



**PROFESSIONAL SERVICES AGREEMENT BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND THE CITIES OF PALO ALTO AND SANTA CLARA
(THE "BAY AREA MUNICIPAL TRANSMISSION SERVICES AGREEMENT" OR "BAMx
AGREEMENT")**

This Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency ("NCPA"), a joint powers agency, and the Cities of Palo Alto and Santa Clara (each referred to as a "Contracting Member" and jointly referred to as "Contracting Members" or "BAMx Participants"). NCPA and the Contracting Members are together sometimes referred to herein individually as a "Party" and collectively as "the Parties."

This Agreement is made as of _____, 20__ (the "Effective Date") in Roseville, California.

Section 1. RECITALS

This Agreement is entered into based on the following facts, among others:

1.1 NCPA is a public agency created by a joint powers agreement established under California law for the purpose of assisting its members in the efficient use of their common powers.

1.2 Contracting Members are engaged in, among other things, transmitting and distributing electric power within their respective corporate limits. Contracting Members are also each a member of NCPA. Contracting Members jointly desire that NCPA provide Contracting Members with the Services described in this Agreement.

1.3 Article III, section 3 of the "Amended and Restated Northern California Power Agency Joint Powers Agreement" (as amended and effective January 1, 2008) (hereinafter "JPA") entitled "Powers and Functions" provides that "none of the debts, liabilities or obligations of NCPA shall be the debts, liabilities or obligations of any of the members of NCPA unless assumed in a particular case by resolution of the governing body of the member to be charged." Notwithstanding the foregoing, Article V, section 1 of the JPA entitled "General Provisions" provides that "[t]he governing Commission of NCPA is authorized to procure public liability and other insurance as it deems advisable to protect NCPA and each of the parties hereto, charging the cost thereof to the operating costs of NCPA."

1.4 Contracting Members desire to secure NCPA's Services under this Agreement in a manner that balances their interests and the interests of other NCPA Members with the ongoing financial viability and professional responsibilities of NCPA. Accordingly, Contracting Members desire to secure NCPA's Services under this Agreement by accepting a limited insurance based recourse against NCPA, with the option of procuring additional insurance at Contracting Members' sole expense. By so doing, the Parties thereby ensure that NCPA will substantially limit its risk for the provision of such Services and allocates risks back to the Contracting Members in the event NCPA is not adequately insured.

1.5 The Parties have previously entered into a professional services agreement for this same purpose dated as of July 1, 2016 ("the Prior Agreement") the term of which ends on June 30, 2017.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth, NCPA and Contracting Members agree as follows:

Section 2. DEFINITIONS

Whenever used in this Agreement with initial capitalization, these terms shall have the following meanings as applicable, whether in the singular or plural:

2.1 "Consultant" shall mean Flynn Resource Consultants Inc.

2.2 "Consulting Services Agreement" shall mean the Consulting Services Agreement Between the Northern California Power Agency and Flynn Resource Consultants Inc., dated as of _____, 20__, as such may be amended from time to time.

2.3 "Good Utility Practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition and the requirements of the Northern American Electric Reliability Corporation ("NERC") or Western Electric Coordinating Council ("WECC") Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

2.4 "NCPA Members" shall mean the signatories to the JPA or those agencies which have executed an Associate Member Agreement with NCPA.

2.5 "Stranded Costs" shall mean all costs incurred by NCPA in providing Services to Contracting Members under this Agreement that could not reasonably be avoided by NCPA from the date it receives a written Notice of Termination. Such costs may include, but not be limited to, salary and employment costs, rent, utilities, or contracts incurred to provide Services under this Agreement. In this regard, Contracting Members acknowledge that NCPA will be entering into professional services agreements with third persons under the terms of this Agreement, and that sums owing to such third persons may become Stranded Costs upon termination of this Agreement.

2.6 "Uncontrollable Forces" shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities or any other cause beyond the reasonable control which could not be avoided through the exercise of Good Utility Practice.

Section 3. SERVICES TO BE PROVIDED; AUTHORIZED REPRESENTATIVES; STANDARD OF PERFORMANCE

3.1 This Agreement is entered into by the Parties in order for NCPA to provide services to Contracting Members for the services described in Exhibit A hereto (“Services”). The Services do not include supervision of the performance of any of the third persons with whom contracts are entered into; such supervision shall be provided by the Contracting Members.

3.2 The following are the authorized representatives of the Parties (“Authorized Representatives”) for contract administration purposes under this Agreement:

NCPA:

David Dockham, Dave.Dockham@ncpa.com
Assistant General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678
916-781-4207
Fax 916-781-4255

PALO ALTO:

Debra Lloyd, Debra.LLloyd@cityofpaloalto.org
Utilities Compliance Manager
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303
650-329-2369
Fax: 650-326-1507

SANTA CLARA:

Kathleen Hughes, khughes@SantaClaraCA.gov
Position
1601 Civic Center Dr. # 201
Santa Clara, CA 95050
XXX-XXX-XXXX
Fax: 408-261-2717

No Authorized Representative is authorized to amend any provision of this Agreement except in accordance with Section 12.16.

3.3 Standard of Performance. NCPA will perform the Services using that level of skill and attention reasonably required to complete the Services in a competent and timely manner.

3.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that Contracting Members, in their sole discretion, at any time during the term of this Agreement, jointly desire the reassignment of any

such persons, NCPA shall, immediately upon receiving notice from each Contracting Member of such desire of the Contracting Members, reassign such person or persons.

3.5 Time. NCPA shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 3.3, above and to satisfy NCPA's obligations hereunder.

Section 4. TERM AND TERMINATION

4.1 Authorization to Perform Services. NCPA is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until its receipt of a written resolution and/or other appropriate/applicable authorization from each Contracting Member's governing body confirming each Contracting Member's authority to enter into this Agreement and confirming that each Contracting Member has allocated funds for and approved contract payments to NCPA under this Agreement.

4.2 Term. The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2020.

4.3 Early Termination and Stranded Costs. This Agreement may be terminated by either NCPA or by the Contracting Members, upon 30 days written notice to all other Parties ("Notice of Termination"). Provided, however, that a Notice of Termination on behalf of the Contracting Members shall be executed by each Contracting Member to be effective.

In the event of an early termination, Contracting Members shall pay NCPA for all fees and costs required under this Agreement through the effective date of their Notice of Termination plus all Stranded Costs. Upon payment of the above amounts, no Parties shall have any further obligations under this Agreement except as otherwise set forth in Section 5.7 regarding the survival of defense and indemnity obligations.

Section 5. INDEMNITY AND INSURANCE

5.1 Limitation of NCPA's Liability.

5.1.1 Except as provided in this section 5.1, NCPA shall not at any time be liable for any injury or damage occurring to Contracting Members or any other person or property from any cause whatsoever arising out of this Agreement.

5.1.2 The provisions of section 5.1.1 shall not apply where the injury or damage occurring to Contracting Members is caused by the negligence of NCPA or of any employee, agent or contractor of NCPA; provided that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the NCPA insurance policies described in this Section 5.

5.1.3 Notwithstanding Section 5.1.2 above, the Contracting Members agree to reimburse NCPA, in a timely manner, for all deductibles and/or self-insured retentions payable for any claim, liability or damage arising out of this Agreement.

5.2 Indemnification of NCPA. Except as specified in Section 5.1.2 above, Contracting Members shall, at their sole cost and expense, indemnify and hold harmless NCPA and all associated, affiliated, allied, member and subsidiary entities of NCPA, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement.

5.3 Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Contracting Members shall, upon reasonable prior written notice from any of the Indemnitees, at Contracting Members' sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Contracting Members, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor Contracting Members shall admit liability in any such matter or on behalf of the other without express written consent, which consent shall not be unreasonably withheld or delayed, nor enter into any compromise or settlement of any claim for which Indemnitees are indemnified hereunder without prior express written consent. The Contracting Members' duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

5.4 Notice. The Parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 5.

5.5 Insurance. During the term of the Agreement and prior to beginning any work under this Agreement, NCPA shall maintain, or cause to be maintained, in full force and effect, and at its sole cost and expense, the types and limits of insurance as are annually approved by the governing Commission of NCPA. NCPA warrants and represents that the types of insurance and coverage limits that are approved by the governing Commission of NCPA are in full force and effect and shall remain so during the term of this Agreement unless NCPA gives prior written notification (of not less than 15 days) of modification, cancellation or rescission of such coverage.

5.6 Contracting Members' Acknowledgment of Option to Secure Additional Insurance. The Contracting Members acknowledge that there are limitations on NCPA's liability to the Contracting Members under this Section 5 and that the Contracting Members may need to purchase additional insurance of their own to cover the additional risks and the potential additional liabilities they are assuming under this Agreement. Contracting Members agree that they will, with respect to any additional insurance they obtain or which is otherwise available to Contracting Members, cause their insurers to issue an endorsement providing a waiver of subrogation rights as to Indemnitees.

5.7 Survival of Obligations. The defense and indemnity obligations of Section 5 shall survive the termination of this Agreement.

Section 6. COMPENSATION

6.1 Charges for Services. Charges for the Services shall be billed separately to each Contracting Member in accordance with Exhibit B of this Agreement.

6.2 Security Deposit. Contracting Members shall each maintain on deposit in its General Operating Reserve Account held at NCPA the sum of Zero Dollars (\$0) as security to NCPA for liabilities NCPA could incur under this Agreement. Contracting Members hereby authorize NCPA to reserve and commit this sum in its General Operating Reserve Account for the payment of the aforementioned liabilities should same become necessary. Interest on monies held by NCPA pursuant to this section shall be credited in accordance with the then standard practices of NCPA relating to the General Operating Reserve Account.

Section 7. BILLING AND PAYMENT

7.1 Invoices. NCPA shall submit invoices to Contracting Members, not more often than once a month during the term of this Agreement, for Services performed and reimbursable costs incurred prior to the invoice date.

7.2 Monthly Payment. Contracting Members shall make monthly payments, based on invoices received, for Services performed, and for authorized reimbursable costs incurred. Contracting Members shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay NCPA. Any amount due on a day other than a business day, i.e., any day except a Saturday, Sunday, or a Federal Reserve Bank holiday, may be paid on the following business day.

If all or any portion of a bill is disputed by Contracting Members, the entire amount of the bill shall be paid when due, and NCPA's Authorized Representative shall be concurrently provided written notice of the disputed amount and the basis for the dispute. NCPA shall reimburse any amount determined to have been incorrectly billed, within ten (10) days after such determination.

Amounts which are not paid when due shall bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT & SA, or its successor, then in effect, plus two per cent (2%) or (ii) the maximum rate permitted by law. The provisions of this Section 7 shall survive expiration of this Agreement until satisfied.

7.3 Contracting Members shall pay for the Services pursuant to this Agreement. Contracting Members shall not pay any additional sum for any expense or cost whatsoever incurred by NCPA in rendering Services pursuant to this Agreement. Contracting Members shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall NCPA submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment in accordance with this Agreement.

7.4 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.

7.5 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to Contracting Members. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

7.6 Payment of Taxes. NCPA is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

7.7 Payment upon Termination. In the event that Contracting Members or NCPA terminates this Agreement pursuant to Section 4, Contracting Members shall compensate the NCPA for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written Notice of Termination. NCPA shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

7.8 Authorization to Perform Services. NCPA is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from each of the Contracting Members' Authorized Representative following receipt of the required approvals under the terms of this Agreement.

7.9 The addresses of Contracting Members to which invoices shall be sent is:

Debra Lloyd
Utilities Compliance Manager
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303
650-329-2369
Fax: 650-326-1507

Bob Kazlauskas
City of Santa Clara
Attn: Electric Department
1500 Warburton Ave
Santa Clara, CA 95050
Bkazlauskas@svpower.com
408-615-6688
Fax: 408-261-2717

Section 8. STATUS OF NCPA; FACILITIES AND EQUIPMENT

8.1 Independent Contractor. At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of Contracting Members. Contracting Members shall have the right to control NCPA only insofar as the results of NCPA's Services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 3.4;

however, otherwise Contracting Members shall not have the right to control the means by which NCPA accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other agency, state, local or federal policy, rule, regulation, law, or ordinance to the contrary, NCPA 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 Contracting Members, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Contracting Member and entitlement to any contribution to be paid by Contracting Members for employer contributions and/or employee contributions for PERS benefits.

8.2 Facilities and Equipment. The facilities and equipment that may be necessary to perform the Services required by this Agreement shall be provided as follows: **None.**

Section 9. UNCONTROLLABLE FORCES

9.1 Obligations of the Parties, other than those to pay money when due, shall be excused for so long as and to the extent that failure to perform such obligations is due to an Uncontrollable Force; provided, however, that if either Party is unable to perform due to an Uncontrollable Force, such Party shall exercise due diligence to remove such inability with reasonable dispatch. Nothing contained in this Agreement shall be construed as requiring a Party to settle any strike, lockout, or labor dispute in which it may be involved, or to accept any permit, certificate, contract, or any other service agreement or authorization necessary for the performance of this Agreement which contains terms and conditions which a Party determines in its good faith judgment are unduly burdensome or otherwise unacceptable.

9.2 Each Party shall notify the other promptly, by telephone to the other Party's operating personnel and Authorized Representative identified in Section 3.2, upon becoming aware of any Uncontrollable Force which may adversely affect the performance under this Agreement. A Party shall additionally provide written notice in accordance with Section 12.8 to the other Party within 24 hours after providing. Each Party shall notify the other promptly, when an Uncontrollable Force has been remedied or no longer exists.

Section 10. LEGAL REQUIREMENTS

10.1 Governing Law. The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine.

10.2 Compliance with Applicable Laws. NCPA and any subcontractors shall comply with all laws applicable to the performance of the Services hereunder.

10.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, NCPA and any subcontractors shall comply with all applicable rules and regulations to which Contracting Member is bound by the terms of such fiscal assistance program.

10.4 Licenses and Permits. NCPA represents and warrants to Contracting Member that

NCPA and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. NCPA represents and warrants to Contracting Member that NCPA and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

10.5 Nondiscrimination and Equal Opportunity. NCPA shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by NCPA under this Agreement. NCPA shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of NCPA thereby.

Section 11. KEEPING AND STATUS OF RECORDS.

11.1 Records Created as Part of NCPA'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 NCPA prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Contracting Members. NCPA hereby agrees to deliver those documents to the Contracting Members upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Contracting Members and are not necessarily suitable for any future or other use. Contracting Members and NCPA agree that, until final approval by Contracting Members, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties, except as may otherwise be required by applicable law.

11.2 NCPA's Books and Records. NCPA shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Contracting Members 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 NCPA to this Agreement.

11.3 Inspection and Audit of Records. Any records or documents that Section 11.2 of this Agreement requires NCPA 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 Contracting Member. 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 any Contracting Member or as part of any audit of any of the Contracting Members, for a period of three (3) years after final payment under the Agreement.

11.4 Confidential Information and Disclosure. During the term of this Agreement, any Party ("Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to another Party ("Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of Disclosing Party at the time of disclosure to Receiving Party. Receiving Party shall hold Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by Disclosing Party. Receiving Party shall not disclose Disclosing Party's Information to any person other than Receiving Party's employees, agents, contractors and subcontractors who have a need to know in connection with this Agreement.

Receiving Party's confidentiality obligations hereunder shall not apply to any portion of Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of Receiving Party;
- (b) Has been made known to Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of Receiving Party prior to the disclosure of such Information by Disclosing Party and was not acquired directly or indirectly from the other Party or any person or entity in a relationship of trust and confidence with the other Party with respect to such Information;
- (d) Receiving Party is required by law to disclose; or
- (e) Has been independently developed by Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

Receiving Party shall return or destroy Disclosing Party's Information (including all copies thereof) to Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. The parties understand that each Party is a public entity and is subject to the laws that may compel either to disclose information about the other's business.

Section 12. MISCELLANEOUS PROVISIONS

12.1 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions 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.

12.2 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.

12.3 Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable by federal or state statute or regulation, but the remaining portions of the Agreement can be enforced without failure of material consideration to any Party, then the remaining provisions shall continue in full force and effect. To that end, this Agreement is declared to be severable. Provided, however, that in the event any provision is declared to be invalid, void or unenforceable, any Party may terminate this Agreement upon 10 days written notice given within five (5) days of receipt of notice of final entry of judgment.

12.4 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.

12.5 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.

12.6 Use of Recycled Products. NCPA shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

12.7 Conflict of Interest. NCPA shall not employ any Contracting Members' official or employee in the work performed pursuant to this Agreement. No officer or employee of Contracting Member shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

12.8 Notices. Unless this Agreement requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered in person, or sent by registered or certified first class mail, to the persons specified below:

NCPA:
David Dockham
Assistant General Manager – Power Management
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:
Ruthann Ziegler
General Counsel, Northern California Power Agency
c/o Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

PALO ALTO:

Ed Shikada
Assistant City Manager & Interim Utilities Director
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

With a copy to:
Amy Bartell, Senior Deputy City Attorney
City of Palo Alto
c/o City Attorney's office
P.O. Box 10250
Palo Alto, CA 94303

SANTA CLARA:
Kathleen Hughes, **Position**
City of Santa Clara
1500 Warburton Ave
Santa Clara, CA 95050

With a copy to:
Richard Nosky, City Attorney
City of Santa Clara
1500 Warburton Ave
Santa Clara, CA 95050

Whenever it is required, permitted, or desired in this Agreement that written notice or demand be given by any Party to any other Party, such notice or demand may be either personally served or sent by United States Mail, or facsimile. Notice shall be deemed to have been given when personally served, when deposited in the United States Mail, certified or registered with postage prepaid and properly addressed, or when transmitted by facsimile provided however, notices delivered by facsimile shall only be effective if delivered during regular business hours on a day that is considered a regular business day for NCPA by the involved Parties.

12.9 Integration; Incorporation. This Agreement, including all the Exhibits attached hereto, represents the entire and integrated agreement between Contracting Members and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral. All Exhibits attached hereto are incorporated by reference herein.

12.10 Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Contracting Members and NCPA agree to resolve the dispute in accordance with the following:

12.10.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute;

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

12.10.3 If the issue remains unresolved after sixty (60) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

12.10.4 This informal 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.*

12.11 Other Agreements. This Agreement is not intended to modify or change any other agreement between any of the Parties, individually or collectively. Without limiting the generality of the foregoing, this Agreement does not amend or extend the Prior Agreement.

12.12 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.

12.13 Obligations of Contracting Members Joint and Several; No Joint Venture. The duties, obligations and liabilities of the Contracting Members, including the obligations to make payments to NCPA, are intended to be joint and several. Provided that nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to the Contracting Members.

12.14 Effect of Section Headings. Section headings and subheadings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretation of text.

12.15 Authority of Signatories. The signatories hereby represent that they have been appropriately authorized to execute this Agreement on behalf of the Party for whom they sign.

12.16 Amendments. Unless otherwise provided for in this Agreement, the Parties may amend this Agreement only by a writing signed by all the Parties following each Party's receipt of written resolution/authorization from their governing bodies, which resolutions/authorizations shall be condition precedents to any amendments of this Agreement and shall be attached as exhibits to this Agreement.

The Parties have executed this Agreement as of the Effective Date.

NORTHERN CALIFORNIA POWER AGENCY

RANDY S. HOWARD, General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

CONTRACTING MEMBERS:

CITY OF PALO ALTO

Approved as to Form:

By: _____

By: _____
City Attorney

Its: _____

CITY OF SANTA CLARA

Approved as to Form

By: _____

By: _____
City Attorney

Its: _____

EXHIBIT A

SERVICES

NCPA will enter into the Consulting Services Agreement on behalf of the Contracting Members, so that NCPA may assist the Contracting Members in securing access to consulting services related to electric transmission, power generation, regulatory and electric market design issues affecting the Contracting Members. NCPA's primary role as to the Services provided under this Agreement is to act as contract administrator and billing agency on behalf of the Contracting Members, as further described herein.

For the purpose of administering this Agreement, each Contracting Member shall be represented by its Authorized Representative. During the term of this Agreement, the Authorized Representatives for each Contracting Member are responsible for coordinating all requests for Services made to Consultant, and shall manage all related activities as further described herein.

A Contracting Member may designate a new or alternative Authorized Representative by providing written notice of such designation to NCPA, and such action will not be treated as an amendment to this Agreement.

The Contracting Members and Consultant intend to pursue the activities listed below during the term of this Agreement pursuant to the Consulting Services Agreement. Such activities will include monitoring, meeting participation, coordinating with affected or other participating parties, and, as necessary, preparing and submitting formal position submittals. The Services provided in accordance with this Agreement and the Consulting Services Agreement are described below:

1. Grid Planning Activities:
 - a. CAISO Regionalization Process, Transmission Access Charge, Governance and Resource Adequacy;
 - i. Coordination with the California Municipal Utilities Association and Northern California Power Agency on these activities
 - b. CAISO/PG&E annual transmission expansion planning process;
 - c. Support or oppose specific transmission additions;
 - d. Greater Bay Area long term studies;
 - e. CAISO local capacity technical study process;
 - f. Other regional and sub-regional transmission planning activities;
 - g. CAISO Tariff and BPM Change Management Process;
 - h. Generator Interconnection Procedure;
 - i. Transmission cost minimization;
 - j. Impacts due to potential generation retirements;
 - k. Transmission for renewables deliverability issues;
 - l. CTPG planning process; and
 - m. Tracy to Bay development activities.
2. CPUC and CEC transmission matters:
 - a. Integrated Energy Policy Report;
 - b. Resource adequacy issues;

- c. Renewable Portfolio Standard issues;
- d. Long Term Procurement issues;
- e. Approval of CPCNs and PTCs for new transmission lines; and
- f. Renewable Energy Transmission Initiative (RETI 2.0).

3. CAISO Market Issues

- a. CAISO markets proceedings and implementation matters;
- b. Resource Adequacy / Local Capacity/ Flexible Capacity/ Deliverability;
- c. LMP congestion and losses incidence and impacts; and
- d. Regionalization and New Participating Transmission Owner Issues.

4. Communicate Regularly with Contracting Members

Client meetings, telephone conferences and written summaries of activities on key issues.

NCPA will accept invoices from Consultant and transmit them to each Contracting Members' Authorized Representative, or their designee, for their review, and if acceptable, the Contracting Members' Authorized Representative will direct payment by NCPA. Such payment direction shall be provided by each Contracting Members' Authorized Representative, in writing, utilizing appropriate approval forms as shall be developed and/or revised by NCPA from time to time. An example of such form is included in Exhibit C of this Agreement. NCPA will prepare invoices indicating the share of Consultant's costs to be paid by each Contracting Member along with the appropriate charges by NCPA for its services; however, as provided in the Agreement, each Contracting Member is jointly and severally liable for the entirety of any amounts billed under this Agreement. NCPA will then pay Consultant utilizing Contracting Members' funds.

Contracting Members will be solely responsible for payment of the Consultant's invoices, as well as determining whether or not the professional services have been satisfactorily performed. The services under this Agreement by NCPA to Contracting Members are limited to the contracting for Services with Consultant and billing/payment function.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all Services performed pursuant to this Agreement, including hourly fees and expenses, shall not exceed One Million Nine Hundred Seventy Two Thousand Five Hundred Dollars (\$1,972,500.00) during the Term of the Agreement, or Six Hundred Fifty Seven Thousand Five Hundred Dollars (\$657,500.00) during each annual period of the Term of the Agreement. The compensation schedule and hourly fees for Services are as follows:

1. Monthly charges for Services provided by NCPA for billing and contract preparation under this Agreement shall be Six Hundred Twenty Five Dollars (\$625.00) per month. Such charges will be allocated to the Contracting Members in accordance with the allocation percentages listed in Table 1 of this Exhibit B.
2. Compensation paid to Consultant for all Services, including hourly fees and expenses, shall not exceed the amounts set forth in Section 2 of the Consulting Services Agreement. The compensation schedule and hourly fees for Services rendered by Consultant to Contracting Members are set forth in Exhibit B of the Consulting Services Agreement. Monthly Charges invoiced by Consultant to NCPA for Services provided to the Contracting Members, pursuant to the Consulting Services Agreement, shall be allocated to the Contracting Members in accordance with the allocation percentages listed in Table 1 of this Exhibit B.

**TABLE 1
ALLOCATION PERCENTAGES**

Contracting Member	Allocation Percentage
City of Palo Alto	25.0%
City of Santa Clara	75.0%
Total	100.0%

