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Agenda – Revised

Date: Wednesday, August 5, 2020

Subject: Facilities Committee Meeting

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

Time: 9:00 am

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

You may participate in the meeting via teleconference by:

Dial: 1-312-757-3121

Code: 600-474-613#

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

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

REVIEW SAFETY PROCEDURES

1. Call Meeting to Order and Roll Call

PUBLIC FORUM

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

OPEN SESSION

DISCUSSION / ACTION ITEMS

2. **Approval of Minutes** – Approve the July 1, 2020 Facilities Committee meeting minutes.
3. **All NCPA Facilities, Members, SCPPA – NorCal Power Services, LLC MTGSA** – Staff is seeking a recommendation for Commission approval of a Multi-Task General Services Agreement with NorCal Power Services, LLC, for electrical maintenance related services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CTs*)
4. **All NCPA Facilities, Members, SCPPA – Evoqua Water Technologies, LLC First Amendment to MTGSA** – Staff is seeking a recommendation for Commission approval of a First Amendment to the Multi-Task General Services Agreement, extending the agreement expiration date from September 1, 2020 to November 1, 2020, with no change to the not to exceed amount, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CTs*)
5. **All NCPA Facilities, Members, SCPPA – First Global Gear Services, LLC dba FGGS, LLC MTGSA** – Staff is seeking a recommendation for Commission approval of a Multi-Task General Services Agreement with First Global Gear Services, LLC dba FGGS, LLC, for turbo machinery maintenance services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CTs*)
6. **CY 2021 NCPA Capacity Pool Rates** – Staff will review and seek a recommendation for approval of the Resource Adequacy capacity rates, to be used in the NCPA Capacity Pool during calendar year 2021. (*Commission Category: Consent; Sponsor: Pooling and Portfolio Management*)
7. **NCPA Hydroelectric Facility – Hydro Wildfire Risk Mitigation Project** – Staff is seeking a recommendation for Commission approval to increase the not to exceed amount of the Hydroelectric Wildfire Risk Mitigation Project from \$3,000,000 to \$3,250,000, including approval for the additional funds to be paid from the Hydro Maintenance Reserve fund. (*Commission Category: Discussion/Action; Sponsor: Hydro*)

INFORMATIONAL ITEMS

8. **New Business Opportunities** – Staff will provide an update regarding new business opportunities. (*Sponsor: Power Management*)
9. **NCPA Generation Services Plant Updates** – Plant Staff will provide the Committee with an informational update on current plant activities and conditions. (*Sponsor: Generation Services*)

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

11. Next Meeting – The next Facilities Committee meeting is scheduled for September 2, 2020.

ADJOURNMENT

/cp



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Minutes – Draft

Date: July 6, 2020
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: July 1, 2020 Facilities Committee Meeting Minutes

- 1. Call meeting to order & Roll Call** – The meeting was called to order by Committee Chair Brian Schinstock (Roseville), at 9:02 am. A sign-in sheet was passed around. Attending via teleconference and/or on-line presentation were Alan Harbottle (Alameda), Mark Sorensen (Biggs), Paul Eckert (Gridley), Jiayo Chiang (Lodi), Tikan Singh (Lompoc), Poorvi Rau, and Jim Stack (Palo Alto), Nick Rossow (Redding) Basil Wong, Monica Nguyen, and Eric Shum (Santa Clara), and Owen Goldstrom, and Willie Manuel (TID). Those attending in person are listed on the attached Attendee Sign-in Sheet. Committee Representatives from BART, Healdsburg, Plumas-Sierra REC, Port of Oakland, and Ukiah were absent. A quorum of the Committee was established.

PUBLIC FORUM

No public comment.

OPEN SESSION

DISCUSSION / ACTION ITEMS

- 2. Approval of minutes from the June 3, 2020 Facilities Committee meeting.**

Motion: A motion was made by Basil Wong and seconded by Brian Schinstock recommending approval of the June 3, 2020 Facilities Committee meeting minutes. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Redding, Roseville, and Santa Clara. ABSTAIN = TID. The motion passed.

- 3. All NCPA Facilities, Members, SCPPA – Peterson Power Systems, Inc. First Amendment to MTGSA** – Staff provided background information and was seeking a recommendation for Commission approval of a First Amendment to the Multi-Task General Services Agreement with Peterson Power Systems, Inc., increasing the not to exceed amount from \$215,000 to \$1,000,000, with no other changes to the contract terms, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

NCPA entered into a five year Multi Task General Services Agreement with Peterson Power Systems, Inc. effective March 8, 2019 for an amount not to exceed \$215,000. The Geothermal Facility Plant 1 fire pump diesel engine was completely overhauled, coupled with renting portable generators during the duration of the Plants 1 & 2 outages, quickly exhausted the funds available under this agreement. This amendment will increase the not to exceed amount from \$215,000 to \$1,000,000. It is an enabling agreement with no commitment of funds. This agreement will still be available for use at any facility owned and/or operated by the Agency, its Members, SCPPA, or SCPPA Members. NCPA currently has agreements in place for similar services with Koffler Electric Mechanical Apparatus Inc. dba Kemar, and Vince Sigal Electric, Inc. A draft Commission Staff Report, and draft first amendment to the agreement, with the original agreement were available for review. It is recommended to place this item on the consent calendar.

Motion: A motion was made by Jiayo Chiang and seconded by Tikan Singh recommending Commission approval authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with Peterson Power Systems, Inc., with any non-substantial changes as recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$215,000 to \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members. YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and TID. The motion passed.

4. **NCPA Geo Facility – Plant 1 Fire System Modernization Project** – Staff presented background information and was seeking a recommendation for Commission approval of the NCPA Geothermal Plant 1 Fire System Modernization Project, 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, for a not to exceed amount of \$1,200,000, including approval of \$320,000 for the project contingency from the Maintenance Reserve fund.

The fire protection system at NCPA's Geothermal Plant 1 is malfunctioning, unserviceable, unsupported by the manufacturer, and is no longer considered reliable. The Plant 1 fire protection system is critical to the safety of NCPA personnel and the preservation of plant equipment in the event of a fire. This project is part of the recurring and usual work that is necessary to preserve NCPA's facilities in a safe, efficient, and continuously usable condition. The fire system by its very nature is permanently attached, and part of the buildings and equipment at NCPA's Geothermal Projects. As such, this work fits into the classification of "maintenance" as that term is defined in Title 8, California Code of Regulations Section 16000. Per NCPA's purchasing policy, this work needs to be bid and must pay prevailing wages.

The Plant 1 Fire System Modernization Project forecasted cost is approximately \$1,200,000. Purchase orders referencing the terms and conditions of any agreements executed for work related to this project will be issued following NCPA procurement policies and procedures. The breakdown of the project cost will include \$800,000 from the approved budget for FY 2021, \$80,000 per CEC DCBO requirements (10% adder), and a project contingency from the Maintenance Reserve of \$320,000. It is recommended to place this item on the consent calendar.

Motion: A motion was made by Brian Schinstock and seconded by Basil Wong recommending Commission approval authorizing the NCPA Geothermal Plant 1 Fire System Modernization 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 forecasted amount not to exceed \$1,200,000, including approval of \$320,000 for the project contingency from the Maintenance Reserve fund. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Roseville, Santa Clara, and TID. ABSTAIN = Palo Alto, and Redding. The motion passed.

INFORMATIONAL ITEMS

- 5. New Business Opportunities** – Staff provided the Committee with an update regarding new business opportunities.

Staff is currently in negotiations with Sonoma Clean Power (SCP). A draft Power Management Services Agreement was sent to SCP for their review. SCP sent back comments for NCPA's review. Staff will review, and will follow up with SCP. The final agreement will be reviewed by this Committee, seeking a recommendation for Commission approval before moving forward. A proposal has also been sent to South Feather Water and Power Agency (SFWPA) for their review. Staff is still waiting on a response from SFWPA.

- 6. Resource Adequacy Commitments Impact on Operations** – Staff reviewed and discussed the impacts Resource Adequacy (RA) commitments have on joint project operations.

Many Members are either claiming or selling RA capacity sourced from NCPA Projects. RA commitments result in certain obligations that impact scheduling and operations of NCPA Projects, which creates exposure to RAIM penalties. Planned outage requests are subject to CAISO review. Lack of substitute or replacement RA may result in a planned outage being rejected by the CAISO. Planned outage replacement can be supplied from system or local RA. Forced outage replacement can only be supplied from like sources (resources located at the same electrical bus). The CAISO has expressed concerns with outages being reclassified, raising potential concerns of changing planned outages to forced outages.

Outage schedules are presented and discussed during August and September. Once approved by the Facilities Committee these outages are scheduled with the CAISO by October 15 each year. Annual RA commitments are filed at the CAISO by October 30 each year. Options for planned and forced outages were discussed. Formal operating procedures are being developed for planned outages. Staff propose that during a planned outage Members may self-provide substitute RA by a defined date, or NCPA will be authorized to seek the substitute RA. NCPA may also seek approval of an outage without substitute RA, but the outage may need to be cancelled. During forced outages Members will be notified and shall be individually responsible for providing substitute RA capacity to mitigate the impacts associated with non-availability. NCPA may also act on behalf of Members pursuant to existing authority granted under existing agreements which include the MPP Agreement and the Pooling Agreement. The duration of the outage will also impact whether RA capacity should be committed or not.

Staff will develop proposed modifications to operating procedures based on Member feedback for FA schedules and operating agreements. Proposed modifications will be presented to the Members at a future Facilities Committee meeting seeking a recommendation for Commission approval.

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

Geo – There were no health or safety issues to report for the month of June. The average generation was 90.4 MW, which is up from 88.8 MW in May. The FY 2020 YTD generation is 655.7 GWh, which is 92.8 GWh (12%) below forecast. Vegetation management continues under the 230 KV line with crews from Cal Fire helping out. Improvements for steam production is under way to fix idle wells. The plan is to re-establish 10 underperforming wells, and convert into MWs. The original fire pump doors have been replaced on Plants 1 and 2. Insulation repairs have been completed to the inlet piping for the Unit 4 turbine, and parts of the steam pipeline. Lastly the Bear Canyon Road repairs have also been completed.

CTs – All CT Units are running, and now available. During the month of June CT1 had 10 actual starts, out of 19 forecasted with 2 ghost starts. The YTD total is 237. CT2 had 5 actual starts of 4 that were forecasted. Bringing the YTD total to 41. Alameda Unit 1 was in a forced outage due to a PG&E system problem. There are no planned outages for the summer.

Hydro – Collierville is running again now. The Walker Fire was June 16-17, 2020 under power lines, so tripped the relay. It burned approximately 1100 – 1200 acres. Three NCPA towers were not affected. Heavy vegetation work was done around these towers. Both lines were tested, and they are fine. The 230 KV Insulator Replacement Project will start July 8, 2020. Contractor mobilization is this week. Construction is scheduled from July 8, 2020 through August 26, 2020. An Osprey nest is currently on one of the towers, with two babies. Nothing can be done to this tower until they are gone.

Joel Ledesma, Assistant General Manager, Generation Services, introduced Jay Mearns, joining the Generation Services Department. Jay is an engineer working with Jeremy Lawson. Previous experience includes working for PG&E.

8. Planning and Operations Update –

- NCPA Renewables RFP – Staff is seeking Member feedback regarding the Renewable RFPs Members are interested in. Additional proposals have been received since the last Facilities Committee meeting. Proposal material will be available on the NCPA Connect Collaboration site.
- Meter Maintenance Program – Staff is currently seeking bids for the Meter Maintenance Program (MMP) services through a RFP. The roles and responsibilities of NCPA and Member staff, along with next steps will be discussed at the next Committee meeting.
- STAR Process Update – NCPA is participating in this process with comments due today. Staff has been reaching out to Members for input. A meeting is scheduled for August 1, 2020.
- COVID-19 Update – Dual operations continue for the NCPA dispatch and scheduling functions.

9. Next Meeting Date – The next regular Facilities Committee meeting is scheduled for August 5, 2020.

ADJOURNMENT

The meeting was adjourned at 11:05 pm by the Committee Chair.

Teleconference call only due to Covid19.

Northern California Power Agency July 1, 2020 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	✓
TID	✓
UKIAH	

**Northern California Power Agency
July 1, 2020 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]



Commission Staff Report – *DRAFT*

Date: August 5, 2020

COMMISSION MEETING DATE: August 27, 2020

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

AGENDA CATEGORY: Consent

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

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

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

It is recommended that this item be listed on the Commission Consent calendar.

BACKGROUND:

Electrical maintenance related services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NorCal was the low bidder on a recent project and due to timing we had to move forward with the next low bidder in which we already had an agreement with. NCPA desires to enter into a multi-task enabling agreement with NorCal Power Services LLS 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 and proven vendors for these types of services. NCPA currently has agreements in place with Electrical Maintenance Consultants and Hart High Voltage for similar services.

FISCAL IMPACT:

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

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee Review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with NorCal Power Services LLC

RESOLUTION XX-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH NORCAL POWER
SERVICES LLC**

(reference Staff Report #XXX:XX)

WHEREAS, electrical maintenance 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, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, NorCal Power Services LLC is a provider of these services; and

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

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

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

PASSED, ADOPTED and APPROVED this ____ day of _____, 2020 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
NORCAL POWER SERVICES 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 NorCal Power Services LLC, a sole proprietorship with its office located at 3917 Auburn Folsom Road, Loomis, CA 95650 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 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** FIVE HUNDRED THOUSAND dollars (\$500,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Contractor shall maintain professional liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) 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 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:

NorCal Power Services LLC
Attention: Aaron Stone
3917 Auburn Folsom Road
Loomis, CA 95650

Any written notice to Agency shall be sent to:

Randy S. Howard

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

With a copy to:

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

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

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

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

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

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

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

SIGNATURES ON FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

NORCAL POWER SERVICES LLC

Date_____

Date_____

RANDY S. HOWARD,
General Manager

AARON STONE,
Owner

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

NorCal Power Services LLC ("Contractor") shall provide electrical maintenance 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:

- Protection relay testing
- NERC PRC and MOD standards compliance services
- Substation and generation electrical equipment maintenance and testing
- Limited repair capabilities of substation and generation electrical equipment
- Power system studies
- Protection relay upgrades
- OSIsoft PI support
- Emerson Ovation and ABB Bailey DCS support
- General combined cycle power plant troubleshooting including process equipment and instrumentation
- Engineering

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:

- Travel time = \$50/hr
- Vehicle miles charge = current year federal mileage rate
- Electrical equipment field testing w/specialized test equipment = \$170/hr straight time
- Protective relay testing = \$170/hr straight time
- Protective relay programming = \$150/hr straight time
- On-site troubleshooting = \$150/hr straight time
- Licensed Professional Engineer = \$200/hr straight time

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

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

NorCal Power 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.

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*

Date: August 5, 2020

COMMISSION MEETING DATE: August 27, 2020

SUBJECT: Evoqua Water Technologies, LLC – First Amendment to Five Year Multi-Task General Services Agreement for Water Treatment Related Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

AGENDA CATEGORY: Consent

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

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

Approve Resolution XX-XX authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with Evoqua Water Technologies, LLC for water treatment related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, extending the expiration date from September 1, 2020 to November 1, 2020, with no change to the not to exceed amount or other contract terms, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

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

BACKGROUND:

Water treatment 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, or by SCPPA Members.

NCPA entered into a five year Multi-Task General Services Agreement with Evoqua Water Technologies LLC effective September 1, 2015. This agreement is expiring on September 1, 2020. NCPA requested competitive bids specifically for the water treatment services required for the CT facilities. Evoqua Water Technologies, LLC was the winning bidder. The negotiation process for the new agreement is taking more time than anticipated. This First Amendment will extend the expiration date from September 1, 2020 to November 1, 2020 which will allow for finalizing negotiations. This Agreement is still available for use at any facility owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$1,400,000 over the existing five year term through November 1, 2020. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee Review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- Multi-Task General Services Agreement with Evoqua Water Technologies, LLC
- First Amendment to Multi-Task General Services Agreement with Evoqua Water Technologies, LLC

RESOLUTION XX-XX

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

(reference Staff Report #XXX:XX)

WHEREAS, water treatment 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, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, Evoqua Water Technologies, LLC is a provider of these services; and

WHEREAS, NCPA entered into a five year Multi-Task General Services Agreement with Evoqua Water Technologies LLC effective September 1, 2015; and

WHEREAS, This agreement is expiring on September 1, 2020; and

WHEREAS, NCPA requested competitive bids specifically for the water treatment services required for the CT facilities. Evoqua Water Technologies, LLC was the winning bidder. The negotiation process for the new agreement is taking more time than anticipated; and

WHEREAS, NCPA now seeks to extend the expiration date from September 1, 2020 to November 1, 2020; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with Evoqua Water Technologies, LLC, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,400,000, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2020 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
EVOQUA WATER TECHNOLOGIES LLC**

This agreement for general services ("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 Evoqua Water Technologies LLC, a Delaware limited liability company, with an office located at 181 Thorn Hill Road, Warrendale, PA 15086 ("Contractor") (together sometimes referred to as the "Parties") as of 9/1/, 2015 ("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 upon the later of five (5) years from the (i) Effective Date or (ii) the date this Agreement was signed by Agency.
- 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 and reasonable discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Contractor shall, promptly upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 **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 or 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.

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED ONE MILLION FOUR HUNDRED THOUSAND dollars (\$1,400,000.00)** 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.

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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;
- 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

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; provided, however, Agency shall pay all sales and use taxes levied by any properly constituted governmental authority upon the Work as invoiced by Contractor.

2.4 Authorization to Perform Work. The Contractor is not authorized to perform any Work or incur any costs whatsoever under the terms of this Agreement until receipt of a Purchase Order from the Agency's 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 tools and equipment that may be necessary to perform the Work.

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

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial General Insurance. Contractor shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$750,000; provided, however, that Contractor's self-insured retention or deductible may exceed this amount if Contractor provides to Agency at least ninety (90) days' written notice of the amount of the self-insured retention or deductible amount prior to the effective date of such amount. 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 \$500,000; provided, however, that Contractor's self-insured retention or deductible may exceed this amount if Contractor provides to Agency at least ninety (90) days' written notice of the amount of the self-insured retention or deductible amount prior to the effective date of such amount. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

4.3 Professional Liability Insurance. Intentionally left blank.

4.4 All Policies Requirements.

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

4.6 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 ensues 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 Agency) and hold Agency harmless from any claim, cause of action or liability incurred by Agency as a result of third party claims for (i) bodily injury, (ii) death or (iii) damage to tangible property, to the extent any of the foregoing are caused by Contractor's negligence. For the avoidance of doubt, claims of an employee of Agency are deemed third party claims. Contractor shall have the sole authority to direct the defense of and settle any such indemnified claim. Contractor's indemnification is conditioned on Agency providing (i) Contractor, within a commercially reasonable time following its receipt, with notice of any claim brought to the attention of Agency that Agency knows or reasonably should know is an indemnifiable claim under this Section 5.2 and (ii) reasonable cooperation in the defense of any claim.

For the avoidance of doubt, this Section 5.2 (Indemnification) shall not affect direct claims or actions by Agency against Contractor, including but not limited to claims for damage to Agency property or property at a Project site..

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.

- 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 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 reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency, which such approval shall not be unreasonably withheld or delayed. Contractor shall not subcontract any portion of the Work, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency (such approval not to be unreasonably withheld). 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, excluding any conflicts of law rules that may require application of the laws of any other state or country.
- 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 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 of Contractor (or its employees, agents and subcontractors, as the case may be) to practice their respective professions.
- 7.4 **Work Requiring Payment of Prevailing Wages.** If applicable, 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 fixed as provided in the California Labor Code shall be paid to all workers engaged in performing the Work.

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 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 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 from the date of final payment to Contractor under the Agreement or for any longer period required by law.

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 the Agreement. Notwithstanding anything to the contrary, Contractor shall not be required to divulge information of a proprietary nature.

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential or proprietary information, whether written, recorded, electronic, oral or otherwise, where such Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential or proprietary. Confidential Information shall not include information that: (a) was already known to the Receiving Party (as such term is defined in Section 9.4.2) 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 9.4.1.

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. Conclusion of Agreement. Receiving Party shall return to Disclosing Party, or destroy, Confidential Information (including all copies thereof) upon termination of this Agreement, 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, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

10.1 Project Site Locations. The Project site at which Contractor may perform Work under this Agreement shall include any facilities owned and/or operated by the Agency, by the Agency's members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA members.

10.2 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 Agency's operations and the operations of other contractors at the Project site and take reasonable precautions 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 in broom-clean condition and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.

10.3 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. Excluding any willful vandalism or damage caused by Agency or its contractors, 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. Agency may assume that anything left on the Project site an unreasonable length of time after the Work is completed has been abandoned. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall have no liability therefor. Excluding any willful vandalism or damage caused by Agency or its contractors, 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 sufficient for performance of the Work.

10.4 Use of Agency Equipment. Contractor shall assume the risk and is solely responsible for its use of any equipment and property owned and/or provided by Agency, its members, SCAPA, or its members for the performance of Work.

Section 11. WARRANTY.

11.1 Nature of Work. Contractor warrants to Agency that the Work shall be carried out in a timely and workmanlike manner, and that Contractor shall perform all Work in accordance with Prudent Industry Practices. Agency's warranty from Contractor is ninety (90) days from the date the Work is provided. The term "Prudent Industry Practices," as used in this Agreement, means those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or believed to exist at the time, are deemed as reasonably prudent in the industrial water treatment industry as practiced in the United States with respect to the services which are the subject of this Agreement.

11.2 Deficiencies in Work. In the event of Contractor's failure to perform any Work in accordance with the standards required by Section 11.1 of this Agreement, then upon the earlier of (i) Contractor's discovery of such failure or (ii) Agency's written notice to Contractor of such failure, Contractor shall be obligated, at its expense and as Agency's sole remedy, to either repair or replace the Work at Contractor's sole option, as long as any repaired or replacement Work meets the design specifications of the original Work. If Contractor determines that any warranty claim is not, in fact, covered by this warranty,

Agency shall pay Contractor its then customary charges for any additionally required work. Contractor's warranty is conditioned on Agency's (a) operating and maintaining any equipment associated with the Work in accordance with Contractor's written instructions, (b) not making any unauthorized repairs or alterations in Contractor's equipment which affect the Work and (c) not being in default of any payment obligation to Contractor. Contractor's warranty does not cover damage caused by Agency's negligent operation of any equipment associated with the Work, chemical action or abrasive material or misuse which has damaged the equipment associated with the Work (unless caused by Contractor), or improper installation (unless installed by Contractor).

- 11.3 Exclusive Warranty.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE WARRANTIES SET FORTH IN THIS SECTION ARE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES, AND CONTRACTOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR PURPOSE OR WARRANTIES ARISING BY CUSTOM OR TRADE USAGE.

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 Agency site programs.

- 12.1** Contractor is responsible for performing 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. Contractor and its subcontractors shall be required to comply with the written safety and health obligations as established in the Agreement. Non-compliance with such 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 determine the need for, and 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 to 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 shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 13.7 **Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 13.8 **Notices.** Any written notice to Contractor shall be sent to:

Evoqua Water Technologies LLC
Attention: Branch Manager
1440 Venture Lane
Turlock, CA 95380

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:

Michael F. Dean
General Counsel
Northern California Power Agency
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

- 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 Exhibits A through C attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter hereof. Exhibits A through C 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 refer any remaining disputes to non-binding 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. For clarity, each Party shall be responsible for costs and expenses of its personal attorneys, witnesses and specialists.

13.11.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted 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, the Agreement 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.

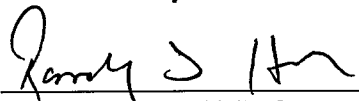
Section 14 **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, AND EVEN IF ANY REMEDIES PROVIDED UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE OR OTHER INDIRECT DAMAGES, EXCEPT THAT CONTRACTOR MAY BE LIABLE FOR CONSEQUENTIAL DAMAGES TO THE EXTENT CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE. CONTRACTOR'S TOTAL LIABILITY ARISING AT ANY TIME IN CONNECTION WITH THIS AGREEMENT SHALL IN ANY EVENT BE LIMITED TO THE TOTAL COMPENSATION PROVIDED IN SECTION 2, OR THE AMOUNT AND TYPES OF INSURANCE REQUIRED UNDER SECTION 4 OF THIS AGREEMENT, WHICHEVER IS GREATER. THE LIMITATIONS PROVIDED IN THIS SECTION APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

SIGNATURES ON FOLLOWING PAGE

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

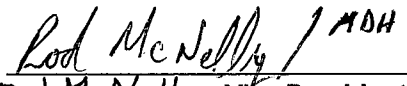
NORTHERN CALIFORNIA POWER AGENCY

Date 9/1/15

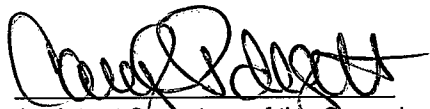

RANDY S. HOWARD, General Manager

EVOQUA WATER TECHNOLOGIES LLC

Date Aug 19, 2015

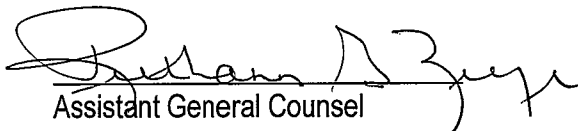

Rod McNelly, Vice President / GM - GIS
Authorized Signatory

Attest:


Assistant Secretary of the Commission



Approved as to Form:


Assistant General Counsel

2386170.11

EXHIBIT A

SCOPE OF WORK

Evoqua Water Technologies LLC ("Contractor") shall provide condensate polisher resin regeneration, DI mixed bed vessel rental & regeneration, RO & UF membrane cleaning, and other water treatment support services as requested by the Northern California Power Agency ("Agency").

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

1. Service Calls - Provide Normal (within 7 to 10 days) and Emergency Service (within 48 hours) calls at the billable rates established in Exhibit "B".
2. Lodi Energy Center, 12745 N. Thornton Road, Lodi, CA 95242
 - a. Provide condensate polisher resin regeneration services per the specification below. The resin is to be regenerated in the hydrogen cycle.

i. Condensate polisher feed water characteristics:

Parameter	Feed water	Unit
Sodium	<3	ug/L
Chloride	<3	ug/L
Sulfate	<3	ug/L
Phosphate	<3	ug/L
Silica	<10	ug/L
Specific Conductivity	<30	uS/cm
Ammonia (as NH3)	<5	mg/L
Total Organic Carbon	<300	ug/L
Temperature Range, normal	70-120	°F
Temperature - peak during bypass	160 for 30-60 min	°F
Total Iron	<0.2	mg/L

ii. Treated Water Specification:

Parameter	Feed water	Unit
Sodium	<1	ug/L
Chloride	<1	ug/L
Sulfate	<1	ug/L
Phosphate	<1	ug/L
Silica	<5	ug/L
Specific Conductivity	<0.1	uS/cm
Temperature Range, normal	90	°F
Temperature - peak during bypass	160 for 30-60 min	°F

- b. Provide a 60 cf resin transport vessel as part of the services.

3. Lodi CT2 (STIG), 12745 N. Thornton Road, Lodi, CA 95242
 - a. Provide Rental of 8 - 60 cf DI vessels (four in service and four in standby) per the following specification: > 10 Meg Ohm/cm resistivity & < 20 ppb Silica.
4. Lodi CT1, 2131 W. Turner Road, Lodi, CA 95240
 - a. Provide Rental of DI Mixed Bed Bottles, Quantity of 12, 3.6 cf each per the following specification: > 10 Meg Ohm/cm resistivity & < 20 ppb Silica.
 - b. Provide Exchange of DI Mixed Bed Bottles. Include labor for service technician to perform Exchange (including transportation).
5. Alameda CT, 2900 Main Street, Alameda, CA 94501
 - a. Provide Rental of DI Mixed Bed Bottles, Quantity of 16, 3.6 cf each per the following specification: > 10 Meg Ohm/cm resistivity & < 20 ppb Silica.
 - b. Provide Exchange of DI Mixed Bed Bottles. Include labor for service technician to perform Exchange (including transportation).
6. Additional Support Services:
 - a. Off Site Cleaning of RO membranes
 - b. Off Site Cleaning of UF membranes
 - c. Labor to remove and install UF / RO (include transportation)

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

ITEM #1:

- Standard service labor \$ 95 hour
- Emergency Service, Weekends, Holidays, or evenings after 5PM, billed at 4 hour min...\$125 / hour

ITEM #2:

- Regeneration of Condensate Polisher (per cf of resin): \$ 30.00*
 - Rental Fee of Transport Vessel: \$ 100.00 / month
 - Freight - Inbound / Outbound: \$ 0 - included in regen fee
- *Customer resin requires sampling analysis by Evoqua for approval into facility to verify contaminants on the resin, condition of resins, separability, and degree of cross-contamination of cation and anion; resin volume responsibility of Customer

ITEM #3:

- Rental fee of 4 x 60 cf DI vessel: \$1,150 per month
 - Regeneration of each 60 cf vessel: \$ 990 each, delivered
- OPTIONS:
- Increase to 8 x 60 cf vessel, allowing for 4 standby: add \$1,150 / month
 - Decrease size to 4 x 42 cf DI Vessel (RECOMMENDED): \$ 480 per month
 - Regeneration of each 42 cf vessel: \$ 680 each, delivered

ITEM #4: Alameda Peaker

- Rental fee of 16 x 3.6 cf vessels \$300 per month
- Exchange Fee per 3.6 cf vessel \$ 62 each
- Exchange Service fee, flat rate delivered to site: \$ 55 per event

ITEM #5: Lodi Peaker

- Rental fee of 16 x 3.6 cf vessels \$300 per month
- Exchange Fee per 3.6 cf vessel \$ 62 each
- Exchange Service fee, flat rate delivered to site: \$ 55 per event

ADDITIONAL SUPPORT SERVICES:

- Labor: See ITEM #1
- Off-site Cleaning of RO membranes (includes support labor to remove and install NCPA spare membrane set) \$90 per element (36 membranes typical for one RO). We'll haul to cleaning skid on our trucks at no charge, and return boxed and bagged for storage for next cycle of use.
- Off-site Cleaning of UF membranes (includes support labor to remove and install NCPA spare membrane set) \$90 per element (32 membranes typical for one UF). We'll haul to cleaning skid on our trucks at no charge and return boxed and bagged for storage for next cycle of use.
- UV Bulbs, should be replaced every 8,000 hours. 60" 254mm Aquafine 3098 w/ 24 bulbs total.....\$68.57 each
- UV Quartz sleeves should be replaced every 24,000 hours. 60" Aquafine 3198 w/24 sleeves.....\$72.85 each
- Cartridge Filters, 21 round and 30" long by 4 housing = \$4 per change.....5 micron Poly spun cartridges with gasket, part # FCROF3005.....\$ 4.98 per element, cases of 12.
- Miscellaneous Parts, if requested, non standard items: Cost plus 15%.

Rates for work to be performed at NCPA Member/SCPPA locations will be proposed at the time work is needed.

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, Rod McNelly, Vice President / GM - GIS

(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

Evoqua Water Technologies 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.

Rod McNelly / MDH

(Signature of officer or agent)

Dated this 19th day of August, 20 15.

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.

Linda Stone

From: Fortier, Guy M <guy.fortier@evoqua.com>
Sent: Wednesday, August 19, 2015 8:28 AM
To: Fortier, Guy M
Subject: FW: NCPA - Evoqua Service Agreement

Delegation record for file.

Guy Fortier

Lead Contract Manager

Evoqua Water Technologies LLC

Phone (847) 805-1146; Fax (847) 805-1140; Cell (847) 682-9343

guy.fortier@evoqua.com

From: McNelly, Rodney
Sent: Tuesday, August 18, 2015 7:42 PM
To: Fortier, Guy M <guy.fortier@evoqua.com>
Cc: Hunsaker, Mark D <mark.hunsaker@evoqua.com>
Subject: RE: NCPA - Evoqua Service Agreement

Delegated to Mark for signature and approval.

Thanks

Rod

Sent via the Samsung Galaxy S® III mini, an AT&T 4G LTE smartphone

----- Original message -----

From: "Fortier, Guy M"
Date: 08/18/2015 8:35 PM (GMT-05:00)
To: "McNelly, Rodney"
Cc: "Hunsaker, Mark D"
Subject: RE: NCPA - Evoqua Service Agreement

Rod,

Please see the below email as a reference for your convenience. This is the contract I mentioned to you on your way out the door last week.

The originals have arrived and are as agreed.

Please delegate to Mark to sign on your behalf.

Thx,
Guy Fortier

Lead Contract Manager

Evoqua Water Technologies LLC

Phone (847) 805-1146; Fax (847) 805-1140; Cell (847) 682-9343

guy.fortier@evoqua.com

From: McNelly, Rodney

Sent: Monday, August 03, 2015 9:46 AM

To: Fortier, Guy M <guy.fortier@evoqua.com>

Cc: McNelly, Rodney <Rodney.McNelly@evoqua.com>

Subject: RE: Evoqua Service Agreement

Thank you guy for the work here. Please consider this approval for proceeding per your request.

Rod McNelly

VP/GM General Industry Solutions

1501 Woodfield Road, Suite 200S

Schaumburg, IL 60173



Office – 847-805-1150

Cell – 317-908-6493

Rodney.mcnelly@evoqua.com

Linda Stone

From: Fortier, Guy M <guy.fortier@evoqua.com>
Sent: Wednesday, August 19, 2015 8:40 AM
To: Linda Stone
Subject: RE: Multi-Task Agreement - Evoqua
Attachments: FW: NCPA - Evoqua Service Agreement

Hi Linda,

Our policy allows for delegation by internal email. The delegation for this one was part of an internal email chain, so I've taken the last three exchanges from that chain (sufficient enough to document the delegation) and have attached in order to provide to you for purposes of your documentation.

Regards,
Guy Fortier
Lead Contract Manager

Evoqua Water Technologies LLC

Phone (847) 805-1146; Fax (847) 805-1140; Cell (847) 682-9343

guy.fortier@evoqua.com

From: Linda Stone [<mailto:Linda.Stone@ncpa.com>]
Sent: Wednesday, August 19, 2015 10:18 AM
To: Fortier, Guy M <guy.fortier@evoqua.com>
Subject: RE: Multi-Task Agreement - Evoqua

Hi,
Thank you for the email. I'm curious if you have any written email or other delegation document to show that your signer has the authority to sign for your VP. If so it would be great if I could get a copy of that to attach with the agreement itself.
If not and it is your policy to so delegate, then I'm sure it is fine pursuant to your internal signature authority.
Thank you.
Linda

From: Fortier, Guy M [<mailto:guy.fortier@evoqua.com>]
Sent: Wednesday, August 19, 2015 8:04 AM
To: Linda Stone; Melissa Philpot
Cc: Malone, William D; Travis, Lloyd J
Subject: Multi-Task Agreement - Evoqua

Linda / Melissa:

FYI – here's a scanned copy of one of the two originals, both of which are going out in today's mail for 2-day delivery to Linda's attention.

In follow up to our recent correspondence and just as a reminder; our VP is out of the office this week, so I obtained his delegation to one of his reports (who also sits in my office location). Since the originals came to us with the title of Vice President already in place, I had our delegate sign the VP's name and initial thereafter with his own initials.

Best Regards,
Guy Fortier
Lead Contract Manager

Evoqua Water Technologies LLC
1501 E. Woodfield Rd.
Suite 200 South
Schaumburg, IL 60173

Phone (847) 805-1146; Fax (847) 805-1140; Cell (847) 682-9343

guy.fortier@evoqua.com

Confidentiality Note: This e-mail message and any attachments to it are intended only for the named recipients and may contain legally privileged and/or confidential information. If you are not one of the intended recipients, please do not duplicate or forward this e-mail message and immediately delete it from your computer.

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**FIRST AMENDMENT TO MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
EVOQUA WATER TECHNOLOGIES LLC**

This First Amendment (“Amendment”) to Multi-Task General Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Evoqua Water Technologies LLC (“Contractor”) (collectively referred to as “the Parties”) as of _____, 2020.

WHEREAS, the Parties entered into a Multi-Task General Services Agreement dated effective September 1, 2015, (the “Agreement”) for Contractor to provide water treatment services at the CT Facilities and at any other facilities owned and/or operated by the Agency, by the Agency’s members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members ; and

WHEREAS, the Agency now desires to amend the Agreement to extend the term of the Agreement from the original expiration date of September 1, 2020 to a new date of November 1, 2020; 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 1.1—Term of Agreement** is amended and restated to read in full as follows:

The term of this Agreement shall begin on the Effective Date and shall end when Contractor completes the Work described in Exhibit A, or no later than November 1, 2020, whichever is shorter.

2. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth above.

SIGNATURES ON FOLLOWING PAGE

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///

///

Date:_____

NORTHERN CALIFORNIA POWER AGENCY

RANDY S. HOWARD, General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

Date:_____

EVOQUA WATER TECHNOLOGIES LLC

ROD MCNELLY,
Vice President / GM-GIS



Commission Staff Report – *DRAFT*

Date: August 5, 2020

COMMISSION MEETING DATE: August 27, 2020

SUBJECT: First Global Gear Services, LLC dba FGGS, LLC – Five Year Multi-Task General Services Agreement for Turbo Machinery Related Services; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

AGENDA CATEGORY: Consent

FROM:	Joel Ledesma	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 XX-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with First Global Gear Services, LLC dba FGGS, LLC for turbo machinery related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

It is recommended that this item be listed on the Commission Consent calendar.

BACKGROUND:

Turbo machinery 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, or by SCPPA Members. NCPA had a previous agreement in place with First Global Gear Services, LLC dba FGGS, LLC, which expired. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into a multi-task enabling agreement with First Global Gear Services, LLC dba FGGS, LLC 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 and proven vendors for these types of services. NCPA does not currently have any agreements in place with similar vendors at this time.

FISCAL IMPACT:

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

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee Review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with First Global Gear Services, LLC dba FGGS, LLC

RESOLUTION XX-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH FIRST GLOBAL GEAR SERVICES, LLC DBA FGGS, LLC

(reference Staff Report #XXX:XX)

WHEREAS, turbo machinery 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, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, First Global Gear Services, LLC dba FGGS, LLC is a provider of these services; and

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

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

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

PASSED, ADOPTED and APPROVED this ____ day of _____, 2020 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
FIRST GLOBAL GEAR SERVICES, LLC DBA FGGS, 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 First Global Gear Services, LLC dba FGGS, LLC, a limited liability company with its office located at 115 Technology Drive, A-201, Trumbull, CT 06611 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 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 Contractor's receipt of the Agency's Purchase Order in which to respond in writing (electronically or otherwise) that Contractor chooses, in Contractor's sole and absolute discretion, 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. Contractor shall have no liability to the Agency or any related party in the event that Contractor chooses not to perform the Requested Work.

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 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. 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.** 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. Notwithstanding any provision to the contrary in this Agreement, Contractor's liability under this Section 5 shall be limited to the insurance limits and liabilities covered by and as described in in Section 4 of this Agreement.

5.3 Transfer of Title. Not Applicable.

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

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

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

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.** Either party may cancel this Agreement at any time and without cause upon fifteen (15) days prior written notice to the other party. Notwithstanding, Contractor cannot terminate this Agreement if Contractor has agreed to complete a Purchase Order(s) and all work under any Purchase Order is not yet complete.

In the event of termination, Contractor shall be entitled to compensation for Work satisfactorily completed and costs incurred prior to termination 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.** 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.

If the Agency breaches any of the terms of this Agreement, the Contractor shall be entitled to payment for work completed, costs reasonably incurred, and costs to demobilize should Contractor have started 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 final 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 except as a result of the active negligence or intentional misconduct of the Agency or the entity for which Contractor is performing the Work. 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 by Contractor, 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 determine if health monitoring and/or sampling is needed and if so, 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** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

First Global Gear Services, LLC dba FGGS, LLC
Attention: Marco Amaral
115 Technology Drive, A-201
Trumbull, CT 06611

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.

13.16 Force Majeure. As used herein, an "Event of Force Majeure" shall mean those events that are beyond the control of Contractor, including events of war or terrorism, floods, labor disputes or stoppages, earthquakes, declared states of emergency or public health emergency (including without limitation epidemics and/or pandemics), illness, government mandated quarantine or shutdown, adverse weather conditions not reasonably anticipated, and other acts of God. Notwithstanding the foregoing and for the avoidance of doubt, the following shall not be considered events of Force Majeure: economic hardship; lack of money or credit; loss of profit or loss of return on investment; changes in commodity prices and the price of raw materials, fuel and supplies; changes in labor costs, wages and benefits; changes in exchange rates; seller's inability to perform and complete the work for the Purchase Order price; and labor disputes between the Contractor and its work force.

Contractor shall not be in default hereunder if it is unable to fulfill or is delayed in fulfilling any of its obligations hereunder by reason of any Events of Force Majeure. Nonetheless, Contractor acknowledges NCPA and NCPA's Members are critical infrastructure industries where work continues during many declared states of emergency and public health emergencies including the recent COVID 19 pandemic and declared state of emergency. Nonetheless, Contractor agrees Contractor must make its own determination regarding the safety of its employees and the worksite and whether Contractor is interested in working during those types of conditions.

SIGNATURES ON FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

FIRST GLOBAL GEAR SERVICES, LLC
DBA FGGS, LLC

Date_____

Date_____

RANDY S. HOWARD,
General Manager

MIKE SCHMIDT,
Field Service Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

First Global Gear Services, LLC dba FGGS, LLC ("Contractor") shall provide turbo machinery 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:

- Maintenance on pumps, motors, gearbox, fluid couplings, turbo gear units, variable speed drives on various hydro, geothermal and turbine equipment.
- Drive train alignment check and correction, as required.
- Walk down of drive train inspecting for oil leaks, broken or missing parts.
- Review of operation history and alarm 1 trip history.
- Interview operators to collect information on any operational issues
- Perform customer spare parts evaluation
- Operate drive train at several speeds and perform full spectrum analysis
- Compile OAT recordings of transitional operation to analyze machine control and identify any possible resonances occurring during operation.
- Perform modal analysis of complete drive train (Currently in development)

Reports:

- Alignment certification
- Recommended repairs 1 parts replacements
- Vibration analysis, including both relative and seismic analysis
- Recommended stocking level for customer owned spare parts
- Modal analysis of complete drive train (Currently in development)
- Recommendation for future service requirements.

Vorecon Only:

- Horsepower estimate. (Speed, torque and guide vane percentage from Voith operating map utilized to estimate actual power applied to the machine.) Graph maintained for future trending.
- Report on internal labyrinth condition based on torque converter operation.
- Graph showing system operating/lubricating oil pressures. Graph maintained for future trending.

On-Site Diagnostics & Overhauls:

- Factory trained and authorized technicians
- Tooling delivered to site
- Voith Spare Parts

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:

2020 FGGS Field Service Rates:

A. Buyer shall be billed for all services at the following rates:

FGGS Engineering Representative	Continental United States	International, Alaska and Hawaii	Offshore & Hazardous Installations*
Labor Rates: (8 -Hour Day) in USD	\$1680/day	\$1760/day	\$1984/Day
Weekday (Mon-Fri)	\$210.00/hour	\$220.00/hour	\$248.00/hour
Weekday Hours Over 8	\$348.00/hour	\$366.00/hour	\$413.00/hour
Saturday, Sunday, and Holidays	\$315.00/hour	\$330.00/hour	\$372.00/hour
Saturday, Sunday, and Holidays Hours Over 8	\$378.00/hour	\$396.00/hour	\$451.00/hour

*Advise location and service duration for final FGGS Rates

* Laser alignment services available at the above rates +10%. Additional equipment mobilization charges may apply

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

First Global Gear Services, LLC dba FGGS, 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*

Date: August 5, 2020

COMMISSION MEETING DATE: August 27, 2020

SUBJECT: NCPA Hydroelectric Wildfire Mitigation Project Request for Additional Funds;
Applicable to the following projects: NCPA Hydroelectric Facility

AGENDA CATEGORY: Discussion/Action

FROM: Joel Ledesma

Assistant General Manager

Division: Generation Services

Department: Hydroelectric

METHOD OF SELECTION:

Competitive Pricing Process

If other, please describe:

IMPACTED MEMBERS:

All Members ☐

City of Lodi ☒

City of Shasta Lake ☐

Alameda Municipal Power ☒

City of Lompoc ☒

City of Ukiah ☒

San Francisco Bay Area
Rapid Transit ☐

City of Palo Alto ☒

Plumas-Sierra REC ☒

City of Biggs ☐

City of Redding ☐

Port of Oakland ☐

City of Gridley ☐

City of Roseville ☒

Truckee Donner PUD ☐

City of Healdsburg ☒

City of Santa Clara ☒

Other ☐

If other, please specify

RECOMMENDATION:

Approval of Amendment to Resolution 20-18 authorizing additional funds for the NCPA Hydroelectric Wildfire Mitigation Project, increasing the total not to exceed amount of this project from \$3,000,000 to \$3,250,000, delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the updated project amount, authorizing use of up to \$250,000 from the Hydroelectric Maintenance Reserve Fund, and acknowledging that the Hydro Maintenance Reserve Fund will need to be replenished in future budget years.

It is recommended that this item being listed as a Discussion/Action Item on the Commission agenda.

BACKGROUND:

Design and construction of the first circuit of the Collierville-Bellota 230 kV line was completed in 1988. The second circuit was added around 1991. Both circuits utilized first-generation EPDM polymer insulators. When the Collierville-Bellota 230 kV was put into service, manufacturers did not typically recommend corona rings on 230 kV lines, as this was a practice normally reserved for extra high voltage (345 kV and above). Since then, operational experience, EPRI testing, and advanced product research laboratory testing has indicated a need for corona rings at the line end of 230 kV polymer insulators.

In September 2019, NCPA contracted with Power Engineers to prepare a Wildfire Risk Mitigation Report and Recommendations. Part of the Collierville-Bellota 230 kV line crosses through CalFire Tier II Fire Hazard Severity Zone. In consideration of the age of the insulators, observed failures, and changing design standards, Power Engineers recommended that the approximately 30 year old EPDM polymer-type insulators be replaced with new silicon polymer insulators with corona rings, along with other hardware modifications.

The Hydroelectric Wildfire Mitigation Project was approved by the NCPA Commission on February 20, 2020 (SR: 127:20; Reso: 20:18), with a budget of not to exceed \$3,000,000.

After competitive bidding, a contract was awarded to Wilson Construction for \$2,654,877.39 and construction started in July 2020. Subsequent on-tower observations and design engineer recommendations resulted in NCPA increasing the scope of work and issuing several corresponding change orders. As of July 28, 2020, a total of \$2,948,294.52 has been committed for the project, leaving authorized funds of \$51,705.48 as remaining contingency.

FISCAL IMPACT:

The NCPA Hydroelectric Wildfire Mitigation Project was originally approved by Resolution 20:18 with a budget not-to-exceed \$3,000,000, with funds coming from existing Hydroelectric Capital Development Reserve collections. The NCPA Commission acknowledged that additional Capital Development Reserve collections would be proposed in future Hydro Project budgets to refund the Capital Development Reserve account (as needed) for the upcoming McKays Sediment Removal project.

To-date, the following amounts have been committed for the Project:

<u>Scope</u>		
Base Contract	Insulator & Damper Replacement	\$ 2,654,877.39
CCO #1	OHGW Bonding Assembly Replacement	\$ 29,480.04
CCO #2	Jumper Replacements & Detailed Inspection Reports	\$ 141,160.00
CCO #3	Tower 50A Weights	\$ 28,159.33
CCO #4	Guy Tightening & Rub Post Replacements	\$ 94,617.76
	Total (as of 8/5/20)	\$ 2,948,294.52
Remaining Contingency:		\$ 51,705.48

No other issues have been identified, and there are no additional forecasted costs at this time; however, the contractor has not yet had line workers on each structure, so unknown issues could be discovered before construction concludes. In consideration of the criticality of the project, the potential severity of the impending fire season, and the accelerated construction schedule, staff is recommending authorizing the use of up to \$250,000 from the Hydro Maintenance Reserve Fund if needed.

SELECTION PROCESS:

On February 4, 2020, NCPA released a Notice Inviting Bids for the Collierville-Bellota 230KV Insulator Replacement Project (Wildfire Mitigation Project). Seven (7) potential bidders expressed interest and attended the mandatory pre-bid meeting and site visit. On March 4, 2020, NCPA received six (6) bids:

\$ 2,654,877.39	Wilson Construction
\$ 2,895,168.00	Summitline
\$ 3,257,869.00	Rokstadpower
\$ 3,394,252.00	Michels Pacific
\$ 3,947,330.00	Sturgeon
\$ 5,306,062.00	ILB
Declined to Bid	Par

Wilson Construction was determined to be the lowest responsive, responsible bidder and was awarded the project.

ENVIRONMENTAL ANALYSIS:

CEQA Guidelines section 15301 states that a project is categorically exempt from CEQA review when the project "consists of the operation, repair, maintenance ... or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." There is no reasonable possibility that maintaining the Collierville-Bellota 230 kV

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

COMMITTEE REVIEW:

Committee approval pending.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (1):

- Resolution

AMENDED RESOLUTION 20-18

AMEND RESOLUTION 20-18 OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A REQUEST FOR ADDITIONAL FUNDS FOR THE NCPA HYDROELECTRIC WILDFIRE MITIGATION PROJECT

(reference Staff Report #127:20 and XXX:20)

WHEREAS, the Northern California Power Agency (NCPA) owns and operates the Collierville-Bellota 230 kV line; and

WHEREAS, the NCPA Hydroelectric Wildfire Mitigation Project was approved by the NCPA Commission on February 20, 2020 (SR: 127:20; Reso: 20:18) with a budget of not to exceed \$3,000,000; and

WHEREAS, based on actual bid responses and current estimated costs, the new forecasted budget to complete the project is \$3,250,000; and

WHEREAS, NCPA seeks approval to increase the not to exceed amount for this project from \$3,000,000 to \$3,250,000, and authorize the use of up to \$250,000 from the NCPA Hydroelectric Maintenance Reserve Fund for the increased project cost; and

WHEREAS, CEQA Guidelines section 15301 states that this project is categorically exempt from CEQA review because the project "consists of the operation, repair, maintenance ... or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."; and

WHEREAS, a Notice of Exemption for this type of work was approved by the NCPA Commission and filed with Calaveras County on March 27, 2014; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency approves the request for additional funds for the Hydroelectric Wildfire Mitigation Project, increasing the total not to exceed amount of this project from \$3,000,000 to \$3,250,000, delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the updated project amount, authorizing use of up to \$250,000 from the Hydroelectric Maintenance Reserve Fund, and acknowledging that the Hydro Maintenance Reserve Fund will need to be replenished in future budget years.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2020 by the following vote on roll call:

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY