



651 Commerce Drive  
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September 25, 2019

TO: Facilities Committee

FROM: Carrie Pollo

SUBJECT: Notice of the Facilities Committee Meeting

Facilities Committee: In compliance with the Brown Act, if participating on the conference call **and/or online presentation**, please attend one of the locations listed below and post this notice at a publicly accessible location at the participation location **72-hours** before the call begins.

Date:	<b>Wednesday, October 2, 2019</b>
Time:	<b>9:00 am</b>
Where:	<b>NCPA Headquarters 651 Commerce Drive Roseville, CA 95678</b>
Contact at NCPA:	Carrie Pollo 916.781.4282

ALAMEDA MUNICIPAL PWR 2000 Grand St., Alameda 510.748.3901	BAY AREA RAPID TRANSIT 300 Lakeside Drive, Oakland 510.464.6435	CITY OF BIGGS 465 "C" Street, Biggs 530.868.5493
CITY OF GRIDLEY 685 Kentucky Street, Gridley 530.846.5695	CITY OF HEALDSBURG 401 Grove Street, Healdsburg 707.431.3317	CITY OF LODI 1331 S. Ham Lane, Lodi 209.333.6762
CITY OF LOMPOC 100 Civic Ctr. Plaza, Lompoc 805.875.8299	CITY OF PALO ALTO 250 Hamilton Ave, Palo Alto 650.329.2273	PORT OF OAKLAND 530 Water Street, Oakland 510.627.1100
PLUMAS-SIERRA REC 73233 Hwy 70, Portola 530.832.4261	CITY OF REDDING 3611 Avtech Parkway, Redding 530.339.7344	CITY OF ROSEVILLE 2090 Hilltop Cir, Roseville 916.774.5602
CITY OF SANTA CLARA 881 Martin Avenue, Santa Clara 408.261.5490	TURLOCK IRR. DISTRICT 333 E. Canal Drive, Turlock 209.883.8300	CITY OF UKIAH 300 Seminary Ave, Ukiah 707.463.6200



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# Agenda

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**Date:** Wednesday, October 2, 2019  
**Subject:** Facilities Committee Meeting  
**Location:** NCPA Headquarters, 651 Commerce Drive, Roseville CA.  
**Time:** 9:00 am

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

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

## 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**

2. **Approve minutes from the September 4, 2019 Facilities Committee meeting.**
3. **All NCPA Facilities, Members, SCPPA – Utility Services, Inc. MTPSA –** Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Professional Services Agreement with Utility Services, Inc. for NERC related regulatory compliance services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members. All purchase orders issued pursuant to the agreement will be charged against approved Annual Operating Budgets. (*Commission Category: Consent; Sponsor: Executive Services*)
4. **All Generation Services Facilities, Members, SCPPA – Utilicast, LLC First Amendment to MTCSA –** Staff is seeking a recommendation for Commission approval of a First Amendment to the Multi-Task Consulting Services Agreement with Utilicast, LLC for consulting services related to CAISO rules and procedures, increasing the not to exceed amount from \$200,000 to \$1,000,000, for continued use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA

Members. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Consent; Sponsor: CTs)*

5. **All Generation Services Facilities – Thatcher Company of California, Inc. MTEMS** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Thatcher Company of California, Inc. for chemical purchases, with a not to exceed amount of \$2,500,000, for use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Consent; Sponsor: CT's)*
6. **All Generation Services Facilities, Members, SCPPA – ANZGT Field Services, LLC MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with ANZGT Field Services, LLC for gas turbine maintenance services, with a not to exceed amount of \$2,500,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Consent; Sponsor: CTs)*
7. **All Generation Services Facilities, Members, SCPPA – Environex, Inc. MTPSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Professional Services Agreement with Environex, Inc. for catalyst testing related services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Consent; Sponsor: CTs)*
8. **All Generation Services Facilities – Hill Brothers Chemical Company MTEMS** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Agreement for Purchase of Equipment Materials and Supplies with Hill Brother Chemical Company for chemical purchases, with a not to exceed amount of \$2,500,000, for use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Consent; Sponsor: CTs)*
9. **CT1 Alameda – Unit 2 Generator Major Overhaul Project** – Staff is seeking a recommendation for Commission approval of the CT1 Alameda Unit 2 Generator Major Overhaul Project, with a not to exceed amount of \$440,000 (including contingency funds), to be charged against approved Annual Operating Budgets. *(Commission Category: Consent; Sponsor: CTs)*
10. **All Generation Services Facilities, Members, SCPPA – Team Industrial Services MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Team Industrial Services, Inc. for specialty mechanical and inspection services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Consent; Sponsor: Geo)*
11. **All Generation Services Facilities – Matheson Tri-Gas, Inc. MTEMS** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc. for gases, welding supplies, and cylinder rental services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Consent; Sponsor: Geo)*
12. **Cooperative Response Center, Inc. Associate Membership Agreement** – Staff is seeking a recommendation for Commission approval of an Associate Membership Agreement between NCPA and Cooperative Response Center, Inc. (CRC). CRC provides customer service representative support services, including interactive voice response technology, for after-hour, overflow, and/or 24-hour inbound and/or outbound call answering and related dispatching. NCPA Members can

subscribe to these services through NCPA's Associate Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: Generation Services Administration*)

- 13. NCPA Generation Services Plant Updates** – NCPA Plant Staff will provide the Committee with an informational update on current plant activities and conditions. (*Commission Category: Informational; Sponsor: Generation Services Administration*)
- 14. FY2019 Annual Billing Settlements Review** – Staff will present a draft of the FY2019 Annual Billing Settlement for the period of July 1, 2018 through June 30, 2019. (*Commission Category: Informational; Sponsor: Administrative Services*)
- 15. Overview of FY2021 Budget Process and Approach** – Staff will present an overview of the FY2021 Budget process and recommended operating budget directions. (*Commission Category: Informational; Sponsor: Administrative Services*)
- 16. NID Services Agreement** – NCPA staff will review a draft Services Agreement between NCPA and Nevada Irrigation District. (*Commission Category: Discussion; Sponsor: Power Management*)
- 17. SFWPA Services Agreement and/or Power Purchase Agreement** – NCPA staff will review the structure of a draft Services Agreement between NCPA and South Feather Water and Power Agency, and the structure of a draft Purchase Power Agreement between NCPA and South Feather Water and Power Agency. (*Commission Category: Discussion; Sponsor: Power Management*)
- 18. Planning and Operations Update** – Staff will provide an update on issues related to planning and operations. (*Commission Category: N/A; Sponsor: Power Management*)
- 19. Schedule next meeting date** – The next Facilities Committee meeting is currently scheduled for November 6, 2019.

#### **ADJOURNMENT**

/cp





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# Minutes - Draft

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**Date:** September 10, 2019  
**To:** NCPA Facilities Committee  
**From:** Carrie Pollo  
**Subject:** September 4, 2019 Facilities Committee Meeting Minutes

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1. **Call meeting to order & Roll Call** – The meeting was called to order by Committee Chair Tikan Singh at 9:04 am. A sign-in sheet was passed around. Attending via teleconference and/or on-line presentation were Vidhi Chawla and Alan Harbottle (Alameda), Mark Sorensen (Biggs), Paul Eckert (Gridley), Shiva Swaminathan (Palo Alto), Jared Carpenter (Port of Oakland), Paulo Apolinario and Steve Hance (Santa Clara), and Willie Manual (TID). Those attending in person are listed on the attached Attendee Sign-in Sheet. Committee Representatives from BART, Healdsburg, Plumas-Sierra REC, Redding, and Ukiah were absent. A quorum of the Committee was established.

## **PUBLIC FORUM**

No public comment.

## 2. **Approve Minutes from the August 7, 2019 Facilities Committee Meeting.**

Motion: A motion was made by Jiayo Chiang and seconded by Steve Hance recommending approval of the August 7, 2019 Facilities Committee Meeting minutes. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Roseville, and Santa Clara. The motion passed.

3. **All Generation Services Facilities, Members, SCPPA – Worley Group, Inc. First Amendment to MTPSA** – Staff presented background information and was seeking a recommendation for Commission approval of a First Amendment to the Multi-Task Professional Services Agreement with Worley Parsons Group, Inc. accepting assignment as Worley Group, Inc., with no changes to the not to exceed amount or the terms and conditions, for continued use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members. This amendment assigns a new name to the contract. It will still be an enabling agreement with no commitment of funds. All purchase orders issued pursuant to the agreement will be charged against approved Annual Operating Budgets. A draft Commission Staff Report and the draft First Amendment with the original agreement were available for review.

Motion: A motion was made by Brian Schinstock and seconded by Jiayo Chiang recommending Commission approval authorizing the General Manager or his designee to enter into a First Amendment to the Five Year Multi-Task Professional Services Agreement with WorleyParsons Group, Inc., with any non-substantial changes as recommended and approved by the NCPA

General Counsel, to change the vendor name in the agreement to Worley Group, Inc., for continued use at all facilities owned and/or operated the Northern California Power Agency (NCPA), its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Roseville, and Santa Clara. The motion passed.

- 4. All Generation Services Facilities (Except LEC), Members, SCPPA – Ardent Companies, LLC First Amendment to MTGSA** – Staff presented background information and was seeking a recommendation for Commission approval of a First Amendment to the five-year Multi-Task General Services Agreement with Ardent Companies, LLC, increasing the not to exceed amount from \$200,000 to \$1,200,000, for use at all facilities owned and/or operated by NCPA (with exception of the Lodi Energy Center), its Members, SCPPA, and SCPPA Members. Staff anticipate utilizing this vendor for upcoming wooden pole maintenance for 16 poles, on the 21kV line at the geothermal facilities. This agreement will still be an enabling agreement with no commitment of funds. All purchase orders issued pursuant to the agreement will be charged against approved Annual Operating Budgets. A draft Commission Staff Report and the draft First Amendment with the original agreement were available for review.

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 Ardent Companies, LLC, with any non-substantial changes recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$200,000 to \$1,200,000, for continued use at any facilities owned and/or operated by NCPA, its Members, SCPPA, or SCPPA Members, with the exception of NCPA's Lodi Energy Center. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Roseville, and Santa Clara. ABSTAIN = Port of Oakland. The motion passed.

- 5. NCPA Solar Project 1 – Healdsburg WRF Site – CEQA Mitigated Negative Declaration for the Healdsburg Water Reclamation Facility Site** – Staff was seeking a recommendation for Commission approval of a resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and directing staff to file a Notice of Determination with the State Clearinghouse and Sonoma County.

Staff presented an overview of the NCPA Solar Project 1. A RFP was issued May 31, 2019 for seven solar sites. Five proposals were received by August 6, 2019. Two proposals included all of the sites, but there was no clear single best proposal that included all sites. The 20 year PPA \$/MWh for the smaller sites exceeded engineering estimates. Staff will schedule one on one meetings with Members to discuss outstanding items regarding the PPA and work through all questions. The Phase 3 Agreement is ready for Commission approval, but is currently awaiting vendor selections and terms. CEQA declarations have to be approved and published as well. The target date for Commission approval is October 24, 2019. Possible 2019 participant starts include Healdsburg WRF, PSREC Chilcote, and the Redding Airport sites. The Lodi sites will reissue a RFP to solicit more bids, and an incomplete CEQA declaration may jeopardize the Alameda Doolittle Landfill 2019 start.

The study for the Healdsburg Water Reclamation Facility site has been completed pursuant to the California Environmental Quality Act (CEQA). The Initial Study and Mitigated Negative Declaration (IS-MND) circulated to 20 public and interested agencies, including the State Clearinghouse. The 30 day public comment period was between June 7 and July 8, 2019. There were three written comments including a confirmation of receipt and review from the State Clearinghouse, the Federated Indians of Graton Rancheria confirmed receipt with no comments, and Stewards Point Rancheria Band of Kashia Pomo Indians confirmed receipt with no comments. The mitigation monitoring and report program will be the responsibility of the developer.

Motion: A motion was made by Brian Schinstock and seconded by Basil Wong recommending Commission approval adopting the Mitigated Negative Declaration and Mitigation Monitoring Program (IS&MND) for the Healdsburg Water Reclamation Facility Site, and directing staff to file a notice of Determination with the State Clearinghouse and Sonoma County. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, and Roseville. ABSTAIN = Palo Alto, Port of Oakland, and Santa Clara. The motion passed.

- 6. NCPA Solar Project 1 – Lodi Sites – CEQA Mitigated Negative Declaration for the Lodi Pixley Basin, Century East/West, and Parking Garage Sites** – Staff was seeking a recommendation for Commission approval of a resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and directing staff to file a Notice of Determination with the State Clearinghouse and San Joaquin County.

The study for the three Lodi sites has been completed pursuant to the California Environmental Quality Act (CEQA). The Initial Study and Mitigated Negative Declaration (IS-MND) circulated to 21 public and interested agencies, as well as State Clearinghouse. The 30 day public comment period was between June 19 and July 19, 2019. There were six written comments including a confirmation of receipt and review from the State Clearinghouse. The California Department of Transportation, California Regional Water Quality Control Board, San Joaquin County Public Works, and North Valley Yokuts Tribe all confirmed receipt with no comments. The mitigation monitoring and report program will be the responsibility of the developer.

Motion: A motion was made by Jiayo Chiang and seconded by Brian Schinstock recommending Commission approval adopting the Mitigated Negative Declaration and Mitigation Monitoring Program (IS&MND) for the Lodi Pixley Basin, Century East/West, and Parking Garage Sites, and directing staff to file a notice of Determination with the State Clearinghouse and San Joaquin County. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, and Roseville. ABSTAIN = Palo Alto, Port of Oakland, and Santa Clara. The motion passed.

- 7. NCPA Solar Project 1 – Plumas-Sierra Chilcoot Site – CEQA Mitigated Negative Declaration for the Plumas-Sierra Chilcoot Site** – Staff was seeking a recommendation for Commission approval of a resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and directing Staff to file a Notice of Determination with the State Clearinghouse and Plumas County.

The study for Plumas-Sierra Chilcoot site has been completed pursuant to the California Environmental Quality Act (CEQA). The Initial Study and Mitigated Negative Declaration (IS-MND) circulated to 19 public and interested agencies, as well as State Clearinghouse. The 30 day public comment period was between July 1 and August 1, 2019. There were three written comments including a confirmation of receipt and review from the State Clearinghouse, the California Department of Transportation requested adequate right of way, and the Central Valley Regional Water Quality Control Board requested compliance. The mitigation monitoring and report program will be the responsibility of the developer.

Motion: A motion was made by Jiayo Chiang and seconded by Brian Schinstock recommending Commission approval adopting the Mitigated Negative Declaration and Mitigation Monitoring Program (IS&MND) for the Plumas-Sierra Chilcoot Site, and directing staff to file a notice of Determination with the State Clearinghouse and Plumas County. A vote was taken by roll call: YES = Alameda, Gridley, Lodi, and Roseville. ABSTAIN = Palo Alto, Port of Oakland, Santa Clara, and TID. The motion passed.

- 8. Generation Services 2020 Outage Schedule** – At the last Facilities Committee meeting Members expressed concern regarding two outages for the Geo plants during two different months, which may cause a conflict of scheduling RA during this time. Staff re-evaluated the

outages and is able to schedule both plant outages in April, proposing one at the beginning of the month, and one towards the end of the month, with a one day overlap. Staff presented the updated outage schedule with this change, and was seeking a recommendation for Facilities Committee approval of the 2020 Outage Schedule for NCPA's CT, Geo, and Hydro facilities.

Motion: A motion was made by Basil Wong and seconded by Brian Schinstock recommending Commission approval of the 2020 Generation Services Maintenance Outage Plan presented at the September 4, 2019 Facilities Committee Meeting. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Port of Oakland, Roseville, Santa Clara, and TID. The motion passed.

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

**CTs** – The August operations were very busy for both CT1 and CT2, including 30 actual starts plus 7 ghost starts, of 22 starts that were forecasted for CT1, bringing the FYTD to 74 total. CT2 had 7 actual starts, with only 4 forecasted for a FYTD of 11. There were no forced outages, but one delayed start due to bleed valves, and no planned outages. The STIG chiller work has been completed. The STIG RATA source test has been completed as well.

**Hydro** – The Collierville Generator Unit 1 Rewind started August 5, 2019. By August 13, the unit was disassembled with the Stator on the top deck. The Stator has been stripped and core work has begun. Currently glue is being scraped off the bars, which takes approximately 2 weeks. Measurements have been done for balance. There were no hot spots found in the core, and is being fine-tuned. During the outage, others parts and equipment are being cleaned and inspected. During the rest of September and October, the core will be prepared and the winding installation completed. Re-assembly is scheduled for October 25, with testing and commissioning November 21. Release of the unit is scheduled for November 26.

**Geo** – There were no safety incidents to report at Geo for the month of August. 71% of Geo staff have completed their mandatory training with the other 29% expected to finish by the end of the year. Vegetation management continues, with 300 feet spacing from structures and 100 feet spacing from the pipelines, and roads. The average net generation for August was 85.6 MW with an estimated total 63.7 GWhr. YTD net generation is 478.4 GWhr, which is 3.5% above forecasted. The P-site drilling project has been completed. The estimated cost is \$5.2 million of the \$9 million budget. Staff will move onto drilling the Q-site with the remaining funds left over.

**10. CAISO Initiative – The Market Settlement Timeline Change –** Staff provided an update regarding this new initiative. The CAISO is proposing to modify the current timeline to produce more timely and accurate settlements, and to shorten the overall time horizon from three years to two years. Disputes will also be limited to cases only greater than \$100.00.

The current settlement timeline is that the majority of actual cash clearing takes place between the Initial settlement statement at trade date plus 3 business days and Recalculation 2, which is the trade date, plus 55 business days. The Initial statement at plus 3 business days has historically been of low settlement quality, and does not utilize meter data or price corrections. NCPA settles activity with Members through the All Resources Bill (ARB) in a timeline that closely mirrors the CAISO's settlement timeline. The majority of actual cash clearing takes place between the Pre-Bill and Adjustment 3, which mirrors Recalculation 2 of the trade date plus 55 business days. In order to stabilize cash flow NCPA has put measures in place to mask low settlement quality of CAISO Initial statements.

The proposed CAISO timeline change will be to move the Initial statement to trade date plus 9 business days, with Recalculation 1 being the trade date plus 70 business days, Recalculation 2 being the trade date plus 12 months, Recalculation 3, the trade date plus 21 months, and Recalculation 4 being trade date plus 24 months. NCPA staff analysis' is that this proposal will produce generally favorable improvements in CAISO, and the market participant financial

clearing relationship. NCPA believes that Initial statements will be much more substantive and reflective of a more complete picture. While the proposal does create improvements to CAISO-NCPA clearing, it does introduce new challenges for NCPA-Member clearing. Moving the Initial settlements from trade date plus 3 business days to trade date plus 9 business days creates a time crunch for the ARB preparation. Because of this time crunch, a potential solution could be moving the ARB back by one month. However, staff believe this would be a step backwards and could create harm for Members. Stakeholder comments are due to the CAISO by September 6. Please contact staff for specific feedback to provide to the CAISO. CAISO will publish the final draft Thursday, September 19, with Board approval by mid-November 2019. The earliest implementation for this initiative would be spring 2020. Members have asked to bring this item back in October with a better potential solution.

**11. Combined Integrated Resource Plan 2019 Annual Update** – NCPA provided notice to the Facilities Committee, a public committee, that the 2019 Combined Integrated Resource Plan Annual Update was filed with Western on June 28, 2019, on behalf of the NCPA Pool Members. A copy of the report has been published to NCPA Connect.

**12. CY 2020 NCPA Capacity Pool Rates** – Staff presented background information and was seeking a recommendation for approval of the Resource Adequacy capacity rates, to be used in the NCPA Capacity Pool during calendar year 2020. Each Pool Member has established a Resource Adequacy Program that works in conjunction with the CAISO Resource Adequacy Program. To enable efficient transfers of Resource Adequacy Capacity between the Pool Members, NCPA developed the Capacity Pool that is fully described in Pooling Agreement Schedule 4. Pursuant to Section 3.8 of Pooling Agreement Schedule 4, capacity pricing for both system and local area capacity will be developed annually, and will be established pursuant to Commission adoption and approval. Prices may be developed by one of the following methods, or a combination of these including a negotiated price, a market price survey, or the CAISO backstop procurement proxy value.

Motion: A motion was made by Shiva Swaminathan and seconded by Tikan Singh recommending Commission approval, subject to an alternative recommendation as may be provided by the NCPA Pooling Committee, establishing the following as the Resource Adequacy Capacity rates to be used in the CY 2020 NCPA Capacity Pool:

- Local Capacity = \$5.50 / kW-Month (May 2020 – September 2020); and, \$5.07 / kW-Month (January 2020 – April 2020 and October 2020 – December 2020)
- System Capacity = \$5.00 / kW-Month (May 2020 – September 2020); and, \$4.57 / kW-Month (January 2020 – April 2020 and October 2020 – December 2020)
- Flexible Capacity Attribute = \$0.50 / kW-Month

A vote was taken by roll call: YES = Alameda, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Roseville, and Santa Clara. ABSTAIN = TID. The motion passed.

**13. NID Services Agreement** – NCPA staff reviewed terms and conditions for development of a Services Agreement between NCPA and Nevada Irrigation District (NID). NID issued a RFI on April 9, 2019, for energy generation at their Deer Creek Powerhouse. Services requested by NID included purchase of the project output, and/or scheduling and dispatch services. NCPA responded to NID's RFI with a Statement of Qualifications on April 30, 2019. Then participated in an interview May 31, 2019. NCPA submitted a Services Offer to NID July 8, 2019. NID formally selected NCPA's offer September 3, 2019.

The project output is approximately 17,000 MWh annually. NCPA also submitted an offer to purchase RPS energy, and resource adequacy capacity on behalf of Lompoc. NID is seeking an initial term of 2 years for services. The services proposal will include dispatch and scheduling

services for the initial 2 years with an automatic extension. The structure of the services agreement will be flexible, to enable adding additional capacity. Total capacity output for the project is 82.2 MW. Next steps include developing an NDA for negotiations, presenting a draft services agreement to NID for review, and seeking direction from the Facilities Committee for Commission approval.

**14. Clean Energy Savings Initiative Program (CESI)** – Staff opened this item for discussion purposes with members who may be interested in moving forward with the next steps of this program. A working group of NCPA staff and Members received an overview of the CESI program September 3, from the Agency's financial advisor, PFM. Staff presented the CESI overview to the Committee. Seven Members of the working group were included in the original presentation September 3. This is a JPA structure, and is working through the discovery phase.

This program involves tax-exempt compliance commodity prepayments. Tax-exempt natural gas and power prepayments are an IRS approved financing that allows municipal utilities to achieve savings by using their access to tax exemption to prepay for the commodity. These transactions have been around since the 1990s. Prepaid commodity transactions combine tax-exempt financing with a series of physical and financial contracts. They can be used for market power, renewable contracts, and natural gas. While savings will be created through these payments, there is also risk involved with this opportunity. SCPA is in the process of getting this implemented. Currently they are going through documentation, and renewable portfolio commitment. Staff will research this program further, and bring this item back to the Committee at a later date.

**15. Planning and Operations Update –**

- SFWPA PPA Negotiations Update – NCPA submitted an updated offer to SFWPA August 29, 2019, which is currently being reviewed by SFWPA. NCPA staff is currently working on a draft PPA for discussion purposes, including pricing and services.
- Western Base Resource Contract Review – Staff will attend the meeting scheduled September 6, to review the proposed Western Base Resource Contract beginning January 1, 2025.
- Modified NCPA Capacity Pool Structure – Staff is working on a change to Schedule 4 of the Pooling Agreement regarding a balancing requirement.
- Monitoring CAISO Initiatives – DAME, RA Enhancements, Hybrid Resources, and others.
- CCA Procedure Review – Staff are meeting and working with the CCA's on getting procedures in place.

**16. Schedule next meeting date** – The next regular Facilities Committee meeting is scheduled for October 2, 2019.

**ADJOURNMENT**

The meeting was adjourned at 12:32 pm.

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

[illegible]

**Northern California Power Agency  
September 4, 2019 Facilities Committee Meeting  
Attendance List**

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

<b><u>MEMBER</u></b>	<b><u>NAME</u></b>
<b>ALAMEDA</b>	
<b>BART</b>	
<b>BIGGS</b>	
<b>GRIDLEY</b>	
<b>HEALDSBURG</b>	
<b>LODI</b>	<i>Jwayo Chang</i>
<b>LOMPOC</b>	<i>Sukhan Singh</i>
<b>PALO ALTO</b>	
<b>PLUMAS-SIERRA REC</b>	
<b>PORT OF OAKLAND</b>	
<b>REDDING</b>	
<b>ROSEVILLE</b>	<i>B. S. L. T. L.</i>
<b>SANTA CLARA</b>	<i>Basil Wang</i>
<b>TID</b>	
<b>UKIAH</b>	





# Commission Staff Report – *DRAFT*

Date            October 2, 2019

**COMMISSION MEETING DATE:**     October 24, 2019

**SUBJECT:**    Five Year Multi-Task Professional Services Agreement with Utility Services, Inc. for NERC regulatory compliance services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, SCPA, and their Members.

**AGENDA CATEGORY:**    Consent

<b>FROM:</b>	Randy Howard	<b>METHOD OF SELECTION:</b>
	General Manager	N/A
Division:	Executive Services	<i>If other, please describe:</i>
Department:	Compliance	

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

## **RECOMMENDATION:**

Approval of Resolution 19-XX authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Utility Services, Inc. for North American Electric Reliability Corporation (NERC) regulatory compliance services, with any non-substantial changes recommended and approved by the Northern California Power Agency (NCPA) General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

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

## **BACKGROUND:**

NERC regulatory compliance services are required from time to time related to NCPA, SCPPA, and their Members owned and operated Distribution, Generation, Transmission, and Control Center Facilities.

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is \$1,000,000 over five years, to be used out of the NCPA approved budget. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA Procurement Policies and Procedures.

## **SELECTION PROCESS:**

NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required. NCPA currently has agreements with Burns and McDonnell Engineering Company, Inc. and Utility System Efficiencies, Inc. This enabling agreement does not commit NCPA to any expenditure of funds.

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Committee reviews pending.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution
- Multi-Task Professional Services Agreement with Utility Services, Inc.

## RESOLUTION 19-XX

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

(reference Staff Report #xxx:19)

WHEREAS, North American Electric Reliability Corporation (NERC) regulatory compliance services are periodically required at the facilities owned and/or operated by the Northern California Power Agency (NCPA), the Southern California Public Power Authority (SCPPA), and their Members; and

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

WHEREAS, NCPA seeks to enter into a Multi-Task Professional Services Agreement with Utility Services, Inc. to provide such services as needed at all NCPA, SCPPA, and their Members' Facilities in an amount not to exceed \$1,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the NCPA Commission authorizes the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Utility Services, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for NERC regulatory reliability compliance services, for use at all facilities owned and/or operated by NCPA, SCPPA, and their Members.

PASSED, ADOPTED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019 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 PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND UTILITY SERVICES, INC.**

This Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Utility Services, Inc., a Vermont corporation with its office located at 1080 Waterbury-Stowe Rd., Suite 2, Waterbury, VT 05676 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

**4.4 All Policies Requirements.**

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

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

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

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



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

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

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

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

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

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

## **Section 6. STATUS OF CONSULTANT.**

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

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

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

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

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement

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

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

**Section 7.     LEGAL REQUIREMENTS.**

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

**Section 8.     TERMINATION AND MODIFICATION.**

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

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

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

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

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

**8.4.1** Immediately terminate the Agreement;

**8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

**8.4.3** Retain a different consultant to complete the Services not finished by Consultant; and/or

**8.4.4** Charge Consultant the difference between the costs to complete the Services that are unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

**8.5     Options upon Breach by Agency.** If Agency materially breaches any of the terms of this Agreement, Consultant's remedies shall include, but not be limited to, the following:

**8.5.1** Immediately terminate the Agreement.

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

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

**9.2     Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

**9.4 Confidential Information and Disclosure.**

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

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

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

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

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

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

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

## **Section 10. MISCELLANEOUS PROVISIONS.**

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

- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

- 10.7 Contract Administrator.** This Agreement shall be administered by Randy S. Howard, General Manager, or his/her designee, who shall act as the Agency’s representative. All correspondence shall be directed to or through the representative.

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

Mr. Brian Evans-Mongeon  
President and CEO  
Utility Services, Inc.  
1080 Waterbury-Stowe Rd., Suite 2  
Waterbury, VT 05676

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

- 10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and

Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

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

- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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



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

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

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

NORTHERN CALIFORNIA POWER AGENCY

UTILITY SERVICES, INC.

Date:

Date:

\_\_\_\_\_  
**Randy S. Howard, General Manager**

\_\_\_\_\_  
**Brian Evans-Mongeon, President**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## **EXHIBIT A SCOPE OF SERVICES**

Utility Services, Inc. ("Consultant") shall provide NERC related regulatory compliance and consulting services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by NCPA, its Members, the Southern California Power Authority ("SCPPA"), or SCPPA members.

### **Utility Services, Inc.**

#### **Generic Services List and Descriptions:**

##### **Program Services**

Our team of experts can take this burden off your internal team when it comes to navigating the fluid, dynamic, and ever-changing world of NERC Reliability Standards. Utility Services can review and evaluate your current structures, provide feedback, and propose tailored solutions.

##### ***Program Development***

Creating compliance programs is a massive task to undertake. Are you ERO ready? Our staff can help you design a custom fit program to your organization's needs, or you can choose to use one of our pre-made templates. Whether a custom program or pre-established template, you can trust the quality as they have been crafted by our experience assisting with program designs and actual audits.

##### ***Compliance Program Reviews***

Evaluating compliance programs and its associated evidence periodically, for example prior to an audit, is an important part of a robust program. This can be conducted in several ways, depending on the needs of your organization:

##### ***Readiness Reviews***

With an Utility Services Readiness Review, an entity can enter a compliance engagement process with confidence knowing that their program having been evaluated against expected performance requirements. This evaluation provides you with a quality assessment of your program against the applicable reliability standards. We offer you a sense of your strengths and weaknesses, plus provide suggested improvements to better align your performance to the expected demands. This information is based upon our involvement in hundreds of audits and compliance examinations.

##### ***Mock Audits***

Mock Audits are a readiness review strategy where we evaluate your site in the same capacity as a NERC compliance audit would. Doing this can allow us to identify possible weaknesses or areas of growth and development for your site.

### ***Subject Matter Expert (SME) Interviews***

Audits can be hard, and it can be stressful for your Subject Matter Expert to go through. We can help prepare your SME for this through an interview session(s) to prepare them for what they need to know so they can be confident in the audit process.

### **Security and Preparedness**

#### ***Cyber and Physical Risk Preparedness Assessments***

This may be one of the best ways to address the growing cyber and physical threats on the electric sector. Sentry Services, a Utility Services business unit, bases its program off of the DOE's ES-C2M2 maturity model and the E-ISAC's CRPA program to tailor and adapt a risk preparedness assessment specific to an organization's needs.

#### ***Cyber and Physical Incident Response Assessments***

Attacks on the electric sector are becoming more frequent, sophisticated, and increasingly dangerous. Therefore, it has become even more evident that electric organizations need to create and maintain an effective incident response plan. We can aid your entity in the creation and maintenance of this plan in order to mitigate the risk posed by the modern age.

#### ***Securing the Grid (STG)***

STG is a custom designed table-top exercise and can be performed after an entity's Cyber and Physical Preparedness Assessment, or as a challenge to your organization's practices and policies. The exercises will allow the participants to understand, enhance and ensure their cyber and physical security procedures. This program includes a detailed post exercise report for your reference and follow up requirements. A Certificate of Participation is also a part of this program and has been used for demonstrating your performance in the requirements of certain reliability standards.

#### ***Securing the Grid Catalog***

Utility Services has put together a catalog of scenarios for entities to choose from when designing your exercise. You have your choice of cyber, physical, emergencies, and incident management situations. Ask to take a look!

#### ***Background Checks***

Background checks are a critical security protocol to establish an individual's security clearances. Whether it is a corporate requirement, or one bound by standards, we can provide you with the valuable information you need.

## **Education and Organizational Culture**

### ***Reliability Assurance Continuing Education (RACE) Training Program***

RACE is a compliance, reliability, and security training resource for power industry entities to utilize to raise their employee's awareness on the topics surrounding industry compliance standards and structure. Ask US to provide you our Course Catalog and get you started on your RACE Scorecard.

### ***Client Days***

As a USI client, you receive the added benefit of being invited to our annual Client Day workshop. Our workshops include discussions with staff and other USI customers on the prevalent topics of the day. Our workshops are held in various locations or can be geared to specifically meet your needs. These events provides you with the latest compliance education, and training while providing a space to network with other industry professionals.

### ***Compliance Calls and Presentations***

For those who would prefer a more regular discussion and training schedule, Utility Services offers weekly, bi-weekly, or monthly calls and presentations for entities who want to learn more about their NERC requirements. Utility Services can tailor each call and presentation to an entity's individual needs.

### ***"US News & NERC Report", "Brian's Blog", and Security Alert***

When you become a client of Utility Services you are invited to sign up for our bi-weekly Newsletter and email list for "Brian's Blog". The "US News & NERC Report" addresses current NERC compliance news, upcoming meetings, and general compliance topics. "Brian's Blog" is our CEO's noteworthy news, meeting reminders, and general "need to know" information. The Utility Services' Security Alert disseminates important cyber and physical news that need to go out on those specialized needs. These notices can be directed to those persons in your organization that would benefit from these special notices.

Aside from our own experiences highlighted above, some of our contractors have been auditors deployed within regions and were instrumental in the development of the regional compliance program. Utility Services, Inc. seeks and retains contractors with varied background and expertise in order to provide for the diverse needs of its constituency. The contractors give the company the ability to match a customer's needs with the right information and knowledge, as well as having a regional perspective, and while USI tries to use its full time employee's when they can, schedules can be conflicting and the use of a Subcontractor may be deemed necessary. Subcontractors hold the same levels of insurance and standards of security as USI.

**Subcontractors:**

- Garth Arnott
- Kim Pitchell
- Kirstine Broos
- Joe Spencer
- David Belanger
- Sal Buffamante
- Alan Freeman-Scott

**EXHIBIT B**  
**COMPENSATION SCHEDULE AND HOURLY FEES**

**Service Rate Sheet**

Utility Services offers its customers pricing designed for their needs. Projects/Tasks/Scope of Work services can be structured on the following bases:

- Time &
- Materials
- Not to Exceed  
Fixed Pricing
- Other accommodations, if desired

When Utility Services uses an hourly billing rate structure for any work performed, the following table outlines the specific hourly rates for the different class of worker used.

Hourly Rate Table for Readiness Reviews, Audits, & 1 <sup>st</sup> Run Compliance	Normal Hourly	Discount Hourly Rates
Executive	\$225.00	\$200.00
Technical/Compliance Analyst	\$210.00	\$180.00
Associate	\$175.00	\$160.00
Hourly Rate for all other types of work	\$195.00	\$175.00
Travel time (when billable)	\$140.00	\$120.00

- Customers are entitled to Discount Hourly Rates when the customer agrees to:
  - Paying a fixed fee price for work described in Section 2.1 of the standard Services Agreement, or
  - Subscribing to a fixed number of hours of work within a monthly period for work to be performed under Sections 2.1 and 2.2.
- For work periods less than an hour, it is the discretion of the Utility Services to determine what amount of time is appropriate. Typically, the smallest increment billed is fifteen (15) minutes.

**Other Pricing Provisions**

- Clients are responsible for costs directly assignable to them for work performed.
- Travel related expenses directly attributable to the client/task project are billed at cost with no mark up.
- Utility Services uses the maximum allowed IRS mileage reimbursement rate. Travel time for the Executives is not billed but it may be for other personnel.
- Company specific or confidential information is not shared without the permission of the respective organization.
- To the extent possible, Utility Services can and will combine meetings and expenses and may allocate a portion of such expenses to the clients involved during that time.
- Information obtained by Utility Services is available and routinely shared with clients for their performance with the ERO.
- Pricing set by our CIP Maintenance Program efforts are not subject to change per this announcement.

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

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

**EXHIBIT C  
CERTIFICATION**

**Affidavit of Compliance for Contractors**

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

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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





# Commission Staff Report

Date: October 2, 2019

**COMMISSION MEETING DATE:** October 24, 2019

**SUBJECT:** Utilicast, LLC – First Amendment to the Five Year Multi-Task Consulting Services Agreement; Applicable to the following projects: All NCPA Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), or SCPPA Members.

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approval of Resolution 19-XX authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement with Utilicast, LLC, with any non-substantial changes as recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$200,000 to \$1,000,000, for continued use at any facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, the Southern California Public Power Authority (SCPPA), or SCPPA Members.

## **BACKGROUND:**

Consulting services related to CAISO rules and procedures are required from time to time related to project support at facilities owned and/or operated by NCPA, its Member, SCPPA, and by SCPPA Members.

On December 5, 2018, NCPA entered into a five year Multi-Task Consulting Services Agreement with Utilicast, LLC for an amount not to exceed \$200,000. This initial agreement was intended primarily for an NCPA project related to MSG modeling requirements. This initial work exhausted a majority of the funds available under this agreement. Additionally, during the process of the MSG modeling, it became clear that completion of the NCPA Automated Dispatching Systems (NADS) rewrite is necessary in order for MSG implementation. NCPA's Information Services department concluded that Utilicast's experience with NCPA's system and general expertise on the subject makes them the best fit for the NADS rewrite.

This amendment will increase the not to exceed amount from \$200,000 to \$1,000,000 to allow for this additional work as well as extra funds for other facilities and members to utilize for the remainder of the term of the agreement. This agreement is still available for use at any facility owned and/or operated by NCPA, NCPA Members, SCPPA, or SCPPA Members.

## **FISCAL IMPACT:**

Upon execution, the total cost of the Agreement remains not to exceed \$1,000,000 over five years, to be used out of NCPA approved annual operating budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

## **SELECTION PROCESS:**

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

**ENVIRONMENTAL ANALYSIS:**

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

**COMMITTEE REVIEW:**

Pending committee review.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (3):

- Resolution
- Multi-Task Consulting Services Agreement with Utilicast, LLC
- First Amendment to Multi-Task Consulting Services Agreement with Utilicast, LLC

## RESOLUTION 19-XX

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE FIVE YEAR MULTI-TASK CONSULTING SERVICES AGREEMENT WITH UTILICAST, LLC

(reference Staff Report #XXX:19)

WHEREAS, consulting services related to CAISO rules and procedures are required from time to time at facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, Utilicast, LLC is a provider of these services; and

WHEREAS, NCPA entered into a five year Multi-Task Consulting Services Agreement with Utilicast, LLC on December 5, 2018; and

WHEREAS, NCPA utilized Utilicast, LLC for a recent project related to MSG modeling requirements in CAISO markets, and as a result, this agreement is now running low on funds; and

WHEREAS, NCPA's Information Services department would now like to utilize Utilicast, LLC to perform the NCPA Automated Dispatching Systems (NADS) rewrite; and

WHEREAS, NCPA seeks to increase the not to exceed amount of the current agreement from \$200,000 to \$1,000,000 to ensure there are sufficient funds for this and any other future projects for the remaining four years of the agreement; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a First Amendment to the Five Year Multi-Task Consulting Services Agreement with Utilicast LLC, with any non-substantial changes as approved by the NCPA General Counsel, increasing the not to exceed amount from \$200,000 to \$1,000,000, for continued use at all facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 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 CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND UTILICAST LLC**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Utilicast LLC, a limited liability corporation with its office located at 701 5<sup>th</sup> Avenue, Suite 4200, Seattle, WA 98104 ("Consultant") (together sometimes referred to as the "Parties") as of December 5, 2018 ("Effective Date") in Roseville, California.

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

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

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

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED TWO HUNDRED THOUSAND** dollars (\$200,000.00) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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



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

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

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

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

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

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

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

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

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

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

**4.3 Professional Liability Insurance.** Not Applicable.

**4.4 All Policies Requirements.**

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

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

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

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

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

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



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

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

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

## **Section 6. STATUS OF CONSULTANT.**

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

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

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

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

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

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

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

**Section 7. LEGAL REQUIREMENTS.**

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

**Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

subcontractors who have a need to know in connection with this Agreement.

**Section 10. MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 10.7 Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 10.8 Notices.** Any written notice to Consultant shall be sent to:

Utilicast LLC  
Attention: David Luedtke, President  
P.O. Box 38  
Kirkland, WA 98083

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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



the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

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

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

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

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

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

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

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

///



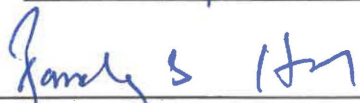
The Parties have executed this Agreement as of the date signed by the Agency.


NORTHERN CALIFORNIA POWER AGENCY

UTILICAST LLC

Date 12/5/18

Date October 22, 2018

  
**RANDY S. HOWARD,**  
General Manager

  
**DAVID LUEDTKE,**  
President

Attest:   
Assistant Secretary of the Commission

Approved as to Form:  
  
Jane E. Luckhardt, General Counsel

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Utilicast LLC ("Contractor") shall provide CAISO rules and procedures related consulting services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Model Implementation

## **EXHIBIT B**

### **COMPENSATION SCHEDULE AND HOURLY FEES**

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

Consultant Rate: \$225.00 per hour

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

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

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I, David Luedtke, President

(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

UTILICAST 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 22nd day of October, 20 18.

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



## FIRST AMENDMENT TO MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND UTILICAST LLC

This First Amendment (“Amendment”) to Multi-Task Consulting Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Utilicast LLC, (“Consultant”) (collectively referred to as “the Parties”) as of \_\_\_\_\_, 2019.

WHEREAS, the Parties entered into a Multi-Task Consulting Services Agreement dated effective December 5, 2018, (the “Agreement”) for Consultant to provide CAISO rules and procedures related consulting services; and

WHEREAS, the Agency now desires to amend the Agreement to increase the total compensation authorized by the Agreement from a “NOT TO EXCEED” amount of \$200,000.00 to a ‘NOT TO EXCEED’ amount of \$1,000,000.00; and

WHEREAS, the Agency now desires to amend the Description of Work set forth in Exhibit A to the Agreement; and

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

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

NOW, THEREFORE, the Parties agree as follows:

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

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

The remainder of Section 2 of the Agreement is unchanged.

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

### SIGNATURES ON FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

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

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

UTILICAST LLC

\_\_\_\_\_  
**DAVID LUEDTKE, President**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Utilicast LLC ("Contractor") shall provide CAISO rules and procedures related consulting services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Model Implementation
- Specification of business requirements in support of modifications to NCPA Systems.



# Commission Staff Report

Date: October 2, 2019

**COMMISSION MEETING DATE:** October 24, 2019

**SUBJECT:** Thatcher Company of California, Inc. – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for Chemical Purchases; Applicable to the following projects: All NCPA Facilities

**AGENDA CATEGORY:** Consent

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

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



## **RECOMMENDATION:**

Approval of Resolution 19-XX authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Thatcher Company of California, Inc. for chemical purchases, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA).

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

## **BACKGROUND:**

Chemicals are required from time to time related to project support at facilities owned and/or operated by NCPA.

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$2,500,000 over five years, to be used out of the NCPA approved annual operating budgets. 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 chemicals are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has agreements in place with Apex Engineering Products, Brenntag Pacific, Hill Brothers Chemical Company, Northstar Chemical and Univar USA, Inc. for similar chemicals and seeks bids from as many qualified providers as possible. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the chemicals at the time they are 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 Agreement for Purchase of Equipment, Materials and Supplies with Thatcher Company of California, Inc.

## RESOLUTION 19-XX

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK AGREEMENT FOR PURCHASE OF EQUIPMENT, MATERIALS AND SUPPLIES WITH THATCHER COMPANY OF CALIFORNIA, INC.

(reference Staff Report #XXX:19)

WHEREAS, chemical purchases are periodically required at the facilities owned and/or operated by the Northern California Power Agency (NCPA); and

WHEREAS, Thatcher Company of California, Inc. is a provider of these chemicals; and

WHEREAS, NCPA seeks to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Thatcher Company of California, Inc. to provide such chemicals as needed at all NCPA facilities in an amount not to exceed \$2,500,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Thatcher Company of California, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for chemical purchases, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA).

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 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  
AGREEMENT FOR PURCHASE OF  
EQUIPMENT, MATERIALS AND SUPPLIES  
BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
THATCHER COMPANY OF CALIFORNIA, INC.**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency, with its main offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and Thatcher Company of California, Inc. ("Supplier"), whose principal office is located at 8625 Unsworth, Sacramento, CA 95828 (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 (the "Effective Date").

**Section 1. SCOPE.** In accordance with the terms and conditions set forth in this Agreement, Supplier is willing to deliver the equipment, materials and supplies ("Goods") described in Exhibit A, attached hereto and incorporated herein to the designated Project Site, DDP, when requested by the Agency. Supplier shall be responsible at its sole expense for delivering the Goods to the designated Project Site and title shall not pass until the Agency accepts delivery at this Site. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

**Section 2. PROJECT SITE.** Goods provided under this Agreement by Supplier may include Goods delivered directly to the Agency. The "designated Project Site", as that term is used herein, shall mean the site for delivery, DDP.

**Section 3. TERM OF AGREEMENT.** This Agreement shall begin upon Effective Date and shall end on the earlier of five (5) years after the Effective Date or when Supplier has provided to Agency the Goods described in Exhibit A.

**Section 4. REQUEST FOR GOODS.** At such time that Agency determines to have Supplier provide Goods under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Goods to be provided ("Requested Goods"), may include a not-to-exceed cap or monetary cap on the Requested Goods and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Goods shall be delivered. Supplier shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Supplier chooses not to provide the Requested Goods. If Supplier agrees to provide the Requested Goods, begins to provide the Requested Goods, or does not respond within the seven day period specified, then Supplier will have agreed to provide the Requested Goods on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 5. COMPENSATION.** Agency hereby agrees to pay Supplier for the Goods an amount not to exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00) as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges. This dollar amount is not a guarantee that Agency will pay that full amount to the Supplier, but is merely a limit of potential Agency expenditures under this Agreement.

- 5.1 Invoices.** Supplier shall have ninety (90) days after the delivery of Goods to invoice Agency for all amounts due and outstanding under this Agreement. Supplier shall include the number of the Purchase Order which authorized the Goods for which Supplier is seeking payment. In the event Supplier fails to invoice Agency for all amounts due within such ninety (90) day period, Supplier waives its right to collect payment from Agency for such amounts. All invoices shall be submitted to:

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

- 5.2 Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.
- 5.3 Timing for Submittal of Final Invoice.** Supplier shall have ninety (90) days after delivery of the Requested Goods to submit its final invoice for the Requested Goods. In the event Supplier fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Supplier is deemed to have waived its right to collect its final payment for the Requested Goods from Agency.

**Section 6. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Supplier, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement.

- 6.1 Workers' Compensation.** If Supplier employs any person, Supplier shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Supplier with limits of not less than one million dollars (\$1,000,000) per accident.
- 6.2 Automobile Liability.** Supplier shall maintain automobile liability insurance 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, whether or not owned by the Supplier, on or off Agency premises. The policy shall provide a minimum limit of \$3,000,000 per each accident, with \$5,000,000 aggregate. This insurance shall provide contractual liability covering

all motor vehicles and mobile equipment utilized in the transport of the Goods to the Agency's Project Site.

- 6.3 Commercial General Liability (CGL).** Supplier shall maintain commercial general liability coverage covering Goods, including product 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 Supplier in regard to this Agreement with not less than \$3,000,000/\$5,000,000 aggregate for bodily injury and property damage, on an occurrence basis. No endorsement shall be attached limiting the coverage.
- 6.4 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.
- 6.5 All Policies Requirements.**
- 6.5.1 Verification of Coverage.** Prior to beginning any work under this Agreement, Supplier shall, at the sole option of the Agency, provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the automobile liability policy and the CGL policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement and that Agency's insurance is excess and non-contributing.
- 6.5.2 Notice of Reduction in or Cancellation of Coverage.** Supplier agrees to provide at least thirty (30) days prior written notice of any cancellation or reduction in scope or amount of the insurance required under this Agreement.
- 6.5.3 Waiver of Subrogation.** Supplier agrees to waive subrogation which any insurer of Supplier may acquire from Supplier by virtue of the payment of any loss. Supplier agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.
- 6.5.4 Self-Insured Retention.** Supplier shall declare the amount of the self-insured retention to the Agency; the amount shall be not more than \$100,000.
- 6.6 Pollution Insurance.** If Contractor's Work involves its transporting hazardous materials, then Contractor shall obtain and maintain Contractors' Pollution Liability Insurance of not less than two million dollars (\$2,000,000) for any one occurrence and not less than four million dollars (\$4,000,000) aggregate. Any deductible or self-insured retention shall not exceed two hundred fifty thousand

dollars (\$250,000) per claim. Such insurance shall be on "an occurrence" basis. In addition, Contractor shall ensure that such insurance complies with any applicable requirements of the California Department of Toxic Substances Control and California regulations relating to the transport of hazardous materials (Health & Safety Code sections 25160 *et seq.*).

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

**Section 7. SELLER'S LIMITED WARRANTY: SUBJECT TO THE LIMITATIONS LISTED BELOW.**

Seller warrants that at the time of delivery the goods will conform to the attached specifications, that Seller will convey good title thereto, and that the goods will be delivered free from any lawful security interest, lien or encumbrance.

EXCLUSION AND DISCLAIMER OF ALL OTHER WARRANTIES : THE LIMITED WARRANTIES LISTED ABOVE ARE SELLERS SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO THE GOODS. SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED , WHETHER WITH RESPECT TO ITS RECOMMENDATIONS , INSTRUCTIONS, GOODS , APPARATUS , PROCESS OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY , SUITABILITY , FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

**LIMITATIONS OF REMEDIES AND SELLER'S LIABILITY:**

- (a) BUYER'S EXCLUSIVE REMEDY AND SELLER'S TOTAL LIABILITY TO BUYER FOR CLAIMS , AS DEFINED IN SUBPARAGRAPHS (b) BELOW, IS EXPRESSLY LIMITED AS FOLLOWS: BUYER HAS THE OPTION OF REPAYMENT OF THE PURCHASE PRICE PAID OR REPLACEMENT OF THE GOODS SUPPLIED HEREUNDER WITH RESPECT TO WHICH DAMAGES ARE CLAIMED. BUYER WAIVES ALL OTHER CLAIMS BY BUYER AGAINST SELLER AND SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL , CONSEQUENTIAL, SPECIAL , EXEMPLARY OR PUNITIVE DAMAGES, EXCEPT IN CASES OF GROSS NEGLIGENCE. THE PRICE STATED FOR THE GOODS IS A CONSIDERATION IN LIMITING SELLERS AND ITS AFFILIATES' LIABILITY .

- (b) "CLAIMS" MEANS ALL ASSERTIONS OF ANY LEGAL, EQUITABLE, AND/OR ADMIRALTY CAUSES OF ACTION, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE; STRICT LIABILITY; OTHER TORT; EXPRESS OR IMPLIED WARRANTIES, INDEMNITY OR CONTRACT; CONTRIBUTION; OR SUBROGATION RELATED TO OR ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS CONTRACT.

ALL LIMITATIONS ON BUYER'S REMEDIES AND SELLER'S LIABILITY SHALL SURVIVE THE EXPIRATION, TERMINATION OR CANCELLATION OF THIS CONTRACT.

NOTICE OF CLAIMS: All product claims by Buyer shall be deemed waived unless made by Buyer in writing and received by Seller within thirty (30) days of receipt of the goods; provided that for any claim which is not readily discoverable within such 30 day period such claim shall be deemed waived unless made by Buyer in writing and received by Seller within 90 days after receipt of the goods or within 30 days after Buyer learns or should have been reasonably aware of facts which should have given rise to such claim, whichever first occurs.

## **Section 8. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.**

- 8.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Supplier 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, Supplier acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 8.2 Scope.** Supplier 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 Supplier, 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.
- 8.3 Transfer of Title.** Supplier shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until Agency accepts delivery at its Site. For the purposes of this



Agreement, such acceptance shall occur after Supplier or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Supplier shall be responsible for all such notifications. Should Supplier be required to remedy or remove Goods as a result of a leak, spill, release or discharge of Goods into the environment at Agency's Site or elsewhere, Supplier agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

## **Section 9. MISCELLANEOUS PROVISIONS.**

- 9.1 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Supplier and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 9.2 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.
- 9.3 Compliance with Applicable Law.** Supplier shall comply with all applicable federal, state, and local laws, rules and regulations in regard to this Agreement and the Goods supplied hereunder.
- 9.4 Construction of Agreement.** The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.
- 9.5 Supplier's Status.** Supplier is an independent contractor and not an employee or agent of NCPA.
- 9.6 Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.
- 9.7 Governing Law.** This Agreement and all matters pertaining to it, shall be governed by the laws of the State of California and venue shall lie in Placer County or in the county to which the Goods are delivered.
- 9.8 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.

- 9.9 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.
- 9.10 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.
- 9.11 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.
- 9.12 Conflict of Interest.** Supplier may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Supplier in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Supplier 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.*

- 9.13 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.
- 9.14 Notices.** Any written notice to Supplier shall be sent to:

Thatcher Company of California, Inc.  
Attention: Craig N. Thatcher, President  
P.O. Box 27407  
Salt Lake City, Utah 84127-0407

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

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

- 9.15.1** Each party shall designate a senior management or executive level representative to negotiate any dispute.
- 9.15.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 9.15.3** 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.
- 9.15.4** 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.
- 9.15.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 9.15.6** 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.*

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

- 9.17 Certification as to California Energy Commission.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit B.
- 9.18 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit C.
- 9.19 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.
- 9.20 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.
- 9.21 Force Majeure.**
- a) Performance of any obligation under this contract may be suspended by the party so affected without liability in the event of an Act of God; war; fire; flood; strike; explosion; labor trouble; mechanical breakdown; accident, riot, governmental action, laws, regulations or orders (including, but not limited to, pollution, health, ecology or environmental matters); Seller's inability to obtain fuel, power, raw materials, or equipment used in connection therewith on terms it deems practicable; or any other cause beyond the reasonable control of either party interfering with the production, supply, transportation or consumption practice of the party at the time which delays, prevents, restricts, limits or renders commercially infeasible, the performance of this contract or the consumption, sale or use of the goods, except as to the goods already in transit.
  - b) The affected party may invoke subparagraph (a) or (b) by promptly notifying the other party in writing of the nature and the estimated duration of the suspension or cancellation of the party's performance. The total quantity hereunder shall be reduced by the quantity not delivered during the term of the suspension or cancellation without liability, and the contract shall otherwise remain unaffected. In no event shall Seller be required to ship the goods from Seller's or, if applicable, its affiliates' other locations or to purchase the goods or components thereof from other sources to fulfill the contract requirements. Seller may, without liability, allocate its supply of such goods or raw materials among its own uses, or distribute it among its customers upon such basis and in such manner as Seller deems fair and reasonable, provided that any goods or raw materials obtained by Seller from a third party solely for Seller's internal use are not subject to allocation.

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

NORTHERN CALIFORNIA POWER AGENCY  
INC.

THATCHER COMPANY OF CALIFORNIA,

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

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

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

\_\_\_\_\_  
**CRAIG THATCHER,** President

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## EXHIBIT A

### PURCHASE LIST

As requested by Agency, Supplier shall provide supplies ("Goods") including, but not limited to the following:

Anhydrous Ammonia (R Grade)	No Quote
Aqueous Ammonia 19%	No Quote
Hydrated Lime 90%	No Quote
MagOx 93 HR 325	No Quote
Magnesium Sulfate 30%	No Quote
Sodium Bisulfite 40%	\$ 0.425 / lb
Sodium Hydroxide 15% (Caustic Soda)	\$ 0.72 / lb
Sodium Hypochlorite 12.5% (Bleach)	\$ 0.878 / GL
Sulfuric Acid 93%	\$ 0.09 / lb

All delivery vehicles shall be labeled and constructed to meet all requirements of the California State Highway Patrol, the Interstate Commerce Commission and any and all jurisdictions having control over said delivery truck operations.

NCPA acknowledges that Supplier's chemical pricing may be subject to change every six to twelve (6 -12) months. NCPA shall compensate Supplier in accordance with such price list revisions, provided, however, that (1) Supplier shall provide NCPA with written notice of such bi-annual revisions thirty (30) days in advance; and (2) regardless of such price list revisions, total compensation for all tasks, including all chemicals delivered under this Agreement, shall not exceed the amount set forth in Section 5 (Compensation) of this Agreement.

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

**EXHIBIT B**

**CERTIFICATION**

**Affidavit of Compliance for Suppliers**

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

THATCHER COMPANY OF CALIFORNIA, INC.

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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

**EXHIBIT C**

**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,

THATCHER COMPANY OF CALIFORNIA, INC.

(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.





# Commission Staff Report

Date: October 2, 2019

**COMMISSION MEETING DATE:** October 24, 2019

**SUBJECT:** ANZGT Field Services, LLC – Five Year Multi-Task General Services Agreement for Gas Turbine Maintenance Services; Applicable to the following projects: All NCPA Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approval of Resolution 19-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with ANZGT Field Services, LLC for gas turbine related maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

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

## **BACKGROUND:**

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

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$2,500,000 over five years, to be used out of the NCPA approved annual operating budgets. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with ANZGT Field Services, LLC

**RESOLUTION 19-XX**

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

**(reference Staff Report #XXX:19)**

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

WHEREAS, ANZGT Field Services, LLC is a provider of these services; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with ANZGT Field Services, LLC to provide such services as needed at all NCPA facilities, Member, SCPPA, and SCPPA Member facilities in an amount not to exceed \$2,500,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with ANZGT Field Services, LLC, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for gas turbine related maintenance services, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 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  
ANZGT FIELD 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 ANZGT Field Services, LLC., a limited liability company with its office located at 34759 Lencioni Avenue, Bakersfield, CA 93308 USA ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

- 4.1 Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than one million dollars (\$1,000,000.00) 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 \$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, Agency shall have the right to require Contractor to provide the certificates of insurance and/or policy endorsements, as referenced in Section 4.5.1, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.

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

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



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

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope for General Services.** 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 Scope for Professional Services.** For services including those provided by licensed architects, licensed engineers, licensed landscape architects, and/or licensed land surveyors, Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Contractor in its performance of Work under this Agreement. Contractor shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency.
- 5.4 Limitation.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF CONTRACTOR, ON ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR USE OF ANY ENGINE SHALL NOT EXCEED THE VALUE OF THE WORK BEING PERFORMED OR US\$2 MILLION, WHICHEVER IS THE GREATER.

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, ALLEGED NEGLIGENCE, WILFUL MISCONDUCT OR OTHERWISE, SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF

GOODWILL, LOSS OF PROFITS OR REVENUE, LOSS OR USE, OR ANY INCIDENTAL, CONSEQUENTIAL OR INDIRECT LOSSES OR DAMAGES OF ANY KIND.

**5.5     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.** Not applicable.

**6.6 Maintenance Labor Agreement.** Not applicable.

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

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

**7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.

**7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, 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.

## **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. Notwithstanding the foregoing, nothing in this Section 9.1 applies to third parties' intellectual property.

- 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. Notwithstanding the preceding in this Section 11.2, warranty on parts or materials used by Contractor is strictly limited to the terms and conditions of the respective manufacturer's written warranty statement, except that any warranty period stated in the manufacturer's written warranty shall begin to run only upon Contractor's use of the parts or materials during the Work.

- 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 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:

ANZGT Field Services, LLC.  
Attention: Frank Oldread, General Manager  
34759 Lencioni Avenue  
Bakersfield, CA 93308 USA

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

ANZGT FIELD SERVICES, LLC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**FRANK OLDREAD,**  
General Manager

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**  
**SCOPE OF WORK**

ANZGT Field Services, LLC. ("Contractor") shall provide gas turbine maintenance or inspection services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Gas Turbine Maintenance
- Gas Turbine Borescope Inspections
- Engineering services and support

Contractor may provide services at all Project Site Locations.

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

#### **Turbine Technician**

Straight Time ..... \$200/Hr

Overtime..... \$250/Hr

Overtime rates apply to any hours worked after normal working hours (6:00 AM – 2:30 PM)

Monday through Friday, any time worked on weekends and any time worked on holidays.

**Engineering Support/ Supervisory** ..... \$300/Hr

#### **Expenses**

Travel expenses will be charged at cost plus 10%

Shipping for tooling, etc. will be charged at cost plus 10%

Outside vendor fees or materials at cost plus +10%.

#### **Tooling mobilization fee schedule**

(Based on one week or part of week)

HPC Stage to stage tooling ..... \$3,600

VSV/VG Pump ..... \$220

LM2500 Front Frame Tooling (in package) ..... \$1,000

Turbine MidFrame R&R ..... \$375

LPC Booster R&R ..... \$1,600

HPC Compressor R&R tooling ..... \$320

Engine R&R (includes one set of maintenance stands) ..... \$900

Additional maintenance stands (per set) ..... \$175

Accessory Gearbox R&R ..... \$370

LM5000 LPT Tooling ..... \$750

Hot Section R&R ..... \$3,600

ADRE vibration analysis tooling ..... \$1,600

Borescope and turning tooling ..... \$600

Engine Laser alignment tooling ..... \$1,500

LM5000 PT R&R Tooling ..... \$1,200

LM2500 PT R&R ..... \$320

GT Maintenance Frame (Field hotsection replacement, front frames etc.) ..... \$320

Tooling Trailer ..... \$250

Storage and preservation per engine per month ..... \$600

Bearing wetting tooling ..... \$250

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

ANZGT FIELD SERVICES, LLC.

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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



# Commission Staff Report

Date: October 2, 2019

**COMMISSION MEETING DATE:** October 24, 2019

**SUBJECT:** Environex, Inc. – Five Year Multi-Task Professional Services Agreement for Catalyst Related Testing Services; Applicable to the following projects: All NCPA Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approval of Resolution 19-XX authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Environex, Inc. for catalyst related testing services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

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

## **BACKGROUND:**

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

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution
- Multi-Task Professional Services Agreement with Environex, Inc.

## RESOLUTION 19-XX

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

(reference Staff Report #XXX:19)

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

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

WHEREAS, NCPA seeks to enter into a Multi-Task Professional Services Agreement with Environex, Inc. to provide such services as needed at all NCPA facilities, Member, SCPPA, and SCPPA Member facilities in an amount not to exceed \$1,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Environex, Inc., with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for catalyst related testing services, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 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 PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND ENVIRONEX, INC.**

This Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Environex, Inc., a corporation with its office located at 1 Great Valley Parkway, Suite 4, Malvern, PA 19355 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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



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

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

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

**4.4 All Policies Requirements.**

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

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

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

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

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

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

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

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

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

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

## **Section 6. STATUS OF CONSULTANT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.4.1** Immediately terminate the Agreement;

**8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

**8.4.3** Retain a different consultant to complete the Services not finished by Consultant; and/or

**8.4.4** Charge Consultant the difference between the costs to complete the Services that are unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

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

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

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

## **9.4 Confidential Information and Disclosure.**

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

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

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

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

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

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

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

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

## **Section 10. MISCELLANEOUS PROVISIONS.**

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

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

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

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

Environex, Inc.  
Attention: Joe Otto  
1 Great Valley Parkway, Suite 4  
Malvern, PA 19355

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

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



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

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

NORTHERN CALIFORNIA POWER AGENCY

ENVIRONEX, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**DANIEL W. OTTO,**  
President

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Environex, Inc. ("Consultant") shall provide catalyst testing related services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

- SCR & CO Catalyst Testing
- System Inspection & Sampling
- Reporting
- Engineering

No services under this agreement shall include Work that would qualify as "public works" under the California Labor Code.

## **EXHIBIT B**

### **COMPENSATION SCHEDULE AND HOURLY FEES**

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

- Consulting \$200 / Hour
- Engineering \$95 / Hour
- Administrative \$60 / Hour
- Field Work / Time On-Site \$1,500 per day plus expenses

\*Travel Expenses are billed at cost.

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 Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

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

(Name of person signing affidavit)(Title)

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

ENVIRONEX, INC.

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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



# Commission Staff Report

Date: October 2, 2019

**COMMISSION MEETING DATE:** October 24, 2019

**SUBJECT:** Hill Brothers Chemical Company – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for Chemical Purchases; Applicable to the following projects: All NCPA Facilities

**AGENDA CATEGORY:** Consent

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

<b>IMPACTED MEMBERS:</b>		
All Members <input checked="" type="checkbox"/>	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:**

Approval of Resolution 19-XX authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Hill Brothers Chemical Company for chemical purchases, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA).

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

## **BACKGROUND:**

Chemicals are required from time to time related to project support at facilities owned and/or operated by NCPA.

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$2,500,000 over five years, to be used out of the NCPA approved annual operating budgets. 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 chemicals are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has agreements in place with Apex Engineering Products, Brenntag Pacific, Thatcher Company of CA, Northstar Chemical and Univar USA, Inc. for similar chemicals and seeks bids from as many qualified providers as possible. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the chemicals needed at the time they are 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 Agreement for Purchase of Equipment, Materials and Supplies with Hill Brothers Chemical Company



## RESOLUTION 19-XX

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK AGREEMENT FOR PURCHASE OF EQUIPMENT, MATERIALS AND SUPPLIES WITH HILL BROTHERS CHEMICAL COMPANY

(reference Staff Report #XXX:19)

WHEREAS, chemical purchases are periodically required at the facilities owned and/or operated by the Northern California Power Agency (NCPA); and

WHEREAS, Hill Brothers Chemical Company is a provider of these chemicals; and

WHEREAS, NCPA seeks to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Hill Brothers Chemical Company to provide such chemicals as needed at all NCPA facilities in an amount not to exceed \$2,500,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Hill Brothers Chemical Company, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,500,000 over five years, for chemical purchases, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA).

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 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  
AGREEMENT FOR PURCHASE OF  
EQUIPMENT, MATERIALS AND SUPPLIES  
BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
HILL BROTHERS CHEMICAL COMPANY**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency, with its main offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and Hill Brothers Chemical Company, ("Supplier"), whose principal office is located at 3000 E. Birch Street, Suite 108, Brea, CA 92821 (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 (the "Effective Date").

**Section 1. SCOPE.** In accordance with the terms and conditions set forth in this Agreement, Supplier is willing to deliver the equipment, materials and supplies ("Goods") described in Exhibit A, attached hereto and incorporated herein to the designated Project Site, DDP, when requested by the Agency. Supplier shall be responsible at its sole expense for delivering the Goods to the designated Project Site and title shall not pass until the Agency accepts delivery at this Site. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

**Section 2. PROJECT SITE.** Goods provided under this Agreement by Supplier may include Goods delivered directly to the Agency. The "designated Project Site," as that term is used herein, shall mean the site for delivery, DDP.

**Section 3. TERM OF AGREEMENT.** This Agreement shall begin upon Effective Date and shall end on the earlier of five (5) years after the Effective Date or when Supplier has provided to Agency the Goods described in Exhibit A.

**Section 4. REQUEST FOR GOODS.** At such time that Agency determines to have Supplier provide Goods under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Goods to be provided ("Requested Goods"), may include a not-to-exceed cap or monetary cap on the Requested Goods and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Goods shall be delivered. Supplier shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Supplier chooses not to provide the Requested Goods. If Supplier agrees to provide the Requested Goods, begins to provide the Requested Goods, or does not respond within the seven day period specified, then Supplier will have agreed to provide the Requested Goods on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 5. COMPENSATION.** Agency hereby agrees to pay Supplier for the Goods an amount not to exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00) as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges. This dollar amount is not a guarantee that Agency will pay that full amount to the Supplier, but is merely a limit of potential Agency expenditures under this Agreement.

- 5.1 **Invoices.** Supplier shall have ninety (90) days after the delivery of Goods to invoice Agency for all amounts due and outstanding under this Agreement. Supplier shall include the number of the Purchase Order which authorized the Goods for which Supplier is seeking payment. In the event Supplier fails to invoice Agency for all amounts due within such ninety (90) day period, Supplier waives its right to collect payment from Agency for such amounts. All invoices shall be submitted to:

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

- 5.2 **Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.
- 5.3 **Timing for Submittal of Final Invoice.** Supplier shall have ninety (90) days after delivery of the Requested Goods to submit its final invoice for the Requested Goods. In the event Supplier fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Supplier is deemed to have waived its right to collect its final payment for the Requested Goods from Agency.

**Section 6. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Supplier, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement.

- 6.1 **Workers' Compensation.** If Supplier employs any person, Supplier shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Supplier with limits of not less than one million dollars (\$1,000,000) per accident.
- 6.2 **Automobile Liability.** Supplier shall maintain automobile liability insurance 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, whether or not owned by the Supplier, on or off Agency premises. The policy shall provide a minimum limit of \$3,000,000 per each accident, with \$5,000,000 aggregate. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment utilized in the transport of the Goods to the Agency's Project Site.
- 6.3 **Commercial General Liability (CGL).** Supplier shall maintain commercial general liability coverage covering Goods, including product 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 Supplier in regard to this Agreement with not less than \$3,000,000/\$5,000,000 aggregate for bodily injury and property damage, on an occurrence basis. No endorsement shall be attached limiting the coverage.

**6.4 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.

**6.5 All Policies Requirements.**

**6.5.1 Verification of Coverage.** Prior to beginning any work under this Agreement, Supplier shall, at the sole option of the Agency, provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the automobile liability policy and the CGL policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement and that Agency's insurance is excess and non-contributing.

**6.5.2 Notice of Reduction in or Cancellation of Coverage.** Supplier agrees to provide at least thirty (30) days prior written notice of any cancellation or reduction in scope or amount of the insurance required under this Agreement.

**6.5.3 Waiver of Subrogation.** Supplier agrees to waive subrogation which any insurer of Supplier may acquire from Supplier by virtue of the payment of any loss. Supplier agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

**6.5.4 Self-Insured Retention.** Supplier shall declare the amount of the self-insured retention to the Agency; the amount shall be not more than \$100,000.

**6.5.5 Additional Certificates and Endorsements.** Not Applicable.

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

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

**Section 7. WARRANTY.** In addition to any and all warranties provided or implied by law or public policy, or any other warranties provided by Supplier, Supplier warrants that all Goods are free from defects in design and workmanship; comply with applicable federal, state and local laws and regulations; are new, of good quality and workmanship, and free from defects; are suitably safe and sufficient for the purpose for which they are normally used; and are not subject to any liens or encumbrances. Supplier shall provide all Goods in accordance with all applicable engineering, construction and other codes and standards, in accordance with prudent electrical utility standards, and in accordance with the terms of this Agreement applicable to such Goods, all with the degree of high quality and workmanship expected from purveyors engaged in the practice of providing materials and supplies of a similar nature. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof, unless Supplier's warranty is for greater than one (1) year, in which case Supplier's warranty shall be applied), the Goods provided by Supplier under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Supplier shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

**Section 8. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.**

- 8.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Supplier 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, Supplier acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 8.2 Scope.** Supplier 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 Supplier, 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.
- 8.3 Transfer of Title.** Supplier shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Supplier or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Supplier shall be responsible for all such notifications. Should Supplier be required to remedy or remove Goods as a result of a leak, spill, release or

discharge of Goods into the environment at Agency's Site or elsewhere, Supplier agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

## **Section 9. MISCELLANEOUS PROVISIONS.**

- 9.1 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Supplier and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 9.2 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.
- 9.3 Compliance with Applicable Law.** Supplier shall comply with all applicable federal, state, and local laws, rules and regulations in regard to this Agreement and the Goods supplied hereunder.
- 9.4 Construction of Agreement.** The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.
- 9.5 Supplier's Status.** Supplier is an independent contractor and not an employee or agent of NCPA.
- 9.6 Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.
- 9.7 Governing Law.** This Agreement and all matters pertaining to it, shall be governed by the laws of the State of California and venue shall lie in Placer County or in the county to which the Goods are delivered.
- 9.8 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.
- 9.9 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.
- 9.10 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.

**9.11 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.

**9.12 Conflict of Interest.** Supplier may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Supplier in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Supplier 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.*

**9.13 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.

**9.14 Notices.** Any written notice to Supplier shall be sent to:

Hill Brothers Chemical Company  
Attention: Frank Alari  
3000 E. Birch Street, Suite 108  
Brea, CA 92821

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

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

**9.15.1** Each party shall designate a senior management or executive level representative to negotiate any dispute.

- 9.15.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 9.15.3** 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.
- 9.15.4** 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.
- 9.15.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 9.15.6** 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.*
- 9.16** **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Supplier's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Supplier's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Supplier's Proposal (if any), the Purchase Order shall control.
- 9.17** **Certification as to California Energy Commission.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit B.
- 9.18** **Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit C.
- 9.19** **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.
- 9.20** **Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.



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

NORTHERN CALIFORNIA POWER AGENCY

HILL BROTHERS CHEMICAL COMPANY

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

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

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

\_\_\_\_\_  
**FRANK ALARI,**  
Regional Sales Manager

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## EXHIBIT A

### PURCHASE LIST

As requested by Agency, Supplier shall provide supplies ("Goods") including, but not limited to the following:

Product	Pricing
Anhydrous Ammonia (R Grade)	\$540/ton + \$525.60 delivery charge
Aqueous Ammonia 19%	\$0.38/Lb delivered
Hydrated Lime 90%	
MagOx 93 HR 325	\$708/ton FOB Gabs, NV PPA \$41.86/ton + 30% fuel surcharge
Magnesium Sulfate 30%	
Sodium Bisulfite 40%	
Sodium Hydroxide 15% (Caustic Soda)	
Sodium Hypochlorite 12.5% (Bleach)	
Sulfuric Acid 93%	

All delivery vehicles shall be labeled and constructed to meet all requirements of the California State Highway Patrol, the Interstate Commerce Commission and any and all jurisdictions having control over said delivery truck operations.

NCPA acknowledges that Supplier's chemical pricing may be subject to change every six to twelve (6 -12) months. NCPA shall compensate Supplier in accordance with such price list revisions, provided, however, that (1) Supplier shall provide NCPA with written notice of such bi-annual revisions thirty (30) days in advance; and (2) regardless of such price list revisions, total compensation for all tasks, including all chemicals delivered under this Agreement, shall not exceed the amount set forth in Section 5 (Compensation) of this Agreement.

**EXHIBIT B**  
**CERTIFICATION**

**Affidavit of Compliance for Suppliers**

I, Frank Alari, Regional Sales Manager,

(Name of person signing affidavit)(Title)

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

HILL BROTHERS CHEMICAL COMPANY

(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.

**EXHIBIT C**

**CERTIFICATION**

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

I, Frank Alari, Regional Sales Manager,

(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,

HILL BROTHERS CHEMICAL COMPANY

(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.



# Commission Staff Report

Date: October 2, 2019

**COMMISSION MEETING DATE:** October 24, 2019

**SUBJECT:** CT1 Alameda Unit 2 Generator Major Overhaul Project; Applicable to the following projects: CT1 Alameda Facility

**AGENDA CATEGORY:** Consent

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

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

Approval of Resolution 19-XX authorizing the CT1 Alameda Unit 2 Generator Major Overhaul Project using Electrical Maintenance Consultants (EMC) and authorizing the General Manager or his designee to enter into agreements and to issue purchase orders to complete this work without further approval by the Commission, with a total cost not to exceed \$440,000.

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

## **BACKGROUND:**

NCPA conducted an inspection and electrical testing on Alameda Unit 2 generator to determine the operating condition and plan for a major outage based on findings. There are signs of oil seepage on the lower oil seals on the generator and gearbox. NCPA is currently monitoring for further degradation. The generator is also due for a routine maintenance overhaul.

Alameda Unit 2 was originally scheduled for an outage to complete routine maintenance work from March 2, 2020 through March 29, 2020. Staff is requesting that the Unit 2 outage schedule be revised to extending the completion date to April 17, 2020 due to the additional work required.

## **FISCAL IMPACT:**

Total cost of the work is estimated not to exceed \$440,000. This project is included in the current fiscal year budget for \$400,000 under the maintenance reserve account. An additional \$40,000 will come out of the fixed maintenance accounts. Cost allocation will be based on project participation percentages.

## **SELECTION PROCESS:**

In accordance with NCPA's procurement policies and procedures, NCPA conducted a job walkdown on 8/6/2019 in which four vendors attended: Electrical Maintenance Consultants (EMC), MD&A, Power Services Group and Sulzer Turbo. Bids were due on 8/23/2019. NCPA only received bids from two vendors: EMC and MD&A. EMC was the lowest responsive bidder at \$403,000.

## **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 (1):

- Resolution

## RESOLUTION 19-XX

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE CT1 ALAMEDA UNIT 2 GENERATOR MAJOR OVERHAUL PROJECT

(reference Staff Report #XXX:19)

WHEREAS, the Northern California Power Agency (NCPA) operates and maintains the CT1 Alameda facility on behalf of the project participants; and

WHEREAS, NCPA conducted an inspection and electrical testing on Alameda Unit 2 generator to determine the operating condition and plan for a major outage based on findings. There are signs of oil seepage on the lower oil seals on the generator and gearbox. NCPA is currently monitoring for further degradation. The generator is also due for a routine maintenance overhaul; and

WHEREAS, NCPA conducted a job walkdown on 8/6/2019 in which four vendors attended: Electrical Maintenance Consultants (EMC), MD&A, Power Services Group and Sulzer Turbo. Bids were due on 8/23/2019. NCPA received bids from two vendors: EMC and MD&A. EMC was the lowest responsive bidder at \$403,000; and

WHEREAS, NCPA now seeks approval of the Unit 2 Generator Major Overhaul Project at the CT1 Alameda facility; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency approves the CT1 Alameda Unit 2 Generator Major Overhaul Project using Electrical Maintenance Consultants (EMC), and delegating authority to enter into agreements and to issue purchase orders necessary to complete this work without further approval by the Commission, with a total cost not to exceed \$440,000.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 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





# Commission Staff Report

Date: October 4, 2019

**COMMISSION MEETING DATE:** October 24, 2019

**SUBJECT:** Team Industrial Services, Inc. – Five Year Multi-Task General Services Agreement for specialty mechanical, inspection, and maintenance services; Applicable to the following projects: All NCPA Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approval of Resolution XX-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Team Industrial Services, Inc. for specialty mechanical, inspection, and 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 the Northern California Power Agency (NCPA), its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

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

## **BACKGROUND:**

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

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not-to-exceed \$500,000 to be used out of the NCPA approved annual operating budgets. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with Team Industrial Services, Inc.

## RESOLUTION 19-XX

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

(reference Staff Report #xxx:19)

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

WHEREAS, Team Industrial Services, Inc. is a provider of these services; and

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

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement with Team Industrial Services, Inc. with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$500,000 for specialty mechanical, inspection and maintenance related services for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 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  
TEAM INDUSTRIAL SERVICES, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and TEAM Industrial Services, Inc., a Texas corporation with its office located at 13131 Dairy Ashford, Suite 600, Sugar Land, TX 77478 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Contractor completes the Work, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Contractor shall perform the Work in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged and for which Contractor is providing the Work. Contractor represents that it is licensed, qualified and experienced to provide the Work set forth herein.
- 1.3 Assignment of Personnel.** Contractor shall assign only competent personnel to perform the Work. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Contractor shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Work Provided.** Work provided under this Agreement by Contractor may include Work directly to the Agency.
- 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 fourteen (14) 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 (in writing) to perform the Requested Work 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) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

**4.1 Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than one million dollars (\$1,000,000.00) 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 excess of SIR. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering General Liability, with a self-insured retention or deductible of no more than \$1,000,000. 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.** Intentionally omitted.

**4.4 Pollution Insurance.** Intentionally omitted.

**4.5 All Policies Requirements.**

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

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

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

**4.5.4 Additional Certificates and Endorsements.** Not applicable.

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

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

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

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



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

- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency. Notwithstanding anything in this Agreement to the contrary, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES TO THE EXTENT RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR BUSINESS INTERRUPTIONS INCLUDING LOSS OR DELAY OF OPERATIONS, HOWEVER CAUSED.

- 5.3 Transfer of Title.** Intentionally Omitted

## **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, costs, actual, direct damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, directly 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.** Not applicable.
- 6.6 Maintenance Labor Agreement.** Not applicable.

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

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, 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 actual direct costs to complete the Work that is unfinished at the time of breach

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

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

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

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

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

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

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

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

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

**10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency and

other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.

- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Agency will not be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall have no liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency for the performance of Work.

## **Section 11. WARRANTY.**

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

provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

**Section 12. HEALTH AND SAFETY PROGRAMS.** The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency.

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



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

**Section 13. MISCELLANEOUS PROVISIONS.**

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

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

**13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, Assistant General Manager, or his 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:

TEAM Industrial Services, Inc.  
Attn: Julie James/Brian Gailey  
4650 E. Second Street, Suite E  
Benicia, CA 94510

With a copy to:

TEAM Industrial Services, Inc.  
Attn: General Counsel  
13131 Dairy Ashford, Suite 600  
Sugar Land, TX 77478

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

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

**13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. .

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

NORTHERN CALIFORNIA POWER AGENCY

TEAM INDUSTRIAL SERVICES, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**JIM MCCLOSKEY, SVP, Commercial Services**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**  
**SCOPE OF WORK**

TEAM Industrial Services, Inc. ("Contractor") shall provide, specialty mechanical and inspection services as requested by Northern California Power Agency ("Agency") at any facilities owned and/or operated by the Agency.

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

**On-Steam Services:**

- Leak Maintenance Services
- Hot Tapping, Line Stopping, Line Freezing
- Energy Management
- Emissions Control

**Turnaround/Outage Services:**

- Field Machining Services
- 3-D Measurement and Inspection Services
- Technical Bolting Services
- Isolation & Hydro Test Plug Services
- Inspection (NDE/NDT)
- Heat Treating/Stress Relieving

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

## **EXHIBIT B**

### **COMPENSATION SCHEDULE AND HOURLY FEES**

Compensation for all work, including hourly fees and expenses, shall not exceed the amount set forth in Section 2 hereof. The hourly rates and or compensation break down is considered proprietary by Contractor and are on file in NCPA's office

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

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

---

(Name of person signing affidavit)(Title)

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

---

(Company name)

for contract work at:

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

(Project name and location)

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

---

(Signature of officer or agent)

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

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



# Commission Staff Report

Date        October 2, 2019

**COMMISSION MEETING DATE:**    October 24, 2019

**SUBJECT:**    Matheson Tri-Gas, Inc. – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for CEMS EPA gas purchases; Applicable to the following projects: All NCPA Facilities.

**AGENDA CATEGORY:**    Consent

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

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



## **RECOMMENDATION:**

Approval of Resolution XX-XX authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc., for CEMS EPA gas purchases, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA).

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

## **BACKGROUND:**

CEMS EPA gases are required from time to time related to project support at facilities owned and/or operated by NCPA.

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years, to be used out of the NCPA approved budget. 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 products are required, NCPA will bid the specific products consistent with NCPA procurement policies and procedures. NCPA currently has a similar agreement in place with Airgas USA, LLC and seeks bids from multiple qualified providers whenever products are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the products needed at the time the products are 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 Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc.

**RESOLUTION 19-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A MULTI-TASK AGREEMENT FOR PURCHASE OF EQUIPMENT, MATERIALS  
AND SUPPLIES WITH MATHESON TRI-GAS, INC.**

(reference Staff Report #xxx:19)

WHEREAS, CEMS EPS gases are periodically required at facilities owned and/or operated by the Northern California Power Agency (NCPA); and

WHEREAS, Matheson Tri-Gas, Inc. is a provider of these products; and

WHEREAS, NCPA seeks to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc., to provide such products as needed at all NCPA facilities, in an amount not to exceed \$1,000,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc. with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 for CEMS EPA gases purchases for use at all facilities owned and/or operated by the Northern California Power Agency (NCPA).

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2019, 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  
AGREEMENT FOR PURCHASE OF  
EQUIPMENT, MATERIALS AND SUPPLIES  
BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
MATHESON TRI-GAS, INC.**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency, with its main offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and Matheson Tri-Gas, Inc., ("Supplier"), whose principal office is located at 3080 North State Street, Ukiah, CA 95482 (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 (the "Effective Date").

**Section 1. SCOPE.** In accordance with the terms and conditions set forth in this Agreement, Supplier is willing to deliver the equipment, materials and supplies ("Goods") described in Exhibit A, attached hereto and incorporated herein to the designated Project Site, DDP, when requested by the Agency. Supplier shall be responsible at its sole expense for delivering the Goods to the designated Project Site and title shall not pass until the Agency accepts delivery at this Site. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

**Section 2. PROJECT SITE.** Goods provided under this Agreement by Supplier may include Goods delivered directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement.

**Section 3. TERM OF AGREEMENT.** This Agreement shall begin upon Effective Date and shall end on the earlier of five (5) years after the Effective Date or when Supplier has provided to Agency the Goods described in Exhibit A.

**Section 4. REQUEST FOR GOODS.** At such time that Agency determines to have Supplier provide Goods under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Goods to be provided ("Requested Goods"), may include a not-to-exceed cap or monetary cap on the Requested Goods and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Goods shall be delivered. Supplier shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Supplier chooses not to provide the Requested Goods. If Supplier agrees to provide the Requested Goods, begins to provide the Requested Goods, or does not respond within the seven day period specified, then Supplier will have agreed to provide the Requested Goods on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 5. COMPENSATION.** Agency hereby agrees to pay Supplier for the Goods an amount not to exceed ONE MILLION dollars (\$1,000,000) as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges. This dollar amount is not a guarantee that Agency will pay that full amount to the Supplier, but is merely a limit of potential Agency expenditures under this Agreement.

- 5.1 **Invoices.** Supplier shall have ninety (90) days after the delivery of Goods to invoice Agency for all amounts due and outstanding under this Agreement. Supplier shall include the number of the Purchase Order which authorized the Goods for which Supplier is seeking payment. In the event Supplier fails to invoice Agency for all amounts due within such ninety (90) day period, Supplier waives its right to collect payment from Agency for such amounts. All invoices shall be submitted to:

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

- 5.2 **Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.
- 5.3 **Timing for Submittal of Final Invoice.** Supplier shall have ninety (90) days after delivery of the Requested Goods to submit its final invoice for the Requested Goods. In the event Supplier fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Supplier is deemed to have waived its right to collect its final payment for the Requested Goods from Agency.

**Section 6. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Supplier, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement.

- 6.1 **Workers' Compensation.** If Supplier employs any person, Supplier shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Supplier with limits of not less than one million dollars (\$1,000,000) per accident.
- 6.2 **Automobile Liability.** Supplier shall maintain automobile liability insurance 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, whether or not owned by the Supplier, on or off Agency premises. The policy shall provide a minimum limit of \$3,000,000 per each accident, with \$5,000,000 aggregate. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment utilized in the transport of the Goods to the Agency's Project Site.
- 6.3 **Commercial General Liability (CGL).** Supplier shall maintain commercial general liability coverage covering Goods, including product 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 Supplier in regard to this Agreement with not less than \$3,000,000/\$5,000,000 aggregate for bodily injury and property damage, on an occurrence basis. No endorsement shall be attached limiting the coverage.

**6.4 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.

**6.5 All Policies Requirements.**

**6.5.1 Verification of Coverage.** Prior to beginning any work under this Agreement, Supplier shall, at the sole option of the Agency, provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the automobile liability policy and the CGL policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement and that Agency's insurance is excess and non-contributing.

**6.5.2 Notice of Reduction in or Cancellation of Coverage.** Supplier agrees to provide at least thirty (30) days prior written notice of any cancellation or reduction in scope or amount of the insurance required under this Agreement.

**6.5.3 Waiver of Subrogation.** Supplier agrees to waive subrogation which any insurer of Supplier may acquire from Supplier by virtue of the payment of any loss. Supplier agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

**6.5.4 Self-Insured Retention.** Supplier shall declare the amount of the self-insured retention to the Agency; the amount shall be not more than \$100,000.

**6.5.5 Additional Certificates and Endorsements.** Not Applicable

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

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

**Section 7. WARRANTY.** In addition to any and all warranties provided or implied by law or public policy, or any other warranties provided by Supplier, Supplier warrants that all Goods are free from defects in design and workmanship; comply with applicable federal, state and local laws and regulations; are new, of good quality and workmanship, and free from defects; are suitably safe and sufficient for the purpose for which they are normally used; and are not subject to any liens or encumbrances. Supplier shall provide all Goods in accordance with all applicable engineering, construction and other codes and standards, in accordance with prudent electrical utility standards, and in accordance with the terms of this Agreement applicable to such Goods, all with the degree of high quality and workmanship expected from purveyors engaged in the practice of providing materials and supplies of a similar nature. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof, unless Supplier's warranty is for greater than one (1) year, in which case Supplier's warranty shall be applied), the Goods provided by Supplier under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Supplier shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

**Section 8. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.**

- 8.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Supplier 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, Supplier acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 8.2 Scope.** Supplier 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 Supplier, 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.
- 8.3 Transfer of Title.** Supplier shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Supplier or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Supplier shall be responsible for all such notifications. Should Supplier be required to remedy or remove Goods as a result of a leak, spill, release or

discharge of Goods into the environment at Agency's Site or elsewhere, Supplier agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

## **Section 9. MISCELLANEOUS PROVISIONS.**

- 9.1 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Supplier and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 9.2 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.
- 9.3 Compliance with Applicable Law.** Supplier shall comply with all applicable federal, state, and local laws, rules and regulations in regard to this Agreement and the Goods supplied hereunder.
- 9.4 Construction of Agreement.** The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.
- 9.5 Supplier's Status.** Supplier is an independent contractor and not an employee or agent of NCPA.
- 9.6 Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.
- 9.7 Governing Law.** This Agreement and all matters pertaining to it, shall be governed by the laws of the State of California and venue shall lie in Placer County or in the county to which the Goods are delivered.
- 9.8 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.
- 9.9 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.
- 9.10 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.



**9.11 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.

**9.12 Conflict of Interest.** Supplier may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Supplier in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Supplier 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.*

**9.13 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.

**9.14 Notices.** Any written notice to Supplier shall be sent to:

Elijah Smolen  
Regional General Manager  
Matheson Tri-Gas, Inc.  
3080 North State Street  
Ukiah, CA 95482

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

**9.15.1** Each party shall designate a senior management or executive level representative to negotiate any dispute.

- 9.15.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 9.15.3** 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.
- 9.15.4** 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.
- 9.15.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 9.15.6** 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.*
- 9.16** **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Supplier's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Supplier's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Supplier's Proposal (if any), the Purchase Order shall control.
- 9.17** **Certification as to California Energy Commission.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit B.
- 9.18** **Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit C.
- 9.19** **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.
- 9.20** **Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.

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

NORTHERN CALIFORNIA POWER AGENCY

MATHESON TRI-GAS, INC.

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

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

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

\_\_\_\_\_  
**ELIJAH SMOLEN, General Manager**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## EXHIBIT A

### PURCHASE LIST

Supplier shall provide Goods as requested by the Northern California Power Agency ("Agency"), at any facility locations owned and/or operated by Agency.

#### GASES PRODUCT LIST

Lodi Energy Center (LEC)								
EPA Protocols	Product Description	Cylinder Size	Purity	Cylinder Price \$	Quantity needed on Hand at Site	Frequency Month / Quarter / Yearly	Notes	Rental Cylinder Specialty Codes
Certified Mixes	8.5ppm NH3/ bal Air	150A(141 cf.)	Cert	\$400.00		1 Every 2-3 years	PART # TBD	
	2.5ppm NO/ bal N2	150A(141 cf.)	EPA	\$198.00		1 every 2-3 years	PART # HXG2678039	HEI
	5.5ppm NO/ bal N2	150A(141 cf.)	EPA	\$198.00	2	1 every 2 months	PART # HXG2671789	HEI
	90ppm NO/ bal N2	150A(141 cf.)	EPA	\$198.00	2	1 every 2-3 years	PART # HXG2673459	HEI
	2.5ppm NO, 2.5ppm CO/ bal N2	150A(141 cf.)	EPA	\$352.00		1 every 2-3 years	PART # HXG2676615	HEI
	5.5ppm NO, 5.5ppm CO/ bal N2	150A(141 cf.)	EPA	\$220.00		1 every 2-3 years	PART # HXG2680695	HEI
	25ppm NO, 800ppm CO/ bal N2	150A(141 cf.)	EPA	\$220.00		1 every 2-3 years	PART # TBD	
	55ppm NO, 1200ppm CO/ bal N2	150A(141 cf.)	EPA	\$220.00		1 every 2-3 years	PART # TBD	
	9ppm NO, 9ppm CO/ bal N2	150A(141 cf.)	EPA	\$220.00	2	1 every 2 months	PART # HXG2680637	HEI
	90ppm NO, 2500ppm CO/ bal N2	150A(141 cf.)	EPA	\$220.00	2	1 every 2-3 years	PART # TBD	
	18% O2/ bal N2	150A(141 cf.)	EPA	\$178.00	2	1 every 2 months	PART # HXG2673287	HEI
	5.5% O2/ bal N2	150A(141 cf.)	EPA	\$178.00		1 every 2-3 years	PART # HXG2672428	HEI
	11% O2/ bal N2	150A(141 cf.)	EPA	\$178.00		1 every 2-3 years	PART # HXG2673286	HEI
	25ppm NO/ bal N2	150A(141 cf.)	EPA	\$198.00		1 every 2-3 years	PART # HXG2672895	HEI
	54ppm NO/ bal N2	150A(141 cf.)	EPA	\$198.00		1 every 2-3 years	PART # HXG2675481	HEI
	Chromatograph Cal Gas	150A(141 cf.)		\$884.00		1 every 2-3 years	PART # TBD	
	Helium, Ultra High Purity 5.0	300		\$300.00	2	1 every 2 months	HE UHP1L	SGL
	Nitrogen- CEMS (99.999%) Grade	255 CF	CEMS	\$405.00	2	1 every 2 months	HG G2179101	SGL
STIG (CT2)								
EPA Protocols	Product Description	Cylinder Size	Purity	Cylinder Price \$	Quantity needed on Hand at Site	Frequency Month / Quarter / Yearly	Notes	
Certified Mixes	22.5% O2/ bal N2	150A(141 cf.)	EPA	\$178.00	2	1 every 2 months	PART # HXG2676401	HEI
	13.75 O2/ bal N2	150A(141 cf.)	EPA	\$178.00		1 every 2-3 years	PART # HXG2672880	HEI
	6.25% O2/ bal N2	150A(141 cf.)	EPA	\$178.00		1 every 2-3 years	PART # HXG2672829	HEI
	9 ppm NO/ bal N2	150A(141 cf.)	EPA	\$198.00	2	1 every 2 months	PART # HXG2673071	HEI
	5.5 ppm NO/ bal N2	150A(141 cf.)	EPA	\$198.00		1 every 2-3 years	PART # HXG2671789	HEI
	2.5 ppm NO/ bal N2	150A(141 cf.)	EPA	\$220.00		1 every 2-3 years	PART # HXG2678039	HEI
	90ppm NO, 45ppm CO/ bal N2	150A(141 cf.)	EPA	\$220.00	2	1 every 2 months	PART # TBD	
	55ppm NO, 27.5ppm CO/ bal N2	150A(141 cf.)	EPA	\$220.00		1 every 2-3 years	PART # TBD	
	25ppm NO, 12.5ppm CO/ bal N2	150A(141 cf.)	EPA	\$220.00		1 every 2-3 years	PART # TBD	
Shared Gases								
Industrial	Product Description	Cylinder Size	Purity	Cylinder Price \$	Quantity needed on Hand at Site	Frequency Month / Quarter / Yearly	Notes	
	Argon - Industrial	80	Ind	\$40.00			AR 80	HPS
	Propylene	30lbs		\$62.48			PG 30	DR
	Liquid N2	180 Lbs		\$125.00	2	1 every 2 months	NI 180	LC
	Nitrogen	250	Ind	\$30.00	2	1 every 2 months	NI 250	HPL
	Oxygen - Industrial	250	Ind	\$25.00	2	1 every 2 months	OX 250	HPL
	Acetylene	Size#4	Ind	\$75.00			AC 5M	ACL
	Argon - Industrial	300	Ind	\$80.00			AR 300	HPL
	SF6	200	CP	\$2971.00		1 every 2-3 years	HG G2188101	HEI

All EPA protocol and certified gas mixes will be supplied in aluminum 150A size cylinders unless otherwise specified.

Monthly Cylinder Rentals: \$5.50 Per Month (Per Cylinder), \$1.50 Per Day for Liquid Nitrogen (per Cylinder), if Applicable  
Delivery Charges: \$25.00 Per Delivery, if Applicable

Hazmat Fee: \$7.50 Per Delivery, if Applicable

Miscellaneous Material Purchases: Discounts generally range from 10-30%, can vary depending on product.

Additional products not listed above will be quoted at the time of request.

**EXHIBIT B**

**CERTIFICATION**

**Affidavit of Compliance for Suppliers**

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

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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

**EXHIBIT C**

**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.



# Commission Staff Report

Date        October 2, 2019

**COMMISSION MEETING DATE:**    October 24, 2019

**SUBJECT:**    Cooperative Response Center Associate Membership Agreement for utility customer service representative support services; Applicable to the following projects: all NCPA Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

**AGENDA CATEGORY:**    Consent

<b>FROM:</b>	Joel Ledesma	<b>METHOD OF SELECTION:</b>
	Assistant General Manager	<i>Other</i>
Division:	Generation Services	<i>If other, please describe:</i> Request from members.
Department:	Generation Services	

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

## **RECOMMENDATION:**

Approval of Resolution 19-XX authorizing the General Manager or his designee to enter into an Associate Membership Agreement with Cooperative Response Center, Inc. (CRC) for utility customer service representative support services, with any non-substantial changes recommended and approved by the NCPA General Counsel. NCPA Members can subscribe to these services through NCPA's Associate Membership, via the NCPA Support Services Program.

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

## **BACKGROUND:**

Cooperative Response Center, Inc. (CRC) provides utility customer service representative support services, including interactive voice response technology, for after-hour, overflow, and/or 24-hour inbound and/or outbound call answering and related dispatching.

A number of NCPA Members have expressed an interest in utilizing CRC's services. Those Members have reached out to NCPA to inquire as to whether NCPA would be able to assist with getting an agreement into place with this vendor which could be used by all NCPA Members, SCPPA, and SCPPA Members.

NCPA will be entering into an Associate Membership Agreement with CRC. This will allow NCPA to utilize the services provided by CRC. NCPA Members interested in utilizing CRC services will be able to access this agreement via NCPA's Support Services Program.

## **FISCAL IMPACT:**

This agreement does not carry a not to exceed amount. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

## **SELECTION PROCESS:**

This Associate Membership Agreement does not commit NCPA to any expenditure of funds. NCPA does not currently have any agreements in place with other vendors for similar services. 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
- Associate Membership Agreement with Cooperative Response Center, Inc.

## RESOLUTION 19-XX

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING AN ASSOCIATE MEMBERSHIP AGREEMENT WITH COOPERATIVE RESPONSE CENTER, INC. (CRC)

(reference Staff Report #XXX:19)

WHEREAS, utility customer service representative support services, including interactive voice response (IVR) technology, for call answering and related dispatching are periodically required at the facilities owned and/or operated by the Northern California Power Agency (NCPA), its Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, Cooperative Response Center, Inc. (CRC) is a provider of these services; and

WHEREAS, NCPA seeks to enter into an Associate Membership Agreement with Cooperative Response Center, Inc. (CRC) to provide such services as needed; and

WHEREAS, NCPA Members, SCPPA, and SCPPA Members will have access to utilize these services through NCPA's Support Services Program; 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 an Associate Membership Agreement with Cooperative Response Center, Inc. (CRC), with any non-substantial changes as approved by the NCPA General Counsel, for utility customer service representative support services.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019 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



## Associate Membership Agreement

This Agreement made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between Cooperative Response Center, Inc., a Minnesota cooperative, hereinafter "CRC," and \_\_\_\_\_, a \_\_\_\_\_(state) company, hereinafter "Associate Member."

WHEREAS, CRC is a cooperative association which provides various services to its Associate Members; and

WHEREAS, Associate Member desires to become a Associate Member of CRC for the purpose of availing itself of the rights and benefits of Associate Membership, including the right to receive on behalf of NCPA's Members any of the various services offered by CRC to its Associate Members; and

WHEREAS, the parties desire to set forth in this Agreement the terms and conditions that shall apply to Associate Member's Associate Membership in CRC and the provision of services to Associate Member by CRC.

NOW, THEREFORE, in consideration of the terms and mutual covenants contained herein, the parties agree as follows:

1. Definitions. The following terms shall have the following meanings as used herein:

- 1.1 Customer Contact Center Services. Those services described in the attached Exhibit A.
- 1.2 Central Station Alarm Monitoring Services. Those services described in the attached Exhibit B.
- 1.3 CRCLink™ E-Communications Software Program. The product described in the attached Exhibit C.
- 1.4 Subscriber. Members of Associate Member who receive one or more Services.
- 1.5 Notification Instructions. Written instructions to CRC provided by Associate Member or its Subscribers identifying by name, address and telephone number, or such other identifying information as CRC shall require, and the party(ies) to be notified upon the receipt of a signal from a monitored location and/or device(s).
- 1.6 Responder. A party designated by Associate Member or its Subscribers in a Notification Instruction to receive notification upon the receipt by CRC of a signal from a monitored location and/or device(s).
- 1.7 Intellectual Property. All trademarks, trade names, service marks, logos, copyrights, patents, trade secrets and other intellectual property rights now or hereafter owned by CRC or used by CRC pursuant to a licensing agreement.

2. Associate Membership. CRC hereby grants Associate Member all of the rights and benefits of Associate Membership in CRC, including the right to subscribe to and purchase any of the Services offered by CRC on behalf of Associate Member's Subscribers during the term of this Agreement. In consideration of the grant of Associate Membership in CRC, Associate Member shall pay a non-refundable Associate Membership Fee of \$250.00 contemporaneously with the execution of this Agreement. Associate Membership shall not include the right to vote on any matter in connection with the operation or governance of the CRC cooperative.

3. Services. Associate Member may purchase for Associate Member's Subscribers consistent with the terms of this Agreement such Customer Contact Center Services, Central Station Alarm Monitoring Services, or the CRCLink E-Communications Software Program, hereinafter collectively "Services" or individually "Service," from CRC as Associate Member may from time to time elect, provided that Associate Member purchase at least one Service continuously after initial cutover for the minimum term set forth herein, pay the Service Fees with respect to

such Service as set forth herein and otherwise comply with any applicable provisions set forth herein. The initial Services which Associate Member elects to purchase from CRC are as follows:

- \_\_\_\_\_ Customer Contact Center Services
- \_\_\_\_\_ Central Station Alarm Monitoring Services
- \_\_\_\_\_ CRCLink E-Communications Software License

Associate Member may notify CRC of its desire to purchase any additional Service at any time after the commencement of the term of this Agreement. Services shall commence upon the installation by Associate Member of the equipment or telecommunications services necessary to access and utilize such Services and receipt by CRC of any necessary worksheets, data base files and procedural instructions for each Service purchased.

Services for any monitored location and/or device(s) shall not commence until CRC has also received any necessary preliminary or final Notification Instructions and an acceptable test signal from that location and/or device(s). CRC shall not be obligated to perform any Services hereunder during any time when CRC fails to receive a call, signal or notification or be liable for any damages as a result of such failure.

To the extent necessary to provide the services selected above, CRC grants Associate Member, and Associate Member accepts, a nonexclusive, nontransferable license to use CRC's CRCLink e-communications software program in accordance with the terms and conditions of the CRCLink Software License Agreement attached hereto as Exhibit C.

Prior to receiving any services from CRC, CRC must receive approval from any current Member of CRC whom adjoins the Subscriber's service territory.

4. Fees. Associate Member shall pay CRC an Initial Associate Membership Fee of \$250.00 upon execution of this Agreement. Associate Member shall also pay CRC any Setup Fees and Monthly Service Fees for the Services purchased by Associate Member as specified above or subsequently selected by Associate Member, as such Setup Fees and Monthly Service Fees are set forth in Exhibits A, B, and C. CRC, with the approval of its Board of Directors, may change the Monthly Service Fees upon 90 days' prior written notice to Associate Member. Setup Fees shall be due and payable in advance of the commencement of any selected Service. Monthly Services Fees shall be invoiced to Associate Member and shall be due and payable within 30 days of the date of such invoice. Associate Member shall be charged and agrees to pay a late payment charge of 1.5 percent per month or the highest interest rate permitted by law, whichever is lower or fraction thereof on any amount not paid within 30 days of the date of an invoice. In the event that Associate Member should default in the full and timely payment of any fee due hereunder and fails to cure such default within 10 days of notice by CRC, CRC may, in addition to any remedies provided by law or this Agreement, (i) suspend any and all Services to Associate Member and/or its Subscribers; (ii) provide Services to and receive payment through another CRC Associate Member for Associate Member's Subscribers; (iii) commence an action to collect such past-due amounts (including a \$250.00 service reactivation fee); and/or the right to collect any attorney's costs and disbursements fees.

5. Associate Member's Obligations. Associate Member shall be responsible for obtaining, installing, maintaining, and repairing any and all equipment necessary to access or utilize those Services selected by Associate Member, for maintaining proper telephone communications with CRC which also deliver automatic number identification, for designating and making readily available a contact person(s) for all standard operating procedures for those Services, as well as other personnel should Services require dispatching or other assistance during a peak calling event. Associate Member shall notify CRC in a timely manner of any modifications or changes in any data base files, disconnected accounts, Notification Instructions or procedural instructions, or for any requested telephone notification services. Associate Member shall provide to CRC, maintain, and continually update a predetermined line-crew on-call schedule (as applicable) and a complete customer database, including service address, telephone number(s) and service address description(s). With respect to Central Station Alarm Monitoring Services, Associate Member shall directly enter into an alarm monitoring agreement with each of its Subscribers and shall require that each of its Subscribers agree to be responsible for any and all costs charged by any Responder as the result of being notified by CRC of the receipt of a signal from such Subscriber's System.

6. Term. This Agreement shall commence upon the date hereof and continue for a period of one year. Associate Member shall be required to purchase at least one of the Services described herein continuously during such initial term. Thereafter, this Agreement shall be automatically renewed for additional one year terms unless one party shall give the other party written notice of its intent to terminate this Agreement at least 90 days prior to the

expiration of the initial term or any renewal term. If eligible, Associate Member may upgrade, without penalty, from Associate Membership to Membership at any time during the initial or renewal term of the Agreement. In the event that this Agreement is terminated by Associate Member without cause prior to its expiration, Associate Member agrees to pay CRC for each of the services purchased by Associate Member, as liquidated damages, an amount equal to the average of all monthly fees for that service paid by Associate Member during the 12 months prior to termination, or the number of months that the Agreement has been in effect, whichever is less, times the number of months remaining in the term of this Agreement. Such amount shall be due on the 15th day of the month following such termination.

7. Intellectual Property Rights. CRC hereby grants to Associate Member a nonexclusive license to use the Intellectual Property of CRC in conjunction with the services and products offered by Associate Member which utilize any of the Services in accordance with guidelines established by CRC from time to time. Associate Member agrees that CRC shall retain ownership of all such Intellectual Property. Any and all use of CRC's Intellectual Property by Associate Member shall inure to the benefit of CRC. Upon termination of this Agreement, Associate Member shall cease using the Intellectual Property and shall not thereafter adopt or use any colorable imitation of any of such Intellectual Property.

8. Confidentiality. The customer lists of Associate Member and the names, addresses and other information concerning the identity of Associate Member's customers or subscribers shall be considered to be Confidential Information. CRC shall use its commercially reasonable best efforts to preserve the confidentiality of such information, but on no account shall it use less than the same care it uses with respect to its own confidential information of similar sensitivity. Confidential Information shall not include any information that: (i) is generally known by third parties as part of the public domain as a result of no act or omission of the receiving party; (ii) was already independently known by the receiving party and was not received from a third party in breach of any obligation of confidentiality; (iii) was independently developed by the receiving party; or (iv) is required to be disclosed by court order or other lawful government action, but only to the extent so ordered, and provided that the receiving party promptly notifies the disclosing party so that the disclosing party may seek a protective order.

9. Disclaimer of Warranties; Limitation of Liability. CRC does not warrant or represent that any Service will prevent any loss, including, but not limited to, loss by burglary, robbery, fire, medical emergency or environmental emergency. CRC DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Insurance. During the term of this Associate Membership Agreement, the parties and any Subscriber shall have in force and effect a comprehensive liability insurance policy and carry a minimum of \$2,000,000 of liability coverage per occurrence.

12. No Joint Venture or Enterprise. This Associate Membership Agreement does not create a joint venture or joint enterprise between CRC and Associate Member.

13. Force Majeure. CRC shall not be liable for any delay in performance or non-performance of any of its duties assumed hereunder if delayed, hindered or prevented from performance due to any cause beyond its control including, by way of illustration, riots, labor disputes, vandalism, fire, flood, or acts of God.

14. Arbitration. Any dispute, controversy or claim arising out of or in connection with this Agreement shall be determined and settled by arbitration in Sacramento, California, or such other location as the parties may agree, pursuant to the rules then in effect of the American Arbitration Association as modified by this section. Any award rendered shall be final and conclusive upon the parties, their successors and assigns, and a judgment upon such award may be entered in a court having competent jurisdiction. The party submitting such dispute shall request and the American Arbitration Association shall (i) appoint a neutral arbitrator who is knowledgeable in the area of cooperatives and information and communications services; (ii) direct the arbitrator to follow the substantive rules of law and evidence; (iii) allow for the parties to request discovery pursuant to the rules then in effect under the Federal Rules of Civil Procedure for a period not to exceed 90 days; (iv) require the testimony to be transcribed; and (v) require the award to be accompanied by findings of fact and a statement of the reasons for the decision. All costs and expenses of the arbitration, including the arbitrator's fees, shall be borne equally by the parties. Each party shall be responsible for its own attorney's fees.

15. Taxes. Associate Member shall be responsible for and shall pay all applicable property, sales, use or similar taxes imposed by any local, state, national or international public entity with respect to the performance of Services by CRC to Associate Member or any of its Subscribers.

16. Termination. Associate Member agrees that it will not provide any of the above-described Services, or any other services substantially equivalent thereto, which affect competition with CRC during the term of this Agreement, or this Agreement may be terminated by CRC prior to the expiration of the term. This Agreement may be terminated by either party prior to the expiration of the term upon the occurrence of any of the following events:

- (a) The other party is in breach of any material provision of this Agreement and fails to remedy such breach within 10 days after written notice of such breach from the non-breaching party, provided, however, that in the case of a breach by Associate Member that consists of the failure to subscribe to at least one Service, notice of such breach shall not be given until Associate Member has failed to subscribe to at least one Service for at least one year;
- (b) The other party becomes insolvent, files for bankruptcy protection or other relief from its creditors, or is otherwise the subject of a bankruptcy petition, or makes an assignment for the benefit of its creditors; or
- (c) The other party is in noncompliance of any federal, state or local statute, ordinance, regulation or rule and fails to cure such noncompliance within 10 days of written notice of noncompliance from the first party.

17. Notices. Any notice required hereunder shall be effective upon deposit in the U.S. mail, postage prepaid, addressed to the appropriate party at the following addresses:

CRC

Cooperative Response Center, Inc.  
2000 8<sup>th</sup> Street NW  
Austin, MN 55912

Associate Member

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties, and no modification hereof shall be valid except in writing signed by both parties.

19. Governing Law. This Agreement shall be interpreted according to and governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

COOPERATIVE RESPONSE CENTER, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

ASSOCIATE MEMBER

By \_\_\_\_\_

Its \_\_\_\_\_

Federal Tax ID Number \_\_\_\_\_

EXHIBIT A  
CUSTOMER CONTACT CENTER SERVICES

DESCRIPTION OF SERVICES:

Energy Dispatch Service

CRC shall utilize customer service representatives (voice communication), interactive voice response (IVR) technology, and data communications over the Internet or public telephone and cellular networks to provide after-hour, overflow, and/or 24-hour inbound and/or outbound energy (electric, natural gas and propane) call answering and related dispatching. If a call indicates an electrical, natural gas, propane outage or other problem for one of Associate Member's customers that requires a response or some other action, CRC will notify the Associate Member's line crews or other party designated by Associate Member to be notified in the event of that problem and request that such party respond to the customer's call. CRC will obtain from the customer and convey to the notified party such information as Associate Member shall designate in advance as being necessary or appropriate to respond to that type of problem. CRC shall provide a daily report to Associate Member indicating the calls received or initiated and any follow-up activities that may be required in conjunction therewith.

Customer Care Service

CRC shall utilize customer service representatives (voice communication), and/or interactive voice response (IVR) technology, and data communications over the Internet or public telephone network to provide after-hour, overflow, and/or 24-hour inbound and/or outbound customer care services, which include energy call answering and automatic telephone notification including customer billing call answering and payment processing but not dispatching services, overflow, specialty (such as natural gas and propane) call answering and such other related customer care services as CRC and Member shall agree in advance. CRC will obtain from the customer and convey to the notified party such information as Associate Member shall designate in advance as being necessary or appropriate to respond to that type of inquiry or problem. CRC shall provide a daily report to Associate Member indicating the calls received or initiated and any follow-up activities that may be required in conjunction therewith.

SET-UP FEE (PER SUBSCRIBER):

\$1,150.00 This fee covers usual and customary set-up procedures including documentation of information and instructions in the CRCLink E-Communications Software, customer data import, file structure set-up, standard interface set-up, and remote installation of the CRCLink E-Communications Software.

MONTHLY FEES:

The monthly fees per Subscriber for Energy Dispatch Service and Customer Care Service are designated as follows and require a \$250 minimum usage level.

Energy Dispatch Services (Per Completed Call Except Base Fee)	
Base Fees (Per Meter)	\$0.138
Inbound Voice	\$2.058
Inbound Data	\$0.160
Inbound Front End Greetings	\$0.575
Outbound Voice	\$2.058
Outbound Data (Including Callback for Restoration)	\$0.900
Phone Notification Services (PNS) (Per job)	
First 200 Calls	\$0.900
201 – 1,000	\$0.460
Over 1,000	\$0.115
Texting Services (No charge up to 50% of Associate Member's meter count per year)	\$0.075

Customer Care (Per Completed Call Except Base Fee)	
Energy	
Base Fees (Per Meter)	\$0.064
Inbound Voice	\$2.940
Inbound Data	\$0.300
Inbound Front End Greetings	\$1.475
Outbound Voice	\$2.940
Outbound Data (Including Callback for Restoration)	\$1.360
Texting Services (No charge for up to the lessor of 30,000 texts or 25% of Associate Member's meter count per year)	\$0.075
Overflow	
Base Fees (Per Meter)	\$0.035
Inbound Voice	\$4.340
Inbound Data	\$0.460
Inbound Front End Greetings	\$1.955
Outbound Voice	\$4.340
Outbound Data (Including Callback for Restoration)	\$2.040
Texting Services (No charge for up to the lessor of 30,000 texts or 25% of Associate Member's meter count per year)	\$0.075
Propane	
Inbound Voice	\$3.470
Inbound Data	\$1.080
Inbound Front End Greetings	-
Outbound Voice	\$3.470
Outbound Data (Including Callback for Restoration)	\$1.660
Specialty	
Inbound Voice	\$3.470
Inbound Data	\$1.080
Inbound Front End Greetings	-
Outbound Voice	\$3.470
Outbound Data (Including Callback for Restoration)	\$1.660
Phone Notifications Service (PNS)	
Credit Card Payment Surcharge	
Live Call Surcharge	\$0.230
Automated Call Surcharge	\$0.115
Walk-In Translation Services	
Spanish Translation Services (per minute)	\$1.650
Other Language Translation Services (per minute)	\$2.100



EXHIBIT C  
CRCLINK™ E-COMMUNICATIONS SOFTWARE LICENSE AGREEMENT

CRCLink e-communications software program (the "Software") is designed to provide an interface between an Associate Member's customer information system and CRC's local database to facilitate electronic communication, outage analysis, and report management between CRC and an Associate Member. CRC grants Associate Member, and Associate Member accepts, a nonexclusive, nontransferable license to use the Software, in accordance with the following terms and conditions:

1. License. CRC grants Associate Member a nonexclusive, nontransferable license to use the Software for internal use only in conjunction with the subscription by Associate Member to Services on one computer or a computer network, at the Associate Member's location.

2. Term. The License granted herein shall be coincident with the term of Associate Member's Associate Membership Agreement.

3. License Fees. Associate Member shall pay CRC a Monthly License Fee per Subscriber, as follows, in advance on the first day of each month during the term of this Agreement. The License Fee shall be in addition to the Associate Membership and Service Fees. CRC, with the approval of its Board of Directors, may increase the Monthly License Fee upon 90 days' prior written notice to Associate Member.

CRCLink Monthly License Fees	
Single User License	\$255.00
Network License (2-5 Users)	\$432.00
Network License (6-10 Users)	\$520.00
Network License (11+ Users)	\$608.00
CRCLink Monthly Interface Fees	
One Way Outage Management Interface	\$30.00
Two way Outage Management Interface	\$143.75
AMI Interface	\$71.88

4. Ownership. The Software and all copies thereof, including translations, compilations, partial copies with modifications and updated works, are proprietary to CRC, and title thereto shall remain in CRC. All applicable know-how, trade secrets, patents, trademarks and copyrights in the Software and any modifications thereto are, and shall remain, the property of CRC. Associate Member shall not remove, alter or destroy any form of copyright notice, proprietary markings or confidential legends placed upon or contained in the Software.

5. Restrictions. Associate Member shall not translate, disassemble, reverse engineer, decompile or otherwise attempt to reconstruct or discover any source code or underlying ideas or algorithms of, or embodied in, the Software. Associate Member shall not cause or permit unauthorized copying, reproduction or disclosure of any portion of the Software to any third party, for any purpose whatsoever, including, but not limited to, transmission, uploading, downloading, or operating the Software as a timeshare or service bureau without the prior written consent of CRC.

6. Confidentiality. Associate Member acknowledges that the Software contains trade secrets and other proprietary information of CRC. Associate Member shall permit access to the Software only by its employees that have a need to know in connection with the License granted herein. Associate Member shall secure and protect the Software and any copies thereof in a manner consistent with the maintenance of CRC's rights therein and shall take appropriate action by instruction or agreement with its employees who are permitted access to the Software to satisfy its obligations hereunder. Associate Member shall maintain the confidentiality of the Software using the same care as Associate Member uses to maintain the confidentiality of its own confidential information. Associate Member acknowledges that the disclosure of any aspect of the Software, or any other confidential information referred to herein, will immediately give rise to irreparable injury to CRC inadequately compensable by damages at law, and CRC shall be entitled to obtain immediate injunctive relief against the breach or threatened breach of the foregoing confidentiality undertakings, in addition to any other legal remedies which may be available, and Associate Member hereby consents to the obtaining of such injunctive relief. Associate Member waives any requirement that CRC post a bond in order to obtain such relief.

7. Installation and Training. CRC shall provide Associate Member with a CD-ROM for Associate Member to install. CRC shall provide Associate Member with training in the use of the Software in any of three types of formats: at CRC's headquarters in Austin, Minnesota, at Associate Member's site, or Web-based.

Training and Orientation	
On-Site (1st Day)	\$863 (plus any associated travel-related expenses incurred by CRC)
On-Site (2nd Day)	\$432 (plus any associated travel-related expenses incurred by CRC)
CRC Site (Per Day)	\$216.00
Web-Based (Per Session)	\$216.00

8. Hardware and Telecommunications Requirements. Associate Member shall install and run Software on a client-server network or personal computer which operates at certain minimum hardware and telecommunications requirements which are available upon request from Member.

9. Maintenance and Upgrades. CRC will provide Associate Member with telephone maintenance and support for the Software including upgrades and version upgrades as CRC may release from time to time. Member agrees to comply with CRC's minimum hardware and telecommunications requirements. Failure to do so shall terminate the maintenance and support of Software until such time Member complies with these hardware and telecommunications requirements.

10. Limited Warranty. CRC warrants that the Software will conform, as to all substantial operational features, to CRC's current published specifications when installed and will be free from defects which substantially affect system performance. Associate Member shall notify CRC in writing within 90 days of installation of the Software of any defect in the Software. If the Software is found to be defective by CRC, CRC's sole obligation under this warranty shall be to remedy such defect or replace the Software. THIS LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY CRC. CRC MAKES AND ASSOCIATE MEMBER RECEIVES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CRC SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE WARRANTY CONTAINED HEREIN IS IN LIEU OF ALL LIABILITIES AND OBLIGATIONS OF CRC FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE SOFTWARE. If any modifications are made to the Software by Associate Member, this warranty shall be null and void.

11. Indemnity for Infringement. CRC shall at its own expense defend any action brought against Associate Member to the extent that it is based on a claim that the Software infringes any patents, copyrights, license or other property right, provided that CRC is immediately notified of such claim in writing. CRC shall have the right to control the defense of all such claims, lawsuits or other proceeding. In no event shall Associate Member settle any such claim, lawsuit or proceeding without CRC's prior written approval.

12. Taxes. Associate Member shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, federal, state, or otherwise, however designated, which are levied or imposed by reason of this Agreement. Without limiting the foregoing, Associate Member shall promptly pay to CRC an amount equal to any such items actually paid by CRC, or required to be collected or paid by Associate Member.

13. Assignment. Associate Member may not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement.

14. Modification and Waiver. This Agreement shall not be amended or modified except in writing signed by each party. The failure of either party to exercise any right under this Agreement shall not be deemed to be a waiver of that right.