



# Commission Staff Report

May 12, 2017

**COMMISSION MEETING DATE:** May 25, 2017

**SUBJECT:** Selection of Audit Service Provider and Award of Contract

**AGENDA CATEGORY:** Consent

<b>FROM:</b>	Sondra Ainsworth	<b>METHOD OF SELECTION:</b>
	Treasurer-Controller	Competitive Pricing Process
<b>Division:</b>	Administrative Services	
<b>Department:</b>	Accounting & Finance	

## IMPACTED MEMBERS:

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

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## **RECOMMENDATION:**

Approve Resolution 17-XX authorizing award of Audit Services for up to nine years and the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Baker Tilly Virchow Krause, LLP for annual audit services, with any non-substantial changes recommended and approved by NCPA Assistant General Counsel, which shall not exceed \$300,000 over three years.

## **BACKGROUND:**

The independent audit agreement to perform the annual audit for the Agency has expired. The certified public accounting firm Moss Adams has successfully performed the annual audit under this agreement for the last nine (9) years. The Agency preference is for an audit team to serve the Agency for no more than (9) years, and as such, a Request for Proposal for Audit Services (RFP) was required for the FY 17 audit of NCPA's financial statements and the following two years.

Staff issued an RFP on March 23, 2017 to solicit audit services and received responses from six audit firms as follows:

- Moss Adams LLP
- Baker Tilly Virchow Krause, LLP
- KPMG LLP
- Macias Gini & O'Connell LLP (MGO)
- Maze & Associates
- Vavrinek, Trine, Day & Co., LLP (VTD)

A selection panel comprised of NCPA and member staff recommended and agreed upon by the Finance Committee evaluated the responses and interviewed the top three responding firms.

## **FISCAL IMPACT:**

The total three-year cost of this agreement is \$300,000. The audit fee for last fiscal year (FY 16) was \$75,000 including expenses. The proposed audit fee for FY 2016-2017 is \$68,000 including out-of-pocket expenses. Costs for fiscal years 2018 and 2019 are \$70,000 and \$72,100, respectively. The proposed agreement contains a contingency of \$89,900 for additional services such as the biennial Commercial Compliance Audit, OMB A-133 audit for Federal Grants received in excess of \$750,000, and other miscellaneous services as needed. Upon extension of the agreement for the two subsequent three year periods, the audit fees for would be subject to annual escalation based on the consumer Price Index for All Urban Consumers, U.S. City Average, with a cap of 6%.

This agreement was included in the current fiscal year budget, and funds are available in General Allocations-Related to All Programs portion of the Annual Budget and Ten-Year Forecast. Such General Costs are proportionally allocated to all programs (equalized for debt service, property taxes, and other costs that would otherwise unfairly skew the results of the allocation).

## **SELECTION PROCESS:**

This vendor was selected as a result of Formal Bidding done in accordance with NCPA's procurement policies and procedures. The Audit Services Request for Proposal was released on March 23, 2017 and was distributed to 17 potential vendors on March 25, 2017, including all members' FY 16 audit firms. After due consideration of each firm's qualifications, responses to the RFP, interview results and price quotes, staff recommends the appointment of Baker Tilly Virchow Krause, LLP, as the Agency's auditors and approval of a contract for three years (with two possible extensions of up to 9 years total). This vendor is recommended to provide this service because it provided the best value and most responsive bid to the Agency.

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

The recommendation was reviewed by the Finance Committee on May 10, 2017 and was recommended for Commission approval. [optional to add additional information, i.e., vote results, number of members present, etc.]

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments:

**RESOLUTION 17-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
AWARDING AUDIT SERVICES AGREEMENT**

**(reference Staff Report #154:17)**

WHEREAS, the Northern California Power Agency requires an independent annual audit by a certified public accounting firm of national renown; and

WHEREAS, the current audit contract has expired and the Request for Proposal (RFP) process has been completed; and

WHEREAS, Baker Tilly Virchow Krause, LLP is a qualified certified public accounting firm and has been selected by staff and recommended by the NCPA Finance Committee as the most responsive proposer during the RFP process; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency adopts the Audit Services Agreement to retain the certified public accounting firm Baker Tilly Virchow Krause, LLP as independent auditors for the Northern California Power Agency; for the fiscal year 2017 audit and the following two years and further hereby directs the General Manager or his designee to execute said Agreement.

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



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
BAKER TILLY VIRCHOW KRAUSE, LLP**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Baker Tilly Virchow Krause, LLP, a limited liability partnership with its office located at 10 Terrace Court, Madison, WI 53718 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2017 ("Effective Date") in Roseville, California.

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

- 1.1 Term of Agreement.** This Agreement shall begin on the Effective Date and is for a three (3) year term (including audits for fiscal years 2017, 2018, and 2019). At the sole option of the Agency, it is subject to two renewals for a period of three (3) years each for a maximum of nine (9) fiscal years, as more particularly set forth in EXHIBIT A.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services, or does not respond within the seven day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** three hundred thousand dollars (\$300,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultants, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

**4.3 Professional Liability Insurance.** Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

**4.4 All Policies Requirements.**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**Section 7. LEGAL REQUIREMENTS.**

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

**Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

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

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

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

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

**9.4.3.1** Disclosure to employees, agents, Consultant's 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, Consultant's contractors and subcontractors who have a need to know in connection with this Agreement.

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

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

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

Russ Hissom  
Partner  
Baker Tilly Virchow Krause, LLP  
10 Terrace Court  
Madison, WI 53718

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

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

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

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

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

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

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

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



NORTHERN CALIFORNIA POWER AGENCY

BAKER TILLY VIRCHOW KRAUSE, LLP

Date\_\_\_\_\_

Date\_\_\_\_\_

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

Attest:

\_\_\_\_\_  
**[NAME, TITLE]**

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

Approved as to Form:

\_\_\_\_\_  
General Counsel

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Baker Tilly Virchow Krause, LLP (referred to as “Consultant” or “Auditor”) shall provide annual audit of the financial statements, including associated reporting for the Agency, for fiscal years ended June 30, 2017, 2018, and 2019, as set forth below. In addition, Consultant shall provide additional services, as requested by the Agency.

#### Required Audit Products

For each fiscal year end, June 30, the Consultant shall provide the Agency with the following formal documents:

- Report on the Combined Financial Statements
- Negative assurance for Supplementary Combining Information
- Report on Internal Control/No Material Weaknesses/Management Letter
- Negative assurance for Certain Bond Indenture of Trust Provisions (No Default)
- Report on Compliance with the Agency’s Investment Policy
- Report and discussion on audit with Finance Committee
- Consent to use audited financial statements in bond offerings and on the Agency’s Website.

Consultant and NCPA will exercise their best efforts to complete the audit by October 10th of each year.

Each year following completion and delivery of all required reports hereunder, Consultant may elect to resign by providing written notice prior to January 31.

#### Audit Role of Agency

NCPA recognizes that assistance from its Treasurer-Controller staff during an audit conducted by an external auditor will reduce the cost of an audit. Agency staff will provide the normal Prepared by Client work papers in the same format provided to the current auditor in past years. NCPA Treasurer-Controller staff members write both the Management Discussion and Analysis (MD&A) and footnotes to the financial statements.

#### Prior Year Audit Working Papers

Moss Adams, LLP is the auditor for the Agency for FY 2016. Consultant will be responsible for arranging any review of the prior year’s work papers, which the Agency will approve in advance.

#### Bond Indenture Requirements

The Agency’s Indentures of Trust require an independent annual audit and no default letter to be filed with the Trustee within 120 days after the close of the fiscal year. To meet this schedule and the schedule for the production of the Agency’s Annual Report requires that the reports of independent auditors, which includes the audited combined financial statements, be issued by October 10<sup>th</sup> of each year.

## Additional Services

### Consulting or Other Work

Consultant will not perform any direct consulting or other work for the Agency unless the Agency separately requests it. However, Consultant may be retained by the Agency's underwriters, or other parties working on behalf of the Agency in regard to verification of bond defeasance escrows or similar work, which must be pre-approved by the Agency.

### Federal Awards

From time to time the Agency receives Federal awards for various reasons. Under current Federal law, in any fiscal year those awards total \$750,000 or more, the Agency is required to obtain the following or similar reports from its Auditors in conjunction with the annual audit:

- Audit of Schedule of Expenditures of Federal Awards--OMB Circular A-133
- Completed U.S. Department of Commerce—Bureau of Census Form SF-SAC

While the Agency does not specifically anticipate Federal Awards of \$750,000 or more in any given year, IF REQUIRED, the additional audit fee for compliance with the aforementioned will be determined, if and when required, by mutual agreement.

### Project Financing Activities

In addition to the auditors' consent to use audited financial statements for bond offerings, at the sole option of the Agency, the Agency may need review work in connection with bond offerings during the term of this Agreement. The cost of issuing a comfort letter in connection with a project financing may vary depending on the requirements associated with the financing. The cost of an individual comfort letter, if required, will be separately determined and agreed upon prior to the commencement of that work. Such comfort letters will be billed separately as part of the associated cost of financing and not as part of the audit.

### Commercial Compliance Audit

It is the policy of NCPA to conduct its business in compliance with laws and regulations that govern NCPA's commercial interactions in energy markets, including applicable provisions of the Federal Power Act, the Commodity Exchange Act and the antitrust laws. To ensure this result, NCPA has adopted a compliance program that includes this Commercial Compliance Policy, a Compliance Officer, a Commercial Compliance Policy Training Manual, compliance training and certification, a document retention policy, and ongoing monitoring and auditing. On a biennial basis, the Agency will require a compliance audit to be billed separately and not as part of the audit.

### Other

Consultant shall perform such other services as may be requested by the Agency in writing.

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

#### Fixed Price, Not-To-Exceed Amount for Annual Audit Services

Audit services for fiscal years ended June 30 of 2017, 2018, and 2019 will be based on a fixed not-to-exceed fee for the audit services. As such, any cost overruns incurred by the audit firm will be its sole responsibility. In addition, at the sole option of the Agency, the Agreement is subject to two additional three year renewals for which fees are subject to annual escalation based on the consumer Price Index for All Urban Consumers, U.S. City Average, with a cap of 5%.

Service	2017	2018	2019
Annual financial audit	\$68,000	\$70,000	\$72,100

Agency will not be charged for first year audit start-up hours, which are estimated at 60 hours. Additionally, Consultant will provide up to 40 hours annually of accounting services to the Agency for research, business process evaluations and other financial services. Consultant will also provide eight hours annually of certified professional education at no charge to Agency on a variety of financial and operational topics.

#### Hourly Fees for Additional Services

For additional services requested by the Agency, Consultant's hourly fee schedule is as follows:

Hourly fee schedule	Quoted hourly rates
Partners	\$250
Managers	\$180
Senior accountants	\$155
Staff accountants	\$125

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

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I, \_\_\_\_\_  
(Name of person signing affidavit)(Title)

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

\_\_\_\_\_  
(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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