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Facilities Committee Meeting Agenda

Date: December 6, 2023

Subject: NCPA Facilities Committee Meeting

Location: NCPA, 651 Commerce Drive, Roseville, California 95678 // Conference Call

Time: 9:00 am

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

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

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

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

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

REVIEW SAFETY PROCEDURES

1. Call Meeting to Order and Roll Call

PUBLIC FORUM

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

OPEN SESSION

DISCUSSION / ACTION ITEMS

2. **Approval of Minutes** – Approve minutes from the November 1, 2023 Facilities Committee meeting.
3. **All NCPA Facilities, Members, SCPPA – Millennium Power Services, Inc. MTGSA-EMS** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement and Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Millennium Power Services, Inc. for valve maintenance services and parts, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CTs*)
4. **All NCPA Facilities, Members, SCPPA – Energy Options, Inc. MTGSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with Energy Options, Inc. for cooling tower maintenance services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: CTs*)
5. **NCPA Geothermal Facility – Nick Barbieri Trucking, LLC dba Redwood Coast Fuels MTEMS** – Staff is seeking a recommendation for Commission approval of a five-year Agreement for Purchase of Equipment, Materials and Supplies with Nick Barbieri Trucking, LLC dba Redwood Coast Fuels for delivery of fuels, oils, lubricants and other miscellaneous petroleum products, with a not to exceed amount of \$2,000,000, for use at NCPA's Geothermal Facility. All purchase orders will be issued following NCPA procurement policies and procedures. (*Commission Category: Consent; Sponsor: Geo*)

INFORMATIONAL ITEMS

6. **New Business Opportunities** – Staff will provide an update regarding new business opportunities. (*Sponsor: Power Management*)
7. **Review of Power Supply Assumptions** – Staff will provide an overview of the Power Supply Assumptions for FY 2025 Annual Budget Schedule. (*Sponsor: Pooling and Portfolio Management*)

8. **NCPA Generation Services Plant Updates** – Plant Staff will provide the Committee with an informational update on current plant activities and conditions. (*Sponsor: Generation Services*)
9. **Planning and Operations Update** – Staff will provide an update on issues related to planning and operations. (*Sponsor: Power Management*)
10. **Next Meeting** – The next Facilities Committee meeting is scheduled for January 3, 2024.

ADJOURNMENT

AH/cp



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Minutes

Date: November 6, 2023
To: NCPA Facilities Committee
From: Carrie Pollo
Subject: November 1, 2023 Facilities Committee Meeting Minutes

1. **Call meeting to order & Roll Call** – The meeting was called to order by the Committee Vice-Chair Shiva Swaminathan (Palo Alto) at 9:10 am. Attending via teleconference and on-line presentation were Midson Hay (Alameda), Yuliya Shmidt (BART), Josh Cook, (Biggs), Jake Carter (Gridley), Nathan Tang (Port of Oakland), Nick Rossow (Redding), Monica Nguyen, Basil Wong, Kathleen Hughes, and Suds Jain (Santa Clara), and Colin Selby (TID). Peter Lorenz (non-voting Representative with TID) also attended via teleconference and on-line presentation. Those attending in person are listed on the attached Attendee Sign-in Sheet. Committee Representatives from Healdsburg, Lompoc, Plumas-Sierra, Shasta Lake, and Ukiah were absent. A quorum of the Committee was established.

PUBLIC FORUM

No public comment.

OPEN SESSION

DISCUSSION / ACTION ITEMS

2. **Approval of Minutes** – Approve minutes from the October 11, 2023 Facilities Committee meeting.

Motion: A motion was made by Jiayo Chiang and seconded by Monica Nguyen recommending approval of the October 11, 2023 Facilities Committee meeting minutes. A vote was taken by roll call: YES = Alameda, BART, Biggs, Gridley, Lodi, Palo Alto, Port of Oakland, Redding, Roseville, Santa Clara, and TID. The motion passed.

Informational item # 16 was presented after approval of the minutes per a Member request.

- Brad Wilkie with the City of Lompoc joined the meeting during the presentation of Informational item # 16.

- 3. All NCPA Facilities, Members, SCPPA – Utilicast, LLC MTCSA –** Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task Consulting Services Agreement with Utilicast, LLC for miscellaneous energy and utility related consulting services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

This is a current NCPA vendor. The current agreement with Utilicast, LLC is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are needed, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA has agreements in place for similar services with Trimark Associates, Inc., Aspen Environmental Group, and Utility System Efficiencies, Inc. A draft Commission Staff Report and the 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 Consulting Services Agreement with Utilicast, LLC for energy and utility related consulting services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. A vote was taken by roll call: YES = Alameda, BART, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, Santa Clara, and TID. The motion passed.

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

This is a current NCPA vendor. The current agreement with Valley Power Systems North, Inc. is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are needed, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA has agreements in place for similar services with Bay Cities Pyrotector and Sabah International. A draft Commission Staff Report and the draft agreement were available for review. It is recommended to place this item on the Commission Consent Calendar.

Motion: A motion was made by Jake Carter 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 Valley Power Systems North, Inc. for fire pump maintenance related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. A vote was taken by roll call: YES = Alameda, BART, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, Santa Clara, and TID. The motion passed.

- 5. All NCPA Facilities, Members, SCPPA – North American Substation Services, LLC MTGSA –** Staff presented background information and was seeking a recommendation for Commission approval of a five-year Multi-Task General Services Agreement with North American Substation

Services, LLC for transformer related services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

This is a current NCPA vendor. The current agreement with North American Substation Services, LLC is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are needed, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA has an agreement in place for similar services with VPF Transformer Consulting, Inc. A draft Commission Staff Report and the 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 General Services Agreement with North American Substation Services, LLC for transformer 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 any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. A vote was taken by roll call: YES = Alameda, BART, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, Santa Clara, and TID. The motion passed.

6. Property Insurance Program Renewal for CY 2024 – Staff provided background information and was seeking a recommendation for Commission approval to renew the Agency's property insurance program for CY 2024.

One of the goals identified in the 2021-2026 Strategic Plan was to develop a long-term, cost-effective insurance coverage strategy while building solid relationships between the Agency and its insurers. FM Global has been insuring the Agency's property assets since 2021 and has become a trusted and valued partner. NCPA has a strong partnership with FM Global, and an excellent relationship with the account managers, engineers and company executives. FM Global offers engineering support, cyber security assessments, and responsive account managers/engineers. In addition, FM Global provides credits, upon Board approval, for continued membership in the Mutual.

NCPA will receive a 5% Membership Credit from FM Global in the amount of \$206,393 to be applied directly to the policy premium at renewal for CY24. In addition, NCPA will also receive a Resiliency Credit of \$206,393 (5%) for loss control recommendations with the goal of increasing plant resiliency and reducing FM Global's risk profile.

FM Global presented the Agency with two proposals for the CY24 Property Insurance renewal. Option one is to make no changes and keep Earth Movement coverage at \$70M. Option two is to lower the Earth Movement Coverage to \$40M, resulting in a \$300,000 premium credit. FM Global recommends option two as the maximum foreseeable loss at any one plant is less than \$40M; Agency staff agrees with this recommendation.

The Agency's two-year rate lock expired in CY23. Because of the expiration of the rate lock and the Agency's loss history in CY23, the rate used to calculate the total premium increased by 9%. In addition to the rate increase, the TIV of the Agency's assets also saw a sizeable increase driven by higher forecasted revenues at Geo and Hydro. The total premium for option 1 and option 2 are detailed below:

	Option 1	Option 2
2023 TIV	\$ 1,570,733,112	\$ 1,570,733,112
2023 Premium	\$ 4,559,729	\$ 4,559,729
2023 TRIA	\$ 211,795	\$ 211,795
CA EM to \$40M Credit	\$ -	\$ 300,000
2023 Membership Credit	\$ 206,393	\$ 206,393
2023 Resilience Credit	\$ 206,393	\$ 206,393
Net Premium:	\$ 4,358,738	\$ 4,058,738

The property insurance premium is allocated based on the total insured value, calculated as Property Value + BI. Based on the recommendation of selection Option 2, the expected CY24 Property Insurance Renewal Premium is at a not-to-exceed of \$4,100,000. NCPA's commitment is an NTE of \$2,738,000, while LEC's commitment is an NTE of \$1,362,000 for the CY24 renewal.

Motion: A motion was made by Basil Wong and seconded by Jake Carter recommending Commission approval authorizing the General Manager to negotiate and bind Property Insurance coverage with FM Global for CY24 at a not-to-exceed premium of \$4,100,000. A vote was taken by roll call: YES = Alameda, BART, Biggs, Gridley, Lodi, Lompoc, Port of Oakland, Redding, Roseville, and Santa Clara. The motion passed.

- 7. Settlements Summary Results for FY 2023** – Staff provided background information and was seeking a recommendation for Commission approval of the FY2023 Annual Billing Settlement for the period of July 1, 2022 through June 30, 2023.

This year's Net Refund of Excess Collections due to participants at fiscal year-end was \$6.8 million or 1.0% of Collections (net of credits) through 6/30/23. The sources of these refunds were as follows: (1) Net Generation & Transmission operating costs of \$2.8 million; (2) Management Services costs of \$2.0 million; and (3) Pass-Through Costs and Interest and Other Income of \$2.0 million.

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.

Motion: A motion was made by Jiayo Chiang and seconded by Brain Schinstock recommending Commission approval of the FY 2022-2023 Annual Billing Settlements. A vote was taken by roll call: YES = Alameda, BART, Biggs, Gridley, Lodi, Lompoc, Port of Oakland, Redding and Roseville. The motion passed.

- 8. First Amendment to Resolution 23-13, Revised Deposit Calculation Requirements for Schedule Coordination Program Agreement (SCPA), Third Phase Agreements, Market Purchase Program, Gas Purchase Program, NCPA Green Power Program, and Single Member Services Agreements** – Staff presented background information and was seeking a recommendation for Commission approval of a First Amendment to Resolution 23-13 extending the temporary implementation timeframe through calendar year 2024 allowing staff to continue working with the Members to vet and approve changes to the program agreement terms. The temporary Schedule Coordination Program Agreements deposit calculation is based on the highest two months of estimated CAISO costs, and the temporary deposit calculation for the other Programs is based on the highest single-month contract cost(s) plus the two highest months of Mark-to-Market.

The Northern California Power Agency (NCPA) provides various Power Management services to its members pursuant to various program-based agreements that are signed by the participating member. These agreements provide for the obligation of the participating member to cover all costs and liabilities incurred through the program, thereby shielding other participating and non-participating members from the procurement costs and risks of the respective program. On February 23, 2023, the Commission authorized the revised deposit calculation requirements for the Programs and authorized the General Manager or his designee to temporarily implement the revised deposit calculations through calendar year 2023.

Prior to the approval of the revised calculations, the pending fiscal year 2024 budget reflected that all but one member would be required to deposit additional funds into the Schedule Coordination Program Agreement Balancing Account (SCPA) for a total additional collection of \$9.0 million. With the application of the revised methodology, all members' SCPA balances fell within the calculation tolerance range, and no additional collections or refunds were required. As a result of the revised methodology, members' committed funds totaling \$7.9 million were released back to their available GOR balances for the other programs.

During calendar year 2024, staff will continue to work with Members to revise respective program agreements. The extension of time will provide the continued benefit of the revised calculation methodologies to participating members until the agreements have been amended by the Commission and the participating members' governing bodies. The deposit methodology requirements will be included in Policy No. 200-101, and the respective agreements will reference that policy. Each subsequent update will require Commission-approved updates to Policy No. 200-101.

This new methodology will not be applicable to the Purchase Agreements Between the Geysers Power Company, LLC and Northern California Power Agency and the Third Phase Agreement for Purchase Agreements with Geysers Power Company, LLC. This agreement will include a 3 month deposit requirement. Members have asked for a projection of the reserve requirement.

Motion: A motion was made by Jake Carter and seconded by Shiva Swaminathan recommending Commission approval of the First Amendment to Resolution 23-13 extending the temporary implementation timeframe through calendar year 2024 allowing staff to continue working with the Members to vet and approve changes to the program agreement terms. The temporary Schedule Coordination Program Agreements deposit calculation is based on the highest two months of estimated CAISO costs, and the temporary deposit calculation for the other Programs is based on the highest single-month contract cost(s) plus the two highest months of Mark-to-Market. A vote was taken by roll call: YES = Alameda, BART, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, and Santa Clara. The motion passed.

- 9. NCPA Geothermal Plant 2 Fire System Modernization Project** – Staff presented background information and was seeking a recommendation for Commission approval of the Geothermal Plant 2 Fire System Modernization Project and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total project cost not to exceed \$778,855.50.

The fire protection system and supporting equipment at NCPA's Geothermal Plant 2 is malfunctioning, unserviceable, unsupported by the manufacturer, and is no longer considered reliable. NCPA Geothermal staff have determined this system must be replaced. The Plant 2 fire protection system is critical to the safety of NCPA personnel and the preservation of plant equipment in the event of a fire. Staff is seeking approval for a full replacement of the fire protection system in Plant 2, which includes the following:

- Replacement of fire alarm system that monitors the turbine generator building, fire pump house, cooling tower and outdoor transformers.
- Replacement of smoke detectors, strobes and horns.
- Replacement of water flow switches and valve supervisor devices.
- Replacement of air handling monitoring and shutdown capability.
- Replacement of extinguishing agent discharge monitoring system.

Project design will be routed to the CEC CBO for review. It should be noted that there is some risk for scope creep as a result of CEC engineering review.

The Geothermal Plant 2 Fire System Modernization Project forecast is shown below. Purchase orders referencing the terms and conditions of any agreements executed for work related to this project will be issued following NCPA procurement policies and procedures. Below is a breakdown of the project costs:

- Contractor's Proposed Project Cost = \$589,650
- 27% Contingency = \$159,205.50
- CEC Reviews and Inspections = \$30,000
- **Not to Exceed Project Authorization Total = \$778,855.50**

This project will be funded through the following source:

- FY2024 Capital Project Budget = \$1,600,000

The total cost of this project is not to exceed \$778,855.50. This amount includes \$159,205.50, or approximately 27% in contingency funds. No cash collection or budget augmentation is required for this work.

CEQA information needs to be updated in the Staff Report.

Motion: A motion was made by Jake Carter and seconded by Josh Cook recommending Commission approval authorizing the NCPA Geothermal Plant 2 Fire System Modernization Project and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total project cost not to exceed \$778,855.50. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Roseville, and Santa Clara. ABSTAIN = BART, Port of Oakland, and Redding. The motion passed.

- 10. PPA and Third Phase Agreement for Transaction with ZWEDC** – Staff presented background information and was seeking a recommendation for Commission approval of (i) a Power Purchase Agreement (PPA) between Zero Waste Energy Development Company, LLC (ZWEDC) and NCPA, and (ii) a Third Phase Agreement for Power Purchase Agreement with ZWEDC, to authorize NCPA to purchase SB 1383 compliant energy supply on behalf of the Participating Members.

Purchase Power Agreement (PPA)

- The cities of Santa Clara and Palo Alto requested that NCPA issue a Request for Proposals to purchase the following Products from an eligible facility:
 - Renewable Energy; compliant with SB 1383 Requirements
 - Capacity

- The proposal that was deemed responsive to this request, and that was determined to best satisfy the requirements, was submitted by Zero Waste Energy Development Company, LLC (ZWEDC).

NCPA has developed a PPA with ZWEDC based on the proposal received. NCPA has now completed the PPA negotiations.

ZWEDC Facility Information

- 1.6 MW biomass power plant
- Interconnection: CAISO BAA
- Resource ID: DIXNLD_1_LNDFL
- Owner: ZWEDC
- Operator: ZWEDC
- SC: Seller
- Term: 10 Year Term
- Products: Energy, Capacity and Environmental Attributes
- Cost: \$185.00 / MWh escalated annually concurrent with anniversary
 - Escalation percentage equal to the positive difference between the average Consumer Price Index ("CPI") percentage for the most recent 12 month period, limited to 2% per year

The seller will operate and schedule the facility into the CAISO markets. Settlements will be "netted" based on the PPA rate and CAISO market revenues. NCPA will take of the products at the point of interconnection. This facility will be SB 1383 compliant and RPS compliant at all times. In the event the facility is no longer SB 1383 compliant or RPS compliant, NCPA may elect to terminate the contract with no requirements of termination payment due to the Seller or Buyer.

Third Phase Agreement

This is an agreement between NCPA and participating Members to enable NCPA to enter into the PPA. By executing the Third Phase Agreement, the participating Members agree to purchase the products produced by ZWEDC under a "take-or-pay" agreement.

- Key Third Phase Agreement Provisions:
 - Specify the rights and obligations of NCPA and the Participants
 - Products will be delivered to the Participants based on their Project Participation Percentage
 - Each Participant agrees to pay for their share of Project Costs, Administrative Services Costs, scheduling coordination costs, and all other related costs
 - Establishes Security Deposit Requirements
 - Establishes rules for governance and other administrative functions

Motion: A motion was made by Basil Wong and seconded by Jim Stack recommending Commission approval authorizing the General Manager of Northern California Power Agency (NCPA) to enter into (i) the Power Purchase Agreement between Zero Waste Energy Development Company, LLC and Northern California Power Agency (PPA), and (ii) the Third Phase Agreement for Power Purchase Agreement with Zero Waste Energy Development Company, LLC (Third Phase Agreement), including any modifications to the Third Phase Agreement and any modifications to the PPA approved by the NCPA General Counsel. A vote was taken by roll call: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, and Santa Clara. The motion passed.

- 11. Appointment of Facilities Committee Chair and Vice Chair** – Approve the appointment of the 2023 Vice Chair, Shiva Swaminathan, as the 2024 Chair and the nomination of Nick Rossow as the new Vice Chair.

Motion: A motion was made by Alan Harbottle and seconded by Jiayo Chiang recommending approval of the appointment of the 2023 Vice Chair, Shiva Swaminathan, as the 2024 Chair, and nominates Nick Rossow as the new Vice Chair. A vote was taken by roll call: YES = Alameda, BART, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, and Santa Clara. The motion passed.

INFORMATIONAL ITEMS

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

Grace Solar

- Project Details:
 - Developer: NextEra Energy Resources Development (NextEra)
 - Capacity: 50 MW “Slice”; Total 400-500 MW Project
 - Offer Price:
 - 15 Yr. @ \$45.73 / MWh Flat Solar PPA Rate
 - **20 Yr. @ \$41.97 / MWh Flat Solar PPA Rate**
 - Energy Only – no deliverability at this time
 - BAA Interconnection:
 - SCE Colorado River 230 kV substation
 - Blythe, Riverside County, CA
 - COD: December 2027
- Estimated Member Interest:
 - Biggs: 0.4 MW
 - Gridley: 0.6 MW
 - Healdsburg: 3.0 MW
 - Lodi: 10 MW to 15 MW
 - Lompoc: 5.0 MW
 - Palo Alto: 5.0 MW
 - Port of Oakland: 5.0 MW
 - Shasta Lake: 5.0 MW
 - SVP: 11.0 MW to 16.0 MW

- 13. FERC Transmission Rate Case Advocacy Program** – Staff discussed development and scope for a FERC Transmission Rate Case Advocacy Program.

TANC’s PA 6 Program is expiring at the end of 2023. NCPA will pick up TANC’s prior TO case work. Funds included in the FY 2024 budget to cover this expenditure are \$600,000. NCPA issued an RFP and solicited offers from rate case attorneys. Duncan Weinberg Genzer and Pembroke, P.C. (DWGP) was selected.

The next steps in the process is to obtain Commission approval to enter into contracts including an amendment to a Multi-Task Professional Services Agreement with DWGP and bill Members according to an approved cost split for funds actually incurred. Approval will be requested through a Commission Resolution. NCPA Staff and participating NCPA Members will develop a Transmission Owner Rate Case Program (the Program).

The Program Committee role will include setting annual program goals, and providing direction on the level of participation throughout the year. Staff propose a smaller group or committee to meet quarterly or as often as needed to direct work. All participants will receive information throughout the year.

Transmission Related Activities / Focus

- TO Rate Cases – NCPA TO Rate Case Program
- STAR Process – NCPA staff, with existing legal support and technical support
- CAISO TPP – NCPA staff, with existing legal support and technical support
- CAISO Interconnection Process – NCPA staff, with existing legal support and technical support
- Policy Objectives – NCPA L&R Team

Program Goals and Objectives

- Minimize the CAISO wheeling access charge increases; and
- Prioritize NCPA Member projects

14. Proposed Changes to NCPA's Energy Risk Management Regulations – Staff presented proposed changes to NCPA's Energy Risk Management Regulations.

General changes include grammatical changes as well as language simplification and clarification. Other proposed changes include product transaction limits, new definitions, and financial and physical coverage recommendations.

Product Transaction Limits in Appendix 4 changes would include:

- AGM of Power Management
 - Can enter into transactions for up to 60 consecutive/cumulative months
- Manager Portfolio and Pool Administration
 - Can enter into transactions for up to 24 consecutive months
- Scheduler and Planner
 - Increase from 10 to 20 days before the conclusion of the current month

New Definitions in Appendix 1 would include:

- "Financial Coverage"
 - Defines the percentage of a Member's forecasted load costs covered by the expected revenues from generating resources, IST, or PPA. The financial coverage a thermal resource provides is net of that resource's fuel cost.
- "Physical Coverage"
 - Defines the percentage of a Member's forecasted load that is covered by a physical generating resource, IST, or PPA. Physical coverage does not include coverage from a generation asset that doesn't have a contract or contracts for the delivery of natural gas.

Recommended Coverage in Appendix 9 include:

- Incorporates a broader view of analyzing a combination of:
 - Physical coverage;
 - Financial coverage;
 - Super peak hours coverage; and
 - Historical price volatility by month
- Leading towards a more robust and advanced monthly recommended coverage matrix to better hedge against risk

At the November ROC meeting staff will be seeking a recommendation for Commission approval.

15. NCPA Inter-Agency Resource Plan – Staff provided an update on the NCPA Inter-Agency Resource Plan, including presenting a draft version of the plan for Committee review/comment.

▪ **What is the IARP?**

- Inter-Agency Resource Plan
- A goal within NCPA's 2021-2026 NCPA Strategic Plan
- An NCPA and member document to prepare; develop and maintain diverse generation resource portfolio in accordance with or exceeding renewable portfolio standard and capacity obligations.

▪ **Why is important?**

- California Air Resources Board (CARB) established a plan to transition to a clean electrical energy economy by 2045
- Load growth is rising and existing generation is changing
 - Drastically reducing fossil fuels
 - Achieve carbon neutrality
 - Meeting energy efficiency goals
- This plan develops steps forward

IARP Evaluation Goals

▪ **Short Term 2021-2026**

- Identify Member's common needs (existing load and member owned resources)
- Conceptual plans of transition periods (effects of electrification and EV charging)
- Proposal & Economic Evaluation (increasing transmission costs)

▪ **Transition Term 2027-2030**

- New Capital Projects (Increase in inverter-based resources translates into falling system inertia, hence the need to consider H₂ combustion for generation plants).
- Adding Electrolyzers at LEC
- Upgrading CT2 (50 MW aero derivative turbine with H₂ compatibility)
- Add Storage Resources – H₂ & BESS

▪ **Long Term 2031-2045**

- Baseload Resources such as Geothermal Capital Improvements
- Peaking Resources such as CT 1 (25 MW combustion turbine, fuel with H₂)
- Storage Resources and Emerging Technology

NCPA Short Term Findings

- Pool and SVP meet RA requirements until 2026 when added capacity will be needed
- NCPA resources can satisfy energy requirements until 2026
- RPS mandates from SB 1020 can be met with NCPA resources until 2026

NCPA Mid-Term Findings

- Transition LEC to run on a blend of hydrogen and natural gas
- Plan for full hydrogen conversions for LEC, Lodi STIG, Lodi CT1 and Alameda CT1
- Add resources to cover capacity, energy and RPS requirements starting in 2025
- Evaluate energy storage options to manage renewables and provide RA

NCPA Long-term Findings

- Future resources are required to meet increasing Capacity and Energy needs
- To meet statutory and regulatory goals
 - *Meet RPS Requirement:* 60% by 2030
 - *Meet Retail Electricity Sales Requirements:*
 - 90% by 2035
 - 95% by 2040
 - 100% by 2045

16. Geothermal Steam Field Model – Staff provided an informational presentation regarding the latest Geothermal Steam Field Model.

Project Scope

- Develop numerical reservoir model of the Geysers Geothermal Field with an emphasis on NCPA lease
 - Utilize the ECLIPSE simulation software
 - Transition the model from previous TETRAD software
- Milestones
 - Task 1: Prepare well and resource data/history for model
 - Task 2: History matching and model calibration
 - Task 3: Reservoir Forecast (8 scenarios)
 - Task 4: Formal Report

Task 2: History Matching Data

- Wellhead temperature shows degree of superheat change from 2013-2022

Task 3: Forecasting – Confirm previous model indications

- Case 1: Base Case Forecast- 80% void replacement
 - Scenario 1: Steam Rate Constrained: How fast does pressure fall off
 - Scenario 2: Pressure Constrained: How fast does steam production fall off
- Case 2: Reduced SEGEP Injection – 30% mass replacement
 - Scenario 1&2 as Case 1
- Case 3: Increase SEGEP Injection – 100% mass replacement
 - Scenario 1&2 as Case 1
- Case 4: No Production – What happens to reservoir pressure
 - Can Pressure/Temperature rebound to initial conditions
- Case 5: Customized Schedule of production and injection
 - No production from March to June, injection during March to May

Each of these eight scenarios were discussed in great detail with the Members, providing graphs and data.

Conclusion

- All tasks have been completed by GeothermEx
 - GeothermEx remarks:
 - Model can be improved by calibrating against superheat conditions
 - Maintaining a lower level of injection allows a high steam production rate overall (this is assuming current injection strategy)
 - Results are consistent with measured data and reservoir understanding
 - Reservoir appears to be at a turning point where the model shows the bottom to be watering out – Need to confirm
- Potential work to be considered
 - Tracer history matching
 - Optimize trickled injection
 - Integrate NCG
 - Improve Superheat matching

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

CTs – CT1 had 17 starts, including 1 ghost, of 0 forecasted. FYTD total is 50 starts. CT2 had 8 starts of 0 forecasted. FYTD total is 26 starts.

- **Outages**

- **CT1 Lodi – Available.**

- On 10/18/23 @ 0830 thru 0854, CB52L SF6 circuit breaker low pressure alarm came in. After investigating, the CB pressure temperature compensation switch calibration might be off, these are lab tested. Added .8lbs of SF6 to top off circuit breaker.
 - On 10/27/23 @ 1400 thru 1600, Gas compressor lost communications, found a bad power supply card.
 - 10/28/23 & 10/29/23 @ 0600 thru 0900, Reported icing capacity derate due to ambient conditions.

- **CT1 Alameda – Available.**

- On 10/4/23 @ 1514 thru 1936, U1/U2 forced out due to air compressor trip on high discharge temp, found an air leak in the system. Leak was repaired and plant was restored.
 - On 10/10/23 @ 1546 we received a call for U1 exceptional dispatch, unit came online and we lost our back up ECN Communication network and had to dispatch an operator to the site. While operator was in route to Alameda @ 1645 the U1 tripped on Hi-Hi vibration on #1 inlet bearing. Found the vibration probe to be defective and was replaced. U1 returned to service on 10/11/23 @ 1145. ** Reason for CAISO exceptional dispatch was due to PG&E asking AMP to switch their island load to Oakland Station “J”. PG&E needed to conduct maintenance at their Oakland Substation “C” XFRM from 10/10/23 thru 10/16/23.
 - From 10/10/23 thru 10/16/23- 0600 thru 2100 Alameda units were manned. CAISO dispatched one CT (20MW), to support PG&E station “C” work and to support Alameda island load. Both units were forced thru the same period from 2100 thru 0530 in the morning.
 - On 10/12/23 – AT&T ECN communications were restored and back on the main line.

- **CT2 STIG – Available.**

- 10/28/23 & 10/29/23 @ 0600 thru 0900, Reported icing capacity derate due to ambient conditions.

**NERC Cold weather implementation standard (EOP-012-1), operations is submitting a capacity derate to dispatch when ambient conditions have the potential for inlet icing based on temps <42* & humidity >65%. These ambient capacity derate do not constitute a forced outage.

2024 Planned Outages

- **CT1 Lodi-** 1/1/24 thru 1/31/24
 - **CT2 STIG-** 4/1/24 thru 4/30/24
 - **CT1 Alameda U1/U2-** 5/1/24 thru 5/31/24

- **CT1 Lodi Run Hours**

- YTD hours 32.2 of 200 Allowed (based on calendar year)

- **CT1 Alameda Diesel Hours**

- U1= 4.80 hrs. of 42 (during any consecutive 12 month period)
 - U2= 3.82 hrs. of 42 (during any consecutive 12 month period)

- **Safety and Environmental**

- There were two minor safety issues
 - No environmental issues to report

- **Staff reviewed the CAISO Commitment Runs for October 2023**

Hydro – Collierville (CV) Power House was at 59% availability due to the normal annual fall outage. The CV outage has now been completed. New Spicer Meadows (NMS) Power House was at 52% availability due to the PG&E TIGO during the month of October. The monthly

generation profiles for CV and NMS were shared with the Committee. Annual maintenance performed during the CV outage included turbine guide bearing inspection, turbine runner pit maintenance, runner and needle inspections, and E testing of the rotor. Staff from AMP visited the site during the Collierville outage. During the month 230 kV switching was performed and NSM received a battery replacement.

New Spicer Meadows Reservoir Storage

- 19,882 acre feet decrease (14%) month-over-month
- 145,182 acre feet to 125,300 acre feet
- Storage levels remain strong going into winter
- Optimizing stored water

Current Events

- Projects
 - Completed CV outage 10/26
 - Spicer Batter Replacement 10/30 for 2 weeks
 - Beaver Creek Trash-rack Removal and Permitting
 - Alpine and Utica Dam Maintenance
 - Continued FEMA/OES damage coordination
 - EAP face to face meeting coming up
 - CCWD coordination meetings – next is December
 - Snow damage repair work: design, permitting, fieldwork

Geo – There were no safety incidents for the month of October. Safety Training is 75% complete. Vegetation was performed along the steam pipelines. The average Net Generation for the month of October was 48 MW. The total net generation was 35.72 GWh. CY 2023 actual net generation = 455.4 GWh, which is 15.4% below forecast. CY net generation goal is 664.8 GWh. On October 11, 2023, the Unit 1 turbine rotor and diaphragms for the Unit 1 Steam Strainer Damage Project was transported to Reliable Turbine Services for repair. The Unit 4 damaged lube oil pump has been sent out for repairs. Metal debris has been found throughout the seal oil system. Machining on the turbine rotor shaft was performed to remove damage caused by the lube oil pump. Other annual maintenance is almost complete in the Unit 4 Overhaul Project. The projected return to service is November 15, 2023. Efforts are being made to shorten this timeline.

Geothermal Plant Projects Update to September 30, 2023 – The Administrative Services department provided cost and funding updates to the Committee for the Geothermal Plant 2023 projects including the Plant 2 Unit 4 Overhaul, the Plant 1 Steam Strainer Project, the Cooling Tower Temporary Measures, and the Crane Repairs. Staff also provided the Maintenance Preserve projection.

18. Planning and Operations Update – Staff reviewed the current water storage conditions, which still remain above average due to the exceptional water year. The Pacific gas storage versus the five year average was provided. Six new resources will be integrated into the NPCA systems during 2024. And, staff provided information regarding the Wildcat Energy Farm 1 Solar.

19. Next Meeting – The next Facilities Committee meeting is scheduled for December 6, 2023.

ADJOURNMENT


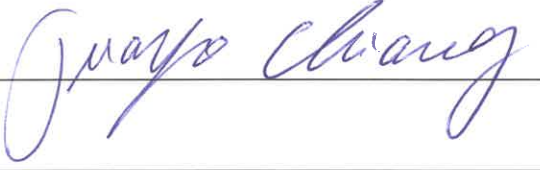

The meeting was adjourned at 1:44 pm by the Committee Chair.

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

Carrie Pollo	NCPA
Tony Zimmer	NCPA
Michael DeBartoli	NCPA
BRIAN SCHINSTOCK	ROSEVILLE
Randy Howard	NCPA
Jake Eymann	NCPA
Rahael Santana	NCPA
Jeremy LAWSON	NCPA
Randall Kramer	NCPA
Alan Harbottle	AMP
Chris Ferrara	AMP
Ben Rings	AMP
Jiayo Cui'ang	Codi
Monty Hawks	NCPA
Jane Heckhardt	NCPA

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

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

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



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: January 18, 2024

SUBJECT: Millennium Power Services, Inc, – Five Year Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

AGENDA CATEGORY: Consent

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

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

Approve Resolution 24-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Millennium Power Services, Inc. for valve parts and maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

BACKGROUND:

Various valve parts and maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place with IMI Critical Engineering, Inc. and Carter Process Controls (pending) for similar services.

FISCAL IMPACT:

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

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee review and approval.

AFTER FACILITIES APPROVAL: On December 6, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On December 11, 2023 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 24-XX
- Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Millennium Power Services, Inc.

RESOLUTION 24-XX

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

(reference Staff Report XXX:24)

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

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

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Millennium Power Services, Inc. to provide such services as needed at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into said Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2024 by the following vote on roll call:

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

JERRY SERVENTI
CHAIR

ATTEST:

ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT AND AGREEMENT FOR PURCHASE OF
EQUIPMENT, MATERIALS AND SUPPLIES BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
MILLENNIUM POWER SERVICES, INC.**

This agreement for general services and purchase of equipment, materials, and supplies ("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 Millennium Power Services, Inc., a corporation with its office located at 80 Mainline Drive, Westfield, MA 01085 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2024 ("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 equipment, materials, and supplies ("Goods") described in the Scope of Work attached hereto as Exhibit A and incorporated herein (both services and Goods collectively referred to as "Work" herein). Contractor shall be responsible at its sole expense for delivering the Goods, as further specified herein, to the specified Project Site, DDP, and title shall not pass until the Agency accepts delivery at the Site. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 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 or monetary cap on Requested Work and all related expenditures authorized by that

Purchase Order, and shall include a time by which the Requested Work shall be completed. Contractor shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Contractor chooses not to perform the Requested Work. If Contractor agrees to perform the Requested Work, begins to perform the Requested Work, or does not respond within the seven day period specified, then Contractor will have agreed to perform the Requested Work on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

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

2.1 Invoices.

For Field Services: 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.

For Goods: Contractor shall submit invoices for each goods order, during the term of this Agreement, based on the cost for Goods delivered prior to the invoice date. Contractor shall include the number of the Purchase Order which authorized the Goods for which Contractor is seeking payment.

All 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 payments, based on invoices received, for Work satisfactorily performed and for authorized reimbursable costs incurred, or for delivery of the Goods, per the delivery terms of this Agreement. 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. Intentionally left blank.

4.4 Pollution Insurance. Intentionally left blank.

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 4.5, 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 and 4.5.5, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.

4.5.5 Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that

may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

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

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.

Without limiting the generality of the foregoing, and in addition to any and all warranties provided or implied by law or public policy, or any other warranties provided by Contractor, Contractor warrants that all Goods are free from defects in design and workmanship; comply with applicable federal, state and local laws and regulations; are new, of good quality and workmanship, and free from defects; are suitably safe and sufficient for the purpose for which they are normally used; and are not subject to any liens or encumbrances. Contractor shall provide all Goods in accordance with all applicable engineering, construction and other codes and standards, in accordance with prudent electrical utility standards, and in accordance with the terms of this Agreement applicable to such Goods, all with the degree of high quality and workmanship expected from purveyors engaged in the practice of providing materials and supplies of a similar nature.

- 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 of a defect, Agency shall provide clear access to the Work at the installation site; provided, however, that Contractor shall be responsible for any cost related to uncovering, disassembly or reassembly of parts or hardware required for Contractor to perform its warranty obligations.

- 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 the Assistant General Manager, Generation Services, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Millennium Power Services, Inc.
Attention: Kendall Walsh
80 Mainline Drive
Westfield, MA 01085

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

MILLENNIUM POWER SERVICES, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

ALISON PERREAULT,
Human Resource Generalist

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Millennium Power Services, Inc. ("Contractor") shall provide valve parts, refurbishments and technical field advisory (TFA) related services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

- System Valve Design & Performance Evaluations
- Inspections of Bypass System
- Conduct Root Cause Analysis on Valve Failures
- Onsite Training
- Onsite technical field advisory (TFA) services
- Parts refurbishments to be conducted at Millenium facility in Westfield, MA¹

At the request of Agency, NCPA Members, SCPPA or SCPPA members, Contractor shall also supply valve parts with agreed upon timeframe based on approved detailed list of item(s) on Purchase order(s).

¹ For Work conducted out of state consistent with the Commerce Clause, California cannot dictate wages to be paid in another state, "[T]he Court struck down on Commerce Clause grounds a state law where the 'practical effect of such regulation is to control [conduct] beyond the boundaries of the state" *Edgar v. Mite Corp.* 457 U.S. 624, 643 (1982) citing *Southern Pacific v. Arizona*, 1325 U.S. 761, 775 (1945). (Also see Public Works Case No. 2007-008 at 11-12, Russ Will Mechanical, Inc. – Off-site Fabrication of HVAC Components, Department of Industrial Relations did not address Commerce Clause objection because it was in that case a "hypothetical attempt to apply the CPWL extraterritorially. .."

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:

2023
Field Service Rates

	<u>Supervisor</u>	<u>Technician</u>
Regular Time	\$118/hour	\$ 112/hour
Overtime	\$145/hour	\$ 138/hour
Premium	\$188/hour	\$ 178/hour

Regular time – Monday through Friday, 7:00 a.m. to 3:30 p.m.
Overtime – Monday through Friday, after 3:30 p.m. All Day Saturday
Premium time – All day Sunday and Holidays
Mileage billed at \$2.00 per mile*
Per Diem \$60.00*
Material, Subcontracted Labor Mark-up 30%
Hotel Mark-up 10%*
Mobile Machine Shop \$3,000 per week
Electronic safety valve test device (AVK) \$600 per day
Torque up Rental \$600 per day

At the request of the Agency, Contractor may either provide T&M or fixed pricing proposals.

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

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

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

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

Millennium Power Services, Inc.

(Company name)

for contract work at

LODI ENERGY CENTER

(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 establishes trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5) It will secure a duly executed Agreement to be Bound, in form identical to this documents, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: January 18, 2024

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

AGENDA CATEGORY: Consent

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

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

RECOMMENDATION:

Approve Resolution 24-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Energy Options, Inc. for cooling tower maintenance related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

BACKGROUND:

Various cooling tower maintenance related services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar services with American Cooling Tower, Creative Cooling Technologies and EvapTech, Inc.

FISCAL IMPACT:

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

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee review and approval.

AFTER FACILITIES APPROVAL: On December 6, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

AFTER LEC PPC APPROVAL: On December 11, 2023 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 24-XX
- Multi-Task General Services Agreement with Energy Options, Inc.

RESOLUTION 24-XX

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

(reference Staff Report XXX:24)

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

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

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with Energy Options, Inc. to provide such services as needed at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members; and

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

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

PASSED, ADOPTED and APPROVED this ____ day of _____, 2024 by the following vote on roll call:

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

JERRY SERVENTI
CHAIR

ATTEST:

ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
ENERGY OPTIONS, 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 Energy Options, Inc., a corporation, with its office located at 7720 Madison Street, Paramount, CA 90723 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2023 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

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

of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

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

Additionally, in accordance with the California Administrative Code, Title 8, Group 3, Article 2, Section 16000, Publication of Prevailing Wage Rates by Awarding

Bodies, copies of the applicable determination of the Director can be found on the web at: <http://www.dir.ca.gov/DLSR/PWD/> and may be reviewed at any time.

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

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

8.4.1 Immediately terminate the Agreement;

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

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

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

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

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

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

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

Section 10. PROJECT SITE.

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

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.

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

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

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

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

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

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

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

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

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in

whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

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

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

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

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

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

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

Energy Options, Inc.
Attention: Omar Gomez
7720 Madison Street
Paramount, CA 90723

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

ENERGY OPTIONS, INC.

Date_____

Date_____

RANDY S. HOWARD,
General Manager

LUIS GOMEZ,
Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Energy Options, Inc. ("Contractor") shall provide cooling tower maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

- Cooling Tower Maintenance
- Cooling Tower Cleaning
- Cooling Tower Inspections I Evaluations

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:

<u>Title</u>	<u>Hourly Rate</u>	<u>Overtime</u>	<u>Subsistence</u>
Supervisor	\$145.00	\$217.00	\$100 per day
Foreman	\$135.00	\$202.00	\$100 per day
Technician I	\$125.00	\$187.00	\$100 per day
Technician II	\$120.00	\$180.00	\$100 per day

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

Energy Options, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

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)

RECOMMENDATION:

Approve Resolution 24-XX authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Nick Barbieri Trucking, LLC dba Redwood Coast Fuels for delivery of fuels, oils, lubricants, and other miscellaneous petroleum products, 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 NCPA's Geothermal facility.

BACKGROUND:

Delivery of fuels, oils, lubricants, and other miscellaneous petroleum products are required from time to time for the operation and maintenance of NCPA's Geothermal Facility. NCPA currently has an agreement in place with Nick Barbieri Trucking, LLC dba Redwood Coast Fuels which is expiring. 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. NCPA has agreements in place for similar services with Westgate Petroleum Company, Inc., Valley Pacific Petroleum Services, Inc, and Southern Counties Lubricants, LLC.

FISCAL IMPACT:

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

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Pending Committee review and approval.

AFTER FACILITIES APPROVAL: On December 6, 2023 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 24-XX
- Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Nick Barbieri Trucking, LLC dba Redwood Coast Fuels

RESOLUTION 24-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK FOR PURCHASE OF EQUIPMENT, MATERIALS AND
SUPPLIES WITH NICK BARBIERI TRUCKING, LLC DBA REDWOOD COAST FUELS**

(reference Staff Report #XXX:24)

WHEREAS, delivery of fuels, oils, lubricants and other miscellaneous petroleum products, are required from time to time for the operation and maintenance of NCPA's Geothermal Facility; and

WHEREAS, Nick Barbieri Trucking, LLC dba Redwood Coast Fuels is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task Purchase of Equipment, Materials and Supplies with Nick Barbieri Trucking, LLC dba Redwood Coast Fuels to provide such services as needed at the Geothermal Facility; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into said Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at the Geothermal Facility.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2024 by the following vote on roll call:

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

JERRY SERVENTI
CHAIR

ATTEST:

ASSISTANT SECRETARY



**MULTI-TASK
AGREEMENT FOR PURCHASE OF
EQUIPMENT, MATERIALS AND SUPPLIES
BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
NICK BARBIERI TRUCKING, LLC DBA REDWOOD COAST FUELS**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency, with its main offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and Nick Barbieri Trucking, LLC dba Redwood Coast Fuels, ("Supplier"), whose principal office is located at 3471 N State Street, Ukiah, CA 95482 (together sometimes referred to as the "Parties") as of _____, 2024 (the "Effective Date").

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

Section 2. PROJECT SITE. Goods provided under this Agreement by Supplier may include Goods delivered directly to the Agency at its Geothermal facilities and consistent with the terms of this Agreement. The "designated Project Site" as that term is used herein, shall mean the site for delivery, DDP.

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

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

Section 5. COMPENSATION. Agency hereby agrees to pay Supplier for the Goods an amount not to exceed TWO MILLION (\$2,000,000) as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges. This dollar amount is not a guarantee that Agency will pay that full amount to the Supplier, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

- 5.2 **Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.

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

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

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

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

6.5 All Policies Requirements.

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

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

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

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

6.5.5 Additional Certificates and Endorsements. Not Applicable.

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

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

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

Section 8. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.

- 8.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Supplier from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Supplier acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 8.2 Scope.** Supplier shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Supplier, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 8.3 Transfer of Title.** Supplier shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Supplier or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Supplier shall be responsible for all such notifications. Should Supplier be required to remedy or remove Goods as a result of a leak, spill, release or discharge of Goods into the environment at Agency's Site or elsewhere, Supplier

agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

Section 9. MISCELLANEOUS PROVISIONS.

- 9.1 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Supplier and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 9.2 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 9.3 Compliance with Applicable Law.** Supplier shall comply with all applicable federal, state, and local laws, rules and regulations in regard to this Agreement and the Goods supplied hereunder.
- 9.4 Construction of Agreement.** The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.
- 9.5 Supplier's Status.** Supplier is an independent contractor and not an employee or agent of NCPA.
- 9.6 Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.
- 9.7 Governing Law.** This Agreement and all matters pertaining to it, shall be governed by the laws of the State of California and venue shall lie in Placer County or in the county to which the Goods are delivered.
- 9.8 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 9.9 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 9.10 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

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

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

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

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

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

Nick Barbieri
Owner
Redwood Coast Fuels
3471 N State Street
Ukiah, CA 95482

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

- 9.15.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 9.15.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 9.15.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 9.15.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 9.15.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 9.16** **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Supplier's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Supplier's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Supplier's Proposal (if any), the Purchase Order shall control.
- 9.17** **Certification as to California Energy Commission.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit B.
- 9.18** **Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit C.
- 9.19** **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.
- 9.20** **Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.

SIGNATURES ON NEXT PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

NICK BARBIERI TRUCKING, LLC DBA
REDWOOD COAST FUESL

Date: _____

Date: _____

RANDY S. HOWARD, General Manager

NICK BARBIERI, Owner

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

PURCHASE LIST

As requested by Agency, Supplier shall provide, but limited to the delivery of Fuels, Oils, Lubricants, and other miscellaneous petroleum products to the Geothermal Facility Storage Tanks.

Fuels and Lubricants, but not limited to the following:

- GST 32 Turbine oil delivered to Plant 2 – 8,000 gallon clean oil tank
- Gasoline delivered to the facility - 500 gallon gas tank for vehicles.
- Clear diesel delivered to the facility – 500 gallon fuel tank for vehicles.
- Red diesel delivered to the Plant 1, fuel tank used for the backup diesel generator and back up diesel fire pump. – 1,000-gallon tank.
- Red diesel delivered to the Plant 2, fuel tank used for the backup diesel generator and back up diesel fire pump. – 1,000 gallon tank.

GST 32 Turbine Oil \$13.48 Price per Gallon

Fuel (gasoline & diesel) S.F. Bay Area prior day OPIS Avg. +\$.27

Gasoline and diesel pricing will change daily based on the prior day average cost as published by OPIS.

Lubricant pricing is subject to change in the event of a price change by Redwood's vendor. Supplier shall provide Agency with advance written notice of any change in Agency's price, and such change in price shall mirror the price increase/decrease received from Supplier's vendor.

EXHIBIT B – NOT APPLICABLE

CERTIFICATION

Affidavit of Compliance for Suppliers

I, _____

(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20____.

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

EXHIBIT C – NOT APPLICABLE

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.