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Agenda

Date: Wednesday, November 4, 2020

Subject: Facilities Committee Meeting

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

Time: 9:00 am

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

Dial: 1-312-757-3121

Meeting ID: 600-474-613#

Hosted through GoToMeeting

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

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

REVIEW SAFETY PROCEDURES

1. Call Meeting to Order and Roll Call

PUBLIC FORUM

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

OPEN SESSION

DISCUSSION / ACTION ITEMS

2. **Approval of Minutes** – Approve the October 7, 2020 Facilities Committee meeting minutes.
3. **All NCPA Facilities, Members, SCPPA – ORR Protection Systems, Inc. First Amendment to MTGSA** – Staff is seeking a recommendation for Commission approval of a First Amendment to the Multi-Task General Services Agreement with ORR Protection Systems, Inc., increasing the not to exceed amount from \$1,500,000 to \$3,000,000, with no change to the contract term, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: Geo*)
4. **NCPA Facilities, Members, SCPPA – Tesco Controls, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Tesco Controls, Inc. for integrated electrical and process control systems services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: Geo*)
5. **NCPA Geothermal Facility – Fifth Amendment to the Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project** – Staff is seeking a recommendation for Commission approval of the Fifth Amendment to the Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project, updating the Cost Responsibility calculation used and extending the agreement expiration date for an additional two years. (*Commission Category: Consent; Sponsor: Geo*)
6. **All NCPA Facilities, Members, SCPPA - Process Innovations, Inc. First Amendment to MTCSA** – Staff is seeking a recommendation for Commission approval of a First Amendment to transfer assignment of Five Year Multi-Task Consulting Services Agreement for OSISoft PI support services to Brandenburg Holdings, LLC dba Process Innovations/Process Plugins, and approval of related Standard Software License Agreement, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CTs*)
7. **Settlements Summary Results for FY20** – Staff is seeking a recommendation for approval of the FY20 Annual Billing Settlement for the period of July 1, 2019 through June 30, 2020. (*Commission Category: Consent; Sponsor: Administrative Services*)
8. **Professional Services Agreement between NCPA and BAMx Members** – Staff is seeking a recommendation for Commission approval of a five-year Professional Services Agreement between NCPA and the cities of Palo Alto and Santa Clara, (BAMx Members), with a not to exceed amount of \$3,250,000. (*Commission Category: Consent; Sponsor: Power Management*)
9. **Consulting Services Agreement between NCPA and Flynn Resource Consultants, Inc.** – Staff is seeking a recommendation for Commission approval of a five-year Consulting Services Agreement between NCPA and Flynn Resource Consultants Inc. (Flynn RCI),

under which Flynn RCI is to act as project manager and shall coordinate the efforts of BAMx Members with a not to exceed amount of \$3,250,000. (*Commission Category: Consent; Sponsor: Power Management*)

- 10. 2021 Major Insurance Renewal Proposal** – Staff is seeking a recommendation for Commission approval of NCPA Major insurance renewals for 2021. (*Commission Category: Discussion/Action; Sponsor: Administrative Services*)

INFORMATIONAL ITEMS

- 11. New Business Opportunities** – Staff will provide an update regarding new business opportunities. (*Sponsor: Power Management*)
- 12. NCPA Generation Services Plant Updates** – Plant Staff will provide the Committee with an informational update on current plant activities and conditions. (*Sponsor: Generation Services*)
- 13. Planning and Operations Update** – Staff will provide an update on issues related to planning and operations. (*Sponsor: Power Management*)
- 14. Next Meeting** – The next Facilities Committee meeting is scheduled for December 2, 2020.

ADJOURNMENT

BS/cp



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Minutes - Draft

Date: October 20, 2020
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: October 7, 2020 Facilities Committee Meeting Minutes

- 1. Call Meeting to Order & Roll Call** – The meeting was called to order by Committee Chair Brian Schinstock (Roseville) at 9:04 am. Attending via teleconference and/or on-line presentation were Alan Harbottle (Alameda), Mark Sorensen (Biggs), Paul Eckert (Gridley), Jiayo Chiang (Lodi), Shiva Swaminathan (Palo Alto), Mike Brozo (Plumas-Sierra), Nick Rossow (Redding), and Basil Wong and Steve Hance (Santa Clara). Owen Goldstrom (non-voting Member with TID) also attended via teleconference. Those attending in person are listed on the attached Attendee Sign-in Sheet. Committee Representatives from BART, Healdsburg, Lompoc, Port of Oakland, TID, and Ukiah were absent. A quorum of the Committee was established.

PUBLIC FORUM

No public comment.

OPEN SESSION

DISCUSSION / ACTION ITEMS

- 2. Approve Minutes from the September 2, 2020 Facilities Committee and Special Facilities Committee Meetings.**

Motion: A motion was made by Basil Wong and seconded by Jiayo Chiang recommending approval of the September 2, 2020 Facilities Committee and Special Facilities Committee meeting minutes. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Roseville, and Santa Clara. The motion passed.

- 3. All NCPA Facilities, Members, SCPPA – Evoqua Water Technologies, LLC MTGSA** – Staff presented back ground information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Evoqua Water Technologies, LLC, for water services including condensate polisher/DI mix bed vessel services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a renewal agreement with an existing vendor. It is an enabling agreement with no commitment of funds. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. Execution of this enabling agreement will also increase the pool of qualified and proven vendors for these types of services. NCPA does not currently have any agreements in place with similar vendors. A draft Commission Staff Report and draft agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Mike Brozo and seconded by Brian Schinstock recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Evoqua Water Technologies, LLC for water treatment related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Roseville, and Santa Clara. The motion passed.

4. **All NCPA Facilities (Except LEC), Members, SCPPA – Sulzer Turbo Services Houston, Inc. MTGSA** – Staff presented back ground information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Sulzer Turbo Services Houston, Inc., for inspection and maintenance services, with a not to exceed amount of \$3,000,000, for use at all facilities owned and/or operated by NCPA (except LEC), NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a renewal agreement with an existing vendor. It is an enabling agreement with no commitment of funds. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. Execution of this enabling agreement will also increase the pool of qualified and proven vendors for these types of services. NCPA has a pending agreement for similar services with Allied Power Group. A draft Commission Staff Report and draft agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Basil Wong and seconded by Brian Schinstock recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Sulzer Turbo Services Houston, Inc. for inspection and maintenance related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$3,000,000 over five years, for use at all facilities owned and/or operated by NCPA (except LEC), NCPA Members, by SCPPA, or by SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

5. **NCPA CT Facilities – Pure Process Filtration, Inc. MTEMS** – Staff presented back ground information and was seeking a recommendation for Commission approval of a five-year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Pure Process Filtration, Inc., for filters and filter storage, with a not to exceed amount of \$1,000,000, for use at NCPA CT's facilities only. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a renewal agreement with an existing vendor. It is an enabling agreement with no commitment of funds. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. Storage is limited at the CT facilities and the vendor has space to store at their location. NCPA desires to enter into this agreement so established terms and conditions are in place for future purchases and storage of goods. There are no additional agreements in place for similar purchases and/or storage services. A draft Commission Staff Report and draft agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Jiayo Chiang and seconded by Basil Wong recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Pure Process Filtration, Inc. for filter purchases and storage of goods, 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 the NCPA CT facilities. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 6. NCPA CT Facilities – First Amendment to Second Amended and Restated Ground Lease with the City of Lodi** – Staff provided background information and was seeking a recommendation for Commission approval of a First Amendment to the Second Amended and Restated Ground Lease with the City of Lodi, adding additional Annex area to lease, increasing the total annual lease payments to \$1,040,620, with no change to the agreement term, for use at NCPA's CT Facilities.

The original Ground Lease was dated February 17, 1993 and effective January 1, 1993. An Amended and Restated Ground Lease was entered into on March 22, 2010. On April 29, 2013 the parties entered into a Second Amended and Restated Ground Lease.

LEC has been operating with a shared facilities warehouse between CT1, CT2 and LEC. Space has been tight for both parts storage and lay down space. As experienced during the LEC forced outage, when significant work is performed, there is not enough space onsite for laydown and, as a result, parts were stored outside the fence. In addition, LEC is preparing for the major on the steam turbine and generators, and in doing so, there will be a significant addition to the parts on hand. LEC has found that Sea Vans are effective and inexpensive for storage. In order to obtain extra space, NCPA negotiated with the City of Lodi to annex 2.3 acres of additional space and amend the existing lease agreement.

In order to use the land, NCPA will need to make some minor improvements. It will be leveled with a new base material installed for a firm surface that will be usable in the rainy season. It will also include fencing to secure the area. In addition, lights and security will be incorporated. The land improvements will cost \$300,000. Because of the change of scope of work in the LEC major, funds are available in the Maintenance Reserve to pay for these costs. A draft Commission Staff Report and draft amendment were available for review. It is recommended to place this item on the consent calendar.

Motion: A motion was made by Basil Wong and seconded by Mike Brozo recommending Commission approval authorizing the General Manager or his designee to enter into a First Amendment to the Second Amended and Restated Ground Lease with the City of Lodi, with any non-substantial changes recommended and approved by the NCPA General Counsel, for the Annex land and delegate authority for the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the parts in accordance with

NCPA Purchasing Policies and Procedures without further approval by the Commission to make improvements on the Annex, for a total cost not to exceed \$300,000, and approval for these funds to come from the LEC Maintenance Reserve fund. Facilities Committee approves this item as either one or two actions at the Commission meeting. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Plumas-Sierra, and Santa Clara. ABSTAIN = Lodi, Palo Alto, Redding, and Roseville. The motion passed.

- 7. All NCPA Facilities, Members, SCPPA – Ancon Marine dba Ancon MTGSA –** Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Ancon Marine dba Ancon, for specialized high pressure cleaning services, with a not to exceed amount of \$2,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a new agreement with a new vendor. It is an enabling agreement with no commitment of funds. NCPA has enabling agreements in place for similar services with Gifford's Backhoe Services and Northern Industrial Construction. Specialized high pressure cleaning, vacuum trucks, safety and fire watch services, are required from time to time for the operation and maintenance of NCPA facilities and those of our Members and SCPPA. Geothermal staff was contacted by Ancon Marine dba Ancon, who expressed a desire to be added to NCPA's vendor list for services, because they routinely work in the Geysers area. After having met with this vendor, staff recommends that NCPA enter into an enabling agreement with Ancon Marine dba Ancon, so established terms and conditions are in place should this vendor be the successful bidder on future projects. Also, increasing the pool of qualified vendors willing to work in the more remote location of NCPA's Geothermal Facilities, results in more competitive bidding when services are needed. A draft Commission Staff Report and draft agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Brian Schinstock and seconded by Jiayo Chiang recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Ancon Marine dba Ancon for specialized high pressure cleaning, vacuum trucks, safety and fire watch services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 8. All NCPA Facilities, Members, SCPPA – Rege Construction, Inc. MTGSA –** Staff provided background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Rege Construction, Inc., for maintenance services including grading, excavation, and paving, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a new agreement with a new vendor. It is an enabling agreement with no commitment of funds. NCPA has enabling agreements in place for similar services with Epidendio Construction, Inc., Gifford's Backhoe Services, Northern Industrial Construction, and Granite Construction Company (pending). Geothermal staff was contacted by Rege Construction, who expressed a desire to be added to NCPA's vendor list for services,

because they routinely work in the Geysers area. After having met with this vendor, staff recommends that NCPA enter into an enabling agreement with Rege Construction, so established terms and conditions are in place should this vendor be the successful bidder on future projects. Also, increasing the pool of qualified vendors willing to work in the more remote location of NCPA's Geothermal Facilities results in more competitive bidding when services are needed. A draft Commission Staff Report and draft agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Brian Schinstock and seconded by Basil Wong recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Rege Construction for general maintenance services, including grading, excavation, and paving, 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 NCPA, NCPA Members, by SCPPA, or by SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 9. All NCPA Facilities, Members, SCPPA – Brian Davis dba Northern Industrial Construction MTGSA** – Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Brian Davis dba Northern Industrial Construction, for miscellaneous maintenance services including welding and safety/fire watch services, with a not to exceed amount of \$2,500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a new agreement with an existing vendor. It is an enabling agreement with no commitment of funds. Staff has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA has agreements in place for similar services with Gifford's Backhoe Services, Inc., Epidendio Construction, Inc., and pending agreements with Ancon Marine dba Ancon, and Rege Construction. A draft Commission Staff Report and draft agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Basil Wong and seconded by Jiayo Chiang recommending Commission approval authorizing the General Manager or his designee to enter into a Five Year Multi-Task General Services Agreement with Brian Davis dba Northern Industrial Construction, for general maintenance services, including welding, safety, and fire watch services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 10. All NCPA Facilities, Members, SCPPA – MP Environmental Service, Inc. MTGSA** – Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with MP Environmental Service, Inc., for removal and replacement of sulfur bins, phase separators, and vacuum truck services, with a not to exceed amount of \$3,000,000, for use at all facilities owned

and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

This is a new agreement with an existing vendor. It is an enabling agreement with no commitment of funds. This vendor will provide maintenance services including but not limited to removal and disposal of sulfur bins, hazardous material, phase separators, and vacuum truck services. Since this vendor provides removal of hazardous materials, it is also recommended that this agreement be for use at NCPA facilities only. NCPA will be requesting competitive bids specifically for the sulfur bin hauling and disposal services required for the Geothermal Facilities. MP Environmental Services, Inc. will be one of the prospective bidders. Staff has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into a multi-task enabling agreement with MP Environmental Services, Inc., so established terms and conditions are in place should this vendor be the successful bidder on future projects. Execution of this enabling agreement will also increase the pool of qualified and proven vendors for these types of services. NCPA currently has agreements in place for similar services with Patriot Environmental Services, Gifford's Backhoe Services, Fremouw Environmental Services, Inc., and a pending agreement with Ancon Marine dba Ancon. A draft Commission Staff Report and draft agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Basil Wong and seconded by Brian Schinstock recommending Commission approval authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with MP Environmental Services, Inc., for general maintenance services, including removal and disposal of sulfur bins, hazardous material, phase separators, and vacuum truck services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$3,000,000 over five years, for use at all facilities owned and/or operated by NCPA. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 11. NCPA Geothermal Facility – NOAA Middletown License Agreement** – Staff presented background information and was seeking a recommendation for Commission approval of a License Agreement with the National Oceanic and Atmospheric Administration allowing them to operate and maintain an observing platform consisting of an S-band radar system and meteorological tower on GEO J-Site, for a duration of 10 years, with no cost to NCPA, at NCPA's Geothermal Facility.

NCPA entered into a License Agreement with the National Oceanic and Atmospheric Administration (NOAA) on December 8, 2014. This License Agreement allowed NOAA to place a weather monitoring station on the J-Site well pad of the NCPA Geothermal Facilities. Aside from providing a 20 amp 120V circuit to power the unit, NCPA incurred no cost, was not responsible for maintaining the equipment, and was not liable for any damages to the weather station. NCPA entered into this agreement solely as a courtesy to NOAA, and its effort to gather weather data.

The original agreement expired December 8, 2019. NOAA would like to establish a new license agreement. The new agreement has the same terms and conditions as the original one, but the term of the agreement is being updated to ten years, the previous agreement had a term of five years. A draft Commission Staff Report and the license agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Jiayo Chiang and seconded by Alan Harbottle recommending Commission approval authorizing the General Manager or his designee to enter into a License Agreement with the National Oceanic and Atmospheric Administration (NOAA) to place a weather monitoring station at the NCPA Geothermal Facility. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 12. All NCPA Facilities, Members, SCPPA – Katama Technologies, Inc. First Amendment to MTCSA** – Staff provided background information and was seeking a recommendation for Commission approval of a First Amendment to the Multi-Task Consulting Services Agreement with Katama Technologies, Inc. for consulting services related to business strategy and project planning, increasing the not to exceed amount from \$250,000 to \$1,000,000, for continued use at all facilities owned and/or operated by NCPA, its Members, SCPPA, or SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures.

On August 6, 2020, NCPA entered into a five-year Multi-Task Consulting Services Agreement with Katama Technologies, Inc., for an amount not to exceed \$250,000. This agreement was developed primarily for a Member project relating to detailed design services for a fiber optic cabling loop between key substations. Initially the scope of work was estimated to fall within the available funds authorized by this agreement, but during the scoping of the project, it became clear an increase to the agreement's compensation amount is required. For this reason, an amendment is necessary to provide adequate funds for the project through completion, plus the availability of additional funds for use by NCPA, its Members, SCPPA, or SCPPA Members over the course of the agreement's five-year term. This is an enabling agreement with no commitment of funds. This is also a Hometown Connections Inc. (HCI) preferred vendor. NCPA currently has agreements in place for similar services with Quest Media Supplies, and IEC Corporation. A draft Commission Staff Report and draft first amendment to the agreement were available for review. It is recommended to place this item on the Commission Consent calendar.

Motion: A motion was made by Jiayo Chiang and seconded by Mike Brozo recommending Commission approval authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement with Katama Technologies, Inc., with any non-substantial changes as recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$250,000 to \$1,000,000, for continued use at any facilities owned and/or operated by NCPA, its Members, the Southern California Public Power Authority (SCPPA), or SCPPA Members. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Palo Alto, Plumas-Sierra, Redding, Roseville, and Santa Clara. The motion passed.

- 13. NCPA Geothermal Facility – Geothermal Plant 1 HVAC System Project** – Staff presented background information of the project and was seeking a recommendation for Commission approval to increase the not to exceed amount of the Geothermal Plant 1 HVAC System Project from \$893,817 to \$1,500,000 (subject to approval of \$606,183 in the FY2022 budget), for use at NCPA's Geothermal Facilities.

The original HVAC system installed at the Geothermal Plant 1 has outlived its useful life and has many components in need of replacement and an upgrade. The HVAC system is a critical system to the Plant as it conditions the space for employees, filters hazardous H2S gas, reduces thermal degradation of important electrical systems and their insulation, and removes excessive waste heat to keep indoor transformers operating efficiently. To evaluate and upgrade the existing HVAC system, Costa Engineers completed a total upgrade design

and engineering package. This package included replacement of major equipment utilized in the HVAC system.

The Geothermal Plant 1 HVAC System Project was originally approved at the January 16, 2020 Commission Meeting, with a budget not to exceed \$893,817 (funded in FY2021). After soliciting bids as a Public Works project, in which no bids were received, a Formal Competitive Bid process was followed and three responsive bids were received. The lowest qualifying bid received was from Famand, Inc. dba SitelogiQ, for a total bid amount of \$1,266,506. These funds will come from a combination of FY2021 funds (already approved) and FY2022 funds (pending approval). Utilizing the already authorized FY2021 funds, long-lead equipment will be purchased and the services of the contractor will be secured. Pending the authorization of the FY2022 additional funds, the project's construction will begin late in FY2021 and extend into the first quarter of FY2022, allowing the project timeline to extend across two Fiscal Year budget cycles.

Motion: A motion was made by Brian Schinstock and seconded by Mike Brozo recommending Commission approval of an Amendment to Resolution 20-08 authorizing additional funds for the Geothermal Plant 1 HVAC System Project, increasing the total not to exceed amount of this project from \$893,817 to \$1,500,000 (subject to approval of \$606,183 in the FY2022 budget), and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the updated project amount, without further approval by the Commission. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Plumas-Sierra, Redding, Roseville, and Santa Clara. ABSTAIN = Palo Alto. The motion passed.

INFORMATIONAL ITEMS

14. FY2020 Annual Billing Settlements Review – Staff presented a draft of the FY2020 Annual Billing Settlement for the period of July 1, 2019 through June 30, 2020.

After internal accounting review, the final draft of the FY2020 Annual Billing Settlement was reviewed by the Facilities Committee. The draft results include an approximate \$2.8 million refund from the plants, and approximately \$2.3 million coming from management services, pass-through costs, and third party revenues, for a total amount of \$5.3 million in refunds. The refunds for projects include the Hydro Project at \$1.8 million, Geo at \$869,000, CT1 at \$12,000, CT2 at \$95,000, and the LEC at \$128,000.

The next steps in this process are to present this draft to the LEC PPC October 7, 2020, then the Utility Directors at the October 15, 2020 UD meeting. The final version of the FY2020 Annual Billing Settlement will be presented to the Facilities Committee at the November 4, 2020 Facilities Committee meeting, seeking a recommendation for Commission approval. After that it will be presented to the LEC PPC for approval, and again to the UD in November. Staff will be seeking Commission approval at the December 3, 2020 Commission meeting.

15. Overview of FY2022 Budget Process and Approach – Staff provided an overview of the FY2022 Budget process, and recommended operating budget directions.

The proposed budget process will continue with review of the draft budgets through the Facilities, LEC PPC, and L&R Committees, and UD meeting, seeking a recommendation for Commission approval. The budget is prepared on a project/program basis. Allocation for all allocated costs are Power Management, Legislative and Regulatory, Judicial Action, Administrative and General, and direct allocations. Previously approved methods will be

continued at this time with focus on NCPA controllable costs and aligning budgets with expectations and previous actuals. Issues impacting the FY2022 budget include union contracts (IBEW and HEA), PERS Pension with an increase of \$375,000 (4%), OPEB, and the CPI index of 1.3%. Other issues include capital and maintenance of assets, including replenishment of reserves, and wildfire mitigation with increased efforts to minimize risks and compliance with audit recommendations.

Recommendations for the FY2022 budget include a target increase of 1.3% for regular operating and maintenance of the plants. All maintenance and capital projects will be reviewed and vetted by the Facilities Committee and the LEC PPC Committee prior to seeking a recommendation for Commission approval. Members expressed consideration for maintenance that is critical, and needed, to keep the plants reliable and resilient. The salary increase target range will be between \$600,000 and \$1 million. No new positions are anticipated at this time. All other operating expenses will target no more than a 1.3% increase as well.

16. New Business Opportunities – Staff presented an update regarding new business opportunities.

South Sutter Water District (SSWD) has contacted NCPA, and is seeking Scheduling Coordinator and Dispatch Services, with the possibility for a long term PPA for project output. The SSWD Camp Far West Hydroelectric Project is a 6.8 MW reservoir, run-of-river type of hydroelectric project, primarily focused on irrigation for rice farming in the area. The project is RPS and RA eligible, and will be available in 2021.

17. Resource Adequacy Commitment Impacts on Operations – Staff presented and discussed impacts Resource Adequacy commitments have on joint project operations.

All planned outage requests are subject to CAISO review, in which the CAISO may issue a POSO, a requirement to supply substitute or replacement RA. Lack of substitute or replacement RA may result in a planned outage being rejected by the CAISO. Planned outage replacement can be supplied from system and/or local RA. Forced outage replacement can only be supplied from like resources, located the same electrical bus. The CAISO has expressed potential concerns with outages being reclassified from planned to forced outages. Staff proposed possible RA substitution processes for both planned and forced outages listed below, and is asking for feedback from Members.

Planned Outages – The planned outage schedule for the following compliance year period is reviewed and approved by the Facilities Committee annually in either August or September, then filed at the CAISO by October 15. At the time of the year ahead filing, on October 31, any RA commitments in conflict with the approved planned outage schedule will be noticed to applicable project participants. Project participants have the opportunity to identify qualified substitute RA capacity at least 30 calendar days in advance of the month ahead compliance deadline. If a project participant does not supply substitute RA capacity, NCPA may seek to procure eligible substitute RA capacity on behalf of a project participant(s) who does not provide substitute RA capacity by the deadline. Costs associated with eligible RA capacity procured by NCPA will be allocated to the deficient project participant(s). A planned outage may need to be cancelled if NCPA does not receive a combination of transferred and/or procured eligible RA capacity that is sufficient to satisfy the full substitution requirement. NCPA will seek alternative options such as a short term opportunity outage or off-peak opportunity outage. Cost allocation for impacts associated with a cancelled planned outage will be considered.

Forced Outages – Project participants are notified at the time of a forced outage. Project participants have the opportunity to identify qualified substitute RA capacity within two calendar days of the notice. If a project participant does not supply substitute RA capacity, NCPA may seek to procure eligible substitute RA capacity on behalf of a project participant(s) who does not provide substitute RA capacity by the deadline. Costs associated with eligible RA capacity procured by NCPA will be allocated to the deficient project participant(s). Any penalty costs incurred for RA commitments as a result of the forced outage will be allocated to project participants based on their pro-rata share of committed RA capacity that was not covered by eligible substitute RA capacity. A defined period of days to qualify for this substitution procedure will be determined.

Substitute RA replacement rules will be incorporated into a new Facilities Agreement Schedule, under Facilities Schedule 15. Rules will be applicable to jointly owned NCPA projects including CT1, CT2, Geothermal Projects, and North Fork Stanislaus River Hydroelectric Developments Projects. Staff will develop a draft Facilities Schedule 15 and present for further consideration at a future Facilities Committee meeting.

18. PG&E Application for CapEx Recovery – Staff provided a presentation regarding PG&E's application for recovery of 2011–2014 CapEx (A.20-07-020).

On July 31, 2020, PG&E filed an application with the CPUC for Recovery of 2011-2014 Gas Transmission and Storage Capital Expenditures. PG&E seeks a revenue requirement of \$416.3 million for the period 2011-2014 of GT&S capital expenditures that were unplanned. PG&E proposes to “amortize” most of the \$416.3 million revenue requirement over 36 months starting in April 2021, by applying it to the volumetric component of the negotiated rates. Increasing the current rate from \$0.1522/th to \$0.1682/th. NCPA budgets will increase at LEC by \$1,481,344, at CT1 by \$47,494, and CT2 by \$9,597 for 2021. PG&E seeks a CPUC Commission decision by February 2021.

Concerns, as well as questions, regarding the filing could push the decision back several months to the fourth quarter of 2021, therefore pushing back the start of the amortization period another year from PG&E's proposal of April 2021. This would overlap into the next GT&S Rate Case expected in quarter three of 2021 on collections and rate impacts. Staff will continue to monitor and develop potential options for recovery that are equitable, and actions to prepare for the upcoming GT&S Rate Case.

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

Geo – There were no safety recordables in September, with zero near misses. EH&S training is 78% complete. Poor air quality impacted the area with a few days in the unhealthy to hazardous range, and topping out at almost 600 AQI September 30, 2020. Average generation for September was down to 81.8 MW, with the net generation at 58.9 GWh due to the Plant 1 Lakeville Transmission Line Outage and Glass Fire. The 2020 YTD net generation is 545.7 GWh, 1.3% above forecast. Steam Field maintenance and idle wells continues with D-7 back in production. The SEGEP outage is completed as well as the Plant 1 outage for switch repair.

CTs – September operations included 30 actual starts for CT1, of 108 forecasted, bringing the FYTD total to 92. CT2 had 17 actual starts of 26 forecasted, with the FYTD total at 49. Two forced outages occurred during the month. CT1's outage was due to the compartment fan, and battery failure. CT2 also experienced a forced outage due to the temperature and vibration sensors. There were no planned outages.

Hydro – New Spicer Meadows (NSM) storage is currently at 106,475 acre-feet. NCPA purchased 2,000 acre-feet of water from Utica Water & Power Agency (UWPA) through the water-for-power program for October through November. NSM was offline for 13 days in September due to a PG&E maintenance outage at Salt Springs. During the month there was also two PG&E PSPS events. For the first time in history, the USFS closed the forest including all campgrounds, day use, trails, etc. due to the high fire danger. NCPA submitted a special use permit application for the McKays Sediment Removal Beneficial Reuse Project. FERC delegated their authority to Hydro staff for dam inspections. Beaver Creek and North Fork Diversion Dams have been drained for debris removal and annual maintenance. October priorities include Collierville dual outage and McKays trashrack cleaning, Collierville Unit 1 maintenance outage, and the McKays 17kV fire hardening, to be scheduled.

20. Planning and Operations Update –

- NCPA Renewables RFP – Staff is seeking member feedback regarding interest in projects. The current projects in which Members have expressed interest include: 1) Glover Solar, 2) Avangrid Stagecoach, 3) Calpine Geysers, 4) ORMAT Geo, and 5) OCID. Review of additional proposals is currently underway.
- 2021 Annual RA Filings Due October 31, 2020 – Please send RA information to staff for the annual filings due.
- SCP Services Agreement has been fully executed – Integration is underway.
- SFWPA negotiations are underway again with the PPA review, and possible development of a third phase agreement.
- Strategic Planning effort is continuing with Member meetings to discuss the next 5 year Strategic Plan. The formal plan will be brought back to the Facilities Committee for discussion, and a recommendation for Commission approval.
- Glover Solar Project PPA is under negotiations with Samsung.
- COVID-19 Update – NCPA Dispatch and Scheduling continue with dual operations.

21. Next Meeting – The next regular Facilities Committee meeting is scheduled for November 4, 2020.

ADJOURNMENT

The meeting was adjourned at 12:30 pm by the Committee Chair.

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

[illegible]

Teleconference call only due to Covid19

Northern California Power Agency October 7, 2020 Facilities Committee Meeting Attendance List

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

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



Commission Staff Report – *DRAFT*

Date: October 29, 2020

COMMISSION MEETING DATE: December 3, 2020

SUBJECT: ORR Protection Systems, Inc. – First Amendment to Five Year Multi-Task General Services Agreement; Applicable to the following projects: All Northern California Power Agency (NCPA) facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

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

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

RECOMMENDATION:

Approval of Resolution 20-XX authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with ORR Protection Systems, Inc., with any non-substantial changes recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$1,500,000 to \$3,000,000, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

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

BACKGROUND:

Fire system, inspection and testing, system recharge, monitoring, modification and design build services are required from time to time at facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members.

NCPA entered into a five year Multi-Task General Services Agreement with ORR Protection Systems, Inc., effective April 17, 2020, for an amount not to exceed \$1,500,000. In July 2020, a Request for Proposal was released for the NCPA Geothermal Plant 1 Fire System Modernization Project, with bids due on July 16, 2020. NCPA received only one bid, which was much higher than the project engineering estimate. To ensure competitiveness, Geo staff updated the project scope and released an updated Request for Proposal, with bids due on August 4, 2020. NCPA received bids from ORR Protections Systems, Inc and Sabah International, Inc., with a third vendor, Johnson Controls, Inc., declining to bid. ORR Protection Systems, Inc. was the apparent winner, with a bid total of \$1,298,751. This First Amendment will increase the not to exceed amount from \$1,500,000 to \$3,000,000. This will ensure there are sufficient funds available for both the Geothermal Plant 1 Fire System Modernization Project, as well as for the remaining term of the enabling NCPA. This agreement is still available for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA currently has agreements in place for similar services with Sabah International, Inc., Fire Safety Supply Company, Bay Cities Pyrotector, Inc. and Bay Cities Fire Protection, Inc.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$3,000,000 over the existing five year term. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee Review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- Multi-Task General Services Agreement between NCPA and ORR Protection Systems, Inc.
- First Amendment to Multi-Task General Services Agreement between NCPA and ORR Protection Systems, Inc.

RESOLUTION 20-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE MULTI-TASK GENERAL SERVICES AGREEMENT WITH ORR PROTECTION SYSTEMS, INC.

(reference Staff Report # XXX:20)

WHEREAS, fire system, inspection and testing, system recharge, monitoring, modification, and design build services are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA), NCPA Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, ORR Protection Systems, Inc. is a provider of these services; and

WHEREAS, NCPA entered into a five-year Multi-Task General Services Agreement with ORR Protection Systems, Inc., on April 17, 2020 for a not to exceed amount of \$1,500,000; and

WHEREAS, NCPA released a Request for Proposal for the NCPA Geothermal Plant 1 Fire System Modernization Project in July 2020, and ORR Protection Systems, Inc. was the winning bidder; and

WHEREAS, NCPA now seeks to increase the not to exceed amount of this agreement from \$1,500,000 to \$3,000,000 to ensure sufficient funds are available for both the Geothermal Plant 1 Fire System Modernization Project as well as for the remainder of the contract term; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a First Amendment to the Multi-Task General Services Agreement with ORR Protection Systems, Inc., with any non-substantial changes as approved by the NCPA General Counsel, increasing the not to exceed amount from \$1,500,000 to \$3,000,000, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

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

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

TERESA O'NEILL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
ORR PROTECTION SYSTEMS, 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 ORR Protection Systems, Inc., a corporation with its office located at 11601 Interchange Drive, Louisville, KY 40229 ("Contractor") (together sometimes referred to as the "Parties") as of April 17, 2020 ("Effective Date") in Roseville, California.

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED ONE MILLION FIVE HUNDRED THOUSAND** dollars (\$1,500,000) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Contractor shall maintain professional liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Contractor's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained through the term of this Agreement and completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period.

4.4 Pollution Insurance. Not Applicable

4.5 All Policies Requirements.

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

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

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

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

4.5.5 Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims are caused by 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 are caused by such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency.
- 5.3 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 and direct costs and expenses incurred by Contractor resulting from the 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, and Contractor has failed to commence and diligently continue to cure same, 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, and paid for by Agency;

8.4.3 Retain a different Contractor to complete the Work not finished by Contractor; and/or

8.4.4 Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Contractor's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency, upon the first to occur of Contractor's substantial completion of the Work or Agency's payment for same. 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 reasonable 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** The products Contractor sells are provided or manufactured by other parties and are warranted by those manufacturers against defects in materials and workmanship for a period of time depending on the products. Any and all misuse of these products is excluded from warranties. To the extent allowed by law, Contractor will pass through to Agency any and all warranties that are in effect for products purchased. 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. In the event Contractor's investigation or inspection reveals no defect and both parties agree with this conclusion, Contractor's regular charges for any and all repairs shall apply.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.

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

Rick Reynolds
VP Power Generation
ORR Protection Systems, Inc.
140 Bluffs Ct.
Canton, GA 30114

With a copy to:

Attn: General Counsel
ORR Protection Systems, Inc.
11601 Interchange Drive
Louisville, KY 40229

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

ORR PROTECTION SYSTEMS, INC.

Date 4/17/20

Date 3-27-2020



RANDY S. HOWARD, General Manager



RICK D. REYNOLDS, Vice President

Attest:



Assistant Secretary of the Commission

Approved as to Form:



Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

ORR Protection Systems, Inc. ("Contractor") shall provide fire system maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

- Inspection & Testing
 - Fire Alarm and Detection System
 - Fire Suppression Systems
 - Air Sampling
 - Fire Extinguishers
 - Sprinkler Systems
 - Emergency/Exit Lights
 - SCBA's (Self-Contained Breathing Apparatus)
 - Card Access Systems
- System Recharge
- System Monitoring
- System Modifications
- Materials
 - Supply or procure miscellaneous maintenance material

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

**ORR Protection Systems, Inc.
Exhibit B Rate Sheet
NCPA GEO - Proposed 5-Year MTGSA**

Regular Rates – Weekdays between 7 am – 5 pm

Fire Tech	Sprinkler Tech	Sprinkler Fitter (repairs)
\$155.00	\$170.00	\$230.00

Overtime Rates – Weeknights between 5 pm – 7 am & Weekends

Fire Tech	Sprinkler Tech	Sprinkler Fitter (repairs)
\$232.50	\$255.00	\$320.00

Double Time Rates – Holidays

Fire Tech	Sprinkler Tech	Sprinkler Fitter (repairs)
\$310.00	\$340.00	\$400.00

- Trip charges and mileage fees based on the MTGSA
- Emergency on demand service callouts, not previously scheduled, have a 4-hour response time based on geographic.
- Emergency on demand service callouts, not previously scheduled, will be invoiced at a 4-hour minimum.

Parts Pricing

MTGSA Discount	15% discount off Manufacturer's Published List Price
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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,

Rick Reynolds

(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

ORR Protection Systems

(Company name)

for contract work at:

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

(Project name and location)

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

[Signature]

(Signature of officer or agent)

Dated this 27th day of March, 20 20.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

NOT APPLICABLE

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



FIRST AMENDMENT TO MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND ORR PROTECTION SYSTEMS, INC.

This First Amendment ("Amendment") to Multi-Task General Services Agreement is entered into by and between the Northern California Power Agency ("Agency") and ORR Protection Systems, Inc. ("Contractor") (collectively referred to as "the Parties") as of _____, 2020.

WHEREAS, the Parties entered into a Multi-Task General Services Agreement, dated effective April 17, 2020, (the "Agreement") for ORR Protection Systems, Inc. to provide fire system maintenance services, for use at any facilities owned and/or operated by Agency, its Members, Southern California Public Power Authority ("SCPPA"), or by SCPPA Members; 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 \$1,500,000 to a NOT TO EXCEED amount of \$3,000,000; and

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

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

NOW, THEREFORE, the Parties agree as follows:

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

Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED THREE MILLION** dollars (\$3,000,000) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

The remainder of Section 2 of the Agreement is unchanged.

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

SIGNATURES ON FOLLOWING PAGE

///

///

Date:_____

NORTHERN CALIFORNIA POWER AGENCY

Date:_____

ORR PROTECTION SYSTEMS, INC.

RANDY S. HOWARD,
General Manager

RICK D. REYNOLDS,
Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel



Commission Staff Report – *DRAFT*

Date: October 29, 2020

COMMISSION MEETING DATE: December 3, 2020

SUBJECT: Tesco Controls, Inc. – Five Year Multi-Task General Services Agreement;
Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities,
NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

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

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

RECOMMENDATION:

Approve Resolution 20-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Tesco Controls, Inc. to provide integrating electrical and process control systems 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 NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

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

BACKGROUND:

Integrating electrical and process control systems services are required from time to time at facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. Tesco Controls, Inc. is a new vendor for NCPA. NCPA's Geothermal staff was contacted by Tesco Controls, Inc., who expressed a desire to be added to NCPA's vendor list for services, because they routinely work in the Geysers area. After having met with this vendor, staff recommends that NCPA enter into an enabling agreement with Tesco Controls, Inc., so established terms and conditions are in place should this vendor be the successful bidder on future projects. Also, increasing the pool of qualified vendors willing to work in the more remote location of NCPA's Geothermal facility results in more competitive bidding when services are needed. NCPA, currently has in place for similar services with Nor-Cal Controls ES, Inc., Wunderlich-Malec, Systems, Inc. and dHeurle Systems, Inc. (pending).

FISCAL IMPACT:

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

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee Review

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with Tesco Controls, Inc.

RESOLUTION 20-XX

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

(reference Staff Report #XXX:20)

WHEREAS, integrating electrical and process control systems services are periodically required at the facilities owned and/or operated by the Northern California Power Agency (NCPA), NCPA Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

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

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement with Tesco Controls, Inc. to provide such services as needed at all NCPA facilities, NCPA Members, 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 General Services Agreement with Tesco Controls, Inc., for integrating electrical and process control systems services, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

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

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

TERESA O'NEILL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
TESCO CONTROLS, 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 Tesco Controls, Inc., a corporation with its office located at 8440 Florin Road, Sacramento, CA 95828 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2020 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable

4.4 Pollution Insurance. Not Applicable

4.5 All Policies Requirements.

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, 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.
- 5.3 Transfer of Title.** Not Applicable

Section 6. STATUS OF CONTRACTOR.

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

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

is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

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

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

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

- 6.6 Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

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

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

- 8.4.1** Immediately terminate the Agreement;

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

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

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

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

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

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

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

Section 10. PROJECT SITE.

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

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations

including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.

11.2 Deficiencies in Work. In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

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

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

12.1 Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.

12.2 Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.

12.3 Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.

12.4 Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for

any Work performed when, Contractor is not in full compliance with this Section 12.

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

Keith Webb
National Sales Manager Water/Wastewater
Tesco Controls, Inc.
8440 Florin Road
Sacramento, CA 95828

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-signatory 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

TESCO CONTROLS, INC.

Date_____

Date_____

RANDY S. HOWARD, General Manager

**KEITH WEBB, National Sales Manager
Water/Wastewater**

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Tesco Controls, Inc. ("Contractor") shall provide integrating electrical and process control systems 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:

- **Systems Integration**
 - System Design & Validation
 - Control Strategy Development
 - PLC Applications Programming
 - SCADA-HMI System Development
 - Network Infrastructure
 - Project Management
 - Communications / Radio / Telemetry
 - Cyber Security
 - System Commissioning
- **Field Services**
 - Power System Analysis and Testing
 - Communications Testing
 - Harmonic Analysis and Testing
 - System tuning and commissioning
 - Preventative Maintenance
- **EMASS – Extended Maintenance**
- **Training**

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Services	Standard Rate	Premium Services	Emergency Services	Service Contracts
Project Engineer	\$155	\$165	\$235	\$135
Senior Project Engineer	\$170	\$185	\$245	\$145
Project Manager	\$165	\$175	\$235	\$145
Senior Project Manager	\$185	\$195	\$245	\$155
PLC Applications Programmer	\$155	\$165	\$235	\$135
Senior PLC Applications Programmer	\$170	\$185	\$245	\$145
SCADA Applications Programmer	\$155	\$165	\$235	\$135
Senior SCADA Applications Programmer	\$170	\$185	\$245	\$145
Field Service Engineer/Specialist	\$155	\$165	\$235	\$135
Senior Field Service Engineer	\$170	\$185	\$245	\$145
Network/Communications Engineer	\$165	\$185	\$250	\$150

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

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

NOT APPLICABLE

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report – *DRAFT*

Date: October 29, 2020

COMMISSION MEETING DATE: December 3, 2020

SUBJECT: Fifth Amendment to the Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline (SEGEP) Project. Applicable to the following projects: NCPA Geothermal facility.

AGENDA CATEGORY: Consent

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

IMPACTED MEMBERS:		
All Members <input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	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 checked="" type="checkbox"/>
<i>If other, please specify</i>		Turlock

RECOMMENDATION:

Approve Resolution 20-XX delegating authority to the NCPA General Manager or his designee to enter into a Fifth Amendment to the Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline (SEGEP) Project between NCPA and Geysers Power Company, LLC, with any non-substantial changes recommended and approved by NCPA General Counsel, for use at NCPA's Geothermal facility.

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

BACKGROUND:

The Southeast Geysers Effluent Pipeline (SEGEP) Project is a cooperative project between Lake County Sanitation District, Calpine, and NCPA that has been in operation since September 23, 1997. The project provides wastewater to The Geysers for the purposes of maintaining the reservoir pressure and increasing steam reserves of the geothermal field.

Calpine and NCPA share in the operating and maintenance costs for SEGEP, as detailed in the Steam Suppliers Joint Operating Agreement (JOA). Per the JOA, Electrical power to operate the pumps stations can be supplied by either Calpine or NCPA. The value of the electrical power is based on the Local Market Price. Calpine and NCPA either pays or reimburses the other entity for their share of electrical power. The payment or reimbursement is based on the volume of water each receive during a calendar year.

In addition, both Calpine and NCPA receive Bucket 0 Renewable Energy Credits (REC's) for the electrical power supplied to the effluent pipeline. Calpine as a private corporation is allowed to convert the Bucket 0 REC's into Bucket 3 REC's that are typically valued at \$0.50 to \$1.00 per MWhr. Members of NCPA, as a Public Agency, are allowed to convert the Bucket 0 REC's into Bucket 1 REC's that are typically valued around \$15 per MWhr.

A Fourth Amendment to the Steam Suppliers Joint Operating Agreement SEGEP Project was signed on March 2, 2018, which required NCPA to provide the entire power supply for the Bear Canyon Pump Stations except in outage situations. This allowed Calpine to sell power normally reserved for SEGEP on the Day Ahead market and receive higher valued Bucket 1 REC's. In return, Calpine compensated NCPA for its relative share of the electricity costs at the Local Market Price and further paid NCPA one half the value of a Bucket 1 REC or \$7.50 per MWhr for all electricity supplied to SEGEP.

This Fifth Amendment extends the term of the underlying agreement through March 1, 2022, and also clarifies the term "Electricity Percentage" for purposes of calculating the value of Bucket 1 REC's that Calpine will owe NCPA each month.

FISCAL IMPACT:

Approval of the Fifth Amendment to the Amended and Restated Steam Suppliers Joint Operating Agreement for SEGEP Project will result in approximately \$60,000 to \$90,000 per year in revenue to NCPA.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Committee Review pending.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline (SEGEP) Project
- Fifth Amendment to the Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline (SEGEP) Project

RESOLUTION 20-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIFTH AMENDMENT TO THE AMENDED AND RESTATED STEAM SUPPLIERS JOINT OPERATING AGREEMENT FOR SOUTHEAST GEYSERS EFFLUENT PIPELINE (SEGEF) PROJECT

(reference Staff Report #XXX:20)

WHEREAS, the Parties originally entered into a Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project on July 25, 1995, which established and provided for certain terms and conditions relating to their participation in and responsibility for the operation of that portion of the Southeast Geysers Effluent Pipeline Project ("Project") which commences at the Point-of-Delivery and terminates at The Geysers Terminus; and

WHEREAS, the Parties executed "Amendment No. 1 to the Steam Suppliers Joint Operating Agreement" Southeast Geysers Effluent Pipeline Project on December 20, 2001 to recognize that Calpine had acquired the geothermal interests of PG&E and Unocal at The Geysers and therefore owned a 2/3 interest in all of the Steam Suppliers Facilities of the Project, to recognize that NCPA had entered into an agreement with Lake County Sanitation District to fund Basin 2000 Facilities to deliver additional effluent to the Project, and to provide how the Project Water was to be distributed among other issues; and

WHEREAS, the Parties entered into the "Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project", also referred to as Second Amendment and Restatement of the Agreement, ("Agreement") on September 18, 2003 to amend and restate certain terms and conditions relating to the Parties' participation in the Project, re-allocate the Parties' rights to the Project Water, and agree that each Parties' share of the monthly electricity costs needed to pump the Project Water would be equal to its percentage of the Project Water actually received for that month; and

WHEREAS, the Parties entered into a Third Amendment to the Agreement on November 7, 2007, regarding the solar array facilities owned by NCPA, referred to as the Solar Pumps Project, and its installation, operation, and maintenance; and

WHEREAS, Section 5.1.2 of the Agreement states that "[t]he Party required to supply the power to operate the three Bear Canyon Pump Stations in order to deliver the Project Water shall be established from time to time by the Parties", Section 6.5 of the Agreement states that "[e]ach Party's share of the pumping power costs shall be equal to its percentage of Project Water actually received for that month", and Exhibit A of the Agreement ("Exhibit A") identified the Parties' agreed-upon statement of the value of the electricity that NCPA would provide to pump the Project Water, specifically that NCPA would provide all electricity to operate the three Bear Canyon Pump Stations at a set price for the period April 01, 2003 through December 31, 2006; and

WHEREAS, the Parties agreed by letters dated December 20, 2006 to amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and the value of the electricity used for that power supply; and

WHEREAS, the Parties agreed by letter dated June 26, 2008 to further amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and the value of the electricity used for that power supply; and

WHEREAS, the Parties agreed by letter dated June 1, 2009 ("2009 Letter Agreement") to further amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and also to extend the term of Exhibit A for an additional 36 months; and

WHEREAS, the Parties agreed by letter dated October 28, 2010, to further amend Exhibit A regarding calculation of the Pumping Power to be supplied to the Bear Canyon Pump Stations; and

WHEREAS, between 2012 and the present, the Parties have agreed upon their relative responsibility for the electricity costs needed to operate the Bear Canyon Pump Stations in connection with the yearly budgeting process for Project operations and maintenance ("O&M") expenses, and have each year executed written agreements approving the Project's O&M budget (which includes line items for electricity costs for the Bear Canyon Pump Stations as well as the Calpine Share (as defined below)); and

WHEREAS, the Parties executed a further Amendment (Fourth Amendment) to the Agreement as of March 2, 2018, requiring that NCPA provide the entire power supply for the Bear Canyon Pump Stations, except in outage situations, and Calpine would compensate NCPA for its share of the electricity costs at the agreed upon price stated therein, for a two-year term; and

WHEREAS, the Parties wish to further revise the terms of Exhibit A to the Agreement, which requires that NCPA provide the entire power supply for the Bear Canyon Pump Stations except in outage situations, and that Calpine compensate NCPA for its relative share of such electricity costs at a revised agreed-upon index price, and extend the term of the agreement through March 1, 2022; and

WHEREAS, Geysers Power Company, LLC is an indirect wholly owned subsidiary of Calpine Corporation, founded in 1999, and the owner of 13 Geysers geothermal power plants and related assets, including the Southeast Geysers Effluent Pipeline;

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency delegates authority to the NCPA General Manager or his designee to enter into a Fifth Amendment to the Amended and Restated Steam Suppliers Joint Operating Agreement for the Southeast Geysers Effluent Pipeline (SEGEPL) Project between NCPA and Geysers Power Company, LLC, with any non-substantial changes recommended and approved by NCPA General Counsel, for use at NCPA's Geothermal facility.

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

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

TERESA O'NEILL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY

**STEAM SUPPLIERS JOINT OPERATING AGREEMENT
SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT**

Among

**Northern California Power Agency
Calpine Geysers Company, L P.
Union Oil Company of California
NEC Acquisition Company
Thermal Power Company**

July, 1995

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STEAM SUPPLIERS JOINT OPERATING AGREEMENT

THIS STEAM SUPPLIERS JOINT OPERATING AGREEMENT (Agreement), is entered into this 25th day of JULY, 1995, by and between NORTHERN CALIFORNIA POWER AGENCY ("NCPA), UNION OIL COMPANY OF CALIFORNIA (Union Oil), NEC ACQUISITION COMPANY (NEC) and THERMAL POWER COMPANY (Thermal) (collectively herein "U-N-T"), and CALPINE GEYSERS COMPANY ("CGC"), referred to herein collectively as the "Parties".

RECITALS

WHEREAS, the Parties and Lake County Sanitation District (IACOSAN), by separate agreement intend to fund and construct a pipeline which will be known as the Southeast Geysers Effluent Pipeline Project (Project), to run from Clear Lake and the Southeast Regional and Middletown Treatment Plants to The Geysers Terminus, and which will deliver Effluent and Makeup Water (as defined in said agreement) for injection into The Geysers geothermal reservoir; and

WHEREAS, the Parties and LACOSAN, by separate agreement have provided for the operation of that portion of the Project which commences at Clear Lake and terminates at the Point-of-Delivery; and

WHEREAS, the Parties desire to enter into this Agreement to establish and provide for certain terms and conditions relating to their participation in and responsibility for the operation of that portion of the Project which commences at the Point-of-Delivery and terminates at The Geysers Terminus.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Parties hereto agree as follows:

1. DEFINITIONS

1.1 "Gross negligence" shall mean the want of even scant care or an extreme departure from the ordinary standard of conduct.

1.2 "Operation and Maintenance Work" shall mean all labor, services, and material required to operate the Steam Suppliers Facilities in compliance with their design specifications and prudent industry practices, and to maintain Steam Suppliers Facilities in good working order, and to monitor and mitigate any impact on the environment, in accordance with Mitigation Monitoring and Operation Plan adopted by the County of Lake on September 20, 1994.

1.3 "Point-of-Delivery" shall mean the intake side of the pump station to be located near the intersection of Bear Canyon Road and Highway 175. The exact location and design of the Point-of-Delivery shall be agreed upon in writing by the Parties.

1.4 "Project Water" shall mean that water which is delivered to the Parties by LACOSAN at the Point-of-Delivery pursuant to that certain Joint Operating Agreement for the Southeast Geysers Effluent Pipeline Project.

1.5 "Steam Suppliers Facilities" shall mean the pumps, pipeline, instrumentation and other property utilized directly in connection with transporting Project Water from the Point-of-Delivery to The Geysers Terminus.

1.6 "The Geysers Terminus" shall mean that location known as NCPA's "C" Pad, located in the northeast corner of Section 3, Township 10 North, Range 8 West, MDB&M in The Geysers field.

2. EFFECTIVE DATE

2.1 This Agreement shall be effective and binding when it has been duly executed by all Parties.

3. TERM

3.1 The term of this Agreement shall be for a period of twenty-five (25) years from the effective date hereof, unless this Agreement is sooner terminated pursuant to Section 15. If upon expiration of said term, the Parties elect to continue operations, the Parties agree to extend this Agreement for a term of not **less** than five (5) years.

4. OWNERSHIP INTERESTS

4.1 The Parties acknowledge, stipulate and agree that, for all purposes of this Agreement, the respective ownership interests of the Parties to this Agreement are:

<u>Party</u>	<u>Interest</u>
NCPA	One-Third (1/3)
U-N-T	One-Third (1/3)
CGC	One-Third (1/3)

For all purposes of this Agreement, unless specifically changed by agreement of the Parties, (i) all Steam Suppliers Facilities shall be owned by the Parties and, all costs and liabilities incurred in operations hereunder shall be borne and paid in the percentages set forth above in the column captioned "Interest"; and (ii) all Project Water delivered by IACOSAN to the Point-of-Delivery shall also be owned by the Parties in the percentages set forth above in the column captioned "Interest".

4.2 The Parties agree that though Union Oil, NEC and Thermal have each executed this Agreement, they shall jointly exercise all rights vested in U-N-T by this

Agreement but shall be severally liable for the performance of U-N-T's obligations to the other Parties to this Agreement to the extent, but only to the extent, that this Agreement provides that U-N-T is obligated to the other Parties. Union Oil shall be separately liable for fifty percent (50%) of U-N-T's obligations hereunder, and NEC and Thermal shall each be separately liable for twenty-five percent **(25%)** of U-N-T's obligations. This Section **4.2** shall take precedence over all other provisions of this Agreement that relate to the rights and obligations of the Parties and the relationships among them.

4.3 Union Oil hereby guarantees the performance of **NEC's** obligations under this agreement to the extent, but only to the extent, that NEC is obligated hereunder.

5. OPERATIONS AND MAINTENANCE

5.1 Operating Committee

5.1.1 Creation and Composition. An Operating Committee is hereby created consisting of one (1) member appointed by each Party to this Agreement designating in writing its respective representative and that representative's address to the other Parties. Such representatives may be changed from time to time in like manner. Such Committee shall meet in Santa Rosa, California, or at such other place as may be mutually agreed upon at the request of any member on ten (10) days' written notice, unless such notice is waived, for the purpose of reviewing operations and information pertaining to the progress of operations, and directing Operator with regard to operations hereunder. Operator or the member calling the meeting shall present an agenda together with the notice of such meeting. Relevant additional matters may be considered at the meeting but may not be approved until adequate notice is given to all members of the Operating Committee. Operator will keep the Operating committee informed of the progress of work and provide the members of the Operating Committee with all reports and information upon request.

5.1.2 Decisions of the Operating Committee. The Operating Committee shall approve the annual budgets authorized under this Agreement, and may approve any Authority for Expenditure as defined in Section 5.2.8. No action shall be taken by the Operating committee unless unanimous approval has been given by all voting members. Absent members may vote for agenda items by telefax or by mail addressed to Operator.

5.1.3 Voting Interests. Each member's voting interest shall be equal to the Interest of the Party as specified in Section 4.1.

5.1.4 Additional Parties. If a Party assigns its interest under this Agreement to another person or entity pursuant to Section 14, such assignee shall appoint a member to the Operating Committee.

5.1.5 Telephone Meetings. Any provision in this Section 5 to the contrary notwithstanding, meetings of the Operating Committee may be held by telephone if all members agree. If any meeting of the Operating Committee is held by telephone, all action and votes taken at such meeting shall be immediately confirmed in writing.

5.2 Operator

5.2.1 Designation of Operator. NCPA is hereby designated Operator of the Steam Suppliers Facilities and in such capacity shall have the right to conduct and manage the Steam Suppliers Facilities and Project Water for the account of the Parties hereto, subject, however, to the instructions of the Operating Committee and the provisions of this Agreement.

5.2.2 Operator's Performance. The Operator shall exercise its judgement and discretion in good faith and in accordance with the terms hereof. The Operator shall act in accordance with generally accepted engineering practices and will not violate the decisions of the Operating Committee. The Parties shall share all costs of Operator's action under this Agreement on the basis of the percentage interests set forth in Section

4.1 above, except for costs arising out of the gross negligence or wilful misconduct of the Operator.

5.2.3 Operator's Employees. The number of employees, their selection, the hours of labor and the compensation for services performed shall be determined by Operator. All such employees shall at all times remain the employees of Operator.

5.2.4 Liens and Encumbrances. Operator shall endeavor to keep the Steam Suppliers Facilities free and clear of any liens and encumbrances occasioned by the operations hereunder, provided, however that if any lien or encumbrance should attach, Operator shall promptly give notice of such lien or encumbrance to the other Parties.

5.2.5 Records. Operator shall keep correct books, accounts and records of all operations at Operator's Geysers office.

5.2.6 Reports. Operator shall furnish to the Parties such reports as the Operating Committee may require Operator to prepare from time to time, and shall no less frequently than quarterly furnish unaudited reports of operating costs and maintenance, and Project Water disbursement.

5.2.7 Budgets. Operator shall prepare and submit to the Operating Committee for approval a budget of estimated expenses for each fiscal year no later than the first day of May of each year. The fiscal year shall begin on July 1. Each budget shall separately identify any and all planned capital expenditures. Each budget shall enumerate the estimates by quarterly periods, describing each item in reasonable detail. Budgets shall be estimates only and may be amended as necessary by the Operating Committee. A copy of each budget and amended budget shall promptly be furnished to each Party.

5.2.8 Authority for Expenditure. An Authority for Expenditure ("AFE") is a document authorizing Operator *to* make expenditures for the purposes stated in the AFE. An AFE shall be submitted by Operator for approval by the Parties for:

1. All unbudgeted capital expenditures.
2. Budgeted single capital expenditures in excess of \$5,000.00.
3. Unbudgeted expenses in excess of \$5,000.00.

The AFE shall be prepared by Operator and submitted to each Party. An AFE must have unanimous approval of the Parties in order *to* be effective. Each Party shall have thirty (30) days in which to approve or not to approve the expenditure. A Party not responding within thirty (30) days will be deemed *to* have voted *to* approve the expenditure. If an AFE becomes effective, each Party is liable for any expenditures incurred in connection with the purposes stated in the AFE to the extent of its interest as specified in Section 4.1. An informational AFE may be submitted by Operator for expenditures not requiring approval.

5.2.9 Emergency Expenditures. Notwithstanding any other provision of this Agreement to the contrary, in the event of an emergency, as determined in good faith by Operator, the Operator may immediately make or incur such expenditures as in its opinion are required to deal with the emergency and each Party shall be liable for said expenditures on the basis of the percentage interests set forth in Section 4.1 above. Operator shall report to the Operating Committee as promptly as possible the nature of the emergency and the action taken.

5.2.10 Resignation or Removal of Operator. Operator may resign at any time by giving written notice thereof to the other Parties. If Operator terminates its legal existence, no longer holds an interest in the Steam Suppliers Facilities or if Operator becomes insolvent, bankrupt or is placed in receivership, it shall be deemed to have been removed without any action by the other Parties except the selection of a successor. Such resignation or removal shall not become effective until 7:00 o'clock A.M.

on the first day of the calendar month following the expiration of ninety (90) days after the giving of notice of resignation by Operator, or removal or bankruptcy, insolvency or receivership unless a successor Operator has been selected and assumes the duties of Operator at an earlier date. Operator, after effective date of resignation or removal, shall be bound by the terms hereof as a non-operating Party. A change of corporate name or structure of Operator or transfer of Operator's interest to any single member entity or multiple member entity, parent or successor corporation or subsidiary shall not be the basis for removal of Operator.

5.2.11 Notwithstanding anything contained in Section 25.1 below, if a dispute between the Parties arises because Parties holding a majority interest believe that the Operator has failed or refused to carry out its duties hereunder or is no longer capable of serving as operator, the dispute shall be referred to arbitration according to the procedure specified in subsection 5.2.12 below. If it is determined by the arbitrator that Operator has failed or refused to carry out its duties hereunder or *is* no longer capable of operating as operator, the Parties shall immediately select a successor Operator by majority vote.

5.2.12 Arbitration: Notwithstanding anything contained in Section 16 below to the contrary, any dispute under Section 5.2.11 above shall be directly submitted to arbitration and a decision rendered within sixty (60) days of the allegation of the Parties holding a majority interest that the Operator has failed or refused to carry out its duties hereunder or is no longer capable of serving as operator.

If the Parties cannot agree on an arbitrator, they shall select the arbitrator from a list of three arbitrators experienced in complex disputes relating to electric utility operations to be submitted to the Parties by the American Association of Arbitrators. The Operator and the other Parties shall each be entitled to strike one name from the list and the remaining name on the list shall be the arbitrator. The Operator and the other Parties shall draw lots to determine the order in which they strike the names. The arbitration procedures shall be those set forth in Sections 16.4, 16.5 and 16.6 of this Agreement

except that the Arbitrator may modify those procedures to the extent necessary to enable a decision to be rendered within the sixty (60) day period provided for in this Section.

5.2.13 Selection of Successor Operator. Upon the resignation or removal of Operator, a successor Operator shall be selected by the Parties. The successor Operator shall be selected by the Parties owning an interest in the Steam Suppliers Facilities at the time such successor Operator is selected. The successor Operator shall be selected by the affirmative vote of *two* (2) or more Parties owning a majority interest.

5.3 Delivery and Acceptance of Project Water

5.3.1 Commencement. Operator shall commence delivery and the Parties shall receive and accept Project Water transported by the Steam Suppliers Facilities to The Geysers Terminus or other mutually accepted location(s), no later than thirty (30) days following completion of the Project construction.

5.3.2 Division of Project Water. Operator shall deliver the available Project Water in equal one-third (1/3) amounts ~~to~~ each ~~of~~ the Parties on a continuous basis, consistent, however, with the specific operating criteria established from time to time by the Operating Committee.

5.3.3 Metering of Project Water. Operator shall operate and maintain in accurate working order metering devices properly equipped and located for the measurement of the Project Water to be delivered hereunder. All Parties shall have access to inspect and test such equipment at all reasonable times, but readings, calibrations, adjustments, repair and other maintenance thereof shall be conducted by Operator.

5.4 Suspension of Operations

5.4.1 The Parties acknowledge that the injection of Project Water as a means of augmenting The Geysers geothermal reservoir is a process which may or may not achieve the desired results, or which may have effects beyond the contemplation of the Parties. Therefore, the Parties hereto may individually or jointly suspend delivery or acceptance of Project Water if at any time during the term of this Agreement a State or Federal agency concludes that the injection of Project Water is causing significant adverse health, safety or environmental effect, or if a Party concludes that the operations are causing interference with its steam production or having adverse effects upon its geothermal facilities, or if contractual or economic conditions make continued operations impractical. Any Party may continue to suspend operations hereunder until such time as the cause can be remedied.

6. ALLOCATION AND PAYMENT OF COSTS

6.1 General Rules. Except as otherwise provided herein, all costs and expenses incurred pursuant to the terms and provisions of this Agreement and which relate directly to the Steam Suppliers Facilities shall be shared in proportion to the interest of each Party, as specified in Section 4.1 herein.

6.2 Payment. Operator shall endeavor to bill non-operators on or before the last day of each month for their proportionate share of the actual Operation and Maintenance Work costs for the preceding month. Such bills will be accompanied by statements which identify all charges and credits. Any unusual charges or credits shall be separately identified and fully described in detail. Each non-operator shall pay its proportion of all bills within fifteen (15) days after receipt. If payment is not made within such time, the unpaid balance shall bear interest monthly at the prime rate quoted by the Bank of America NT & SA plus one and one-half percent (1 1/2%) per annum or the maximum contract rate permitted by the applicable usury laws of the state of California,

whichever is the lesser, plus attorney's fees, court costs, and other costs incurred in connection with the collection of unpaid amounts.

6.3 Advances and Payments by Non-Operators. Operator may require the non operators to advance their share of estimated cash outlay for the succeeding month's operation. Operator shall adjust each monthly billing to reflect advances received from the non-operators.

6.4 Adjustments. Payment of any such bills shall not prejudice the right of any non-operator to protest or question the correctness thereof; provided, however, all bills and statements rendered to non-operators by Operator during any calendar year shall conclusively be presumed to be true and correct after twenty-four **(24)** months following the end of any such calendar year, unless within the said twenty-four **(24)** month period a non-operator takes written exception thereto and makes claim on Operator for adjustment. **No** adjustment favorable to Operator shall be made unless it is made within the prescribed period.

6.5 Special Allocations. The electricity costs for pumping the Project water shall be allocated separately from other Operations and Maintenance Work costs for each month. Each Party's share of the pumping power costs shall be equal to its percentage of Project Water actually received for that month.

6.5.1 CGC, in accordance with an agreement with Pacific Gas & Electric Company (**PG&E**) will provide the electricity for pumping power for the Project Water at an annual price calculated as provided in Exhibit "A", **so** long as such price is not higher than the price of power that is otherwise available to the Project.

6.5.2 CGC's monthly share of Operation and Maintenance Work expenses will include, as appropriate, a credit or debit for the value of such power calculated by multiplying the total kilowatts hours of power used by the value calculated as provided in Exhibit "A".

6.5.3 Operations and Maintenance Work costs other than pumping power costs shall continue to be allocated based on each Party's interest as specified in Section 4.1.

6.6 Commingling of Funds. No funds received by Operator under this Agreement need be segregated or maintained by it as a separate fund, but may be commingled with its own funds.

6.7 Audits. A non-operator, upon notice in writing to Operator and all other non-operators, shall have the right to audit Operator's accounts and records relating to this project for any calendar year within the twenty-four **(24)** month period following the end of such calendar year; provided, however, the making of an audit shall not extend the time for the taking of written exception to and the adjustments of accounts as provided for above. Where there are two or more non-operators, the non-operators shall make every reasonable effort to conduct joint or simultaneous audits in a manner which will result in a minimum of inconvenience to the Operator. The audits shall not be conducted more than once a year without prior approval of the Operator who is subject to such audit.

7. ABANDONMENT AND RESTORATION

7.1 Upon final termination of this Agreement, each Party shall be responsible for a share of the costs and expenses involved in removing or decommissioning the Steam Suppliers Facilities, less any salvage value. The Operator shall calculate each Party's percentage share of such abandonment costs based on the total amount of water taken by each Party as a percent of total Project Water delivered by LACOSAN during the term of this Agreement.

8. RIGHTS RESERVED BY ALL PARTIES

8.1 Access to Project. Each Party shall at all times during the term hereof make reasonable efforts to provide for the other Parties to have reasonable access to the Steam Suppliers Facilities, including facilities under construction, and to all data and documents concerning current Operation and Maintenance Work affecting any Steam Suppliers Facilities.

8.2 Right to Inspect Books and Records. The Parties shall at all reasonable times have the right to inspect Operator's books and accounts relating to operations hereunder.

8.3 Right to Audit. Non-operating Parties shall have the right to audit Operator's books and accounts pertaining to operations in accordance with the provisions of Section 6.7.

9. TAXES

9.1 Property Taxes. Each Party shall be responsible for payment of the real and personal property taxes assessed upon its interest in the property used or held by Operator for operations hereunder. If the property should be assessed as a unit, the Operator shall prepare and file all property tax returns and shall bill the Parties on the basis of their respective shares of the portion of the property that is subject to taxation. Such billings shall be paid at least 10 days prior to the dates on which the tax payments are due. At the request of any Party, the Operating Committee shall take responsibility for conducting discussions with the proper taxing authorities relating to the assessment and taxation of such property and shall assist in resolving disputes over property tax assessments.

9.2 Individual Withdrawal. Should any Party withdraw from this Agreement pursuant to Section 13, Individual Withdrawal, such Party will be required to pay a

prorated share of property taxes attributable to its interest for the tax year in which the Party withdraws from this Agreement. Said withdrawing Party will not be required to pay property taxes for the remaining duration of this Agreement.

9.3 Other Taxes. Each Party shall be individually responsible for any taxes levied or assessed on potential or actual generation increases or reduction of decline rates due to the injection of Project Water into each Party's respective geothermal property.

10. INSURANCE

10.1 Worker's Compensation. Operator shall procure and maintain, for the benefit of all Parties, Worker's Compensation Insurance required by the State of California. If it qualifies, Operator may elect to be a self-insurer with respect to Worker's Compensation Insurance. In either case Operator may charge each Party its share, as specified in Section 4.1, of the actual cost of the premiums for such insurance. Each Party's share shall be paid as set forth in Section 6.

10.2 Other Insurance. Operator shall procure and maintain such other insurance for the benefit of the Parties as may be required by the Operating Committee. The net premiums for such insurance shall be charged to each Party based on its interest as specified in Section 4.1 and paid pursuant to the terms in Section 6.

11. LIABILITY AND INDEMNIFICATION

11.1 Except for the failure to make monetary payments as required by this Agreement, and except for damage resulting from a breach of this Agreement, willful misconduct, gross negligence, conscious disregard or breach of fiduciary obligation, (a) no Party, nor any of its members, directors, members of its governing body, officers or employees shall be liable to any other Party for any loss or damage resulting from, or in any way related to, the performance or nonperformance of its obligations under this

Agreement, and (b) any and all liability to Third Parties and any liability arising from the consequence of any violation or alleged violation of permit, statutes, ordinances, orders, rules or regulations of any governmental entity arising out of the performance of this Agreement shall be shared among the Parties in proportion to the ownership interest set forth in Section 4.1 of this Agreement.

12. OBLIGATIONS AND RELATIONSHIPS OF THE PARTIES

12.1 Each Party shall use its best efforts and work diligently, in good faith, and in a timely manner, to carry out the duties and obligations imposed by this Agreement.

12.2 Individual Liability. The duties, obligations and liabilities of the Parties shall be several and not joint or collective and nothing contained herein is intended to create a partnership, joint venture, association, or trust among the Parties. Each Party shall be responsible only for its obligations as specified herein, and shall be liable only for its proportionate share of the costs of operating the Steam Suppliers Facilities as defined in this Agreement.

12.3 Except as expressly provided for in this Agreement or other Project agreements, no Party shall be the agent of or have the right or power to bind another Party.

13. INDIVIDUAL WITHDRAWAL

13.1 Except as otherwise provided in Section 13.2 below, after the expiration of three (3) years from the commencement of operations hereunder, any Steam Supplier shall have the right, upon *two* (2) years written notice, to withdraw from this Agreement by assigning and transferring in writing all its right, title and interest in the Project to the remaining Steam Supplier(s) who do not then wish to withdraw.

13.2 During the first four (4) years of operations hereunder, U-N-T shall have the right, upon one year written notice, to withdraw from this Agreement by assigning and transferring in writing, all of its rights, title and interest in the Project to the other Steam Suppliers if (i) PG&E or its successor in interest delivers notice to U-N-T that either Unit 18 or Unit 20 will be retired or decommissioned during or prior to the first four (4) years of operation hereunder, or if (ii) PG&E or its successor in interest curtails generation from the U-N-T leaseholdings to a level where U-N-T's continued participation in the Project is uneconomic, as determined by U-N-T. After the expiration of four (4) years from the commencement of operations hereunder, U-N-T will be subject to Section 13.1.

13.3 Any assignment made as a result of a withdrawal by a Steam Supplier pursuant to this Section 13 shall not relieve the withdrawing Party from any obligation or liability incurred or created prior to the date that the notice is received, including but not limited to the obligations set forth in Section 7.1 of this Agreement, and provided further that any and all interests created out of such withdrawing Party's interest shall from and after the date of such assignment be subject to the terms of this Agreement and shall be chargeable with the pro rata portion of all expenses thereunder in the same manner as if such interest were a working interest. The right of a withdrawing Party to any benefits subsequently accruing hereunder shall cease upon the effective date of the withdrawal. The withdrawing Party shall be relieved of all obligations and liabilities which arise subsequent to the effective date of the withdrawal.

14. ASSIGNMENTS

14.1 No Party shall have the right to assign, either in whole or in part, any of the rights, duties or obligations related or imposed under this Agreement without the prior written consent of the other Parties, except to another Party to this Agreement or to a subsidiary, affiliate or any other party succeeding to all or substantially all of the Geysers geothermal interests of that Party provided that such subsidiary, affiliate or succeeding party assumes the assigning Party's obligations hereunder in writing. No sale or

assignment as among the Parties shall relieve the assigning Party of any duties or obligations which accrued prior to the effective date and time of such sale or assignment.

15. TERMINATION

The Parties may jointly terminate this Agreement at any time during the term hereof by the unanimous written consent of the Parties.

16. DISPUTE RESOLUTION

16.1 Mediation. If a dispute arises from or relates to this Agreement, or breach thereof, and if such dispute cannot be settled through negotiation, the Parties agree to first try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association.

16.2 Arbitration - If the Parties are unable to resolve the dispute within thirty (30) days after service of the mediation request, any Party may serve on the other Parties a demand for arbitration. Any dispute shall be subject to arbitration under the Commercial Arbitration Rules of the **AAA** as amended and supplemented by the terms of this Section. The demand shall set forth the nature of the dispute, the amount involved, the remedy sought, and the locale requested for the arbitration hearing (the "Hearing"). Any demand or a counterclaim by any other Party shall be served within twenty (20) days after service of the demand for arbitration, and shall contain the same information required by this Section 16.

16.3 Selection of Arbitrator - If the Parties cannot agree on an arbitrator, they shall select the arbitrator from a list of 7 arbitrators experienced in complex engineering, construction or contract disputes, to be submitted to the Parties by the **AAA**. Each Party shall be entitled to strike two names from such list and the last name shall be the arbitrator. The Parties shall draw lots to determine the order in which they strike the

names. Any Party may request the AAA to disqualify an arbitrator for bias, personal or financial interest, or relationship with any Party, pursuant to the rules of the AAA.

16.4 Discovery - Each Party shall have the right to limited discovery from the other Party or Parties as follows: (a) each party shall be entitled to demand the production, no later than fifteen (15) days before the Hearing, of any documents the other Party intends to rely upon at the Hearing for its case-in-chief, and any documents which refer or relate to the matters at issue in the Arbitration; (b) any Party may demand production, no later than ten (10) days before the Hearing, of the list of witnesses the other Party intends to call at the Hearing for its case-in-chief, together with a brief description of the testimony of each witness; and (c) either Party shall be entitled to take a total of three (3) days of depositions of the other Party's employees or other witnesses, which may be extended only for good cause. Any dispute over discovery shall be submitted to the arbitrator for decision.

16.5 Pre-hearing Conference - The arbitrator shall convene a pre-hearing conference at least ten (10) days before the Hearing to determine procedures for the Hearing, including evidence to be submitted, evidentiary objections, length of the Hearing and other matters.

16.6 Hearing Location and Time - The Hearing shall begin not later than ninety (90) days after service of the demand or cross-demand for arbitration, whichever is later. The Hearing shall be held at a location mutually agreed by the Parties. If the Parties are unable to agree Santa Rosa shall be the hearing locale. The Hearing shall proceed under the rules and procedures of the AAA or as mutually agreed by the Parties.

16.7 Decision - The arbitrator's decision shall be rendered within thirty (30) days of the submission of all evidence. The decision shall be final and binding on the Parties and their successors, and may be confirmed in any competent Court having jurisdiction.

16.8 Interest - The prevailing Party shall be entitled to interest, compounded monthly, on the net amount of the award, at the then-current prime lending interest rate used by the Bank of America, plus three (3) percentage points. The interest shall accrue from the date the Arbitration request under Section 16.2 "Arbitration" is served through the date the award is paid.

16.9 Confidentiality- Notwithstanding anything to the contrary contained in this Section 16, the Parties shall execute an agreement with the mediator or the arbitrator, which shall (a) require the mediator or the arbitrator to treat any information conveyed to them as confidential, and prohibit disclosure of any confidential or trade secret information; (b) make California Evidence Code Section 1152.5 applicable to the mediation or arbitration; and (c) for the arbitration, prohibit any ex parte contacts with the arbitrator without the explicit consent of the other parties, unless the arbitrator initiates the contacts and they are made part of the record. Any information presented at the mediation or arbitration shall be neither admissible nor discoverable in any regulatory proceeding or in any action, as provided in Section 1152.5 of the Evidence Code.

16.10 Party Representative - Each Party shall have in attendance throughout the mediation and arbitration proceedings a designated representative who has : (a) sufficient authority to negotiate and recommend compromise within the full monetary range of the dispute; and (b) little or no direct involvement in the dispute.

16.11 Costs - The prevailing Party or Parties shall be entitled to their respective costs incurred in connection with the procedures described in this Section 16, pursuant to Section 26 below.

16.12 Statute of Limitations - The service of a arbitration request under Section 16.2 "Negotiation" shall suspend the running of any statute of limitations applicable to the dispute for which the negotiation request is made. The Parties shall jointly take any action required in order to effectuate the suspension.

16.13 Exclusivity -The procedures specified in this Section 16 shall be the sole and exclusive procedures for the resolution of disputes. However, a Party may seek a preliminary injunction or other preliminary judicial relief in order to avoid great or irreparable injury, or waste to the extent otherwise permitted by law. Despite such action, the Parties shall continue to participate in good faith in the procedures specified in this Section 16.

17. FORCE MAJEURE

17.1 If as result of force majeure, which means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, insurrections, riots, epidemics, landslides, earthquake, severe weather conditions, fires, storms, floods, washouts, or acts of restraint by any governmental agency or any other cause whether similar or dissimilar to the foregoing enumerated causes not within the control of the Party or Parties claiming suspension, any Party is unable to carry out its obligations under this Agreement wholly or in part, such Party or Parties shall give prompt written notice to the other Parties of the force majeure with reasonably full particulars concerning it. Thereupon, except for obligations to make payment of money, the obligation of the Party or Parties giving the notice, so far as it is affected by the force majeure, shall be suspended to the extent of and during, but no longer than, the continuance of the force majeure; provided the non-performing Party promptly and persistently pursues all the alternatives available to remedy its ability to perform and the non-performing Party resumes performance of its obligations as soon as possible. The other Party or Parties shall also be relieved of its obligations to the extent such Party or Parties cannot perform due to such event of force majeure.

18. COMPLIANCE WITH LAWS

18.1 The Parties shall comply with all applicable federal, state, and local laws and the rules and regulations of any federal, state, local or other government agency

having jurisdiction over the activities and operations conducted pursuant to this Agreement.

19. NOTICES

19.1 Any and all notices or other communications required or permitted by this Agreement, or by the law, to be delivered to, served on, or given to any Party to this Agreement shall be in writing and shall be deemed properly delivered when personally delivered to the Party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, addressed to the parties as follows:

<u>Party</u>	<u>Address</u>
NCPA	P.O. Box 663 Middletown, CA 95461 Attn. Steam Field Superintendent
<i>GGC</i>	1160 North Dutton, #200 P.O.Box 11279 Santa Rosa, CA 95406 Attn. Operations Manager, Santa Rosa
U-N-T	3576 Unocal Place Santa Rosa, Ca 95403 Attn: General Manager

19.2 Any Party hereto may change its address for the purpose of this Section 19 by giving written notice of such change in the manner prescribed by this Section 19 to the other Parties to this Agreement.

20. ENTIRE AGREEMENT

20.1 This document represents and contains the entire Agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior oral and written agreements and understandings, except for the Project Construction Financing Agreement and the Joint Operating Agreement between IACOSAN, NGPA, GGC, and U-N-T. No promises, agreements, or warranties additional to this Agreement shall be deemed to be a part hereof, nor will any alteration, amendment or modification hereto be effective unless confirmed in writing by all Parties or their duly authorized agents.

21. SEVERABILITY

21.1 In the event that any term, covenant, or condition of this Agreement or the application of any such term, covenant, or condition shall be held invalid as to any person, entity, or circumstance by any court or agency having jurisdiction, such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby but shall remain in full force and effect unless a court or agency having jurisdiction holds that such provisions are not severable from the other provisions of this Agreement.

22. WAIVERS AND AMENDMENTS

22.1 No waiver shall be deemed to have been made by any Party of any of its rights under this Agreement unless the same shall be in writing signed on its behalf by a person authorized to make such a waiver. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Further, this Agreement shall not be amended or modified except by an instrument in writing signed by the Party against whom enforcement is sought.

23. NO DEDICATION OF FACILITY

23.1 Any undertaking by a Party under any provision of this Agreement is rendered strictly as an accommodation and shall not constitute the dedication of such Party's facilities to the public, to any other Party, or to any Third Party.

24. THIRD PARTY BENEFICIARIES

24.1 None of the promises, rights, or obligations contained in this Agreement shall ensure to the benefit of any person or entity not a Party to this Agreement, other than the rights of members of NCPA, which derive from their membership in NCPA.

25. DEFAULT

25.1 If any Party to this Agreement defaults in respect to any of its obligations under this Agreement, any of the non-defaulting Parties shall notify the defaulting Party in writing, setting out in what respects the non-defaulting Party deems the defaulting Party to be in such default. If within thirty (30) days after receipt of such notice, the defaulting Party has corrected the default alleged by the non-defaulting Party, the defaulting Party shall not be deemed in default. Neither the service of said notice, nor the doing of acts by the defaulting Party aimed to correct any or all of the alleged defaults, shall be deemed an admission or presumption that the defaulting Party has failed in any respect to perform its obligations hereunder. If the defaulting Party fails to correct all or any of the alleged defaults within the allowable time, the non-defaulting Party, may proceed in accordance with Section 16.

26. ATTORNEY'S FEES

26.1 If any action at law or in equity, including arbitration pursuant to Section 16 above, is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements,

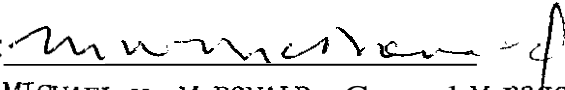
in addition to any other relief to which such Party may be entitled, unless otherwise provided in this Agreement.

27. COUNTERPARTS

27.1 This Agreement may be executed in any number of counterparts and all such counterparts shall be deemed to constitute a single Agreement and the execution of one counterpart by any Party shall have the same force and effect as if such Party had signed all the other counterparts.

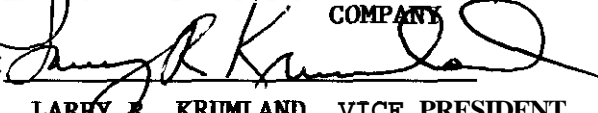
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

NORTHERN CALIFORNIA POWER AGENCY

By: 
MICHAEL W. McDONALD, General Manager

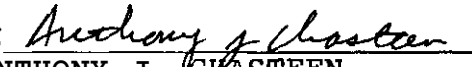
Date AUGUST 10, 1995

CALPINE GEYSERS CORPORATION, LP
COMPANY

By: 
LARRY R. KRUMLAND, VICE PRESIDENT


Date AUGUST 14, 1995

UNION OIL COMPANY OF CALIFORNIA

By: 
ANTHONY J. CHASTEEN

Date September 8, 1885

GENERAL MANAGER, DOMESTIC GEOTHERMAL OPERATIONS
NEC ACQUISITION COMPANY

By: 
ANTHONY J. CHASTEEN
ATTORNEY IN FACT

Date September 8, 1885

THERMAL POWER COMPANY

By: 
LARRY R. KRUMLAND, VICE PRESIDENT

Date SEPTEMBER 6, 1995

CALPINE CORPORATION GUARANTY

In consideration for the execution of this Agreement by ^{SLK}~~LAGOSAN~~, NCPA, UNOCAL and NEC, CALPINE CORPORATION ("CALPINE") guarantees faithful and complete performance of this Agreement and any amendments thereto by THERMAL and CGC. CALPINE also guarantees payment of all damages, costs and expenses for which either THERMAL or CGC may become liable with respect to this Agreement.

CALPINE waives all right to notice of nonperformance of this Agreement and to notice to THERMAL and CGC to perform.

Dated: AUGUST 14, 1995, 1995

CALPINE CORPORATION

By: 

LARRY R. KRUMLAND
VICE PRESIDENT

EXHIBIT A

Calculation of Pumping Power Value of Southeast Geysers Effluent Pipeline Project

The pumping power provided to the project be generated at PG&E Units 13 and 16. As such, the value of the pumping power provided to the Project by PG&E and Calpine during any calendar year is the sum of the following:

	<u>1995 Price mils/kwh</u>
1) The price Calpine is paid annually by PG&E for steam delivered to PG&E Unit 13 and 16. This price is calculated as defined in the March 1973 Agreement for the Sale and Purchase of geothermal steam between PG&E and Calpine Corporation as a successor in interest to Signal Oil and Gas Company.	12.07
2) The price Calpine is paid annually by PG&E for effluent (condensate) disposal at Unit 13 and 16. This price is calculated as in 1) above.	.50
3) A constant value of 12.5 mils/kwh for the life of the project.	<u>12.50</u>
1995 PRICE	<u>25.07</u>

AMENDMENT NO. 1 TO STEAM SUPPLIERS JOINT OPERATING AGREEMENT

This Amendment No. 1 to the Steam Suppliers Joint Operating Agreement is entered into this 20th day of December, 2001 by and between Northern California Power Agency ("NCPA") and Calpine Corporation ("Calpine"), referred to collectively as the "Parties."

RECITALS

WHEREAS, Calpine has acquired the geothermal interests of PG&E and Union Oil Company of California ("Unocal") at the Geysers steam field, located within Lake and Sonoma Counties; and has assumed all of Unocal's interest in this Agreement;

WHEREAS, NCPA and Calpine constitute the remaining Steam Suppliers;

WHEREAS, LACOSAN and NCPA intend to enter into Phase II of the Southeast Geysers Effluent Pipeline Project ("SEGEP") to increase the delivery rate of effluent and makeup water for injection into the Geysers geothermal reservoir;

WHEREAS, LACOSAN and the Parties, by separate agreement, have modified the Joint Operating Agreement Southeast Geysers Effluent Pipeline Project to provide for the operation and financing of the SEGEP Phase II Facilities and intend to modify the existing Steam Suppliers Joint Operating Agreement as provided herein;

WHEREAS, NCPA and Calpine intend to make all reasonable efforts, consistent with Project design, to develop the existing SEGEP facilities to achieve and maintain a delivery rate of 6,100 gpm prior to the start up of the Phase II facilities;

WHEREAS, the operation of the SEGEP Phase II Facilities will require changes in the manner that the Project Water delivered to The Geysers is distributed among the Parties, and the manner that Project Operations and Maintenance Work costs are to be shared among the Parties;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties agree to modify the existing Steam Suppliers Joint Operating Agreement as follows:

1.3 Delete in its entirety and insert "Point-of-Delivery shall mean the intake side of the Pump Station located along Bear Canyon Road that is closest to Highway 175."

1.4 At the end of the sentence, insert "and Addendum No. 1 thereto."

1.5 At the end of the sentence, insert "except the SEGEP Phase II Facilities."

Add 1.7 "Basin 2000 Facilities" shall mean all facilities that will be used to supply and deliver the additional effluent from NWRWTP to the Project, including intake structures, the main pipeline, pump stations, and a new separate flow meter at the NWRWTP. The Basin 2000 Facilities are expected to supply the Project with a minimum of 1,700 gallons per minute (gpm) on average, subject to normal interruptions for maintenance.

Add 1.8 "SEGEP Phase II Facilities" shall mean those upgrades to the existing SEGEP system necessary to increase the delivery rate of the Project to approximately 7,100 gpm. The upgrades are expected to include, but not necessarily be limited to, two new booster pump stations, three additional pumps at the existing pump stations within the Geysers portion of the SEGEP project, and a 21 KV transmission line.

Add 1.9 "Phase I Maximum Delivery Rate" (Phase I MDR) shall mean the maximum capacity of the Steam Suppliers Facilities, excluding the use of the additional SEGEP Phase II Facilities, to deliver Project Water to the Steam Suppliers, as determined from time to time. For the purposes of allocating Project Water and the Operation and Maintenance Work costs, the Phase I MDR shall not exceed 6,100 gpm.

Add 1.10 "Phase II Maximum Delivery Rate" (Phase II MDR) shall mean the maximum capacity of the Steam Suppliers Facilities, including the use of the additional SEGEP Phase II Facilities, to deliver Project Water to the Steam Suppliers, as determined at the startup of the SEGEP Phase II Facilities. For the purposes of allocating Project Water and the Operation and Maintenance Work costs, the Phase II MDR shall not exceed 7,100 gpm.

Add 1.11 "Melded Ownership Interest" (MOI) shall mean each Party's average ownership interest of the combined Steam Supplier and SEGEP Phase II Facilities, upon completion and startup of the SEGEP Phase II Facilities. Subject to the option contained in Section 4.4, Calpine's MOI shall be 2/3 of 6,100 gpm/7,100 gpm or 57.28% and NCPA's MOI shall be 42.72%, if the Phase II MDR is 7,100 gpm or greater. If the Phase II MDR is less than 7,100 gpm, Calpine's MOI shall instead be 2/3 of 6,100 gpm/Phase II MDR and NCPA's MOI shall be adjusted accordingly.

3.1. On line 2, after "the effective date" delete "hereof" and insert "of Addendum No. 1 to the Steam Suppliers Joint Operating Agreement."

4.1 Insert heading "Steam Supplier Facilities"

Under the column heading "Party," delete "U-N-T" and "CGC" and insert "Calpine."

Under the column heading "Interest," delete "One-Third (1/3) relating to the "U-N-T" and "CGC" interests and insert "Two-Thirds (2/3)" to correspond to Calpine's interest.

Delete the "(i)" in the second paragraph and delete remainder of the paragraph starting with "(ii)".

Replace 4.2 with "SEGEP Phase II Facilities. Subject to the provisions contained in Section 4.4, NCPA shall have one hundred (100) percent ownership interest in the additional SEGEP Phase II pumping facilities located within the Geysers portion of the Project. All costs and liabilities incurred in the construction of these separate facilities shall be borne and paid for in accordance with the Parties respective ownership interests in these facilities, unless otherwise provided in Section 4.5."

Delete paragraph 4.3 and insert the following:

4.3 "Project Water.

4.3.1 The Party or Parties owning the SEGEP Phase II Facilities as set forth in Section 4.2 shall also own all the Project Water delivered by LACOSAN to the Project by the Basin 2000 Facilities according to their percentage of ownership in the SEGEP Phase II Facilities.

4.3.2 Steam Suppliers shall own all of the other Project Water in the percentages set forth above in Section 4.1."

Add 4.4 For a period of up to one year following the initial operation of the SEGEP Phase II Facilities, Calpine shall have the right, but not the obligation, to acquire up to a maximum of one-third ownership interest in the SEGEP Phase II Facilities, by paying its desired proportional share of the cost to construct the SEGEP Phase II Facilities, including only that portion of the 21 KV transmission line costs to extend service from Bear Canyon Pump Station #1 to a new pump station near Middletown, by assuming its proportional liability for those facilities, and by paying its proportional share of NCPA's cash contribution toward the cost to construct the Basin 2000 Facilities.

Add 4.5 If the Phase I MDR is less than 6,100 gpm at the time of startup of the SEGEP Phase II Facilities, the Steam Suppliers shall have the option to pay according to their ownership interests defined in Section 4.1 for a percentage of the SEGEP Phase II construction costs, including only that portion of the 21 KV transmission line costs to extend service from Bear Canyon Pump Station #1 to a new pump station near Middletown. That percentage shall be calculated as the quantity of 6,100 gpm minus the Phase I MDR, divided by the difference between 7,100 gpm and the Phase I MDR.

Add 5.1.6 The Operating Committee shall establish the specific procedures to determine and/or revise a numeric Phase I MDR, the Phase II MDR, and the rate that electricity is being consumed at each of the pump stations then in operation. The Operating Committee shall also determine the electricity consumption rate at the delivery rate of 6,100 gpm and at such other rates it decides. The adopted procedures shall be utilized within reason at any time, as requested by either Party to this Agreement.

5.2.11 At line 2, delete "Parties holding a majority interest" and insert "the Non-operator Party"

5.2.12 At line 3-4, delete "Parties holding a majority interest" and insert "the Non-operator Party"

5.2.13 Delete entire paragraph and insert "Upon resignation or removal of Operator, a successor Operator shall be selected by unanimous vote of the Parties. In the event the Parties are unable to agree on a successor Operator, the Parties shall proceed in accordance with Section 16 of the Agreement."

5.3.2 Delete entire paragraph and insert "Operator shall deliver the available Project Water in amounts generally consistent with the Melded Ownership Interests of the Project facilities as specified in paragraph 1.11 herein, on a continuous basis, and in accordance with the specific operating interests established from time to time by the Operating Committee. However, during drought conditions when no Project Water is available for withdrawal from Clear Lake, the division and delivery of Project Water will be according to the respective ownership interests provided in Section 4.3, paragraphs 4.3.1 and 4.3.2."

6. Replace title with "ALLOCATION AND PAYMENT OF OPERATING COSTS"

6.1 Delete the remainder of the paragraph after "Steam Supplier Facilities" and substitute "and the SEGEF Phase II Facilities shall be shared in proportion to the Melded Ownership Interest of each Party, as specified in paragraph 1.11 herein."

Replace paragraph 6.5 with "Special Allocations. The electricity costs for pumping the Project Water shall be allocated separately from the other Operations and Maintenance costs for each month."

Replace paragraph 6.5.1 with "When the monthly average delivery rate is equal to or less than 6,100 gpm, that portion of the electricity costs not borne by LACOSAN shall be allocated between the Parties in proportion to the amount of Project Water each received."

Add 6.5.1.1 When the monthly average delivery rate is more than 6,100 gpm, and Calpine has not exercised its option provided in paragraph 4.4, the amount of Project Water actually received by Calpine, divided by the total delivery amount possible during that time period at the delivery rate of 6,100 gpm determines a percentage, and that percentage of the amount of electricity consumed when the system is operated at 6,100 gpm shall be Calpine's share of the total amount of electricity actually consumed during that time period. That portion of the electricity costs not borne by LACOSAN shall be allocated between the Parties based on their respective shares of the electricity consumed.

Add 6.5.1.2 When the monthly average delivery rate is more than 6,100 gpm, and Calpine has exercised its option provided in paragraph 4.4, then that portion of the electricity costs not borne by LACOSAN shall be allocated between the Parties in proportion to the amount of Project Water each received.

Replace paragraph 6.5.2 with "Calpine shall provide all necessary electricity for pumping power to Bear Canyon Pumping Stations at the price provided in Exhibit "A", so long as such price is not higher than the price of power otherwise available to the Project. Calpine's monthly share of Operations and Maintenance Work costs will include, as appropriate, a credit or debit for the value of such power calculated by multiplying the total kilowatt hours of power used by the price provided in Exhibit "A"."

Add 6.5.3 If requested by either Party, NCPA shall provide the electricity needed at the Bear Canyon Pumping Stations to deliver Project Water at those delivery rates that are above 6,100 gpm. NCPA's monthly share of Operations and Maintenance Work costs will include, as appropriate, a credit or debit for the value of such power calculated by multiplying the total kilowatt hours of power used by the price provided in Exhibit "A", or as otherwise agreed upon by the Parties.

7.1 On line 3 after "Steam Suppliers Facilities" insert "and SEGEP Phase II Facilities,"

8.1 On line 3 after "Suppliers Facilities" insert "and SEGEP Phase II Facilities," and at the end of the paragraph after "Steam Suppliers Facilities" insert "and SEGEP Phase II Facilities."

Delete paragraph 13.2 and renumber paragraph 13.3 as 13.2.

19. Notices Delete reference to "CGC" and "U-N-T" under "Party" and "Address" and replace with "Calpine"

10350 Socrates Mine Road
Middletown, CA 95461
Attn: VP-Geothermal Resource Management

20.1 Replace line 1 with "This document and Amendment No. 1 hereto represent and contain the entire agreement and". On line 5, delete "CGC, and U-N-T" and replace with "Calpine."

NORTHERN CALIFORNIA POWER AGENCY

Dated: 12/10/01, 2001

By: 

CALPINE CORPORATION

Dated: 12/20/01, 2001

By: W.T. Bosh 

**AMENDED AND RESTATED
STEAM SUPPLIERS JOINT OPERATING AGREEMENT
SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT**

Between

NORTHERN CALIFORNIA POWER AGENCY

and

CALPINE CORPORATION

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STEAM SUPPLIERS JOINT OPERATING AGREEMENT
SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT

THIS SECOND AMENDMENT AND RESTATEMENT OF THE STEAM SUPPLIERS JOINT OPERATING AGREEMENT SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT (Agreement), is entered into and dated as of this 18th day of September, 2003, by and between NORTHERN CALIFORNIA POWER AGENCY, a California joint powers agency and public entity, with its principal executive offices at 180 Cirby Way, Roseville, California 95678 ("NCPA") and CALPINE CORPORATION, a Delaware corporation, with its principal executive offices at 50 West San Fernando Street, San Jose, California 95113 ("Calpine"), referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Parties originally entered into a STEAM SUPPLIERS JOINT OPERATING AGREEMENT SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT on July 25, 1995 that established and provided for certain terms and conditions relating to their participation in and responsibility for the operation of that portion of the Southeast Geysers Effluent Pipeline Project (Project) which commences at the Point-of-Delivery and terminates at The Geysers Terminus; and

WHEREAS, the Parties first amended that STEAM SUPPLIERS JOINT OPERATING AGREEMENT on December 20, 2001 to recognize that Calpine had acquired the geothermal interests of PG&E and Unocal at The Geysers and therefore owned a 2/3 interest in all of the Steam Suppliers Facilities of the Project, to recognize that NCPA had entered into an agreement with Lake County Sanitation District (LACOSAN) to fund Basin 2000 Facilities to deliver additional effluent to the Project, and to provide how the Project Water was to be henceforth distributed among other issues; and

WHEREAS, Calpine has recently expressed a willingness to transfer to NCPA a portion of its interest in the Project and a portion of its rights to Project Water for specific considerations, and NCPA has expressed a willingness to provide those same specific considerations; and

WHEREAS, the Parties intend to combine in this single document their original agreement as restated and amended in this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Parties hereto agree as follows:

1. DEFINITIONS

1.1 "Gross negligence" shall mean the want of even scant care or an extreme departure from the ordinary standard of conduct.

1.2 "Operation and Maintenance Work" shall mean all labor, services, and material required to operate the Steam Suppliers Facilities in compliance with their design specifications and prudent industry practices, and to maintain Steam Suppliers Facilities in good working order, and to monitor and mitigate any impact on the environment.

1.3 "Point-of-Delivery" shall mean the intake side of the pump station located along Bear Canyon Road that is closest to Highway 175.

1.4 "Project Water" shall mean that water which is delivered to the Parties by LACOSAN at the Point-of-Delivery pursuant to the Joint Operating Agreement Southeast Geysers Effluent Pipeline (SEGEP) Project originally dated July 25, 1995 and amended on December 4, 2001 and the Steam Suppliers Joint Operating Agreement including Amendment 1.

1.5 "Steam Suppliers Facilities" shall mean the pumps, pipeline, instrumentation and other property utilized directly in connection with transporting Project Water from the Point-of-Delivery to The Geysers Terminus, including the Project's transformer at Calpine's Unit 16 and the section of 21 kv power line that connects from Unit 16 to the Bear Canyon Pump Stations.

1.6 "The Geysers Terminus" shall mean that location known as NCPA's "C" Pad, located in the northeast corner of Section 3, Township 10 North, Range 8 West, MDB&M in The Geysers field.

1.7 "Basin 2000 Facilities" shall mean all facilities that will be used to supply and deliver the additional effluent from Northwest Regional Wastewater Treatment Plant (NWRWTP) to the Project, including intake structures, the main pipeline, pump stations, and a new separate flow meter at the NWRWTP. The Basin 2000 Facilities are expected to supply the Project with a minimum of 1,700 gallons per minute (gpm) on average, subject to normal interruptions for maintenance.

1.8 "SEGEF Phase II Facilities" shall mean those upgrades to the existing SEGEF system necessary to increase the delivery rate of the Project to at least 6,400 gpm. The upgrades are expected to include one new booster pump station near "B" street containing two 500 HP pumps, replacement of the existing eleven 450 HP Union pumps and motors and one 450 HP Goulds pump and motor in the Bear Canyon Pump Stations with twelve 500 HP Goulds pumps and motors, VFD replacement at the Bear Canyon Pump Stations, a new fiber optic communication line from NCPA's control room to the Bear Canyon Pump Stations, and an improved cooling system at the Bear Canyon Pump Stations.

1.9 "NCPA's 21 kv Delivery System" shall mean that 21 kv power delivery system, wholly owned and operated by NCPA, that connects the transformer in the switchyard at NCPA's Power Plant #1 to switch "1292" located near Bear Canyon Pump Station #3.

2. EFFECTIVE DATE

This Agreement shall be effective and binding when it has been duly executed by both Parties.

3. TERM

The term of this Agreement shall be for a period of twenty-five (25) years from the effective date hereof, unless this Agreement is sooner terminated pursuant to Sections 13.1, 13.2 or 15 of this Agreement. If upon expiration of said term, the Parties elect to continue operations, the Parties agree to extend this Agreement for a term of not less than five (5) years.

4. OWNERSHIP INTERESTS

4.1 Percentage Shares. Calpine hereby releases and transfers to NCPA, and NCPA hereby accepts, 1/6 of Calpine's formerly described 2/3 ownership interest. The Parties acknowledge, stipulate and agree that, for all purposes of this Agreement, the respective undivided ownership interests of the Parties to this Agreement are:

<u>Party</u>	<u>Interest</u>
NCPA	50 percent
Calpine	50 percent

For all purposes of this Agreement, unless specifically changed by agreement of the Parties, all Steam Suppliers Facilities and all SEGEP Phase II Facilities shall be owned by the Parties as tenants in common and, all costs and liabilities incurred in operations hereunder shall be borne and paid in the percentages set forth above in the column captioned "Interest".

4.2 Project Water. The Parties acknowledge that there are multiple sources of Project Water and that the Parties have different ownership interests in these sources. The water delivered by LACOSAN to the Point of Delivery is to be distributed as follows:

4.2.1 During non-drought years when the Project is allowed to withdraw water from Clear Lake, Calpine will receive 2/3 of the water when the delivery rates are 5,400 gpm or less, and NCPA will receive 1/3. NCPA will receive all of the additional increment of water when the Project is operated between 5,400 gpm and 6,100 gpm, and Calpine and NCPA will equally share in the additional water when the Project is operated above 6,100 gpm. These rates will be calculated on a daily basis.

4.2.2 During drought years when the Project is not allowed to withdraw any water from Clear Lake, Calpine shall receive 2/3 of the effluent flow from Clearlake Oaks Wastewater Treatment Plant, from LACOSAN's Southeast Regional Treatment Plant, and from the Middletown Treatment Plant; Calpine shall have no rights to effluent from the Basin 2000 facilities that include LACOSAN's NW Treatment Plant and NCPA shall have all rights to such effluent.

4.2.3 Calpine will have the right to all of the portion of the Clear Lake water unused by the Project, if any, if extraction by Calpine from other areas of Clear Lake becomes possible.

5. OPERATIONS AND MAINTENANCE

5.1 Operating Committee

5.1.1 Creation and Composition. An Operating Committee is hereby created consisting of two (2) members appointed by each Party to this Agreement designating in writing its respective representative and that representative's address to the other Parties. Such representatives may be changed from time to time in like manner. Such Committee shall meet in Santa Rosa, California, or at such other place as may be mutually agreed upon at the request of any member on ten (10) days' written notice, unless such notice is waived, for the purpose of reviewing operations and information pertaining to the progress of operations, and directing Operator with regard to operations hereunder. Operator, as designated in Section 5.2.1, or the member calling the meeting shall present an agenda together with the notice of such meeting. Relevant additional matters may be considered at the meeting but may not be approved until adequate notice is given to the other members of the Operating Committee. Operator will keep the Operating Committee informed of the progress of work and provide the members of the Operating Committee with all reports and information upon request.

5.1.2 Decisions of the Operating Committee. The Operating Committee shall approve the annual budgets authorized under this Agreement, shall determine the distribution between the Parties of the maintenance responsibilities for the two 21 kv power supply systems available to supply power to the Bear Canyon Pump Stations, and may approve any Authority for Expenditure as defined in Section 5.2.8. The Party required to supply the power to operate the three Bear Canyon Pump Stations in order to deliver the Project Water shall be established from time to time by the Parties. No action shall be taken by the Operating Committee unless unanimous approval has been given by all voting members. Absent members may vote for agenda items by telefax or by mail addressed to Operator.

5.1.3 Voting Interests. Each Party's voting interest of its members shall be equal to the percentage interests of the Party as specified in Section 4.1.

5.1.4 Substitute Party. If a Party assigns its interest under this Agreement to another person or entity pursuant to Section 14, such assignee shall appoint a member to the Operating Committee.

5.1.5 Telephone Meetings. Any provision in this Section 5 to the contrary notwithstanding, meetings of the Operating Committee may be held by telephone if the members agree. If any meeting of the Operating Committee is held by telephone, all action and votes taken at such meeting shall be immediately confirmed in writing.

5.2 Operator

5.2.1 Designation of Operator. NCPA is hereby designated Operator of the Steam Suppliers Facilities and in such capacity shall have the right to conduct and manage the Steam Suppliers Facilities and Project Water for the account of the Parties hereto, subject, however, to the instructions of the Operating Committee and the provisions of this Agreement.

5.2.2 Operator's Performance. The Operator shall exercise its judgment and discretion in good faith and in accordance with the terms hereof. The Operator shall act in accordance with generally accepted engineering practices and will not violate the decisions of the Operating Committee in the absence of an emergency. The Parties shall share all costs of Operator's action under this Agreement on the basis of the percentage interests set forth in Section 4.1 above, except for costs arising out of the gross negligence or willful misconduct of the Operator.

5.2.3 Operator's Employees. The number of employees, their selection, the hours of labor and the compensation for services performed shall be determined by Operator. All such employees shall at all times remain the employees of Operator.

5.2.4 Liens and Encumbrances. Operator shall endeavor to keep the Steam Suppliers Facilities free and clear of any liens and encumbrances occasioned by the operations hereunder, provided, however that if any lien or encumbrance should attach, Operator shall promptly give notice of such lien or encumbrance to the other Party.

5.2.5 Records. Operator shall keep correct books, accounts and records of all operations at Operator's Geysers office.

5.2.6 Reports. Operator shall furnish to the other Party such reports as the Operating Committee may require Operator to prepare from time to time, and shall no less frequently than quarterly furnish unaudited reports of operating costs and maintenance, and Project Water disbursement.

5.2.7 Budgets. Operator shall prepare and submit to the Operating Committee for approval a budget of estimated expenses for each fiscal year no later than the first day of May of each year. The fiscal year shall begin on July 1. Each budget shall separately identify any and all planned capital expenditures. Each budget shall enumerate the estimates by quarterly periods, describing each item in reasonable detail. Budgets shall be estimates only and may be amended as necessary by the Operating Committee. A copy of each budget and amended budget shall promptly be furnished to each Party.

5.2.8 Authority for Expenditure. An Authority for Expenditure ("AFE") is a document authorizing Operator to make expenditures for the purposes stated in the AFE. An AFE shall be submitted by Operator for approval by the Parties for:

- a. All unbudgeted capital expenditures.
- b. Budgeted single capital expenditures in excess of \$5,000.00.
- c. Unbudgeted expenses in excess of \$5,000.00.

The AFE shall be prepared by Operator and submitted to the non-operating Party. An AFE must have unanimous approval of the Parties in order to be effective. Both Parties shall have thirty (30) days in which to approve or not to approve the expenditure. A Party not responding within thirty (30) days will be deemed to have voted to approve the expenditure. If an AFE becomes effective, each Party is liable for any expenditures incurred in connection with the purposes stated in the AFE to the extent of its interest as specified in Section 4.1. An informational AFE may be submitted by Operator for expenditures not requiring approval.

5.2.9 Emergency Expenditures. Notwithstanding any other provision of this Agreement to the contrary, in the event of an emergency, as determined in good faith by Operator, the Operator may immediately make or incur such expenditures as in its opinion are required to deal with the emergency and both Parties shall be liable for said expenditures on the basis of the percentage interests set forth in Section 4.1 above. Operator shall report to the Operating Committee as promptly as possible the nature of the emergency and the action taken.

5.2.10 Resignation or Removal of Operator. Operator may resign at any time by giving written notice thereof to the non-operating Party. If Operator terminates its legal existence, no longer holds an interest in the Steam Suppliers Facilities or if Operator becomes insolvent, bankrupt or is placed in receivership, it shall be deemed to have been removed without any action by the other Party except the selection of a successor. Such resignation or removal shall not become effective until 7:00 o'clock A.M. on the first day of the calendar month following the expiration of ninety (90) days after the giving of notice of resignation by Operator, or removal or bankruptcy, insolvency or receivership unless a successor Operator has been selected and assumes the duties of Operator at an earlier date. Operator, after the effective date of resignation or removal, shall be bound by the terms hereof as a non-operating Party. A change of corporate name or structure of Operator or transfer of Operator's interest to any single member entity or multiple member entity, parent or successor corporation or subsidiary shall not be the basis for removal of Operator.

5.2.11 Notwithstanding anything contained in Section 25, if a dispute between the Parties arises because the Non-operator Party believes that the Operator has failed or refused to carry out its duties hereunder or is no longer capable of serving as operator, the dispute shall be referred to dispute resolution according to the procedure specified in subsection 5.2.12 below. If it is determined by the arbitrator that Operator has failed or refused to carry out its duties hereunder or is no longer capable of operating as operator, the other Party shall proceed as set forth in subsection 5.2.13 and select a successor Operator.

5.2.12 Arbitration: Any dispute under Section 5.2.11 above shall be directly submitted to dispute resolution in accordance with Section 16 of this Agreement.

5.2.13 Upon the resignation or removal of Operator, a successor Operator shall be selected by unanimous vote of the Parties. In the event the Parties are unable to agree on a successor Operator, the Parties shall proceed in accordance with Section 16 of the Agreement.

5.3 Delivery and Acceptance of Project Water

5.3.1 Commencement. Operator shall commence delivery and the Parties shall receive and accept Project Water transported by the Steam Suppliers Facilities to The Geysers Terminus or other mutually accepted location(s), no later than thirty (30) days following completion of the Project construction.

5.3.2 Division of Project Water. Operator shall deliver the available Project Water in amounts generally consistent with the provisions contained in subsections 4.2.1 and 4.2.2, on a continuous basis, and in accordance with instructions as to deliveries or exchanges to which the Parties may agree from time to time.

5.3.3 Metering of Project Water. Operator shall operate and maintain in accurate working order metering devices properly equipped and located for the measurement of the Project Water to be delivered hereunder. The Parties shall have access to inspect and test such equipment at all reasonable times, but readings, calibrations, adjustments, repair and other maintenance thereof shall be conducted by Operator.

5.4 Suspension of Operations. The Parties acknowledge that the injection of Project Water as a means of augmenting The Geysers geothermal reservoir is a process which may or may not achieve the desired results, or which may have effects beyond the contemplation of the Parties. Therefore, the Parties hereto may individually or jointly suspend delivery or acceptance of Project Water if at any time during the term of this Agreement a State or Federal agency concludes that the injection of Project Water is causing significant adverse health, safety or environmental effects, or if a Party concludes that the operations are causing interference with its steam production or having adverse effects upon its geothermal facilities, or if contractual or economic conditions make continued operations impractical. Any Party may continue to suspend operations hereunder until such time as the cause can be remedied.

6. ALLOCATION AND PAYMENT OF COSTS

6.1 General Rules. Except as otherwise provided herein, all costs and expenses incurred pursuant to the terms and provisions of this Agreement and which relate directly to the Steam Suppliers Facilities shall be shared in proportion to the percentage interest of each Party, as specified in Section 4.1 herein.

6.2 Payment. Operator shall endeavor to bill the non-operator Party on or before the last day of each month for its percentage interest of the actual Operation and Maintenance Work costs for the preceding month. Such bills will be accompanied by statements that identify all charges and credits. Any unusual charges or credits shall be separately identified and fully described in detail. The non-operator Party shall pay its percentage interest of all bills within fifteen (15) days after receipt. If payment is not made within such time, the unpaid balance shall bear interest monthly at the prime rate quoted by the Bank of America NT & SA plus one and one-half percent (1 1/2%) per annum or the maximum contract rate permitted by the applicable usury laws of the State of California, whichever is the lesser, plus attorney's fees, court costs, and other costs incurred in connection with the collection of unpaid amounts.

6.3 Advances and Payments by Non-Operator. Operator may require the non-operator Party to advance its share of the estimated cash outlay for the succeeding month's operation. Operator shall adjust each monthly billing to reflect advances received from the non-operator.

6.4 Adjustments. Payment of any such bills shall not prejudice the right of the non-operator Party to protest or question the correctness thereof; provided, however, all bills and statements rendered to the non-operator Party by Operator during any calendar year shall conclusively be presumed to be true and correct after twenty-four (24) months following the end of any such calendar year, unless within such twenty-four (24) month period the non-operator Party takes written exception thereto and makes claim on Operator for adjustment. No adjustment unfavorable to Operator shall be made unless it is made within the prescribed period.

6.5 Special Allocations. The electricity costs for pumping the Project water shall be allocated separately from other Operation and Maintenance Work costs for each

month. Each Party's share of the pumping power costs shall be equal to its percentage of Project Water actually received for that month.

6.5.1 The value of supplying the power to operate the three Bear Canyon Pump Stations in order to deliver the Project Water shall be established from time to time by the Parties, and the agreed upon value of that power shall be that specified in Exhibit "A" of this Agreement.

6.5.2 Each Party's monthly share of Operation and Maintenance Work costs will include, as appropriate, a credit or debit for the value of such power calculated by multiplying the total kilowatt hours of power used by the Party by the value of power as described in Exhibit A herein.

6.5.3 Operations and Maintenance Work costs other than pumping power costs shall continue to be allocated based on each Party's percentage interest as specified in Section 4.1

6.5.4 NCPA shall pay for all of the costs up to \$2.5 million (Two Million Five Hundred Thousand Dollars) to purchase and install the SEGEP Phase II Facilities described in Section 1.8, as partial consideration for Calpine transferring and releasing to NCPA of a portion of Calpine's Project Water. Notwithstanding the foregoing sentence, the non-power Operations and Maintenance Work costs to operate and maintain these facilities will be allocated based on each Party's percentage interest as specified in Section 4.1.

6.5.5 As further consideration for Calpine transferring to NCPA a portion of Calpine's Project Water, NCPA will pay Calpine \$450,000 (Four Hundred Fifty Thousand Dollars) upon the effective date of this Agreement.

6.6 Commingling of Funds. No funds received by Operator under this Agreement need be segregated or maintained by it as a separate fund, but may be commingled with its own funds.

6.7 Audits. The non-operator Party, upon notice in writing to Operator, shall have the right to audit Operator's accounts and records relating to this Project for any calendar year within the twenty-four (24) month period following the end of such

calendar year; provided, however, the making of an audit shall not extend the time for taking written exception to and making adjustments of accounts as provided for above. The non-operator Party shall make every reasonable effort to conduct joint or simultaneous audits in a manner that will result in a minimum of inconvenience to the Operator. The audit shall not be conducted more than once a year without prior approval of the Operator.

7. ABANDONMENT AND RESTORATION

Upon final termination of this Agreement, each Party shall be responsible for a share of the costs and expenses involved in removing or decommissioning the Steam Suppliers Facilities and SEGEP Phase II Facilities, less any salvage value. The Operator shall calculate each Party's percentage share of such abandonment costs based on the total amount of water taken by each Party as a percent of total Project Water delivered by LACOSAN during the term of this Agreement.

8. RIGHTS RESERVED BY ALL PARTIES

8.1 Access to Project. Each Party shall at all times during the term hereof make reasonable efforts to provide for the other Party to have reasonable access to the Steam Suppliers Facilities and SEGEP Phase II Facilities, including facilities under construction, and to all data and documents concerning current Operation and Maintenance Work affecting any Steam Suppliers Facilities and SEGEP Phase II Facilities.

8.2 Right to Inspect Books and Records. The non-operating Party shall at all reasonable times have the right to inspect Operator's books and accounts relating to operations hereunder.

8.3 Right to Audit. The non-operating Party shall have the right to audit Operator's books and accounts pertaining to operations in accordance with the provisions of Section 6.7.

9. TAXES

9.1 Property Taxes. Each Party shall be responsible for payment of the real and personal property taxes assessed upon its interest in the property used or held by Operator for operations hereunder. If the property should be assessed as a unit, the Operator shall prepare and file all property tax returns and shall bill the non-operating Party on the basis of its respective share of the portion of the property that is subject to taxation. Such billings shall be paid at least 10 days prior to the dates on which the tax payments are due. At the request of either Party, the Operating Committee shall take responsibility for conducting discussions with the proper taxing authorities relating to the assessment and taxation of such property and shall assist in resolving disputes over property tax assessments.

9.2 Individual Withdrawal. Should either Party withdraw from this Agreement pursuant to Section 13, Individual Withdrawal, such Party will be required to pay a prorated share of property taxes attributable to its percentage interest for the tax year in which the Party withdraws from this Agreement. The withdrawing Party will not be required to pay property taxes for the remaining duration of this Agreement.

9.3 Other Taxes. Each Party shall be individually responsible for any taxes levied or assessed on potential or actual generation increases or reduction of decline rates due to the injection of Project Water into each Party's respective geothermal property.

10. INSURANCE

10.1 Worker's Compensation. Operator shall procure and maintain, for the benefit of both Parties, Worker's Compensation Insurance required by the State of California. If it qualifies, Operator may elect to be a self-insurer with respect to Worker's Compensation Insurance. In either case Operator may charge the other Party its share, as specified in Section 4.1, of the actual cost of the premiums for such insurance.

10.2 Other Insurance. Operator shall procure and maintain such other insurance for the benefit of the Parties as may be required by the Operating Committee. The net premiums for such insurance shall be charged to each Party based on its interest as specified in Section 4.1 and paid pursuant to the terms in Section 4.1.

11. LIABILITY AND INDEMNIFICATION

Except for the failure to make monetary payments as required by this Agreement, and except for damage resulting from a breach of this Agreement, willful misconduct, gross negligence, conscious disregard or breach of fiduciary obligation, (a) no Party, nor any of its members, directors, members of its governing body, officers or employees shall be liable to any other Party for any loss or damage resulting from, or in any way related to, the performance or nonperformance of its obligations under this Agreement, and (b) any and all liability to third parties and any liability arising from the consequence of any violation or alleged violation of permit, statutes, ordinances, orders, rules or regulations of any governmental entity arising out of the performance of this Agreement shall be shared among the Parties in proportion to the percentage interest set forth in Section 4.1 of this Agreement.

12. OBLIGATIONS AND RELATIONSHIPS OF THE PARTIES

12.1 Best Efforts. Each Party shall use its best efforts and work diligently, in good faith, and in a timely manner, to carry out the duties and obligations imposed by this Agreement.

12.2 Individual Liability. The duties, obligations and liabilities of the Parties shall be several and not joint or collective and nothing contained herein is intended to create a partnership, joint venture, association, or trust among the Parties. Each Party shall be responsible only for its obligations as specified herein, and shall be liable only for its percentage interest as defined in this Agreement in Section 4.1.

12.3 No Agency. Except as expressly provided for in this Agreement or other Project agreements, no Party shall be the agent of or have the right or power to bind another Party.

13. INDIVIDUAL WITHDRAWAL

13.1 Notice of Withdrawal. Except as otherwise provided in Section 13.2 below, after the expiration of three (3) years from the commencement of operations hereunder, a Party shall have the right, upon two (2) years advance written notice, to

withdraw from this Agreement by assigning and transferring in writing all its right, title and interest in the Project to the remaining Party that does not then wish to withdraw.

13.2 Effect of Assignment. Any assignment made as a result of a withdrawal by a Party pursuant to this Section 13 shall not relieve the withdrawing Party from any obligation or liability incurred or created prior to the date that the notice is received, including but not limited to the obligations set forth in Section 7.1 of this Agreement, and provided further that any and all interests created out of such withdrawing Party's interest shall from and after the date of such assignment be subject to the terms of this Agreement and shall be chargeable with the pro rata portion of all expenses thereunder in the same manner as if such interest were a working interest. The right of a withdrawing Party to any benefits subsequently accruing hereunder shall cease upon the effective date of the withdrawal. The withdrawing Party shall be relieved of all obligations and liabilities that arise subsequent to the effective date of the withdrawal.

14. ASSIGNMENTS

No Party shall have the right to assign, either in whole or in part, any of the rights, duties or obligations related or imposed under this Agreement without the prior written consent of the other Party, and said consent shall not be unreasonably withheld, except to the other Party to this Agreement or to a subsidiary, affiliate or the other party succeeding to all or substantially all of the Geysers geothermal interests of that Party provided that such subsidiary, affiliate or succeeding party assumes the assigning Party's obligations hereunder in writing. No sale or assignment as between the Parties shall relieve the assigning Party of any duties or obligations which accrued prior to the effective date and time of such sale or assignment.

15. TERMINATION

The Parties may jointly terminate this Agreement at any time during the term hereof by the unanimous written consent of the Parties.

16. DISPUTE RESOLUTION

16.1 Mediation. If a dispute arises from or relates to this Agreement, or breach thereof, and if such dispute cannot be settled through negotiation, the Parties agree to first

try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA").

16.2 Arbitration. If the Parties are unable to resolve the dispute within thirty (30) days after service of the mediation request, any Party may serve on the other Party a demand for arbitration. Any dispute shall be subject to arbitration under the Commercial Arbitration Rules of the AAA as amended and supplemented by the terms of this Section. The demand shall set forth the nature of the dispute, the amount involved, the remedy sought, and the locale requested for the arbitration hearing (the "Hearing"). Any demand or a counterclaim shall be served within twenty (20) days after service of the demand for arbitration, and shall contain the same information required by this Section 16.

16.3 Selection of Arbitrator. If the Parties cannot agree on an arbitrator, they shall select the arbitrator from a list of five arbitrators experienced in complex engineering, construction or contract disputes, to be submitted to the Parties by the AAA. Each Party shall be entitled to strike two names from such list and the last name shall be the arbitrator. The Parties shall draw lots to determine the order in which they strike the names. Either Party may request the AAA to disqualify an arbitrator for bias, personal or financial interest, or relationship with any Party, pursuant to the rules of the AAA.

16.4 Discovery. Each Party shall have the right to limited discovery from the other Party as follows: (a) each Party shall be entitled to demand the production, no later than fifteen (15) days before the Hearing, of any documents the other Party intends to rely upon at the Hearing for its case-in-chief, and any documents which refer or relate to the matters at issue in the Arbitration; (b) either Party may demand production, no later than ten (10) days before the Hearing, of the list of witnesses the other Party intends to call at the Hearing for its case-in-chief, together with a brief description of the testimony of each witness; and (c) either Party shall be entitled to take a total of three (3) days of depositions of the other Party's employees or other witnesses, which may be extended only for good cause. Any dispute over discovery shall be submitted to the arbitrator for decision.

16.5 Pre-hearing Conference. The arbitrator shall convene a pre-hearing conference at least ten (10) days before the Hearing to determine procedures for the Hearing, including evidence to be submitted, evidentiary objections, length of the Hearing and other matters.

16.6 Hearing Location and Time. The Hearing shall begin not later than ninety (90) days after service of the demand or cross-demand for arbitration, whichever is later. The Hearing shall be held at a location mutually agreed by the Parties. If the Parties are unable to agree Santa Rosa shall be the hearing locale. The Hearing shall proceed under the rules and procedures of the AAA or as mutually agreed by the Parties.

16.7 Decision. The arbitrator's decision shall be rendered within thirty (30) days of the submission of all evidence. The decision shall be final and binding on the Parties and their successors, and may be confirmed in any competent Court having jurisdiction. The arbitrator may direct specific performance and may award other equitable relief, but the arbitrator is not empowered to award punitive damages, treble damages or other damages in excess of actual damages, except as indemnification under Section 11 "Liability and Indemnification" of damages owing to a third party.

16.8 Interest. The prevailing Party shall be entitled to interest, compounded monthly, on the net amount of the award, at the then-current prime lending interest rate used by the Bank of America, plus three (3) percentage points. The interest shall accrue from the date the arbitration request under Section 16.2 "Arbitration" is served through the date the award is paid.

16.9 Confidentiality. Notwithstanding anything to the contrary contained in this Section 16, the Parties shall execute an agreement with the mediator or the arbitrator, which shall (a) require the mediator or the arbitrator to treat any information conveyed to them as confidential, and prohibit disclosure of any confidential or trade secret information; (b) make California Evidence Code Section 1152.5 applicable to the mediation or arbitration; and (c) for the arbitration, prohibit any ex parte contacts with the arbitrator without the explicit consent of the other parties, unless the arbitrator initiates the contacts and they are made part of the record. Any information presented at the mediation or arbitration shall be neither admissible nor discoverable in any regulatory proceeding or in any action, as provided in Section 1152.5 of the Evidence Code.

16.10 Party Representative. Each Party shall have in attendance throughout the mediation and arbitration proceedings a designated representative who has: (a) sufficient authority to negotiate and recommend compromise within the full monetary range of the dispute; and (b) little or no direct involvement in the dispute.

16.11 Costs. The prevailing Party shall be entitled to its costs incurred in connection with the procedures described in this Section 16.

16.12 Statute of Limitations. The service of an arbitration request under Section 16.2 shall suspend the running of any statute of limitations applicable to the dispute for which the negotiation request is made. The Parties shall jointly take any action required in order to effectuate the suspension.

16.13 Exclusivity. The procedures specified in this Section 16 shall be the sole and exclusive procedures for the resolution of disputes. However, a Party may seek a preliminary injunction or other preliminary judicial relief in order to avoid great or irreparable injury, or waste to the extent otherwise permitted by law. Despite such action, the Parties shall continue to participate in good faith in the procedures specified in this Section 16.

17. FORCE MAJEURE

If as a result of force majeure, which means acts of God, strikes, lockouts, or other disturbances, acts of the public enemy, wars, insurrections, riots or acts of terrorism, epidemics, landslides, earthquake, severe weather conditions, fires, storms, floods, washouts, or acts of restraint by any governmental agency or any other cause whether similar or dissimilar to the foregoing enumerated causes not within the control of the Party or Parties claiming suspension, any Party is unable to carry out its obligations under this Agreement wholly or in part, such Party shall give prompt written notice to the other Party of the force majeure with reasonably full particulars concerning it. Thereupon, except for obligations to make payment of money, the obligation of the Party giving the notice, so far as it is affected by the force majeure, shall be suspended to the extent of and during, but no longer than, the continuance of the force majeure; provided the non-performing Party promptly and persistently pursues all the alternatives reasonably available to remedy its ability to perform and the non-performing Party resumes performance of its obligations as soon as possible. The other Party shall also be relieved of its obligations to the extent such Party or other Party cannot perform due to such event of force majeure.

18. COMPLIANCE WITH LAWS

The Parties shall comply with all applicable federal, state, and local laws and the rules and regulations of any federal, state, local or other government agency having jurisdiction over the activities and operations conducted pursuant to this Agreement.

19. NOTICES

19.1 Addresses. Any and all notices or other communications required or permitted by this Agreement, or by the law, to be delivered to, served on, or given to either Party to this Agreement shall be in writing and shall be deemed properly delivered when personally delivered to the Party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, addressed to the parties as follows:

<u>Party</u>	<u>Address</u>
NCPA	P.O. Box 663 Middletown, CA 95461 Attn. Steam Field Superintendent
	With a copy to: General Manager Northern California Power Agency 180 Cirby Way Roseville, CA 95678
Calpine	10350 Socrates Mine Road, Middletown, CA 95461 Attn. VP-Geothermal Resource Management

19.2 Changes. Any Party hereto may change its address for the purpose of this Section 19 by giving written notice of such change in the manner prescribed by this Section 19 to the other Party to this Agreement.

20. ENTIRE AGREEMENT

This document represents and contains the entire Agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior oral and written agreements and understandings including the first amendments and second, except for the Project Construction Financing Agreement and the Joint Operating Agreement between LACOSAN, NCPA, and Calpine. No promises, agreements, or warranties additional to this Agreement shall be deemed to be a part hereof, nor will any alteration, amendment or modification hereto be effective unless confirmed in writing by the Parties or their duly authorized agents.

21. SEVERABILITY

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

22. WAIVERS AND AMENDMENTS

No waiver shall be deemed to have been made by any Party of any of its rights under this Agreement unless the same shall be in writing signed on its behalf by a person authorized to make such a waiver. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Further, this Agreement shall not be amended or modified except by an instrument in writing signed by the Party against whom enforcement is sought.

23. NO DEDICATION OF FACILITY

Any undertaking by a Party under any provision of this Agreement is rendered strictly as an accommodation and shall not constitute the dedication of such Party's facilities to the public, to any other Party, or to any third party.

24. THIRD PARTY BENEFICIARIES

None of the promises, rights, or obligations contained in this Agreement shall ensure to the benefit of any person or entity not a Party to this Agreement, other than the rights of members of NCPA, which derive from their membership in NCPA.

25. DEFAULT

If any Party to this Agreement defaults in respect to any of its obligations under this Agreement, the non-defaulting Party shall notify the defaulting Party in writing, setting out in what respects the non-defaulting Party deems the defaulting Party to be in such default. If within thirty (30) days after receipt of such notice, the defaulting Party has corrected the default alleged by the non-defaulting Party, the defaulting Party shall not be deemed in default. Neither the service of said notice, nor the doing of acts by the defaulting Party aimed to correct any or all of the alleged defaults, shall be deemed an admission or presumption that the defaulting Party has failed in any respect to perform its obligations hereunder. If the defaulting Party fails to correct all or any of the alleged defaults within the allowable time, the non-defaulting Party, may proceed in accordance with Section 16.

26. ATTORNEY'S FEES

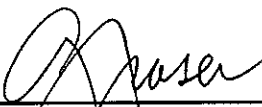
If any action at law or in equity, including arbitration pursuant to Section 16 above, is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements, in addition to any other relief to which such Party may be entitled, unless otherwise provided in this Agreement.

27. COUNTERPARTS

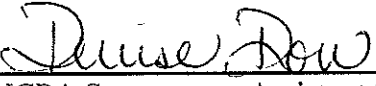
This Agreement may not be executed in counterparts and shall be deemed to constitute a single Agreement when executed by both parties on the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

NORTHERN CALIFORNIA POWER
AGENCY


By:  Date: 9/18/03
Name: George Fraser
Title: General Manager

Witness:

By: 
NCPA Secretary or Assistant Secretary

Approved as to Form:

DENNIS W. DE CUIR
A Law Corporation

By: 
Dennis W. De Cuir

CALPINE CORPORATION

By: W.T. Bosh Date: 9/8/03

Name:

Title: VP, Geothermal Resource Management

Witness:

By: Denny Little
Regional Power VP, Geothermal

EXHIBIT A

(effective as of April 1, 2003)

Statement of the Value of the Pumping Power delivered to the Bear Canyon Pump Stations as part of the operation of the Southeast Geysers Effluent Pipeline Project

The pumping power at Bear Canyon shall be provided as follows:

NCPA will provide all project power to operate the three Bear Canyon Pump Stations at \$40/Mwhr for the period April 1, 2003 through December 31, 2006. Under emergency conditions, when NCPA is incapable of supplying power, NCPA may request that Calpine temporarily supply the power needed until NCPA's capability has been restored.

Calpine and NCPA will jointly develop a mutually acceptable plan for either or both Parties to provide the Bear Canyon Pumping Stations power requirements after December 31, 2006.

STEAM SUPPLIERS JOINT OPERATING AGREEMENT SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT

THIS THIRD AMENDMENT OF THE STEAM SUPPLIERS JOINT OPERATING AGREEMENT SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT (Agreement), is entered into and dated this 6th day of November 2007, by and between NORTHERN CALIFORNIA POWER AGENCY, a California joint powers agency and public entity, with its principal executive offices at 180 Cirby Way, Roseville, California 95678 ("NCPA") and CALPINE CORPORATION, a Delaware corporation, with its principal executive offices at 50 West Fernando Street, San Jose, California 95113 ("Calpine referred to herein individually as "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the Parties originally entered into a STEAM SUPPLIERS JOINT OPERATING AGREEMENT SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT on July 25, 1995 that established and provided for certain terms and conditions relating to their participation in and responsibility for the operation of that portion of the Southeast Geysers Effluent Pipeline Project (Project) which commences at the Point-of-Delivery and terminates at The Geysers Terminus; and

WHEREAS, the Parties first amended that STEAM SUPPLIERS JOINT OPERATING AGREEMENT on December 20, 2001 to recognize that Calpine had acquired the geothermal interests of PG&E and Unocal at The Geysers and therefore owned a 2/3 interest in all the Steam Suppliers Facilities of the Project, to recognize that NCPA had entered into an agreement with Lake County Sanitation District (LACOSAN) to fund Basin 2000 Facilities to deliver additional effluent to the Project, and to provide how the Project Water was to be henceforth distributed among other issues; and

WHEREAS, the Parties more recently approved the AMENDED AND RESTATED STEAM SUPPLIERS JOINT OPERATING AGREEMENT SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT on September 18, 2003 to recognize that Calpine has transferred to NCPA a portion of its interest in the Project and a portion of its rights to Project Water for specific considerations provided to Calpine by NCPA, resulting in the Parties each having a 50 percent interest in the ownership of all Steam Supplier Facilities; and

WHEREAS, NCPA now has an approved reservation request from PG&E for California Solar Initiative ("CSI") incentives to support a proposed 999 kw PTC_{AC} rated solar array at the Southeast Geysers Effluent Pipeline Project's ("SEGEP") Southeast Pump Station ("SEPS"), the solar array henceforth referred to as the Solar Pumps Project ("SPP"), and that NCPA intends to utilize its governmental agency status (not available to Calpine) to obtain favorable financial incentives (CSI PBIs at a higher-than-taxable-entity rate and CREB financing) to permit NCPA to construct, operate and obtain a return on its investment that approximates its cost of capital for a just-under 1 mW PTC_{AC} rated solar facility; and

WHEREAS, The SPP facility will hedge approximately 30% of the PG&E electricity costs for operating the SEPS, and that NCPA as the Host Customer for the PG&E meter for SEPS is the only eligible party for CSI incentives, and must be owner of the solar facility to minimize levelized costs of electricity from the SPP, and because of its non-federally taxable and non-profit status and thus low cost of capital, NCPA is willing to make the approximately \$8.3 million capital investment required for the ground based, tilted, single axis tracking solar facility; and

WHEREAS, NCPA will require the collection of the savings in PG&E electricity costs, and the ownership of any Renewable Energy Credit ("REC") attributable to the array over a period of time (the capital recovery period or "CRP"), in order to amortize its large projected capital investment, and that after that CRP is completed, NCPA is willing to share with Calpine the future hedging benefit (but not any RECs created after the CRP) of the solar facility at no capital cost to Calpine.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Parties hereto agree to modify the existing AMENDED AND RESTATED STEAM SUPPLIERS JOINT OPERATING AGREEMENT SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT as follows:

Add under 1. DEFINITIONS

1.9 "Solar Pumps Project (SPP)" facilities shall mean the solar array owned by NCPA to be installed at the SEPS for use by the Project to reduce electricity costs charged the Parties by PGE.

Replace the introduction to existing Section 6.5 with the following:

"Special Allocations. The electricity costs for pumping Project Water shall be allocated separately from other Operation and Maintenance Work costs for each month. Each Party's share of the pumping power costs shall be equal to its percentage of Project Water actually received for that month, with the exception that the pumping power costs incurred at SEPS are to be calculated in the manner described in Section 6.5.6."

Replace existing Section 6.5.3 with the following:

"Operations and Maintenance Work costs other than pumping power costs shall continue to be allocated based on each Party's percentage interest as specified in Section 4.1, subject to the adjustments described in Sections 6.5.7 and 6.5.8."

Add a new section, as follows:

"Section 6.5.6 Once the SPP is operational at SEPS the CRP will start and from that point in time (and until the end of the CRP) Calpine's share of the cost of SEPS electricity is to

be calculated as the product of the percentage of water received during the monthly billing periods times a "calculated" PG&E bill (the "CBill") rather than the actual PG&E bill. This CBill will be calculated by taking hourly data from the PG&E meter and adding hourly production data from the SPP's Production Monitoring and Reporting Service ("PMRS") and computing the cost of electricity for the SEPS as if all electricity consumed at the SEPS facility had been supplied by PG&E. Under current E-20P billing, this would result in Time Of Use ("TOU") totals for energy and capacity in kwh and kw, respectively, multiplied by the appropriate rate for each category, plus power factor adjustment and CEC tax. A sample CBILL is attached as an Exhibit B to this Amendment. The CBill will be calculated using the actual PG&E rate schedule in force at SEPS for each monthly billing period. If PG&E makes any change in the rate schedule at SEPS solely because of the production from the SPP (i.e., a less or more costly rate schedule is applied to SEPS because of the reduced purchases of electricity from PG&E due to the production provided by the SGP), Calpine and NCPA agree to make an appropriate adjustment to the method of calculating the CBill so that Calpine's share of SEPS electricity expenses is equivalent to what it would have incurred absent the existence of the SPP. Both parties agree to share in any changes in PG&E costs at SEPS that occur in the general course of PG&E's business, unrelated to the use of the SPP. Starting in year 26 (after the CRP), the allocation of the PG&E electricity bill at SEPS will revert back to the pre-SPP calculation, simply using the actual PG&E bill."

Add a new section, as follows:

"Section 6.5.7 None of the Operation and Maintenance Work costs of the SPP solar array incurred by NCPA during the CRP are to be allocated to Calpine. Starting at the end of the CRP, the SPP Operation and Maintenance Work costs are to be allocated based on each Party's percentage interest in the Project as specified in Section 4.1 and if disposition of the SPP occurs after the CRP (presumably at the termination of SEGEP), that will be done in accordance with Section 7 Abandonment and Restoration. If SEGEP termination occurs before the completion of the CRP, NCPA will be wholly responsible for all SGP re-deployment, dismantling and/or disposal costs incurred. It is agreed and acknowledged that, as between the parties, NCPA has sole control over the selection, design, construction, and testing of the SPP, including the retention of qualified design professionals and contractors to construct the SPP, and will own the SPP. Therefore NCPA is solely responsible for acquiring warranty and other contractual protections related to same. Should the SPP be defective in design or manufacture; fail prematurely; or become obsolete prior to expiration of the CRP, NCPA shall be solely responsible for the repair or replacement of the unit, or any failed part associated therewith, at its sole cost, and Calpine shall not be responsible for any repair or replacement except to the extent the defect, premature failure, or obsolescence is caused by Calpine's active negligence. NCPA is solely responsible for keeping the SPP project (and related improvements) free of mechanic's and materialmen's liens which arise from the design or construction of the SPP, and NCPA is solely responsible for any and all costs, including attorney fees), necessary for the defense, and timely removal, of those liens recorded against the real property or personal property of the Parties, or each of them. NCPA shall defend, hold harmless and indemnify Calpine from any all claims and alleged damages by any person, both in law and equity, including attorneys fees, which arise from or are associated with the design and construction of the SPP, except to the extent caused by the active negligence of Calpine."

Add a new section, as follows:

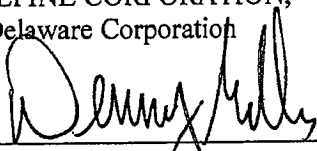
"Section 6.5.8 Calpine is not to be charged for any increased incremental insurance premiums created by the SPP during the CRP. After the CRP is completed, all insurance premiums will be allocated as normally provided for in Section 6.5.3".

Except as expressly described herein this Third Amendment, the "Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project" remains in full force and effect.

The signatories represent that they are authorized to sign this Amendment on behalf of the party for whom they sign, and have executed it on the dates as shown.

CALPINE CORPORATION,
A Delaware Corporation

By



Printed Name: Dennis J Gilles

Title: Senior Vice President

Date 11-06-07

NORTHERN CALIFORNIA POWER AGENCY
a California joint powers agency and public entity

by



Printed Name: Murray G. Grande

Title: Geothermal Facility Manager

Date 11/7/07

Exhibit B Example CBill

Service ID # 8432194005 WTR PUMPING STATION 2125HP
 Rate Schedule: E20P Service to Custs with Max Demands of 1000 K or More
 Billing Days: 30

Meter # X90696

PG&E CBILL

EXAMPLE

Blue cells are data input cells

Dates of Bill period		number of days in bill	Prior Read	Current Read	Difference	Meter Constant	Usage
6/12/2009 -	7/11/2009	30					
PG&E Data	Total kwh		39778	40282	504	1200	604,800
PG&E Data	Total kvars		24032	24454	422	1200	505,400
PMRS Data							
6/12/2009 -	6/30/2009						76,000
Peak							53,200
Partial Peak							0
Off-Peak							129,200
Subtotal							
7/1/2009 -	7/11/2009						44,000
Peak							30,800
Partial Peak							0
Off-Peak							74,800
Subtotal							
Total PMRS	kwh						120,000
Peak							84,000
Partial Peak							
Off-Peak							204,000
Subtotal							
Total kwh						810,000	808,800
Total Bill	calculated						\$90,691.99

Exhibit B Example CBIII

6/12/2009 -		6/30/2009						
Season:	Summer	PG&E Energy	PMRS Energy	Total Cbill Energy	Rate	Amounts	C BILL Amounts	
Peak		11,400	76,000	87,400	\$0.12385		\$10,824.49	
Partial Peak		50,920	53,200	104,120	\$0.09183		\$9,561.34	
Off-Peak		321,480	0	321,480	\$0.06527		\$20,983.00	
Totals		383,800	129,200	513,000				\$41,368.83
Season:	Summer	PG&E Capacity	PMRS Capacity	Total Cbill Capacity				
Peak		200	1,000	1,200	\$11.88000		\$14,256.00	
Partial Peak		1,308	1,308	1,308	\$2.72000		\$3,557.76	
Off-Peak		1,308	1,308	1,308	\$5.04000		\$6,592.32	
Totals							\$24,406.08	
Capacity charge Allocation to this period of bill						0.633333333	\$15,457.18	
Meter charge allocation						\$788.50	0.633333333	\$499.38
Total Charges this period before CEC tax and PF adjustment								\$57,325.40
CEC tax this period							Rate \$/kwh	\$0.00022
								\$112.86
7/1/2009 -		7/11/2009						C BILL Amounts
Season:	Summer	PG&E Energy	PMRS Energy	Total Cbill Energy	Rate	Amounts		
Peak		6,600	44,000	50,600	\$0.12385		\$6,266.81	
Partial Peak		29,480	30,800	60,280	\$0.09183		\$5,535.51	
Off-Peak		186,120	0	186,120	\$0.06527		\$12,148.05	
Totals		222,200	74,800	297,000				\$23,950.37
Season:	Summer	PG&E Capacity	PMRS Capacity	Total Cbill Capacity				
Peak		200	1,000	1,200	\$11.88000		\$14,256.00	
Partial Peak		1,308	1,308	1,308	\$2.72000		\$3,557.76	
Off-Peak		1,308	1,308	1,308	\$5.04000		\$6,592.32	
Totals							\$24,406.08	
Capacity charge Allocation to this period of bill						0.366666667	\$8,948.90	
Meter charge allocation						\$788.50	0.366666667	\$289.12
Total Charges this period before CEC tax and PF adjustment								\$33,188.39
CEC tax this period							Rate \$/kwh	\$0.00022
								\$65.34
number of days in bill		Daily meter charge primary voltage						
Meter charge		30	\$26.28337		\$788.50			
Total Bill								
Total kwh				810,000				
Total kvars				506,400				
Power Factor measured				85.0%				
power factor penalty		\$0.00005		\$/kwh% under 85%				
Total Bill				\$90,691.99				



June 26, 2008

Mr. Dennis Gilles
Senior Vice President, Calpine Corporation
10350 Socrates Mine Road
Middletown, CA 95409


Re. Amendment of Exhibit A (Power Supply and Calculation of Pumping Power Value of the Southeast Geysers Effluent Pipeline Project) of the letter agreement between Calpine Corporation and NCPA dated December 20, 2006.

Dear Dennis:

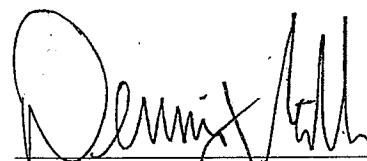
Pursuant to section 22 of the SEGEP Agreement, which allows for revisions to the Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project by an instrument in writing, attached is NCPA's proposed amended Exhibit A to the referenced agreement. This Amended Exhibit A is necessary because the current agreement as contained in a letter agreement dated June 4, 2007 as to the supply of power to the Bear Canyon Pump Stations will expire on June 30, 2008. NCPA's proposed Amended Exhibit A is to be implemented effective July 1, 2008.

The proposed changes are to extend the term of Exhibit A for an additional 12 months, to run concurrent with the full term of the fiscal year beginning on July 1, 2008 and to increase the adjustment factor from \$5/MWhr to \$10/MWhr above the hourly weighted daily market prices for electricity as posted by the International Exchange (ICE) for North Path 15. In addition, once a quarter a Party is to have the option to temporarily provide the power needed to operate all three stations in order to better balance the amount of power it will supply to the amount of water it will receive that quarter.

If the above fairly represents your understanding of the conditions of this amendment, please sign as indicated and return.


James H. Pope
Northern California Power Agency

Date 3/1/08


Dennis Gilles
CALPINE CORPORATION

Date July 21, 2008

EXHIBIT A

(As amended by letter agreement dated June 4, 2008, effective as of July 1, 2008)

Power Supply and the Calculation of Pumping Power Value of the Southeast Geysers Effluent Pipeline Project

The Supply of Power to the Bear Canyon Pump Stations shall be as follows:

- 1). Calpine shall continue to normally supply the power needed to operate both Bear Canyon Pump Stations #1 and #2, while NCPA shall continue to normally supply the power needed to operate Bear Canyon Pump Station #3.
- 2). Both Parties will provide temporary backup power service to the other as needed if available. Such temporary period is not to exceed 45 calendar days without written acknowledgement and agreement.
- 3). By the 5th business day of the each month the Parties are to inform each other of the metered delivery of MWhrs to the Bear Canyon Pump Station(s) during the previous month. Emailed or FAXED transmission will be accepted.
- 4). On or about August 10, 2008, based on the July data, the daily meter readings automatically recorded at each pump station during the first third of August, and on the amount of water each Party has received so far and is expected to further receive during the quarter, NCPA (as Operator) is to inform Calpine which Party will need to begin on the 20th to temporarily supply all of the power needed to operate the Bear Canyon Pump Stations, and the number of days that it will need to continue to do so in order that the power it supplies during the quarter will better balance the amount of water it is expected to receive during the quarter. That Party is to have the option to either temporarily supply that additional power for that number of days before returning to its normal schedule of power supply, or to not do so and to instead simply continue its normal schedule of power supply. That decision is to be communicated to the other Party within 5 days of the notice by either E-mail or Fax.
- 5). This process is to then continue in each of the quarters ahead, with the opportunity for a temporary changes in power supply to begin on the 20th of the middle month of each quarter, or on the first business day after that date.

Calculation of the Value of the Pumping Power to be Supplied to the Bear Canyon Pump Stations

- 1).. For the period July 1, 2008 through June 30, 2009 the value of the electricity being supplied by the Parties to the Bear Canyon Pump Stations each month is to continue to be calculated by using the simple mathematical average of the hourly weighted daily market prices for electricity as posted by the International Exchange (ICE) for North Path 15, plus an adjustment factor of \$10/MWhr. In the event that CAISO implements MRTU, the value of the electricity being supplied by the Parties to the Bear Canyon Pump Stations each month will be calculated by using the simple mathematical average of the hourly weighted daily market prices for electricity at the NP15 EZ GEN Hub, plus an adjustment factor of \$10/MWhr
- 2). Any Party with an excess delivery of power, compared to its percentage of water received from the Project that month, will be credited for those excess MWhrs at the rate described above. That credit will be applied as part of the accounting of the total project expenses for that month, and the respective share of those expenses to be paid by each Party.
- 3). For the fiscal year beginning July 1, 2009 and thereafter, this method is to be either extended or modified by mutual written agreement, not less than 60 days before the end of the then current SEGEP fiscal year.



651 Commerce Drive
Roseville, CA 95678

(916) 781-3636

www.ncpa.com

June 1, 2009

Mr. Mike Rogers
Senior Vice President, Geothermal Region
Calpine Corporation
10350 Socrates Mine Road
Middletown, CA 95409

SUBJECT: Amendment of Exhibit A (Power Supply and Calculation of Pumping Power Value of the Southeast Geysers Effluent Pipeline Project) of the letter agreement between Calpine Corporation and NCPA dated June 26 2008.

Dear Mike:

Pursuant to section 22 of the SEGEP Agreement, which allows for revisions to the Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project by an instrument in writing, attached is NCPA's proposed amended Exhibit A to the referenced agreement. This Amended Exhibit A is necessary because the current agreement as contained in a letter agreement dated June 26, 2008 as to the supply of power to the Bear Canyon Pump Stations will expire on June 30, 2009. NCPA's proposed Amended Exhibit A is to be implemented effective July 1, 2009.

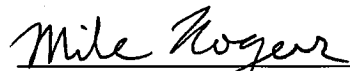
The proposed changes are to extend the term of Exhibit A for an additional Thirty Six (36) months, to run concurrent with the full term of the fiscal year beginning on July 1, 2009, and to modify the calculation of power to potentially include the new Bear Canyon Zero Booster Pump Station if agreed to by both Parties.

If the above fairly represents your understanding of the conditions of this amendment, please sign as indicated and return.



JAMES H. ROPE
General Manager
Northern California Power Agency

Date 6/1/09



MIKE ROGERS
Senior Vice President, Geothermal Region
CALPINE CORPORATION

Date 6/10/2009

Attachment: Exhibit A

EXHIBIT A

(As amended by Letter Agreement dated June 1, 2009, effective as of July 1, 2009)

Power Supply and the Calculation of Pumping Power Value of the Southeast Geysers Effluent Pipeline Project

The Supply of Power to the Bear Canyon Pump Stations shall be as follows:

1. Calpine shall continue to normally supply the power needed to operate both Bear Canyon Pump Stations #1 and #2, while NCPA shall continue to normally supply the power needed to operate Bear Canyon Pump Station #3.
2. Both Parties will provide temporary backup power service to the other as needed if available. Such temporary period is not to exceed forty-five (45) calendar days without written acknowledgement and agreement.
3. By the fifth (5th) business day of the each month, the Parties are to inform each other of the metered delivery of MWhrs to the Bear Canyon Pump Station(s) during the previous month. Emailed or FAXED transmission will be accepted.
4. On or about August 10, 2009, based on the July data, the daily meter readings automatically recorded at each pump station during the first (1st) third (3rd) of August, and on the amount of water each Party has received so far and is expected to further receive during the quarter, NCPA (as Operator) is to inform Calpine which Party will need to begin on the twentieth (20th) to temporarily supply all of the power needed to operate the Bear Canyon Pump Station, and the number of days that it will need to continue to do so in order that the power it supplies during the quarter will better balance the amount of water it is expected to receive during the quarter. That Party is to have the option to either temporarily supply that additional power for that number of days before returning to its normal schedule of power supply, or to not do so and to instead simply continue its normal schedule of power supply. That decision is to be communicated to the other Party within 5 days of the notice by either E-mail or Fax.
5. This process is to then continue in each of the quarters ahead, with the opportunity for temporary changes in power supply to begin on the twentieth (20th) of the middle month of each quarter or on the first (1st) business day after that date.
6. NCPA will be solely responsible to provide power for Bear Canyon Booster Pump Station Zero (BCZ)

Calculation of the Value of the Pumping Power to be Supplied to the Bear Canyon Pump Stations

1. For the period July 1, 2009 through June 30, 2012, the value of the electricity being supplied by the Parties to the Bear Canyon Pump Stations each month will be calculated by using the simple mathematical average of the hourly weighted daily market prices for electricity at the NP15 EZ GEN DA LMP .
2. Any Party with an excess delivery of power, compared to its percentage of water received from the Project that month, will be credited for those excess MWhrs at the rate described above. That credit will be applied as part of the accounting of the total project expenses for that month, and the respective share of those expenses to be paid by each Party.
3. For the fiscal year beginning July 1, 2012, and thereafter, this method is to be either extended or modified by mutual written agreement, not less than sixty (60) days before the end of the then current SEGEP fiscal year.
4. If both Parties agree, NCPA will receive credit for the power delivered to BCZ and that credit will be applied herein as part of the accounting of the total project expenses for that month, and the respective share of those expenses to be paid by each Party.



October 28, 2010

Mr. Mike Rogers
Senior Vice President, Geothermal Region
Calpine Corporation
10350 Socrates Mine Road
Middletown, CA 95461

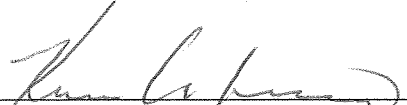
SUBJECT: Amendment of Exhibit A (Power Supply and Calculation of Pumping Power Value of the Southeast Geysers Effluent Pipeline Project) of the letter agreement between Calpine Corporation and NCPA dated June 1, 2009.

Dear Mike:

Pursuant to section 22 of the SEGEP Agreement, which allows for revisions to the Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project by an instrument in writing, attached is NCPA's proposed amendment to paragraph #1 of the "Calculation of the Value of the Pumping Power to be Supplied to the Bear Canyon Pump Stations" portion of Exhibit A to the referenced agreement. This amendment is now appropriate because the hourly weighted daily market prices for electricity at the NP15 EZ GEN DA LMP as reported by ICE are no longer reliably available and are now judged to be less representative than those prices made available from CAISO.

The change is proposed to become effective as of the first of October 2010 and to continue through the current term of Exhibit A which ends on June 30, 2012.


If the above fairly represents your understanding of the conditions of this amendment, please sign as indicated and return.



KEVIN CUNNINGHAM
Manager, Geothermal Facilities
Northern California Power Agency

Date 11-8-10

Attachment




f. 2nd MIKE ROGERS
Senior Vice President, Geothermal Region
CALPINE CORPORATION

Date 11/30/2010

Paragraph #1 in the section titled: "Calculation of the Value of the Pumping Power to be Supplied to the Bear Canyon Pump Stations" of Exhibit A of the "Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project" as most recently amended effective July 1, 2009 is replaced to read as follows:

"1. For the period October 1, 2010 through June 30, 2012, the value of the electricity being used by the Parties to the Bear Canyon Pump Stations each month will be calculated by using the simple mathematical average of the hourly weighted daily market prices for electricity at the CAISO Day Ahead TH NP15 GEN-APND."

 ATTACHMENT TO LETTER AGREEMENT OF 10-28-10
SIGNED BY KEVIN CUNNINGHAM OF NCPA 11-8-10
AND BY MIKE ROGERS OF CALPINE

**AMENDMENT TO THE
SECOND AMENDMENT AND RESTATEMENT OF THE
STEAM SUPPLIERS JOINT OPERATING AGREEMENT**

SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT (SEGEF)

THIS AMENDMENT (“**Amendment**”) to the Second Amendment and Restatement of the Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project (“**Agreement**”), is entered into and dated as of the 2nd day of March, 2018, by and between NORTHERN CALIFORNIA POWER AGENCY, a California joint powers authority and public entity (“**NCPA**”), and CALPINE CORPORATION, a Delaware corporation (“**Calpine**”), referred to herein individually as “Party” and collectively as the “Parties.”

RECITALS

A. WHEREAS, the Parties originally entered into a Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project on July 25, 1995, which established and provided for certain terms and conditions relating to their participation in and responsibility for the operation of that portion of the Southeast Geysers Effluent Pipeline Project (“**Project**”) which commences at the Point-of-Delivery and terminates at The Geysers Terminus; and

B. WHEREAS, the Parties first amended that Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project on December 20, 2001 to recognize that Calpine had acquired the geothermal interests of PG&E and Unocal at The Geysers and therefore owned a 2/3 interest in all of the Steam Suppliers Facilities of the Project, to recognize that NCPA had entered into an agreement with Lake County Sanitation District to fund Basin 2000 Facilities to deliver additional effluent to the Project, and to provide how the Project Water was to be distributed among other issues; and

C. WHEREAS, the Parties entered into the Agreement on September 18, 2003 to amend and restate certain terms and conditions relating to the Parties’ participation in the Project, re-allocate the Parties’ rights to the Project Water, and agree that each Parties’ share of the monthly electricity costs needed to pump the Project Water would be equal to its percentage of the Project Water actually received for that month; and

D. WHEREAS, Section 5.1.2 of the Agreement states that “[t]he Party required to supply the power to operate the three Bear Canyon Pump Stations in order to deliver the Project Water shall be established from time to time by the Parties”, Section 6.5 of the Agreement states that “[e]ach Party’s share of the pumping power costs shall be equal to its percentage of Project Water actually received for that month”, and Exhibit A of the Agreement (“**Exhibit A**”)

identified the Parties' agreed-upon statement of the value of the electricity that NCPA would provide to pump the Project Water, specifically that NCPA would provide all electricity to operate the three Bear Canyon Pump Stations at a set price for the period April 01, 2003 through December 31, 2006; and

E. WHEREAS, the Parties agreed by letters dated December 20, 2006 to amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and the value of the electricity used for that power supply; and

F. WHEREAS, the Parties agreed by letter dated June 26, 2008 to further amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and the value of the electricity used for that power supply; and

G. WHEREAS, the parties agreed by letter dated June 1, 2009 ("**2009 Letter Agreement**") to further amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and also to extend the term of Exhibit A for an additional 36 months; and

H. WHEREAS, between 2012 and the present, the Parties have agreed upon their relative responsibility for the electricity costs needed to operate the Bear Canyon Pump Stations in connection with the yearly budgeting process for Project operations and maintenance ("**O&M**") expenses, and have each year executed written agreements approving the Project's O&M budget (which includes line items for electricity costs for the Bear Canyon Pump Stations as well as the Calpine Share (as defined below)); and

I. WHEREAS, the Parties now wish to revise the terms of the Agreement to require that NCPA provide the entire power supply for the Bear Canyon Pump Stations except in outage situations, and that Calpine compensate NCPA for its relative share of such electricity costs at an agreed-upon index price.

AGREEMENT

THEREFORE, in consideration of the promises and the mutual agreements contained herein, the Parties agree as follows:

1. **Definitions.** Capitalized terms used and not defined herein shall have the meanings set forth in the Agreement.
2. **Term and Termination.** The term of Exhibit A as revised by this Amendment shall begin on the date this Amendment is executed and extend for two (2) years from that date; provided that either Party in its sole discretion may elect to revert to the prior terms of Exhibit A (as set forth in the 2009 Letter Agreement) by providing thirty (30) written notice to the other Party.

3. Supply of Power to the Bear Canyon Pump Stations. Exhibit A to the Agreement is replaced and superseded in its entirety with the following:

The supply of electricity to power the Bear Canyon Pump Stations shall be as follows:

- A. NCPA shall supply the electricity needed to operate Bear Canyon Pump Stations #1, #2, and #3 (collectively, the “**Bear Canyon Pump Stations**”).
- B. If NCPA is temporarily unable to provide electricity to power the Bear Canyon Pump Stations, Calpine will provide backup power service to the Bear Canyon Pump Stations as needed and as available.
- C. On or about the 10th day of each calendar month, NCPA (as Operator) shall provide Calpine with a calculation of the electricity costs to supply the Bear Canyon Pump Stations during the prior month. NCPA shall calculate Calpine’s responsibility for such costs (“**Calpine’s Cost Responsibility**”) using the following formula:

$$\text{Calpine's Cost Responsibility} = ((\text{Electricity Usage} \times \text{Average Supply Cost}) \times \text{Calpine Share}) + (\text{Electricity Usage} \times \text{Cost Adder})$$

For purposes of this calculation, the following definitions apply:

“**Electricity Usage**” is the amount of electricity (in kWhs) that NCPA used to supply the Bear Canyon Pump Stations during the prior calendar month, less the amount of electricity (if any, in kWhs) that Calpine provided as temporary backup power service to the Bear Canyon Pump Stations during the prior calendar month.

“**Average Supply Cost**” is the average Locational Marginal Price (“**LMP**”) for the Geysers Plant 1, Unit 2 LMP node during the prior calendar month.

“**Calpine Share**” is the percentage of Project Water that Calpine received in the prior calendar month (as expressed in decimal terms (0.00)). For instance, if Calpine received 40% of the Project Water in a prior month, the Calpine Share for that month would be 0.40.

“**Cost Adder**” is equal to \$0.00750/kWh (i.e. \$7.50/MWh).

- D. To the extent the Parties disagree as to Calpine's Cost Responsibility for any particular month, the Operating Committee shall attempt to resolve such disagreement. If the Operating Committee is unable to resolve the disagreement, the Parties shall use the dispute resolution procedures set forth in Section 16 of the Agreement.
4. No Other Changes. Except as set forth herein, the Agreement, as previously amended, remains in full force and effect.
5. Execution and Delivery. This Amendment may be executed in one or more counterparts, all of which will be considered one and the same. This Amendment may be delivered by the electronic exchange of executed signature pages (*e.g.*, by email), and any printed or copied version of any signature page so delivered will have the same force and effect as an originally executed version of such signature page.
6. Governing Law. The validity, interpretation, and effect of this Amendment are governed by and will be construed in accordance with the laws of the State of California applicable to contracts made and performed in such state and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by federal law or are governed by the law of the jurisdiction of organization of the respective Parties.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Amendment to be signed by their respective officers hereunto duly authorized as of the day and year first set forth above.

NORTHERN CALIFORNIA POWER AGENCY CALPINE CORPORATION

By: Randy S. Howard
Name: Randy S. Howard
Title: General Manager
Date: 3/2/18

By: SEE COUNTERPAGE
Name: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Amendment to be signed by their respective officers hereunto duly authorized as of the day and year first set forth above.

NORTHERN CALIFORNIA POWER AGENCY CALPINE CORPORATION *pk*

By: _____

Name: _____

Title: _____

Date: _____

By: 

Name: Andrew Novotny

Title: Vice President

Date: 3/6/18

FIFTH AMENDMENT TO THE AMENDED AND RESTATED STEAM SUPPLIERS JOINT OPERATING AGREEMENT SOUTHEAST GEYSERS EFFLUENT PIPELINE PROJECT THIS FIFTH AMENDMENT ("Amendment") to the "Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project", also referred to as Second Amendment and Restatement of the Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project, ("Agreement"), is effective as of March 1, 2020, by and between NORTHERN CALIFORNIA POWER AGENCY, a California joint powers authority and public entity ("NCPA"), and GEYSERS POWER COMPANY, LLC a limited liability company, formerly CALPINE CORPORATION, ("Calpine"), referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, the Parties originally entered into a Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project on July 25, 1995, which established and provided for certain terms and conditions relating to their participation in and responsibility for the operation of that portion of the Southeast Geysers Effluent Pipeline Project ("Project") which commences at the Point-of-Delivery and terminates at The Geysers Terminus; and

B. WHEREAS, the Parties executed "Amendment No. 1 to the Steam Suppliers Joint Operating Agreement" Southeast Geysers Effluent Pipeline Project on December 20, 2001 to recognize that Calpine had acquired the geothermal interests of PG&E and Unocal at The Geysers and therefore owned a 2/3 interest in all of the Steam Suppliers Facilities of the Project, to recognize that NCPA had entered into an agreement with Lake County Sanitation District to fund Basin 2000 Facilities to deliver additional effluent to the Project, and to provide how the Project Water was to be distributed among other issues; and

C. WHEREAS, the Parties entered into the "Amended and Restated Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project", also referred to as Second Amendment and Restatement of the Agreement, ("Agreement") on September 18, 2003 to amend and restate certain terms and conditions relating to the Parties' participation in the Project, re-allocate the Parties' rights to the Project Water, and agree that each Parties' share of the monthly electricity costs needed to pump the Project Water would be equal to its percentage of the Project Water actually received for that month; and

D. WHEREAS, the Parties entered into a Third Amendment to the Agreement on November 7, 2007, regarding the solar array facilities owned by NCPA, referred to as the Solar Pumps Project, and its installation, operation, and maintenance; and

E. WHEREAS, Section 5.1.2 of the Agreement states that "[t]he Party required to supply the power to operate the three Bear Canyon Pump Stations in order to deliver the Project

Water shall be established from time to time by the Parties", Section 6.5 of the Agreement states that "[e]ach Party's share of the pumping power costs shall be equal to its percentage of Project Water actually received for that month", and Exhibit A of the Agreement ("Exhibit A") identified the Parties' agreed-upon statement of the value of the electricity that NCPA would provide to pump the Project Water, specifically that NCPA would provide all electricity to operate the three Bear Canyon Pump Stations at a set price for the period April 01, 2003 through December 31, 2006; and

F. WHEREAS, the Parties agreed by letters dated December 20, 2006 to amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and the value of the electricity used for that power supply; and

G. WHEREAS, the Parties agreed by letter dated June 26, 2008 to further amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and the value of the electricity used for that power supply; and

H. WHEREAS, the Parties agreed by letter dated June 1, 2009 ("2009 Letter Agreement") to further amend Exhibit A to revise certain of the terms related to the power supply for the Bear Canyon Pump Stations and also to extend the term of Exhibit A for an additional 36 months; and

I. WHEREAS, the Parties agreed by letter dated October 28, 2010, to further amend Exhibit A regarding calculation of the Pumping Power to be supplied to the Bear Canyon Pump Stations; and

J. WHEREAS, between 2012 and the present, the Parties have agreed upon their relative responsibility for the electricity costs needed to operate the Bear Canyon Pump Stations in connection with the yearly budgeting process for Project operations and maintenance ("O&M") expenses, and have each year executed written agreements approving the Project's O&M budget (which includes line items for electricity costs for the Bear Canyon Pump Stations as well as the Calpine Share (as defined below)); and

K. WHEREAS, the Parties executed a further Amendment (Fourth Amendment) to the Agreement as of March 2, 2018, requiring that NCPA provide the entire power supply for the Bear Canyon Pump Stations, except in outage situations, and Calpine would compensate NCPA for its share of the electricity costs at the agreed upon price stated therein, for a two-year term; and

L. WHEREAS, the Parties wish to further revise the terms of Exhibit A to the Agreement, , which requires that NCPA provide the entire power supply for the Bear Canyon Pump Stations except in outage situations, and that Calpine compensate NCPA for its relative share of such electricity costs at a revised agreed-upon index price; and

M. WHEREAS, on date – *Calpine/Geysers Power Company needs to insert language explaining the name change from Calpine Corporation to Geysers Power Company;*
and

NOW THEREFORE, in consideration of the promises and the mutual agreements contained herein, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined herein shall have the meanings set forth in the Agreement.
2. Term and Termination. The term of Exhibit A as revised by this Amendment shall begin on the date this Amendment is executed and extend two (2) years from that date; provided that either Party in its sole discretion may elect to its revise terms and conditions, terminate the amendment, or revert to the prior terms of Exhibit A (as set forth in the 2009 Letter Agreement) by providing a minimum of thirty (30) days written notice prior to the execution date to the other Party.
3. Supply of Power to the Bear Canyon Pump Stations. Exhibit A to the Agreement is replaced and superseded in its entirety with the following:

The supply of electricity to power the Bear Canyon Pump Stations shall be as follows:

- A. NCPA shall supply the electricity needed to operate Bear Canyon Pump Stations #1, #2, and #3 (collectively, the "Bear Canyon Pump Stations").
- B. If NCPA is temporarily unable to provide electricity to power the Bear Canyon Pump Stations, Calpine will provide backup power service to the Bear Canyon Pump Stations as needed and as available.
- C. On or about the 10th day of each calendar month, NCPA (as Operator) shall provide Calpine with a calculation of the electricity costs to supply the Bear Canyon Pump Stations during the prior month. NCPA shall calculate Calpine's responsibility for such costs ("Calpine's Cost Responsibility") using the following formula:

$$\begin{aligned} \text{Calpine's Cost Responsibility} = \\ (\text{Electricity Usage} \times \text{Average Supply Cost} \times \text{Calpine Share}) + \\ (\text{Electricity Usage} \times \text{Cost Adder} \times \text{Electricity Percentage}) \end{aligned}$$

For purposes of this calculation, the following definitions apply:

"Electricity Usage" is the amount of electricity (in KWhrs) that NCPA used to supply the Bear Canyon Pump Stations during the prior calendar month, less the amount of electricity (if any, in KWhrs) that Calpine provided as temporary backup power service to the Bear Canyon Pump Stations during the prior calendar month.

"Average Supply Cost" is the average Locational Marginal Price ("LMP") for the Geysers Plant 1, Unit 2 LMP node during the prior calendar month.

"Calpine Share" is the percentage of Project Water that Calpine received in the prior calendar month (as expressed in decimal terms (0.00)). For instance, if Calpine received 40% of the Project Water in a prior month, the Calpine Share for that month would be 0.40.

"Cost Adder" is equal to \$0.00750/kWh (i.e. \$7.50/MWh).

"Electricity Percentage" is equal to 50% or 0.50. It refers to the amount of electricity that generally was provided by Calpine before the revision was established.

D. To the extent disagree as to Calpine's Cost Responsibility for any particular month, the Operating Committee shall attempt to resolve such disagreement. If the Operating Committee is unable to resolve the disagreement, the Parties shall use the dispute resolution procedures set forth in Section 16 of the Agreement.

4. No Other Changes. Except as set forth herein, the Agreement, as previously amended, remains in full force and effect.
5. Execution and Delivery. This Amendment may be executed in one or more counterparts, all of which will be considered one and the same. This Amendment may be delivered by the electronic exchange of executed signature pages (e.g. , by email), and any printed or copied version of any signature page so delivered will have the same force and effect as an originally executed version of such signature page.
6. Governing Law. The validity, interpretation, and effect of this Amendment are governed by and will be construed in accordance with the laws of the State of California applicable to contracts made and performed in such state and without regard to conflicts of law doctrines except to the extent that certain matters are

preempted by federal law or are governed by the law of the jurisdiction of organization of the respective Parties.

[Signature page follows]

DRAFT

IN WITNESS WHEREOF, hereto, intending to be legally bound hereby, have caused this Amendment to be signed by their respective officers hereunto duly authorized as of the day and year first set forth above.

NORTHERN CALIFORNIA POWER AGENCY GEYSERS POWER COMPANY

By: _____
Signature

By: _____
Signature

Name

Name

Title

Title

Date

Date

Approved as to form:

Jane E. Luckhardt, General Counsel



Commission Staff Report – *DRAFT*

Date: October 30, 2020

COMMISSION MEETING DATE: December 3, 2020

SUBJECT: Process Innovations, Inc. – First Amendment to transfer assignment of Five Year Multi-Task Consulting Services Agreement for OSIsoft PI support services to Brandenburg Holdings, LLC dba Process Innovations/Process Plugins, and approval of related Standard Software License Agreement; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

AGENDA CATEGORY: Consent

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

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

RECOMMENDATION:

Approve Resolution 20-XX authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement with Process Innovations, Inc. to transfer assignment of the agreement to Brandenburg Holdings, LLC dba Process Innovations/Process Plugins for OSISoft PI support services, and further approval of the related Standard Software License Agreement, both with any non-substantial changes recommended and approved by the NCPA General Counsel, which Consulting Services Agreement shall not exceed \$500,000 over five years, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

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

BACKGROUND:

On January 23, 2020, NCPA entered into a five year Multi-Task Consulting Services Agreement for OSISoft PI support services with Process Innovations, Inc.

On August 31, 2020, Process Innovations, Inc. was acquired by Brandenburg Holdings, LLC dba Process Innovations/Process Plugins, and wishes to accept assignment of the contract via this First Amendment to the Multi-Task Consulting Services Agreement.

In 2015, when the initial Consulting Services Agreement was executed, NCPA entered into a Software License Agreement related to the services. Due to the acquisition by Brandenburg Holdings, LLC dba Process Innovations/Process Plugins, an updated license agreement is needed.

FISCAL IMPACT:

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

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA seeks bids from as many qualified providers as possible. Bids are awarded to the 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 Approvals.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- First Amendment Transferring Assignment of Multi-Task Consulting Services Agreement with Process Innovations, Inc., to Brandenburg Holdings, LLC dba Process Innovations/Process Plugins
- Standard Software License Agreement with Process Innovations/Process Plugins

RESOLUTION 20-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO TRANSFER A MULTI-TASK CONSULTING SERVICES AGREEMENT FROM PROCESS INNOVATIONS, INC., TO BRANDENBURG HOLDINGS, LLC DBA PROCESS INNOVATIONS/PROCESS PLUGINS AND APPROVING RELATED STANDARD SOFTWARE LICENSE AGREEMENT

(reference Staff Report #XXX:20)

WHEREAS, Northern California Power Agency and Process Innovations, Inc., entered into a Multi-Task Consulting Services Agreement dated effective January 23, 2020, for Process Innovations, Inc., to provide OSISoft PI support services for the Agency, Agency Members, the Southern California Public Power Authority (SCPPA), or SCPPA members; and

WHEREAS, effective August 31, 2020, the assets of Process Innovations, Inc. were acquired by Brandenburg Holdings, LLC dba Process innovations/Process Plugins, and the Agency desires to transfer the assignment of the Agreement to Brandenburg Holdings, LLC dba Process Innovations; and

WHEREAS, the Parties now desire to amend Section 10.8 "Notices", Section 10.12 "Controlling Provisions" and Exhibits A, B, and C to affect the change of the Consultant's name; and

WHEREAS, due to the acquisition by Brandenburg Holdings, LLC, the Parties desire to enter into an updated Software License 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 Multi-Task Consulting Services Agreement with Process Innovations, Inc., accepting assignment to Brandenburg Holdings, LLC dba Process Innovations/Process Plugins for OSISoft PI support services, and further enter into a related Standard Software License Agreement, both with any non-substantial changes as approved by the NCPA General Counsel, which Consulting Services Agreement shall not exceed \$500,000 over five years, for continued use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

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

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

TERESA O'NEILL
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**FIRST AMENDMENT TO MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND PROCESS INNOVATIONS, INC.
ACCEPTING ASSIGNMENT TO BRANDENBURG HOLDINGS, LLC DBA PROCESS
INNOVATIONS/PROCESS PLUGINS**

This First Amendment (“Amendment”) to the Multi-Task Consulting Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Brandenburg Holdings, LLC dba Process Innovations/Process Plugins (“Consultant”) (collectively referred to as “the Parties”) as of _____, 2020.

WHEREAS, the Parties entered into a Multi-Task Consulting Services Agreement dated effective January 23, 2020, (the “Agreement”) for Process Innovations, Inc. to provide OSISoft PI software support services for the Agency, Agency Members, the Southern California Public Power Authority (SCPPA), or SCPPA Members; and

WHEREAS, effective August 31, 2020, the assets of Process Innovations, Inc. were acquired by Brandenburg Holdings, LLC dba Process Innovations/Process Plugins, and the Agency desires to assign the agreement to Brandenburg Holdings, LLC dba Process Innovations/Process Plugins; and

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

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

WHEREAS, the Agency now desires to amend the Certification: Affidavit of Compliance for Contractors as set forth in Exhibit C to include Brandenburg Holdings, LLC dba Process Innovations/Process Plugins; 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

WHEREAS, Process Innovations, Inc. consents to the assignment;

NOW, THEREFORE, the Parties agree as follows:

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

“This Consulting Services Agreement (“Agreement”) is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 (“Agency”) and Brandenburg Holdings, LLC dba Process Innovations/Process Plugins, with its main office located at 8400 E. Prentice

Avenue, Suite 1300, Greenwood Village, CO 80111 ("Consultant") (together sometimes referred to as "Parties") as of January 23, 2020 ("Effective Date") in Roseville, California."

2. **Section 10.8 Notices** is replaced in its entirety as follows:

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

Brandenburg Holdings, LLC dba Process Innovations/Process Plugins
Attention: Leane Gabel
8400 E. Prentice Avenue, Suite 1300
Greenwood Village, CO 80111

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

3. **Exhibit A – SCOPE OF SERVICES** is amended and restated to read in full as set forth in the attached Exhibit A.
4. **Exhibit B – COMPENSATION SCHEDULE AND HOURLY FEES** is amended and restated to read in full as set forth in the attached Exhibit B.
5. **Exhibit C – CERTIFICATION: Affidavit of Compliance for Contractors** is amended to include Brandenburg Holdings, LLC dba Process Innovations/Process Plugins and shall be executed as set forth in the attached Exhibit C.
6. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

SIGNATURES ON FOLLOWING PAGE

///

///

Date:_____

NORTHERN CALIFORNIA POWER AGENCY

Date:_____

BRANDENBURG HOLDINGS, LLC
DBA PROCESS INNOVATIONS/PROCESS
PLUGINS

RANDY S. HOWARD, General Manager

JERRY PALMER, President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Brandenburg Holdings, LLC dba Process Innovations/Process Plugins ("Consultant") shall provide OSIsoft PI Software support services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Provide OSIsoft Software Support - Support OSI soft software on Agency supplied server and interface hardware. This software will be prepared to accept the connections from all Agency data sources.
- Provide Onsite Client Tool Training - This task will involve providing Process Innovations client tool training. Ideally each participant should have their own computer for training as the class involves many hands-on exercises to leverage acquired data to perform real time evaluations. Develop some base reports and graphics in the class to provide a foundation for further development.
- Provide Value Added Applications - This task will involve the development of value added applications and features. This will include report building and calculated tag development.
- Design Diagrams - Design and provide detailed architectural network diagrams and review with approval by the entity for which services are performed (Diagrams shall include, but not limited to, detailed specifications of all network connections, protocols, addresses, ports, etc.).
- Provide Diagrams - Provide final ("As Built") architectural network diagrams and review with approval by the entity for which services are performed.
- Compliance - Ensure all network modifications and implementations meet North American Electric Reliability Corporation (NERC) reliability standards.

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:

Service Provider	Hourly Rates			
	Onsite Consulting Services	Offsite (Remote) Services	Travel Time	Onsite Training
Principal Engineer/Consultant	\$ 250	\$ 200	\$ 170	\$ 320
Sr. Application Consultant	\$ 235	\$ 185	\$ 155	\$ 295
Application Engineer	\$ 170	\$ 145	\$ 95	\$ 270

Notes:

Billing is in hourly increments

Travel and living expenses are in addition to Onsite Rates

A one-time licensing fee to be paid upon delivery of new software. NCPA previously paid this fee in the amount of \$44,500.00 in 2015 for the current NCPA license.

The Software Reliance Program annual fee is \$8,900.00. This fee covers the maintenance and updates to the licensed product.

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

Brandenburg Holdings, LLC dba Process Innovations/Process Plugins
(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.



STANDARD SOFTWARE LICENSE AGREEMENT

This Standard Software License Agreement (this “Agreement”) is made this ____ day of _____, 20__ by and between Brandenburg Holdings, LLC, D/B/A “Process Plugins”, and its related companies, (“Licensor”) and the Northern California Power Agency (“Licensee”).

WHEREAS, the Licensor has copyright rights to **Process Plugins Solutions Software** programs and desires to license the use of the software to Licensee, and

WHEREAS, Licensee desires to license a version of the software from Licensor pursuant to the terms of this Agreement.

NOW, THEREFORE, for valuable consideration the parties agree as follows:

1. License. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee one non-exclusive, non-sublicensable and non-transferable license to use one specific copy of the *Process Plugins Solutions Software* (“Software”) in object code form only (and specifically not in source code form) as set forth below. This license is solely for use of the Software by the Licensee as a single individual or entity. Licensee acknowledges that, as between Licensee and Licensor, Licensor owns all right, title, and interest, including all intellectual property rights, in and to the Software. Licensee’s use of the Software is as a licensee only, and Licensee acknowledges that it is not the owner of the Software program. The expression contained within the Software program is expressly reserved by the Licensor. Licensee shall not use the Software for any purposes beyond the scope of the license granted in this Agreement. Licensee shall not sublicense or sell the Software to third-parties. All aspects of the Software (including but not limited to design, format and structure of files and reports created by the Software) are copyrighted by Licensor. Licensee may not use, copy, modify, or transfer the Software or documentation, in whole or in part, except as provided in this agreement. The license granted permits Licensee to do only each of the following:

- Use the Software at the site identified in the license invoice;
- Use the Software on computers which have the minimum system requirements as described in the documentation;
- Use the Software and documentation for business and commercial purposes only;
- Make copies of the Software only as necessary for backup purposes; no other copies shall be made without Licensor's prior written consent (any such copies shall remain Licensor’s exclusive property

and shall be subject to the terms and conditions of this Agreement); and

- Use the Software with any software upgrades that may be provided by the Licensor.

These are the only rights granted. All other rights are expressly reserved by Licensor. Licensee has no right, among other things: to transfer, convey, reproduce, sublicense, loan, lend, distribute, rent, modify, translate, disassemble, decompile, or reverse engineer the Software; translate the Software into another computer language or otherwise reduce the Software to human perceivable form; to use the Software at a location or on a network at other than the specified location; or to create derivative works based upon the Software. Such limits shall apply to use of either a portion of or the entire Software program. The rights granted by this license shall terminate (without refund) automatically upon Licensee's failure to abide by all terms or conditions of this Agreement or by any contribution by Licensee to any infringement of any proprietary rights owned or licensed by Licensor. In the event an update is received, Licensee agrees to, upon the election of Licensor, destroy or return the original Software and documentation and acknowledges that the update will be governed by the terms of this license also unless specifically superseded in writing.

2. Use and Ownership. Licensee is entitled to use the Software on multiple computers throughout its system or network of machines only at the site identified in the license invoice. Licensee is entitled to make two additional copies of the Software for archival purposes only. “Archival purpose” means the copy is being made for “back up” in case the computer(s), network or system breaks down, or in case the original Software program becomes damaged or unusable. The archival copy must be destroyed if

this license is terminated. The Software, documentation and any copies thereof are the property of the Licensor. Licensee is responsible and liable for all uses of the Software resulting from access provided by Licensee, whether such access or use is permitted by or in violation of this Agreement. Licensor licenses the Software for use in the United States and Puerto Rico; it does not transfer ownership. Licensee may merge all or a portion of the Software program into another program. The portion so merged into the new program remains the copyright and within the ownership of Licensor. Any reproduction of the Software program, whether for archival or merging purposes, must include the copyright notice as follows: © 2020 Brandenburg Holdings, LLC.

3. Licensing Fee. Licensee agrees to pay Licensor a one-time licensing fee per licensed solution per separate agreement. Said fee shall be due and payable upon delivery of the Software.

4. Term. This Agreement is effective until terminated, as determined herein. Licensee may terminate this License at any time by destroying the Software, documentation, and all copies thereof. This License will terminate immediately without notice from Licensor if Licensee fails to comply with any provision of this Agreement. Upon termination, Licensee must destroy the Software, documentation, and all copies thereof.

5. Limited Warranty. The only warranty Licensor makes to Licensee in connection with the Software is that media provided by Licensor on which the Software is recorded, if any will be replaced without charge, if Licensor in good faith determines that it was defective and not subject to misuse, and if the media and proof of purchase are returned to Licensor within ninety (90) days of the date of purchase. Licensee assumes full responsibility for the selection of the Software and for its installation and use and the results of that use. IN NO CASE SHALL LICENSOR, ITS EMPLOYEES, AGENTS, OR SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONTINGENT, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES, ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY IN TORT OR CONTRACT, INCLUDING BUT NOT LIMITED TO, ANY LOST PROFITS, LOSS OF DATA, DAMAGES FROM BUSINESS INTERRUPTION, DOWNTIME, GOODWILL, DAMAGE TO OR REPLACEMENT OF EQUIPMENT OR PROPERTY, COSTS OF RECOVERING, REPROGRAMMING, OR REPRODUCING ANY

SOFTWARE PROGRAM OR DATA USED IN CONJUNCTION WITH THE SOFTWARE, EVEN IF LICENSOR, ITS EMPLOYEES, AGENTS, OR SUPPLIERS, OR ANYONE ELSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE AGREES THAT LICENSOR'S AND ITS EMPLOYEES', AGENTS', OR SUPPLIERS' TOTAL LIABILITY, IF ANY, UNDER ANY THEORY, SHALL NOT EXCEED ANY AMOUNT PAID BY LICENSEE FOR THE SOFTWARE. ANY WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY LICENSOR, ITS EMPLOYEES, AGENTS, OR SUPPLIERS WILL IN NO WAY INCREASE THE SCOPE OF LIABILITY OR LIMITED WARRANTY, NOR MAY LICENSEE RELY ON ANY SUCH WRITTEN OR ORAL COMMUNICATION. LICENSEE AGREES TO ACCEPT THIS SOFTWARE "AS IS" AND "WITH ALL FAULTS" OTHER THAN THE LIMITED WARRANTY STATED ABOVE. ALL EXPRESS WARRANTIES, UNLESS SPECIFICALLY STATED HEREIN, AND ALL IMPLIED WARRANTIES ON THE SOFTWARE, MEDIA AND DOCUMENTATION, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, PERFORMANCE AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE DISCLAIMED BY LICENSOR AND ACKNOWLEDGED BY LICENSEE. Some states do not allow limitations on how long an implied warranty may last or on incidental or consequential damages so the above limitation may not apply to you. Licensor shall be responsible only to the Licensee; no responsibility to any third party shall be created. The limited express warranty set forth above is in lieu of all other express warranties and the remedies set forth above are the Licensee's sole and exclusive remedies. The agents, employees, distributors, dealers and other suppliers of Licensor are not authorized to make modifications to this warranty or additional warranties on its behalf. This warranty gives Licensee specific legal rights. Licensee may also have other rights which vary from state to state.

6. Employee Use. By this license, Licensee agrees to use its best efforts to ensure that its employees use the Software only in a manner consistent with the terms of this Agreement. Licensee agrees to restrict all usage and modification of the Software program by employees as per the terms of this Agreement and to notify Licensor in writing if it becomes aware that any employee or other party has

copied or has in some other way changed the property rights of the Licensor in the Software.

7. Maintenance and Installation. Licensee must provide for repair and maintenance of the Software or must separately contract for such through the Licensor. This Agreement is not an agreement to provide services in regard to the setting up or the operation of the Software program. Any such service must be separately contracted for and must be the subject of a separate agreement.

8. Export Law Assurance. Licensee agrees and certifies that neither the Software nor any other technical data received from Licensor, nor the direct product thereof, will be exported outside the United States except as authorized and as permitted by the laws and regulations of the United States.

9. No Liability. Licensor has no liability for any claim based on Licensee's: (i) negligence or willful misconduct; (ii) use of the Software in a manner not authorized or contemplated by this Agreement; (iii) use of the Software in combination with data, software, hardware, equipment or technology not provided by Licensor or authorized by Licensor in writing; or (iv) modifications to the Software not made by Licensor.

9. General Conditions. The validity and interpretation of this Agreement shall be governed by and construed in accordance with Colorado law except as to copyright and other proprietary matters which

may be preempted by United States laws and international treaties. In the event of any violation of this Agreement, Licensor reserves the right to pursue any state law remedies (including contractual remedies) or remedies under federal laws or both. Licensee consents to exclusive jurisdiction in either state or federal courts in Colorado or both as appropriate and agrees that the prevailing party may be entitled to its attorney's fees and costs. No decision, act, or inaction of Licensor shall be construed to be a waiver of any right or remedy, and pursuit of any state or federal causes shall not be deemed an election of remedies. Licensee may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Licensor. In the event any provision of this Agreement shall be deemed unenforceable, or void, or invalid, such provision shall be modified so as to make it valid and enforceable and as so modified the entire Agreement shall remain in full force and effect. This Agreement sets forth the entire understanding and agreement between the parties and no written or oral representations of any kind whatsoever shall in any way modify or expand the terms of this Agreement. This Agreement can be modified only in writing between the Licensor and Licensee. In the event of any conflict or inconsistency between the terms of this Agreement and any documentation, this Agreement shall preempt such documentation to the extent inconsistent.

PROPRIETARY RIGHTS WARNING

All material associated with this Agreement is copyrighted material. The owner of the Software and materials asserts all copyrights and other proprietary rights in and to such items except as licensed to users hereunder and subject to strict compliance with the terms of this license. Federal law provides severe civil and criminal penalties for the unauthorized reproduction, distribution, or use of copyrighted materials [Title 17, United States Code]. Penalties of up to \$250,000 for individuals and \$500,000 for organizations exist for each infringement; furthermore, both the Federal Bureau of Investigation and Interpol investigate allegations of criminal copyright infringement for enforcement of penalties which may include imprisonment for up to five (5) years in the United States [Title 18, United States Code].

[Signature Page to Follow.]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement effective as of the date first written above.

LICENSOR: Brandenburg Holdings, LLC
DBA Process Plugins

LICENSEE:
Northern California Power Agency

By: _____
Authorized Agent

By: _____
Authorized Agent

Print Name: _____

Print Name: _____

DRAFT



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
PROCESS INNOVATIONS, INC.**

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 Process Innovations, Inc., a corporation with its office located at 63 Weber Creek Road, PO Box 82, Centennial, WY 82055 ("Consultant") (together sometimes referred to as the "Parties") as of January 23, 2020 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.2.3 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 pursuant to this Agreement, Consultant shall provide certificates of insurance and

policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

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

4.5 Consultant's Obligation. Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensues 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.
- 7.4 Cyber Security.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) will at its sole expense follow applicable NERC CIP standards for cyber security for the applicable Agency facility. Furthermore, Consultant shall notify Agency no less than 24-hours after discovery of a potential compromise of Consultant's network, computers, applications, or electronic systems in any way that Consultant determines could provide unauthorized access or negatively impact the confidentiality, integrity, security, or availability of Agency systems.

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 confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.
- 9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any

permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

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

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

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

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

Section 10. MISCELLANEOUS PROVISIONS.

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

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this

Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

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

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

10.7 Contract Administrator. This Agreement shall be administered by 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:

Process Innovations, Inc.
Attention: Joe Devine
2519 South Shields Street, Suite 166
Fort Collins, CO 80526

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
 - 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to

change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

NORTHERN CALIFORNIA POWER AGENCY


PROCESS INNOVATIONS, INC.

Date 1/23/2020

Date 12/11/2019

 CFO for

RANDY S. HOWARD,
General Manager



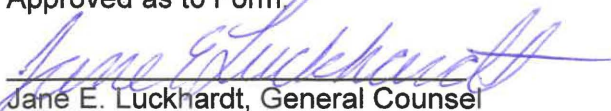
JOE DEVINE,
President

Attest:



Assistant Secretary of the Commission

Approved as to Form:


Jane E. Luckhardt, General Counsel

Michelle Schellentrager

From: Randy Howard
Sent: Wednesday, January 22, 2020 12:13 PM
To: *Mgmt Team
Cc: *Admin Assts
Subject: Signature Authority

Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon,

During my absence, Monty Hanks will have contract signature authority on my behalf.

January 22-23, 2020.

Thank you,
Randy

Randy S. Howard
General Manager
Northern California Power Agency
A Public Agency
651 Commerce Drive, Roseville CA 95678
916-781-4200

EXHIBIT A

SCOPE OF SERVICES

Process Innovations, Inc. ("Consultant") shall provide OSIsoft PI Software support 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:

- Provide OSIsoft Software Support - Support OSI soft software on Agency supplied server and interface hardware. This software will be prepared to accept the connections from all Agency data sources.
- Provide Onsite Client Tool Training - This task will involve providing Process Innovations client tool training. Ideally each participant should have their own computer for training as the class involves many hands-on exercises to leverage acquired data to perform real time evaluations. Develop some base reports and graphics in the class to provide a foundation for further development.
- Provide Value Added Applications - This task will involve the development of value added applications and features. This will include report building and calculated tag development.
- Design Diagrams - Design and provide detailed architectural network diagrams and review with NCPA for approval (Diagrams shall include, but not limited to, detailed specifications of all network connections, protocols, addresses, ports, etc.)
- Provide Diagrams - Provide final ("As Built") architectural network diagrams and review with NCPA for approval
- Compliance - Ensure all network modifications and implementations meet North American Electric Reliability Corporation (NERC) reliability standards

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:

Service Provider	Hourly Rates			
	Onsite Consulting Services	Offsite (Remote) Services	Travel Time	Onsite Training
Principal Engineer/Consultant	\$ 250	\$ 200	\$ 170	\$ 320
Sr. Application Consultant	\$ 235	\$ 185	\$ 155	\$ 295
Application Engineer	\$ 170	\$ 145	\$ 95	\$ 270

Notes:

Billing is in hourly increments

Travel and living expenses are in addition to Onsite Rates

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, Diana Devine, Vice 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

Process Innovations, 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.

Diana Devine
(Signature of officer or agent)

Dated this 11th day of December, 20 19.

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



Commission Staff Report

November 18, 2020

COMMISSION MEETING DATE: December 3, 2020

SUBJECT: FY2019-20 Annual Billing Settlements

AGENDA CATEGORY: Consent

FROM: Monty Hanks

Assistant General
Manager/CFO

METHOD OF SELECTION:

N/A

Division: Administrative Services

Department: Accounting & Finance

IMPACTED MEMBERS:

All Members ☒

City of Lodi ☐

City of Shasta Lake ☐

Alameda Municipal Power ☐

City of Lompoc ☐

City of Ukiah ☐

San Francisco Bay Area
Rapid Transit ☐

City of Palo Alto ☐

Plumas-Sierra REC ☐

City of Biggs ☐

City of Redding ☐

Port of Oakland ☐

City of Gridley ☐

City of Roseville ☐

Truckee Donner PUD ☐

City of Healdsburg ☐

City of Santa Clara ☐

Other ☐

If other, please specify

RECOMMENDATION:

Northern California Power Agency (NCPA) staff recommends the Commission approve Resolution 20-XXX and the attachments thereto regarding the FY2019-20 Annual Billing Settlements.

BACKGROUND:

The attached FY2019-20 Annual Billing Settlements Summary shows a comparison of Actual Costs and Final Billing Settlements (i.e., Collections vs. Actual).

This year's Net Refund of Excess Collections due to participants at fiscal year-end was \$5.58 million or 1.2% of Collections (net of credits) to date. The sources of these refunds were as follows: (1) Net Generation & Transmission operating costs of \$2.9 million; (2) Management Services costs of \$1.4 million; and (3) Pass-Through Costs and Interest and Other Income of \$1.3 million.

[Pending] The Utility Directors have reviewed the final draft of the FY2019-20 Annual Billing Settlements Summary and supporting data, which is currently available on NCPA Connect. Supporting data includes the final re-run of the All Resources Bill to reflect the final settlement amounts, explanations of the primary refund drivers, and schedules reflecting annual costs, collections, and resulting over/under collections by month.

Fuel, CAISO charges and energy and ancillary services sales do not play a material role in the annual settlements process as those items are adjusted monthly in the Agency's All Resources Bill when the actual costs for these categories are invoiced by NCPA.

FISCAL IMPACT:

Upon approval by the Commission, the amount of \$5,584,181 will be distributed to participants. NCPA member refund amounts will be deposited into their respective General Operating Reserve accounts, and non-members will receive a credit miscellaneous billing in early December.

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] The recommendation was reviewed by the Facilities Committee on November 4th and the LEC Project Participant Committee on November 9th. Both committees recommended Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments: Billing Settlements Summary

RESOLUTION 20-XXX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING THE FY 2018-19 ANNUAL BILLING SETTLEMENTS**

(reference Staff Report #XXX:20)

WHEREAS, the Northern California Power Agency, (Agency) FY2019-20 Annual Billing Settlements has been closed, reconciled, and finalized; and

WHEREAS, the independent audit of the Agency's financial statements has been completed; and

WHEREAS, the Agency's generating, transmission, energy contract resources, and other programs are billed monthly throughout the fiscal year on an estimated basis; and

WHEREAS, the Agency's monthly billings to participants for FY2019-20 have been re-run using the finalized FY2019-20 Annual Billing costs; and

WHEREAS, these processes have resulted in a final billing cost settlement for each program; and

WHEREAS, the Utility Directors reviewed the detailed support for the FY2019-20 Annual Billing Settlements Summary, the related Project and Program Cost Summary Reports, and the re-run of the monthly All Resources Bills and have found all to be satisfactory; 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 adopts the FY2019-20 Annual Billing Settlements, as summarized in the attachments hereto; and, does hereby direct that the net refund of \$5,584,181 due to participants be distributed.

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

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

ROGER FRITH
CHAIR

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



Commission Staff Report

October 28, 2020

COMMISSION MEETING DATE: December 3, 2020

SUBJECT: Approval of Northern California Power Agency's (NCPA) Major Insurance Renewals for Policy Year 2021

AGENDA CATEGORY: Discussion/Action

FROM:	Rui Dai	METHOD OF SELECTION:
	Risk Manager	N/A
Division:	Administrative Services	
Department:	Risk Management	

IMPACTED MEMBERS:

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

If other, please specify

RECOMMENDATION:

Northern California Power Agency (NCPA) staff recommends that the Commission delegate authority to the General Manager to negotiate and bind property damage and liability coverage amounts as presented (or better) and a not-to-exceed proposed premiums of approximately \$4,605,300.

BACKGROUND:

NCPA utilizes the insurance brokerage services of Aon Risk Solutions, San Francisco, California to market and place NCPA's insurance programs. Each insurance policy and the related insurance market conditions are reviewed prior to the renewal date and remarketed as required to qualified insurers experienced in underwriting the applicable insurance risk. Current property and liability insurance coverage expires on December 15 and December 31, 2020, respectively.

This year NCPA, together with Aon, marketed NCPA's insurance programs to both existing and prospective underwriters (UWs), a total of 22 UWs from 15 different insurers, focused on presenting NCPA's proactive enterprise risk management approach and its rigorous loss prevention programs. The property insurance market had been soft for many years. It turned around in 2017-18, triggered by floods in Texas, hurricanes along the east coast, the devastation of Puerto Rico, and wildfires in California. NCPA management's commitment to loss prevention and the marketing effort successfully improved the insurance underwriters' confidence and knowledge of NCPA's business and risk profile.

Highlights of the Renewal Process

- The insurance market conditions hardened in 2017-18 after many years of soft markets. The members have benefited with reduced (or flat) premiums since 2015.
- On-going exposure to flooding, hurricanes, and catastrophic California wildfires have changed the insurance landscape.
- NCPA had six claims in the past five years: 2015 Geothermal wildfire and Hydro Plant landslide, 2017 storm damage on Hydro Beaver Creek, and 2018 Alameda Unit 1 equipment failure, 2019 Kincade Fire Business Interruption, and 2020 LEC turbine generator failure (\$44 million).
- California wildfires have a significant impact on the liability insurance market.
- Some underwriters withdrew from California liability insurance market while others have reduced capacities and/or excluded wildfire coverage altogether.

Insurance Programs Renewal Requests

Due to the current wildfires in California, underwriters are not ready to quote NCPA's program before assessing their potential exposures. While NCPA and Aon are still in the process of securing final quotes, staff requests the Commission grant the authority to the General Manager to negotiate and bind coverages with not-to-exceed rates for the 2021 renewal premiums of \$3,122,100 (25% increase over prior year) for property damage coverage which includes \$796,445 for LEC and \$1,483,200 (50% increase over prior year) for casualty coverage which includes \$209,100 for LEC. While our broker will continue pushing the markets for better rates, this provides the General Manager the ability to bind coverages prior to the expiration of the policies. A final report will be made available after all the quotes and coverages are secured.

NCPA Insurance Premium Summary			
	2020	2021	% Change
Property Damage			
Property Damage & Terrorism	\$1,437,500	\$1,813,401	26.15%
Insurable Value	\$821,829,403	\$829,387,936	0.92%
Rate per \$100	\$ 0.17	\$ 0.22	25.00%
Time Element (BI)	\$448,192	\$512,253	14.29%
Time Element (BI) insurable value	\$100,972,401	\$96,651,557	-4.28%
Rate per \$100	\$0.44	\$0.53	19.40%
Tax & Fees			
Premium Total	\$1,885,692	\$2,325,654	23.33%
Casualty			
Policy Limit \$75 million			
Premium Total	\$849,412	\$1,274,118	50.00%
Total	\$2,735,104	\$3,599,772	31.61%
LEC Insurance Premium Summary			
	Renewal	Renewal	% Change
Property Damage			
Property Damage & Terrorism	\$ 618,856	\$ 796,445	28.70%
Insurable Value	\$401,875,050	\$413,758,712	2.96%
Rate per \$100	\$ 0.1540	\$ 0.1925	25.00%
Time Element (BI) Excl.	Not Purchased	Not Purchased	
Premium Total	\$ 618,856	\$ 796,445	28.70%
Casualty			
\$35mm Excess Liability	\$139,388	\$209,081	50.00%
Additional \$45 Liability	Not Purchased	Not Purchased	
Terrorism	Incl	Incl	
Premium Total	\$ 139,388	\$ 209,081	50.00%
Total	\$ 758,244	\$ 1,005,526	32.61%
WORKERS' COMPENSATION			
WORKERS' COMPENSATION	2020 Renewal	2021 Renewal	% Change
Premium	\$236,084	\$247,888	5.00%
Payroll	\$23,320,087	\$24,463,247	4.90%
Terrorism	Incl	Incl	
TOTAL PREMIUM	\$236,084	\$247,888	5.00%
GRAND TOTAL	\$3,729,431	\$4,853,187	30.13%

Property

Given a hardening market, the renewal rates in 2020 for Property Damage (PD) and Business Interruption (BI) have been around 25% compared to prior year. Aon will continue to push the markets to minimize the impact on our program.

Casualty

The Casualty program mainly consists of Excess Liability, Workers Comp, and Auto. Workers Comp and Auto renewal premium are expected to be stable. The anticipated renewal premiums are within \$250,000 for Workers Comp and \$50,000 for Auto, less than 10% premium increase over prior year. This is due to a increase in NCPA's reported payroll costs for the Workers Comp premium (4.9%). However, as mentioned above, Excess Liability coverage in California is challenging from both capacity and premium standpoints due to the devastating California wildfires in recent years and adverse legal precedent of inverse condemnation and the corresponding strict liability standard. California wildfire liability is quickly reaching the brink of becoming an uninsurable, or not insurable at a price utilities deem reasonable. While NCPA and Aon continue to push the market, we are estimating this premium may be 50% higher from the prior year of \$988,800 to \$1,483,200 to achieve the same level of liability insurance of \$75 million but only \$35 million in wildfire coverage.

FISCAL IMPACT:

The total cost of the policy year 2021 insurance programs is estimated not to exceed \$4,605,300. This is approximately 32% higher than current year premiums.. Depending on final premiums, a budget augmentation may be required for FY21. Staff will return in January with a final report of coverages and premiums.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation was reviewed by the Facilities Committee and the Lodi Energy Center Project Participant Committee on November 4 and November 9, 2020 respectively and was recommended for Commission approval at both meetings.

Respectfully submitted,

RANDY S. HOWARD
General Manager