



Commission Staff Report - *DRAFT*

March 28, 2017

COMMISSION MEETING DATE: April 20, 2017

SUBJECT: Airgas USA, LLC – First Amendment to Five Year Multi-Task Agreement for Purchase of Equipment, Material and Supplies; Applicable to the following projects: All NCPA Generation Services Plant Locations, Members, SCPPA, and SCPPA Members

AGENDA CATEGORY: Consent

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

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

RECOMMENDATION:

Approval of Resolution 17-XX authorizing the General Manager or his designee to enter into a First Amendment to Multi-Task Agreement for Purchase of Equipment, Material and Supplies with Airgas USA, LLC, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$750,000 over five years for use at any facilities owned and/or operated by Agency, its Members, Southern California Public Power Authority (“SCPPA”) or SCPPA Members.

BACKGROUND:

Various gases are required at the NCPA locations from time to time. Airgas USA, LLC is a provider of these services. NCPA entered into a Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Airgas USA, LLC effective May 1, 2014 for an amount not to exceed \$500,000. On May 24, 2016, Airgas USA, LLC was acquired by Air Liquide. This amendment will 1) increase the not to exceed amount from \$500,000 to \$750,000; 2) add additional delivery facility locations and 3) add products to the Purchase List. This agreement will be for use at any facilities owned and/or operated by Agency, its Members, Southern California Public Power Authority (“SCPPA”) or SCPPA Members.

FISCAL IMPACT:

Total cost of the agreement is not to exceed \$750,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

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

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Committee Review Pending.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution
- Multi-Task Agreement for Purchase of Equipment, Material and Supplies with Airgas USA, LLC
- First Amendment to Multi-Task Agreement for Purchase of Equipment, Material and Supplies with Airgas USA, LLC

RESOLUTION 17-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A FIRST AMENDMENT TO MULTI-TASK AGREEMENT FOR
PURCHASE OF EQUIPMENT, MATERIAL AND SUPPLIES WITH AIRGAS USA, LLC**

(reference Staff Report #xxx:17)

WHEREAS, Northern California Power Agency (NCPA) facilities, its Members, Southern California Public Power Authority ("SCPPA") and SCPPA Members require gases at its various locations; and

WHEREAS, Airgas USA, LLC is a provider of these materials and supplies; and

WHEREAS, NCPA and Airgas USA, LLC entered into a five year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies effective May 1, 2014; and

WHEREAS, NCPA seeks to increase the not to exceed amount from \$500,000 to \$750,000; add additional delivery facility locations including all NCPA facilities, its Members, SCPPA, and SCPPA Members; and add materials to the Purchase List; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a First Amendment to Multi-Task Agreement for Purchase of Equipment, Material and Supplies with Airgas USA, LLC, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$750,000 over five years.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2017 by the following vote on roll call:

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

BOB LINGL
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY



**FIRST AMENDMENT TO MUTLI-TASK AGREEMENT FOR PURCHASE OF EQUIPMENT, MATERIALS
AND SUPPLIES BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND AIRGAS USA, LLC**

This First Amendment ("Amendment") to Multi-Task Agreement for Purchase of Equipment, Materials and Supplies is entered into by and between the Northern California Power Agency ("Agency") and Airgas USA, LLC ("Supplier") (collectively referred to as "the Parties") as of _____, 2017.

WHEREAS, the Parties entered into a five year Multi-Task Agreement for the Purchase of Equipment, Materials and Supplies dated effective May 1, 2014, (the "Agreement") for Supplier to provide gases and cylinder rentals at its CT facilities located at 12745 N. Thornton Road, Lodi, CA 95242; and

WHEREAS, the Agency now desires to amend the Agreement to increase the total compensation authorized by the Agreement from a "NOT TO EXCEED" amount of \$500,000.00 to a "NOT TO EXCEED" amount of \$750,000.00; and

WHEREAS, the Agency now desires to amend the Agreement to allow Contractor to provide Work to Agency members, Southern California Public Power Authority ("SCPPA"), and/or SCPPA members on the terms and conditions set forth in the Agreement, as amended herein; and

WHEREAS, the Agency now desires to amend the Purchase List set forth in Exhibit A to the Agreement; and

WHEREAS, the Agency now desires to amend the Agreement to add additional Miscellaneous provisions; and

WHEREAS, the Agency now desires to amend the Agreement to provide for the supply of ammonia and to include Airgas Specialty Products, Inc. as a supplier under the Agreement; and

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

NOW, THEREFORE, the Parties agree as follows:

1. Airgas Specialty Products, Inc. shall be a supplier under the Agreement together with Airgas USA, LLC, and all references to "Supplier" in the Agreement shall refer to both Airgas Specialty Products, Inc. and Airgas USA, LLC.
2. **Section 1—Scope** of the Agreement is amended and restated to read in full as follows:

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, DDP to NCPA when requested by the Agency. Supplier shall be responsible at its

sole expense for delivering the Goods to Agency's Project Site 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.

3. **Section 4—Compensation** of the Agreement is amended and restated to read as follows:

Agency hereby agrees to pay Supplier for the Goods an amount **NOT TO EXCEED SEVEN HUNDRED FIFTY THOUSAND dollars (\$750,000.00)** as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges. This dollar amount is not a guarantee that Agency will pay that full amount to the Supplier, but is merely a limit of potential Agency expenditures under this Agreement.

The remainder of Section 4 of the Agreement is unchanged.

4. **Section 5- Insurance Requirments** of the Agreement is amended to add the followikng provisions:

5.6 Poluution Liability. During the term of this Agreement, Supplier's primary and excess liability insurance policies shall include pollution coverage, which shall provide coverage for various activities by Spplier, including sudden and accidental pollution caused by Suppliers' products and/or operation.

5. **Section 8-Miscellaneous Provisions** of the Agreement is amended to add the following provisions:

8.8 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.

8.9 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.10 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.

8.11 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.

8.12 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.

8.13 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.*

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

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

Airgas USA, LLC
920 Piner Road
Santa Rosa, CA 95403-1904

Any written notice to Agency shall be sent to:

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

With a copy to:

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

8.16 **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:

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

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

8.16.3 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.

8.16.4 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.

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

8.16.6 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.*

8.17 **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.

The remainder of Section 8 of the Agreement is unchanged.

6. **Exhibit A – PURCHASE LIST** is amended and restated to read in full as set forth in the attached Exhibit A.

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

////////////////////

Date: _____

NORTHERN CALIFORNIA POWER AGENCY

RANDY S. HOWARD, General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Assistant General Counsel

Date: _____

AIRGAS USA, LLC

Authorized signatory

AIRGAS SPECIALTY PRODUCTS, INC.

Authorized Signatory

EXHIBIT A

PURCHASE LIST

Supplier shall provide the following list of Goods after the Effective Date of this Agreement as requested by the Northern California Power Agency ("Agency"), at any facilities owned and/or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members and in accordance with the Rates set forth below:

Product Price Schedule:

Airgas P/N	Airgas Product Description	Cylinder Size	Purity	Cylinder Price
	Lodi Energy Center			
Certified Mixes				
X02AI99C15A3299	8ppm NH3/ bal Air	150A [141 cf.]	Cert	\$215.00
EPA Protocols				
E02NIE15AC427	2.5ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NIE15AC007	5.5ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NI99E15A0065	80ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E03NI99E15AC470	2.5ppm NO,2.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A03L5	5.5ppm NO,5.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A01L7	25ppm NO,800ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15AC0J9	55ppm NO,1700ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A03NO	9ppm NO,8ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15ACLD8	90ppm NO,2500ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI94E15AC220	5.5% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NII89E15AC155	11% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
NI CZ200	Nitrogen- CEMS [99.9999%] grade	200	CEMS	\$97.00
	STIG			
E02NI77E15A0084	22.5% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI86E15AC044	13.75 O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI93E15AC043	6.25% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI99E15A0131	9 ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NI99E15AC1T1	5.5 ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NI99E15AC427	2.5 ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$185.00

E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E03NI99E15A2718	90ppm NO,45ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A3818	55ppm NO,27.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A3819	25ppm NO,12.5pm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
Industrial				
NI 250	Nitrogen	250	Ind.	\$19.00
OX 250	Oxygen – Industrial	250	Ind.	\$12.50
AC 4	Acetylene	Size 4	Ind.	\$22.72
AR 300	Argon - Industrial	300	Ind.	\$40.80
SH CP200	SF6	200	CP	\$1425.00
Ammonia				
*Anhydrous(R-Grade)		Ton		\$600.00
*Aqueous (19%)		Solution Lb.		\$0.45

Additional products not listed above to be provided as requested in writing by NCPA facilities. Pricing for additional products not listed above will be quoted by Supplier at the time product is requested.

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

*NCPA acknowledges that Supplier's pricing for ammonia may be subject to change every six to twelve (6 – 12) months. NCPA shall compensate Supplier in accordance with such price list revisions, provided, however, that (1) Supplier shall provide NCPA with written notice of such revisions thirty (30) days in advance; and (2) regardless of such price list revisions, total compensation for all tasks, including all products delivered under this Agreement, shall not exceed the amount set forth in Section 4 (Compensation) of this Agreement.

All EPA protocol and certified gas mixes will be supplied in aluminum 150A size cylinders unless otherwise specified.

Monthly Cylinder Rental: \$7.00 per cylinder per month.

The monthly charge is based on the number of cylinders on site at the end of each calendar month multiplied by the charge per cylinder.

Delivery Charges: \$72.00/ bulk delivery, \$38.00/ cylinder delivery - There is no charge for picking up empty cylinders.

Hazmat Fee: \$6.45/ delivery



**MULTI-TASK
AGREEMENT FOR PURCHASE OF
EQUIPMENT, MATERIALS AND SUPPLIES
BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
AIRGAS USA, LLC.**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is entered into on 5/1/ 2014 (the "Effective Date") between the NORTHERN CALIFORNIA POWER AGENCY, ("Agency"), a public joint powers agency, with offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 and Airgas USA, LLC., ("Supplier"), whose principal office is located at 920 Piner Road, Santa Rosa, CA 95403-1904 (together sometimes referred to as the "Parties").

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 DDP to NCPA facility, located at 12745 N. Thornton Road, Lodi, CA 95242, when requested by the Agency. Supplier shall be responsible at its sole expense for delivering the Goods to Agency's 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. 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 3. 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.

Section 4. COMPENSATION. Agency hereby agrees to pay Supplier for the Goods an amount not to exceed five hundred thousand dollars (\$500,000) as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges.

4.1 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

- 4.2 Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.
- 4.3 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 5. 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.

- 5.1 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 (\$1,000,000.00) per accident.
- 5.2 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 \$1,000,000 per each accident, with \$2,000,000 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.
- 5.3 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 \$1,000,000/\$2,000,000 aggregate for bodily injury and property damage, on an occurrence basis. No endorsement shall be attached limiting the coverage.
- 5.4 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.

5.5 All Policies Requirements.

- 5.5.1 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.
- 5.5.2 Notice of Reduction in or Cancellation of Coverage.** Supplier agrees to provide at least ten (10) days prior written notice of any cancellation or reduction in scope or amount of the insurance required under this Agreement.
- 5.5.3 Waiver of Subrogation.** Supplier agrees to waive subrogation, to the extent of Supplier's indemnity obligations hereunder, 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.
- 5.5.4 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.

Section 6. WARRANTY. In addition to any and all 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 7. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.

- 7.1 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.

7.2 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 negligent acts or omissions by Supplier, its officers, officials, agents and employees, except as caused by the sole or gross negligence of Agency.

7.3 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 8. MISCELLANEOUS PROVISIONS.

8.1 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.

8.2 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.

8.3 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.

8.4 Construction of Agreement. The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.

8.5 Supplier's Status. Supplier is an independent contractor and not an employee or agent of NCPA.

8.6 Non-assignment. Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.

8.7 **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.

Section 9. COMPLIANCE CERTIFICATION.

9.1 **Affidavit of Compliance for Contractors.** Consistent with the Conditions of the Certification issued by the California Energy Commission, Contractor shall, at the same time Contractor executes this Agreement, execute and provide to Agency Exhibit B hereto for any employees, agents or other representatives of Contractor who will be present on site at NCPA's Lodi Energy Center, Lodi, California. During the term of this Agreement, Contractor shall keep current the Certificate, attached as Exhibit B.

9.2 **Affidavit of Compliance for Hazardous Materials Transport Vendors.** Consistent with the Conditions of Certification issued by the California Energy Commission, Contractor shall, at the same time Contractor executes this Agreement, execute and provide to Agency Exhibit C hereto for itself, any employees, agents or other representatives of Contractor who shall be present on site at NCPA's Lodi Energy Center, Lodi, California. During the term of this Agreement, Contractor shall keep current the Certificate, attached as Exhibit C.

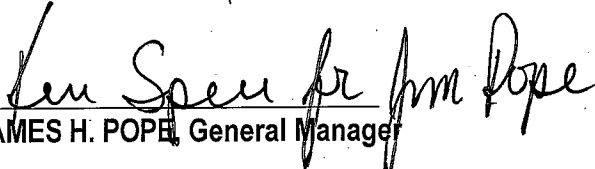
The Parties have executed this Agreement as of the date signed by the Agency.


NORTHERN CALIFORNIA POWER AGENCY

AIRGAS USA, LLC.

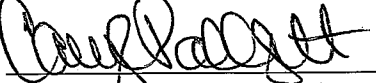
Date: 5-1-14

Date: 4-30-14

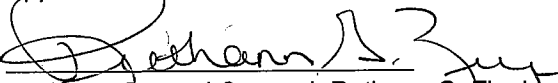

JAMES H. POPE, General Manager


MICHAEL CHANDLER, President-NCN Region

Attest:


Assistant Secretary of the Commission

Approved as to Form:


Assistant General Counsel, Ruthann G. Ziegler

**EXHIBIT A
PURCHASE LIST**

Supplier shall provide the following list of Goods in an on-going basis to Agency after the Effective Date of this Agreement in accordance with the Rates set forth below:

Product Price Schedule:

Airgas P/N	Airgas Product Description	Cylinder Size	Purity	Cylinder Price
	Lodi Energy Center			
Certified Mixes				
X02AI99C15A3299	8ppm NH3/ bal Air	150A [141 cf.]	Cert	\$215.00
EPA Protocols				
E02NIE15AC427	2.5ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NIE15AC007	5.5ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NI99E15A0065	80ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E03NI99E15AC470	2.5ppm NO,2.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A03L5	5.5ppm NO,5.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A01L7	25ppm NO,800ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15AC0J9	55ppm NO,1700ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A03NO	9ppm NO,8ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15ACLD8	90ppm NO,2500ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI94E15AC220	5.5% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NII89E15AC155	11% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
NI CZ200	Nitrogen- CEMS [99.9999%] grade	200	CEMS	\$97.00
	STIG			
E02NI77E15A0084	22.5% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI86E15AC044	13.75 O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI93E15AC043	6.25% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI99E15A0131	9 ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NI99E15AC1T1	5.5 ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NI99E15AC427	2.5 ppm NO/ bal N2	150A [141 cf.]	EPA	\$218.00
E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$185.00
E03NI99E15A2718	90ppm NO,45ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00

E03NI99E15A3818	55ppm NO,27.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
E03NI99E15A3819	25ppm NO,12.5pm CO/ bal N2	150A [141 cf.]	EPA	\$265.00
Industrial				
NI 250	Nitrogen	250	Ind.	\$19.00
OX 250	Oxygen – Industrial	250	Ind.	\$12.50
AC 4	Acetylene	Size 4	Ind.	\$22.72
AR 300	Argon - Industrial	300	Ind.	\$40.80
SH CP200	SF6	200	CP	\$1425.00

All EPA protocol and certified gas mixes will be supplied in aluminum 150A size cylinders unless otherwise specified.

Monthly Cylinder Rental : \$7.00 per cylinder per month.

The monthly charge is based on the number of cylinders on site at the end of each calendar month multiplied by the charge per cylinder.

Delivery Charges: \$38.00/ delivery - There is no charge for picking up empty cylinders.

Hazmat Fee: \$6.45/ delivery

EXHIBIT B

CERTIFICATION

Affidavit of Compliance for Contractors

I, Michael Chandler

(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

Airgas USA, LLC

(Company name)

for contract work at

Lodi Energy Center, Lodi, CA

(Project name and location)

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

Michael Chandler
(Signature of officer or agent)

Dated this 30th day of April, 20 14.

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

Exhibit C

Certification - Affidavit of Compliance for Hazardous Materials Transport Vendors

I, Michael Chaudhry
(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 172.880 and has conducted employee background investigations in conformity with 49 CFR 172, subparts A and B,

Airgas USA, LLC
(Company name)

for hazardous materials delivery to

Lodi Energy Center, Lodi, CA
(Project name and location)

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

Michael Chaudhry
(Signature of officer or agent)

Dated this 30th day of April, 20 14.

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.

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