview of updated revisions recommended by the qualified independent evaluator. (*Sponsor: Generation Services*)
- 18. NCPA Generation Services Plant Updates** – Plant Staff will provide the Committee with an informational update on current plant activities and conditions. (*Sponsor: Generation Services*)
- 19. Planning and Operations Update** – Staff will provide an update on issues related to planning and operations. (*Sponsor: Power Management*)
- 20. Next Meeting** – The next regular Facilities Committee meeting is scheduled for May 3, 2023.

ADJOURNMENT

AB/cp



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Minutes

Date: March 9, 2023
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: March 1, 2023 Facilities Committee Meeting Minutes

- 1. Call Meeting to Order & Roll Call** – The meeting was called to order by Committee Chair Alan Harbottle (Alameda) at 9:06 am. Attending via teleconference and on-line presentation were Midson Hay (Alameda), Jake Carter (Gridley), Melissa Price (Lodi), CJ Berry (Lompoc), Shiva Swaminathan (Palo Alto), Mike Brozo (Plumas-Sierra), Khaly Nguyen (Port of Oakland) Kamryn Hutson (Redding), Brian Schinstock and Ryley Kelly (Roseville), Monica Nguyen (Santa Clara), and Cindy Sauers (Ukiah). Peter Lorenz (non-voting Representative with TID) also attended via teleconference and online presentation. Those attending in person are listed on the attached Attendee Sign-in Sheet. Committee Representatives from BART, Biggs, Healdsburg, Shasta Lake, and TID were absent. A quorum of the Committee was established.

PUBLIC FORUM

No public comment.

- 2. Approval of Minutes from the February 1, 2023 Facilities Committee meeting, and the February 8, 2023 Special Facilities Committee meeting.**

Motion: A motion was made by Shiva Swaminathan and seconded by Khaly Nguyen recommending approval of the minutes from the February 1, 2023 Facilities Committee meeting, and the February 8, 2023 Special Facilities Committee meeting. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Redding, Roseville, Santa Clara, and Ukiah. The motion passed.

- 3. All NCPA Facilities, Members, SCPPA – Reliability Optimization, Inc. First Amendment MTCSA** – Staff presented background information and was seeking a recommendation for Commission approval of a First Amendment to the Multi-Task Consulting Services Agreement with Reliability Optimization, Inc. for predictive maintenance testing services, accepting assignment to RTS Reliability Testing Services, LLC, with no changes to the contract term or not-to-exceed amount, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

NCPA entered into a five year Multi-Task Consulting Services Agreement with Reliability Optimization, Inc. effective December 6, 2019, for use at all NCPA, NCPA Members, SCPPA, and SCPPA Member facilities.

Effective December 1, 2022, Reliability Optimization, Inc. was acquired by RTS Reliability Testing Services, LLC. NCPA now desires to enter into a First Amendment to the Multi-Task Consulting Services Agreement accepting assignment to RTS Reliability Testing Services, LLC. This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are needed, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA does not have other agreements in place for similar services at this time.

Motion: A motion was made by Brian Schinstock and seconded by CJ Berry recommending Commission approval authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement with Reliability Optimization, Inc. for predictive maintenance testing services, with any non-substantial changes recommended and approved by the NCPA General Counsel, accepting assignment to RTS Reliability Testing Services, LLC, for continued use at any facilities owned and/or operated by NCPA, NCPA Members, by SPPA, and SPPA Members. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Roseville, Santa Clara, and Ukiah. ABSTAIN = Redding. The motion passed.

4. **All NCPA Facilities, Members, SPPA – HRST, Inc. MTGSA** – Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with HRST, Inc. for HRSG related inspection services, with a not to exceed amount of \$1,500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SPPA, and SPPA Members.

This is an existing NCPA vendor. The current agreement is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are needed, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA has agreements in place for similar services with Groome Industrial, Nooter Eriksen (pending) and Tetra Engineering.

Motion: A motion was made by Jiayo Chiang and seconded by Mike Brozo recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with HRST, Inc. for HRSG related inspection services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SPPA and SPPA Members. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Roseville, Santa Clara, and Ukiah. ABSTAIN = Redding. The motion passed.

5. **All NCPA Facilities, Members, SPPA – Swaim Biological Incorporated MTPSA** – Staff provided background information and was seeking a recommendation for Commission approval of a five-year Multi-Task Professional Services Agreement with Swaim Biological Incorporated for biological monitoring and support services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SPPA, and SPPA Members.

The current agreement with CH2M Hill Engineers, our current vendor for these services, is expiring. CH2M is no longer offering these services and recommended Swaim Biological Incorporated. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are needed, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA has an agreement in place for similar services with Stratus Environmental.

Motion: A motion was made by Cindy Sauers and seconded by Mike Brozo recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Swaim Biological Incorporated for biological monitoring and support services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Roseville, Santa Clara, and Ukiah. ABSTAIN = Redding. The motion passed.

- 6. All NCPA Facilities, Members, SCPPA – Control Components, Inc. First Amendment to MTGSA-EMS** – Staff presented background information and was seeking a recommendation for Commission approval of a First Amendment to the Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Control Components, Inc. for valve and vent maintenance services, accepting assignment to IMI Critical Engineering, LLC with no changes to the contract term or not-to-exceed amount, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

NCPA entered into a five year Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Control Components, Inc. effective January 26, 2022, for use at all NCPA, NCPA Member, SCPPA, and SCPPA Member facilities. Effective January 1, 2023, Control Components, Inc. changed their name to IMI Critical Engineering LLC. NCPA now desires to enter into a First Amendment to the Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies accepting assignment to IMI Critical Engineering LLC. This five year contract does not commit NCPA to any expenditure of funds. When these services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has no other agreements in place for similar services. Two other agreements are currently pending with Carter Process Control, and Millennium Power.

Motion: A motion was made by Shiva Swaminathan and seconded by Brian Schinstock recommending Commission approval authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Control Components, Inc. for valve and vent maintenance services and parts, with any non-substantial changes recommended and approved by the NCPA General Counsel, accepting assignment to IMI Critical Engineering LLC, for continued use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Roseville, Santa Clara, and Ukiah. ABSTAIN = Redding. The motion passed.

INFORMATIONAL ITEMS

- 7. Proposed FY2024 Annual Budget Review** – Staff presented the draft budget for FY 2024, and asked for additional Member input of final recommendations for Commission approval in April.

FY 2024 Annual Budget Changes from February include:

- CT2
 - Increased outside services
- LEC
 - Increased legal costs
 - Decreased generation
 - Lower energy sales and ancillary services revenue
 - Reduction of GHG transfer credits

- Reduced variable costs
 - O&M
 - Fuel and LDC
 - GHG emissions
 - Transmission
- Contracts and other resources
 - Increased net load costs
 - Increased transmission costs
 - Increased GHG obligation requirements
 - Decreased member resources energy and owned generation
 - Decreased NCPA contracts
- L&R
 - Increased legal costs
- Judicial Action
 - Increased legal costs for FERC rate cases*
- Power Management
 - Increased PM service revenue
- Pass Throughs – Increased costs
- Overall labor
 - Decreased

The total Generation Resources proposed budget is increasing from \$495,485,438 to \$640,370,151 for an increase of \$144,884,713 at 29.2%. This is largely due to the generation forecast, increased projects, reserves, revenue due to MWh, and the forward curves impacting volume changes. Transmission costs are increasing from \$168,782,370 to \$195,762,030 for an increase of \$26,979,660 at 16%. Management services are up 7.4% at \$1,255,797. Lastly, the Member owned generation CAISO energy revenues are also up 50.8% at \$60,173,700. The total adjusted net annual budget cost is increasing from \$562,581,609 to \$674,980,794 for a total overall increase of \$112,399,185 at 20%.

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

NCPA Project Development (PPA) – Zero Waste Energy Development (ZWED)

- SB 1383 Compliance Goal
- 1.6 MW LF Gas – Existing Facility
- Participants: Santa Clara and Palo Alto
- Products: Energy, RPS, RA
- Term: 10 Year Term
- Operations: Seller to act as Scheduling Coordinator
- Price: To Be Discussed
- Negotiation Status: Active

Scheduling Coordinator Services – City of Lodi Strategic Reserve – Lodi is working with CDWR to install additional capacity in support of a State Strategic Reserve Program. This would be a 48+ MW natural gas facility operated by Enchanted Rock. NCPA's role would be to act as the Schedule Coordinator for the facility interconnected with the City of Lodi. This facility is to only be dispatched under limited circumstances such as CAISO system emergency (EEA1, EEA2, and EEA3) in response to a local transmission emergency. The goal of this project is to be operational in the summer of 2023. Staff is now engaging in initial discussions.

Geysers Geothermal – Next Steps

- Project Participation Percentage Transfer Deadline
 - Deadline: April 30, 2023

- Key Steps Required:
 - Provide written notice of intent to accept transfer to NCPA
 - Execute the Geysers Geothermal Third Phase Agreement by the Transfer Completion Deadline

NCPA Renewables RFP Open Discussion

- Review of current activities
- Discuss successes and opportunities for improvement
- Review direction, identify updates, and adjustments
- Staff is asking for feedback with interest in these projects, and project sizes

9. Meter Maintenance Program Development – Staff provided an update regarding the Meter Maintenance Program Development.

NCPA staff has been experiencing a growing number of challenges without a Meter Maintenance Program. Staff have proposed developing a new Meter Maintenance Program, and is currently working with Ulteig on additional details for the underlying services agreement. A new Meter Maintenance Program Agreement is under development for Member consideration. An Ad Hoc meeting will be scheduled for review with the Members in the next couple of weeks. This item will be brought back to a future meeting for a recommendation for Commission approval.

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

CTs – CT1 had 4 starts 9 (excitation system commissioning) of 4 forecasted. FYTD total is 89 starts. CT2 had 0 starts of 19 forecasted. FYTD total is 21 starts.

- Planned Outages
 - CT1 Lodi - Outage Complete and Available
 - CT1 Alameda - U1/U2 - **Outage starts today
 - CT2 STIG - 4/1/23 thru 4/30/23
- CT1 Lodi Run Hours
 - YTD hours 11 of 200 Allowed (based on calendar year)
- CT1 Alameda Diesel Hours
 - U1= 3.44 hrs. of 20 (based on rolling year)
 - U2= 4.89 hrs. of 20 (based on rolling year)
- Safety and Environmental
 - No Safety issues to report.
 - Reported an emissions deviation to SJVAPCD for CT1 Lodi on 2/23/23 while performing excitation system commissioning. A letter of explanation to district will follow within 10 days of the notification.
- (NERC) Extreme Cold Weather Reliability Standards EOP-012-1 – Reliability Standard EOP-012-1 represents an improvement to the Reliability Standards and enhances the reliable operation of the Bulk-Power System by requiring generator owners to implement freeze protection measures, develop enhanced cold weather preparedness plans, implement annual training, draft and implement corrective action plans to address freezing issues, and provide cold weather operating parameters to reliability coordinators, transmission operators, and balancing authorities for use in their resource planning.
- Staff reviewed the CAISO Commitment Runs for December 2022.

Geo – There was one safety incident to report for the month of February. An employee slipped on ice resulting an injury. Online safety training is 32% complete. Vegetation continues at Geo. The average net generation level for February was 90.9 MW. Total average net generation was 61.1 GWh. The FY 2023 net generation goal is 734 GWh. FY 2023 actual net generation was 486.3 GWh YTD at 1.3% over the forecasted net generation of 480.3 GWh YTD. There was excessive snow in

the Geysers from February 23 – February 28, 2023. The 2022 Geo Facility Operating Protocol was reviewed. Staff is proposing a change for May 2023. Plant 1, Units 1 and 2, was in an outage from March 1 – 15, 2023. The scope of work is listed below:

- Main Steam Strainer Inspections
- Stretford Repairs
- Plant #1 Circulating Pump Repairs
- Cooling Tower Repairs
- Unit #1 and #2 Trip Testing
- Siemens T3K System Upgrade
- Miscellaneous Repairs

Hydro – Collierville (CV) Power House was at 100% availability and New Spicer Meadows (NMS) Power House was at 92% availability during the month of February. February precipitation was 7.3 inches based on the 5 – Station Index. The snow pack is at 191% of average for this date. Staff reviewed preliminary McKays bathymetry findings.

Hydrology

- **New Spicer Meadows Reservoir Storage**
 - 18,660 acre feet decrease (23%) month-over-month
 - 81,140 acre feet to 62,481 acre feet
 - 73,640 acre feet this time last year
 - Cold watershed; much of the large precipitation fell as snow
 - Forecasts indicate substantial probability of filling/spilling Spicer
 - Optimizing stored water
 - Spicer draft 400 – 450 cfs began January 18
 - Anticipate elevated drafts based on market conditions
 - Monitor snowpack, runoff, and market

11. Planning and Operations Update –

- **Resource Integrations In Progress**
 - City of Lodi Strategic Reserve – June 2023
 - Dagget Solar / Storage – Q3 2023
 - Sandborne Storage – Q4 2023
 - Scarlet Solar / Storage – Q3 2023
 - Proxima Solar / Storage – Q1 2024
 - Deer Creek – On Hold
- **Market Conditions** – Staff discussed current market conditions. Wholesale costs in the CAISO's energy market saw additional costs of \$3 Billion in December and about \$0.9 Billion for the first 25 days of January. CAISO electricity prices increased as a result of higher gas prices, with December seeing a fivefold increase since last year, at an average price of more than \$250/MWh. Prices in all CAISO electric markets have trended higher during periods of high gas prices. A government and FERC investigation is underway as to why the gas prices were so high, and then collapsed—unexplainably. The Pacific Region has extremely low gas storage. Why?

12. Next Meeting – The next regular Facilities Committee meeting is scheduled for April 5, 2023. A Special Facilities Committee meeting has been scheduled for March 15, 2023.

ADJOURNMENT

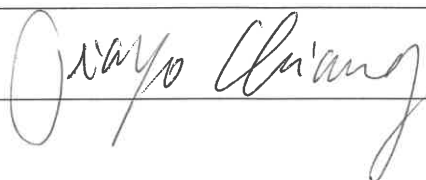
The meeting was adjourned at 12:07 pm.

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

| | |
|----------------|------|
| Carrie Pollo | NCPA |
| Ted Zimmer | NCPA |
| Michael DeB | NCPA |
| Jane Luckhardt | NCPA |
| Jake Eymann | NCPA |
| MARC PELLETIER | NCPA |
| Monty Hawks | NCPA |
| Jay Chirany | Lodi |

**Northern California Power Agency
March 1, 2023 Facilities Committee Meeting
Attendance List**

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

| <u>MEMBER</u> | <u>NAME</u> |
|--------------------------|---|
| ALAMEDA | |
| BART | |
| BIGGS | |
| GRIDLEY | |
| HEALDSBURG | |
| LODI |  |
| LOMPOC | |
| PALO ALTO | |
| PLUMAS-SIERRA REC | |
| PORT OF OAKLAND | |
| REDDING | |
| ROSEVILLE | |
| SANTA CLARA | |
| SHASTA LAKE | |
| TID | |
| UKIAH | |



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Minutes

Date: March 17, 2023
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: March 15, 2023 Special Facilities Committee Meeting Minutes

- 1. Call meeting to order & Roll Call** – The meeting was called to order by Committee Chair Alan Harbottle (Alameda) at 9:15 am. Attending via teleconference and on-line presentation were Jake Carter (Gridley), Terry Crowley (Healdsburg), Jiayo Chiang (Lodi), Shiva Swaminathan (Palo Alto), Mike Brozo (Plumas-Sierra), Khaly Nguyen (Port of Oakland), Nick Rossow (Redding), Brian Schinstock (Roseville), Basil Wong (Santa Clara), Willie Manuel and Peter Lorenz (TID), and Cindy Sauers (Ukiah). Those attending in person are listed on the attached Attendee Sign-in Sheet. Committee Representatives from BART, Biggs, Lompoc, and Shasta Lake were absent. A quorum of the Committee was established.

PUBLIC FORUM

No public comment.

OPEN SESSION

INFORMATIONAL ITEMS

- 2. NCPA Geothermal Facility – Geo Battery Energy Storage System** – Geothermal staff lead a discussion regarding a possible Battery Energy Storage System at Geo. (*Sponsor: Geo*)

Staff is proposing a 70MW Battery Energy Storage System (BESS) based on the available remaining existing transmission capacity. This BESS would consist of 76 Tesla Mega-packs. Charge time for these batteries is just under four hours and up to seven hours, which can be cycled once per day for 360 days per year including maintenance days. These Mega-packs could be used during peak hours, and would be capable of importing and exporting the energy. All system components are outside of the existing plant boundaries.

The approximate cost of this project is \$152,709,009. With an investment tax credit (ITC) of 30% at \$45,812,703 the total cost to build the project is \$106,896,306. The total project cost including maintenance costs is approximately \$125,866,984. Approximate savings compared with the Calpine BESS PPA is \$9.51 per kW-month.

Member questions were answered regarding economics, the Inflation Reduction Act (IRA), operation of the system, and other miscellaneous questions. Below is the current ownership shares per Member.

| GEO Participant | Ownership Share | Interest? |
|-----------------------------|-----------------|-----------|
| Alameda | 16.883% | |
| Biggs | 0.227% | |
| Gridley | 0.336% | |
| Healdsburg | 3.674% | |
| Lodi | 10.280% | |
| Lompoc | 3.681% | |
| Plumas | 0.701% | |
| Ukiah | 5.615% | |
| Roseville | 7.883% | |
| Santa Clara | 44.391% | |
| Turlock Irrigation District | 6.331% | |

After discussion with the Committee, staff asked Members of their interest in this project. The general consensus of the Members present at the meeting was that all were interested in the project, and would like staff to continue researching and gathering information for this project. Members expressed that they need to discuss this item with their City Counsels. Staff will bring this item back for further consideration and discussion in approximately three months.

ADJOURNMENT

The meeting was adjourned at 10:35 am by the Committee Chair.

**Northern California Power Agency
March 15, 2023 Special Facilities Committee Meeting
Attendance List**

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

| <u>MEMBER</u> | <u>NAME</u> |
|-------------------|-------------|
| ALAMEDA | ✓ |
| BART | |
| BIGGS | |
| GRIDLEY | ✓ |
| HEALDSBURG | ✓ |
| LODI | ✓ |
| LOMPOC | |
| PALO ALTO | ✓ |
| PLUMAS-SIERRA REC | ✓ |
| PORT OF OAKLAND | ✓ |
| REDDING | ✓ |
| ROSEVILLE | ✓ |
| SANTA CLARA | ✓ |
| SHASTA LAKE | |
| TID | ✓ |
| UKIAH | ✓ |

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

[illegible]



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: April 27, 2023

SUBJECT: Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy – First Amendment to Five Year Multi-Task General Services Agreement for Chiller and HVAC Maintenance Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

AGENDA CATEGORY: Consent

| | | |
|--------------------|---------------------------|-----------------------------------|
| FROM: | Michael DeBortoli | METHOD OF SELECTION: |
| | Assistant General Manager | N/A |
| Division: | Generation Services | <i>If other, please describe:</i> |
| Department: | Combustion Turbines | |

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

RECOMMENDATION:

Approve Resolution 23-XX authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy for chiller and HVAC maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, modifying Exhibit A and Exhibit B, for continued use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

BACKGROUND:

Chiller and HVAC maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. NCPA entered into a five year Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy effective December 9, 2019, for use at all NCPA, NCPA Members, SCPPA, and SCPPA Member facilities.

NCPA has utilized Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy regularly for chiller services at its CT2 plant. NCPA recently discovered this vendor can also perform boiler work. NCPA now desires to enter into a First Amendment to the Multi-Task General Services Agreement to modify Exhibit A to add boiler maintenance services to the Scope of Work and to modify Exhibit B to update pricing and add clarifying language regarding billing. NCPA has agreements in place with ACCO Engineered Systems, Inc. and Johnson Controls, Inc. for similar services.

FISCAL IMPACT:

Upon execution, the total not to exceed amount of the agreement will remain unchanged at not-to-exceed \$1,000,000. 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 needed, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from qualified providers as required. Bids are awarded to the vendor providing the best overall value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee Review.

AFTER FACILITIES: On April 5, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER PPC: On April 10, 2023 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution 23-XX
- Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy
- First Amendment to Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE MULTI-TASK GENERAL SERVICES AGREEMENT WITH MESA ENERGY SYSTEMS, INC. DBA EMCOR SERVICES MESA ENERGY

(reference Staff Report #XXX:23)

WHEREAS, Northern California Power Agency (NCPA) and Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy entered into a Multi-Task General Services Agreement effective December 9, 2019, for Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy to provide chiller and HVAC maintenance services, for use at any facilities owned and/or operated by NCPA, NCPA Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, NCPA has utilized Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy regularly for chiller services at its CT2 plant. NCPA recently discovered this vendor can also perform boiler work; and

WHEREAS, NCPA now desires to enter into a First Amendment to the Multi-Task General Services Agreement to modify Exhibit A to add boiler maintenance services to the Scope of Work and to modify Exhibit B to update pricing and add clarifying language regarding billing; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy, with any non-substantial changes as approved by the NCPA General Counsel, modifying Exhibit A and Exhibit B, for continued use at any facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2023 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 | _____ | _____ | _____ |

JERRY SERVENTI
CHAIR

ATTEST:

TRISHA ZIMMER
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
MESA ENERGY SYSTEMS, INC. dba EMCOR SERVICES MESA ENERGY**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy, a corporation with its office located at 2 Cromwell, Irvine, CA 92618 ("Contractor") (together sometimes referred to as the "Parties") as of 12/9/, 2019 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** ONE MILLION dollars (\$1,000,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

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

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

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

Section 7. LEGAL REQUIREMENTS.

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

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

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

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

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

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

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

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

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

Section 10. PROJECT SITE.

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

Section 11. WARRANTY.

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

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

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

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

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

Section 13. MISCELLANEOUS PROVISIONS.

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

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

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

- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 13.8 Notices.** Any written notice to Contractor shall be sent to:

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy
Attention: Mike Bruins
3906 Kristi Court
Sacramento, CA 95827

Any written notice to Agency shall be sent to:

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

Roseville, CA 95678

With a copy to:

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

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

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

- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.
- 13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

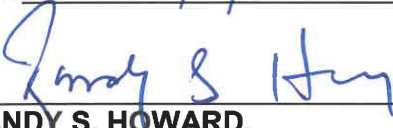
The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

MESA ENERGY SYSTEMS, INC. dba
EMCOR SERVICE MESA ENERGY

Date 12/9/19

Date 11/5/19


RANDY S. HOWARD,
General Manager


LEON RUA,
Branch Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:



Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy ("Contractor") shall provide chiller and HVAC maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Chiller Maintenance
- HVAC Maintenance

CT Facilities Specific Chiller Services to Include:

| Service | Frequency Per Year |
|-------------------------------|--------------------|
| Operational Inspections | 3 |
| Annual PM | 1 |
| Megohm Ref. and Solution Pump | 1 |
| Lithium Bromide Analysis | 1 |

ABSORPTION CHILLER ANNUAL MAINTENANCE

1. CHECK IN WITH PROPER SITE PERSONNEL
2. CHECK ABSORPTION CHILLER OPERATIONS
3. CHECK SYSTEM SAFETIES
4. CHECK SYSTEM OPERATING PRESSURES AND TEMPERATURES
5. CHECK REFRIGERANT CHARGE
6. CHECK REFRIGERANT AND SOLUTION PUMP OPERATIONS
7. CHECK REFRIGERANT AND SOLUTION PUMP AMPERAGE PER MOTOR NAMEPLATE
8. MEGOHM TEST REFRIGERANT AND SOLUTION PUMP WINDINGS
9. CALIBRATE THERMISTORS AND SENSORS AS NEEDED
10. CHECK PURGE SOLENOID VALVE
11. CHECK PURGE OPERATIONS
12. CHANGE PURGE PUMP OIL IF NEEDED
13. CHECK AND VERIFY COOLER AND CONDENSER APPROACH
14. CHECK TUBE CLEANLINESS (customer to remove end bells and reinstall)
15. LOG ENTERING AND LEAVING FLUID TEMPERATURES
16. CHECK STEAM TEMPERATURE AND PRESSURE
17. CHECK FOR UNUSUAL NOISE AND VIBRATION
18. CHECK OVERALL ABSORPTION CHILLER CONDITION
19. CLEAN AREA AROUND WORK SPACE
20. COMPLETE ANY REQUIRED MAINTENANCE CHECK LISTS ITEM IN MANUFACTURE IOM
21. REPORT FINDINGS TO CUSTOMER

ABSORPTION CHILLER OPERATIONAL MAINTENANCE

1. CHECK IN WITH PROPER SITE PERSONNEL
2. CHECK ABSORPTION CHILLER OPERATIONS
3. CHECK SYSTEM OPERATING PRESSURES AND TEMPERATURES
4. CHECK REFRIGERANT CHARGE
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14. CLEAN AREA AROUND WORK SPACE
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ABSORPTION CHILLER LITHIUM BROMIDE ANALYSIS

1. CHECK IN WITH CUSTOMER
2. REMOVE SAMPLE PER GUIDELINES
3. DROP OFF FOR ANALYSIS
4. LABEL AND COMPLETE PAPERWORK INDICATING PRESENT OPERATING CONDITIONS
5. PROVIDE LITHIUM BROMIDE SAMPLE RESULTS TO CUSTOMER

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

CT Facilities Fees:

Year 1 - \$5,417.00/Year (billed quarterly)
Year 2 - \$5,633.00/Year (billed quarterly)
Year 3 - \$5,859.00/Year (billed quarterly)
Year 4 - \$6,093.00/Year (billed quarterly)
Year 5 - \$6,337.00/Year (billed quarterly)

Standard Service Call Rates:

| Labor Classification | Straight Rate | Overtime Rate | Weekend/Holiday Rate |
|------------------------|---------------|---------------|----------------------|
| Unitary (Regular HVAC) | \$130.00 | \$195.00 | \$260.00 |
| Applied (Chillers) | \$145.00 | \$217.50 | \$290.00 |
| Controls (BMS) | \$145.00 | \$217.50 | \$290.00 |
| | | | |
| Parts & Supplies | Cost Plus 35% | | |
| Truck Charge | \$85.00 | | |

Pricing for services to be performed at other NCPA facilities, 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, LEON RUA / BRANCH MANAGER

(Name of person signing affidavit)(Title)

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

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy

(Company name)

for contract work at:

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

(Project name and location)

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

[Signature]

(Signature of officer or agent)

Dated this NOVEMBER day of 26, 20 19.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

ATTACHMENT A [from MLA] AGREEMENT TO BE BOUND

MAINTENANCE LABOR AGREEMENT ATTACHMENT LODI ENERGY CENTER PROJECT

The undersigned hereby certifies and agrees that:

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

DATED: 11/5/19

Name of Employer

MESA ENERGY SYSTEMS
LEON RUIZ - BRANCH MANAGER
(Authorized Officer & Title)
3906 KRISTI COURT
SACRAMENTO, CA 95827
(Address)



**FIRST AMENDMENT TO MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND MESA ENERGY SYSTEMS, INC. DBA
EMCOR SERVICES MESA ENERGY**

This First Amendment (“Amendment”) to the Multi-Task General Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Mesa Energy Systems, Inc. dba Emcor Services Mesa Energy (“Contractor”) (collectively referred to as “the Parties”) as of _____, 2023.

WHEREAS, the Parties entered into a Multi-Task General Services Agreement dated effective December 9, 2019, (the “Agreement”) for Contractor to provide chiller and HVAC maintenance services at any facilities owned or operated by NCPA, NCPA Members, SCPA and SCPA Members; and

WHEREAS, the Agency now desires to amend the Description of Work set forth in Exhibit A to the Agreement to add boiler and burner maintenance to the Scope of Work; and

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

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

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

NOW, THEREFORE, the Parties agree as follows:

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

SIGNATURES ON FOLLOWING PAGE

Date:_____

NORTHERN CALIFORNIA POWER AGENCY

RANDY S. HOWARD, General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

Date:_____

MESA ENERGY SYSTEMS, INC. DBA
EMCOR SERVICES MESA ENERGY

LEON RUA, Branch Manager

EXHIBIT A

SCOPE OF WORK

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy ("Contractor") shall provide chiller, HVAC, and boiler and burner maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Chiller Maintenance
- HVAC Maintenance
- Boiler and Burner Maintenance

CT Facilities Specific Chiller Services to Include:

| Service | Frequency Per Year (But Not Required) |
|---|--|
| Operational Inspections | 2 |
| Annual PM | 1 |
| Megohm Ref. and Solution Pump (Part of Annual Service) | 1 |
| Lithium Bromide Analysis (Part of Annual Service) | 1 |

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

ABSORPTION CHILLER ANNUAL MAINTENANCE

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21. REPORT FINDINGS TO CUSTOMER

ABSORPTION CHILLER OPERATIONAL MAINTENANCE

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ABSORPTION CHILLER LITHIUM BROMIDE ANALYSIS

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EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

CT Facilities Fees*:

| <u>Estimated Quantity</u> | <u>Item Description</u> (Assumes Straight Time Rate) | <u>Unit Price (Price per service to be billed only when services rendered)</u> |
|---------------------------|--|--|
| 1 | Annual In-Depth PM: - Megohm Ref. and Solution Pump (part of annual service) - Lithium Bromide Analysis (part of annual service) | \$ 3,677.00* |
| 2 | Operational/Quarterly Service | \$ 870.00* |

*Prices are subject to change, up to 5% each year

Standard Service Call Rates**:

| Labor Classification | Straight Rate | Overtime Rate | Weekend/Holiday Rate |
|------------------------|---------------|---------------|----------------------|
| Unitary (Regular HVAC) | \$150.00 | \$225.00 | \$300.00 |
| Applied (Chillers) | \$165.00 | \$247.50 | \$330.00 |
| Controls (BMS) | \$165.00 | \$247.50 | \$330.00 |
| | | | |
| Parts & Supplies | Cost Plus 35% | | |
| Truck Charge | \$100.00 | | |

**Base rates go up \$5.00 every July.

Pricing for additional services to be performed at other NCPA facilities, 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.



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: April 27, 2023

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

AGENDA CATEGORY: Consent

| | | |
|--------------------|---------------------------|-----------------------------------|
| FROM: | Michael DeBortoli | METHOD OF SELECTION: |
| | Assistant General Manager | N/A |
| Division: | Generation Services | <i>If other, please describe:</i> |
| Department: | Combustion Turbines | |

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

RECOMMENDATION:

Approve Resolution 23-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with OST Trucks and Cranes, Inc. for crane related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

BACKGROUND:

Various crane related services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar services with American Crane Rental, Hatton Crane & Rigging, Maxim Crane Works, Summit Crane and Titan Crane & Rigging.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee review and approval.

AFTER FACILITIES APPROVAL: On April 5, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On April 10, 2023 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval. Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 23-XX
- Multi-Task General Services Agreement with OST Trucks and Cranes, Inc.

DRAFT

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH OST TRUCKS AND CRANES, INC.

(reference Staff Report XXX:23)

WHEREAS, various crane related services are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA), NCPA Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, OST Trucks and Cranes, Inc. is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with OST Trucks and Cranes, Inc. to provide such services as needed at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members; 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 said Multi-Task General Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2023 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 | _____ | _____ | _____ |

JERRY SERVENTI
CHAIR

ATTEST:

TRISHA ZIMMER
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
OST TRUCKS AND CRANES, 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 OST Trucks and Cranes, Inc., a corporation with its office located at 2951 N. Ventura Avenue, Ventura, CA 93001 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2023 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** ONE MILLION FIVE HUNDRED THOUSAND dollars (\$1,500,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Riggers Liability Insurance. If the Services involves moving, hoisting, lifting, picking, erecting, lowering, rigging, or use of a crane, Contractor shall maintain Riggers Liability Insurance in an amount not less than the full replacement cost of the property, materials or equipment being moved, hoisted, lifted, picked, erected, lowered, rigged or craned. There shall be no sublimit for the property of others in the Contractor's care, custody or control.

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.

The failure of Agency to identify any deficiencies in the certificate(s) or endorsement(s) provided by Contractor shall not be construed as acceptance of the noncompliant coverage nor a waiver of Contractor's obligation to maintain coverage compliant with the requirements set forth herein. Agency does not represent or warrant that coverage and limits will be adequate to protect Contractor from loss, and such coverage and limits required herein shall not be deemed a limitation on Contractor's liability under this Agreement. Agency has not waived, and is not estopped from asserting against Contractor, any claim or claims alleging Contractor's breach of any of its insurance procurement or maintenance obligations.

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

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

5.2 Scope. Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

5.3 Transfer of Title. Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

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

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

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

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

6.3 Assignment and Subcontracting. This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall

be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770

and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Contractor shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1** Immediately terminate the Agreement;
 - 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
 - 8.4.3** Retain a different Contractor to complete the Work not finished by Contractor; and/or
 - 8.4.4** Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code

Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.

9.4 Confidential Information and Disclosure.

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

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

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

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

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

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

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

Section 10. PROJECT SITE.

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

10.2 Contractor's Equipment, Tools, Supplies and Materials. Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

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

Section 11. WARRANTY.

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

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.

- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this

Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

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

OST Trucks and Cranes, Inc.
Attention: Chris Lang
2951 N. Ventura Avenue
Ventura, CA 93001

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

SIGNATURES ON FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

OST TRUCKS AND CRANES, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

CHRIS LANG,
Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

OST Trucks and Cranes, Inc. ("Contractor") shall provide truck and crane services, including trucks, cranes and operators, as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Engineering and Project Management for crane rental projects
- Crane and lift training
- Engineered crane lifts
- Crane rentals and crane rental services
- Rigging services
- Transportation services
- Heavy lifts/Heavy transportation services
- On-site evaluations
- Operated and Maintained Crane Rental
- Base crane rental

Contractor may provide services at all Project Site Locations.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

SEE FOLLOWING PAGE

SCHEDULE A - TRANSPORTATION

| TYPE OF EQUIPMENT | PER HOUR |
|---|-----------|
| Pickup Truck - Hot Shot----- | \$ 120.00 |
| Flatbed Truck----- | \$ 123.00 |
| Tractor & Highbed----- | \$ 133.00 |
| Tractor w/ Stretch Semi Trailer/ Pole Dolly----- | \$ 143.00 |
| Hydrolift Truck - 22 Ton----- | \$ 158.00 |
| Hydrolift Truck - 23 Ton----- | \$ 168.00 |
| Hydrolift Truck - 30 Ton----- | \$ 178.00 |
| Tractor & Driver Only - Legal Loads - Shipper Owned --- | \$ 133.00 |
| Tractor & Driver Only - Requiring Permit----- | \$ 138.00 |
| Hydrolift Truck Operating Engineer----- | \$ 215.00 |

| HEAVY DUTY LOW BED SEMI UNITS | PER HOUR |
|-------------------------------|----------------|
| 0 to 25 Ton----- | \$ 142.00 |
| 25 to 30 Ton----- | \$ 147.00 |
| 30 to 35 Ton----- | \$ 152.00 |
| 35 to 40 Ton----- | \$ 157.00 |
| 40 to 50 Ton----- | \$ 187.00 |
| 50 to 60 Ton----- | \$ 197.00 |
| 60 to 70 Ton----- | \$ 207.00 |
| 70 to 80 Ton----- | \$ 232.00 |
| Lowbed Rail Trailer----- | Call for rates |

Over 80 Ton - Call for Price Quote
EXTRA CHARGE FOR PERMIT COSTS - SEE SPECIAL SERVICE RATES

| EXTRA TRAILERS & SEMI TRAILERS | PER DAY |
|--|-----------|
| Semi Hi-Bed Trailer - Carrier Owned----- | \$ 60.00 |
| Semi Lo-Bed Trailer - Carrier Owned----- | \$ 100.00 |

| SPECIAL SERVICE & EQUIPMENT | PER HOUR |
|---|-----------|
| Helpers or Swampers ----- | \$ 90.00 |
| Working Foreman----- | \$ 155.00 |
| Pilot Cars----- | \$ 100.00 |
| Mechanic----- | \$ 150.00 |
| All Loads Requiring Permit - Service Charge | \$ 75.00 |
| Plus Insurance Charge and 3% | |
| Hazardous endorsement loads----- | \$ 10.00 |

All rates are portal to portal. All equipment and labor listed are based on a two hour minimum between the hours of 6:00 AM to 6:00 PM Monday through Friday. All other times will be a four hour minimum unless noted otherwise.
 Subsistence will be charged at \$150.00 per night if applicable

| OVERTIME | |
|--|----------|
| For work performed in excess of eight hours, before 6:00 am, after 5:00 pm, Saturdays or Sundays - add to applicable rate----- | \$ 32.50 |

| DOUBLETIME | |
|---|----------|
| Shall be paid for all hours in excess of twelve (12) hours in one (1) tour of duty (Christmas Eve)----- | \$ 48.00 |

| HOLIDAY (8 hour minimum) | |
|---|-----------|
| If holiday falls on Sunday, Monday shall be holiday or any day celebrated in lieu of holiday. (July 4, Memorial Day, Labor Day, Veteran's Day, Thanksgiving, Day After Thanksgiving, Christmas, New Year's Day) Add per hour to above rates----- | \$ 102.00 |

SCHEDULE B - CRANE SERVICE

| TYPE OF EQUIPMENT | PER HOUR |
|-----------------------------------|-----------|
| Conventional Cranes | |
| Truck Crane 100 Ton Capacity----- | \$ 405.00 |
| Truck Crane 140 Ton Capacity----- | \$ 455.00 |
| Truck Crane 150 Ton Capacity----- | \$ 465.00 |

| | |
|---|-----------|
| Hydraulic Cranes - One Man Crew | |
| Hydraulic Crane 25 Ton Capacity----- | \$ 215.00 |
| Hydraulic Crane 40 Ton Capacity----- | \$ 235.00 |
| Hydraulic Crane 65 Ton RT Capacity----- | \$ 265.00 |

| | |
|--|-----------|
| Hydraulic Cranes - Two Men Crew | |
| Hydraulic Crane 50 Ton Capacity----- | \$ 360.00 |
| Hydraulic Crane 60 Ton Capacity----- | \$ 370.00 |
| Hydraulic Crane 70 Ton Capacity----- | \$ 380.00 |
| Hydraulic Crane 90 Ton Capacity----- | \$ 400.00 |
| Hydraulic Crane 115 Ton Capacity----- | \$ 430.00 |
| Hydraulic Crane 120 Ton Capacity----- | \$ 435.00 |
| Hydraulic Crane 140 Ton Capacity----- | \$ 460.00 |
| Hydraulic Crane 175 Ton Capacity----- | \$ 510.00 |
| Hydraulic Crane 210 Ton Capacity----- | \$ 540.00 |
| Hydraulic Crane 250 Ton Capacity----- | \$ 565.00 |
| Hydraulic Crane 300 Ton Capacity----- | \$ 615.00 |

| ADDITIONAL SERVICES | |
|---|-----------|
| Truck required to transport extra boom sections and/ or accessories Per Hour----- | \$ 150.00 |
| Pickup/ Rigging truck to follow crane Per Day----- | \$ 110.00 |
| Riggers/ Ironworkers Per Hour----- | \$ 140.00 |

| ADDITIONAL BOOM CHARGE | |
|----------------------------------|----------|
| Length 80' - 100' inc. jib----- | \$ 6.00 |
| Length 100' - 160' inc. jib----- | \$ 10.00 |
| Length 160' - 220' inc. jib----- | \$ 12.00 |
| Length 220' - 300' inc. jib----- | \$ 18.00 |
| Length 300' - 320' inc. jib----- | \$ 25.00 |
| Length 320' - 340' inc. jib----- | \$ 30.00 |
| Length 340' - 360' inc. jib----- | \$ 35.00 |
| Length 360' - 400' inc. jib----- | \$ 45.00 |

| ACCESSORY EQUIPMENT | PER DAY |
|--|----------------|
| Dragline, Clam Bucket or Manbasket ----- | \$ 200.00 |
| Spreader Bars, Breaking Ball, Concrete Buckets----- | \$ 70.00 |
| Anti-tool blocking w/ OSHA approved Manbasket ----- | \$ 250.00 |
| Test Weights----- | Call for Rates |
| Lift Plans----- | Call for Rates |

MINIMUM CHARGE FOR ALL SERVICE WILL BE FOUR (4) HOURS
All Rates are Portal to Portal

SCHEDULE B - CRANE SERVICE

...continued from previous page

OVERTIME / DOUBLETIME / TRIPLETIME CHARGES

Overtime - For work performed in excess of eight hours, before 6:00 am, after 5:00 pm or on Saturdays or Sundays
-add to applicable rates

| | PER HOUR |
|------------------|-----------|
| 1 Man Crane----- | \$ 57.65 |
| 2 Men Crane----- | \$ 115.25 |

Doubletime - Sundays, Monday thru Saturday after the 12th hour, or working with crafts receiving doubletime.
-add to applicable rates

| | |
|------------------|-----------|
| 1 Man Crane----- | \$ 90.25 |
| 2 Men Crane----- | \$ 180.50 |

Triplettime - All holidays to be an 8 hour minimum - add to applicable rate

| | |
|------------------|-----------|
| 1 Man Crane----- | \$ 135.75 |
| 2 Men Crane----- | \$ 271.50 |

Holidays-New Year's Day, Presidents' Day, Memorial Day, July 4th, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day, The first Saturday after the first Friday in June and December or other special union requirements.

If any of the holidays fall on Sunday, the Monday following shall be considered a holiday.

Standby Time for State, County, and City Permits or other misc. requirements will be charged for at regular crew time only - this rate is per hour

| | |
|------------------|-----------|
| 1 Man Crane----- | \$ 130.00 |
| 2 Men Crane----- | \$ 255.00 |

Subsistence - 45 to 77.5 miles per man per night \$ 115.00
Subsistence - 77.5 miles and over per man per night \$ 225.00
Certified Payroll - per job \$ 50.00

SCHEDULE C - STORAGE

| TYPE OF SERVICE | PER HOUR |
|------------------------------|----------------|
| 30000# Forklift----- | \$ 155.00 |
| 25000# Forklift----- | \$ 150.00 |
| 20000# Forklift----- | \$ 140.00 |
| 18000# Forklift----- | \$ 120.00 |
| 16000# Forklift----- | \$ 115.00 |
| 8000# Forklift----- | \$ 120.00 |
| Helpers or Swimmers----- | \$ 87.00 |
| Tubular Storage - per rack | \$ 150.00 |
| Storage of non-tubular items | Call for Rates |

Dunnage will be charged for or furnished by contractor.

Office Space and Special Service Rates available upon request.

OVERTIME-4 hour minimum call out
For work performed in excess of eight hours, before 6:00 am, after 5:00 pm or on Saturdays or Sundays Add to above rates -----

| | |
|--|----------|
| | \$ 32.50 |
|--|----------|

DOUBLETIME-
Shall be paid for all hours in excess of twelve (12) hours in one (1) tour of duty.

| | |
|--|----------|
| | \$ 48.00 |
|--|----------|

HOLIDAYS-8 hour minimum call out
If any of the holidays fall on Sunday, the Monday following shall be considered a holiday.
(July 4, Memorial Day, Labor Day, Veteran's Day, Thanksgiving, Day After Thanksgiving, Christmas, New Year's Day)

| | |
|-----------------------------------|-----------|
| Add per hour to above rates ----- | \$ 102.00 |
|-----------------------------------|-----------|

| |
|---|
| <p align="center">SCHEDULE E</p> <p align="center">ROLL OFF TRUCKS AND CONTAINERS</p> |
|---|

| TYPE OF EQUIPMENT | PER HOUR |
|---|-----------|
| Roll Off Truck for 1 Container----- | \$ 132.00 |
| Roll Off Truck for 2 Containers ----- | \$ 142.00 |
| Tractor and Semi Roll-Off Trailer----- | \$ 142.00 |
| Hazardous Endorsement Loads ----- | \$ 10.00 |
| Bins - Daily Rental after 7 days----- | \$ 30.00 |
| Covered top Bin (per day) ----- | \$ 35.00 |
| Bin Liner - Small----- | \$ 30.00 |
| Bin Liner - Large----- | \$ 35.00 |
| Foam (per can) ----- | \$ 20.00 |
| Tyveks----- | \$ 25.00 |
| Monthly Rental Bins ----- | \$ 375.00 |
| Disposal Costs - Actual Cost + 15% handling | |

All rates are portal to portal. All equipment and labor listed are based on a two hour minimum between the hours of 6:00 AM to 6:00 PM Monday through Friday. All other times will be a four hour minimum unless noted otherwise.

OVERTIME-4 hour minimum call out

For work performed in excess of eight hours, before 6:00 am, after 5:00 pm or on Saturdays or Sundays Add to above rates ----- \$ 32.50

DOUBLETIME-

Shall be paid for all hours in excess of twelve (12) hours in one (1) tour of duty. \$ 48.00

HOLIDAYS-8 hour minimum call out

If any of the holidays fall on Sunday, the Monday following shall be considered a holiday.
(July 4, Memorial Day, Labor Day, Veteran's Day, Thanksgiving, Day After Thanksgiving, Christmas, New Year's Day)

Add per hour to above rates ----- \$ 102.00

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

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

OST Trucks and Cranes, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

NOT APPLICABLE

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: April 27, 2023

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

AGENDA CATEGORY: Consent

| | | |
|--------------------|---------------------------|-----------------------------------|
| FROM: | Michael DeBortoli | METHOD OF SELECTION: |
| | Assistant General Manager | N/A |
| Division: | Generation Services | <i>If other, please describe:</i> |
| Department: | Combustion Turbines | |

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

RECOMMENDATION:

Approve Resolution 23-XX authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Tetra Engineering Group, Inc. for inspection services related to HRSG, power piping, steam plant assessments, root cause failures and consulting engineering, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

BACKGROUND:

Various inspection services related to HRSG, power piping, steam plant assessments, root cause failures and consulting engineering services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar services with Groome Industrial, HRST, Inc., Nooter Eriksen and N&T Consulting Service Inc. (pending).

FISCAL IMPACT:

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

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee review and approval.

AFTER FACILITIES APPROVAL: On April 5, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On April 10, 2023 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 23-XX
- Multi-Task Professional Services Agreement with Tetra Engineering Group, Inc.

RESOLUTION 23-XX

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

(reference Staff Report XXX:23)

WHEREAS, various inspection services related to HRSG, power piping, steam plant assessments, root cause failures and consulting engineering services are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA), NCPA Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, Tetra Engineering Group, Inc. is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task Professional Services Agreement with Tetra Engineering Group, Inc. to provide such services as needed at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members; 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 said Multi-Task Professional Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2023 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 | _____ | _____ | _____ |

JERRY SERVENTI
CHAIR

ATTEST:

TRISHA ZIMMER
ASSISTANT SECRETARY



MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND TETRA ENGINEERING GROUP, INC.

This Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Tetra Engineering Group, Inc., a Connecticut corporation with its office located at 110 Hopmeadow Street, Suite 800, Weatogue, CT 06089 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2023 ("Effective Date") in Roseville, California.

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

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

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

Section 2. **COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED ONE MILLION** dollars (\$1,000,000.00) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

- 2.4 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.
- 2.5 Timing for Submittal of Final Invoice.** Consultant shall have ninety (90) days after completion of its Services to submit its final invoice. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

- 4.1 Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident.
- 4.2 Commercial General and Automobile Liability Insurance.**
- 4.2.1 Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$2,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.
- 4.2.2 Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$2,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and

mobile equipment to the extent coverage may be excluded from general liability insurance.

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

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

4.4 All Policies Requirements.

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

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

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

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

Agency member, SCPPA or Agency member for which the Services are to be performed.

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

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

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel

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

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

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

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

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the

performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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

Section 7. LEGAL REQUIREMENTS.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

9.4 Confidential Information and Disclosure.

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

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

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

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

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

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

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

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

Section 10. MISCELLANEOUS PROVISIONS.

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

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

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

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

Tetra Engineering Group, Inc.
Attention: Peter S. Jackson, President
P.O. Box 55
Weatogue, CT 06089

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

TETRA ENGINEERING GROUP, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

PETER S. JACKSON
President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Tetra Engineering Group, Inc. ("Consultant") shall provide HRSG related inspection services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- 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.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

| Labor Category | Rate (USD/hr) |
|----------------------------|----------------------|
| Senior Project Manager | \$ 343.75 |
| Assistant Project Manager | \$ 312.50 |
| Senior Consulting Engineer | \$ 281.25 |
| Consulting Engineer / TFA | \$ 218.75 |
| Senior Engineer | \$ 187.50 |
| Engineer II | \$ 156.25 |
| Drafter/Senior Designer | \$ 156.25 |
| Drafter/Junior Designer | \$ 118.75 |
| Technical Support | \$ 110.00 |

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

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I, _____

(Name of person signing affidavit)(Title)

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

Tetra Engineering Group, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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



Commission Staff Report

COMMISSION MEETING DATE: April 27, 2023

SUBJECT: Baker Tilly US, LLP – First amendment to Two Year Multi-Task Professional Services Agreement for Annual Audit Services. Applicable to NCPA, Members, SCPPA and SCPPA Members

AGENDA CATEGORY: Consent

FROM: Monty Hanks
Assistant General
Manager/CFO

METHOD OF SELECTION:

N/A

Division: Administrative Services

Department: Accounting & Finance

IMPACTED MEMBERS:

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

If other, please specify

RECOMMENDATION:

Recommending the Northern California Power Agency (NCPA) Commission authorize the General Manager or his designee to enter into a first amendment to the Multi-Task Professional Services Agreement with Baker Tilly US, LLP for annual audit services, with any non-substantial changes recommended and approved by the NCPA General Counsel, increasing the not-to-exceed amount of \$500,000 to a not-to-exceed amount of \$1,000,000.

BACKGROUND:

As a public agency, NCPA is required to have an annual audit and attestation of NCPA's financial statements performed by an independent auditor. In June 2018, the Commission approved a two-year Multi-Task Professional Services Agreement with Baker Tilly Virchow Krause LLP with a not-to-exceed amount of \$500,000 for the audits of NCPA fiscal years 2018 and 2019. The Agreement included NCPA's option to extend the term of the agreement for two additional three-year terms. In 2020, NCPA notified Baker Tilly Virchow Krause LLP of its intent to exercise the first three-year extension for the audit of the agency's financial statements for fiscal years 2020-2022, and the audit firm agreed to the extension. The audit firm has since changed its name to Baker Tilly US, LLP.

NCPA has notified Baker Tilly US, LLP of its intent to exercise the second three-year extension for the audit of the agency's financial statements for fiscal years 2023-2025, and the audit firm has agreed to the extension. In order to fund the second extension, NCPA needs to increase the current not-to-exceed amount from \$500,000 to \$1,000,000.

FISCAL IMPACT:

The total not-to-exceed amount of this agreement is \$1,000,000. The audit fees for fiscal years 2023-2025 including annual administrative fees are \$91,000, \$96,000, and \$100,000, respectively. The agreement contains additional funds for OMB A-133 audits for Federal Grants received in excess of \$750,000 as needed, for other services as needed, and for utilization by NCPA Members, SCPPA, and/or SCPPA Members. The amount is already included in the Accounting budget and no budget augmentation 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

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments:

- Multi-Task Professional Services Agreement between NCPA and Baker Tilly Virchow Krause LLP
- First Amendment To Multi-Task Professional Services Agreement Between The Northern California Power Agency And Baker Tilly US, LLP
- Resolution No. 23-XX



**NOTICE OF ELECTION TO EXTEND THE MULTI-TASK PROFESSIONAL SERVICES
AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY
AND BAKER TILLY VIRCHOW KRAUSE LLP**

This Notice of Election to Extend the Multi-Task Professional Services Agreement is entered into by and between the Northern California Power Agency ("Agency") and Baker Tilly Virchow Krause LLP ("Consultant") (collectively referred to as "the Parties") as of 12/20/19, 2019.

WHEREAS, the Parties entered into a Multi-Task Professional Services Agreement dated effective July 2, 2018, (the "Agreement") for Consultant to provide annual audit of the financial statements, including associated reporting for the Agency, for the fiscal years ending 2018 and 2019 as well as services as requested by the Agency, Agency Members, SCPPA, and SCPPA members; and

WHEREAS, the Agency now desires to extend the Agreement consistent with Section 1.1 of the Agreement for an additional three year period from the original expiration date of July 1, 2020 to a new date of July 1, 2023; and

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

WHEREAS, in accordance with Section 1.1 this extension to the Agreement must be in writing and signed by all the Parties; and

NOW, THEREFORE, the Parties agree to extend the term of the Agreement as provided in Section 1.1 for an additional three (3) years ending no later than July 1, 2023.


Date: 12/9/19

NORTHERN CALIFORNIA POWER AGENCY


RANDY S. HOWARD, General Manager

Date: 12/20/2019

BAKER TILLY VIRCHOW KRAUSE, LLP


BETHANY RYERS,
Firm Director – Energy & Utilities

Attest:


Assistant Secretary of the Commission

Approved as to Form:


Jane E. Luckhardt, General Counsel



**MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
BAKER TILLY VIRCHOW KRAUSE, LLP**

This Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Baker Tilly Virchow Krause, LLP, a limited liability partnership with its office located at 10 Terrace Court, Madison, WI 53718 ("Consultant") (together sometimes referred to as the "Parties") as of 7/2/, 2018 ("Effective Date") in Roseville, California.

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

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than two (2) years from the date this Agreement was signed by Agency, whichever is shorter. At the parties' option, the term of the Agreement may be extended for two additional three-year terms, which options may be exercised by the Agency providing written notice to the Consultant no less than four (4) months in advance of expiration of the agreement and Consultant subsequently providing written agreement to said extension.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar

days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services or does not respond within the seven day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

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

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

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

Invoices shall be sent to:

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

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

- 2.3 Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.
- 2.4 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.
- 2.5 Timing for Submittal of Final Invoice.** Consultant shall have ninety (90) days after completion of its Services to submit its final invoice. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

- 4.1 Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than one million dollars (\$1,000,000) per accident.
- 4.2 Commercial General and Automobile Liability Insurance.**
- 4.2.1 Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.
- 4.2.2 Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The

policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

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

4.4 All Policies Requirements.

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

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

4.4.3 Intentionally omitted.

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

Agency member, SCPA or Agency member for which the Services are to be performed.

- 4.5 Waiver of Subrogation.** Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.
- 4.6 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 Scope.** Consultant shall indemnify, hold harmless, and defend with counsel reasonably acceptable to the Agency, the Agency, and its officials, commissioners, officers, employees, agents and volunteers (each a "Covered Person") from and against all third-party losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation reasonable costs and fees of litigation), judgments and causes of action, to the extent such claims arises directly out of negligent, willful misconduct or fraudulent actions or inactions by Consultant, its officers, officials, agents, and employees in connection with the services. In compliance with AICPA independence requirements, the Agency hereby releases Consultant, its subsidiaries and their present or former partners, principals, employees, officers and agents from, and acknowledges that such parties shall not be required to indemnify the Agency or any Covered Person against, any costs, fees, expenses, damages and liabilities (including attorney's fees and all defense costs) relating to or arising as a result of the acts or omissions of the Agency or such Covered Person. Furthermore, because of the importance of the information that the Agency provides to Consultant with respect to Consultant's ability to perform the services, the Agency hereby releases Consultant and its present and former

partners, principals, agents and employees from any liability, damages, fees, expenses and costs including attorney's fees, relating to the services that arise from or relate to any information, including representations by management, provided by the Agency, its personnel or agents, that is not materially and/or substantively complete, accurate or current. Notwithstanding the above, this section shall not be construed to release Consultant from its obligation, consistent with the standard of performance in its profession, from identifying in a timely manner information and/or representations by management that is not materially and/or substantively complete, accurate or current.

In no event shall either party be liable for any lost business opportunity, consequential, special, incidental, exemplary or punitive damages, delays or interruptions arising out of or related to this Agreement.

Any legal proceedings arising from or in conjunction with the services provided under this Agreement must be commenced within forty-eight (48) months after the completed audit report is accepted by the Commission, without consideration as to the time of discovery of any claim.

Each Party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases for this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each Party under this Agreement and in the decision by each Party to enter into this Agreement. The terms of this section shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort or any form of negligence, whether of the Agency, Consultant or others), but these terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. The terms of this section shall also continue to apply after any termination of this Agreement.

Section 6. STATUS OF CONSULTANT.

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

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

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

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

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

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

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

Section 7. LEGAL REQUIREMENTS.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** The documents prepared by Consultant for its internal use for performing the Services hereunder, including without limitation any drafts or works in progress, (collectively "Consultants Work Papers") are the property of Consultant and constitute confidential information. Consultant may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. Notwithstanding anything to the contrary in Section 9.4 below, if Consultant is required by law, regulation, or professional standards to make Consultant's Work Papers available to third parties, Consultant shall give at least seven business days' prior written notice so as to enable Agency to determine whether it will seek a protective order or other response to such third party demand. All other reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents, excluding its Work Papers to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing or as otherwise set forth herein, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** As required by law, any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

9.4 Confidential Information and Disclosure.

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

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

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

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

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

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

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

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

Section 10. MISCELLANEOUS PROVISIONS.

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

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

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

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

Russ Hissom
Partner
Baker Tilly Virchow Krause, LLP
10 Terrace Court
Madison, WI 53718

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

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

10.16 Consultant's Statement. Consultant's Statement as to its Services is attached hereto as Exhibit D, and incorporated herein.

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

NORTHERN CALIFORNIA POWER AGENCY

BAKER TILLY VIRCHOW KRAUSE, LLP

Date 7/2/18

Date June 13, 2018


RANDY S. HOWARD, General Manager


RUSS HISSOM, Partner

Attest:

Assistant Secretary of the Commission

Approved as to Form:



Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Baker Tilly Virchow Krause, LLP (referred to as “Consultant” or “Auditor”) shall provide annual audit of the financial statements, including associated reporting for the Agency, for fiscal years ended June 30, 2018, and 2019, as set forth below. In addition, Consultant shall provide additional services, as requested by the Agency.

Required Audit Products

For each fiscal year end, June 30, the Consultant shall provide the Agency with the following formal documents:

- Report on the Combined Financial Statements
- Negative assurance for Supplementary Combining Information
- Report on Internal Control/No Material Weaknesses/Management Letter
- Negative assurance for Certain Bond Indenture of Trust Provisions (No Default)
- Report on Compliance with the Agency's Investment Policy
- Report and discussion on audit with Finance Committee
- Consent to use audited financial statements in bond offerings and on the Agency's Website.

Consultant and NCPA will exercise their best efforts to complete the audit by October 10th of each year.

Each year following completion and delivery of all required reports hereunder, Consultant may elect to resign by providing written notice prior to January 31.

Audit Role of Agency

NCPA recognizes that assistance from its Treasurer-Controller staff during an audit conducted by an external auditor will reduce the cost of an audit. Agency staff will provide the normal Prepared by Client work papers in the same format provided to the current auditor in past years. NCPA Treasurer-Controller staff members write both the Management Discussion and Analysis (MD&A) and footnotes to the financial statements.

Bond Indenture Requirements

The Agency's Indentures of Trust require an independent annual audit and no default letter to be filed with the Trustee within 120 days after the close of the fiscal year. To meet this schedule and the schedule for the production of the Agency's Annual Report requires that the reports of independent auditors, which includes the audited combined financial statements, be issued by October 10th of each year.

Additional Services

Consulting or Other Work

Consultant will not perform any direct consulting or other work for the Agency unless the Agency separately requests it. However, Consultant may be retained by the Agency's underwriters, or other parties working on behalf of the Agency in regard to verification of bond defeasance escrows or similar work, which must be pre-approved by the Agency.

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From time to time the Agency receives Federal awards for various reasons. Under current Federal law, in any fiscal year those awards total \$750,000 or more, the Agency is required to obtain the following or similar reports from its Auditors in conjunction with the annual audit:

- Audit of Schedule of Expenditures of Federal Awards--OMB Circular A-133
- Completed U.S. Department of Commerce—Bureau of Census Form SF-SAC

While the Agency does not specifically anticipate Federal Awards of \$750,000 or more in any given year, IF REQUIRED, the additional audit fee for compliance with the aforementioned will be determined, if and when required, by mutual agreement.

Project Financing Activities

In addition to the auditors' consent to use audited financial statements for bond offerings, at the sole option of the Agency, the Agency may need review work in connection with bond offerings during the term of this Agreement. The cost of issuing a comfort letter in connection with a project financing may vary depending on the requirements associated with the financing. The cost of an individual comfort letter, if required, will be separately determined and agreed upon prior to the commencement of that work. Such comfort letters will be billed separately as part of the associated cost of financing and not as part of the audit.

Commercial Compliance Audit

It is the policy of NCPA to conduct its business in compliance with laws and regulations that govern NCPA's commercial interactions in energy markets, including applicable provisions of the Federal Power Act, the Commodity Exchange Act and the antitrust laws. To ensure this result, NCPA has adopted a compliance program that includes this Commercial Compliance Policy, a Compliance Officer, a Commercial Compliance Policy Training Manual, compliance training and certification, a document retention policy, and ongoing monitoring and auditing. On a biennial basis, the Agency will require a compliance audit to be billed separately and not as part of the audit.

Other

Consultant shall perform such other services as may be requested by the Agency in writing.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Fixed Price, Not-To-Exceed Amount for Annual Audit Services

Audit services for fiscal years ended June 30 of 2018 and 2019 will be based on a fixed not-to-exceed fee for the audit services. As such, any cost overruns incurred by the audit firm will be its sole responsibility. In addition, at the sole option of the Agency, the Agreement is subject to two additional three year renewals for which fees are subject to annual escalation based on the consumer Price Index for All Urban Consumers, U.S. City Average, with a cap of 5%.

| Service | 2018 | 2019 |
|------------------------|----------|----------|
| Annual financial audit | \$70,000 | \$72,100 |

Agency will not be charged for first year audit start-up hours, which are estimated at 60 hours. Additionally, Consultant will provide up to 40 hours annually of accounting services to the Agency for research, business process evaluations and other financial services. Consultant will also provide eight hours annually of certified professional education at no charge to Agency on a variety of financial and operational topics.

Hourly Fees for Additional Services

For additional services requested by the Agency, Consultant's hourly fee schedule is as follows:

| Hourly fee schedule | Quoted hourly rates |
|---------------------|---------------------|
| Partners | \$250 |
| Managers | \$180 |
| Senior accountants | \$155 |
| Staff accountants | \$125 |

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I, Russ Hissom

(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
Baker Tilly Virchow Krause, LLP

(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 13th day of June, 20 18.

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

EXHIBIT D CONSULTANT'S STATEMENT



Baker Tilly Virchow Krause, LLP
Ten Terrace Ct, PO Box 7398
Madison, WI 53707-7398
tel 608 249 6622
fax 608 249 8332
bakertilly.com

June 8, 2018

Northern California Power Agency

Thank you for using Baker Tilly Virchow Krause, LLP ("Baker Tilly" or "we" or "our") as auditors for Northern California Power Agency.

This attachment to the MTCSA fulfills our requirements under Generally Accepted Auditing Standards to document our understanding of the audit engagement with our client – the Northern California Power Agency ("Agency", "you", "your").

Services and Related Report

We will audit the financial statements of the Northern California Power Agency as of and for the years ended June 30, 2018 and 2019 and the related notes to the financial statements. At the sole option of the Agency, it is subject to two renewals for a period of three years each for a maximum of nine fiscal years. Upon completion of our audit, we will provide the Northern California Power Agency with our audit report on the financial statements referred to below. If, for any reasons caused by or relating to the affairs or management of the Northern California Power Agency, we are unable to complete the audit or are unable to or have not formed an opinion, or if we determine in our professional judgment the circumstances necessitate, we may withdraw and decline to issue a report as a result of this engagement.

Our Responsibilities and Limitations

The objective of a financial statement audit is the expression of an opinion on the financial statements. We will be responsible for performing that audit in accordance with auditing standards generally accepted in the United States of America ("GAAS"). These standards require that we plan and perform our audit to obtain reasonable, rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. The audit will include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit does not relieve management and the audit committee or equivalent group charged with governance of their responsibilities.

The audit will include obtaining an understanding of the Northern California Power Agency and its environment, including internal controls, sufficient to assess the risks of material misstatement of the financial statements and to determine the nature, timing and extent of further audit procedures. An audit is not designed to provide assurance on internal controls or to identify deficiencies in internal control. However, during the audit, we will communicate to management and the audit committee or equivalent group charged with governance internal control matters that are required to be communicated under professional standards.

We will design our audit to obtain reasonable, but not absolute, assurance of detecting errors or fraud that would have a material effect on the financial statements as well as other illegal acts having a direct and material effect on financial statement amounts. An audit is not designed to detect error or fraud that is immaterial to the financial statements. Our audit will not include a detailed audit of transactions, such as would be necessary to disclose errors or fraud that did not cause a material misstatement of the financial statements. It is important to recognize that there are inherent limitations in the auditing process. Audits are based on the concept of selective testing of the data underlying the financial statements, which involves judgment regarding the areas to be tested and the nature, timing, extent and results of the tests to be performed. Our audit is not a guarantee of the accuracy of the financial statements and, therefore, is subject to the limitation that material errors or fraud or other illegal acts having a direct and material financial statement impact, if they exist, may not be detected. Because of the characteristics of fraud, particularly those involving concealment through collusion, falsified documentation and management's ability to override controls, an audit designed and executed in accordance with GAAS may not detect a material fraud. Further, while effective internal control reduces the likelihood that errors, fraud or other illegal acts will occur and remain undetected, it does not eliminate that possibility. For these reasons, we cannot ensure that errors, fraud or other illegal acts, if present, will be detected. However, we will communicate to you, as appropriate, any such matters that we identify during our audit.

We are also responsible for determining that the audit committee or equivalent group charged with governance is informed about certain other matters related to the conduct of the audit, including (i) our responsibility under GAAS, (ii) an overview of the planned scope and timing of the audit, and (iii) significant findings from the audit, which include (a) our views about the qualitative aspects of your significant accounting practices, accounting estimates, and financial statement disclosures; (b) difficulties encountered in performing the audit; (c) uncorrected misstatements and material corrected misstatements that were brought to the attention of management as a result of auditing procedures; and (d) other significant and relevant findings or issues (e.g., any disagreements with management about matters that could be significant to your financial statements or our report thereon, consultations with other independent accountants, issues discussed prior to our retention as independent auditors, fraud and illegal acts, and all significant deficiencies and material weaknesses identified during the audit). Lastly, we are responsible for ensuring that the audit committee or equivalent group charged with governance receives copies of certain written communications between us and management including written communications on accounting, auditing, internal controls or operational matters and representations that we are requesting from management.

The audit will not be planned or conducted in contemplation of reliance of any specific third party or with respect to any specific transaction. Therefore, items of possible interest to a third party will not be specifically addressed and matters may exist that would be addressed differently by a third party, possibly in connection with a specific transaction.

Northern California Power Agency

June 8, 2018

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Management's Responsibilities

The Northern California Power Agency management is responsible for the financial statements referred to above. In this regard, management is responsible for establishing policies and procedures that pertain to the maintenance of adequate accounting records and effective internal controls over financial reporting, the selection and application of accounting principles, the authorization of receipts and disbursements, the safeguarding of assets, the proper recording of transactions in the accounting records, and for reporting financial information in conformity with accounting principles generally accepted in the United States of America ("GAAP").

Management is also responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us in the management representation letter (i) about all known or suspected fraud affecting the Northern California Power Agency involving: (a) management, (b) employees who have significant roles in internal control over financial reporting, and (c) others where the fraud or illegal acts could have a material effect on the financial statements; and (ii) of its knowledge of any allegations of fraud or suspected fraud affecting the Northern California Power Agency received in communications from employees, former employees, analysts, grantors, regulators, or others.

Management is responsible for (i) adjusting the financial statements to correct material misstatements and for affirming to us in a management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period under audit are immaterial, both individually and in the aggregate, to the financial statements taken as a whole, and (ii) notifying us of all material weaknesses, including other significant deficiencies, in the design or operation of your internal control over financial reporting that are reasonably likely to adversely affect your ability to record, process, summarize and report external financial data reliably in accordance with GAAP. Management is also responsible for identifying and ensuring that the Northern California Power Agency complies with the laws and regulations applicable to its activities.

As part of management's responsibility for the financial statements and the effectiveness of its system of internal control over financial reporting, management is responsible for making available to us, on a timely basis, all of your original accounting records and related information and for the completeness and accuracy of that information and your personnel to whom we may direct inquiries. As required by GAAS, we will make specific inquiries of management and others about the representations embodied in the financial statements and the effectiveness of internal control over financial reporting. GAAS also requires that we obtain written representations covering audited financial statements from certain members of management. The results of our audit tests, the responses to our inquiries, and the written representations, comprise the evidential matter we intend to rely upon in forming our opinion on the financial statements.

Baker Tilly is not a municipal advisor as defined in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or under Section 15B of the Securities Exchange Act of 1934 (the "Act"). Baker Tilly is not recommending an action to the Northern California Power Agency; is not acting as an advisor to you and does not owe a fiduciary duty pursuant to Section 15B of the Act to you with respect to the information and material contained in the deliverables issued under this engagement. You should discuss any information and material contained in the deliverables with any and all internal and external advisors and experts that you deem appropriate before acting on this information or material.

Other Documents

If you intend to reproduce or publish the financial statements in an annual report and make reference to our firm name in connection therewith, you agree to publish the financial statements in their entirety.

If you intend to reproduce or publish the financial statements in an official statement, unless we establish a separate agreement to be involved in the issuance, any official statements issued by the Northern California Power Agency must contain a statement that Baker Tilly is not associated with the official statement, which shall read "Baker Tilly Virchow Krause, LLP, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. Baker Tilly Virchow Krause, LLP, has also not performed any procedures relating to this official statement."

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Baker Tilly asserts that the draft workpaper documentation prepared by Baker Tilly for this engagement is the property of Baker Tilly and constitutes confidential information, not subject to any public records request. In the event a public records request is made to NCPA for documentation of this engagement, including the workpapers, NCPA will notify Baker Tilly of said request in writing. Baker Tilly may either produce, or refuse to produce, the requested documents. Should NCPA be sued for release of such documents, Baker Tilly will cooperate with NCPA in the defense of such lawsuit and, if the lawsuit is successful, reimburse NCPA for its attorneys' fees, costs incurred, and any award of attorneys' fees or costs against NCPA.

Baker Tilly may be required to disclose confidential information to federal, state and international regulatory bodies or a court in criminal or other civil litigation. In the event that Baker Tilly receives such request from a third party (including a subpoena, summons or discovery demand in litigation) calling for the production of information, Baker Tilly will promptly notify NCPA, unless otherwise prohibited. Baker Tilly shall inform NCPA in writing of such request with adequate time for NCPA to seek a protective order at NCPA's expense. In the event Baker Tilly is requested by NCPA or required by government regulation, subpoena or other legal process to produce Baker Tilly's engagement working papers or its personnel as witnesses with respect to services rendered to NCPA, as long as Baker Tilly is not a party to the proceeding in which the information is sought, Baker Tilly may seek reimbursement for its professional time and expenses, as well as the fees and legal expenses, incurred in responding to such a request. When such a request has been made of Baker Tilly, it will notify NCPA (if allowed) in advance of the preparation of such documents and provide NCPA with an estimate for the related services as known at that time. Baker Tilly will update the cost estimate of the services if the scope of the request is expanded beyond the original request. However, NCPA is not obligated by this agreement to pay such additional costs.

Timing

Completion of our work is subject to, among other things, (i) appropriate cooperation from the Northern California Power Agency' personnel, including timely preparation of necessary schedules, (ii) timely responses to our inquiries, and (iii) timely communication of all significant accounting and financial reporting matters.

Northern California Power Agency

June 8, 2018

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Temporary contract staff/use of third parties

All services provided under this engagement will be provided by Baker Tilly employees. Baker Tilly will not utilize temporary contract staff or third parties in providing these services.

Additional services

Any additional services provided to Northern California Power Agency by Baker Tilly will be outlined in a separate engagement letter.

Other Matters

Baker Tilly Virchow Krause, LLP is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly Virchow Krause, LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Baker Tilly Virchow Krause, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. The name Baker Tilly and its associated logo are used under license from Baker Tilly International Limited.

We appreciate the opportunity to be of service to you.

BAKER TILLY VIRCHOW KRAUSE, LLP

Baker Tilly Virchow Krause, LLP

FIRST AMENDMENT TO MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND BAKER TILLY US, LLP

This First Amendment (“Amendment”) to Multi-Task Professional Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Baker Tilly US, LLP (“Consultant”) (collectively referred to as “the Parties”) as of _____, 2023.

WHEREAS, the Agency and Baker Tilly Virchow Krause LLP entered into a Multi-Task Professional Services Agreement dated effective July 2, 2018, (the “Agreement”) for Consultant to provide annual audit of the Agency’s financial statements, including associated reporting for the Agency, for the fiscal years ending June 30, 2018 and June 30, 2019, as well as additional services as requested; and

WHEREAS, as of December 20, 2019, the Agency and Baker Tilly Virchow Krause LLP entered into a Notice of Election to Extend the Agreement consistent with Section 1.1 of the Agreement for an additional three-year period from the original expiration date of July 1, 2020, to a new date of July 1, 2023; and

WHEREAS, Baker Tilly Virchow Krause, LLP changed its name to Baker Tilly US, LLP and the Parties desire to reflect the new name, Baker Tilly US, LLP, in the Agreement; and

WHEREAS, the Parties now desire to amend Section 13.8 entitled “Notices” of the Agreement to reflect the change of the Consultant’s name to Baker Tilly US, LLP; and

WHEREAS, the Agency now desires to amend Section 2 of the Agreement to increase the total compensation authorized by the Agreement from a NOT TO EXCEED amount of \$500,000 to a NOT TO EXCEED amount of \$1,000,000; and

WHEREAS, the Parties now desire to extend the Agreement for a second additional three-year period from the current expiration date of July 1, 2023, to a new date of July 1, 2026; and

WHEREAS, the Parties now desire to amend Exhibit A - Scope of Services of the Agreement to reflect the change of the Consultant’s name; and

WHEREAS, the Parties now desire to amend Exhibit C - Certification Affidavit of Compliance for Contractors of the Agreement to reflect the change of Consultant’s name; and

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

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

NOW, THEREFORE, the Parties agree as follows:

1. As of the Amendment Effective Date, the preamble to the Agreement is replaced in its entirety as follows:

This Multi-Task Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency, with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Baker Tilly US, LLP, a limited liability partnership, with its office located at 4807 Innovate Lane, Madison WI, 53707 ("Consultant") (together sometimes referred to as the "Parties") as of July 2, 2018 ("Effective Date") in Roseville, California.

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

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

The remainder of Section 2 of the Agreement is unchanged.

3. **EXHIBIT A – SCOPE OF SERVICES** is amended and restated to read in full as set forth in the attached Exhibit A.
4. **EXHIBIT C – CERTIFICATION Affidavit of Compliance for Contractors** is amended and restated to read in full as set forth in the attached Exhibit C.
5. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

Date:_____

Date:_____

NORTHERN CALIFORNIA POWER AGENCY

BAKER TILLY US, LLP

RANDY S. HOWARD, General Manager

BETHANY RYERS, Partner

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Baker Tilly US, LLP (referred to as “Consultant” or “Auditor”) shall provide annual audit of the financial statements, including associated reporting for the Agency, for fiscal years ended June 30, 2018, and 2019, as set forth below. In addition, Consultant shall provide additional services, as requested by the Agency.

Required Audit Products

For each fiscal year end, June 30, the Consultant shall provide the Agency with the following formal documents:

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- Report on Compliance with the Agency’s Investment Policy
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Consultant and NCPA will exercise their best efforts to complete the audit by October 10th of each year.

Each year following completion and delivery of all required reports hereunder, Consultant may elect to resign by providing written notice prior to January 31.

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NCPA recognizes that assistance from its Treasurer-Controller staff during an audit conducted by an external auditor will reduce the cost of an audit. Agency staff will provide the normal Prepared by Client work papers in the same format provided to the current auditor in past years. NCPA Treasurer-Controller staff members write both the Management Discussion and Analysis (MD&A) and footnotes to the financial statements.

Bond Indenture Requirements

The Agency’s Indentures of Trust require an independent annual audit and no default letter to be filed with the Trustee within 120 days after the close of the fiscal year. To meet this schedule and the schedule for the production of the Agency’s Annual Report requires that the reports of independent auditors, which includes the audited combined financial statements, be issued by October 10th of each year.

///

///

Additional Services

Consulting or Other Work

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Other

Consultant shall perform such other services as may be requested by the Agency in writing.

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

BAKER TILLY US, LLP

(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 _____, 2023.

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



Commission Staff Report

COMMISSION MEETING DATE: 4/27/2023

SUBJECT: Parker Landscape Development, Inc. – Five Year Multi-Task General Services Agreement for landscape maintenance services at NCPA headquarters and the Disaster Recovery Center on Sunrise. Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

AGENDA CATEGORY: Consent

| | | |
|--------------------|--|---|
| FROM: | Monty Hanks Chief Financial Officer/Assistant General Manager | METHOD OF SELECTION: <i>Competitive Pricing Process</i> |
| Division: | Administrative Services | <i>If other, please describe:</i> |
| Department: | General Services | |

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

RECOMMENDATION:

Staff is recommending the Northern California Power Agency (NCPA) Commission approve resolution 23-XX authorizing the General Manager or his designee to enter into a Five-Year Multi-Task General Services Agreement with Parker Landscape Development, Inc. for professional commercial landscape maintenance services, including; horticulture maintenance, irrigation, maintenance to irrigation, and special projects at NCPA headquarters and the Disaster Recovery Center on Sunrise, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$300,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

BACKGROUND:

In February of 2023, staff issued an RFP soliciting proposals from landscape maintenance companies to perform landscape maintenance services including but not limited to general groundskeeping, horticultural maintenance, irrigation, cleanup of landscape areas, maintenance of irrigation systems, and replacement of plant materials as needed for NCPA headquarters and the Disaster Recovery Center on Sunrise.

NCPA has utilized this vendor in the past and has a good working relationship with them. The vendor proposed the lowest cost escalation over the 5 year term of the agreement. NCPA desires to enter into a five-year, multi-task general services agreement with Parker Landscape Inc. These activities are intended to provide NCPA properties with well-maintained landscaping, water efficiencies, and overall property appeal.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$300,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures. The landscape maintenance services are included in the current fiscal year General Services budget.

SELECTION PROCESS:

This vendor was selected as a result of Formal Bidding done in accordance with NCPA's procurement policies and procedures. In February 2023, staff issued an RFP soliciting proposals from landscape maintenance companies to perform landscape maintenance services including but not limited to general groundskeeping, horticultural maintenance, irrigation, cleanup of landscape areas, maintenance of irrigation systems, and replacement of plant materials as needed for NCPA headquarters and the Disaster Recovery Center on Sunrise. The proposal was published on NCPA's website and was sent to six vendors, and Parker Landscape Inc. was selected to provide this service.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee review and approval.

Facilities Committee Meeting, Scheduled April 5, 2023

Lodi Energy Center Project Participant Committee, Scheduled April 10, 2023

AFTER FACILITIES APPROVAL: On April 5, 2023, the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On April 10, 2023, the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments:

- Resolution 23-XX
- Multi-Task General Services Agreement with Parker Landscape Development, Inc.

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE MULTI-TASK GENERAL SERVICES AGREEMENT WITH PARKER LANDSCAPE DEVELOPMENT, INC.

(reference Staff Report #xxx:23)

WHEREAS, professional landscape maintenance services at NCPA headquarters and the Disaster Recovery Center, are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA), NCPA Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, Parker Landscape Development, Inc is a provider of these services; and

WHEREAS, NCPA issued an RFP soliciting proposals from six landscape maintenance companies to perform all manner of landscape maintenance; and

WHEREAS, Parker Landscape Development, Inc was selected as the vendor to provide these services due to pricing and good working relationship; and

WHEREAS, NCPA seeks to enter into a five-year Multi-Task General Services Agreement with Parker Landscape Development, Inc to provide such services as needed at all NCPA facilities, NCPA Members, SCPPA, and SCPPA Member facilities, in an amount not to exceed \$300,000 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 of the California Environmental Quality Act. No environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into said Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$300,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2023, 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 | _____ | _____ | _____ |

JERRY SERVENTI
CHAIR

ATTEST:

TRISHA ZIMMER
ASSISTANT SECRETARY



Commission Staff Report

COMMISSION MEETING DATE: April 27, 2023

SUBJECT: Approval of Northern California Power Agency's Cyber Insurance Liability Program Renewal for April 2023 to April 2024

AGENDA CATEGORY: Discussion/Action

| | | |
|--------------------|---|--|
| FROM: | Monty Hanks Assistant General Manager/CFO | METHOD OF SELECTION: Competitive Pricing Process |
| Division: | Administrative Services | <i>If other, please describe:</i> |
| Department: | Risk Management | |

IMPACTED MEMBERS:

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

If other, please specify

RECOMMENDATION:

Approve Resolution 23-XX authorizing the General Manager or his designee to negotiate and bind the Cyber Liability Insurance program for the term starting April 27, 2023, and ending April 27, 2024, at a not-to-exceed premium of \$258,000 for the Northern California Power Agency and Lodi Energy Center.

BACKGROUND:

Alliant Insurance Services has aggressively marketed the Cyber Security Insurance Program to ensure best-in-class pricing, terms, and conditions. Earlier in the year, the Insurance Markets indicated that insurers were seeing twenty to thirty percent year-over-year increases; these increases were later confirmed during market solicitation meetings with Alliant in December of 2022. The IS team and Plant personnel were instrumental in assisting with completing the insurer's lengthy application. The insurer requested no follow-up questions or clarifications. This effort led to the pricing improving substantially; Alliant estimates that the 2023 renewal premium will increase by approximately 10%. Staff recommends a not-to-exceed of \$258,000 to provide sufficient headroom for the General Manager to bind coverage.

Coverage Details

Below are the provided coverages deemed as critical coverage areas to limit the Agency's risk exposure:

Business Interruption and Extra Expense –responds to a loss of income and operating expenses when business operations are interrupted or suspended due to a network security failure.

Data Recovery –responds to a loss of digital information assets, including customer databases resulting from a network security failure.

Cyber Extortion –reimburses for payments made to settle network security-related extortion demands (e.g., threats to shut down websites, release confidential customer information, or vandalization of computer networks).

Privacy and Security –responds to and covers claims arising from disclosing personally identifiable or confidential corporate information from various sources (e.g., phishing). Coverage extends to data in all forms (electronic and hard copy).

Breach Event and Crisis Management Coverage –responds to the costs to retain vendors/services to assist in managing and mitigating a covered privacy or network security incident.

FISCAL IMPACT:

The total cost of the policy year 2023 Cyber Liability Insurance program is estimated not-to-exceed \$258,000. This amount is already included in the Risk Management budget; no budget augmentation is required. The cost is split 90% to Integrated Systems Support which is included in the Nexant allocation model, and 10% to the A&G allocation methodology.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments:

- Resolution 23-XXX

RESOLUTION 23-XXX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE CYBER LIABILITY INSURANCE PROGRAM RENEWAL FOR APRIL 2023 TO APRIL 2024

(reference Staff Report #XXX:23)

WHEREAS, the Agency utilizes the insurance brokerage services of Alliant Insurance Services, Inc. to market and place the Agency's insurance programs. Each insurance policy and the related insurance market conditions are reviewed and marketed as required to qualified insurers experienced in underwriting the applicable insurance risk; and

WHEREAS, the Agency currently carries Cyber Liability coverage, and this coverage provides Liability Coverage for Agency should the network experience a breach or critical computer and data infrastructure be compromised by internal or external individuals or organizations; and

WHEREAS, the IS team and Plant personnel were instrumental in assisting with completing the insurer's lengthy application, and the insurer requested no follow-up questions or clarifications, leading to renewal pricing improving substantially; and

WHEREAS, underwriters have provided premium indications for the Cyber Liability Program based on the thorough responses on the application; and

WHEREAS, to negotiate coverage of the policies, this action grants the authority to the General Manager to bind coverages with a not-to-exceed premium of \$258,000 for the April 2023 to April 2024 policy year; and

WHEREAS, LEC PPC reviewed and approved on April 10, 2023, and the Facilities Committee reviewed and recommended on April 5, 2023; and

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

NOW, THEREFORE BE IT RESOLVED that the Commission of the Northern California Power Agency approves granting the authority to the General Manager to bind Cyber Liability Insurance coverages at the proposed not-to-exceed rates of \$257,000 for the April 2023 to April 2024 policy year.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2023
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 | _____ | _____ | _____ |

JERRY SERVENTI
CHAIR

ATTEST:

TRISHA ZIMMER
ASSISTANT SECRETARY



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: April 27, 2023

SUBJECT: Siemens Energy, Inc. – Five Year Multi-Task General Services Agreement for T3000 Maintenance and Support Services; Applicable to the following: All Northern California Power Agency (NCPA) Lodi Energy Center and Geothermal Facility Locations, City of Redding and City of Roseville

AGENDA CATEGORY: Discussion/Action

| | | |
|--------------------|---------------------------|-----------------------------------|
| FROM: | Michael DeBortoli | METHOD OF SELECTION: |
| | Assistant General Manager | N/A |
| Division: | Generation Services | <i>If other, please describe:</i> |
| Department: | Combustion Turbines | |

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

RECOMMENDATION:

Approve Resolution 23-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Siemens Energy, Inc. for T3000 maintenance and support services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$6,000,000 over five years, for use at NCPA Lodi Energy Center (LEC) and Geothermal (GEO) facilities as well as the City of Redding and the City of Roseville.

BACKGROUND:

In February 2016, a Power Plant Working Group was created which includes members from NCPA, City of Redding, City of Roseville and Silicon Valley Power. The group meets quarterly to discuss safety, environmental and plant technical issues. During these discussions, it was discovered that the LEC, GEO, City of Redding and City of Roseville facilities all utilize the Siemens T3000 Control System. T3000 maintenance and support services are required from time to time related to project support at NCPA LEC and GEO facilities as well as the City of Redding and the City of Roseville. By collectively establishing one agreement with Siemens for these services, all of the facilities will benefit from discounted pricing on services as well as parts purchases. The cities of Redding and Roseville will utilize this agreement through NCPA's Shared Services Program.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$6,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

Siemens is the original equipment manufacturer (OEM) for the control systems. They provide all of the upgrades and patch management for the control systems. This support is only available from the OEM. Options to executing this agreement would be to do nothing, buy a new control system from a different manufacturer, or execute an agreement with the OEM.

Doing nothing is not acceptable because it leaves the system vulnerable to cyber-attacks and other flaws. Purchasing a new control system is also not feasible, as it would cost millions of dollars and extensive down time of the unit for installation.

By combining efforts with Roseville and Redding, NCPA is able to negotiate a discount applicable to all participants. If the City of Redding and/or the City of Roseville opt to not use this agreement, NCPA will not be able to apply the discounted pricing. With the discount, the annual cost for LEC is approved at \$246,171.80 per year. The annual cost for the Geysers will be \$230,931.40 per year.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee review and approval.

AFTER FACILITIES APPROVAL: On April 4, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On April 10, 2023 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 23-XX
- Multi-Task General Services Agreement with Siemens Energy, Inc.

RESOLUTION 23-XX

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

(reference Staff Report XXX:23)

WHEREAS, T3000 maintenance and support services are periodically required by the Northern California Power Agency (NCPA) Lodi Energy Center and Geothermal facilities, as well as the City of Redding and the City of Roseville; and

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

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with Siemens Energy, Inc. to provide such services as needed at the NCPA Lodi Energy Center and Geothermal facilities, as well as the City of Redding and the City of Roseville; 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 said Multi-Task General Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$6,000,000 over five years, for use at the NCPA Lodi Energy Center and Geothermal facilities, as well as the City of Redding and the City of Roseville.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2023 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 | _____ | _____ | _____ |

JERRY SERVENTI
CHAIR

ATTEST:

TRISHA ZIMMER
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
SIEMENS ENERGY, 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 Siemens Energy, Inc., a Delaware corporation with its office located at 100 Technology Parkway, Alpharetta, GA 30005 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2023 ("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, unless extended in writing by mutual agreement of the Parties to complete a specific outstanding Purchase Order or terminated earlier in accordance with Section 8 ("Termination") below.
- 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. Contractor shall ensure all personnel assigned to perform the Work meet and follow the requirements specified below for unescorted physical or electronic access:
 - Complete a Personnel Risk Assessment, provided by the Contractor, comprised of the following: 1) verification of identification, (2) criminal history reference check for the previous seven (7) years, and 3) written confirmation that the results of the criminal history reference check are within the acceptance criteria defined by Agency and included in Exhibit C, and
 - Complete an initial security training and annual training thereafter, both of which will be provided by Agency.

Contractor shall notify Agency within 24 hours of voluntary separation or termination of one of its personnel who has been granted unescorted physical or

electronic access to Agency facilities or systems. And, Contractor shall notify the Agency within 24 hours of any lost or stolen Agency issued badges or electronic access authenticators. Failure to timely notify Agency of voluntary termination or separation, or loss of access badge or authenticator may be considered by Agency as Contractor breach of this Agreement allowing Agency to immediately terminate this Agreement without liability to Agency pursuant to the provisions set forth in Section 8.

- 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.
- 1.6 Changes in Name, Ownership, or Control.** Contractor shall notify the Agency in writing of any change in name, ownership or control of Contractor's corporation. Changes in the name will require an amendment to this Agreement.

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** SIX MILLION dollars (\$6,000,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

- 2.1 Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- The beginning and ending dates of the billing period;
 - Work performed;
 - The Purchase Order number authorizing the Requested Work;
 - At Agency's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the

- name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction;
- At Agency's option, the total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing work hereunder.

Invoices shall be sent to:

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

- 2.2 Monthly Payment.** Agency shall make monthly payments, based on invoices received, for Work satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 Payment of Taxes.** Contractor is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement. The dollar amount set forth and authorized in a Purchase Order does not include any state or local sales or use taxes. Such sales or use taxes are for the account of Agency and Agency agrees to pay any sales or use tax to reimburse Contractor consistent with the payment terms set forth herein. Should Agency be exempted from any such tax, it shall provide Contractor certification thereof no later than the effective date of the Purchase Order. Contractor shall split labor vs. material costs on any invoice submitted so it is clear what items are taxable and shall identify any taxable items. All other taxes at any level of government are for the account of Contractor.
- 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 sole cost and expense, shall procure and maintain the types and

amounts of insurance listed below with insurance companies having an A.M. Best rating of A/VIII or better, or otherwise acceptable to Agency. Contractor shall maintain the types and amount of insurance listed below for the period covered by this Agreement, unless otherwise specified below.

- 4.1 Workers' Compensation & Employer's Liability Insurance.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance in compliance with all applicable federal, state and local laws, regulations and statutes, for any and all persons employed directly or indirectly by Contractor. Contractor shall maintain Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000.00) for bodily injury by per accident, \$1,000,000 for bodily injury by disease (each employee), \$1,000,000 for bodily injury by disease (policy limit).
- 4.2 Commercial General Liability Insurance.** Contractor shall maintain commercial general liability insurance with limits of \$2,000,000 per occurrence, \$2,000,000 in the aggregate. Coverage shall be at least as broad as ISO Form CG 00 01 04 13, or other equivalent form acceptable to Agency. Products-completed operations coverage shall apply through the expiration of all applicable statutes of limitation and statutes of repose. Such coverage shall include, with no sublimit: broad form third party bodily injury, including death; broad form property damage, including loss of use thereof; premises & operations; contractual liability, including tort liability of another assumed in a written agreement; liability for work within 50 feet of a railroad or railroad right of way; independent contractors; sudden & accidental pollution liability; fire, explosion and underground damage (XCU coverage); and include defense coverage outside the limits.
- 4.3. Business Automobile Liability.** Contractor shall maintain automobile liability insurance for all owned, non-owned, hired and leased vehicles, including loading and unloading, with limits no less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage shall be at least as broad as form CA 0001 (current edition). If the work includes transportation of hazardous materials, coverage shall include pollution coverage on ISO Form CA 99 48, or its equivalent. If the work includes transportation hazardous waste, a compliant MCS-90 shall be endorsed. 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 limit of \$2,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.
- 4.4 Umbrella/Excess Liability Insurance.** Contractor shall maintain umbrella/excess liability insurance on a follow-form basis, including drop down coverage, with limits of \$5,000,000 per occurrence/aggregate. Such coverage shall be on an occurrence form and shall provide coverage in excess of the Employer's Liability, Commercial General Liability, and Automobile Liability insurance. Such coverage

shall not contain any endorsements that restrict the underlying policies or exclude cross liability. The coverage amounts set forth above in Sections 4.2 and 4.3 may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

4.5 Not Applicable (Professional Liability).

4.6 Not Applicable (Pollution Insurance).

4.7 Not Applicable (Aircraft Liability).

4.8 Cyber Risk Liability. If Contractor has access to Agency's IT systems or critical cyber assets, Contractor shall, at its own expense, procure and maintain in full force at all times during the term of each Purchase Order, Cyber Liability and Information Technology Errors and Omissions Insurance (IT E&O), including coverage for loss/violation of data, media liability, privacy liability, and network security breach. Contractor's Cyber Liability insurance shall include coverage for Contractor's legal liability for financial losses caused by an information security breach, including loss of data, data deletion or data manipulation, as well as interruptions to Contractor's operations related to network security breaches, with a limit of \$5,000,000 each occurrence and in the aggregate. Such coverage shall include Contractor's legal liability for losses in connection to the transfer of malware to Agency's systems or the publication of sensitive data (e.g. personal data or business secrets). Contractor's IT E&O insurance shall include coverage for Contractor's legal liability for financial loss of the Agency caused by the Contractor's Software products and IT-related services, with a limit of \$5,000,000 each claim and \$10,000,000 in the annual aggregate. Contractor shall have the right to maintain these coverages outside of the U.S. through a corporate affiliate.

4.9 All Policies Requirements.

4.9.1 Additional Insured. Agency shall be included as additional insureds on each of the Contractor's policies except for Workers' Compensation and Professional Liability. The additional insured protection for the commercial general liability and umbrella/excess liability shall include both ongoing and completed operations coverage. Additional insured coverage shall not be limited to the minimum amounts of insurance required by written agreement and shall extend through the expiration of all applicable statutes of limitation and statutes of repose.

4.9.2 Primary/Non-Contributory. Contractor's insurance coverage shall be primary and any insurance or self-insurance of Agency shall be excess and non-contributory to Contractor's coverage.

4.9.3 Severability of Interests. All Contractor policies shall provide, or be endorsed to include, a severability of interests provision. There shall be no exclusion for cross liability.

4.9.4 Deductibles. Contractor is responsible for payment of all deductibles and self-insured retentions.

4.9.5 Verification of coverage. Prior to beginning any work under this Agreement, 5 business days prior to insurance coverage renewals, and upon Agency's written request, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) waiver of subrogation, additional insured and primary/non-contributory policy endorsements. Agency's review of coverage does not relieve Contractor of the requirements of Section 4. Furthermore, Contractor agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, Agency may either (i) immediately terminate this Agreement pursuant to Section 8, or (ii) upon reasonable prior notice allowing Contractor an opportunity to cure, take out the necessary insurance and pay the premium(s) thereon at Contractor's expense, provided such premiums shall not exceed what Contractor would have otherwise paid for such coverage. Agency reserves the right to obtain a full certified copy of any insurance policy endorsement. Failure to exercise this right shall not constitute a waiver of the right to exercise later

4.9.6 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.

4.9.7 Higher Limits. If Contractor maintains higher limits than the minimums specified herein pursuant to revised insurance provisions set forth and agreed in a particular Purchase Order, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.

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

4.9.8 Waiver of Subrogation. Contractor agrees to waive, and shall cause all of its insurers and subcontractors to waive, all rights of subrogation and set-off against Agency. All insurance policies shall be endorsed to provide such waivers of subrogation.

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

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

5.2 Scope. Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, injuries, taxes, costs (including without limitation costs and fees of litigation), judgments and causes of action from and against claims for personal injury (including disease, sickness, and death) and for physical damage to or loss of property to the extent caused by the acts or omissions or willful misconduct of Contractor, its officials, officers, employees, or agents. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency. Contractor acknowledges that Agency would not enter into this Agreement in the absence of Contractor's commitment to indemnify and protect Agency as set forth herein.

In no event shall Contractor's obligations under this indemnity provision apply to any claim by a customer of Agency for voltage or frequency fluctuation or service interruption of any kind, or to any claim by any third party for failure of Agency to provide power or capacity under any contract, and provided further that in no event shall the term "third party" as used in this paragraph apply to any affiliate or lender of Agency or any transferee of some or all of the Work.

The Party seeking the indemnification shall promptly give written notice to the other Party of any third party action for which indemnification is being sought and provide the other Party with the opportunity to participate in all settlement negotiations respecting such claim.

5.3 Not Used.

5.4 Offset Compensation. Agency shall have the right to offset against any compensation due Contractor under this Agreement any amount due Agency from Contractor as a result of Contractor's failure to pay Agency promptly any indemnification arising under this Section 5 of this Agreement and any amount due Agency from Contractor arising from Contractor's failure either to (i) pay

taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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 debt, obligation or

liability whatsoever. Contractor shall not represent that it is, or that any of its agents or employees are, in any manner agents or employees of Agency.

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. Contractor shall be liable and accountable for all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. Agency shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.

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. In the event of changes in law after the effective date of an issued Purchaser Order require changes in the Work to be performed under such

Purchase Order, such changes shall be addressed pursuant to a written change order to such Purchase Order.

- 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 be in their name 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 and Division of Labor Standards Enforcement (Labor Commissioner's Office).
- 7.5 Not Used.**
- 7.6 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.
- 7.7 Prevailing Wage Law.** This Agreement is subject to the requirements of the prevailing wage laws, including, but not limited to, Labor Code Section 1720 et seq., and Labor Code Section 1770 et seq., as well as Code of Regulations, Title 8, Section 16000 et seq., which require payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Contractor shall defend, indemnify, and hold harmless Agency, and its officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of failure or alleged failure of Contractor to comply with such prevailing wage laws.

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

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

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

7.7.1 Payment of Prevailing Wages. Contractor shall pay the prevailing wage rates for all work performed under this Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification.

7.7.2 Forfeiture. Contractor shall forfeit as a penalty to Agency Two Hundred Dollars (\$200.00), or any greater penalty provided in the Labor Code, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under this Agreement employed in the performance of the Scope of Services by Contractor or by any subcontractor of Contractor in violation of the provisions of the Labor Code. In addition, 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 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). Contractor will also be entitled to any additional expense incurred by reason of termination or cancellation of written agreements between Contractor and its suppliers. Contractor will make every reasonable effort to minimize such costs upon termination. Payments made by Agency and received by Contractor prior to the date of termination will be credited against the amount due. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the services required by this Agreement.

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 and pertaining to the handling and non-disclosure of confidential information shall survive the termination of this Agreement unless specifically provided otherwise in 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, and provided Contractor has not substantially commenced cure of such default within ten (10) days after receipt of written notice of default, 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. Agency shall use its best efforts to mitigate the cost for completion of such Work.

Section 9. RECORDS, CONFIDENTIALITY, SECURITY AND NOTIFICATION.

9.1 Keeping and Status of Records.

- 9.1.1 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 ("Agency Records") 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. Furthermore, Contractor shall not use Agency Records for any purpose other than to facilitate this Agreement.
- 9.1.2 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.

9.1.3 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.

9.2 Confidential Information and Disclosure.

9.2.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, dam safety, Critical Energy/Electrical Infrastructure Information (CEII)¹, proprietary, 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.

¹ CEII is specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that:

1. Relates details about the production, generation, transmission, or distribution of energy;
2. Could be useful to a person planning an attack on critical infrastructure;
3. Is exempt from mandatory disclosure under the Freedom of Information Act; and
4. Gives strategic information beyond the location of the critical infrastructure.

Critical energy/electric infrastructure means a system or asset of the bulk-power system, (physical or virtual) the incapacity or destruction of which would negatively affect:

- national security,
- economic security,
- public health or safety, or
- any combination of such matters.

([Critical Energy/Electric Infrastructure Information \(CEII\) | Federal Energy Regulatory Commission \(ferc.gov\)](https://www.ferc.gov/critical-energy-electric-infrastructure-information-ceii)),

- 9.2.2 Restricted Use of Confidential Information.** A party shall not use Confidential Information for any purpose other than to facilitate this Agreement
- 9.2.3 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 with the same degree of care it uses to protect its own confidential information, but in no event using less than a reasonable standard of care; (b) shall not disclose Confidential Information to any employee or contractor unless such person needs access in order to facilitate the Agreement,; and (c) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.
- 9.2.4 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 9.2.4.2 or 9.2.4.3. 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:
- 9.2.4.1** Disclosure to employees, agents, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.
- 9.2.4.2** Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and
- 9.2.4.3** Disclosure by Agency in response to a request pursuant to the California Public Records Act.
- 9.2.5 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). Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement in files of Receiving Party's representatives where such copies are necessary to comply with applicable law.

9.2.6 Unauthorized Disclosure.

9.2.6.1 Security Breach. Security Breach means (a) any actual or reasonably suspected unauthorized use of, loss of, access to or disclosure of Agency Records or Agency Confidential Information or (b) security breach (or substantially similar term) as defined with applicable law.

9.2.6.2 Action Upon Unauthorized Disclosure. If either party believes there has been a Security Breach, such party must notify the other party upon the earlier of forty-eight (48) hours after discovery or any timeframe required by applicable law unless legally prohibited from doing so. Each party will reasonably assist the other party in mitigating or remediating any potential damage where appropriate. Each party shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by it or if such part is the recipient of the Security Breach. As soon as reasonably practicable after any such Security Breach, Agency and Contractor will consult in good faith regarding the root cause analysis and any remediation efforts.

9.3 Cyber Security. Contractor agrees to abide by Agency's CIP-013² policies, processes, and procedures as outlined below for completing the Work. In addition, Contractor takes all responsibility and liability to ensure all Work is free from malicious code when delivered to Agency. Malicious code means viruses, worms, timebombs, trojan horses and other malicious code, files, scripts, agents or programs. In addition, Contractor shall take all of the following actions.

9.3.1 Notification. Contractor shall notify Agency of Contractor-identified incidents related to the Work provided to Agency that pose cyber security risk to Agency through the Siemens Energy CERT.

Contractor is required to notify Agency of identified, or successful breaches or vulnerabilities of Contractor's products, software, systems, components, or services through the Siemens Energy CERT. Contractor's notification on the Siemens Energy CERT will also provide Agency with mitigations, controls, patches, components Agency can implement to prevent and/or correct the identified breach, issue, or incident.

Contractor shall provide all notifications to:

²See North American Transmission Forum, NATF CIP 013 Implementation Guidance; Supply Chain Risk Management Plans (available at [natf-cip-013-implementation-guidance-supply-chain-risk-management-plans.pdf](https://www.natf.org/wp-content/uploads/2018/05/natf-cip-013-implementation-guidance-supply-chain-risk-management-plans.pdf)) .

NCPA Security
Email: security@ncpa.com
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Contract Administrator
Assistant General Manager, Generation Services
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

9.3.2 Coordination. Contractor shall coordinate responses to Contractor-identified incidents related to the Work provided to Agency that pose cyber security risk to Agency.

As stated in Section 9.3.1, Contractor is required to notify Agency of any breaches or vulnerabilities related to Contractor's products or services. In the event Contractor's products or services pose a cyber security risk to Agency or otherwise cause a cyber security incident for Agency through the Siemens Energy CERT, Contractor is required to provide on the Siemens Energy CERT potential actions for Agency to mitigate and correct the cyber security risk, breach or vulnerability.

As applicable, Contractor shall provide Agency with:

- List of Contractor's specific products or services at risk
- Precautions, mitigations, or controls to minimize risks
- Action plan to correct the risk
- Status reports (if risk is ongoing)
- Final resolution of issue

9.3.3 Remote or Onsite Access. Contractor shall notify Agency when remote or onsite access should no longer be granted to Contractor representatives.

Contractor will notify Agency within 24 hours:

- Contractor's employees, or Contractor's authorized subcontractors no longer require access.

- Contractor's employees, or Contractor's authorized subcontractors are no longer qualified to maintain access.
- Contractor's employees', or Contractor's authorized subcontractors' employment has ended or been terminated.

9.3.4. Disclosure of Vulnerabilities. Contractor shall promptly disclose known vulnerabilities related to the Work provided to Agency.

Contractor will provide Agency with summary documentation describing security breaches in Contractor's products or Contractor's supply chain impacting Agency's BES Cyber System. Contractor will also provide Agency with summary documentation describing any uncorrected security vulnerabilities.

Contractor's disclosure should be made to Agency within 48 hours of identifying the breach or vulnerability. The disclosure should include:

- Summary description of the breach or vulnerability
- Potential impact of the breach or vulnerability
- Root cause
- Corrective actions, compensating controls, mitigations, or other steps Agency should take as a result of the breach or vulnerability

9.3.5 Integrity and Authenticity. Contractor shall verify the integrity and authenticity of all software and patches provided by Contractor for use by Agency.

Provided Agency has an active subscription to the US Security Bundle (included in 2023 5yr CSA), Contractor agrees to provide Agency with all software and firmware updates to remediate vulnerabilities or weaknesses. Upon execution of this Contract, provided Agency has an active subscription to the US Security Bundle (included in 2023 5yr CSA), Contractor will provide Agency with Contractor's patch management and update process and software delivery documentation. The documentation should include a description of how Agency will verify the authenticity of software and validate the integrity of all patches provided by Contractor.

Provided Agency has an active subscription to the US Security Bundle (included in 2023 5yr CSA), Contractor will also provide Agency with Contractor's tentative schedule for releasing software and patch updates. Contractor will provide Agency with instructions for applying, validating, and testing the updates and patches as part of the US Security Bundle subscription (included in 2023 5yr CSA).

- 9.3.6 Access Controls.** Contractor shall coordinate controls with Agency for (a) Contractor-initiated interactive remote access, and (b) system to system remote access.

If Contractor uses remote access, Contractor will provide Agency with the IP addresses, ports, and minimum privileges required to perform remote access services. Contractor agrees to use individual user accounts to limit access and permissions. Contractor also agrees to maintain Contractor's IT assets connecting to Agency's network with current updates to remediate vulnerabilities or weaknesses. Contractor and Contractor's employees agree to not disclose or share account credentials, passwords, or established connections.

Section 10. PROJECT SITE.

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

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

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's reasonable 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.
- 11.4 Exclusivity of Warranties and Remedies.** Exclusivity of Warranties and Remedies. The only warranties and guarantees made by Contractor are those expressly enumerated in this Section 11. Any other statements of fact or descriptions whether expressed in the Purchase Order, or any attachments or Appendices thereto, or in any quotations, proposals, specifications, drawings or manuals, or other documentation concerning the Scope of Work, whether in electronic form or hardcopy, shall not be deemed to constitute a warranty or guarantee of the Work or any part thereof. THE WARRANTIES AND GUARANTEES PROVIDED IN THIS SECTION 11 ARE EXCLUSIVE AND NO OTHER WARRANTIES OR GUARANTEES OR CONDITIONS OF ANY KIND APPLY, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), SHALL APPLY. Correction of defects in accordance with this Section 11 or a refund in accordance with this Section 11 in the manner and during the period provided herein shall constitute complete fulfillment of Agency's exclusive remedy for all the liabilities or responsibilities of Contractor and its

subcontractors to Agency for defective or nonconforming Equipment, Software, or Work, whether the claims of Agency are based in contract, in tort (including negligence and strict liability), or otherwise. Notwithstanding the above, the responsibility and liability for patent violations or violations of Subsections 1.3 and 9.3 (all parts) regarding cyber or physical security are not limited by this Subsection 11.4.

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.*

Contractor represents that it has advised Agency in writing prior to the date of signing this Agreement of any known relationships with third parties, Agency members, or employees of Agency which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090 *et seq.*, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Contractor from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

13.7 Contract Administrator. This Agreement shall be administered by the Assistant General Manager, Generation Services, or his/her designee, ("Contract Administrator") who shall act as the Agency's representative. All correspondence shall be directed to or through the representative. Agency reserves the right to change this designation upon written notice to Contractor.

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

Siemens Energy, Inc.
Attention: Jeff Miller, General Manager/VP
100 Technology Parkway
Alpharetta, GA 30005

Any written notice to Agency shall be sent to:

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

With a copy to:

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

13.9 Professional Seal. Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page

of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

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

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

- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code Section 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.
- 13.16 Nondiscrimination.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 13.17 Force Majeure.** Except with respect to payment delays exceeding five business days, neither party shall incur any liability to the other party by reason of failure to fulfill, or any delay in fulfilling, any of its obligations under this Agreement due to the occurrence of Force Majeure. "Force Majeure" means any foreseeable or unforeseeable event beyond the reasonable control of a party, including, but not limited to, weather conditions, fire, third party strikes or cessation or slowdown or stoppage of labor, acts or omissions of a third party (except as otherwise provided in this Agreement), sabotage, cyber-attack, shipwreck, embargo, riot, war (declared or undeclared), terrorist act, enemy action, flood, epidemic, pandemic (including the current COVID-19/SARS-CoV-2 pandemic), so long as delays occur after product is in transit, delays due to transportation or logistics or laws, regulations, orders, rulings or acts of any governmental authority, body or agency. If any delay (other than a payment delay wherein five days are provided to resolve the Force Majeure event) arises by reason of Force Majeure, the time for performance shall be extended by a period of time equal to the time lost due to and reasonably necessary to overcome such delay. Both parties shall take reasonable action to remove such cause and resume performance as soon as possible. The party affected by an event of Force Majeure shall give the other party written notice within a reasonable time after becoming aware of the commencement of the delay. If a delay caused by Force Majeure exceeds 180 days, either party may terminate this Agreement pursuant to Section 8.1 by providing written notice to the other party.
- 13.18 Electronic Signatures.** Not Applicable.

13.19 Limitation of Liability. The aggregate liability of Contractor arising out of the performance or nonperformance of obligations in connection with a Purchase Order or the performance or nonperformance of Work under a Purchase Order, under any theory of recovery, whether based in contract, tort (including negligence and strict liability), or otherwise, shall not exceed an amount equal to one hundred percent (100%) of the amount of the Purchase Order or the amount of the applicable insurance specified in Section 4, whichever is greater.

In no event, whether based in contract, tort (including negligence and strict liability), or otherwise, shall either party be liable for damages for loss of profits or revenue or the loss of use of either; damage to the Work after risk of loss has transferred to Agency; loss by reason of Plant shutdown or inability to operate at capacity; damage to or loss of Agency's property or equipment (except as otherwise provided for and subject to the limitations stated in Section 13.21); costs of replacement power or capital; claims of Agency's customers; inventory or use charges; or incidental, indirect, special or consequential damages of any other kind or nature, whatsoever. The waivers and disclaimers of liability, releases from liability, and limitations on liability expressed in this Section 13.21 shall extend to Agency, Contractor and its subcontractors, affiliates, successors and assigns, and their respective partners, principals, shareholders, directors, officers, employees, and agents.

13.20 Delivery or Title and Risk of Loss. Delivery of each item of Equipment shall occur for all shipments, arrival at the Site entrance, ready to be unloaded (hereinafter referred to as "Delivery" or "Delivery Point"). Provided that all payments are current in accordance with the Exhibit B, legal and equitable title and risk of loss for the Equipment, except for Software, shall pass to Agency on a "Delivered Duty Paid" ("DDP") basis, as that term is defined by the International Commercial Terms 2010.

Title to and right of possession of any Software licensed hereunder shall remain with Contractor, or its licensor, except that Agency, City of Redding and City of Roseville shall have the right of possession and use of the Software provided hereunder at no cost for the term of the corresponding license provided herein, so long as no breach of the Agreement has been made by and singularly applicable to Agency, City of Redding, and City of Roseville and all payments due Contractor have been paid. Nothing in the Agreement shall be construed as giving Agency, City of Redding and City of Roseville any right to sell, assign, lease or in any other manner transfer or encumber Contractor's, or its licensor's ownership of the Software, or as limiting Contractor, or its licensors, from using and licensing the Software to any third party.

13.21 Contractor's Responsibility for Damage to Agency's Property.

- 13.21.1** Subject to the provisions stated in this Section 13.21 below, if sudden and accidental damage to Agency property is caused by (1) the failure of any Equipment or Work provided by Contractor pursuant to this Agreement to conform to the corresponding warranties provided in Section 11 , or (2) a negligent act or omission of Contractor during performance of the Work, then for each such event Contractor shall credit the Agency for the actual direct costs incurred by the Agency to the extent that such property damage was caused by such warranty non-conformance or negligence.
- 13.21.2** Seller's obligations under this Section 13.21 shall be limited on a per event basis and in the aggregate to the lesser of:
- (a) the actual direct cost incurred by the Agency to repair the property damage, including uncovering, gaining access to, removal and replacement costs, to be substantiated to the reasonable satisfaction of Contractor, or
 - (b) an amount of two million Dollars (U.S. \$2,000,000).
- 13.21.3** Except as specifically set forth in this Section 13.21, in no event shall Contractor have any responsibility or liability, under any theory of recovery, whether based in contract, tort (including negligence and strict liability), or otherwise, for any loss or damage to Agency's property as a result of (1) the failure of any Equipment or Work provided by Contractor pursuant to this Agreement to conform to the corresponding warranties provided in Section 11, or (2) a negligent act or omission of Contractor during performance of the Work.

// SIGNATURES ON NEXT PAGE //

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

NORTHERN CALIFORNIA POWER AGENCY

SIEMENS ENERGY, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

JEFF S. MILLER,
General Manager / Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Siemens Energy, Inc. ("Contractor") shall provide T3000 maintenance and support services as requested by the Northern California Power Agency ("Agency") at the Lodi Energy Center and Geothermal facilities as well as the City of Redding and the City of Roseville facilities.

Lodi Energy Center Customer Service Agreement Five (5) - Year Program

Base Services

- I&C Customer Portal, SPPA-View Access
- Annual Lifecycle Report
- Annual Usage and Summary Reporting
- Assigned Service Manager

- **I&C Monitors and Advisors Services via Customer Portal**
- I&C Condition (Monitor Conditions) (Replaces remote systems check)

- **Parts Exchange**
- 25% discount on parts purchased

- **Remote Expert Center (REC) hours**
- 40 Hours (20% discount off list price for additional hours)

- **On-Site Field Service/Technical Support**
- 40 Hours (20% discount off list price for additional hours)
- 1 Trips to Site

- **Cyber Security Services**
- Malware and Patch Management, annual subscription (US Security Bundle)
- One Cyber Vulnerability & Regulatory Assessment (Quantity per CSA term)
- Whitelisting Installation and Annual Subscription

- **Onsite T3000 Training Sessions**
- Annual NCPA 3 days onsite T3000 training up to 10 people max per training (Optional Scope)
- Annual operator simulator training onsite (2 people) (Optional Scope)
- 10% discount off catalog pricing for additional classes

*Onsite Training does not include travel and living expenses. Travel time invoiced at PL1810 with 20% discount and travel and living expenses billed at cost plus 15%

Version Upgrade – The detailed scope of work for the version upgrade is detailed in the Siemens Energy proposal submitted to NCPA – Lodi Energy Center entitled Firm - Omnivise T3000 Version Upgrade, dated March 9, 2023.

It includes:

- a. Upgrade includes 7 Thin Clients
- b. Upgrade includes 11 Scalances
- c. Upgrades includes 4 redundant 410 AP's
- d. Upgrade to include all required engineering, HW/SW, onsite labor, commissioning, travel for install and support

Geysers Plant 1 and 2 Customer Service Agreement Five (5) - Year Program

Base Services

- I&C Customer Portal, SPPA-View Access
- Annual Lifecycle Report
- Usage and Summary Reporting
- Assigned Service Manager

- **I&C Monitors and Advisors Services via Customer Portal**
- I&C Condition (Monitor Conditions) (Replaces remote systems check)

- **Parts Exchange**
- 25% discount on parts purchased

- **Remote Expert Center (REC) hours**
- 40 Hours (20% discount off list price for additional hours)

- **On-Site Field Service/Technical Support**
- 40 Hours (20% discount off list price for additional hours)
- 1 Trips to Site

- **Cyber Security Services**
- Malware and Patch Management, annual subscription (US Security Bundle)
- One Cyber Vulnerability & Regulatory Assessment (Quantity per CSA term)

- **Onsite T3000 Training Sessions**
- Annual NCPA 3 days onsite T3000 training up to 10 people max per training (Optional scope)
- 10% discount off catalog pricing for additional classes

*Onsite Training does not include travel and living expenses. Travel time invoiced at PL1810 with 20% discount and travel and living expenses billed at cost plus 15%

Version Upgrade – The detailed scope of work for the version upgrade is detailed in the Siemens Energy proposal submitted to NCPA – Geysers entitled Firm - Omnivise T3000 Version Upgrade, dated March 9, 2023.

It includes:

- a. Upgrades includes 3 redundant 410 AP's
- b. Upgrade includes 8 Thin Clients
- c. Upgrade for Scalances (qty 14)
- d. Upgrade to include all required engineering, HW/SW, onsite labor, commissioning, travel for install and support

Redding Power Plant Customer Service Agreement Five (5) - Year Program

Base Services

- I&C Customer Portal, SPPA-View Access
- Annual Lifecycle Report
- Usage and Summary Reporting
- Assigned Service Manager

- **I&C Monitors and Advisors Services via Customer Portal**
- I&C Condition (Monitor Conditions) (Replaces remote systems check)

- **Parts Exchange**
- 25% discount on parts purchased

- **Remote Expert Center (REC) hours**
- 40 Hours (20% discount off list price for additional hours)

- **On-Site Field Service/Technical Support**
- 10% discount on hours purchased

- **Cyber Security Services**
- Malware and Patch Management, annual subscription (US Security Bundle)
- Whitelisting Annual Subscription (Optional Scope)
- One Cyber Vulnerability & Regulatory Assessment (Quantity per CSA term) (Optional Scope)

- **Onsite T3000 Training Sessions**
- Annual NCPA 3 days onsite T3000 training up to 10 people max per training (Optional scope)
- 10% discount off catalog pricing for additional classes

*Onsite Training does not include travel and living expenses. Travel time invoiced at PL1810 with 20% discount and travel and living expenses billed at cost plus 15%

Version Upgrade – The detailed scope of work for the version upgrade is detailed in the Siemens Energy proposal submitted to NCPA – City of Redding entitled Firm - Omnivise T3000 Version Upgrade, dated March 9, 2023.

It includes:

- a. Upgrades includes 4 redundant 410 AP's
- b. Upgrade includes 7 Thin Clients to replace the tower thin clients
- c. Upgrades to include all required engineering, HW/SW, onsite labor, commissioning, travel for install and support.

Roseville Power Plant Customer Service Agreement Five (5) - Year Program

Base Services

- I&C Customer Portal, SPPA-View Access
- Annual Lifecycle Report
- Usage and Summary Reporting
- Assigned Service Manager

- **I&C Monitors and Advisors Services via Customer Portal**
- I&C Condition (Monitor Conditions) (Replaces remote systems check)

- **Parts Exchange**
- 25% discount on parts purchased

- **Remote Expert Center (REC) hours**
- 40 Hours (20% discount off list price for additional hours)

- **On-Site Field Service/Technical Support**
- 40 Hours (20% discount off list price for additional hours)
- 1 Trips to Site

- **Cyber Security Services**
- Malware and Patch Management, annual subscription (US Security Bundle)
- Whitelisting Annual Subscription
- One Cyber Vulnerability & Regulatory Assessment (Quantity per CSA term)

- **Onsite T3000 Training Sessions**
- Annual NCPA 3 days onsite T3000 training up people max per training (Optional scope)
- Annual 3-day onsite operator training for T3000 up to 10 people (Optional scope)
- 10% discount off catalog pricing for additional classes

*Onsite Training does not include travel and living expenses. Travel time invoiced at PL1810 with 20% discount and travel and living expenses billed at cost plus 15%

Version Upgrade – The detailed scope of work for the version upgrade is detailed in the Siemens Energy proposal submitted to NCPA – Roseville entitled Firm - Omnivise T3000 Version Upgrade, dated March 9, 2023.

It includes:

- a. Upgrades includes Terminal server,
- b. Upgrades includes Printer to replace M750
- c. Upgrade includes 5 Thin Clients
- d. Upgrade for scalances (qty 13)
- e. Upgrades includes 4 redundant 410 AP's
- f. Upgrades includes 1 CS3000
- g. Upgrades to include all required engineering, HW/SW, onsite labor, commissioning, travel for install and support.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Invoicing for each site will be annually at start of the CSA year.

| Lodi | Pricing | Annual Invoice Amount start of CSA year |
|--|-----------------|--|
| 5 Year CSA | \$ 551,705.00 | \$ 110,341.00 |
| Whitelisting | \$ 93,200.00 | \$ 18,640.00 |
| Version upgrade in 2026 | \$ 456,919.00 | \$ 91,383.80 |
| Optional Annual NCPA Training (3 days onsite) | \$ 23,771.00 | \$ 4,754.20 |
| Optional Annual Operator Simulator Training (Onsite) | \$ 105,264.00 | \$ 21,052.80 |
| Total Price | \$ 1,230,859.00 | \$ 246,171.80 |

| Geysers | Pricing | Annual Invoice Amount start of CSA year |
|---|-----------------|--|
| 5 Year CSA | \$ 653,335.00 | \$ 130,667.00 |
| Version upgrade in 2027/ 2028 | \$ 477,551.00 | \$ 95,510.20 |
| Optional Annual NCPA Training (3 days onsite) | \$ 23,771.00 | \$ 4,754.20 |
| Total Price | \$ 1,154,657.00 | \$ 230,931.40 |

| Redding | Pricing | Annual Invoice Amount start of CSA year |
|---|-----------------|--|
| 5 Year CSA | \$ 380,505.00 | \$ 76,101.00 |
| Version upgrade in 2028 | \$ 525,612 | \$ 105,122.40 |
| Optional Whitelisting Annual Subscription | \$ 78,885.00 | \$ 15,777.00 |
| Optional Annual NCPA Training (3 days onsite) | \$ 23,771.00 | \$ 4,754.20 |
| Optional CVRA | \$ 50,280.00 | \$ 10,056.00 |
| Total Price | \$ 1,059,053.23 | \$ 211,810.65 |

| Rosville | Pricing | Annual Invoice Amount start of CSA year |
|---|-----------------|--|
| 5 Year CSA | \$ 551,710.00 | \$ 110,342.00 |
| Whitelisting | \$ 57,080.00 | \$ 11,416.00 |
| Version upgrade in Fall 2024 | \$ 466,374 | \$ 93,274.80 |
| Optional Annual NCPA Training (3 days onsite) | \$ 23,771.00 | \$ 4,754.20 |
| Optional Annual Operator Training for T3000 (3 days onsite) | \$ 95,085.00 | \$ 19,017.00 |
| Total Price | \$ 1,194,020.12 | \$ 238,804.02 |

Pricing for services not specified above 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. In addition, NCPA policies prohibit reimbursement for alcohol.

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

Siemens Energy, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

NOT APPLICABLE

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: April 27, 2023

SUBJECT: NCPA Geothermal Second Amendment to Resolution 21-109 for the NCPA Geothermal Plant 2 Unit 4 Overhaul Project; Applicable to the following: NCPA Geothermal Facility

AGENDA CATEGORY: Discussion/Action

| | | |
|--------------|---------------------------|-----------------------------------|
| FROM: | Michael DeBortoli | METHOD OF SELECTION: |
| | Assistant General Manager | <i>Other</i> |
| Division: | Generation Services | <i>If other, please describe:</i> |
| Department: | Geothermal | |

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

RECOMMENDATION:

Approval of Second Amendment to Resolution 21-109 for the NCPA Geothermal Plant 2 Unit 4 Overhaul Project: 1) delegating authority to the General Manager or his designee to execute Proof of Loss forms for \$3,599,999 (gross) for the Plant 2 Unit 4 Steam Turbine Damage Claim and deposit the balance back into the Maintenance Reserve account; 2) modifying the Scope of Work and increasing the total not to exceed amount of this project from \$5,000,000 to \$6,409,275; and 3) authorizing the use of an additional \$1,409,275 from the Maintenance Reserve.

BACKGROUND:

On December 2, 2021, the NCPA Commission approved the NCPA Geothermal Plant 2 Unit 4 Overhaul Project (SR: 244:21, Reso: 21-109) with a budget of not to exceed \$3,500,000. During the course of work, damage to the rotor and the turbine internal components were discovered as a result of a steam strainer failure. The damaged steam turbine internals were sent to the vendor's shop in Missouri for further inspection and repair.

On December 1, 2022, the NCPA Commission approved an Amendment to the NCPA Geothermal Plant 2 Unit 4 Overhaul Project (SR: 260:22, Reso: 21-109), increasing the total not to exceed amount of the project to \$5,000,000 to cover the cost to repair the stationary steam turbine internals. The repaired components were installed in early January 2023, and Unit 4 was returned to service in early February 2023.

NCPA has been working with FM Global on a potential insurance claim for the damages to the steam turbine internals. This insurance claim is summarized in the Fiscal Impact section, below. The proceeds from the pending insurance claim would be used to replenish the Maintenance Reserve.

Repairs to the damaged rotor were not included in the previous amendment to the project. NCPA used a spare rotor to bring Unit 4 back into service as a part of the overhaul project. NCPA staff would now like to complete the repairs to the damaged rotor to ensure a spare is available and on-site should it be needed in the future. Only a portion of the repairs are due to the loss. The other portion is due to normal wear and tear. NCPA has negotiated with FM Global with guidance from the turbine vendor as to what the share split should be.

FISCAL IMPACT:

This project is currently funded to \$5,000,000. This Second Amendment will result in an updated total not to exceed amount of \$6,409,275, with \$1,409,275 of funds being requested from the Maintenance Reserve.

The Plant 2 Unit 4 additional scope forecast is shown below.

| | |
|--|--------------------|
| Unit 4 Authorized Amount | \$5,000,000 |
| Additional Project authorization Total | \$1,409,275 |
| Unit 4 Spare rotor Claim | \$760,550 |
| Unit 4 Additional Rotor Maintenance Outside of Claim | \$648,725 |
| Total Unit 4 Cost | \$6,409,275 |

The Plant 2 Unit 4 Insurance Claim is shown below.

| | |
|--|-------------|
| Turbine Repair Claim | \$1,999,999 |
| Business Insurance Estimate (Minimum Expected, Does Not Include RA or REC) | \$1,600,000 |
| Gross Insurance Claim Amount | \$3,599,999 |
| Insurance Deductible | \$1,000,000 |
| Insurance Claim Proceeds (Return to Maintenance Reserve) | \$2,599,999 |

NCPA staff is recommending funding for these additional services through the Maintenance Reserve. The following table depicts the Maintenance Reserve forecast with the inclusion of the insurance claim net proceeds \$2,599,999 and the addition of the increased Unit 4 turbine repair cost to \$6,409,275.

| Funding/(Expenditures) | Beginning Balance | | | | | |
|--|---------------------|-------------|-----------|-------------|-------------|-------------|
| | | 2023 | 2024 | 2025 | 2026 | 2027 |
| Insurance Claim Net Proceeds | | \$2,599,999 | | | | |
| Reserve Activity | | | | | | |
| Unit One Overhaul | | | | | (4,250,000) | |
| Unit Two Overhaul | | | | | (4,250,000) | |
| Unit Four Overhaul | | (6,409,275) | | | | |
| Well Replacement /Workover | | (500,000) | | (2,500,000) | | (4,000,000) |
| Balance of Plant Work | | (507,769) | | | | |
| Plant 1 & 2 Emergency Eyewash Stations | | (140,000) | | | | |
| Plant 2 Cooling Tower Basin Clean Out | | (150,024) | | | | |
| Contingent maintenance | | | (150,000) | | | |
| Projected Requirements | | (5,107,069) | (150,000) | (2,500,000) | (8,500,000) | (4,000,000) |
| Annual Funding Req* | | 3,130,000 | 3,380,400 | 3,650,832 | 4,114,304 | 4,443,448 |
| Balance | 3,172,257 | 1,195,188 | 4,425,588 | 5,576,420 | 1,190,724 | 1,634,172 |
| Minimum Emergency Contingency Balance | \$ 2,250,000 | 2,250,000 | 2,250,000 | 2,250,000 | 2,250,000 | 2,250,000 |
| *Estimated | | | | | | |

Sufficient funds will be available in the Maintenance Reserve to complete the additional work once the insurance claim is processed back into the Maintenance Reserves. NCPA staff does not anticipate any adjustment to the collection amount as a result of the additional work.

SELECTION PROCESS:

In 2022, NCPA solicited competitive bids from multiple vendors to perform various scopes required for this project. NCPA bid these specific scopes of work consistent with NCPA

procurement policies and procedures. This new work will be performed under a change order to the existing agreement.

ENVIRONMENTAL ANALYSIS:

The CEC licensed NCPA's Geothermal Plant 2 (described in the CEC license as Geothermal Project 3) in 1982. The CEC exercised its exclusive siting authority under its CEQA equivalent program and as such has adopted conditions of certification within its license to address environmental impacts of regular and routine maintenance at this facility. Thus, these activities have already been subject to CEQA equivalent review. To the extent the CEC's license does not cover the Geothermal Plant 2, Unit 4 Overhaul Project, the proposed activities are The Plant 2 Unit 4 Overhaul Project is exempt from the provision of the California Environmental Quality Act (CEQA) pursuant to Sections 15301(b), 15302(c), and 15311(c) of the CEQA Guidelines (Class 1, 2, and/or 11 as applied to electric utility systems). This project consists of routine, recurring maintenance to the existing Steam Turbine Generator. This project will not change the function, size or operation of the Steam Turbine Generator. A Notice of Exemption was approved by the NCPA Commission on September 27, 2013 for this class of work and was filed in Sonoma County on October 31, 2012. Thus, this project conforms to these exemptions.

COMMITTEE REVIEW:

Pending Committee review and approval.

AFTER FACILITIES APPROVAL: On April 5, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (1):

- Second Amendment to Resolution 21-109

SECOND AMENDMENT TO RESOLUTION 21-109

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE SECOND AMENDMENT TO RESOLUTION 21-109 FOR THE NCPA GEOTHERMAL PLANT 2 UNIT 4 OVERHAUL PROJECT

(reference Staff Report #XXX:23)

WHEREAS, the Northern California Power Agency (NCPA) operates and maintains on behalf of the project owners a Geothermal Facility near Middletown, CA, consisting of two power plants; and

WHEREAS, on December 2, 2021, the NCPA Commission approved the NCPA Geothermal Plant 2 Unit 4 Overhaul Project (SR: 244:21, Reso: 21-109) with a budget of not to exceed \$3,500,000; and

WHEREAS, during the course of work, damage to the rotor and the steam turbine internals were discovered as a result of a steam strainer failure. The damaged steam turbine internals were sent to the vendor's shop in Missouri for further inspection and repair; and

WHEREAS, on December 1, 2022, the NCPA Commission approved an Amendment to the NCPA Geothermal Plant 2 Unit 4 Overhaul Project (SR: 260:22, Reso: 21-109), increasing the total not to exceed amount of the project to \$5,000,000 to cover the cost to repair the stationary steam turbine internals. The repaired components were installed in early January 2023, and Unit 4 was returned to service in early February 2023; and

WHEREAS, NCPA has been working with FM Global on a potential insurance claim for the damages to the steam turbine internals. The net insurance claim proceeds are estimated at \$2,599,999. The proceeds from this pending insurance claim would be used to replenish the Maintenance Reserve; and

WHEREAS, repairs to the damaged rotor were not included in the previous amendment to the project. NCPA used a spare rotor to bring Unit 4 back into service. NCPA now desires to complete the repairs to the damaged rotor to ensure a spare is available and on-site should it be needed in the future; and

WHEREAS, NCPA is now requesting to modify the Scope of Work for this project, increase the total not to exceed amount of this project to \$6,409,275, and authorize the use of an additional \$1,409,275 from the Maintenance Reserve; and

WHEREAS, the CEC licensed NCPA's Geothermal Plant 2 (described in the CEC license as Geothermal Project 3) in 1982. The CEC exercised its exclusive siting authority under its CEQA equivalent program and as such has adopted conditions of certification within its license to address environmental impacts of regular and routine maintenance at this facility. Thus, these activities have already been subject to CEQA equivalent review. To the extent the CEC's license does not cover the Geothermal Plant 2, Unit 4 Overhaul Project, the proposed activities are The Plant 2 Unit 4 Overhaul Project is exempt from the provision of the California Environmental Quality Act (CEQA) pursuant to Sections 15301(b), 15302(c), and 15311(c) of the CEQA Guidelines (Class 1, 2, and/or 11 as applied to electric utility systems). This project consists of routine, recurring maintenance to the existing Steam Turbine Generator. This project will not change the function, size or operation of the Steam Turbine Generator. A Notice of Exemption was approved by the NCPA Commission on September 27, 2013 for this class of work and was filed in Sonoma County on October 31, 2012. Thus, this project conforms to these exemptions; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the approval of the Second Amendment to Resolution 21-109 for the NCPA Geothermal Plant 2 Unit 4 Overhaul Project: 1) delegating authority to the General Manager or his designee to execute Proof of Loss forms for \$3,599,999 (gross) for the Plant 2 Unit 4 Steam Turbine Damage Claim and deposit the balance back into the Maintenance Reserve account; 2) modifying the Scope of Work and increasing the total not to exceed amount of this project from \$5,000,000 to \$6,409,275; and 3) authorizing the use of an additional \$1,409,275 from the Maintenance Reserve.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2023, 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 | _____ | _____ | _____ |

JERRY SERVENTI
CHAIR

ATTEST:

TRISHA ZIMMER
ASSISTANT SECRETARY



Commission Staff Report

COMMISSION MEETING DATE: April 27, 2023

SUBJECT: Approval of Fiscal Year 2024 Annual Budget

AGENDA CATEGORY: Discussion/Action

FROM: Monty Hanks

Assistant General
Manager/CFO

METHOD OF SELECTION:

N/A

Division: Administrative Services

Department: Accounting & Finance

IMPACTED MEMBERS:

All Members ☒

City of Lodi ☐

City of Shasta Lake ☐

Alameda Municipal Power ☐

City of Lompoc ☐

City of Ukiah ☐

San Francisco Bay Area
Rapid Transit ☐

City of Palo Alto ☐

Plumas-Sierra REC ☐

City of Biggs ☐

City of Redding ☐

Port of Oakland ☐

City of Gridley ☐

City of Roseville ☐

Truckee Donner PUD ☐

City of Healdsburg ☐

City of Santa Clara ☐

Other ☐

If other, please specify

RECOMMENDATION:

Recommending the Northern California Power Agency (NCPA) Commission adopt and approve the FY2024 Annual Budget and Working Capital and Funding Requirement as outlined in Resolution 23-XX and as detailed in the attached budgetary support and Annual Budget document.

BACKGROUND:

In November 2022, the Commission approved budget guidance for the NCPA FY2024 Annual Budget. Staff began preparation of the proposed budget during the following months. From February through April 2023, staff presented the budget to various Commission Committees as follows:

- Facilities Committee (February 8th, March 1st, April 5th)
- Legislative and Regulatory Committee (February 22nd)
- Utility Directors (March 10th, April 13th)
- Budget Preview (Commission meeting March 23rd)
- Lodi Energy Center Project Participants Committee (March 6th, April 10th)

The entire budget document is available on the Agency's extranet site, [NCPA Connect](#).

All changes resulting from the budget review meetings have been incorporated into the proposed FY2024 Annual Budget.

Overview of the FY2024 Annual Budget

This proposed budget totals \$671.7 million (net of revenues). Overall results represent a 19.4% or \$109.1 million dollar increase over the FY2023 approved budget. Budget changes include:

Generation Plants

- Net increase in Plants' Energy Sales (\$51.4m) due primarily to higher forward curve market prices (cost reduction)
- Increase in Ancillary Service Sales for LEC and Hydro (\$3.0m) related to higher forward curve market prices (cost reduction)
- Increases in fuel and LDC costs (\$6.7m) driven by higher forward curve market prices
- Increase in steam royalties (\$0.8m) due to higher market prices
- Increases in routine O&M costs to operate the plants driven by volume increase at Geo, inflation, and supply chain impacts (\$1.0m)
- Net increases in O&M project, capital project, and maintenance reserve collections (\$6.5m)
- Decrease in Hydro debt service requirements (\$1.2m)

Generation Resources

- Net decreases in Member Contracts (\$26.1m) driven by volume and revenue price increases
- Net decreases in Western Resources (\$6.2m) primarily due to forward curve increases
- Net decreases in NCPA Contracts (\$6.0m) related to forward curve increases

- Increased Net Load costs, net of member-owned generation CAISO energy sales (\$163.7m) driven by forward price increases
- Increased GHG obligations (\$0.4m) due to reduced carryover allowance balance for FY2023 and additional member purchases

Transmission

- Increases in costs (\$23.6m) related to increased Wheeling Access and Transmission Access charges and the forecasted load increase

Management Services

- Net increases in expenses (\$0.8m) related to labor increases (\$0.3m) due to increased allocation of Information Services staff, an increase to judicial action (\$0.6) for transmission rate tariff case legal and consulting costs, SCALD software and metering related costs (\$0.3), and increased A&G (\$0.3) offset by increased PM service revenue of (\$0.7).

Personnel

- No change in Full-Time Equivalent (FTE).

Miscellaneous

- Increase in pass-through costs (\$0.1m) for increased member meter maintenance costs.

Working Capital Deposit and Funding Requirement

The Agency provides Working Capital for its Participants and Programs through a combination of:

- Month Ahead Advance Billing;
- Project Financed Deposits; and
- Working Capital Participant Deposits of 15 to 30 days' equivalencies – see attached Analysis of Working Capital Requirements.

In connection with the preparation of the Annual Budget, the Working Capital Participant Deposits are adjusted each year to reflect any changes in the Annual Budget. The proportional allocation of these deposits is based on the participant's percentage in each Project or Program. Any additional deposit required is billed via the monthly All Resources Bill (ARB) and any Refund credit is deposited to the participant's account in the NCPA General Operating Reserve (GOR).

Please note that calculations for the Lodi Energy Center have not been included based on the 60-day Operating Reserve requirement in the Power Sales Agreement (PSA) for that Project.

A summary of the proposed annual budget, an analysis of the working capital deposit and funding requirement, and a copy of the PowerPoint presentation are attached.

FISCAL IMPACT:

The Executive Summary section of the budget document contains an analysis of the overall budget. The total proposed net annual budget cost for FY2024 is approximately \$671.7 million, which represents an increase of 19.4% or a \$109.1 million dollar increase over the FY2023 budget as summarized in the attached schedule. Allocation of the FY2024 Annual Budget

between members and LEC participants is based on participation levels in NCPA programs and projects and the approved cost allocations. Final funding allocation for each member is attached to this staff report and shown in Section 13 of the budget document.

The total calculated FY2024 Working Capital Deposit and Funding Requirements for the Annual Budget has increased \$708k or 6.4%. The attached schedule shows each participant's Additional Requirement Charge or (Refund). The Additional Requirement Charge will be billed on the next ARB following Commission approval, and Refunds of credit amounts will likewise be deposited into the applicable participant's individual GOR account.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The Legislative and Regulatory (L&R) Committee reviewed the L&R Program budget at their meeting on February 22, 2023, and unanimously approved the proposed program budget and recommended approval by the full NCPA Commission.

The Facilities Committee reviewed the Generation Services (except LEC), Power Management and Administrative Services/Executive Services budget at their meetings on February 8, March 1, and April 5, 2023. The Committee unanimously recommended approval of the Generation Services budgets, Power Management budget, and Administrative and Executive Services Budget.

The Lodi Energy Center Participants Committee reviewed the project budget on March 6 and April 10, 2023 and unanimously recommended approval to the Commission.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments:

- Resolution 23-XX
- Budget Summary
- Participant Funding Summary
- Pay Schedule
- Analysis of Working Capital Deposit and Funding Requirements

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY ADOPTING THE FISCAL YEAR 2024 ANNUAL BUDGET AND WORKING CAPITAL DEPOSIT AND FUNDING REQUIREMENTS AND ADJUSTMENTS

(reference Staff Report #XXX:23)

WHEREAS, the Amended and Restated Northern California Power Agency Joint Powers Agreement ("the JPA") provides in Article III section 3 that,

"3. None of the debts, liabilities, or obligations of NCPA shall be the debts, liabilities or obligations of any of the parties to this [Joint Powers] Agreement unless assumed in a particular case by resolution of the governing body of the party to be charged"; and

WHEREAS, certain members have assumed obligations of NCPA through approval of agreements by their governing bodies, such as the project third phase agreements, the Pooling Agreement, the Facilities Agreement, the Power Management and Administrative Services Agreement, the Scheduling Coordination Program Agreement, etc.; and

WHEREAS, the JPA provides in Article IV section 3(a) that,

"3(a). Each party hereto agrees that it will annually contribute, in proportion to its respective total retail electric power load (or where no retail load exists, the consumptive power load, or where no consumptive power load exists, other suitable measure as approved by the Commission) for the previous calendar year, to a fund or budget of NCPA which may cover up to one-third of legislative and regulatory activities or other NCPA general expenses not covered by other agreements or revenue sources, as may be approved by the Commission; and that such annual cash contribution to said fund or budget by any party may be up to fifteen cents (\$0.15) per megawatt hour (MWh) of said total retail electric power load or consumptive power load, or where no consumptive power load exists, other suitable measure as approved by the Commission, as submitted by such party to the Federal Energy Regulatory Commission or other governmental regulatory authority"; and

WHEREAS, the Amended and Restated Rules of Procedure for the Commission of the Northern California Power Agency (the NCPA Bylaws) provide in section 11 that,

"11. Budgets.

(a) NCPA Budget. The General Manager shall, not later than at the regular Commission meeting in May of each year, present a proposed budget for the ensuing fiscal year to the Commission, together with a statement of the payments to be required from the Members by such budget. Such budget shall include the various NCPA Project budgets. The Commission shall adopt such budget by resolution, with any changes ordered by it, not later than the regular meeting in June"; and

WHEREAS, in accordance with the NCPA Bylaws, the General Manager of NCPA has presented a proposed budget for Fiscal Year 2024 (FY2024); and

WHEREAS, the proposed budget in accordance with the JPA includes a proposed charge to the members of \$0.15 per MWh for a total assessment pursuant to the JPA of \$1,432,300; and

WHEREAS, certain of the members of NCPA have from time to time entered into a variety of agreements for the development and operation of NCPA Projects and Programs by which said members have agreed to be responsible for the costs of said Projects and Programs; and

WHEREAS, costs for each of the NCPA Projects and NCPA Programs have been included in the proposed FY2024 NCPA Annual Budget, and the Participants in each such NCPA Project and NCPA Program acknowledge that approval of the NCPA Annual Budget constitutes approval of the annual budget for each of said Programs and Projects; and

WHEREAS, all other costs not included in the JPA assessment have been primarily incurred, by original design, either directly or indirectly on behalf of NCPA Projects or in support of NCPA Programs developed and approved by the members over the years; and

WHEREAS, Project and Program costs have been equitably allocated between and among the NCPA Projects and Programs and such equitable allocation methodology has been approved by the Commission in previous budgets and through specific studies and Commission actions via Resolution 10-16 (Power Management Costs), Resolution 10-106 (Legislative and Regulatory Costs); and

WHEREAS, all such costs are operating and maintenance costs within the meanings and descriptions provided in both the Third-Phase (Take-Or-Pay) Agreements and the Federal Energy Regulatory Commission (FERC) Uniform Chart of Accounts, used to account for the Projects; and

WHEREAS, the Project Participants in all NCPA Projects through recommendation of the NCPA Facilities Committee and the Lodi Energy Center Project Participant Committee have recommended approval of the FY2024 Annual Budget; and

WHEREAS, the participants in the Legislative and Regulatory Programs through recommendation of the Legislative and Regulatory Committee have recommended approval of the Legislative and Regulatory program budget as presented in the FY2024 Annual Budget; and

WHEREAS, the FY2024 Annual NCPA Budget is a comprehensive document that delineates, among other things, each member's fully allocated financial cost responsibility in connection with each and every service provided by the Agency through its various projects and programs; and

WHEREAS, the FY2024 Annual Budget for individual Projects as recommended by the respective Project participants of the various Projects and the related costs and revenues thereof are reflected in the Agency's proposed FY2024 Annual NCPA Budget; and

WHEREAS, the Agency provides Working Capital for its Projects and Programs through a combination of month ahead advanced billing, project financed deposits; and working capital participant deposits of 15 to 30 days' equivalencies; and

WHEREAS, the FY2024 Working Capital Deposit and Funding Requirement schedule shows each participant's Additional Requirement Charge or (Refund); and

WHEREAS, the Additional Requirement Charge will be billed on the next ARB following Commission approval, and Refunds of credit amounts will be deposited into the applicable participant's individual NCPA G.O.R. account; and

WHEREAS, the FY2024 Annual NCPA Budget document also contains certain proposed position changes, reclassifications and salary or pay schedules which also require Commission approval; and

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

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Northern California Power Agency as follows:

Section 1. This Commission hereby finds and determines that the recitals contained herein above are true and correct.

Section 2. This Commission hereby irrevocably adopts, approves, and authorizes the program and project budgets which are an integral part of the FY2024 Annual Budget of the Agency, and it hereby irrevocably adopts, approves, and authorizes the FY2024 Annual Budget of the Agency. The Commission members hereby confirm their commitment and that of their respective member agencies, to provide funding of the FY2024 Annual Budget of the Agency in proportion to their individual shares therein, as shown in the attached summary of budget costs after full allocation of costs to all projects and programs of the Agency.

Section 3. This Commission hereby irrevocably adopts, approves, and authorizes the related participant charges or refunds from the analysis of the Working Capital Deposit and Funding Requirement schedule for FY2024.

Section 4. Notwithstanding the generality of the foregoing, the Commission does hereby approve the classification and position changes and salary or pay schedules as noted in the Annual Budget and authorizes the General Manager to implement such changes.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2023 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 | _____ | _____ | _____ |

JERRY SERVENTI
CHAIRPERSON

ATTEST: _____
TRISHA ZIMMER
INTERIM ASSISTANT
SECRETARY