



651 Commerce Drive
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Facilities Committee Meeting Agenda

Date: June 7, 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 April 5, 2023 and May 3, 2023 regular Facilities Committee meetings, and the May 18, 2023 Special Facilities Committee meeting.
3. **All NCPA Facilities, Members, SCPPA – Dee's Design Box LLC First Amendment to MTCSA** – Staff is seeking a recommendation for Commission approval of a First Amendment to the Multi-Task Consulting Services Agreement with Dee's Design Box LLC, now known as Norwood Creative Group, Inc., for graphic design services, to change the vendor name to Norwood Creative Group, Inc., and to increase the total not-to-exceed amount to \$500,000, for continued use by NCPA, NCPA Members, by SCPPA, and SCPPA Members. (*Commission Category: Consent; Sponsor: Legislative and Regulatory Affairs*)
4. **NCPA Headquarters and Disaster Recovery Center – Brightview Landscape Services, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five year Multi-Task General Services Agreement between NCPA and Brightview Landscape Services, Inc., for commercial landscape maintenance and services, in an amount not-to-exceed \$300,000 for use at NCPA Headquarters and the Agency's Disaster Recovery Center. (*Category: Consent; Sponsor: Administrative Services*)
5. **Execution of Confirmation Number 0304 under the Northern California Power Agency Support Services Program Agreement** – Subject to approval by the Alameda Public Utilities Board of the requested services under the terms of the Northern California Power Agency Support Services Program Agreement, approval of Resolution 23-36 authorizing the NCPA General Manager or his designee to execute Confirmation Number 0304, with a not-to-exceed amount of \$713,195.50, with any non-substantial changes recommended and approved by the NCPA General Counsel, and issue Purchase Orders to CLEAResult Consulting Inc. (CLEAResult) for electric vehicle (EV) charging outreach and technical assistance services through December 17, 2025. (*Category: Consent; Sponsor: Administrative Services*)
6. **All NCPA Facilities, Members, SCPPA – Veteran's Industrial Protection, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Veteran's Industrial Protection, Inc. for fire system maintenance services, with a not to exceed amount of \$3,000,000, 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. (*Category: Consent; Sponsor: Geo*)

- 7. All NCPA Facilities – Rescue Solutions, LLC First Amendment to MTGSA** – Staff is seeking a recommendation for Commission approval of a First Amendment to the five-year Multi-Task General Services Agreement with Rescue Solutions, LLC, increasing the not to exceed amount from \$500,000 to \$1,500,000, for continued use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Consent; Sponsor: Geo)*
- 8. All NCPA Facilities, Members – Siemens Industry, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Siemens Industry, Inc. for Power Distribution maintenance and support services, with a not to exceed amount of \$2,000,000, for use at all facilities owned and/or operated by NCPA and NCPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. *(Category: Consent; Sponsor: Hydro)*
- 9. All NCPA Facilities, Members, SCPPA – Ballard Marine Construction, LLC MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Ballard Marine Construction, LLC, for underwater maintenance, inspections and bathymetric survey services, with a not to exceed amount of \$2,000,000, for use at all facilities owned and/or operated by NCPA only. All purchase orders will be issued following NCPA procurement policies and procedures. *(Category: Consent; Sponsor: Hydro)*
- 10. NCPA Hydro Facility – Andritz Hydro Corporation, Inc. Master Agreement for Supply of Equipment** – Staff is seeking a recommendation for Commission approval of a five-year Master Agreement for Supply of Equipment with Andritz Hydro Corporation, Inc., for equipment purchasing services, with a not to exceed amount of \$5,000,000, for use at NCPA's Hydroelectric Facility. All purchase orders will be issued following NCPA procurement policies and procedures. *(Category: Consent; Sponsor: Hydro)*
- 11. All NCPA Facilities, Members, SCPPA – Fossil Energy Research Corp dba FERCO MTPSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Professional Services Agreement with Fossil Energy Research Corp dba FERCO for testing 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. *(Category: Consent; Sponsor: CTs)*
- 12. All NCPA Facilities, Members, SCPPA – Montrose Air Quality Services, LLC MTCSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Consulting Services Agreement with Montrose Air Quality Services, LLC for testing services, with a not to exceed amount of \$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)*
- 13. All NCPA Facilities, Members, SCPPA – Electrical Maintenance Consultants MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Electrical Maintenance Consultants for specialty electrical related services, with a not to exceed amount of \$5,000,000, 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. *(Category: Consent; Sponsor: CTs)*
- 14. All NCPA Facilities, Members, SCPPA – Industrial Air Flow Dynamics, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Industrial Air Flow Dynamics, Inc. seals, expansion joints, and HRSG related

services, with a not to exceed amount of \$4,000,000, 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. *(Category: Consent; Sponsor: CTs)*

- 15. All NCPA Facilities, Members, SCPPA – EverLine Compliance CA, LLC Second Amendment to MTGSA** – Staff is seeking a recommendation for Commission approval of a Second Amendment to the five-year Multi-Task General Services Agreement with EverLine Compliance CA, LLC for pipeline maintenance and operations related services, amending Exhibits A and B to include additional regulatory services and removing Members/SCPPA from this agreement, for continued use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures. *(Category: Consent; Sponsor: CTs)*
- 16. All NCPA Facilities, Members, SCPPA – Leidos Engineering, LLC MTPSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Professional Services Agreement with Leidos Engineering, LLC for transmission and distribution design 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. *(Category: Consent; Sponsor: Generation Services Engineering)*
- 17. Amendment 1 to Contract for Displacement of Base Resource with Central Valley Project Customers** – Staff is seeking a recommendation for Commission approval of Amendment 1 to the Contract for Displacement of Base Resource with Central Valley Project Customers. *(Commission: Discussion/Action; Sponsor: Power Management)*
- 18. City of Lodi Scheduling Coordinator Agreement** – Staff is seeking a recommendation for Commission approval of a Scheduling Coordinator Agreement between NCPA and the City of Lodi, for the purpose of scheduling the Lodi Strategic Reserve Project (Resource ID LODI25_6_ERKNG1). *(Commission Category: Discussion/Action; Sponsor: Power Management)*
- 19. Approval of Special Conditions Agreement for Grant Administration between NCPA and Plumas Sierra Rural Electric Cooperative** – Staff will present and seek a recommendation for Commission approval of a Special Conditions Agreement for Grant Administration between NCPA and Plumas Sierra Rural Electric Cooperative. *(Commission Category: Discussion/Action; Sponsor: Power Management)*

INFORMATIONAL ITEMS

- 20. New Business Opportunities** – Staff will provide an update regarding new business opportunities. *(Sponsor: Power Management)*
- 21. NCPA Geothermal Facility – Geothermal Plant 1, Unit 1 Steam Strainer Damage Project** – Staff will share results from vendor inspections of Geothermal Plant 1, Unit 1, and seek direction from the Facilities Committee regarding repair options. *(Sponsor: Geo)*
- 22. NCPA Inter-Agency Resource Plan (IARP) Update** – Staff will provide an informational update regarding the development of the NCPA IARP. *(Sponsor: Generation Services Engineering)*
- 23. Natural Gas Transportation Rates** – Staff will share an informational presentation regarding updates to Natural Gas Transportation Rates, and potential impacts on NCPA Facilities. *(Sponsor: Generation Services Engineering)*

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

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

26. Next Meeting – The next regular Facilities Committee meeting is scheduled for July 5, 2023.

ADJOURNMENT

AH/cp



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Minutes

Date: April 20, 2023
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: April 5, 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 9:08 am. Attending via teleconference and/or on-line presentation were Midson Hay (Alameda), Josh Cook (Biggs), Cliff Wagner (Gridley), Melissa Price (Lodi), CJ Berry (Lompoc), Shiva Swaminathan (Palo Alto), Mike Brozo (Plumas-Sierra), Jared Carpenter (Port of Oakland), Basil Wong (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, Healdsburg, Redding, Shasta Lake, and TID were absent. A quorum of the Committee was established.

PUBLIC FORUM

No public comment.

2. **Approval of minutes from the March 1, 2023 Facilities Committee meeting, and the March 15, 2023 Special Facilities Committee meeting.**

Motion: A motion was made by Cliff Wagner and seconded by CJ Berry recommending approval of the minutes from the March 1, 2023 Facilities Committee meeting, and the March 15, 2023 Special Facilities Committee meeting. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Roseville, Santa Clara, and Ukiah. The motion passed.

3. **All NCPA Facilities, Members, SPPA – Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy First Amendment MTGSA** – Staff presented background information and was 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 SPPA, and SPPA 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, SPPA, and SPPA 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. 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. A draft Commission Staff Report, the original agreement, and First Amendment were available for review. It is recommended to place this item on the Commission Consent Calendar.

Motion: A motion was made by Brian Schinstock and seconded by Jiayo Chiang recommending Commission approval authorizing the General Manager or his designee to enter into a 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. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Roseville, Santa Clara and Ukiah. The motion passed.

- 4. All NCPA Facilities, Members, SCPPA – OST Trucks and Cranes, Inc. MTGSA – Staff** presented background information and was 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.

OST Trucks and Cranes Inc. is a current NCPA vendor whose 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. NCPA has agreements in place for similar services with American Crane Rental, Hatton Crane & Rigging, Maxim Crane Works, Summit Crane and Titan Crane & Rigging. 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. A draft Commission Staff Report, and agreement were available for review. It is recommended to place this item on the Commission Consent Calendar.

Motion: A motion was made by Brian Schinstock and seconded by Cindy Sauers recommending Commission approval 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. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Roseville, Santa Clara, and Ukiah. The motion passed.

- 5. All NCPA Facilities, Members, SCPPA – Tetra Engineering Group, Inc. MTPSA – Staff** presented background information and was 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.

Tetra Engineering Group, Inc. is a current NCPA vendor whose 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. NCPA has agreements in place for similar services with Groome Industrial, HRST, Inc., Nooter Eriksen and N&T Consulting Service Inc. (pending). 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. A draft Commission Staff Report, and agreement were available for review. It is recommended to place this item on the Commission Consent Calendar.

Motion: A motion was made by Cliff Wagner and seconded by Jiayo Chiang recommending Commission approval 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. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Roseville, Santa Clara, and Ukiah. The motion passed.

- 6. All NCPA Facilities, Members, SCPPA – Baker Tilly US, LLP First Amendment to MTPSA –** Staff provided background information and was 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.

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 extend the expiration date from July 1, 2023 to July 1, 2026. In order to fund the second extension, NCPA needs to increase the current not-to-exceed amount from \$500,000 to \$1,000,000.

Motion: A motion was made by Cliff Wagner and seconded by Josh Cook recommending Commission approval authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Professional Services Agreement with Baker Tilly Virchow Krause LLP for annual audit services to change the audit firm's name to Baker Tilly US, LLP, to extend the term to July 1, 2026, and to increase the Not to Exceed amount of \$500,000 to a Not to Exceed amount of \$1,000,000, 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, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Roseville, Santa Clara, and Ukiah. The motion passed.

7. **All NCPA Facilities – Parker Landscape Development, Inc. MTGSA** – Staff provided background information and was seeking a recommendation for Commission approval of a 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.

In February of 2023, staff issued a RFP soliciting proposals from landscape maintenance companies to perform landscape maintenance services including but not limited to general grounds keeping, 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 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. 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. A draft Commission Staff Report, and agreement were available for review. It is recommended to place this item on the Commission Consent Calendar.

Motion: A motion was made by Brian Schinstock and seconded by Cliff Wagner recommending Commission approval 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 only at any facilities owned and/or operated by NCPA. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Roseville, Santa Clara, and Ukiah. The motion passed.

8. **NCPA Cyber Security Insurance Renewal** – Staff presented background information and was seeking a recommendation for Commission approval to renew the Agency's Cyber Security Insurance Liability Program for April 2023 – April 2024.

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 are listed below:

- **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 vandalism 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.

Motion: A motion was made by Cindy Sauers and seconded by Cliff Wagner recommending Commission approval 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. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Roseville, Santa Clara, and Ukiah. The motion passed.

9. Plumas-Sierra Rural Electric Cooperative Admission to MPP – Staff provided background information and seeking a recommendation for Commission approval of admission of Plumas-Sierra Rural Electric Cooperative (PSREC) as a new Participant to the Amended and Restated Market Purchase Program Agreement (MPP).

Pursuant to the MPP Agreement, NCPA may act on behalf of MPP Agreement Participants to transact energy and energy related commodities. PSREC has expressed its desire to become a MPP Agreement Participant. Section 11.1 of the MPP Agreement states that a Member may execute the MPP Agreement and become a MPP Agreement Participant provided that such joinder is approved by the NCPA Commission. Upon becoming a MPP Participant, PSREC will participate in the program pursuant to the terms and conditions as set forth in the MPP Agreement.

Motion: A motion was made by Jiayo Chiang and seconded by Brian Schinstock recommending Commission approval of Plumas-Sierra Rural Electric Cooperative (PSREC) becoming a Participant under the Amended and Restated Market Purchase Program Agreement (MPP Agreement) upon PSREC's execution of the MPP Agreement. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Roseville, Santa Clara, and Ukiah. ABSTAIN = Biggs. The motion passed.

10. Approval of Letter of Agreement 23-SNR-02937 – Staff presented background information and was seeking a recommendation for Commission approval of the Letter of Agreement 23-SNR-02937 (WAPA 2023 REC Program) between Western Area Power Administration (WAPA) and Northern California Power Agency (NCPA).

Certain resources in the CVP Project are RPS eligible. Western utilizes a voluntary REC Program to distribute RECs to Base Resource customers. A Letter of Agreement (LOA) sets forth rules and requirements for the program. The LOA is renewed each year. By July 1, 2023, Base Resource customers will have to elect to participate in the CY 2023 WAPA REC Program. NCPA has participated in the program on behalf of the Pool Members in the past. Palo Alto has elected to participate in the program separately. Costs associated with entering into the WAPA 2023 REC Program Letter of Agreement 23-SNR-02937 are estimated to be less than \$10,000 for the term of the agreement, and will be allocated according to Base Resource percentages of the represented Members.

Motion: A motion was made by Alan Harbottle and seconded by Mike Brozo recommending Commission approval of the 2023 REC Program Letter of Agreement, and to authorize the General Manager of NCPA to execute the 2023 REC Program Letter of Agreement on behalf of NCPA, including any non-substantive modifications to the 2023 REC Program Letter of Agreement approved by NCPA's General Counsel. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Roseville, and Ukiah. ABSTAIN = Santa Clara. The motion passed.

- 11. Approval of Exhibit C, Revision 25 to Contract 96-SNR-00110 (WAPA O&M Funding Commitment)** – Staff presented background information and was 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.

NCPA is a party to the O&M Agreement, on behalf of certain NCPA Members who have assigned their Base Resource percentages to NCPA. WAPA periodically requests participants to the O&M Agreement to execute revisions to the individual Customer Commitment and Contribution, or Exhibit C, which reflect allocated shares of the total funding obligation approved through the customer approval process.

Execution of Exhibit C, Revision 25 to Contract 96-SNR-00110 would establish a commitment by NCPA, specifically the Assigning Members, to provide funds associated with Federal Fiscal Year 2025 in the amount of \$11,720,811.88. The obligation to provide funds survives termination of the O&M Agreement, but any and all future obligations would be absolved coincident with the termination of the Base Resource contract. WAPA will invoice and collect funds according to a monthly schedule. Approximately one (1) month following payment, WAPA will return funds to NCPA through a bill credit on the monthly WAPA power bill. Therefore, the net fiscal impact is approximately zero dollars (\$0.00). Costs associated with this commitment will be allocated to the Assigning Members based on Western Allocation percentages.

Motion: A motion was made by Shiva Swaminathan and seconded by Mike Brozo recommending Commission approval of Exhibit C, Revision 25 to Contract 96-SNR-00110, and to authorize the General Manager of NCPA to execute Exhibit C, Revision 25 to Contract 96-SNR-00110, on behalf of NCPA, including any non-substantive modifications to Exhibit C, Revision 25 to Contract 96-SNR-00110 approved by NCPA's General Counsel. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Roseville, and Ukiah. ABSTAIN = Santa Clara. The motion passed.

- 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 presented and was 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 authorizing the General Manager of NCPA to execute the General Services Agreement between NCPA and Ulteig Engineers, Inc. for Meter Maintenance, on behalf of NCPA.

Pursuant to Section 7.4 of the Second Amended and Restated Pooling Agreement (Pooling Agreement) each Participant is required to install and maintain meters and metering equipment in accordance with all applicable metering requirements, including CAISO metering requirements. Section 7.4 of the Pooling Agreement also states that each Participant shall be solely responsible for maintaining their respective metering equipment; provided, however, a Participant may contract with NCPA to supply meter maintenance services pursuant to separate agreements.

To enable NCPA to acquire meter maintenance services on behalf of the Pooling Agreement Participants, NCPA has developed the new Pooling Schedule 14 (Meter Maintenance Program) to be incorporated into the Pooling Agreement. Pooling Schedule 14 (Meter Maintenance Program) directs NCPA, acting on behalf of the Pooling Agreement Participants, to acquire meter maintenance services from a qualified third party services provider, establishes the obligation for the Pooling Agreement Participants to pay for all direct and indirect costs associated with meter maintenance services, and describes the authority upon which approval of such services may be granted by the Commission.

The Pooling Agreement Participants have requested NCPA to contract with a qualified third party services provider to provide meter maintenance services for Pooling Agreement Participant meters and metering equipment. In response to this request, NCPA conducted a competitive solicitation with qualified third party services providers, and based on the responses received in such process, NCPA determined that a proposal made by Ulteig Engineers, Inc. to supply meter maintenance services best met the needs of the Pooling Agreement Participants. As such, NCPA has developed a General Services Agreement with Ulteig Engineers, Inc. for Meter Maintenance services, including the following scope of work: meter maintenance, meter and communication troubleshooting, and other miscellaneous work.

Motion: A motion was made by Jiayo Chiang and seconded by Cindy Sauers recommending Commission approval of (i) the General Services Agreement between NCPA and Ulteig Engineers, Inc. for Meter Maintenance, and (ii) adding Pooling Schedule 14 (Meter Maintenance Program) to the Second Amended and Restated Pooling Agreement, and to 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, including any non-substantive modifications to the General Services Agreement between NCPA and Ulteig Engineers, Inc. for Meter Maintenance approved by NCPA's General Counsel. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, and Ukiah. ABSTAIN = Roseville and Santa Clara. The motion passed.

- 13. NCPA Combustion Turbine and Geothermal Facilities, City of Redding, City of Roseville – Siemens Energy, Inc. MTGSA** – Staff presented background information and was 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.

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. 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.

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

- 14. NCPA Geothermal Facility – Second Amendment to Resolution 21-109 for the NCPA Geothermal Plant 2 Unit 4 Overhaul Project** – Staff presented background information and was 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.

On December 2, 2021, the NCPA Commission approved the NCPA Geothermal Plant 2 Unit 4 Overhaul Project (SR: 244:21, Resolution: 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, Resolution: 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. The gross insurance claim is \$3,599,999 minus the deductible of \$1,000 for a total insurance proceed of \$2,599,999.

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.

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 proceeds from the pending insurance claim would be used to replenish the Maintenance Reserve.

Motion: A motion was made by Brian Schinstock and seconded by Jiayo Chiang recommending Commission 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. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Plumas-Sierra, Roseville, Santa Clara and Ukiah. ABSTAIN = Palo Alto. The motion passed.

15. FY2024 Annual Budget Review and Approval – Staff presented and reviewed the final budget for FY2024, and was seeking a recommendation for Commission approval of the FY 2024 Annual Budget.

All changes resulting from the budget review meetings have been incorporated into the proposed FY2024 annual budget. The proposed FY2024 annual budget total is \$671.7 million (net of revenues). The overall results represent a 19.4% or \$109.1 million dollar increase over the FY2023 approved annual budget. The budget is up 19.4% largely due to the forward curve, load costs, and transmission costs.

The entire budget document is available on the Agency's extranet site, [NCPA Connect](#).

Motion: A motion was made by Josh Cook and seconded by Basil Wong recommending the 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. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Plumas-Sierra, Port of Oakland, Roseville, Santa Clara and Ukiah. The motion passed.

INFORMATIONAL ITEMS

16. 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

17. NCPA 2023 Wildfire Mitigation Plan – Staff presented the draft NCPA 2023 Wildfire Mitigation Plan (WMP) for review and comment, including an overview of updated revisions recommended by the qualified independent evaluator.

Each local publicly owned electric utility and electrical cooperative shall update its plan annually and submit the update to the California Wildfire Safety Advisory Board (WSAB) by July 1 of each year. Last year's 2022 Ignitions, Wire Downs and "Fall In" tree mitigation were all zero, indicating good performance. This year's addition will include a metric for fire break maintenance at Geo, and a water drop tank deployment as part of fire spread risk reduction.

A Dudek revision is being conducted to assure that the NCPA WMP comprehensively addresses all of the applicable statutory requirements. Dudek review of program metrics should further establish that NCPA has taken reasonable actions to minimize the risk that its lines or equipment will cause a wildfire or contribute to spread risk.

Staff will provide a report to Facilities Committee in early May seeking a recommendation for Commission approval of the NCPA 2023 WMP and the comprehensive statutorily required 3-year reviews, with updated revisions based on the qualified independent evaluators assessment and WSAB recommendations.

18. NCPA Generation Services Plant Updates – Plant Staff provided an update on current plant activities and conditions.

Hydro – Collierville (CV) Power House was at 99% availability and New Spicer Meadows (NMS) Power House was at 87% availability during the month of March. March precipitation was 17.7 inches based on the 5 – Station Index. The snow pack is at 237% of average for this date. Collierville experienced a tailrace landslide during the month.

Hydrology

▪ New Spicer Meadows Reservoir Storage

- 11,131 acre feet decrease (18%) month-over-month
- 62,481 acre feet to 51,350 acre feet
 - High snow water content
 - Forecasts indicate Spicer will fill and spill
 - ~250,000 acre feet of snow water content in snowpack above Spicer
 - ~150,000 acre feet of available space in Spicer presently
- Optimizing stored water
 - Spicer draft 400 - 600 cfs beginning 1/18
 - Anticipate elevated drafts based on required flushing flows, likelihood of Spicer spill, market conditions
 - Flushing flows to be complete on 4/8/2023
 - Monitoring snowpack, runoff, and market

Current Events

▪ Projects

- FEMA/OES damage coordination
- USFS annual meeting
- Monthly CCWD coordination meetings
- Annual meeting with USFS
- Base mapping underway for Clarks Creek along CV PH
- 230 KV T-line vegetation management commencing

CTS – CT1 had 15 starts (Alameda Excitation System Commissioning and CT1 Lodi Emissions Testing) of 15 forecasted. FYTD total is 104 starts. CT2 had 0 starts of 0 forecasted. FYTD total is 21 starts.

▪ Outages

- CT1 Lodi- Forced outage on 3/25/23 from 0700-1330 to adjust new excitation system settings
- CT1 Alameda- U1/U2- Spring Outage complete. **Outage on 5/15 thru 5/17

- CT2 STIG- 4/1/23 thru 4/30/23 – In progress
- CT1 Lodi Run Hours
 - YTD hours 16.5 of 200 Allowed (based on calendar year)
- CT1 Alameda Diesel Hours
 - U1= 4.64 hrs. of 20 (based on rolling year)
 - U2= 5.32 hrs. of 20 (based on rolling year)
- Safety and Environmental
 - No Safety issues to report.
 - As previously noted, CT1 Lodi had an emissions deviation while performing excitation system commissioning. During operation, the CT was run at different loads. Inadvertently, the CT ran without water injection for two periods which caused the emissions deviation. Emissions deviation was reported to SJVAPCD on 2/23/23.
- Alameda U1/U2 May Outage (May 15-17, 2023)
 - Alameda island is currently on a single feed from PG&E due to Station “J” transformer issue. We had schedule our 6-year NERC PRC-005 testing during this outage. Unfortunately, the 115kV substation line differential 87B relay can’t be tested and CT’s for the relays can’t be de-energized. In order to test this relay, AMP has to open their two switchyard breakers CB242/232, close the shoo-fly to bypass the Alameda switch yard. The above sequence will interrupt power to the island. The testing request was halted by PG&E and AMP.
 - PG&E is forecasting that on April 10th, the Alameda island should be back on normal feed. Based on contractor’s schedule/availability and our LEC/STIG outage in April, we cannot complete the testing sooner. We had to reschedule the testing for **May 15-17, 2023.**
- Staff reviewed the CAISO Commitment Runs for March 2023.

Geo – There were no safety incidents to report for the month of March. Safety training is 49.7% complete. Severe winter weather hampered outage activities, and created safety hazards causing several near misses. The average net generation level for March was 51.1 MW. Total average net generation was 38.2 GWh. The FY 2023 net generation goal is 734 GWh. Currently FY 2023 actual net generation is 524.5 GWh YTD at 4% under the forecasted net generation YTD. Unit 2 returned to service on March 28, 2023. Unit 1 is currently still out of service. The return to service is TBD.

19. Planning and Operations Update –

- **Resource Integrations In Progress**
 - City of Lodi Strategic Reserve – June 2023
 - Dagget Solar / Storage – Q3 2023
 - Scarlet Solar / Storage – Q3 2023
 - West Tambo Solar – Q3
 - Proxima Solar / Storage – Q1 2024
- Over generation has started at the CAISO, which is causing lots of congestion. Lodi CTs are running with DA market clearing. The CAISO will most likely experience a couple months of over generation due to the high water amounts this year.

20. Next Meeting – The next regular Facilities Committee meeting is scheduled for May 3, 2023.

ADJOURNMENT

The meeting was adjourned at 12:04 pm by the Committee Chair.



**Northern California Power Agency
April 5, 2023 Facilities Committee Meeting
Attendance List**

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

[illegible]

**Northern California Power Agency
April 5, 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: May 4, 2023
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: May 3, 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 9:10 am. Attending via teleconference and on-line presentation were Midson Hay (Alameda), Jake Carter (Gridley), Mike Brozo (Plumas-Sierra), Khaly Nguyen (Port of Oakland), Nick Rossow (Redding), 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, Lodi, Lompoc, Palo Alto, Shasta Lake and TID, were absent. A quorum of the Committee was not established.

PUBLIC FORUM

No public comment.

2. **Approval of Minutes from the April 5, 2023 Facilities Committee meeting.**

Due to the lack of a quorum no formal action was taken on this item.

3. **All NCPA Facilities, Members, SCPPA – Plug In America First Amendment to 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 Plug In America for electrification education and outreach services, to extend the term of the Agreement for an additional two year period, for continued use by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

NCPA entered into a three-year MTCSA with Plug In America effective December 18, 2020, for an amount not to exceed \$750,000. This agreement has been used by NCPA Members through NCPA's Support Services program. An NCPA Member has requested that the agreement be extended. This amendment will extend the term of the Agreement for an additional two-year period from the original expiration date of December 17, 2023 to a new date of December 17, 2025. The not to exceed amount of \$750,000 will remain the same through the end of the contract term. 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 Acterra, Cool the Earth, and Electric Car Insider.

Due to the lack of a quorum, no formal action was taken. However, the Members present at the meeting voiced their support of the recommendation for Commission approval authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement (MTCSA) with Plug In America for Electrification Education and Outreach Services, with any non-substantial changes recommended and approved by the NCPA General Counsel, to extend the term of the Agreement for an additional two year period, for continued use by NCPA, NCPA Members, by SCPPA, and SCPPA Members. No other meeting attendees had any objections or questions. This item will move forward to the next Commission Meeting scheduled on May 25, 2023 on the Commission Consent Calendar.

- 4. All NCPA Facilities, Members, SCPPA – EverLine Compliance CA, LLC Second Amendment to MTGSA –** Staff presented background information and was seeking a recommendation for Commission approval of a Second Amendment to the five-year Multi-Task General Services Agreement with EverLine Compliance CA, LLC for pipeline maintenance and operations related services, amending Exhibits A and B to include additional regulatory services, 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 with Energy Project Solutions, LLC, effective June 1, 2020, to provide pipeline operations and maintenance services, for use at all NCPA, NCPA Member, SCPPA, and SCPPA Member facilities. Effective April 18, 2022, NCPA and Energy Project Solutions entered into a First Amendment, accepting assignment of the agreement to EverLine Compliance CA, LLC.

It was recently determined NCPA didn't have a compliant control room under our current services to control the Alameda pipeline. Since the Alameda pipeline is a DOT PHMSA regulated asset, NCPA can't add it to the existing LEC control room without significantly increasing the regulatory requirements for NCPA and its employees. These services were previously administered by Dick Brown Technical Services (DBTS) as subcontracted by Energy Project Solutions (EPS), NCPA's previous pipeline compliance contractor. EverLine has acquired both DBTS and EPS, and can provide these services. NCPA now desires to enter into a Second Amendment to the Multi-Task General Services Agreement amending Exhibits A and B to add these required regulatory control room services. The not to exceed amount of \$1,000,000 will remain the same through the end of the contract term. 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 any other agreements for similar services at this time.

Due to the lack of a quorum, no formal action was taken. However, the Members present at the meeting voiced their support of the recommendation for Commission approval authorizing the General Manager or his designee to enter into a Second Amendment to the Multi-Task General Services Agreement with EverLine Compliance CA, LLC for pipeline operations and maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, amending Exhibits A and B to add required regulatory services, for continued use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. No other meeting attendees had any objections or questions. This item will move forward to the next Commission Meeting scheduled on May 25, 2023 on the Commission Consent Calendar.

- 5. All NCPA Facilities, Members, SCPPA – Aspen Environmental Group MTCSA –** Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task Consulting Services Agreement with Aspen Environmental Group for

energy related consulting 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.

This is an existing NCPA vendor. The current agreement with Aspen Environmental is expiring. An NCPA Member has expressed an interest in using this vendor in the future. 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 similar agreements in place with Kano Consultants, Geosyntec Consultants, Inc., EGS Consulting, Inc., and Risk Management Professionals, Inc.

Due to the lack of a quorum, no formal action was taken. However, the Members present at the meeting voiced their support of the recommendation for Commission approval authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Aspen Environmental Group for energy related consulting 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 SCPPA and SCPPA Members. No other meeting attendees had any objections or questions. This item will move forward to the next Commission Meeting scheduled on May 25, 2023 on the Commission Consent Calendar.

- 6. NCPA Geothermal Facility – 2023 Steam Field Operations Forecast Report** – Staff presented background information and was seeking a recommendation for Commission approval of the 2023 Steam Field Operations Forecast Report, including approval regarding the market power price at which to curtail the load at the NCPA Geothermal facilities, as the Geothermal Operating Protocol effective July 1, 2023, and remaining in effect until replaced by the Commission.

The 2022 Operating Protocol for NCPA's Geothermal Facility used a two-zone strategy with wells on the west side of the NCPA lease producing to Plant #1, Units #1 and #2, while the wells on the east side of the NCPA lease produced to Plant #2, Unit #4. The 2022 Protocol allowed for reduction of load under the economic conditions listed below.

- Day Ahead Market Prices are a minimum of negative \$25 per MWh.
- The level of curtailment will be limited to 45 MW with discretion to adjust this level based on the steam field response.
- Duration of the curtailment is to be a minimum of 4 hours.
- Curtailments are limited to once per calendar day.

In 2023, the recommended Operating Protocol is to continue using the two-zone strategy, and operate Plants #1 and #2 at baseload conditions with the goal of maximizing generation. To clarify the criteria for any reduction in generating load, the following economic conditions are introduced into the 2023 Geothermal Operating Protocol.

- Curtailing generation is an option that may occur only when the Day Ahead Market Prices are a minimum of negative \$25 per MWh and Net of the Renewable Energy Credit (REC) value.
- The level of curtailment will be limited to 45 MW with discretion to adjust this level based on the steam field response.
- Duration of the curtailment is to be a minimum of 4 hours.
- Curtailments are limited to once per calendar day.

This Protocol establishes a 2023 annual peak generation target of 101.5 gross MW.

Due to the lack of a quorum, no formal action was taken. However, the Members present at the meeting voiced their support of the recommendation for Commission approval authorizing the 2023 Steam Field Operations and Forecast Report dated May 2023 as the Geothermal Operating Protocol effective July 1, 2023. This Operating Protocol is to remain in effect until replaced by the Commission. No other meeting attendees had any objections or questions. This item will move forward to the next Commission Meeting scheduled on May 25, 2023 on the Commission Consent Calendar.

7. **NCPA 2023 Wildfire Mitigation Plan** – Staff is seeking a recommendation for approval of the NCPA 2023 Wildfire Mitigation Plan, with updated revisions based on the qualified independent evaluator’s recommendations.

Public Utilities Code, Division 4.1, Chapter 6 Wildfire Mitigation, Code 8387 requires electric utilities to assess the risk of catastrophic wildfire posed by a utility’s overhead electrical lines and equipment. In response to this requirement, NCPA created its Wildfire Mitigation Plan, to reduce the risk of NCPA facilities igniting wildfire, including identifying preventative maintenance procedures and practices. The NCPA Wildfire Mitigation Plan was approved in the December 5, 2019 Commission Meeting. Annual independent evaluations of the Wildfire Mitigation Plan were conducted in 2020, 2021 and 2022, with minor revisions to the plan. Each revision has been approved in annual Commission Meetings.

NCPA contracted with Dudek, a qualified independent evaluator with experience in assessing the safe operation of electrical infrastructure, to complete the statutorily required three-year revision and assess the comprehensiveness of the Wildfire Mitigation Plan. The independent evaluator issued a report (attached as an appendix to the Wildfire Mitigation Plan) stating that NCPA’s Wildfire Mitigation Plan appropriately addressed all elements required under CPUC Section 8387 (b) (2) and WSAB 2022 recommendations. The independent evaluation and report were completed April 27, 2023.

NCPA is now seeking Commission approval of the NCPA 2023 Wildfire Mitigation Plan, to include the recommended revisions provided by the qualified independent evaluator, revise the Wildfire Mitigation Plan from Version 1.3 to 2.0 to reflect the three year required update, and post the Wildfire Mitigation Plan 2.0 to the NCPA Website.

Due to the lack of a quorum, no formal action was taken. However, the Members present at the meeting voiced their support of the recommendation for Commission approval of the NCPA 2023 Wildfire Mitigation Plan, with updated revisions based on the qualified independent evaluator’s recommendations and Wildfire Safety Advisory Board (WSAB) 2022 recommendations. No other meeting attendees had any objections or questions. This item will move forward to the next Commission Meeting scheduled on May 25, 2023 on the Commission Consent Calendar.

8. **City of Lodi Scheduling Coordinator Agreement** – Staff is seeking a recommendation for Commission approval of a Scheduling Coordinator Agreement between NCPA and the City of Lodi, for the purpose of scheduling the Lodi Strategic Reserve Project (Resource ID LODI25_6_ERKNG1). *****This item was pulled from the agenda and will be brought back to a future meeting.*****

INFORMATIONAL ITEMS

9. **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: TBD
- 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 developing a Scheduling Coordinator Agreement with Lodi.

Geysers Geothermal – Next Steps

- Project Participation Percentage Transfer Deadline
 - Deadline: April 30, 2023
- Next Steps:
 - All assignments have been fully executed
 - NCPA to seek Commission approval of amended Appendix A to incorporate Table 3

10. NCPA Inter-Agency Resource Plan (IARP) Update – Staff provided an informational update regarding the development of the NCPA IARP.

- **Short Term Goals 2021-2026**
 - Identify Member's common needs (existing load and Member owned resources)
 - Conceptual plans of transition periods (effects of electrification and EV charging)
 - Proposal & Economic Evaluation (considering effects of temperature increase and increasing transmission costs)
- **Project Deliverables Schedule (Ascend)**
 - 3/2 – NCPA Background, Assumptions & Purpose
 - 3/9 – Energy & Peak Demand Forecasts (Pooling Member review of Load forecasts)
 - 3/16 – Resources & Capacity (Pooling Member review of Resources)
 - 4/28 – Load – Resource Balance (Pooling Member review)
 - 5/11 – Planning Scenario and Recommendations
 - 5/23 – Conclusion
 - 5/30 – Executive Summary

Please direct any questions to James Mearns with NCPA or Brandon Mauch with Ascend Analytics.

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

CTs – CT1 had 16 starts (7 ghost and 9 actual) of 6 forecasted. FYTD total is 120 starts. Alameda Units 1 & 2 were dispatched in the Day Ahead market. CT2 had 0 starts of 0 forecasted. FYTD total is 21 starts.

- **Outages**
 - CT1 Lodi – On 4/20/23 @1443 64B Utility Ground Fault Relay. Crews were dispatched and began troubleshooting. Found 13.8Kv bus cable to Aux transformer,

- “B” phase is bad. On 5/24/23 RFP went out to three electrical contractors, on 5/26 one contractor responded, quote on hand for the work. Unit forced out thru 5/15/23.
 - CT1 Alameda – U1/U2 – The NERC PRC-006 testing outage scheduled for 5/15/23 – 5/17/23 was cancelled due to PG&E unable to support those dates. New outage dates are 6/5/23 – 6/7/23.
 - CT2 STIG – Outage is complete and unit is back in service.
- **CT1 Lodi Run Hours**
 - YTD hours 16.5 of 200 Allowed (based on calendar year)
- **CT1 Alameda Diesel Hours**
 - U1= 5.27 hrs. of 20 (based on rolling year)
 - U2= 5.80 hrs. of 20 (based on rolling year)
- **Safety and Environmental**
 - No Safety issues to report.
 - DOT Pipeline and Hazardous Material Safety Administration (PHMSA), conducted Alameda gas pipeline inspection 4/18-4/20. To finalize inspection, DOT inspector needs to witness main gas shutoff for pipeline.
- **FY 20203 Encumbrance Update**
 - The CT1 Excitation upgrade is complete, NCPA has paid \$919,530.54 and the controls upgrade will need to be carried over into FY 2024. Controls estimated cost will be around \$255,000.
 - All other outstanding projects have been received and paid.
- **Staff reviewed the CAISO Commitment Runs for April 2023.**

Geo – There was one safety incident to report for the month of April due to an accidental H2S release. Safety training was done after this incident, which is now 56% complete for the year. Cal Fire Konocti is staging and starting vegetation management at the Geo Facilities. The average net generation level for April was 74 MW. Total average net generation was 53.3 GWh. The FY 2023 net generation goal is 734 GWh. Currently FY 2023 actual net generation is 577.8 GWh YTD at 4.8% under the forecasted net generation YTD. Unit 1 is currently still out of service. The return to service is TBD. Basket strainer material was found inside the turbine. Bids were received to open, clean, and inspect the turbine. Inspections were conducted on the Plant 1 and 2 cooling towers.

Hydro – The Hydro project continues with heavy generation schedules. Collierville (CV) Power House was at 99% availability and New Spicer Meadows (NMS) Power House was at 92% availability during the month of April. April precipitation was 0.1 inches based on the 5 – Station Index. Precipitation is at 61.2 total inches, and is at 167% of average for this date. The SWC dropped from 237 to 191 and is at 252% of average for this date. Alpine, Union, Utica, North Fork, Beaver Creek and McKays Point are all currently spilling.

Staff provided a McKays Sedimentation levels update. A February 2023 Bathymetry was conducted to determine sedimentation impact from recent 2023 storms. It's been detected that there is sediment movement into critical zones of the Hydro facilities including the cofferdam, power tunnel intake, fishery facilities and McKays Dam. There has been no overall net reservoir accumulation since 2018 – 518,000 to 460,000 cubic yards. The multi-beam scanning technology effectively shows advancement, scouring, and densification of the loose vegetative deposits. Staff will develop methods for a more frequent survey regime, and a sediment response plan.

- **New Spicer Meadows Reservoir Storage**
 - 12,191 acre feet increase (20%) month-over-month
 - 62,481 acre feet to 74,672 acre feet
 - High snow water content and forecasted spill
 - Optimizing stored water

- Flushing flows completed on 4/8/2023
- Anticipate elevated drafts based on required flushing flows, likelihood of Spicer spill, tailwater management, and market conditions
- Monitoring snowpack, water rights, runoff, and market

Current Events

- Projects
 - USGS approved the 2021-2022 Water Year Record
 - Continued FEMA/OES damage coordination
 - Monthly CCWD coordination meetings
 - Commencing preparatory work on all approved FY 2024 projects
 - Base mapping underway for Clarks Creek along CV PH
 - Detailed design out for proposals
 - 230 KV T-line vegetation management commencing
 - Work is bidding

12. Planning and Operations Update

- **Resource Integrations In Progress**
 - City of Lodi Strategic Reserve – June 2023
 - Dagget Solar / Storage – Q3 2023
 - Solar Summer 2023
 - BESS Fall 2023
 - Scarlet Solar / Storage – Q3 2023
 - West Tambo Solar – Q3 2023
 - Proxima Solar / Storage – Q1 2024
- **Summer 2023 Readiness** – A coordination meeting with CAISO on May 9. NCPA activities include review and confirmation of Member contact information, review and validation of operating procedures, updated Dispatch and SC training for emergency operations, discuss emergency operations with Members, and further coordination with CAISO.
- **Meter Maintenance Program** – Next steps include confirming Member contacts, developing a project schedule for the Member meter maintenance per site and/or device, and implanting internal procedures for the administration of the Meter Maintenance Program.

13. Next Meeting – The next regular Facilities Committee meeting is scheduled for June 7, 2023.

ADJOURNMENT


The meeting was adjourned at 12:05 pm by the Committee Chair.

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

Carrie Pollo	NCPA
Jane Luckhardt	NCPA
Michael DeBortoli	NCPA
Jay Mearns	NCPA
MARC PELLETIER	NCPA
Jeremy Lawson	NCPA
Jake Eymann	NCPA
Rafael Santana	NCPA
Ed Vira	NCPA
Tony Zimmer	NCPA
Brian Schinrock	NCPA
Ryley Kelly	Roseville

**Northern California Power Agency
May 3, 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	



651 Commerce Drive
Roseville, CA 95678

phone (916) 781-3636
fax (916) 783-7693
web www.ncpa.com

Minutes

Date: May 23, 2023
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: May 18, 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 9:08 am. Attending via teleconference and/or on-line presentation were Midson Hay (Alameda), Josh Cook (Biggs), Jake Carter (Gridley), Jiayo Chiang (Lodi), CJ Berry (Lompoc), Mike Brozo (Plumas-Sierra), Nick Rossow (Redding), Monica Nguyen and Basil Wong (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, Healdsburg, Palo Alto, Port of Oakland, Shasta Lake, and TID were absent. A quorum of the Committee was established.

PUBLIC FORUM

No public comment.

OPEN SESSION

DISCUSSION / ACTION ITEMS

2. **NCPA Geothermal Facility – Geothermal Plant 2, Unit 4 Cooling Tower Temporary Measures Project** – Staff presented background information and was seeking a recommendation for Commission approval of the Geothermal Plant 2, Unit 4 Cooling Tower Temporary Measures Project and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total not exceed \$250,000, to be funded through a Geothermal FY2023 budget augmentation.

NCPA hired an independent contractor specializing in cooling towers to conduct an inspection of the Geothermal Plant 2, Unit 4 cooling tower. Their inspection revealed that the cooling tower fans, sweet gas header, guardrail, and stairs are in urgent need of repair. While items such as stairs and guardrails can be mitigated with scaffolding, the fans and header are critical for operation. The inspection revealed deteriorated supports for the header and large splits and holes in the fans. Out of an abundance of caution and for the safety of all personnel, NCPA shut down the Geothermal Plant 2 on May 8, 2023. Staff and Committee Members discussed the urgency of the repairs and employee safety.

While the FY2024 budget included an \$800,000 project to replace the fan motor frames, blades, and hubs, temporary repairs are needed immediately to stabilize these items in order to get the unit back online. Complete repairs will be proposed in a future budget. The total cost of this project is not to exceed \$250,000. A breakdown of the project scope and associated costs is shown below.

Scope of Work	Cost
Mobilization/Demobilization	\$8,000.00
Repair Sweet Gas Line Supports	\$60,000.00
Remove, Clean, Refurbish/Replace Cooling Tower Fan Blades, Supports, and Equipment	\$140,000.00
Crane and Support	\$17,000.00
Contingency Funds	\$25,000.00
Total Project Cost	\$250,000.00

A FY2023 budget augmentation in the amount of \$250,000 is requested to fund this project. If approved, the additional cost of \$250,000 would require funding from the Geothermal Member agencies in proportion to their individual shares. NCPA will issue a special invoice for \$250,000 on May 26, 2023 and payable by June 15, 2023. Project Participants can elect to provide a letter of direction using their GOR funds or send funds from their bank account.

Motion: A motion was made by CJ Berry and seconded by Brian Schinstock recommending Commission approval authorizing the Geothermal Plant 2, Unit 4 Cooling Tower Temporary Measures Project and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total not exceed \$250,000, to be funded through a Geothermal FY2023 budget augmentation. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Plumas-Sierra, Roseville, Santa Clara and Ukiah. ABSTAIN = Redding The motion passed.

3. NCPA Geothermal Facility – Geothermal Plant 1, Unit 1 Steam Strainer Damage Project –

Staff presented background information and was seeking a recommendation for Commission approval of the Geothermal Plant 1, Unit 1 Steam Strainer Damage Project and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total not to exceed amount of \$2,500,000, to be funded through a Geothermal FY2023 budget augmentation.

On March 1, 2023, NCPA's Geothermal Plant 1, Unit 1 was taken offline for routine seasonal Stretford maintenance. During the course of inspections conducted by NCPA staff, steam strainer failures were found which caused strainer material to enter the steam turbine. Staff was unable to remove the upper casing to determine the extent of the damage. NCPA hired Reliable Turbine Services, LLC (RTS) to perform a Steam Path Inspection. RTS removed the upper turbine case and found screen material throughout the turbine rotor and casing diaphragms. Upon initial visual inspection, minimal obvious damage was seen.

RTS is recommending to pull, clean, and conduct nondestructive testing on the turbine rotor and diaphragms, and to remove and inspect the valves. After the turbine rotor, diaphragms, and upper turbine case are examined and any necessary repairs completed, the equipment will be reassembled and returned to service. It is expected that this work will be completed by June 30, 2023.

It is important to note that this unit is scheduled for a regular overhaul in 2026. During the course of this work, staff will be evaluating whether this scope can count as the regular scheduled overhaul, thus enabling NCPA to defer that future work. Committee Members expressed they would like a Special Facilities Committee meeting if an overhaul will be needed at this time and/or extending the outage. Members would like this plant to be up and running by July 1, 2023.

The total cost of the project is not to exceed \$2,500,000. A breakdown of the project scope and associated costs is shown below:

Scope of Work	Cost
Steam Path Inspection	\$93,685.00
RTS Proposal dated May 3, 2023 (includes mobilization, removal, blast-cleaning, non-destructive testing of rotor and stationary, valve removals and visual inspection, upper casing inspection, report of findings)	\$406,980.00
Additional Repairs, Reassembly, Demobilization	\$300,000.00
Contingency Funds	\$1,699,335.00
Total Project Cost	\$2,500,000.00

It should be noted that the large contingency is to allow for unexpected findings, and to allow for the option of completing the work as an overhaul, deferring the 2026 work. NCPA will not collect the contingency portion of the augmentation unless the work scope dictates the need. NCPA will issue a special invoice for \$800,665 on May 26, 2023 and payable by June 15, 2023. Project Participants can elect to provide a letter of direction using their GOR funds or send funds from their bank account. If it is recommended to overhaul the unit, NCPA will issue a subsequent special invoice for \$1,699,335 at a later date, but prior to the FY deadline date of June 30, 2023.

Motion: A motion was made by Josh Cook and seconded by Jiayo Chiang recommending Commission approval authorizing the Geothermal Plant 1, Unit 1 Steam Strainer Damage Project and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total not to exceed amount of \$2,500,000, to be funded through a Geothermal FY2023 budget augmentation. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Plumas-Sierra, Roseville, Santa Clara and Ukiah. ABSTAIN = Redding The motion passed.

4. **NCPA Geothermal Facility – FY2023 Geothermal Budget Augmentation for Routine Operations and Maintenance (O&M)** – Staff presented background information and was seeking a recommendation for Commission approval of a FY2023 budget augmentation in the amount of \$2,200,000, for application to NCPA's Geothermal facility Routine Operations and Maintenance (O&M) costs as a result of extraordinary work and extreme weather conditions during the year.

On April 28, 2022, the NCPA Commission approved the FY2023 Annual Budget (Resolution 22-45). Over the course of FY2023, various extraordinary events have resulted in higher than projected expenditures for routine operations and maintenance activities at NCPA's Geothermal facility, including various pump failures requiring the need for maintenance and to purchase parts for the pumps, extreme winter weather conditions causing the need for greater than normal maintenance activities including snow removal services, unexpected transmission line damage requiring emergency repairs, and increasing costs of steam royalties due to the rise in energy prices.

NCPA's Geothermal facility is requesting a budget augmentation to the FY2023 Annual Budget to fund these unexpected maintenance activities. The requested amount of the FY2023 Geothermal

budget augmentation is \$2,200,000. This budget augmentation is needed to fully fund the required operations and maintenance costs. The additional cost of \$2,200,000 would require funding from the Geothermal projects' respective member agencies in proportion to their individual shares. NCPA will issue a special invoice for \$2,200,000 on May 26, 2023 and payable by June 15, 2023. Project Participants can elect to provide a letter of direction using their GOR funds or send funds from their bank account.

Motion: A motion was made by Brian Schinstock and seconded by Cindy Sauers recommending Commission approval authorizing a FY2023 budget augmentation in the amount of \$2,200,000, for application to NCPA's Geothermal facility Routine Operations and Maintenance (O&M) costs as a result of extraordinary work and extreme weather conditions during the year. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Plumas-Sierra, Roseville, Santa Clara and Ukiah. ABSTAIN = Redding. The motion passed.

ADJOURNMENT

The meeting was adjourned at 10:04 am by the Committee Chair.


**Northern California Power Agency
May 18, 2023 Special Facilities Committee Meeting
Attendance List**

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

[illegible]

**Northern California Power Agency
May 18, 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	



Commission Staff Report

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Dee's Design Box, LLC. – First Amendment to Five Year Multi-Task Consulting Services Agreement for Graphic Design Services Changing Vendor's Name to Norwood Creative Group, Inc.; Applicable to the following: All Northern California Power Agency (NCPA), NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

AGENDA CATEGORY: Consent

FROM:	Jane Cirrincione	METHOD OF SELECTION:
	Assistant General Manager	<i>Competitive Pricing Process</i>
Division:	Legislative & Regulatory Affairs	<i>If other, please describe:</i>
Department:	Legislative & Regulatory	

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

Approve Resolution 23-X authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement (MTCSA) with Dee's Design Box, LLC. now known as Norwood Creative Group, Inc., for graphic design services, with any non-substantial changes recommended and approved by the NCPA General Counsel, to change the vendor name to Norwood Creative Group, Inc., and to increase the total not-to-exceed amount to \$500,000, for continued use by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

BACKGROUND:

Participants in NCPA's Customer Programs Working Groups requested assistance in contracting for graphic design services, and NCPA issued Request for Proposal (RFP) LR 2102 on June 3, 2021, to solicit proposals from qualified consultants providing graphic design services. Nine vendors responded to the RFP by the deadline of June 25, 2021. Based on the scoring review group's evaluation, three vendors were selected to provide graphic design services,

Nine vendors responded to the RFP. Based on the scoring committee's evaluation, three of the vendors were interviewed and selected to provide graphic design services. Dee's Design Box, LLC was one of the vendors selected based upon its experience and response to the RFP.

NCPA entered into a five-year MTCSA with Dee's Design Box LLC effective August 31, 2021, for an amount not to exceed \$250,000. On May 9, 2023, Dee's Design Box LLC notified NCPA that its name was changed to Norwood Creative Group, Inc as of June 1, 2023. This amendment will change the vendor name in the agreement to Norwood Creative Group, Inc.

To date, this agreement has been used by NCPA and several NCPA Members. To ensure sufficient funds are available for the remainder of the contract term, this amendment will increase the not-to-exceed amount from \$250,000 to \$500,000 for continued use by NCPA, NCPA Members, SCPPA, and SCPPA Members.

NCPA has agreements in place for similar services with Background Stories Co and Pat Davis Design Group, Inc.

FISCAL IMPACT:

Upon execution, the total not-to-exceed amount of the agreement will increase from \$250,000 to \$500,000 for the contract term. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

Three vendors were selected as a result of an RFP process in accordance with NCPA's procurement policies and procedures. An RFP was posted on NCPA's website June 3, 2021, to June 25, 2021. A total of nine responses were received and evaluated based on: 1. Quality and completeness of proposal; 2. Knowledge, experience and skills to provide the requested services; 3. Experience of staff to be assigned to the project, based on prior engagements of similar scope and complexity; 4. Competitive rates for the requested services; 5. Demonstrated strong project management; and 6. Customer references. The selection process was completed by NCPA along with Alameda Municipal Power and the City of Lodi.

SR:

This enabling agreement does not commit NCPA to any expenditure of funds. 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 Facilities Committee review and approval during its regularly scheduled meeting on June 7, 2023.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution 23-XX
- First Amendment to Multi-Task Consulting Services Agreement with Dee's Design Box, LLC, n/k/a Norwood Creative Group, Inc.
- Multi-Task Consulting Services Agreement with Dee's Design Box, LLC.

SR:

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE MULTI-TASK CONSULTING SERVICES AGREEMENT WITH DEE'S DESIGN BOX, LLC n/k/a NORWOOD CREATIVE GROUP, INC.

(reference Staff Report #XXX:23)

WHEREAS, Northern California Power Agency (NCPA) and Dee's Design Box, LLC entered into a Multi-Task Consulting Services Agreement effective August 31, 2021, for Dee's Design Box, LLC to provide graphic design services, for use by NCPA, NCPA Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, effective June 1, 2023, Dee's Design Box, LLC's name changed to Norwood Creative Group, Inc., and the Agency desires to agree to substitute the new Norwood Creative Group, Inc. name in place of Dee's Design Box, LLC in the Agreement; and

WHEREAS, NCPA now desires to increase the not to exceed amount from \$250,000 to \$500,000 to ensure sufficient funds are available for the remainder of the contract term; 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 the First Amendment to the Multi-Task Consulting Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, for continued use 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:
ASSISTANT SECRETARY



**FIRST AMENDMENT TO MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND DEE'S DESIGN BOX, LLC, n/k/a
NORWOOD CREATIVE GROUP, INC.**

This First Amendment ("Amendment") to the Multi-Task Consulting Services Agreement is entered into by and between the Northern California Power Agency ("Agency") and Dee's Design Box, LLC n/k/a Norwood Creative Group, Inc. ("Consultant") (collectively referred to as "the Parties") as of _____, 2023.

WHEREAS, the Parties entered into a Multi-Task Consulting Services Agreement dated effective August 31, 2021, (the "Agreement") for Consultant to provide graphic design services; and

WHEREAS, effective June 1, 2023, Dee's Design Box LLC changed its name and business structure to Norwood Creative Group, Inc., and the Parties desire to amend the Agreement to reflect this change; and

WHEREAS, the Agency also desires to amend the Agreement to increase the total compensation authorized by the Agreement from a "NOT TO EXCEED" amount of \$250,000 to a 'NOT TO EXCEED amount of \$500,000; and

WHEREAS, the Parties now desire to amend Section 10.8 entitled "Notices" of the Agreement to reflect the change of Consultant's name; and

WHEREAS, the Parties agree to the assignment of the Agreement to Norwood Creative Group, LLC; and

WHEREAS, the Parties desire to amend the Compensation Schedule and Hourly Rates set forth in Exhibit B; 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 Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Norwood Creative Group, Inc., with its office located at 125 Kensington Drive, Youngsville, NC 27596 ("Consultant") (together sometimes referred to as the "Parties") as of August 31, 2021 ("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** 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.

The remainder of Section 2 of the Agreement is unchanged.

3. **Section 10.8-Notices** of the Agreement is replaced in its entirety as follows:

Any written notice to Consultant shall be sent to:

DeAne Norwood
Norwood Creative Group, Inc.
125 Kensington Drive
Youngsville, NC 27596

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

4. **Exhibit B – COMPENSATION SCHEDULE** is amended and restated to read in full as set forth in the Attached Exhibit B.
5. Agency hereby approves the name change of the Agreement from Dee's Design Box, LLC to Norwood Creative Group, Inc., Consultant.
6. 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

Date:_____

NORWOOD CREATIVE GROUP, INC.

RANDY S. HOWARD, General Manager

DEANE NORWOOD, CEO

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$500,000.00. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Hourly Rate

\$75 per hour for during year one of the Agreement.

Hourly rate to increase by 2% each year.

Estimates will be provided to requestors that will include an approximate total number of not-to-exceed hours to create design product(s) from start to finish.

Invoiced on the first of every month as a previous monthly total, broken out by job and within each job by time entries, from job requests completed.

Monthly Retainer

\$6,000 per month for unlimited service hours during year one of the Agreement.

Monthly rate to increase by 2% each year.

Invoiced on the first of every month, or other agreed upon terms.

Summary of Rates:

Effective 8/31/2021	Effective 8/31/2022	Effective 8/31/2023	Effective 8/31/2024	Effective 8/31/2025
Hourly Rates				
\$ 75.00	\$ 76.50	\$ 78.03	\$79.59	\$ 81.18
Monthly Retainer				
\$ 6,000.00	\$ 6,120.00	\$ 6,242.40	\$ 6,367.25	\$ 6,494.60

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.



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
DEE'S DESIGN BOX, LLC**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Dee's Design Box, LLC, a sole proprietorship with its office located at 125 Kensington Drive, Youngsville, NC 27596 ("Consultant") (together sometimes referred to as the "Parties") as of 8/31, 2021 ("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** Two Hundred Fifty Thousand dollars (\$250,000) 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 for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial General Insurance. Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$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 \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 All Policies Requirements.

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

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONSULTANT.

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

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge

and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

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

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

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.
- 9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in

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 Jane Cirrincione, 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:

DeAne Norwood
Chief Executive Officer
Dee's Design Box
125 Kensington Drive
Youngsville, NC 27596

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

SIGNATURES ON NEXT PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

DEE'S DESIGN BOX

Date 8/31/2021

Date _____

Marty Hand for

RANDY S. HOWARD, GENERAL MANAGER

See counterpart

DEANE NORWOOD, CEO

Attest:

[Signature]

Assistant Secretary of the Commission

Approved as to Form:

[Signature]

Jane E. Luckhardt, General Counsel

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

NORTHERN CALIFORNIA POWER AGENCY

DEE'S DESIGN BOX

Date _____

Date August 31, 2021

RANDY S. HOWARD, GENERAL MANAGER

DeAnne Norwood

DEANE NORWOOD, CEO

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Dee's Design Box, LLC ("Consultant") shall provide graphic design services, as requested by the Northern California Power Agency ("Agency") on its behalf or on behalf of its Members, Southern California Public Power Authority ("SCPPA"), or SCPPA Members. Materials developed for NCPA under the scope of the agreement may be shared and used by NCPA Members for commercial purposes. In some cases, NCPA may request the creation of designs that can be rebranded by NCPA Members for their individual use.

The Consultant will provide the following general services, to be customized as needed by the requesting entity:

1. General Graphic Design Services

- Design templates in InDesign, Photoshop, Adobe Illustrator, as required
- Create custom brochures, conference agendas/programs, flow charts, models, illustrations, and other graphics
- Create content for customer education and outreach campaigns
- Import content into approved templates
- Create unique marketing and communications collateral, as needed. Examples include: one-sheeters/fact sheets, brochures, posters, event designs (logos, signage, designs for promotional materials), evites/emails, banners, business cards, fliers, templates, reports, and social media graphics
- Provide photography retouching and editing
- Provide final compilation of documents in print and/or electronic formats (e.g. PDF, JPEG, GIF, PNG, PSD, EPS, or other design file formats) as needed and specified for each project

2. Presentation Graphics

- Design presentation templates in deck slide software (e.g., PowerPoint)
- Create custom flow charts, models, illustrations, and other graphics
- Import content into approved template
- Develop supplementary materials, such as handouts and creative leave-behinds
- Provide final compilation of documents in print and/or electronic formats as needed

3. Special Projects

- Website design
- Support for the development of promotional videos
- Complex visual representation of information and/or processes (including infographics)
- Interface and coordinate with third party vendors, (e.g. printer companies, signage companies, translation services)
- Instruction on printing and use of in-house copy machines for NCPA staff for those projects that can be finalized in-house at NCPA.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$250,000.00. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Hourly Rate

\$75 per hour

Hourly rate to increase by 2% each year.

Estimates will be provided to requestors that will include an approximate total number of not-to-exceed hours to create design product(s) from start to finish.

Invoiced on the first of every month as a previous monthly total, broken out by job and within each job by time entries, from job requests completed.

Monthly Retainer

\$6,000 per month for unlimited service hours

Monthly rate to increase by 2% each year.

Invoiced on the first of every month, or other agreed upon terms.

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.



Commission Staff Report

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Brightview Landscape Services, Inc. – Five Year Multi-Task General Services Agreement for Landscape Maintenance Services; applicable to the following: All NCPA Facilities

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:

Approve Resolution 23-XX authorizing the General Manager or his designee to enter into a Five Year Multi-Task General Services Agreement with Brightview Landscape Services, Inc. for professional commercial landscape maintenance services, including; horticulture maintenance, irrigation, maintenance to irrigation, and special projects, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$300,000 over five years, for use only at any facilities owned and/or operated by NCPA.

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.

The vendor is a provider for local municipalities with proven experience in the region. The vendor proposed the lowest first-year cost, with a competitive year-over-year escalation schedule. NCPA desires to enter into a five year, multi-task general services agreement with Brightview Landscape Services, Inc. for competitive bids on small, landscaping projects and services. 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 Brightview Landscape Services 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 June 7, 2023

AFTER FACILITIES APPROVAL: On June 7, 2023, the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments:

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

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE MULTI-TASK GENERAL SERVICES AGREEMENT WITH BRIGHTVIEW LANDSCAPE SERVICES, 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); and

WHEREAS, Brightview Landscape Services, 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, Brightview Landscape Services, Inc was selected as the vendor to provide these services due to pricing and proven experience with local municipalities; and

WHEREAS, NCPA seeks to enter into a five-year Multi-Task General Services Agreement with Brightview Landscape Services, Inc to provide such services as needed at all NCPA 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 only at any facilities owned and/or operated by NCPA.

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
BRIGHTVIEW LANDSCAPE SERVICES, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Brightview Landscape Services, Inc, a corporation with its office located at 4215 Duluth Ave, Ste 100, Rocklin, CA 95765 ("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.
- 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** three hundred thousand dollars (\$300,000) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not applicable.

4.4 Pollution Insurance. Not applicable.

4.5 All Policies Requirements.

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

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

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

4.5.4 Additional Certificates and Endorsements. Not applicable.

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

5.1 Effect of Insurance. Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By

execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all third-party (where third party includes Agency employees) 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, gross, or active negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

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

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

6.4 Certification as to California Energy Commission. Not applicable.

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

6.6 Maintenance Labor Agreement. Not applicable.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder. Any regulated substances applied as part of the Services shall be applied in accordance with applicable laws and regulations by properly licensed personnel.

Agency shall remain responsible for any water-conservation goals, requirements, mandates, directives, legislation or rulings (collectively "Regulations"), as may be or become in force at the property(s) serviced by this Agreement.

- 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).

Contractor may cancel this Agreement at any time and without cause upon one hundred twenty (120) days prior written notice to Agency.

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

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

have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.
- 9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential

Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

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

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

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

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

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

Section 10. PROJECT SITE.

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

Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.

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

Section 11. WARRANTY.

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

reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

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

- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.

Section 13. MISCELLANEOUS PROVISIONS.

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

Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial

interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

13.7 Contract Administrator. This Agreement shall be administered by 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.

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

Karine Stuimer
Senior Vice President
BrightView Landscape Services, Inc.
4215 Duluth Ave, Ste 100
Rocklin, CA 95765

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

- 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.
- 13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.

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

NORTHERN CALIFORNIA POWER AGENCY

BRIGHTVIEW LANDSCAPE SERVICE, INC

Date _____

Date _____

RANDY HOWARD
General Manager

KARINE STUIMER
Senior Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

DRAFT

EXHIBIT A

SCOPE OF WORK

As requested by the Agency, Contractor shall furnish all labor, material, tools, equipment, transportation, insurance, incidentals, and other facilities to perform all work for the Landscaping Maintenance Services.

Work to be performed comprises general groundskeeping, horticultural maintenance, irrigation and cleanup of landscape areas as designated in each service area at the list of locations and, when necessary, repairs to irrigation systems and replacement of plant materials.

Services are to be Scheduled on **Monday or Wednesday** weekly at Property 1 (NCPA Headquarters, 651 Commerce Drive, Roseville, CA 95678) and **Monday or Wednesday** Bi-Weekly at Property 2 (NCPA DRC, 5034 Sunrise Blvd, Fair Oaks, CA 95628). Services to be rendered include but are not limited to the following:

- a) Maintenance of turf and groundcover areas, mowing and edging
- b) Mowing of "Field" native grasses on an as-needed basis (1) per month July – September and November – March, (2) per month April – June and October – November;
- c) Removal of litter and debris from turf, planter beds, fence lines, and street curbs;
- d) Pruning of trees and shrubs;
- e) Application of chemical agents for control of weeds, plant disease, and insects that are not harmful to desired plant material and/or pedestrians. Any damage to desirable plant material due to the Contractor's negligence or misuse of pesticides will be remedied by the Contractor at his or her expense and in a timely manner;
- f) Monthly inspection and maintenance of irrigation systems;
- g) All sidewalks, parking lots, and hard surfaces shall be blown clear of debris once each week;
- h) Windfall branches and debris shall be removed for disposal by the Contractor. Wind-fallen trees are not in the contract;
- i) Replacement of plant material; and
- j) Special Projects, including but not limited to, aeration, reseeding, renovations, pavers, rocks and border installation, and emergency response.

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Property #1 HQ – 651 Commerce Dr. Roseville, CA 95678	\$ <u>1,806.00</u> /Month
Property #2 DRC – 5034 Sunrise Blvd. Fair Oaks, CA 95628	\$ <u>596.42</u> /Month
Subtotal for Facilities	\$ <u>2,402.42</u> /Month
Annual for Facilities	\$ <u>28,829.04</u> /Year
Escalation over 5 Years	
Year 1	\$ <u>28,829.04</u> /Year
Year 2	\$ <u>30,270.00</u> /Year
Year 3	\$ <u>31,784.00</u> /Year
Year 4	\$ <u>33,374.00</u> /Year
Year 5	\$ <u>35,043.00</u> /Year
Irrigator Labor Rate Standard Business Hours	\$ <u>75.00</u> /hour
Irrigator Labor Rate Emergency After Hours	\$ <u>125.00</u> /hour
Parts and Materials Cost Plus	% <u>10</u> Profit

Pricing for services to be performed at NCPA 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

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Authorize Northern California Power Agency's General Manager to Execute Confirmation Number 0304, with a not-to-exceed amount of \$713,195.50, for CLEAResult Consulting Inc. Services to the City of Alameda dba Alameda Municipal Power and Issue Corresponding Purchase Orders Under the Support Services Program

AGENDA CATEGORY: Consent

FROM:	Monty Hanks Chief Financial Officer/Assistant General Manager	METHOD OF SELECTION:	<i>Other</i>
Division:	Administrative Services	<i>Alameda Acknowledged Satisfaction of its Purchasing Policies</i>	
Department:	Accounting & Finance		

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

Subject to approval by the Alameda Public Utilities Board of the requested services under the terms of the Northern California Power Agency (NCPA) Support Services Program Agreement, approval of Resolution 23-36 authorizing the NCPA General Manager or his designee to execute Confirmation Number 0304, with a not-to-exceed amount of \$713,195.50, with any non-substantive changes as approved by the NCPA General Counsel, and issue Purchase Orders to CLEAResult Consulting Inc. (CLEAResult) for electric vehicle (EV) charging outreach and technical assistance services through December 17, 2025.

BACKGROUND:

The City of Alameda dba Alameda Municipal Power (AMP) became a signatory to the NCPA Support Services Program Agreement (SSPA) on June 8, 2016, which agreement authorizes among other things, the purchase or acquisition of goods and services by NCPA Members through use of NCPA's agreements with its vendors.

NCPA entered into a three-year Multi-Task Consulting Services Agreement (Agreement) with CLEAResult Consulting Inc. (CLEAResult) effective December 18, 2020, for electric vehicle (EV) education, electrification education, and additional energy efficiency related services. On April 27, 2023, the Commission approved a First Amendment to Resolution 23-20 authorizing a First Amendment to the Agreement extending the term through December 17, 2025, increasing the not-to-exceed amount to \$2,000,000, and revising Exhibits "A" and "B".

In April 2023, AMP submitted a Member Task Request under the SSPA for CLEAResult services to provide EV charging outreach and technical assistance services through December 17, 2025. Per the CLEAResult Statement of Work and AMP Task Request, the cost for the services is not-to-exceed \$615,270.00.

If approved, Confirmation Number 0304 states that NCPA agrees to provide the requested services through its contract with CLEAResult, as amended, in the amount of not-to-exceed \$615,270.00, plus a 15% contingency requested by AMP of \$92,290.50, for a total services not-to-exceed amount of \$707,560.50. With the addition of NCPA's administrative fees of not more than \$5,635.00, the total amount expended under the Confirmation will not exceed \$713,195.50.

On July 17, 2023, the Alameda Public Utilities Board will consider for approval Confirmation Number 0304 under the Support Services Program Agreement for these energy efficiency services provided to AMP by CLEAResult through December 17, 2025, for a Confirmation not-to-exceed amount of \$713,195.50.

FISCAL IMPACT:

There is no fiscal impact to NCPA. The services provided by CLEAResult to AMP will be billed to and paid by AMP pursuant to the terms of the Support Services Program Agreement. NCPA's administrative costs will be reimbursed by AMP.

SELECTION PROCESS:

AMP will utilize CLEAResult's services through NCPA's Support Services Program. AMP has confirmed through submission of its Task Request that it is responsible for satisfying AMP's Purchasing Policies.

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:

On June 7, 2023, the Facilities Committee will review the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments:

- Resolution 23-36
- Proposed Confirmation Number 0304

RESOLUTION 23-26

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY AUTHORIZING THE GENERAL MANAGER TO EXECUTE CONFIRMATION NUMBER 0304, WITH A NOT-TO-EXCEED AMOUNT OF \$713,195.50, FOR CLEARresult CONSULTING INC. SERVICES TO CITY OF ALAMEDA DBA ALAMEDA MUNICIPAL POWER AND ISSUE PURCHASE ORDERS UNDER THE SUPPORT SERVICES PROGRAM

(reference Staff Report #152:23)

WHEREAS, the City of Alameda dba Alameda Municipal Power (AMP) became a signatory to the NCPA Support Services Program Agreement (SSPA) on June 8, 2016, which agreement authorizes among other things, the purchase or acquisition of goods and services by NCPA Members through use of NCPA's agreements with its vendors; and

WHEREAS, NCPA entered into a Multi-Task Consulting Services Agreement with CLEARresult Consulting Inc. (CLEARresult) effective December 18, 2020, for electric vehicle (EV) education, electrification education, and additional energy efficiency related services. On April 27, 2023, the commission approved a First Amendment to Resolution 23-20 authorizing a First Amendment to the Agreement extending the term through December 17, 2025, increasing the not-to-exceed amount to \$2,000,000, and revising Exhibits "A" and "B"; and

WHEREAS, in April 2023, AMP submitted a Member Task Request under the SSPA for CLEARresult services to provide EV charging outreach and technical assistance services through December 17, 2025. Per the CLEARresult Statement of Work and AMP Task Request, the cost for the services is not-to-exceed \$615,270.00; and

WHEREAS, Confirmation Number 0304 states that NCPA agrees to provide the requested services through its contract with CLEARresult, as amended, in the amount of not-to-exceed \$615,270.00, plus a 15% contingency requested by AMP of \$92,290.50, for a total services not-to-exceed amount of \$707,560.50. With the addition of NCPA's administrative fees of not more than \$5,635.00, the total amount expended under the Confirmation will not exceed \$713,195.50; and

WHEREAS, this item will be considered by the Alameda Public Utilities Board on July 17, 2023, or as soon thereafter as possible, and is subject to that 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, under the terms of the NCPA Support Services Program Agreement, the Commission of the Northern California Power Agency authorizes the NCPA General Manager or his designee to execute Confirmation Number 0304, with a not-to-exceed amount of \$713,195.50, with any non-substantive changes as approved by the NCPA General Counsel, and issue Purchase Orders to CLEARresult Consulting Inc. for electric vehicle charging outreach and technical assistance services to AMP through December 17, 2025.

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:

ASSISTANT SECRETARY

CONFIRMATION UNDER THE NCPA SUPPORT SERVICES PROGRAM AGREEMENT

1. This is a Confirmation pursuant to the Support Services Program Agreement and subject to the terms and conditions of that agreement, except as expressly provided in this Confirmation. All capitalized terms have the meaning given to them in the Support Services Program Agreement.

2. The Participating Member for this Confirmation is the CITY OF ALAMEDA DBA ALAMEDA MUNICIPAL POWER for services in the total not-to-exceed amount of \$707,560.50 from CLEAResult Consulting Inc. as detailed in the Statement of Work referenced in paragraph 3. The services amount includes \$615,270.00 as specified in the Statement of Work, plus a 15% contingency of \$92,290.50. This is not a guarantee that the full amount will be paid to CLEAResult Consulting Inc., but is merely a limit of potential expenditures for services under this Confirmation.

3. The Participating Member requests the following described Support Services in the dollar amount specified. NCPA agrees to provide the following Support Services to the Participating Member:

CLEAResult Consulting Inc. shall provide electric vehicle charging outreach and technical assistance services as detailed in the Statement of Work for Alameda Municipal Power dated May 3, 2023 for reference. The services shall continue through December 17, 2025. A copy of the Statement of Work is attached hereto as Exhibit "A".

4. The Participating Member agrees to pay for the Support Services in the amount set forth in paragraph 2 above; plus, the administrative fee in the amount not-to-exceed \$5,635.00 (calculated at \$685.00 for development of the Confirmation and first month of administration, plus \$165.00 per month for up to 30 additional months to be billed as costs are actually incurred), in accordance with the provisions of the Support Services Program Agreement. The total amount expended under this Confirmation will not exceed \$713,195.50.

5. A Security Account deposit is not required for this Confirmation.

Date: _____

Date: _____

Participating Member:

CITY OF ALAMEDA DBA
ALAMEDA MUNICIPAL POWER

NORTHERN CALIFORNIA POWER AGENCY

By its Designated Representatives:

By: _____
Randy S. Howard, General Manager

Attest:

Nico Procos, General Manager

Assistant Secretary to Commission

And

Approved as to form:

Office of the City Attorney

Jane E. Luckhardt, NCPA General Counsel

ES-AGY-2016-001

Confirmation No. 0304

STATEMENT OF WORK FOR EV CHARGING OUTREACH AND TECHNICAL ASSISTANCE FOR ALAMEDA MUNICIPAL POWER

1. Statement of Work. THIS STATEMENT OF WORK FOR ELECTRIC VEHICLE ("EV") CHARGING OUTREACH AND TECHNICAL ASSISTANCE SERVICES TO ALAMEDA MUNICIPAL POWER (this "SOW") is pursuant to the terms and conditions of that certain Multi-Task Consulting Services Agreement between the Northern California Power Agency ("NCPA") and CLEAResult Consulting Inc. ("CLEAResult"), dated December 18, 2020 (the "Agreement"), as amended. Capitalized terms not defined in this SOW are as defined in the Agreement.
2. General Scope. As required in the Agreement, this SOW defines the Services. The Parties intend for CLEAResult to perform EV charging outreach and technical assistance services for Alameda Municipal Power, a member of NCPA ("AMP"). The Parties acknowledge and agree that there are no installation services included under this SOW and that no work is allowed under this SOW that would qualify as a public works project under the California Public Contracts Code.
3. Term. The term of this SOW is from the date of signature by CLEAResult on a purchase order issued by NCPA ("Purchase Order") ("the Effective Date") through December 17, 2025.
4. Budget. The budget for this SOW is not-to-exceed ("NTE") \$615,270. The table below provides the estimated budget per task based on time and materials rates. As requested or approved by AMP in writing (email is sufficient), CLEAResult may shift budget between tasks to meet the needs for AMP and AMP's customers so long as the NTE amount is not exceeded.

Task No.	Description	2023	2024	2025
1	Startup	\$39,500	NA	NA
2	Program Management & Reporting	\$18,745	\$38,513	\$39,589
3	Marketing, Outreach & Education	\$16,459	\$33,816	\$34,761
4	Site Assessments	\$60,007	\$123,290	\$126,736
5	Vendor & Trade Ally Management	\$4,800	\$9,863	\$10,139
6	Bid Consultation & Installation Support	\$11,430	\$23,483	\$24,140
Total NTE		\$150,940	\$228,965	\$235,365

- a. Billing Rates. CLEAResult's time and materials billing rates for this SOW are listed in Exhibit "B" of the Agreement, as amended. CLEAResult will provide NCPA with itemized invoices for services each period by Task No., and in accordance with the terms of the Agreement.
- b. Payment. NCPA will make payment in accordance with the terms of the Agreement.

AMP Obligations. None.

5. Tasks. CLEAResult shall perform the following:

Task	Description	Due Date
1. Startup	a. Host kickoff meeting with AMP to finalize program strategy and begin coordination on startup work b. Prepare Program documents, including Program manual and customer and contractor participation agreements c. Define marketing strategy and prepare initial marketing collateral d. Launch Program by deploying customer-facing application and marketing	60 days after Effective Date

Approved by CLEAResult 5-2-2023
 Approved by AMP 5-3-2023 and Finalized

2. Program Management & Reporting	<ul style="list-style-type: none"> a. Host online meeting with AMP every other week b. By the 1st of each month, prepare and deliver to AMP a report summarizing Program activity and budget status for the 30-day period ending on the 20th of the prior month 	Ongoing
3. Marketing, Outreach & Education	<ul style="list-style-type: none"> a. Create one page program outreach sheet, presentation templates, and call script designed to raise customer awareness and drive Program enrollment b. Host up to two (2) customer webinars per year to educate eligible customers on the benefits of installing EV charging and Program services c. Conduct direct phone, email, and in-person outreach to eligible customers 	Ongoing until six (6) months before Program ends
4. Site Assessments	<ul style="list-style-type: none"> a. Conduct pre-assessment meeting with participating customer to learn about their property, any objectives they have for an EV charging project, and schedule the site assessment b. Prepare for the assessment by gathering and reviewing remotely accessible data c. Conduct an onsite assessment to engage site decision-makers and collect information about the location, dimensions, and capacity of parking and electrical infrastructure d. Analyze the data collected and prepare one (1) to three (3) EV charging solutions for the customer that describe EV charging scope and supporting infrastructure, including available incentives e. Within thirty (30) days of onsite assessment, provide report to AMP for review f. Revise report as requested by the AMP then delivery report to customer g. Host online meeting with customer and AMP to review the report and determine next steps to select a solution and move forward with installation 	Ongoing
5. Vendor & Trade Ally Management	<ul style="list-style-type: none"> a. Solicit applications from local electrical contractors, review applications, execute contractor participation agreements, and develop a qualified installer ("Trade Ally") list b. Monitor customer satisfaction with Trade Allies and address any performance issues with Trade Ally training or disciplinary action c. As approved by AMP, use either (1) existing EV supply equipment ("EVSE") qualified product list ("QPL") or (2) develop new list specific to AMP's needs d. Monitor EVSE QPL and update annually 	Develop lists within ninety (90) days from Program launch
6. Bid Consultation & Installation Support	<ul style="list-style-type: none"> a. Provide participating customer with list of Trade Allies b. As requested, assist with requests for bids from Trade Allies c. As requested, assess bids received d. As requested, review design documents to confirm alignment with EVSE scope, identify potential issues, and make cost-saving recommendations e. Engage customer and installation contractor as needed to address questions and troubleshoot installation issues f. Upon completion of installation, verify EVSE installation and commissioning and evaluate customer satisfaction 	Ongoing



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Veterans Industrial Protection Inc – Five Year Multi-Task General Services Agreement for Fire System 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:	Geothermal	

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

Approve Resolution 23-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Veterans Industrial Protection Inc for fire system maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$3,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

BACKGROUND:

Fire system maintenance services, including inspection, testing, system recharge, monitoring, modification and design build services, are required from time to time at facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. Veterans Industrial Protection Inc is a new vendor for NCPA. NCPA Geothermal staff contacted Veterans Industrial Protection Inc because they offer California Registered Fire Protection Engineer (FPE) services. After having met with this vendor, staff recommends that NCPA enter into an enabling agreement with Veterans Industrial Protection Inc, so established terms and conditions are in place should this vendor be the successful bidder on future projects. Execution of this enabling agreement will also increase the pool of qualified vendors willing to work in the more remote location of NCPA's Geothermal facility, which will result in more competitive bidding when services are needed. NCPA has enabling agreements in place for similar services with Sabah International, Inc., and ORR Protection Systems, Inc.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$3,000,000 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 June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On June 12, 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 between NCPA and Veterans Industrial Protection Inc

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH VETERANS INDUSTRIAL PROTECTION INC

(reference Staff Report #XXX:23)

WHEREAS, fire system maintenance 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, Veterans Industrial Protection Inc is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with Veterans Industrial Protection 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 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 Multi-Task General Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$3,000,000 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
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
VETERANS INDUSTRIAL PROTECTION 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 Veterans Industrial Protection Inc., a corporation with its office located at 17741 Hinton Street, Hesperia, CA 92345 ("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** THREE MILLION dollars (\$3,000,000) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable

4.4 Pollution Insurance. Not Applicable

4.5 All Policies Requirements.

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

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

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 Michael DeBortoli, 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:

Charlie Johnson
Director of Operations
Veterans Industrial Protection Inc
17741 Hinton Street
Hesperia, CA 92345

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

VETERANS INDUSTRIAL PROTECTION
INC

Date_____

Date_____

RANDY S. HOWARD, General Manager

**CHARLIE JOHNSON, Director of
Operations**

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Veterans Industrial Protection Inc ("Contractor") shall provide fire system 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.

General services to include, but not be limited to the following:

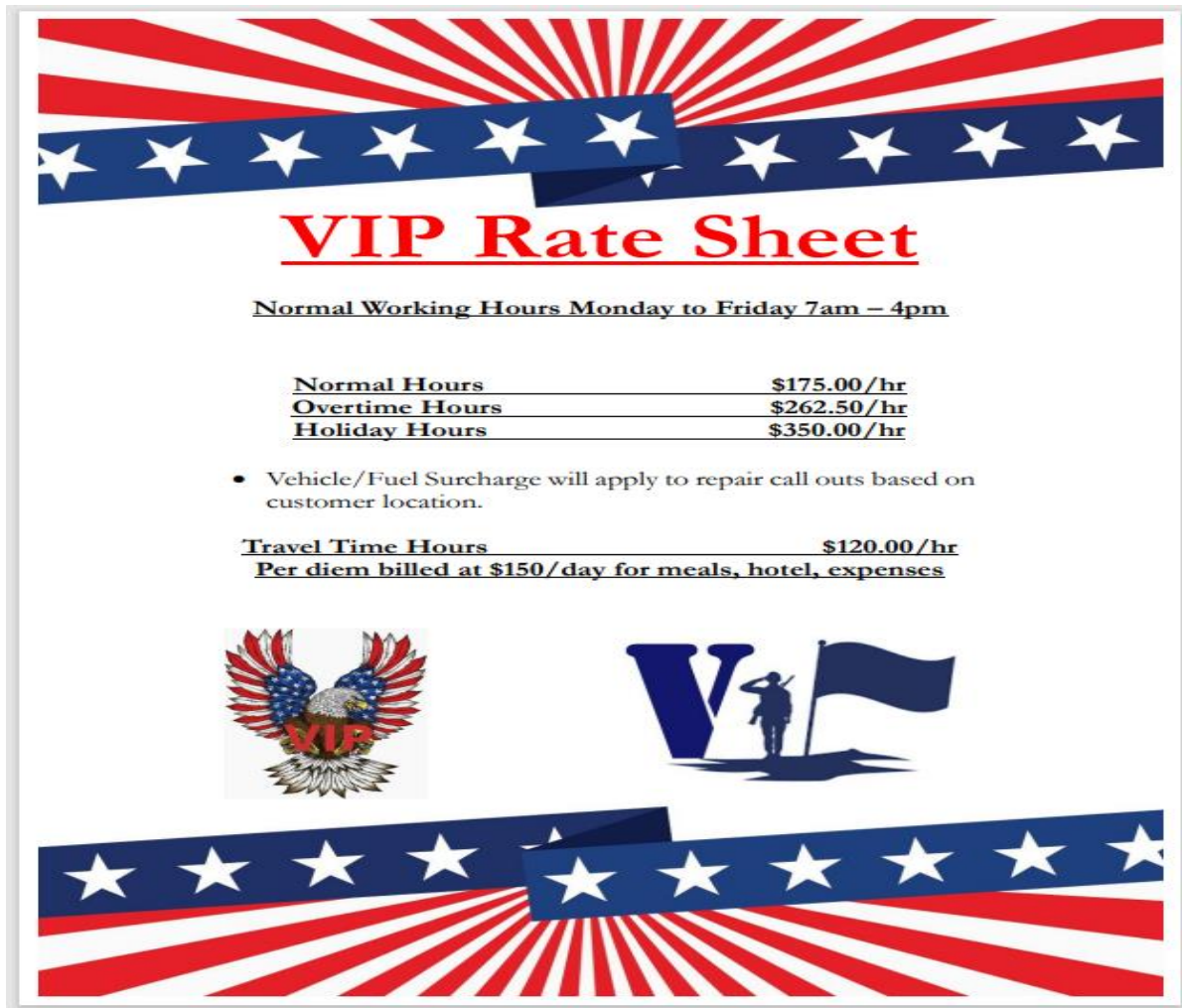
- Inspection & Testing
 - o Fire Alarm and Detection System
 - o Fire Suppression Systems
 - o Air Sampling
 - o Fire Extinguishers
 - o Sprinkler Systems
 - o Emergency/Exit Lights
- System Recharge
- System Monitoring
- System Modifications
- Materials
 - o Supply or procure miscellaneous maintenance material

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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





VIP Rate Sheet

Normal Working Hours Monday to Friday 7am – 4pm

<u>Normal Hours</u>	<u>\$175.00/hr</u>
<u>Overtime Hours</u>	<u>\$262.50/hr</u>
<u>Holiday Hours</u>	<u>\$350.00/hr</u>

- Vehicle/Fuel Surcharge will apply to repair call outs based on customer location.

Travel Time Hours **\$120.00/hr**
Per diem billed at \$150/day for meals, hotel, expenses



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

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit) (Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Rescue Solutions, LLC First Amendment to Five Year Multi-Task General Services Agreement for Rescue Response Related Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities

AGENDA CATEGORY: Consent

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

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

Approve Resolution 23-XX authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with Rescue Solutions, LLC for rescue response related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, increasing the not-to-exceed amount from \$500,000 to \$1,500,000 and amending Exhibit B – Compensation Schedule and Hourly Fees, for continued use at any facilities owned and/or operated by NCPA.

BACKGROUND:

Rescue response related services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NCPA entered into a five year Multi-Task General Services Agreement with Rescue Solutions, LLC, effective December 14, 2021, for an amount not to exceed \$500,000, for use at any facilities owned and/or operated by NCPA.

This agreement was used by the Geothermal Facility extensively during the Plant 2, Unit 4 Steam Turbine Rotor and Steam Turbine Generator Overhaul Project and the agreement is now running low on funds. NCPA now desires to enter into a First Amendment to the current Multi-Task General Services Agreement, increasing the not to exceed amount from \$500,000 to \$1,500,000, to ensure there are sufficient funds available for the remainder of the contract term. Exhibit B – Compensation Schedule and Hourly Fees will also be amended as requested by the vendor to reflect an increase in labor and material costs. This agreement will continue to be available for use at any facility owned and/or operated by NCPA.

NCPA has agreements in place for similar services with Advanced Chemical Transport Inc. dba ACTEnviro, Patriot Environmental Services, Inc., Northern Industrial Construction, and Capstone Fire & Safety Management (pending).

FISCAL IMPACT:

Upon execution, the total not to exceed amount of the agreement will increase from \$500,000 to \$1,500,000 over the remainder of the contract term. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are 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 June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On June 12, 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 Rescue Solutions, LLC
- First Amendment to Multi-Task General Services Agreement with Rescue Solutions, LLC

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE MULTI-TASK GENERAL SERVICES AGREEMENT WITH RESCUE SOLUTIONS, LLC

(reference Staff Report #XXX:23)

WHEREAS, Northern California Power Agency (NCPA) and Rescue Solutions, LLC entered into a Multi-Task General Services Agreement effective December 14, 2021, for Rescue Solutions, LLC to provide rescue response related services, for use at any facilities owned and/or operated by NCPA; and

WHEREAS, this agreement was used by the Geothermal Facility extensively during the Plant 2, Unit 4 Steam Turbine Rotor and Steam Turbine Generator Overhaul Project and this agreement is now running low on funds; and

WHEREAS, NCPA now desires to enter into a First Amendment to the current Multi-Task General Services Agreement to increase the not to exceed amount from \$500,000 to \$1,500,000 to ensure sufficient funds are available for the remainder of the contract term, and to amend Exhibit B – Compensation Schedule and Hourly Fees as requested by the vendor to reflect an increase in labor and material costs; 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, for continued use at any facilities owned and/or operated by NCPA.

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 RESCUE SOLUTIONS, LLC

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 Rescue Solutions, LLC, an LLC, with its office located at 20250 S. Highway 101, Hopland, CA 95449 ("Contractor") (together sometimes referred to as the "Parties") as of December 14, 2021 ("Effective Date") in Roseville, California.

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

2.5 Timing for Submittal of Final Invoice. Contractor shall have ninety (90) days after completion of the Requested Work to submit its final invoice for the Requested Work. In the event Contractor fails to submit an invoice to Agency for

any amounts due within the ninety (90) day period, Contractor is deemed to have waived its right to collect its final payment for the Requested Work from Agency.

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

4.5.4 Additional Certificates and Endorsements. Not Applicable.

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

5.1 Effect of Insurance. Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages

whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

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

- 5.3 Transfer of Title.** 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; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Agency, will not be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall have no liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 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 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.

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental

conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.

- 12.7 Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8 Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9 Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.

Section 13. MISCELLANEOUS PROVISIONS.

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

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

13.7 Contract Administrator. This Agreement shall be administered by the Generation Services 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:

Rescue Solutions, LLC
Attention: Ron Roysum
20250 S. Highway 101
Hopland, CA 95449

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.
- 13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.

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

NORTHERN CALIFORNIA POWER AGENCY

Date 12-14-21


RANDY S. HOWARD,
General Manager

RESCUE SOLUTIONS, LLC

Date 9/3/2021


RON ROYSUM,
CEO

Attest:


Assistant Secretary of the Commission

Approved as to Form:


Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Rescue Solutions, LLC ("Contractor") shall provide rescue response related services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency.

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

- Confined Space Rescue Support
- Safety Training and Consulting

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:

RATE SHEET

Effective January 1, 2021

Standard Services Includes:

1. Rescue Module

- Ropes & Hardware for anchoring and rigging retrieval/rescue systems.
- Multipod (tri-pod), Sked/Stokes Litter, PT packaging
- SCBA/Supplied Air, and Radios
- Air monitoring and Ventilation fan for rescue personnel

2. Rescue Technicians

- Confined Space/Rope Rescue Trained
- Swift-Water Rescue Trained (As required)
- CPR/EMS First responder, Fire Department Personnel

Daily Rates (including (2) Techs, Truck, Rescue Gear, Travel, Per-diem):

<u>Description</u>	<u>8 hour day</u>	<u>10 hour day</u>	<u>12 hour day</u>
Confined Space Support, Rope Access Support	\$2,350	\$2,950	\$3,550

8 hour minimum, cancellation less than 16 hours before scheduled start will be charged for 8 hour day. Saturday work is over time and Sunday work is double time. All prices are subject to change.

Rates included above for technician:

Hotel	\$150/Day/Technician or cost**
Per Diem	\$50/Day/Technician**
Travel	\$75/hour/Technician
Mobilization	\$1/mile or per quote
Demobilization	\$1/mile or per quote

Additional Services for work requested:

Daily Job Site Mileage	\$1.25/mile
Air Fare	Cost
Freight	Cost
Rental Vehicle	Cost
Rescue Boat (17.5' Zodiac w/40hp outboard, seats 10)	\$500/day
Rescue Boat (14' White Water Raft, seats 6)	\$250 a day

Itemized standard rates for Rescue Stand-by:

Technician (up to 8 hours)	\$100/hour/technician
Overtime Labor Rate (hours 9-12)	\$150/hour/technician
Overtime Labor Rate (hours 13-24)	\$200/hour/technician
Saturday Labor Rate (up to 8 hours)	\$150/hour/technician
Saturday Labor Rate (hours 9-24)	\$200/hour/technician
Sunday Labor Rate	\$200/hour/technician
Rescue Gear	\$700/day
Truck	\$50/day
Mobilization (In/Out)	\$400 or per quote

8 hour minimum, cancellation less than 16 hours before scheduled start will be charged for 8 hour day. Saturday work is over time and Sunday work is double time. All prices are subject to change.

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,

Don Rayson

(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

Rescue Solutions, LLC

(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 3rd day of September, 20 21.

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)



FIRST AMENDMENT TO MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND RESCUE SOLUTIONS, LLC

This First Amendment (“Amendment”) to Multi-Task General Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Rescue Solutions, LLC (“Contractor”) (collectively referred to as “the Parties”) as of _____, 2023.

WHEREAS, the Parties entered into a Multi-Task General Services Agreement dated effective December 14, 2021, (the “Agreement”) for Rescue Solutions, LLC to provide rescue response related services at any facilities owned or operated by Agency; and

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

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

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

NOW, THEREFORE, the Parties agree as follows:

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

Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED ONE MILLION FIVE HUNDRED THOUSAND** dollars (\$1,500,000) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor’s fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

The remainder of Section 2 of the Agreement is unchanged.

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

SIGNATURES ON FOLLOWING PAGE

Date:_____

NORTHERN CALIFORNIA POWER AGENCY

RANDY S. HOWARD, General Manager

Date:_____

RESCUE SOLUTIONS, LLC

RON ROYSUM, CEO

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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



RATE SHEET

Effective January 1, 2023

Services Include:

1. Rescue Module

- Ropes & Hardware for anchoring and rigging retrieval/rescue systems.
- Multipod (tri-pod), Sked/Stokes Litter
- SCBA/Supplied Air, Hard line Communication and Radios
- Air monitoring and Ventilation fan for rescue personnel

2. Rescue Technicians

- Confined Space Rescue Trained
- Swift-Water Rescue Trained (As required)
- CPR/EMS First responder, Fire Department Personal

Daily Rates (including Rescue Gear):

<u>Description</u>	<u>8 hour day</u>	<u>10 hour day</u>	<u>12 hour day</u>
Truck & Gear	\$750	\$750	\$750
Two Technicians	\$1,920	\$1,920	\$1,920
Overtime	-	\$720	\$1,440
Total	\$2,670	\$3,390	\$4,110

8 hour minimum, cancellation less than 16 hours before scheduled start will be charged for 8 hour day. Saturday work is over time and Sunday work is double time. All prices are subject to change.

Rescue Solutions
Office 707-670-0272

20250 S HWY 101
Hopland, CA 95425
Rescuesolutions.net



Rates included above for technician:

Hotel	\$150/Day/Technician or cost**
Per Diem	\$50/Day/Technician**
Travel	\$75/hour/Technician
Mobilization	\$1/mile or per quote
Demobilization	\$1/mile or per quote

Additional Services for work requested:

Daily Job Site Mileage	\$1.25/mile
Air Fare	Cost
Freight	Cost
Rental Vehicle	Cost
Rescue Boat (17.5' Zodiac w/40hp outboard, seats 10)	\$500/day
Rescue Boat (14' White Water Raft, seats 6)	\$250 a day

Itemized standard rates for Rescue Stand-by:

Technician (up to 8 hours)	\$120/hour/technician
Overtime Labor Rate (hours 9-12)	\$180/hour/technician
Overtime Labor Rate (hours 13-24)	\$240/hour/technician
Saturday Labor Rate (up to 8 hours)	\$180/hour/technician
Saturday Labor Rate (hours 9-24)	\$240/hour/technician
Sunday Labor Rate	\$240/hour/technician
Rescue Gear	\$700/day
Truck	\$50/day
Mobilization (In/Out)	\$500 or per quote

8 hour minimum, cancellation less than 16 hours before scheduled start will be charged for 8 hour day. Saturday work is over time and Sunday work is double time. All prices are subject to change.

Rescue Solutions
Office 707-670-0272

20250 S HWY 101
Hopland, CA 95425
Rescuesolutions.net

Contractor shall provide NCPA with 30 days' advance written notice of all rate changes. Regardless of any rate or pricelist revisions, total compensation shall not exceed the amount set forth in Section 2, Compensation, of this Agreement.

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: June 29, 2023

SUBJECT: Ballard Marine Construction, LLC – Five Year Multi-Task General Services Agreement for Underwater Maintenance and Inspection Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities

AGENDA CATEGORY: Consent

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

IMPACTED MEMBERS:			
All Members	<input checked="" type="checkbox"/>	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 Multi-Task General Services Agreement with Ballard Marine Construction, LLC for underwater maintenance and inspection services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at any facilities owned and/or operated by NCPA.

BACKGROUND:

Underwater maintenance and inspection services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NCPA has utilized this vendor in the past, and has a good working relationship with 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 DRS Marine, Inc. and Global Diving and Salvage.

FISCAL IMPACT:

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

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are 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 June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On June 12, 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 Ballard Marine Construction, LLC

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH BALLARD MARINE CONSTRUCTION, LLC

(reference Staff Report XXX:23)

WHEREAS, underwater maintenance and inspection 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); and

WHEREAS, Ballard Marine Construction, LLC is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with Ballard Marine, LLC 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 \$2,000,000 over five years, for use at any facilities owned and/or operated by NCPA.

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
BALLARD MARINE CONSTRUCTION, LLC**

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 Ballard Marine Construction, LLC, a limited liability company with its office located at 727 S. 27th Street, Washougal, WA 98671 ("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. 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 reasonable discretion, at any time during the term of this Agreement, requests for cause the reassignment of any such personnel, Contractor shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Work Provided.** Work provided under this Agreement by Contractor may include Work directly to the Agency.
- 1.5 Request for Work to be Performed.** At such time that Agency determines to have Contractor perform Work under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Work to be performed ("Requested Work"), may include a not-to-exceed cap on monetary cap on Requested Work and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Work shall be completed. Contractor shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Contractor chooses not to perform the Requested Work. If Contractor agrees to perform the Requested Work, begins to perform the Requested Work, or does not respond within the seven day period specified, then Contractor will have agreed to perform the Requested Work on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** two million dollars (\$2,000,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement. Notwithstanding the foregoing or anything to the contrary contained in this Agreement or a Purchase Order, this dollar amount (as well as the dollar amount of any Purchase Order) is subject to increase in accordance with the terms of this Agreement (e.g., for changed conditions, Agency delays, etc.).

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 responsible for the payment of all applicable federal, state and local taxes, including employment taxes, for the Work provided by Contractor 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.

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 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 \$250,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

4.2.2 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.

4.2.3 Marine General Liability Insurance. Contractor shall maintain marine general liability insurance for the term of this Agreement covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage, which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Coverage should be on "an occurrence" basis covering comprehensive Marine Liability, with a self-insured retention or deductible of no more than \$100,000.

- 4.3 Maritime Pollution Liability.** Contractor shall maintain Maritime Pollution Liability insurance for the term of this Agreement. The policy shall provide a minimum limit of \$1,000,000 with a self-insured retention or deductible of no more than \$100,000.
- 4.4 Professional Liability Insurance.** Intentionally omitted.
- 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, Section 4.3, 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 ten (10) days prior notice to Agency for non-payment of premium, and thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.
- 4.5.3 Higher Limits.** If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.
- 4.5.4 Additional Certificates and Endorsements.**Not Applicable
- 4.5.5 Waiver of Subrogation.** Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.
- 4.6 Contractor's Obligation.** Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature to the extent resulting from any negligent acts or omissions by Contractor, its officers, officials, agents, and employees, and in no event will Contractor be liable for loss to the extent caused by the negligence of Agency.

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** Contractor is an independent contractor and not an employee of Agency. Agency shall have the right to control Contractor only insofar as 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 appropriately insured in all respects.

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.

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. Notwithstanding anything to the contrary contained in this Agreement or a Purchase Order, in the event a change in law materially impacts Contractor's performance of the Work, Contractor shall be entitled to equitable adjustments in the price and schedule on account of such change.

- 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 and for reasonable costs incurred by Contractor as a direct result of such 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 material 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— provided Agency's use of such plans, specifications, drawings, reports, design documents, or other work product will be at Agency's risk;
- 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.

Notwithstanding the foregoing, in the event of any breach by Contractor, Agency shall provide reasonable written notice of such breach to Contractor and grant Contractor a reasonable period of time to commence curative efforts toward remedying such breach. Agency shall not terminate Contractor or take other adverse action so long as Contractor diligently prosecutes such curative efforts toward completion.

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. Notwithstanding anything to the contrary contained in this Agreement or a Purchase Order, the preceding inspection, auditing, and/or copying rights afforded Agency will not extend to any records or documents in connection with the internal composition of time and material rates, unit rates, or firm fixed pricing.
- 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. Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; and other contractors at the Project site and to protect all persons and property thereon from damage or injury resulting from Contractor's performance of the Work. 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 responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Agency will not be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such except to the extent such loss, theft, damage, or charge is caused by Agency's or, if applicable, such other entity's improper acts or omissions. Contractor's equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's 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 provided Contractor is first notified in writing of the items left behind and subsequently fails to remove such items within a reasonable period of time following receipt of such notification. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall have no liability therefor except to the extent such liability results from Agency's or, if applicable, such other entity's improper acts or omissions. 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; provided, however, Contractor will not be deemed to assume such risk or responsibility for losses caused by Agency's or, if applicable, such other entity's improper acts or omissions. All materials and supplies furnished by Contractor for incorporation into the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is responsible for its use of any equipment owned and property provided by Agency, except to the extent any loss or damage results from the sole or gross negligence or willful misconduct of Agency.

- 10.4 Changed Conditions.** Notwithstanding anything to the contrary contained in this Agreement or a Purchase Order, (i) to the extent Contractor encounters subsurface, underwater, concealed, hidden, or other conditions which differ materially from that actually known by Contractor as of the date of this Agreement, then notice by Contractor shall be given to Agency promptly before conditions are further disturbed and in no event later than five (5) business days after such encounter, and (ii) such materially different conditions shall entitle Contractor to an equitable price adjustment and an equitable extension of the times for completion of the Work.
- 10.5 Force Majeure.** If Contractor is delayed or prevented at any time from performing the Work by any cause beyond the control of Contractor, Contractor shall not be liable for its delayed or non-performance during such time and the schedule for the Work will be equitably extended. For the avoidance of doubt, the foregoing will not be deemed to exclude equitable adjustments in price to the extent afforded in this Agreement or a Purchase Order.
- 10.6 Agency Delays.** Notwithstanding anything to the contrary contained in this Agreement or a Purchase Order, Contractor shall be entitled to an equitable price adjustment and the schedule for the Work will be equitably extended if Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, or others under contract with either Agency or such entity delays, disrupts, or interferes with Contractor's performance of the Work.

Section 11. WARRANTY.

- 11.1 Nature of Work.** Contractor warrants that all Work shall be free from defects in design (only to the extent Contractor's scope expressly includes design services) 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. Notwithstanding anything to the contrary contained in this Agreement or a Purchase Order, the warranties given by Contractor in this Agreement are exclusive and in lieu of all other warranties, whether statutory, express, or implied (including all warranties of merchantability, fitness for a particular purpose, and all warranties arising from course of dealing or usage of trade).
- 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 furnished by Contractor under this Agreement fails due to defects in material and/or workmanship or Contractor's other breach of this Agreement, Contractor shall,

upon any reasonable written notice from Agency, replace or repair the same to Agency's reasonable satisfaction. For the avoidance of doubt, any items provided by or on behalf of Agency are not subject to Contractor's warranties hereunder.

- 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, to the extent such site programs are provided to Contractor prior to start of the Work.

- 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 material compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental

conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.

- 12.7 Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8 Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9 Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 **Conflict of Interest.** Contractor may serve other clients, but may not knowingly serve any 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 Michael DeBortoli, 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:

Chuck Phipps
Ballard Marine Construction, LLC
727 S. 27th Street
Washougal, WA 98671

With a copy to:

Todd Blischke
General Counsel
727 S. 27th Street
Washougal, WA 98671

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.

13.16 Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR A PURCHASE ORDER, CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOST PROFITS, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, TREBLE, SPECIAL, PUNITIVE OR SIMILAR DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR BREACH OF CONTRACT OR WARRANTY, EVEN IF CONTRACTOR IS ADVISED OF THEIR POSSIBILITY.

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

NORTHERN CALIFORNIA POWER AGENCY

BALLARD MARINE CONSTRUCTION, LLC

Date_____

Date_____

RANDY S. HOWARD

General Manager

CHUCK PHIPPS

SW Division General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Ballard Marine Construction, LLC ("Contractor") shall provide the following services as requested by Northern California Power Agency ("Agency"), at any facilities owned or operated by the Agency, including:

- Underwater maintenance and inspections
- Tunnel intake debris removal
- Dam low level outlet debris removal
- ROV inspections
- Fish screen and trash rack inspection and cleaning
- Dam low level outlet gate, stem and stem guide inspections, adjustment and maintenance
- Buoy anchor maintenance
- Bathymetric surveys
- Confined space entry maintenance services

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all work, including hourly fees and expenses, shall not exceed the amount set forth in Section 2 hereof (as such amount may be increased in accordance with this Agreement). The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

STANDARD RATE SCHEDULE 2022-2023							
(L) LABOR RATES - NORTHERN CALIFORNIA							
Navigable Waterways							
Item	Description	ST	OT	DT	8-HR	10-HR	12-HR
L1	Diver	\$ 250.00	\$ 348.00	\$ 446.00	\$ 2,000.00	\$ 2,696.00	\$ 3,588.00
L2	Tender	\$ 164.00	\$ 219.00	\$ 274.00	\$ 1,312.00	\$ 1,750.00	\$ 2,298.00
L3	Pilebuck	\$ 154.00	\$ 204.00	\$ 254.00	\$ 1,232.00	\$ 1,640.00	\$ 2,148.00
L4	Pilebuck Foreman	\$ 164.00	\$ 219.00	\$ 274.00	\$ 1,312.00	\$ 1,750.00	\$ 2,298.00
L5	Standby Diver	\$ 166.00	\$ 222.00	\$ 278.00	\$ 1,328.00	\$ 1,772.00	\$ 2,328.00
L6	DPIC/Project Manager	\$ 173.00	\$ 234.00	\$ 294.00	\$ 1,384.00	\$ 1,852.00	\$ 2,440.00
L7	ROV Operator	\$ 150.00	\$ 198.00	\$ 247.00	\$ 1,200.00	\$ 1,596.00	\$ 2,090.00
L8	CA Shop	\$ 103.00	\$ 141.00	\$ 180.00	\$ 824.00	\$ 1,106.00	\$ 1,466.00
L9	Master Diver	\$ 253.00	\$ 352.00	\$ 452.00	\$ 2,024.00	\$ 2,728.00	\$ 3,632.00
L10	Pilebuck Travel	\$ 126.00	\$ 176.00	\$ 226.00	\$ 1,008.00	\$ 1,360.00	\$ 1,812.00
Non-Navigable Waterways							
Item	Description	ST	OT	DT	8-HR	10-HR	12-HR
L1	Diver	\$ 243.00	\$ 338.00	\$ 433.00	\$ 1,944.00	\$ 2,620.00	\$ 3,486.00
L2	Tender	\$ 160.00	\$ 214.00	\$ 267.00	\$ 1,280.00	\$ 1,708.00	\$ 2,242.00
L3	Pilebuck	\$ 150.00	\$ 199.00	\$ 248.00	\$ 1,200.00	\$ 1,596.00	\$ 2,094.00
L4	Pilebuck Foreman	\$ 160.00	\$ 214.00	\$ 267.00	\$ 1,280.00	\$ 1,708.00	\$ 2,242.00
L5	Standby Diver	\$ 162.00	\$ 216.00	\$ 271.00	\$ 1,296.00	\$ 1,728.00	\$ 2,270.00
L6	DPIC/Project Manager	\$ 170.00	\$ 228.00	\$ 286.00	\$ 1,360.00	\$ 1,816.00	\$ 2,388.00
L7	ROV Operator	\$ 147.00	\$ 194.00	\$ 241.00	\$ 1,176.00	\$ 1,564.00	\$ 2,046.00
L8	CA Shop	\$ 100.00	\$ 138.00	\$ 175.00	\$ 800.00	\$ 1,076.00	\$ 1,426.00
L9	Master Diver	\$ 246.00	\$ 342.00	\$ 439.00	\$ 1,968.00	\$ 2,652.00	\$ 3,530.00
L10	Pilebuck Travel	\$ 122.00	\$ 171.00	\$ 220.00	\$ 976.00	\$ 1,318.00	\$ 1,758.00
* Labor is charged at an 8-hour minimums as required by Local Union 34. * Additional rates and working rules apply to all work requiring decompression, see master labor agreement for details.							
(I) - INCIDENTALS / HAZARD PREMIUMS							
Item	Other	I6 - Depth Pay (FT)			I7 - Penetration Pay (FT)		
I1	Per diem - PM/Supervisors	\$ 150.00	shift	50 to 100	\$ 2.00	0 to 25	N/C
I2	Per diem - Non supervisors	\$ 120.00	shift	101 to 150	\$ 3.00	26 to 300	\$ 1.00
I3	*Crew lodging to be billed at cost plus 15%			151 to 220	\$ 4.00	Over 300	Negotiated
				Over 220	\$ 5.00		
General Notes 1 Labor rates in accordance with union agreements are subject to change yearly on July 1, 2023. 2 Additional rates and working rules may apply, see the PNWRCC and Local 34 master labor agreement for details, copies are available upon request. 3 Standby to be charged at a minimum of 8-hours at the employee's classification and equipment to be charge at 60%. 4 Subcontracts, rented equipment, vendors, consumables, and materials to be charged at cost +15%.							

NOTE: Contractor may request adjustment of hourly rates at least once annually for the duration of the Agreement. Such requests will be submitted in writing at least thirty (30) days before the effective date of the adjustment.

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Andritz Hydro Corporation, Inc. – Five Year Master Agreement for Supply of Equipment for OEM Equipment Purchases and Supplies at Collierville Powerhouse; Applicable to the following: Northern California Power Agency (NCPA) Hydroelectric Facilities

AGENDA CATEGORY: Consent

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

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 checked="" type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Gridley	<input 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 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 Master Agreement for Supply of Equipment with Andritz Hydro Corporation, Inc. for electromechanical parts and equipment for the Collierville powerhouse, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$5,000,000 over five years, for use at NCPA's Hydroelectric Facilities.

BACKGROUND:

Andritz Hydro Corporation, Inc. is the original equipment designer, manufacturer and supplier (OEM) for the major electromechanical components of the Collierville powerhouse. OEM equipment supply (spare and replacement parts) and consulting services (design review, root cause investigation, troubleshooting, upgrade integration) are routinely needed at the hydroelectric facilities in order to maintain the reliability of the facilities. 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 the NCPA Hydroelectric Facilities need to purchase equipment in the future. As Andritz Hydro Corporation, Inc. is the OEM for certain components used in the Collierville powerhouse, NCPA has no other agreements in place with vendors who can provide these services.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$5,000,000 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. As Andritz Hydro Corporation, Inc. is the original equipment provider, there are no other enabling agreement of this exact nature; however; third-party fabrication of custom parts can be sought from other vendors. 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 June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 23-XX
- Master Agreement for Supply of Equipment with Andritz Hydro Corporation, Inc.

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING MASTER AGREEMENT FOR SUPPLY OF EQUIPMENT WITH ANDRITZ HYDRO CORPORATION, INC.

(reference Staff Report XXX:23)

WHEREAS, various OEM equipment and supplies are required from time to time for the operation and maintenance of the Northern California Power Agency (NCPA) Hydroelectric Facilities; and

WHEREAS, Andritz Hydro Corporation, Inc. is a provider of these materials; and

WHEREAS, the NCPA Commission has reviewed the Master Agreement for Supply of Equipment with Andritz Hydro Corporation, Inc. to provide such OEM spare and replacement parts as needed at NCPA's Hydroelectric Facilities; 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 Master Agreement for Supply of Equipment, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$5,000,000 over five years, for use at NCPA's Hydroelectric Facilities.

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

**MASTER AGREEMENT
FOR SUPPLY OF EQUIPMENT**

This Master Agreement ("Agreement") is entered into by and between Andritz Hydro Corporation, Inc., a North Carolina corporation ("Andritz"), and Northern California Power Agency, a California Joint Powers Agency ("NCPA"), as of _____, __ 2023.

WHEREAS, NCPA may from time to time retain Andritz to deliver equipment and perform ancillary services for it on various projects, all of which may be independent of one another; and,

WHEREAS, the parties hereto contemplate that such retention will be handled by written job order from a representative designated by NCPA specifying project location, scope of work, materials to be furnished, and such other matters as may be deemed pertinent (each a "Purchase Order"); and,

WHEREAS, the parties hereto desire to agree upon and enter into a contract which will set forth the terms and conditions under which all work will be performed by Andritz for NCPA and which will be applicable to all Purchase Orders by which Andritz is retained.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises, covenants and agreements hereinafter set forth NCPA and Andritz agree as follows:

1. Scope of Work:

- A. This Agreement sets forth the terms and conditions on which NCPA may purchase equipment and ancillary services ("Equipment") from Andritz from time to time through issuance of individual Purchase Orders, up to an aggregate amount of all such Purchase Orders not to exceed \$5,000,000. The terms and conditions of this Agreement shall be incorporated by reference into each Purchase Order and shall apply even if not specifically referenced in the Purchase Order.
- B. Andritz may fulfill Purchase Orders by or through its Affiliates, in whole or in part, provided that the Affiliates are identified in the applicable Purchase Order. Andritz will remain principally responsible for each Affiliate's performance of and compliance with that Purchase Order. This Agreement shall not be construed as an exclusive dealing contract for the provision of the Equipment and does not preclude Andritz from undertaking work of the same general nature for others or restrict NCPA to purchasing equipment and services only from Andritz. For purposes of this Agreement an "Affiliate" shall mean as to a party, any person or entity controlling, controlled by, or under common control with such party, whether, in the case of an entity, by means of the ownership of fifty percent (50%) or more of its voting equity or the ability to control or otherwise substantially control the entity through other means (via a voting agreement, management agreement, or otherwise).

C. Any commercial use or operation of the Equipment by NCPA prior to formal acceptance shall constitute deemed acceptance for purposes of any payment obligations tied to acceptance of such Equipment, commencement of the warranty period for the Equipment, and the transfer of risk of loss on such Equipment.

2. **Term:** This Agreement shall become effective on the date signed by duly authorized representatives of both parties and shall remain in effect for a period of five (5) years, unless earlier terminated by either party in accordance with the terms herein, or unless extended by the agreement of both parties. If the providing of the Equipment under a specific Purchase Order extends beyond the five (5) year term, then the term of the Agreement shall be extended solely for and until provision of the Equipment under that Purchase Order has been completed.

3. **Terms and Conditions of Sale:** Andritz's Terms and Conditions of Sale and/or Service, attached hereto as Exhibit A (the "Terms and Conditions of Sale and/or Service"), shall be incorporated by reference into each Purchase Order and shall apply even if not specifically referenced in the Purchase Order, except as modified below:

A. **Order of Precedence:** Notwithstanding any other provisions to the contrary, in the case of any conflict or inconsistency among this Amendment, the Quote from Andritz, the Purchase Order issued by NCPA, and the Terms and Conditions of Sale and/or Service, then the following order of precedence shall control (number "1" being the highest hierarchy of the documents): (1) this Agreement; (2) the Terms and Conditions of Sale and/or Service; (3) NCPA's Purchase Order ; and (4) the Andritz Quote to supply.

B. **Compensation:** NCPA hereby agrees to pay Andritz for the Equipment purchased under this Agreement, whether by fixed price, hourly rates subject to a fixed rate schedule with a not to exceed amount, or other basis as may be described in the applicable Purchase Order. The purchase limit set forth in Section 1.A is not a guarantee that NCPA will purchase Equipment equal to the full amount but, instead, is a limitation of the total expenditures authorized by this Amended Contract.

C. **Risk of Loss:**

- i All risk of loss or damage to the Equipment will pass from Andritz to NCPA upon delivery of the Equipment DDP to NCPA's site, regardless of whether title has passed to NCPA.
- ii Should the current COVID-19 delivery disruptions continue or for other reasons should delivery costs remain unpredictable, Andritz shall clearly identify the uncertainty in its quote, and Andritz and NCPA shall negotiate in good faith to address the uncertainty in delivery costs.

D. **Instruments of Service:** Any reports, drawings, specifications, filed date and other documents, including those in electronic form prepared and/or submitted by Andritz to NCPA ("Instruments of Service") on which Andritz wishes to maintain confidentiality or

otherwise restrict NCPA's ability to copy, reproduce or disclose to third parties, shall be marked as Confidential by Andritz prior to Andritz providing such Instruments of Service to NCPA. NCPA shall endeavor to maintain the confidentiality of such duly marked Instruments of Service consistent with applicable law.

- E. **Dispute Resolution, Mediation, Governing Law, Jurisdiction, Venue, Limitations Period:** In the event of any dispute, the parties shall attempt in the first instance to resolve such dispute through good faith negotiations between the parties. If such consultations do not result in a resolution of the dispute within thirty (30) days after written notice of a dispute is delivered by either party, then the parties agree that the dispute be submitted to mediation. The parties will select an impartial mediator together who is a licensed attorney. This mediation is to be held at a neutral site and the costs of the mediator and mediation will be shared equally by the parties. The mediation shall commence within 45 days after written demand by one of the parties. If within 60 days after the mediation is commenced the parties cannot reach a resolution of the claim during mediation, then either party may submit the claim to arbitration in accordance with the Terms and Conditions of Sale and/or Service. The parties agree to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner. This Agreement shall be governed by the laws, substantive and procedural, of the State of California. Exclusive jurisdiction and venue for any mediation, litigation or other disputes shall lie in the United States District Court, Eastern District of California or such federal court in which NCPA's facility is located or in the unlikely event the dispute is not jurisdictional to the federal courts, through arbitration in Sacramento, California, through the American Arbitration Association using their Commercial Arbitration Rules as amended and supplemented for energy disputes. Any causes of action between the parties will have accrued and the applicable statute of limitations will commence to run not later than the earlier of (1) the Delivery Date as extended under Article 3 of the Agreement; (2) the date on which the Equipment is delivered to the NCPA DDP; (3) the date on which this Agreement and/or the applicable Purchase Order is breached; or (4) the date on which this Agreement is terminated.

// SIGNATURES ON NEXT PAGE //

The Parties have executed this Agreement as of the date next to their respective signature.

NORTHERN CALIFORNIA POWER AGENCY

ANDRITZ HYDRO CORP.

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

Attest:

By:_____

Name:_____

Title:_____

Approved as to Form:

By:_____

Name:_____

Title:_____

EXHIBIT A

TERMS AND CONDITIONS OF SALE AND/OR SERVICE

1. TERMS APPLICABLE

(a) These Terms and Conditions of Sale and/or Service are the only terms which govern the sale of the products, equipment, or parts and/or the provision of services ("Products" and "Services") pursuant to the quotation or acknowledgement of the Andritz entity supplying the same ("Seller") or Buyer's purchase order or other written document issued by Buyer. These Terms and Conditions of Sale and/or Service control, supersede and replace any and all other additional and/or different terms and conditions of Buyer, and Seller hereby objects to and rejects all such terms and conditions of Buyer without further notification, except to the extent Seller expressly agrees to such conditions in writing. Buyer's authorization for Seller to commence work under the Agreement or Buyer's acceptance of delivery of or payment for any Products or Services covered by this Agreement, in whole or in part, shall be deemed Buyer's acceptance of these Terms and Conditions of Sale and/or Service. The term "Agreement" as used herein means (1) the Master Agreement for Supply of Equipment, (2) these Terms and Conditions of Sale and/or Service, (3) Buyer's purchase order or other written document issued by Buyer, together with any attachment thereto and any documents expressly incorporated by reference (but excluding any Buyer terms and conditions attached thereto or incorporated therein by reference), and (4) Seller's quotation or acknowledgment together with any attachment thereto and any documents expressly incorporated by reference (but excluding any Seller terms and conditions attached thereto or incorporated therein by reference). In the event of a conflict between any documents forming the Agreement, such documents shall be construed in the above-listed order of precedence.

(b) Prior to Buyer's acceptance of any Seller quotation in which these Terms and Conditions of Sale and/or Service are incorporated, in the event that the introduction of new tariffs, levies, duties, taxes, regulation, or any type of legislation by a domestic or foreign government has the effect of increasing the price of the quoted Products and/or Services, Seller reserves its right to adjust its quoted price in order to reflect these increases in cost as long as Seller provides advance notice of the adjusted price increase to Buyer before Buyer issues a Purchase Order to Seller, as long as Buyer accepts the price increase, and as long as Seller's quote is not provided in response to a formal public works bid. Nothing in this document, or any of the applicable contractual documentation shall be construed as a waiver of this right as a separate contract will be used for any public works bid response.

2. DELIVERY OR PERFORMANCE; RISK OF LOSS AND TITLE

(a) Delivery or performance dates are good faith estimates and do not mean that "time is of the essence." Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery or performance. If the parties have agreed to liquidated damages in this Agreement for Seller's delay in achieving certain milestones, (i) the parties acknowledge and agree that Buyer's damages for Seller's delay are difficult to predict with any certainty, and such liquidated damages are not a penalty but a reasonable estimate of Buyer's delay damages; (ii) such liquidated damages shall not exceed an aggregate value of five percent (5%) of the Agreement price and shall be Buyer's exclusive remedy for any delay by Seller in performing any of its obligations under this Agreement; and (iii) Buyer agrees Seller shall not be liable for liquidated damages if Seller's delay in achieving a milestone subject to liquidated damages has not delayed Buyer's ability to use the applicable Products, Software and/or Services.

(b) Upon and after delivery, risk of loss or damage to the Products shall be Buyer's. Delivery of the Products hereunder will be made on the terms agreed to by the parties as set forth in the Agreement in Paragraph 3(C).

3. WARRANTY

(a) Product Warranty. Seller warrants to Buyer that the Products manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the Products and shall expire on the earlier to occur of 12 months from initial operation of the Products and 18 months from delivery thereof (the "Warranty Period"). If during the Warranty Period Buyer discovers a defect in material or workmanship of a Product and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, either deliver to Buyer, on the same terms as the original delivery was made, according to INCOTERMS 2020, a replacement part or repair the defect in place. Any repair or replacement part furnished pursuant to this warranty are warranted against defects in material and workmanship for one period of 12 months from completion of such repair or replacement, with no further extension. Seller will have no warranty obligations for the Products under this Paragraph 3(a): (i) if the Products have not been stored, installed, operated and maintained in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone other than Seller or have been intentionally or accidentally damaged; (v) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable; or (vi) for expenses incurred for work in connection with the removal of the defective articles and reinstallation following repair or replacement unless removal and reinstallation were included in the services provided to Buyer by Seller.

(b) Services Warranty. Seller warrants to Buyer that the Services performed will be free from defects in workmanship and will conform to any mutually agreed upon specifications. If any failure to meet this warranty appears within 12 months from the date of completion of the Services, on the condition that Seller be promptly notified in writing thereof, Seller as its sole obligation for breach of this warranty will correct the failure by re-performing any defective portion of the Services furnished. Seller does not warrant the accuracy of, or performance results of, any conclusions or recommendations provided, nor that any desired objective will result from the Services provided and Seller shall not be liable for any loss of use or any production losses whatsoever.

(c) THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) The remedies provided in Paragraphs 3(a) and 3(b) are Buyer's exclusive remedy for breach of warranty.

(e) With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part which are capable of being so passed on.

4. LIMITATION OF LIABILITY

Notwithstanding any other provision in this Agreement, the following limitations of liability shall apply:

(a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products or Software, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature resulting from, arising out of or connected with the Products, Services, Software or this Agreement or from the performance or

breach hereof.

(b) But for indemnification obligations for personal injury to third parties including but not limited to employees of Buyer, the aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Products, Services, Software or this Agreement or from the performance or breach hereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed three times the value of the purchase order for amounts less than \$500,000 and two times the value of the purchase order for amounts of \$500,000 or more, but less than \$1,500,000 and the value of the purchase order for amounts of \$1,500,000 or more.

(c) But for liability for personal injury to third parties including but not limited to employees of Buyer The limitations and exclusions of liability set forth in this Paragraph 4 shall take precedence over any other provision of this Agreement and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Agreement are Buyer's exclusive remedies.

(d) All liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Products, Services or this Agreement or from the performance or breach hereof shall terminate on the third anniversary of the date of this Agreement, but for indemnification obligations under Section 16(a) below.

(e) In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods serviced (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under this Agreement) or caused by the use of goods by the Buyer against the advice of Seller. If Seller furnishes Buyer with advice or assistance concerning any products or systems that is not required pursuant to this Agreement, the furnishing of such advice or assistance will not subject Seller to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

5. CHANGES, DELETIONS AND EXTRA WORK.

Seller will not be required to make changes in the Products or Services unless Buyer and Seller have executed a written change order for such change. Any such change order will include an appropriate adjustment to the Agreement price and/or schedule. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the change order will include appropriate modifications to this Agreement. Seller shall be entitled to a change order adjusting the Agreement price, schedule and/or any affected obligations of Seller if after the effective date of this Agreement (a) a change in applicable law, tariffs, levies, duties, taxes, regulations or ordinances or (b) any act or omission of Buyer or any other party for whom Buyer has provided in writing is an authorized representative of Buyer, or any error or change in Buyer-provided information should require a change in the Products or Services or cause an increase in the cost or change in the schedule to supply the Products or Services.

6. TAXES

Seller's prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale or use of the Products, Software or Services shall be billed to and paid by Buyer unless Buyer provides to Seller a tax-exemption certificate acceptable to the relevant taxing authorities. Prior to accepting any quote from Seller, Seller must identify and reasonably estimate the taxes so that Buyer understand the total cost of the equipment.

7. SECURITY INTEREST

Seller shall retain a purchase money security interest and Buyer hereby grants Seller a lien upon and security interest in the Products until all payments hereunder have been made in full. Buyer acknowledges that Seller may file a financing statement or comparable document as required by applicable law and may take all other action it deems reasonably necessary to perfect and maintain such security interest in Seller and to protect Seller's interest in the Products.

8. SET OFF

Either party has the right to set off claims against the other party under this Agreement.

9. PATENTS

Unless the Products or any part thereof are designed to Buyer's specifications or instructions and provided the Product or any part thereof is not used in any manner other than as specified or approved by Seller in writing or modified by Buyer without the written consent of Seller, (i) Seller shall defend against claims made in a suit or proceeding brought against Buyer by an unaffiliated third party that any Product infringes a device claim of a patent issued as of the effective date of this Agreement in the country in which the Product will be operated, and limited to the field of the specific Products provided under this Agreement; provided Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense of such claims; (ii) Seller shall satisfy any judgment (after all appeals) for damages entered against Buyer on such claims so long as such damages are not attributable to Buyer's willful conduct; and (iii) if such judgment enjoins Buyer from using any Product or a part thereof, then Seller will, at its option: (a) obtain for Buyer the right to continue using such Product or part; (b) eliminate the infringement by replacing or modifying all or part of the Products; or (c) take back such Product or part and refund to Buyer all payments on the Agreement price that Seller has received for such Product or part. The foregoing states Seller's entire liability for patent infringement by any Product or part thereof.

10. SOFTWARE LICENSE, WARRANTY, FEES

If Buyer and Seller have not entered into a separate license agreement, the following Software Terms and Conditions apply to any embedded software produced by Seller and furnished by Seller hereunder:

(a) The Software, as described in the Agreement ("Software"), and all written materials or graphic files that are fixed in any tangible medium and that relate to and support the Software ("Documentation"), and all present and future worldwide copyrights, trademarks, trade secrets, patents, patent applications, mask work rights, moral rights, contract rights, and other proprietary rights recognized by the laws of any country inherent therein, including all changes and improvements requested or suggested by Buyer in the support and maintenance of the Software are the exclusive property of Seller as long as Buyer has not paid Seller to develop software specifically for Buyer ("Seller's Intellectual Property Rights"). All rights in and to the Software not expressly granted to Buyer in the Agreement are reserved by Seller. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under any of Seller's existing or future patents. Software will not include any upgrades, new versions, releases, enhancements, or updates to the Software, unless agreed to by Seller in writing and at its sole discretion. To the extent any upgrades, new versions, releases, enhancements, or updates to the Software are provided by Seller, the term "Software" shall be deemed to include such upgrades, new versions or releases, enhancements or updates. To the extent any ownership right arises in Buyer with respect to the above as long as Buyer has not paid Seller to develop software specifically for Buyer, Buyer hereby assigns all of its right, title, and interest in and to any intellectual property embodied in the Seller's Intellectual Property Rights, including enforcement rights, to Seller without the payment of any additional consideration thereof either to Buyer, or its employees, agents, or customers and agrees

to execute any documents Seller deems necessary to effect such assignment.

(b) Seller hereby grants to Buyer a non-exclusive, non-transferable, non-sub-licensable, revocable license to install, run, and use the Software, and any modifications made by Seller thereto only in connection with configuration of the Products and operating system for which the Software is ordered hereunder, and for the end-use purpose stated in the Documentation. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the Software, except Buyer may create a single copy for backup or archival purposes in accordance with the Documentation (the "Copy"). Buyer's license to use the Software and the Copy of such Software shall terminate upon a material breach of this Agreement by Buyer that is not duly cured. As long as Buyer has not paid Seller to develop software specifically for Buyer, all copies of the Software, including the Copy, are the property of Seller, and all copies for which the license is terminated shall be returned to Seller, or deleted from Buyer's computer systems, with written confirmation after termination.

(c) Seller warrants that, on the date of shipment of the Software or the Products containing the Software to Buyer: (1) the Software media contain a true and correct copy of the Software and are free from material defects; (2) Seller has the right to grant the license hereunder; and (3) the Software will function substantially in accordance with the related Seller operating documentation. In no event does Seller warrant that the Software is error free or that Buyer will be able to operate the Software without impairments or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Seller does not warrant that the Software or any equipment, system, or network on which the Software is used will be free of vulnerability to intrusion or attack. Nonetheless, if Seller becomes aware of an attack on the Software in another customer application or a vulnerability in the software, Seller will inform Buyer of the weakness within seventy-two (72) hours so that Buyer can attempt to protect its system from the vulnerability. This notification requirement in no way shields Seller from the obligation to create a patch or other mechanism to address the vulnerability.

(d) If within 12 months from the date of delivery of the Products containing the Software, Buyer discovers that the Software is not as warranted above and notifies Seller in writing prior to the end of such 12 month period, and if Seller determines that it cannot or will not correct the nonconformity, Buyer's and Buyer's authorized transferee's exclusive remedies, at Seller's option, are: (1) replacement of the nonconforming Software; or (2) termination of this license and a refund of a pro rata share of the Agreement price or license fee paid.

(e) If any infringement claims are made against Buyer arising out of Buyer's use of the Software in a manner specified by Seller, Seller shall: (i) defend against any claim in a suit or proceeding brought by an unaffiliated third party against Buyer that the Software violates a registered copyright or a confidentiality agreement to which Seller was a party, provided that Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense and settlement of such claims (including the sole authority to select counsel and remove the Software or stop accused infringing usage); (ii) Seller shall satisfy a final judgment (after all appeals) for damages entered against Buyer for such claims, so long as such damages are not attributable to willful conduct or sanctioned litigation conduct; and (iii) if such judgment enjoins Buyer from using the Software, Seller may at its option: (a) obtain for Buyer the right to continue using such Software; (b) eliminate the infringement by modifying the Software or replacing it with a functional equivalent (in which case, Buyer shall immediately stop use of the allegedly infringing Software), or (c) take back such Software and refund to Buyer all payments on the Agreement price that Seller has received. However, Seller's obligations under this Paragraph 10 shall not apply to the extent that the claim or adverse final judgment relates to: (1) Buyer's running of the Software after being notified to discontinue; (2) non-Seller software, products, data or processes; (3) Buyer's alteration of the Software; (4) Buyer's distribution of the Software to, or its use for the benefit of, any third party not approved in writing by Seller; or (5) Buyer's acquisition of confidential information (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a third

party who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the confidential information. Buyer will reimburse Seller for any costs or damages that result from actions 1 to 5. **THE FOREGOING PROVISIONS OF THIS SECTION 10(e) STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF SELLER AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY VIOLATION OR INFRINGEMENT OF ANY PROPRIETARY RIGHTS UNDER SECTION 10, INCLUDING BUT NOT LIMITED TO PATENTS AND COPYRIGHTS, BY THE SOFTWARE OR ANY PART THEREOF.**

(f) This warranty set forth in subparagraph (c) above shall only apply when: (1) the Software is not modified by anyone other than Seller or its agents authorized in writing; (2) there is no modification in the Products in which the Software is installed by anyone other than Seller or its agents authorized in writing; (3) the Products are in good operating order and installed in a suitable operating environment; (4) the nonconformity is not caused by Buyer or a third party; (5) Buyer promptly notifies Seller in writing, within the period of time set forth in subparagraph (c) above, of the nonconformity; and (6) all fees for the Software due to Seller have been timely paid. **SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.**

(g) Buyer and its successors are limited to the remedies specified in this Paragraph 10.

(h) Any subsequent modifications or enhancements to the Software made by Seller are, at Seller's option, subject to a fee, nonetheless, any software patch or fix created to address a vulnerability in Buyer's version of the Software shall be provided to Buyer from Seller at no cost.

11. SITE RISKS

(a) Site Conditions. The parties acknowledge and agree that as to conditions at the project site, Seller is relying upon information provided by Buyer. If Seller becomes aware of any subsurface, concealed, or differing condition, environmental hazard or violation of any environmental law or regulation, Seller will immediately suspend performance of the work in the affected area and notify Buyer. Buyer acknowledges that it will assume the risk of any increased costs and changes to the schedule that may result from such conditions. If Buyer does not immediately remediate such conditions, Seller may either suspend performance of all work or terminate this Agreement.

(b) Environmental Remediation. Buyer acknowledges that Seller is not an expert in environmental remediation and shall not be directed by change order or otherwise to perform any environmental remediation as part of the Services, including but not limited to asbestos and lead paint removal. If any environmental remediation becomes necessary, Buyer will contract directly with a qualified third party to perform such work.

12. TERMINATION

(a) Buyer may terminate this Agreement upon breach by Seller of a material obligation hereunder and Seller's failure to cure, or to commence a cure of, such breach within a reasonable period of time (but not less than 30 days) following written receipt of notice of the same from Buyer.

(b) Buyer may only terminate this Agreement for Buyer's convenience upon written notice to Seller and upon payment to Seller of Seller's expenses (direct and indirect) incurred and commitments already made by Seller, overhead, and an appropriate profit. In case of such termination without completion of a Purchase Order, the licenses granted in Paragraphs 10 and 13 applicable to outstanding and terminated Buyer Purchase Orders shall terminate. All licenses granted in Paragraphs 10 and 13 for completed Buyer Purchase Orders shall remain with Buyer.

(c) Seller shall have the right to suspend and/or terminate its obligations under this Agreement if payment is not received within 30 days of due date and Buyer's failure to cure within (10) ten days following written notice of the same from Seller. In the event of the bankruptcy or insolvency of Buyer or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller

shall be entitled to terminate any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable cancellation charges.

13. INTELLECTUAL PROPERTY; CONFIDENTIALITY

(a) All intellectual property embodied in the Products, Services and Software provided to Buyer is the property of Seller, and any intellectual property developed, at least in part, by Seller under this Agreement is and remains the sole and exclusive property of Seller as long as Buyer has not paid Seller to develop software specifically for Buyer.

(b) Seller acknowledges that Buyer is a public agency subject to California transparency requirements including the California Public Records Act. As such, any information that Seller believes qualifies for nondisclosure under the California Public Records Act, including but not limited to protected trade secret information, provided to Buyer in connection with this Agreement and the performance hereof, Seller will mark as confidential and proprietary and accept the responsibility to defend Seller's belief on behalf of Buyer if such information is requested of Buyer. Buyer agrees not to disclose such information to third parties without notifying Seller and providing Seller the opportunity to seek a protective order at Seller's sole cost including any fines or attorney's fees and costs awarded by the court. Seller grants to Buyer a non-exclusive, royalty-free, non-transferrable license to use Seller's confidential and proprietary information for the purpose of the installation, operation, maintenance and repair of the Products that are the subject of this Agreement only; provided, however, that Buyer further agrees not to, and not to permit any third party to, analyze, measure the properties of, or otherwise reverse engineer the Products or any parts thereof, fabricate the Products or any parts thereof from Seller's drawings or to use the drawings other than in connection with this Agreement. All copies of Seller's confidential and proprietary information shall remain Seller's property and may be reclaimed by Seller at any time in the event Buyer is in breach of its obligations under this Paragraph 13.

14. END USER

Buyer is not in the business of selling Seller's products and intends to use any products purchased from Seller. If in the unusual circumstance such as responding to a mutual aid request, Buyer is not the end user of the Products sold hereunder (the "End User"), then Buyer will use its best efforts to obtain the End User's written consent to abide by the intellectual property and confidentiality provisions of this Agreement.

15. FORCE MAJEURE

(a) Force Majeure Defined. For the purpose of this Agreement "Force Majeure" will mean all events, whether or not foreseeable, beyond the reasonable control of either party which affect the performance of this Agreement, including, without limitation, acts of God, acts or advisories of governmental or quasi-governmental authorities, newly adopted laws or regulations, strikes, lockouts or other industrial disturbances (by other than Seller or its affiliates' personnel, or any other entity for which Seller has control with respect to avoiding a strike, lockout, or other industrial disturbance, although nothing in this section requires Seller to end a strike), acts of public enemy, wars, insurrections, riots, epidemics, pandemics, outbreaks of infectious disease or other threats to public health, lightning, earthquakes, fires, storms, severe weather, floods, sabotage, rejection of main forgings and castings.

(b) Suspension of Obligations. If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.

16. INDEMNIFICATION AND INSURANCE

(a) Indemnification. Seller agrees to defend and indemnify Buyer from and against any third-party (for avoidance of doubt a Buyer's employees are third parties for purposes of this paragraph) claim for bodily injury or damage to tangible property ("Loss") arising in connection with the Products or the Services provided by Seller hereunder, but only to the extent such Loss has been caused by the negligence, willful misconduct or other legal fault ("Fault") of Seller. Buyer shall promptly tender the defense of any such third-party claim to Seller. Seller shall be entitled to control the defense and resolution of such claim, provided that Buyer shall be entitled to be represented in the matter by counsel of its choosing at Buyer's sole expense. Where such Loss results from the Fault of both Seller and Buyer a third party, then Seller's defense and indemnity obligation shall be limited to the proportion of the Loss that Seller's Fault bears to the total Fault.

(b) Insurance. Seller shall maintain commercial general liability insurance with limits of \$2,000,000 per occurrence and in the aggregate covering claims for bodily injury (including death) and physical property damage arising out of the Products or Services. Seller shall also provide workers' compensation insurance or the like as required by the laws of the jurisdiction where the Services will be performed, and owned and non-owned auto liability insurance with limits of \$2,000,000 combined single limit. Seller will provide a Certificate of Insurance certifying the existence of such coverages and endorsements providing Seller's insurance is primary and a waiver of subrogation.

17. EXPORT CONTROL AND ECONOMIC SANCTIONS COMPLIANCE

(a) Buyer recognizes that any Products and Software that are the subject of this Agreement and originate in the U.S. remain subject to U.S. export control and economic sanctions laws and regulations even after such Products are exported from the U.S. (if applicable), and even though such Products and Software have been purchased in and, if applicable, exported from Canada. Buyer certifies that such Products and Software will not be diverted, transshipped, re-exported, or otherwise transferred in contravention of any applicable export control and economic sanctions laws and regulations, nor will it allow the Products or Software to be incorporated into other products or used to make direct products thereof that are exported, re-exported, used, or transferred in violation of U.S. export control and economic sanctions laws and regulations. Buyer further affirms that such Products and Software will not be used, directly or indirectly, in any application involving missile technology, nuclear proliferation, or chemical and biological weapons proliferation. Without limiting the foregoing, Buyer will not, nor will it allow third parties to, export, re-export, or transfer any Products or Software to any person or entity that is the target of U.S. sanctions or is in Crimea, Cuba, Iran, North Korea, or Syria, or any other country or territory in violation of U.S. sanctions.

(b) Buyer shall be responsible for any breach of this provision by it, and its successors and permitted assigns, , employees, officers, partners, members, customers, agents, ("Buyer Parties") and shall indemnify and hold harmless Seller from and against any claim, proceeding, action, fine, loss, cost, damages, and penalties arising out of or relating to any non-compliance with U.S. export control and economic sanctions laws and regulations by any Buyer Party.

(c) Buyer shall, upon request of Seller, promptly provide all information necessary for Seller to ensure compliance with U.S. export control and economic sanctions laws and regulations, including but not limited to information related to end-users, end-uses, and destination countries.

18. SPECIAL CONDITIONS FOR PRESSURE VESSELS

For installation, repair, or maintenance Services on existing pressure vessels, piping and equipment, the following shall apply:

(a) Unless otherwise agreed and stated in the Agreement, Buyer shall be responsible for: (i) physically disconnecting and isolating vessels and equipment being repaired from existing piping

and electrical power before Seller or any of its subcontractors start the Services, and take adequate precautions that re-connection and resumption of use does not take place until the Services are completed, and (ii) emptying the vessels and piping and freeing them from any toxic or harmful substances before the Services begin so that the vessels and piping are safe for Services to begin. Buyer shall maintain the area entirely free of combustible, toxic and asphyxiant substances and provide fire protection service until the Services are completed;

(b) If the Services are on an existing vessel or existing piping, the Buyer is responsible for determining the prior condition of the portion of the vessel or piping not involved in the Services, and its ability to withstand the Services and any tests that may be necessary;

(c) Buyer shall also be responsible for evaluating the effects of prior use of the vessel or piping upon structural adequacy, and the suitability of the vessel or piping for the service intended when the Services are completed;

(d) Seller has no obligation to provide any inspections or tests, and Buyer takes full responsibility for all necessary inspections and tests, including but not limited to, selection of testing personnel, type, location, frequency, and severity of any inspections and tests and all test results at any stage of the Services;

(e) Upon request of Seller, Buyer shall provide Seller with the history of the vessel, a statement of the tests to be performed and a statement of the proposed use of the vessel after completion of the Services, and

(f) If repairs are required: (i) Buyer will provide an Authorized Inspector ("AI") who will determine the scope of the Services to be done; (ii) Seller will provide Buyer with a proposed Quality Control ("QC") package specifying the methods and procedures that Seller will follow in performing the Services specified by the Buyer; (iii) the proposed QC package is subject to approval by the Buyer, and such approval must be provided before Services commence; (iv) after approval of the QC package, the Services shall be done in accordance with the QC package. At the option of the AI, hold points may be established for inspection during the course of the Services; and (v) upon completion of the Services, the AI shall inspect the Services and provide a signed acceptance that they have been completed in accordance with the QC package. Such acceptance by the AI shall establish completion of the Services.

19. GENERAL

(a) Seller represents that any Products or parts thereof manufactured by Seller will be produced in compliance with all applicable federal, state and local laws applicable to their manufacture and in accordance with Seller's engineering standards.

(b) This Agreement shall inure only to the benefit of Buyer and Seller and their respective successors and assigns. Any assignment of this Agreement or any of the rights or obligations hereunder, by either party without the written consent of the other party shall be void.

(c) This Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products and/or Services and any prior course of dealings or usage of the trade not expressly incorporated herein.

(d) This Agreement may be modified, supplemented or amended only by a writing signed by authorized representatives of the parties. One party's waiver of any breach by the other party of any terms of this Agreement must also be in writing and any waiver by the non-breaching party or failure by the non-breaching party to enforce any of the terms and conditions of this Agreement at any time, shall not affect, limit or waive that party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

(e) All terms of this Agreement which by their nature should apply after the cancellation, completion or termination of this Agreement, including, but not limited to, Paragraphs 4, 13, 17 and 19, shall survive and remain fully enforceable after any cancellation, completion or termination

hereof.

(f)(i) If Seller's office is located in the United States, this Agreement and the performance hereof will be governed by and construed according to the laws of the State of California.

(ii) If Seller's office is located in Canada, this Agreement and the performance hereof will be governed by and construed according to the laws of the Province of New Brunswick...

(g) (i) In the circumstances of f(i) above, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, or to the Products or the Services provided pursuant hereto, shall be definitively settled by arbitration, to the exclusion of courts of law, administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules in force at the time this Agreement is signed and to which the parties declare they will adhere (the "AAA Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the party against whom enforcement is sought or having jurisdiction over any of such party's assets. The arbitration shall be conducted in Sacramento, California by a panel of three members, one of whom will be appointed by each of Buyer and Seller and the third of whom will be the chairman of the panel and will be appointed by mutual agreement of the two party appointed arbitrators. All arbitrators must be persons who are not employees, agents, or former employees or agents of either party. In the event of failure of the two party appointed arbitrators to agree within 45 days after submission of the dispute to arbitration upon the appointment of the third arbitrator, the third arbitrator will be appointed by the AAA in accordance with the AAA Rules. In the event that either of Buyer or Seller fails to appoint an arbitrator within 30 days after submission of the dispute to arbitration, such arbitrator, as well as the third arbitrator, will be appointed by the AAA in accordance with the AAA Rules.

(ii) In the circumstances of f(ii) above, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, or to the Products or the Services provided pursuant hereto, shall be definitively settled under the auspices of the Canadian Commercial Arbitration Centre ("CCAC"), by means of arbitration and to the exclusion of courts of law, in accordance with its General Commercial Arbitration Rules in force at the time the Agreement is signed and to which the parties declare they will adhere (the "CCAC Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the party against whom enforcement is sought or having jurisdiction over any of such party's assets. The arbitration shall be conducted in Saint John, New Brunswick by a panel of three arbitrators, one of whom will be appointed by each of Buyer and Seller and the third of whom will be the chairman of the arbitral tribunal and will be appointed by mutual agreement of the two party-appointed arbitrators. All arbitrators must be persons who are not employees, agents, or former employees or agents of either party. In the event of failure of the two party-appointed arbitrators to agree within 45 days after submission of the dispute to arbitration upon the appointment of the third arbitrator, the third arbitrator will be appointed by the CCAC in accordance with the CCAC Rules. In the event that either of Buyer or Seller fails to appoint an arbitrator within 30 days after submission of the dispute to arbitration, such arbitrator, as well as the third arbitrator, will be appointed by the CCAC in accordance with the CCAC Rules.

(h) In the event this Agreement pertains to the sale of any goods outside the United States or Canada, the parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this Agreement.

(i) The parties hereto have required that this Agreement be drawn up in English. Les parties aux présentes ont exigé que la présente convention soit rédigée en anglais.



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Fossil Energy Research Corp. dba FERCO – Five Year Multi-Task Professional Services Agreement for Testing 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 Fossil Energy Research Corp. dba FERCO for testing services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

BACKGROUND:

Various catalyst testing, ammonia grid tuning and engineering support services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and 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 an agreement in place for similar services with Environex, Inc.

FISCAL IMPACT:

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

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are 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 June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On June 12, 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 Fossil Energy Research Corp. dba FERCO

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK PROFESSIONAL SERVICES AGREEMENT WITH FOSSIL ENERGY RESEARCH CORP. DBA FERCO

(reference Staff Report XXX:23)

WHEREAS, various catalyst testing, ammonia grid tuning and engineering support 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, Fossil Energy Research Corp. dba FERCO is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task Professional Services Agreement with Fossil Energy Research Corp. dba FERCO 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 FOSSIL ENERGY RESEARCH CORP. DBA FERCO

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 Fossil Energy Research Corp. dba FERCO, a corporation with its office located at 23342 South Pointe, Unit C, Laguna Hills, CA 96253 ("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:

Fossil Energy Research Corp. dba FERCO
Attention: Lawrence Muzio
23342 South Pointe, Unit C
Laguna Hills, CA 92653

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.

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

NORTHERN CALIFORNIA POWER AGENCY

FOSSIL ENERGY RESEARCH CORP.
DBA FERCO

Date_____

Date_____

RANDY S. HOWARD,
General Manager

LAWRENCE J. MUZIO, Ph.D., P.E.
Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Fossil Energy Research Corp. dba FERCO ("Consultant") shall provide catalyst testing, ammonia grid tuning and engineering support 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:

- Catalyst Testing
- Ammonia Grid Tuning
- System Inspection & Sampling
- Reporting
- Engineering Support

The testing services are specialized air quality testing services and shall not include maintenance of existing monitoring equipment and thus, are not subject to prevailing wage per Labor Code Section 1773.5 and Title 8 CCR Section 16001(a).

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:

Fossil Energy Research Corporation
Billing Rates: January 1, 2023 – December 31, 2023

Category	Rate *	Name
Engineer 1 (E1)	\$242/hour	L. J. Muzio, G. C. Quartucy, G. H. Shiimoto, D. E. Shore, R. A. Smith, R. E. Thompson J. Canaveral
Engineer 2 (E2)	\$196/hour	
Engineer 3 (E3)	\$180/hour	J. Muncy, S. Bogseth, B. Spang
Engineer 4 (E4)	\$170/hour	
Engineer 5 (E5)	\$149/hour	J. Dang
Engineer 6 (E6)	\$144/hour	J. Pisano
Technician 2 (T2) **	\$118/hour	G. Lagula, C. Buening
Clerical (CI)	\$103/hour	J. Barnes
Expenses	Cost + 10%	

*A 5% premium, paid directly to the employee, is added to work performed outside of the USA and Canada.

**Non-exempt employees (currently Technicians 2 & 3) are covered by the various State and Federal Labor Rules, which stipulate payment of overtime premiums of 50% or 100%. FERCo will invoice these overtime hours at a multiplier of 1.25 and 1.50, respectively.

SCR and CO Catalyst Laboratory Testing
Micro-Scale Rate Sheet
(Nominal 1.25" Diameter, 6" Long Sample)

Updated January 2023

Costs are \$USD per sample

SCR Catalyst Activity: \$3,850

Includes: SCR activity testing by EPRI protocol/guidelines
One area velocity and one inlet temperature

CO Catalyst CO Oxidation Rate: \$3,300

Includes: CO oxidation light-off curve up to 800°F inlet temperature
One space velocity

Catalyst Chemical Analysis: \$800¹

Includes: Surface and bulk XRF (x-ray fluorescence) analysis
Catalyst sample inlet, middle and outlet

Single-Point BET Area: \$550²

Catalyst Pore-Size Distribution & BET Area: \$1,800³

Includes: 40 point nitrogen adsorption isotherm & BET surface area
Catalyst sample inlet and outlet (if sample is < 6" in length only one sample will be collected and invoiced)

¹ Note that if XRF analysis is desired, we will need a catalyst sample $\geq 8 \text{ in}^3$, in addition to the sample to be tested for activity and/or CO oxidation.

²In-house analysis

³Outside laboratory

Customized test programs can be accommodated as well on a T&M basis.

Rates are subject to change.

SCR and CO Catalyst Laboratory Testing **Bench-Scale Rate Sheet** **(Nominal 4"x4" Cross-Section, Up To 1 m Length)**

Updated January 2023

Costs are \$USD per sample

<u>SCR Catalyst Activity:</u>	\$3,850
Includes:	SCR activity testing by EPRI protocol/guidelines for SCR laboratory testing One area velocity and one inlet temperature
<u>CO Catalyst CO Oxidation Rate:</u>	\$3,300
Includes:	CO oxidation measurements One space velocity and one inlet temperature 3" Diameter Test Buttons or Rectangular Elements
<u>SCR Catalyst SO₂ Oxidation Rate:</u>	\$4,700 \$3,100¹
Includes:	Single inlet and triplicate outlet SO ₃ measurements by controlled condensation technique One test condition
<u>Catalyst Chemical Analysis:</u>	\$800
Includes:	Surface and bulk XRF (x-ray fluorescence) analysis Catalyst sample inlet, middle and outlet
<u>Single-Point BET Area:</u>	\$550²
<u>Catalyst Pore-Size Distribution & BET Area:</u>	\$1,800³
Includes:	40 point nitrogen adsorption isotherm & BET surface area Catalyst sample inlet and outlet (if sample is < 6" in length only one sample will be collected and invoiced)

¹Discounted rate if catalyst samples are also to be tested for SCR activity

²In-house analysis

³Outside laboratory

Customized test programs can be accommodated as well on a T&M basis.

Rates are subject to change.

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

Fossil Energy Research Corp. dba FERCO

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Montrose Air Quality Services, LLC – Five Year Multi-Task Consulting Services Agreement for Testing 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 Consulting Services Agreement with Montrose Air Quality Services, LLC for testing 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.

BACKGROUND:

Various rata, source and emissions testing 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 Air Hygiene International, Inc. and Blue Sky Environmental.

FISCAL IMPACT:

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

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are 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 FACILTIES APPROVAL: On June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On June 12, 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 Consulting Services Agreement with Montrose Air Quality Services, LLC

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH MONTROSE AIR QUALITY SERVICES, LLC

(reference Staff Report XXX:23)

WHEREAS, various rate, source and emission testing 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, Montrose Air Quality Services, LLC is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task Consulting Services Agreement with Montrose Air Quality Services, LLC 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 Consulting Services Agreement, with any non-substantial changes as 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.

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 CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND MONTROSE AIR QUALITY SERVICES, LLC

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Montrose Air Quality Services, LLC, a limited liability company, with its office located at 5120 Northshore Drive, North Little Rock, AR 72118 ("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) year from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services, or does not respond within the seven day

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial General Insurance. Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$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 Auto/General Liability/Umbrella Insurance. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

4.3 Professional Liability Insurance. Not Applicable.

4.4 All Policies Requirements.

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

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONSULTANT.

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

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

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

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

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

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

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

Section 7. LEGAL REQUIREMENTS.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in 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:

Montrose Air Quality Services, LLC
Attention: Shane Mascitelli
5120 Northshore Drive
North Little Rock, AR 72118

With a courtesy copy to:
Montrose Environmental Group, Inc.
Attention: Legal Department
Email: legal@montrose-env.com

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

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

be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

MONTROSE AIR QUALITY
SERVICES, LLC

Date_____

Date_____

RANDY S. HOWARD,
General Manager

SHANE MASCITELLI,
NW Region Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Montrose Air Quality Services, LLC ("Consultant") shall provide testing 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:

- Rata Testing
- Source Testing
- Emissions Testing

The testing services are specialized air quality testing services and shall not include maintenance of existing monitoring equipment and thus, are not subject to prevailing wage per Labor Code Section 1773.5 and Title 8 CCR Section 16001(a).

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 this Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

<u>Field Testing Personnel</u>	<u>Hourly Rate (\$)</u>
Consultant	240
Client Project Manager	205
Field Project Manager	165
Senior Technician	145
Field Technician	105
 <u>Support Personnel</u>	 <u>Hourly Rate (\$)</u>
Senior Office Worker	140
Office Worker	95
 <u>Overtime Rate</u>	 <u>Hourly Rate (\$)</u>
Over 8 hours per day or between 40 and 60 hours per week	Standard Rate x 1.5
Over 12 hours per day or over 60 hours per week	Standard Rate x 2.0
<i>Note: MAQS also accounts for overtime meeting the "consecutive day" rules.</i>	
 <u>Overhead Direct Costs</u>	 <u>Unit Rate (\$)</u>
Per Diem	275/day
Mobile Lab Vehicle Mileage	1.50/mile
Other Overhead Direct Costs, including analytical costs	Cost Plus 15%
 <u>Testing Equipment Fees</u>	 <u>Daily Rate (\$)</u>
Mobile Laboratory, no CEMS	355
Chase vehicle - (mileage charged separately at \$0.75/mile)	125
Portable Sampling System	205
Data Acquisition System	105
Strip Chart Recorders	105
O ₂ Analyzer (calibration gases charged separately for all analyzers)	130
CO ₂ Analyzer	130
CO Analyzer	180
NO _x Analyzer	180
SO ₂ Analyzer	205
THC Analyzer	305
FTIR Analyzer (on site)	755
Gas Chromatograph (on site)	755
Heated sample line	105
Isokinetic Sampling System - Complete	255
Non-Isokinetic Pump & Meter	180
VOST Meter Box	230
201A / OTM-027 Cyclone / Cascade Impactor	130
Impinger Set	105
Midget Impinger Assembly	155
Lung Sampler	105
Tedlar Bags (each)	40

Pricing for services to be performed at NCPA Member or SPPA 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

Montrose Air Quality Services, LLC
(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: June 29, 2023

SUBJECT: Electrical Maintenance Consultants – Five Year Multi-Task General Services Agreement for Specialty Electrical 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 Electrical Maintenance Consultants for specialty electrical related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$5,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

BACKGROUND:

Various specialty electrical 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 Contra Costa Electric, Eaton Corporation, Electric Power Systems and NorCal Power Services.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$5,000,000 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 June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On June 12, 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 Electrical Maintenance Consultants

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH ELECTRICAL MAINTENANCE CONSULTANTS

(reference Staff Report XXX:23)

WHEREAS, various specialty electrical 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, Electrical Maintenance Consultants is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with Electrical Maintenance Consultants 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 \$5,000,000 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
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
ELECTRICAL MAINTENANCE CONSULTANTS, 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 Electrical Maintenance Consultants, Inc., a corporation with its office located at 10600 Industrial Avenue, Suite 100, Roseville, CA 95678 ("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** FIVE MILLION dollars (\$5,000,000.00) 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. Contractor shall maintain professional liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Contractor's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

4.5.4 Additional Certificates and Endorsements. 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:

Electrical Maintenance Consultants, Inc.
Attention: Phillip Keller
10600 Industrial Avenue, Suite 100
Roseville, CA 95678

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

ELECTRICAL MAINTENANCE
CONSULTANTS, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

PHILLIP KELLER,
Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Electrical Maintenance Consultants, Inc. ("Contractor") shall provide specialty electrical related services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Generator Inspections
- Testing and Evaluation
- Stator and Field Rewinds
- Stator and Field Cleaning and Sealing
- Exciter Maintenance and Inspection
- Retaining Ring Removal and Non-Destructive Testing
- Static Excitation Retrofits
- Voltage Regulation Retrofits
- Control System Troubleshooting
- Control System Calibration and Maintenance
- Additional electrical related services as needed

Contractor may provide services at all Project Site Locations.

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

SCHEDULE OF RATES AND CHARGES 2023 - 2024

	Straight Time	Over Time	Double Time
1. Specialized Engineer	\$230.00	\$345.00	\$460.00
2. Project Supervisor	\$185.00	\$277.50	\$370.00
3. Field Service Technician	\$165.00	\$247.50	\$330.00
4. Winder	\$155.00	\$232.50	\$310.00
5. Craftsman	\$155.00	\$232.50	\$310.00

1. Straight time rates apply to all hours worked or traveled during a normal eight (8) hour workweek Monday through Friday 7:00 AM to 3:30 PM excluding holidays. Time is based on portal to portal.
2. Over time rates apply to all hours worked or traveled after eight (8) hours and Saturdays up to twelve (12) hours.
3. Double time rates apply to holidays, Sundays and any hours worked or traveled after twelve (12) hours Monday through Saturday.
4. All travel and work from one (1) to four (4) hours will be billed as four hours plus expenses.
5. All travel and work from four (4) to eight (8) hours will be billed as eight (8) hours plus expenses.

EXPENSES

\$180 a day living expense per man. (Exception: Bay area and Southern California living rates of \$250.00 per man) Other expenses will be billed at cost plus 30% Handling Charge including miscellaneous expenses such as parking, telephone, tolls and expendable materials. There will be a hazardous waste surcharge on all projects, amount to be determined based on individual project.

OUTSIDE SERVICES

All outside services will be billed at cost plus 20%

EQUIPMENT

Tooling, Test Equipment and Trailers will be charged as \$250.00 per day. Special Equipment will be billed at standard rental rates plus 20%.

MATERIALS

All materials and replacement parts will be billed at a minimum handling charge of cost plus 20%.

FREIGHT

All incoming and outgoing freight will be charged at a handling charge of cost plus 20%.

MINIMUM BILLING

Minimum billing amount is \$500.00.

MILEAGE

Mileage will be charged at the rate of \$0.92 per mile. Specialist and Supervisor vehicles will be an additional \$5.00 per hour.

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

Electrical Maintenance Consultants, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ 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: June 29, 2023

SUBJECT: Industrial Air Flow Dynamics, Inc. – Five Year Multi-Task General Services Agreement for Seals, Expansion Joint and HRSG 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/>		
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RECOMMENDATION:

Approve Resolution 23-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Industrial Air Flow Dynamics, Inc. for seals, expansion joints and HSRG related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$4,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

BACKGROUND:

Various penetration seals, expansion joints and HRSG related 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 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 Dekomte De Temple, LLC, HRST, Inc. and Performance Mechanical, Inc.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$4,000,000 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 June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On June 12, 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 Industrial Air Flow Dynamics, Inc.

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH INDUSTRIAL AIR FLOW DYNAMICS, INC.

(reference Staff Report XXX:23)

WHEREAS, various penetration seals, expansion joints and HRSG related maintenance 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, Industrial Air Flow Dynamics, Inc. is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with Industrial Air Flow Dynamics, 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 \$4,000,000 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:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
INDUSTRIAL AIR FLOW DYNAMICS, 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 Industrial Air Flow Dynamics, Inc., a corporation with its office located at 11200 Fostoria Road, Cleveland, TX 77328 ("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** FOUR MILLION dollars (\$4,000,000.00) 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/Auto 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 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:

Industrial Air Flow Dynamics, Inc.
Attention: Ryan Sachetti
11200 Fostoria Rd.
Cleveland, TX 77328

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

INDUSTRIAL AIR FLOW DYNAMICS, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

KELLY FLEETWOOD,
C.O.O.

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Industrial Air Flow Dynamics, Inc. ("Contractor") shall provide penetration seals, expansion joints and HRSG related maintenance 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:

- Penetration Seals
- Expansion Joints
- General HRSG Maintenance
- Turnkey Services
- On-Site Training
- Free Consultation

Contractor may provide services at all Project Site Locations.

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Field Service Labor Rates					
Period:	Execution date through 6/30/2024	7/1/2024-6/29/2025	6/30/2025-6/28/2026	6/29/2026-7/27/2027	7/28/2027-7/26/2028
Description					
Straight Time - (First 8 Hours)	\$ 148.50	\$ 153.96	\$ 159.53	\$ 165.09	\$ 170.76
Overtime- (Over 8 Hours)	\$ 175.23	\$ 181.67	\$ 188.25	\$ 194.81	\$ 201.50
Weekends (Saturday & Sunday All Hours)	\$ 208.50	\$ 213.96	\$ 219.53	\$ 225.09	\$ 230.76
Holidays (All Hours)	\$ 208.50	\$ 213.96	\$ 219.53	\$ 225.09	\$ 230.76
Engineering / Project Site Engineering Hours	\$ 208.50	\$ 213.96	\$ 219.53	\$ 225.09	\$ 230.76
Hourly travel rates (drive time to and from site)	\$ 53.04	\$ 54.99	\$ 56.98	\$ 58.96	\$ 60.99
Flight/ Hotel/ Travel Expenses (tolls, fuel, etc)	Invoiced at cost + 20%	Invoiced at cost + 20%	Invoiced at cost + 20%	Invoiced at cost + 20%	Invoiced at cost + 20%
Materials	Invoiced at cost + 25%	Invoiced at cost + 25%	Invoiced at cost + 25%	Invoiced at cost + 25%	Invoiced at cost + 25%
Consumables	Per list cost	Per list cost	Per list cost	Per list cost	Per list cost
Per Diem (per man)	\$30/Day per Field Worker; \$40/Day per Foreman; \$59/Day per Engineer	\$30/Day per Field Worker; \$40/Day per Foreman; \$59/Day per Engineer	\$30/Day per Field Worker; \$40/Day per Foreman; \$59/Day per Engineer	\$30/Day per Field Worker; \$40/Day per Foreman; \$59/Day per Engineer	\$30/Day per Field Worker; \$40/Day per Foreman; \$59/Day per Engineer
IAFD Equipment Usage	\$ 53.04	\$ 54.99	\$ 56.98	\$ 58.96	\$ 60.99
Rental Equipment (generator, lighting, etc.)	Invoiced at cost + 20%	Invoiced at cost + 20%	Invoiced at cost + 20%	Invoiced at cost + 20%	Invoiced at cost + 20%
IAFD Tool Truck Travel to Site	\$ 42.43	\$ 43.99	\$ 45.58	\$ 47.17	\$ 48.79

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

Industrial Air Flow Dynamics, 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: June 29, 2023

SUBJECT: EverLine Compliance CA, LLC – Second Amendment to Five Year Multi-Task General Services Agreement for Pipeline Maintenance Operations Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities

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 Second Amendment to the Multi-Task General Services Agreement with EverLine Compliance CA, LLC for pipeline operations and maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, amending Exhibits A and B to add required regulatory services and remove usage by NCPA Members, SCPPA and SCPPA Members, for continued use at any facilities owned and/or operated by NCPA.

BACKGROUND:

Pipeline operations and 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 Energy Project Solutions, LLC, effective June 1, 2020, to provide such services, for use at all NCPA, NCPA Member, SCPPA, and SCPPA Member facilities.

Effective April 18, 2022, NCPA and Energy Project Solutions entered into a First Amendment, accepting assignment of the agreement to EverLine Compliance CA, LLC.

It was recently determined that NCPA did not have a compliant control room under our current services to control the Alameda pipeline. Since the Alameda pipeline is a Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHSMA) regulated asset, NCPA can't add it to the existing LEC control room without significantly increasing the regulatory requirements for NCPA and its employees. These services were previously administered by Dick Brown Technical Services (DBTS) as subcontracted by Energy Project Solutions (EPS), NCPA's previous pipeline compliance contractor. EverLine has acquired both DBTS and EPS, and can provide these services.

NCPA now desires to enter into a Second Amendment to the Multi-Task General Services Agreement amending Exhibits A and B to add these required regulatory control room services. Because the added regulatory services involve gas pipelines and operations, there could be potential liability issues should anyone other than NCPA use this agreement. For that reason, the Second Amendment will also remove usage by NCPA Members, SCPPA and SCPPA Members. NCPA does not have other agreements for similar services at this time.

FISCAL IMPACT:

Upon execution, the total cost of the agreement will remain unchanged at not-to-exceed \$1,000,000 over the remainder of the contract term. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are 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.

On June 7, 2023 the Facilities Committee reviewed and approved the recommendation above for Commission approval.

On June 12, 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 (4):

- Resolution 23-XX
- Multi-Task General Services Agreement with Energy Project Solutions, LLC
- First Amendment to Multi-Task General Services Agreement with Energy Project Solutions, LLC Accepting Assignment to EverLine Compliance CA, LLC
- Second Amendment to Multi-Task General Services Agreement with EverLine Compliance CA, LLC

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A SECOND AMENDMENT TO THE MULTI-TASK GENERAL SERVICES AGREEMENT
WITH EVERLINE COMPLIANCE CA, LLC

(reference Staff Report #XX:23)

WHEREAS, pipeline operations and maintenance 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, NCPA and Energy Project Solutions, LLC entered into a Multi-Task General Services Agreement effective June 1, 2020, to provide such services; and

WHEREAS, effective April 18, 2022, NCPA and Energy Project Solutions entered into a First Amendment, accepting assignment of the agreement to EverLine Compliance CA, LLC; and

WHEREAS, it was recently determined NCPA didn't have a compliant control room under our current services to control the Alameda pipeline. Since the Alameda pipeline is a Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHSMA) regulated asset, NCPA can't add it to the existing LEC control room without significantly increasing the regulatory requirements for NCPA and its employees; and

WHEREAS, EverLine Compliance CA, LLC can provide these services; and

WHEREAS, because the added regulatory services involve gas pipelines and operations, there could be potential liability issues should anyone other than NCPA use this agreement. For that reason, the Second Amendment will also remove usage by NCPA Members, SCPPA and SCPPA Members; and

WHEREAS, NCPA now desires to enter into a Second Amendment to the Multi-Task General Services Agreement amending Exhibits A and B to add these required regulatory control room services and remove usage by NCPA Members, 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 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 Second Amendment to the Multi-Task General Services Agreement with EverLine Compliance CA, LLC, with any non-substantial changes as approved by the NCPA General Counsel, , amending Exhibits A and B to add required regulatory services and remove usage by NCPA Members, SCPPA and SCPPA Members, for continued use at any facilities owned and/or operated by NCPA.

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



**FIRST AMENDMENT TO MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND ENERGY PROJECT SOLUTIONS,
LLC ACCEPTING ASSIGNMENT TO EVERLINE COMPLIANCE CA, LLC**

This First Amendment ("Amendment") to the Multi-Task General Services Agreement is entered into by and between the Northern California Power Agency ("Agency") and EverLine Compliance CA, LLC ("Contractor") (collectively referred to as "the Parties") as of April 18, 2022.

WHEREAS, the Agency and Energy Project Solutions, LLC entered into a Multi-Task General Services Agreement dated effective June 1, 2020, (the "Agreement") for Contractor to provide pipeline maintenance program services for the Agency, Agency Members, the Southern California Public Power Authority (SCCPA) or SCCPA Members; and

WHEREAS, effective October 25, 2021, Energy Project Solutions, LLC changed its name to EverLine Compliance CA, LLC; and the Agency desires to agree to the assignment of the Agreement to EverLine Compliance CA, LLC; and

WHEREAS, the Parties now desire to amend Section 13.7 entitled "Contract Administrator" of the Agreement to reflect the change of the administrator's name; and

WHEREAS, the Parties now desire to amend Section 13.8 entitled "Notices" of the Agreement to reflect the change of the Contractor's name; and

WHEREAS, the Parties now desire to amend Exhibit A entitled "Scope of Services" of the Agreement to reflect the change of the Contractor's name; and

WHEREAS, the Parties now desire to amend Exhibit C entitled "Affidavit of Compliance for Contractors" of the Agreement to reflect the change of the Contractor's name; and

WHEREAS, the Parties and Energy Project Solutions, LLC agree to the assignment of the Agreement to EverLine Compliance CA, LLC; 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. The preamble to the Agreement is replaced in its entirety as follows:

"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 EverLine Compliance CA, LLC, a limited liability company, with its office located at 841 Mohawk

Street, Suite 120, Bakersfield, CA 93309 ("Contractor") (together sometimes referred to as the "Parties") as of June 1, 2020 ("Effective Date") in Roseville, California."

2. Section 13.7 Contract Administrator is replaced in its entirety as follows:

13.7 Contract Administrator. This Agreement shall be administered by Randy Bowersox, 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.

3. Section 13.8 Notices is replaced in its entirety as follows:

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

EverLine Compliance CA, LLC
Attn: Michael Finch
4203 Montrose Blvd., Suite 670
Houston, TX 77006

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

4. **Exhibit A – SCOPE OF SERVICES** is amended and restated to read in full as set forth in the attached Exhibit A.
5. **Exhibit C – CERTIFICATION – Affidavit of Compliance for Contractors** is amended to include EverLine Compliance CA, LLC and shall be executed as set forth in the attached Exhibit C.
6. Agency hereby approves the name change of the Agreement from Energy Project Solutions, LLC to EverLine Compliance CA, LLC, Contractor.
7. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

Date: 4/18/22

NORTHERN CALIFORNIA POWER AGENCY


RANDY S. HOWARD, General Manager

Date: 4/7/2022

EVERLINE COMPLIANCE CA, LLC


LOUIS KRANNICH,
President

Date: 4/11/2022

ENERGY PROJECT SOLUTIONS, LLC


MICHAEL FINCH,
Director

Attest:


Assistant Secretary of the Commission

Approved as to Form:


Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

EverLine Compliance CA, LLC ("Contractor") shall provide the following Pipeline Maintenance Program services as requested by the Northern California Power Agency ("Agency") at any Facilities owned or operated by NCPA, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members:

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

- Operations and maintenance field activities
- Operations and maintenance compliance activities
- Demonstration of operator qualification (OQ) compliance
- Integrity management program field activities
- Integrity management compliance
- Integrity management action items

Specific CT1 Alameda services to include, but not be limited to the following:

Identified Tasks, Frequency, & Task Assignments

Task Description:	Frequency	Not to Exceed (mths)	Category	Agency	Primary Reference	Resource	Comment
Reporting							
Pipeline Audit	AR	NA	O&M	PHMSA	49 CFR 192	EPS	EPS would provide onsite lead for any PHMSA audits or regulatory responses.
Annual report to PHMSA	March 15/ year	NA	O&M	PHMSA	49 CFR 191.17	EPS	
Incident reporting & investigation	AR	NA	O&M	PHMSA	49 CFR 191.5 & 15	EPS	
Safety Related Condition Reporting	AR	NA	O&M	PHMSA	49 CFR 191.23 & 25	EPS	
Investigation of failures	AR	NA	O&M	PHMSA	49 CFR 617	EPS	
OMB control number assigned to collect information	AR	NA	O&M	PHMSA	49 CFR 191.21	EPS	
National Registry of Operators and Notifications	AR	NA	O&M	PHMSA	49 CFR 191.22	EPS	
Annual NPMS review and update	March 15/ year	NA	O&M	PHMSA	49 CFR 191.29	EPS	
GIS Mapping and Analysis	AR	NA	NA	NA	NA	EPS	
Corrosion Control							
External corrosion control cathodic protection (CP) system survey	1x/calendar year	15	O&M	PHMSA	49 CFR 192.465(a)	FJ Tech	
External corrosion CP remote monitoring	Ongoing	NA	O&M	PHMSA	49 CFR 192.465(a)	DBTS	Remote CP monitoring was added several years ago using Omnimatrix.
External corrosion control rectifier inspection or critical bonds	6x/calendar year	2 1/2	O&M	PHMSA	49 CFR 192.465(b)&(c)	DBTS	
Internal corrosion corrosive gas investigation - obtain sample	1x/calendar year	NA	O&M	PHMSA	49 CFR 192.477	DBTS	The NPCA pipeline has a long history of product analysis demonstrating that the gas is non-corrosive. No treatment of gas or coupons are expected for this pipeline.

Internal corrosion corrosive gas investigation - engineering review	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.477	EPS	
Atmospheric corrosion inspection - onshore	1x/3 calendar year	39	O&M	PHMS A	49 CFR 192.481	DBTS	
Verification of corrosion tasks by qualified person	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.453	EPS	
Emergency Response							
Annual review of emergency plan	1x/calendar year	15	O&M	PHMS A	49 CFR 192.605(a)	EPS	EPS currently provides the ERP for NCPA
Emergency drill or training including verification of effectiveness of training	1x/calendar year	15	O&M	PHMS A	49 CFR 192.615(b)(2)	EPS	
Liaison with appropriate emergency responders	1x/calendar year	15	O&M	PHMS A	49 CFR 192.614 & 615(c)	DBTS	
Emergency activity review after an emergency event	AR	NA	O&M	PHMS A	49 CFR 192.615(b)	EPS	
Hazwoper Refresher	1x/calendar year	NA	O&M	OSHA	29 CFR 1910.120	EPS	
Damage Prevention							
Membership in a One Call	Ongoing	NA	O&M	PHMS A	49 CFR 192.614	EPS	
One Call for excavation activities	AR	NA	O&M	PHMS A	49 CFR 192.614(c)(3)	DBTS	DBTS receives one calls through USA North. Each call is documented as no conflict or marking and locating required. If the dig requires onsite monitoring then this item is billed at based on time and materials.
Damage prevention update list of excavators	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.614(c)(1)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Damage Prevention - Public Awareness							
Public awareness mailers to emergency officials	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public

							Awareness (PAPA).
Public awareness mailers to excavators	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Public awareness mailers to public officials	1x/3 calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA). As a program enhancement this is being completed annually.
Public awareness mailer to "One-Call" centers	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Public awareness mailers to residents, businesses along ROW	1x/2 calendar year	NA	O&M	PHMS A	49 CFR 192.616(e)	EPS	EPS coordinates with the Paradigm. Starting in 2020 this has been increased to annually.
Public awareness program annual self assessment (Procedures and Team Charter)	1x/calendar year	18	O&M	PHMS A	49 CFR 192.616(i)	EPS	This is an annual review of the Public Awareness Program.
Public awareness 4yr review & survey of mailer effectiveness	1x/4 calendar year	NA	O&M	PHMS A	49 CFR 192.616(i)	EPS	EPS coordinates this with PAPA and Paradigm. In addition, EPS completes the evaluation and provide program enhancements.
O&M Activities							
Conversion of service report	AR	NA	O&M	PHMS A	49 CFR 192.14	EPS	
Abandonment Report	AR	NA	O&M	PHMS A	49 CFR 192.727	EPS	
Pressure Testing Report	AR	NA	O&M	PHMS A	49 CFR 192.501-517	EPS	
Annual review of O&M procedures	1x/calendar year	15	O&M	PHMS A	49 CFR 192.605(a)	EPS	EPS currently provides the O&M for NCPA

Annual review of pipeline specific O&M (PSOM)	1x/calender year	15	O&M	PHMSA	49 CFR 192.605(a)	EPS	EPS currently provides the PSOM for NCPA, this manual provides the details of the pipeline and the startup and shutdown procedures. This is part of the O&M.
Annual review work performed by operator	1x/calender year	15	O&M	PHMSA	49 CFR 192.605(b)(8)	EPS	
Change in class location required study	1x/calender year	15	O&M	PHMSA	49 CFR 192.609	EPS	
Change in class location, confirmation or revision of MAOP	AR	NA	O&M	PHMSA	49 CFR 192.611	EPS	
Continuing surveillance review	1x/calender year	15	O&M	PHMSA	49 CFR 192.613	EPS	
Critical crossing (highways, railroads) inspection - Class 3	4x/calender year	4 1/2	O&M	PHMSA	49 CFR 192.705	DBTS	
Patrol of ROWs - Class 3	2x/calender year	7 1/2	O&M	PHMSA	49 CFR 192.705	DBTS	
Leak survey - Class 3	2x/calender year	7 1/2	O&M	PHMSA	49 CFR 192.706(a)	DBTS	
Pressure limiting device inspection (PSV)	1x/calender year	15	O&M	PHMSA	49 CFR 192.739	DBTS	
Pressure limiting device inspection (ESD)	1x/calender year	15	O&M	PHMSA	49 CFR 192.739	DBTS	
Pressure limiting gas pipeline capacity review (PSV)	AR	NA	O&M	PHMSA	49 CFR 192.743	EPS	
Valve maintenance	1x/calender year	15	O&M	PHMSA	49 CFR 192.745	DBTS	
Update maps & drawings	1x/calender year	NA	O&M	PHMSA	49 CFR 192.605(b)(3)	EPS	
Update corrosion maps and records	1x/calender year	NA	O&M	PHMSA	49 CFR 192.491(a)	EPS	
Inspect and maintain pipeline markers	1x/calender year	15	O&M	PHMSA	192.707	DBTS	
Review response of operator to abnormal operations	1x/calender year	15	O&M	PHMSA	49 CFR 192.605(c)(4)	EPS	
Exposed pipe report (external & internal)	AR	NA	O&M	PHMSA	49 CFR 192.475 & 459	DBTS	
Upgrading	AR	NA	O&M	PHMSA	49 CFR 192.553	EPS	
Prevention of Accidental Ignition	AR	NA	O&M	PHMSA	49 CFR 192.751	EPS	
Drug and Alcohol							
PHMSA annual drug report (DAMIS)	March 15/year	NA	D&A	PHMSA	49 CFR 199	EPS	

Verification of Company (Contractor) Drug Plan & Procedures	1x/calendar year	NA	D&A	PHMSA	49 CFR 199	EPS	
Verification of Company (Contractor) Records of Random Drug Testing	1x/calendar year	NA	D&A	PHMSA	49 CFR 199	EPS	
Verification of Sub-Contractor Drug Plan & Procedures	1x/calendar year	NA	D&A	PHMSA	49 CFR 199	EPS	
Verification of Sub-Contractor Records of Random Drug Testing	1x/calendar year	NA	D&A	PHMSA	49 CFR 199	EPS	
Verification of Post-Accident Drug Testing Records	AR	NA	D&A	PHMSA	49 CFR 199	EPS	
Items Requiring Additional Costs - T&M							
Pipeline modification and/ or repairs	AR	NA	O&M	PHMSA	49 CFR Subpart B, Subpart C, Subpart D, Subpart E, Subpart G, Subpart I, Subpart L and Subpart M	EPS/ DBTS	EPS will provide oversight as part of its monthly fee to ensure the modifications and/or repairs are done according to pertinent PHMSA regulations as outlined in the reference. Actual repairs, parts, and engineering would be billed out as T&M.
Pressure Test Pipeline	Based on Assessment Interval	NA	IMP	PHMSA	49 CFR Subpart J	EPS/ DBTS	EPS will provide oversight as part of its monthly fee to ensure pressure tests are done according to pertinent PHMSA regulations as outlined in the reference. Actual cost of the pressure test would be billed out as T&M.
Supplemental Assessment (CIS, DCVG, etc.)	Note	NA	IMP	PHMSA	49 CFR 192.465(b)	EPS/ FJ	EPS will provide oversight as part of its monthly fee to ensure supplemental tests are done according to pertinent

							PHMSA regulations as outlined in the reference. Actual cost of supplemental tests would be billed out as T&M.
Direct Assessment (ECDA, etc.)	Note	NA	IMP	PHMS A	49 CFR 192.490	EPS/FJ	EPS will provide oversite as part of its monthly fee to ensure supplemental tests are done according to pertinent PHMSA regulations as outlined in the reference. Actual cost of supplemental tests would be billed out as T&M.
Operator Qualifications							
OQ - Annual review of procedures	1x/calendar year	15	OQ	PHMS A	49 CFR 192.805	EPS	EPS currently provides the OQ Manual for NCPA.
OQ - Monitoring Individuals between Re-evaluation Intervals	AR	NA	OQ	PHMS A	49 CFR 192.805	EPS	
OQ - Program review and/or audit	AR	NA	OQ	PHMS A	49 CFR 192.805	EPS	
Operate Pipeline on Daily Basis Using Only Qualified Personnel	Ongoing	NA	OQ	PHMS A	49 CFR 192.805	EPS	This includes training and/or qualifying company employees as needed to maintain qualifications.
OQ - Contractor status verification	1x/calendar year	NA	OQ	PHMS A	49 CFR 192.805	EPS	This will be provided via an online system available to NCPA using password protection.
OQ - Verify company personnel OQ records are current for work performed	1x/calendar year	NA	OQ	PHMS A	49 CFR 192.805	EPS	This will be provided via an online system available to NCPA using password protection.

Integrity Management							
IMP procedures annual review	1x/calendar year	18	IMP	PHMS A	49 CFR 192.901	EPS	EPS currently provides the IMP for NCPA.
IMP annual review and team charter: Element #1: ID of HCAs Element #2: ID of threats, Data Integration, and Risk Analysis Element #3: Baseline Assessment Element #4: Direct Assessment Element #5: Remediation Work Element #6: Continual Evaluation and Assessment Element #7: Confirmatory Direct Assessment Element #8: Preventive and Mitigative Element #9: Record Keeping Element #10: Management of Change Element #11: Quality Assurance Element #12: Communication Plan Element #13: Agency Notification Element #14: Environment and Safety	1x/calendar year	18	IMP	PHMS A	49 CFR 192.901 to 192.951	EPS	This is an annual review of each of the IMP program elements.

(All references to "EPS" in table above is EverLine Compliance CA, LLC)

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I, Michael Finch

(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:

EverLine Compliance CA, LLC

(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 11th day of April, 20 22.

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.



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
ENERGY PROJECT SOLUTIONS, LLC**

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 Energy Project Solutions, LLC, a limited liability company, with its office located at 841 Mohawk Street, Suite 120, Bakersfield, CA 93309 ("Contractor") (together sometimes referred to as the "Parties") as of June 1, 2020 ("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.** Contractor shall maintain professional liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Contractor's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.
- 4.4 Pollution Insurance.** Not Applicable.
- 4.5 All Policies Requirements.**
- 4.5.1 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.
- 4.5.2 Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.
- 4.5.3 Higher Limits.** If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.
- 4.5.4 Additional Certificates and Endorsements.** If Contractor performs Work for Agency members, SCPA and/or SCPA 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, SCPA and/or SCPA 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, SCPA or SCPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

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

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

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

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

Energy Project Solutions, LLC
Attention: Michael Finch
P.O. Box 20846
Bakersfield, CA 93390

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.

SIGNATURES ON THE FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

ENERGY PROJECT SOLUTIONS, LLC


Date 6/1/20

Date 5/11/2020


RANDY S. HOWARD,
General Manager


MICHAEL FINCH,
Chief Operating Officer

Attest:


Assistant Secretary of the Commission

Approved as to Form:


Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Energy Project Solutions, LLC ("Contractor") shall provide the following Pipeline Maintenance Program services as requested by the Northern California Power Agency ("Agency") at any Facilities owned or operated by NCPA, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members:

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

- Operations and maintenance field activities
- Operations and maintenance compliance activities
- Demonstration of operator qualification (OQ) compliance
- Integrity management program field activities
- Integrity management compliance
- Integrity management action items

Specific CT1 Alameda services to include, but not be limited to the following:

Identified Tasks, Frequency, & Task Assignments							
Task Description:	Frequency	Not to Exceed (mths)	Category	Agency	Primary Reference	Resource	Comment
Reporting							
Pipeline Audit	AR	NA	O&M	PHMSA	49 CFR 192	EPS	EPS would provide onsite lead for any PHMSA audits or regulatory responses.
Annual report to PHMSA	March 15/ year	NA	O&M	PHMSA	49 CFR 191.17	EPS	
Incident reporting & investigation	AR	NA	O&M	PHMSA	49 CFR 191.5 & 15	EPS	
Safety Related Condition Reporting	AR	NA	O&M	PHMSA	49 CFR 191.23 & 25	EPS	
Investigation of failures	AR	NA	O&M	PHMSA	49 CFR 617	EPS	
OMB control number assigned to collect information	AR	NA	O&M	PHMSA	49 CFR 191.21	EPS	
National Registry of Operators and Notifications	AR	NA	O&M	PHMSA	49 CFR 191.22	EPS	
Annual NPMS review and update	March 15/ year	NA	O&M	PHMSA	49 CFR 191.29	EPS	
GIS Mapping and Analysis	AR	NA	NA	NA	NA	EPS	
Corrosion Control							
External corrosion control cathodic protection (CP) system survey	1x/calendar year	15	O&M	PHMSA	49 CFR 192.465(a)	FJ Tech	
External corrosion CP remote monitoring	Ongoing	NA	O&M	PHMSA	49 CFR 192.465(a)	DBTS	Remote CP monitoring was added several years ago using Omnimatrix.
External corrosion control rectifier inspection or critical bonds	6x/calendar year	2 1/2	O&M	PHMSA	49 CFR 192.465(b)&(c)	DBTS	
Internal corrosion corrosive gas investigation - obtain sample	1x/calendar year	NA	O&M	PHMSA	49 CFR 192.477	DBTS	The NPCA pipeline has a long history of product analysis demonstrating that the gas is non-corrosive. No treatment of gas or coupons

							are expected for this pipeline.
Internal corrosion corrosive gas investigation - engineering review	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.477	EPS	
Atmospheric corrosion inspection - onshore	1x/3 calendar year	39	O&M	PHMS A	49 CFR 192.481	DBTS	
Verification of corrosion tasks by qualified person	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.453	EPS	
Emergency Response							
Annual review of emergency plan	1x/calendar year	15	O&M	PHMS A	49 CFR 192.605(a)	EPS	EPS currently provides the ERP for NCPA
Emergency drill or training including verification of effectiveness of training	1x/calendar year	15	O&M	PHMS A	49 CFR 192.615(b)(2)	EPS	
Liaison with appropriate emergency responders	1x/calendar year	15	O&M	PHMS A	49 CFR 192.614 & 615(c)	DBTS	
Emergency activity review after an emergency event	AR	NA	O&M	PHMS A	49 CFR 192.615(b)	EPS	
Hazwoper Refresher	1x/calendar year	NA	O&M	OSHA	29 CFR 1910.120	EPS	
Damage Prevention							
Membership in a One Call	Ongoing	NA	O&M	PHMS A	49 CFR 192.614	EPS	
One Call for excavation activities	AR	NA	O&M	PHMS A	49 CFR 192.614(c)(3)	DBTS	DBTS receives one calls through USA North. Each call is documented as no conflict or marking and locating required. If the dig requires onsite monitoring then this item is billed at based on time and materials.

Damage prevention update list of excavators	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.614(c)(1)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Damage Prevention - Public Awareness							
Public awareness mailers to emergency officials	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Public awareness mailers to excavators	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Public awareness mailers to public officials	1x/3 calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA). As a program enhancement this is being completed annually.
Public awareness mailer to "One-Call" centers	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Public awareness mailers to residents, businesses along ROW	1x/2 calendar year	NA	O&M	PHMS A	49 CFR 192.616(e)	EPS	EPS coordinates with the Paradigm. Starting in 2020 this has been increased to annually.
Public awareness program annual self assessment (Procedures and Team Charter)	1x/calendar year	18	O&M	PHMS A	49 CFR 192.616(i)	EPS	This is an annual review of the Public Awareness Program.
Public awareness 4yr review & survey of mailer effectiveness	1x/4 calendar year	NA	O&M	PHMS A	49 CFR 192.616(i)	EPS	EPS coordinates this with PAPA and Paradigm. In addition, EPS

							completes the evaluation and provide program enhancements.
O&M Activities							
Conversion of service report	AR	NA	O&M	PHMS A	49 CFR 192.14	EPS	
Abandonment Report	AR	NA	O&M	PHMS A	49 CFR 192.727	EPS	
Pressure Testing Report	AR	NA	O&M	PHMS A	49 CFR 192.501-517	EPS	
Annual review of O&M procedures	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.605(a)	EPS	EPS currently provides the O&M for NCPA
Annual review of pipeline specific O&M (PSOM)	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.605(a)	EPS	EPS currently provides the PSOM for NCPA, this manual provides the details of the pipeline and the startup and shutdown procedures. This is part of the O&M.
Annual review work performed by operator	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.605(b)(8)	EPS	
Change in class location required study	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.609	EPS	
Change in class location, confirmation or revision of MAOP	AR	NA	O&M	PHMS A	49 CFR 192.611	EPS	
Continuing surveillance review	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.613	EPS	
Critical crossing (highways, railroads) inspection - Class 3	4x/calend ar year	4 1/2	O&M	PHMS A	49 CFR 192.705	DBTS	
Patrol of ROWs - Class 3	2x/calend ar year	7 1/2	O&M	PHMS A	49 CFR 192.705	DBTS	
Leak survey - Class 3	2x/calend ar year	7 1/2	O&M	PHMS A	49 CFR 192.706(a)	DBTS	
Pressure limiting device inspection (PSV)	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.739	DBTS	
Pressure limiting device inspection (ESD)	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.739	DBTS	
Pressure limiting gas pipeline capacity review (PSV)	AR	NA	O&M	PHMS A	49 CFR 192.743	EPS	
Valve maintenance	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.745	DBTS	

Update maps & drawings	1x/calend ar year	NA	O&M	PHMS A	49 CFR 192.605(b)(3)	EPS	
Update corrosion maps and records	1x/calend ar year	NA	O&M	PHMS A	49 CFR 192.491(a)	EPS	
Inspect and maintain pipeline markers	1x/calend ar year	15	O&M	PHMS A	192.707	DBTS	
Review response of operator to abnormal operations	1x/calend ar year	15	O&M	PHMS A	49 CFR 192.605(c)(4)	EPS	
Exposed pipe report (external & internal)	AR	NA	O&M	PHMS A	49 CFR 192.475 & 459	DBTS	
Upgrading	AR	NA	O&M	PHMS A	49 CFR 192.553	EPS	
Prevention of Accidental Ignition	AR	NA	O&M	PHMS A	49 CFR 192.751	EPS	
Drug and Alcohol							
PHMSA annual drug report (DAMIS)	March 15/ year	NA	D&A	PHMS A	49 CFR 199	EPS	
Verification of Company (Contractor) Drug Plan & Procedures	1x/calend ar year	NA	D&A	PHMS A	49 CFR 199	EPS	
Verification of Company (Contractor) Records of Random Drug Testing	1x/calend ar year	NA	D&A	PHMS A	49 CFR 199	EPS	
Verification of Sub-Contractor Drug Plan & Procedures	1x/calend ar year	NA	D&A	PHMS A	49 CFR 199	EPS	
Verification of Sub-Contractor Records of Random Drug Testing	1x/calend ar year	NA	D&A	PHMS A	49 CFR 199	EPS	
Verification of Post-Accident Drug Testing Records	AR	NA	D&A	PHMS A	49 CFR 199	EPS	
Items Requiring Additional Costs - T&M							
Pipeline modification and/ or repairs	AR	NA	O&M	PHMS A	49 CFR Subpart B, Subpart C, Subpart D, Subpart E, Subpart G, Subpart I, Subpart L and Subpart M	EPS/ DBTS	EPS will provide oversight as part of its monthly fee to ensure the modifications and/or repairs are done according to pertinent PHMSA regulations as outlined in the reference. Actual repairs, parts, and engineering would be billed out as T&M.

Pressure Test Pipeline	Based on Assessment Interval	NA	IMP	PHMSA	49 CFR Subpart J	EPS/DBTS	EPS will provide oversight as part of its monthly fee to ensure pressure tests are done according to pertinent PHMSA regulations as outlined in the reference. Actual cost of the pressure test would be billed out as T&M.
Supplemental Assessment (CIS, DCVG, etc.)	Note	NA	IMP	PHMSA	49 CFR 192.465(b)	EPS/ FJ	EPS will provide oversight as part of its monthly fee to ensure supplemental tests are done according to pertinent PHMSA regulations as outlined in the reference. Actual cost of supplemental tests would be billed out as T&M.
Direct Assessment (ECDA, etc.)	Note	NA	IMP	PHMSA	49 CFR 192.490	EPS/FJ	EPS will provide oversight as part of its monthly fee to ensure supplemental tests are done according to pertinent PHMSA regulations as outlined in the reference. Actual cost of supplemental tests would be billed out as T&M.
Operator Qualifications							
OQ - Annual review of procedures	1x/calendar year	15	OQ	PHMSA	49 CFR 192.805	EPS	EPS currently provides the OQ Manual for NCPA.

OQ - Monitoring Individuals between Re-evaluation Intervals	AR	NA	OQ	PHMS A	49 CFR 192.805	EPS	
OQ - Program review and/or audit	AR	NA	OQ	PHMS A	49 CFR 192.805	EPS	
Operate Pipeline on Daily Basis Using Only Qualified Personnel	Ongoing	NA	OQ	PHMS A	49 CFR 192.805	EPS	This includes training and/ or qualifying company employees as needed to maintain qualifications.
OQ - Contractor status verification	1x/calend ar year	NA	OQ	PHMS A	49 CFR 192.805	EPS	This will be provided via an online system available to NCPA using password protection.
OQ - Verify company personnel OQ records are current for work performed	1x/calend ar year	NA	OQ	PHMS A	49 CFR 192.805	EPS	This will be provided via an online system available to NCPA using password protection.
Integrity Management							
IMP procedures annual review	1x/calend ar year	18	IMP	PHMS A	49 CFR 192.901	EPS	EPS currently provides the IMP for NCPA.
IMP annual review and team charter: Element #1: ID of HCAs Element #2: ID of threats, Data Integration, and Risk Analysis Element #3: Baseline Assessment Element #4: Direct Assessment Element #5: Remediation Work Element #6: Continual Evaluation and Assessment Element #7: Confirmatory Direct Assessment Element #8: Preventive and Mitigative Element #9: Record Keeping Element #10: Management of	1x/calend ar year	18	IMP	PHMS A	49 CFR 192.901 to 192.951	EPS	This is an annual review of each of the IMP program elements.

Change Element #11: Quality Assurance Element #12: Communication Plan Element #13: Agency Notification Element #14: Environment and Safety							
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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:

CT1 Alameda Pipeline Maintenance Program specific Cost: \$7,900.00 / Month

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, Michael Finch, Chief Operating Officer

(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

Energy Project Solutions, LLC

(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 11 day of May, 20 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)



SECOND AMENDMENT TO MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND EVERLINE COMPLIANCE CA, LLC

This Second Amendment ("Amendment") to the Multi-Task General Services Agreement is entered into by and between the Northern California Power Agency ("Agency") and EverLine Compliance CA, LLC ("Contractor") (collectively referred to as "the Parties") as of _____, 2023.

WHEREAS, the Parties entered into a Multi-Task General Services Agreement dated effective June 1, 2020, (the "Agreement") for Contractor to provide pipeline maintenance program services for the Agency, Agency Members, the Southern California Public Power Authority (SCPPA) or SCPPA Members; and

WHEREAS, the Parties entered into a First Amendment to the Multi-Task General Services Agreement on April 18, 2022 to assign the agreement from Energy Project Solutions, LLC to EverLine Compliance CA, LLC to effectuate its name change; and

WHEREAS, the Agency now desires to amend the Agreement to remove reference to Agency Members, the Southern California Public Power Authority (SCPPA) and SCPPA Members; and

WHEREAS, the Parties now desire to amend Section 1.4 entitled "Work Provided" of the Agreement to remove reference to Agency Members, SCPPA and SCPPA Members; and

WHEREAS, the Parties now desire to amend Section 4.5.4 entitled "Additional Certificates and Endorsements" of the Agreement to remove reference to Agency Members, SCPPA and SCPPA Members and mark as not applicable; and

WHEREAS, the Parties now desire to amend Section 10.1 entitled "Operations at the Project Site" of the Agreement to remove reference to Agency Members, SCPPA and SCPPA Members; and

WHEREAS, the Parties now desire to amend Section 10.2 entitled "Contractor's Equipment, Tools, Supplies and Materials" of the Agreement to remove reference to Agency Members, SCPPA and SCPPA Members; and

WHEREAS, the Parties now desire to amend Section 10.3 entitled "Use of Agency Equipment" of the Agreement to remove reference to Agency Members, SCPPA and SCPPA Members; and

WHEREAS, the Parties now desire to amend Section 12 entitled "Health and Safety Programs" of the Agreement to remove reference to Agency Members, SCPPA and SCPPA Members; and

WHEREAS, the Parties now desire to delete Section 12.10 of the Agreement in its entirety to remove reference to Agency Members, SCPPA and SCPPA Members; and

WHEREAS, the Parties now desire to amend Section 13.5 entitled "No Third Party Beneficiaries" of the Agreement to remove reference to Agency Members, SCPPA and SCPPA Members; and

WHEREAS, the Agency now desires to amend the Description of Work set forth in Exhibit A to the Agreement to add additional required regulatory control room services and to remove reference to Agency Members, SCPPA and SCPPA Members; 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:

The remainder of Section 2 of the Agreement is unchanged.

1. Section 1.4 is replaced in its entirety with the following:

1.4 Work Provided. Work provided under this Agreement by Contractor may include Work directly to the Agency.

2. Section 4.5.4 is replaced in its entirety with the following:

4.5.4 Additional Certificates and Endorsements. Not Applicable

3. Section 10.1 is replaced in its entirety with the following:

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

4. Section 10.2 is replaced in its entirety with the following:

10.2 Contractor's Equipment, Tools, Supplies and Materials. Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Agency will not be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site,

with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall have no liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

5. Section 10.3 is replaced in its entirety with the following:

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 for the performance of Work.

6. Section 12 is replaced in its entirety with the following:

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.

7. Section 12.10 is deleted in its entirety.

8. Section 13.15 is replaced in its entirety with the following:

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.

9. **Exhibit A – SCOPE OF SERVICES** is amended and restated to read in full as set forth in the attached Exhibit A.

10. **Exhibit B – COMPENSATION SCHEDULE** is amended and restated to read in full as set forth in the Attached Exhibit B.

11. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

// SIGNATURES ON NEXT PAGE //

Date: _____

NORTHERN CALIFORNIA POWER AGENCY

Date: _____

EVERLINE COMPLIANCE CA, LLC

RANDY S. HOWARD,
General Manager

LOUIS KRANNICH,
President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

EverLine Compliance CA, LLC ("Contractor") shall provide the following Pipeline Maintenance Program services as requested by the Northern California Power Agency ("Agency") at any Facilities owned or operated by NCPA:

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

- Operations and maintenance field activities
- Operations and maintenance compliance activities
- Demonstration of operator qualification (OQ) compliance
- Integrity management program field activities
- Integrity management compliance
- Integrity management action items
- Required regulatory control room services

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

Specific CT1 Alameda are detailed on the following pages:

Identified Tasks, Frequency, & Task Assignments							
Task Description:	Frequency	Not to Exceed (mths)	Category	Agency	Primary Reference	Resource	Comment
Reporting							
Pipeline Audit	AR	NA	O&M	PHMSA	49 CFR 192	EPS	EPS would provide onsite lead for any PHMSA audits or regulatory responses.
Annual report to PHMSA	March 15/year	NA	O&M	PHMSA	49 CFR 191.17	EPS	
Incident reporting & investigation	AR	NA	O&M	PHMSA	49 CFR 191.5 & 15	EPS	
Safety Related Condition Reporting	AR	NA	O&M	PHMSA	49 CFR 191.23 & 25	EPS	
Investigation of failures	AR	NA	O&M	PHMSA	49 CFR 617	EPS	
OMB control number assigned to collect information	AR	NA	O&M	PHMSA	49 CFR 191.21	EPS	
National Registry of Operators and Notifications	AR	NA	O&M	PHMSA	49 CFR 191.22	EPS	
Annual NPMS review and update	March 15/year	NA	O&M	PHMSA	49 CFR 191.29	EPS	
GIS Mapping and Analysis	AR	NA	NA	NA	NA	EPS	
Corrosion Control							
External corrosion control cathodic protection (CP) system survey	1x/calendar year	15	O&M	PHMSA	49 CFR 192.465(a)	FJ Tech	
External corrosion CP remote monitoring	Ongoing	NA	O&M	PHMSA	49 CFR 192.465(a)	DBTS	Remote CP monitoring was added several years ago using Omnimatrix.
External corrosion control rectifier inspection or critical bonds	6x/calendar year	2 1/2	O&M	PHMSA	49 CFR 192.465(b)&(c)	DBTS	
Internal corrosion corrosive gas investigation - obtain sample	1x/calendar year	NA	O&M	PHMSA	49 CFR 192.477	DBTS	The NPCA pipeline has a long history of product analysis demonstrating that the gas is non-corrosive. No treatment of gas or coupons are expected for this pipeline.
Internal corrosion corrosive gas	1x/calendar year	NA	O&M	PHMSA	49 CFR 192.477	EPS	

investigation - engineering review							
Atmospheric corrosion inspection - onshore	1x/3 calendar year	39	O&M	PHMS A	49 CFR 192.481	DBTS	
Verification of corrosion tasks by qualified person	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.453	EPS	
Emergency Response							
Annual review of emergency plan	1x/calendar year	15	O&M	PHMS A	49 CFR 192.605(a)	EPS	EPS currently provides the ERP for NCPA
Emergency drill or training including verification of effectiveness of training	1x/calendar year	15	O&M	PHMS A	49 CFR 192.615(b)(2)	EPS	
Liaison with appropriate emergency responders	1x/calendar year	15	O&M	PHMS A	49 CFR 192.614 & 615(c)	DBTS	
Emergency activity review after an emergency event	AR	NA	O&M	PHMS A	49 CFR 192.615(b)	EPS	
Hazwoper Refresher	1x/calendar year	NA	O&M	OSHA	29 CFR 1910.120	EPS	
Damage Prevention							
Membership in a One Call	Ongoing	NA	O&M	PHMS A	49 CFR 192.614	EPS	
One Call for excavation activities	AR	NA	O&M	PHMS A	49 CFR 192.614(c)(3)	DBTS	DBTS receives one calls through USA North. Each call is documented as no conflict or marking and locating required. If the dig requires onsite monitoring then this item is billed at based on time and materials.
Damage prevention update list of excavators	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.614(c)(1)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Damage Prevention - Public Awareness							
Public awareness mailers to emergency officials	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Public awareness mailers to excavators	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public

							Awareness (PAPA).
Public awareness mailers to public officials	1x/3 calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA). As a program enhancement this is being completed annually.
Public awareness mailer to "One-Call" centers	1x/calendar year	NA	O&M	PHMS A	49 CFR 192.616(d)	EPS	EPS coordinates with the Pipeline Association of Public Awareness (PAPA).
Public awareness mailers to residents, businesses along ROW	1x/2 calendar year	NA	O&M	PHMS A	49 CFR 192.616(e)	EPS	EPS coordinates with the Paradigm. Starting in 2020 this has been increased to annually.
Public awareness program annual self assessment (Procedures and Team Charter)	1x/calendar year	18	O&M	PHMS A	49 CFR 192.616(i)	EPS	This is an annual review of the Public Awareness Program.
Public awareness 4yr review & survey of mailer effectiveness	1x/4 calendar year	NA	O&M	PHMS A	49 CFR 192.616(i)	EPS	EPS coordinates this with PAPA and Paradigm. In addition, EPS completes the evaluation and provide program enhancements.
O&M Activities							
Conversion of service report	AR	NA	O&M	PHMS A	49 CFR 192.14	EPS	
Abandonment Report	AR	NA	O&M	PHMS A	49 CFR 192.727	EPS	
Pressure Testing Report	AR	NA	O&M	PHMS A	49 CFR 192.501-517	EPS	
Annual review of O&M procedures	1x/calendar year	15	O&M	PHMS A	49 CFR 192.605(a)	EPS	EPS currently provides the O&M for NCPA
Annual review of pipeline specific O&M (PSOM)	1x/calendar year	15	O&M	PHMS A	49 CFR 192.605(a)	EPS	EPS currently provides the PSOM for NCPA, this manual provides the details of the pipeline and the startup and shutdown procedures.

							This is part of the O&M.
Annual review work performed by operator	1x/calender year	15	O&M	PHMSA	49 CFR 192.605(b)(8)	EPS	
Change in class location required study	1x/calender year	15	O&M	PHMSA	49 CFR 192.609	EPS	
Change in class location, confirmation or revision of MAOP	AR	NA	O&M	PHMSA	49 CFR 192.611	EPS	
Continuing surveillance review	1x/calender year	15	O&M	PHMSA	49 CFR 192.613	EPS	
Critical crossing (highways, railroads) inspection - Class 3	4x/calender year	4 1/2	O&M	PHMSA	49 CFR 192.705	DBTS	
Patrol of ROWs - Class 3	2x/calender year	7 1/2	O&M	PHMSA	49 CFR 192.705	DBTS	
Leak survey - Class 3	2x/calender year	7 1/2	O&M	PHMSA	49 CFR 192.706(a)	DBTS	
Pressure limiting device inspection (PSV)	1x/calender year	15	O&M	PHMSA	49 CFR 192.739	DBTS	
Pressure limiting device inspection (ESD)	1x/calender year	15	O&M	PHMSA	49 CFR 192.739	DBTS	
Pressure limiting gas pipeline capacity review (PSV)	AR	NA	O&M	PHMSA	49 CFR 192.743	EPS	
Valve maintenance	1x/calender year	15	O&M	PHMSA	49 CFR 192.745	DBTS	
Update maps & drawings	1x/calender year	NA	O&M	PHMSA	49 CFR 192.605(b)(3)	EPS	
Update corrosion maps and records	1x/calender year	NA	O&M	PHMSA	49 CFR 192.491(a)	EPS	
Inspect and maintain pipeline markers	1x/calender year	15	O&M	PHMSA	192.707	DBTS	
Review response of operator to abnormal operations	1x/calender year	15	O&M	PHMSA	49 CFR 192.605(c)(4)	EPS	
Exposed pipe report (external & internal)	AR	NA	O&M	PHMSA	49 CFR 192.475 & 459	DBTS	
Upgrading	AR	NA	O&M	PHMSA	49 CFR 192.553	EPS	
Prevention of Accidental Ignition	AR	NA	O&M	PHMSA	49 CFR 192.751	EPS	
Drug and Alcohol							
PHMSA annual drug report (DAMIS)	March 15/year	NA	D&A	PHMSA	49 CFR 199	EPS	
Verification of Company (Contractor) Drug Plan & Procedures	1x/calender year	NA	D&A	PHMSA	49 CFR 199	EPS	
Verification of Company (Contractor) Records of Random Drug Testing	1x/calender year	NA	D&A	PHMSA	49 CFR 199	EPS	
Verification of Sub-Contractor Drug Plan & Procedures	1x/calender year	NA	D&A	PHMSA	49 CFR 199	EPS	

Verification of Sub-Contractor Records of Random Drug Testing	1x/calendar year	NA	D&A	PHMSA	49 CFR 199	EPS	
Verification of Post-Accident Drug Testing Records	AR	NA	D&A	PHMSA	49 CFR 199	EPS	
Items Requiring Additional Costs - T&M							
Pipeline modification and/ or repairs	AR	NA	O&M	PHMSA	49 CFR Subpart B, Subpart C, Subpart D, Subpart E, Subpart G, Subpart I, Subpart L and Subpart M	EPS/ DBTS	EPS will provide oversight as part of its monthly fee to ensure the modifications and/or repairs are done according to pertinent PHMSA regulations as outlined in the reference. Actual repairs, parts, and engineering would be billed out as T&M.
Pressure Test Pipeline	Based on Assessment Interval	NA	IMP	PHMSA	49 CFR Subpart J	EPS/ DBTS	EPS will provide oversight as part of its monthly fee to ensure pressure tests are done according to pertinent PHMSA regulations as outlined in the reference. Actual cost of the pressure test would be billed out as T&M.
Supplemental Assessment (CIS, DCVG, etc.)	Note	NA	IMP	PHMSA	49 CFR 192.465(b)	EPS/ FJ	EPS will provide oversight as part of its monthly fee to ensure supplemental tests are done according to pertinent PHMSA regulations as outlined in the reference. Actual cost of supplemental tests would be billed out as T&M.

Direct Assessment (ECDA, etc.)	Note	NA	IMP	PHMS A	49 CFR 192.490	EPS/FJ	EPS will provide oversight as part of its monthly fee to ensure supplemental tests are done according to pertinent PHMSA regulations as outlined in the reference. Actual cost of supplemental tests would be billed out as T&M.
Operator Qualifications							
OQ - Annual review of procedures	1x/calendar year	15	OQ	PHMS A	49 CFR 192.805	EPS	EPS currently provides the OQ Manual for NCPA.
OQ - Monitoring Individuals between Re-evaluation Intervals	AR	NA	OQ	PHMS A	49 CFR 192.805	EPS	
OQ - Program review and/or audit	AR	NA	OQ	PHMS A	49 CFR 192.805	EPS	
Operate Pipeline on Daily Basis Using Only Qualified Personnel	Ongoing	NA	OQ	PHMS A	49 CFR 192.805	EPS	This includes training and/ or qualifying company employees as needed to maintain qualifications.
OQ - Contractor status verification	1x/calendar year	NA	OQ	PHMS A	49 CFR 192.805	EPS	This will be provided via an online system available to NCPA using password protection.
OQ - Verify company personnel OQ records are current for work performed	1x/calendar year	NA	OQ	PHMS A	49 CFR 192.805	EPS	This will be provided via an online system available to NCPA using password protection.
Integrity Management							
IMP procedures annual review	1x/calendar year	18	IMP	PHMS A	49 CFR 192.901	EPS	EPS currently provides the IMP for NCPA.

IMP annual review and team charter: Element #1: ID of HCAs Element #2: ID of threats, Data Integration, and Risk Analysis Element #3: Baseline Assessment Element #4: Direct Assessment Element #5: Remediation Work Element #6: Continual Evaluation and Assessment Element #7: Confirmatory Direct Assessment Element #8: Preventive and Mitigative Element #9: Record Keeping Element #10: Management of Change Element #11: Quality Assurance Element #12: Communication Plan Element #13: Agency Notification Element #14: Environment and Safety	1x/calendar year	18	IMP	PHMSA	49 CFR 192.901 to 192.951	EPS	This is an annual review of each of the IMP program elements.
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(All references to “EPS” in table above is EverLine Compliance CA, LLC)

CT1 Alameda Control Room Services:

1. Facility Description

- a. EverLine will provide control room services for NCPA’s 1-mile Natural Gas pipeline.

2. Project Management

- a. EverLine will assign a Project Manager to coordinate the integration with NCPA’s assigned point of contact.
- b. Project Schedule: EverLine’s Project Manager will prepare a schedule for submission to a designated NCPA representative. The schedule will detail the major technical milestones for the project and EverLine’s major project activities.
- c. Project Updates: At periodic intervals, EverLine’s Project Manager will prepare a status report for submission to a designated NCPA representative. The reports will detail project progress, possible conflicts or sighted delays, scheduling requirements, and information/services required from NCPA to ensure timely project progress.

3. SCADA Design and Configuration

- a. EverLine will use information provided by NCPA along with field notes as a guide to building out the SCADA application, network, and system environment. The SCADA application and network equipment shall reside inside EverLine's secured data center located in downtown Houston for primary and Las Vegas for backup. Both locations shall be real time synchronized for instantaneous fail-over.
- b. Design: EverLine will adhere to its existing SCADA Functional Technical Specification for SCADA design to incorporate NCPA's assets into EverLine's ClearSCADA application. EverLine will work closely with NCPA to define any requested format/layout/orientation preferences prior to commencing screen development.
- c. Alarm D&R: EverLine will complete an Alarm Determination and Rationalization and will maintain a Master Alarm Database
- d. Customer Access: EverLine will provide NCPA personnel with 24/7 read-only access to EverLine's ClearSCADA screens

4. Network Configuration

- a. EverLine will provide a secure SCADA network with a Dedicated DMZ for all field communication and remote user access.
- b. EverLine will establish a network connection between one or more locations within NCPA's local network, and EverLine's data center. These communication paths will be encrypted for a secure connection and replicated for EverLine's secondary data center.
- c. EverLine will provide all necessary hardware that sits inside the EverLine colocation. Hardware and associated configuration inside NCPA's environment is NCPA's responsibility and not included in this scope of work.

5. System Testing

- a. EverLine will be responsible for documenting the Point to Point (P2P) testing process from EverLine's facility in coordination with an NCPA field technician. EverLine's staff will perform troubleshooting of and correction to the SCADA system as required during P2P.

6. Control Room Services:

- a. 24/7 Monitoring and Control Services: EverLine will provide 24/7 remote monitoring and/or control of valves, pumps, meters, pressure transmitters, tanks, and other safety related devices to facilitate normal operating procedures and respond to abnormal and emergency conditions. EverLine will develop standard control room operating procedures in coordination with NCPA to define required actions during normal, abnormal, and emergency conditions, including interactions with NCPA's field personnel, NCPA's commercial personnel and third-party operators. EverLine will make 24/7 notifications to NCPA's operations personnel based on pre-determined safety limits, abnormal operating conditions, or emergency conditions.

- b. CRM Compliance Management: EverLine will adhere to all CRM compliance requirements including a CRM Plan, staffing, alarm management, management of change, training, testing, reporting, documentation, and audit support. EverLine will provide training, qualifications and drug and alcohol testing for all control room personnel performing covered tasks. EverLine will host and/or attend any regulatory audits associated with NCPA's control room operations.
- c. 24/7 SCADA and Network Maintenance and Support: EverLine will provide 24/7 network maintenance and support for EverLine's primary control center and backup control center including supporting infrastructure and the network connections from EverLine's control centers to NCPA's local network.
- d. Backup Control Center: EverLine's operations include a fully operational backup control room in San Antonio, TX that contains functionally equivalent components to the Primary Control Room and can perform all operational SCADA functions as backup to the Primary Control Center. EverLine will relocate and assume operations from this backup center in the event of a planned emergency (e.g. Hurricane).
- e. Operational Reporting: EverLine will provide NCPA with any compliance related documentation but will not provide any incremental operational reporting (hourly / daily meter reports, system balance) as part of this scope of work.

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:

CT1 Alameda Pipeline Maintenance Program Specific Cost: \$7,900.00 / Month

CT1 Alameda Control Room Services Cost:

Set-Up Fee:

- a. EverLine will charge a one-time Set-Up Fee of \$16,220 for the initial installation, with 50% due upon signing of an agreement and the remainder due on the commencement date. The Set-Up Fee includes the following:
 - i. Develop and configure SCADA screens
 - ii. Integrate NCPA's assets into CRM Plan
 - iii. Integrate NCPA's control room operations procedures
 - iv. Integrate NCPA's alarm philosophy
 - v. Integrate call-out procedures (AOC/Emergency)
 - vi. Train EverLine's controllers on NCPA's systems
 - vii. Establish communications from control room to local network
 - viii. Complete point to point testing

Annual Service Fee

- a. EverLine will charge an Annual Service Fee of \$44,700 payable in equal monthly installments of \$3,725. EverLine will charge an escalation factor of 3% for each year after the first year of service. The Annual Service Fee includes the following:
 - i. Staff Qualified Controllers
 - ii. 24/7 monitor, control, and dispatch service
 - iii. AOC/Emergency notifications and documentation
 - iv. Daily coordination with field operations
 - v. Control room network system maintenance
 - vi. CRM daily shift turnover reporting
 - vii. CRM monthly alarm management reporting
 - viii. CRM training program
 - ix. CRM workload analysis studies
 - x. CRM communications plan testing
 - xi. CRM management of change reporting
 - xii. CRM records retention and audit support
 - xiii. CRM periodic point to point testing
 - xiv. CRM backup system testing
 - xv. CRM audit support
 - xvi. Dedicated DMZ

Pricing for services to be performed at other NCPA Facilities 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: December 1, 2022

SUBJECT: Leidos Engineering, LLC – Five Year Multi-Task Professional Services Agreement for Transmission and Distribution Design 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:	Generation Services	

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 Leidos Engineering, LLC for transmission and distribution design services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

BACKGROUND:

Transmission and distribution design 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. The current agreement with Leidos Engineering, LLC has expired. An NCPA Member has expressed an interest in utilizing this vendor in the future. 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 EN Engineering, LLC, McHale & Associates, Inc., Coffman Engineers, Inc., Mead & Hunt, Inc. and PowerTech Labs, 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 June 7, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On June 12, 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 Leidos Engineering, LLC

RESOLUTION 23-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK PROFESSIONAL SERVICES AGREEMENT WITH LEIDOS ENGINEERING, LLC

(reference Staff Report XXX:23)

WHEREAS, transmission and distribution design 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, Leidos Engineering, LLC is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task Professional Services Agreement with Leidos Engineering, LLC 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 a 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 LEIDOS ENGINEERING, LLC

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 Leidos Engineering, LLC, a Limited Liability Company with its office located at 1750 Presidents Street, Reston, VA 20190 ("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, LIMITATION OF LIABILITY, 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.

5.3 Limitation of Liability. Neither Agency nor Consultant shall be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential

damages, whether based in contract, warranty or other legal theory. The total and aggregate liability of consultant for any and all liabilities, losses, claims, damages, judgments and awards shall be limited to the greater of the applicable insurance limits required to be maintained by Consultant under this agreement or \$5,000,000.

Section 6. STATUS OF CONSULTANT.

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

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

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

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

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

Section 7. LEGAL REQUIREMENTS.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

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

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

8.4.1 Immediately terminate the Agreement;

8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or

8.4.4 Charge Consultant the difference between the costs to complete the Services that are unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

Section 9. KEEPING AND STATUS OF RECORDS.

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

9.2 Consultant's Books and Records. Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement

for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

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

9.4 Confidential Information and Disclosure.

- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.
- 9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.
- 9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

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

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

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

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

Section 10. MISCELLANEOUS PROVISIONS.

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

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.6 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

10.7 Contract Administrator. This Agreement shall be administered by 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:

Adam Fox
Engineering Director
Leidos Engineering, LLC
480 Ariel Drive
San Jose, CA 95123

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, 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 Services relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

LEIDOS ENGINEERING, LLC

Date_____

Date_____

RANDY S. HOWARD, General Manager

ALEX KIM, Contracts Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Leidos Engineering, LLC ("Consultant") shall provide transmission and distribution design and engineering services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by the Agency, its Members, Southern California Public Power Authority (SCPPA), or SCPPA Members.

Services to include, but not limited to the following:

- Grid Planning services
- Power Delivery services
- Environmental services
- Asset Management services
- Smart Grid services

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed to the amount 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:

Billing Class	Hourly Rate	Typical Project Roles
3	\$38.00	Clerical, Administration, Junior Engineers, and Technicians
4	\$51.00	
5	\$64.00	
6	\$77.00	
7	\$90.00	Staff Engineers, Consultants, and Technicians
8	\$102.00	
9	\$115.00	
10	\$128.00	
11	\$141.00	Senior Engineers, Consultants and Technicians, Managers, and Principals
12	\$154.00	
13	\$166.00	
14	\$179.00	
15	\$192.00	Executive Engineers and Consultants, Senior Project Managers, and Principals
16	\$205.00	
17	\$218.00	
18	\$230.00	
19	\$243.00	
20	\$256.00	
21	\$269.00	Executive Engineers and Consultants, Senior Project Managers, and Senior Principals
22	\$282.00	
23	\$294.00	
24	\$307.00	
25	\$320.00	
26	\$333.00	
27	\$346.00	
28	\$358.00	
29	\$371.00	
30	\$384.00	
31	\$397.00	

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

(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.