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# Minutes

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**To:** NCPA Facilities Committee  
**From:** Cheryl Bolt  
**Subject:** December 4, 2024 Facilities Committee Meeting Minutes

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- 1. Call meeting to order & Roll Call** – The meeting was called to order by Committee Chair Shiva Swaminathan (Palo Alto) at 9:06 am. Attending via teleconference and on-line presentation were Alan Harbottle, Midson Hay, and Ben Rings (Alameda), Cliff Wagner (Biggs), Elisa Arteaga (Gridley), Brad Wilkie (Lompoc), Jim Stack and Vicente Rios (Palo Alto), Nathan Tang (Port of Oakland), Paulo Apolinario and Monica Nguyen (Santa Clara), and Pete Lorenz (TID non-voting Member). Those attending in person are listed on the attached Attendee Sign-in Sheet. At the time of roll call, Committee Representatives from BART, Healdsburg, Plumas-Sierra, Shasta Lake, TID, and Ukiah were absent. During item 4, Committee Member from Healdsburg, Terry Crowley joined the call. A quorum of the Committee was established at the time of roll.

## PUBLIC FORUM

No public comment.

## OPEN SESSION

## DISCUSSION / ACTION ITEMS

- 2. Approval of Minutes from the November 6, 2024, Facilities Committee meeting.**

**Motion:** A motion was made by Shiva Swaminathan and seconded by Jiayo Chiang recommending approval of the minutes from the November 6, 2024, Facilities Committee meeting. The motion carried by a majority of those Committee Members present on a roll call vote as follows: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, and Santa Clara. The motion passed.

- 3. All NCPA Facilities, Members, SCPPA – SEL Engineering Services, Inc. – First Amendment to MTPSA** – The Plant Manager presented background information to support the need of a first amendment to add additional funds (without an extension to the contract term) to continue utilizing this vendor for protective relay projects at both the CT1 Alameda and CT1 Lodi facilities. NCPA has similar agreements in place with Gannett Fleming. The Facilities Committee had no further questions on this item.

**FISCAL IMPACT:**

Upon execution, the total cost of the agreement will be not to exceed \$1,500,000 over the remainder of the contract term. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

**Motion:** A motion was made by Shiva Swaminathian and seconded by Monica Nguyen recommending Commission approval of a First Amendment to the Multi-Task Professional Services Agreement with SEL Engineering Services, Inc., for protective relay and automation design, testing, and commissioning related services, increasing the not to exceed amount from \$1,000,000 to \$1,500,000, with no change to the contract term, for continued use at any facilities owned and/or operated by NCPA, NCPA members, SCPPA and SCPPA Members. The motion carried by a majority of those Committee Members present on a roll call vote as follows: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, and Santa Clara. The motion passed.

4. **All NCPA Facilities, Members, SCPPA – Blackhawk Painting Co., Inc. MTGSA –** The Plant Manager presented background information on this vendor and stated that they have utilized Blackhawk Painting Co., Inc. in the past and expressed that they would like to enter into a Five Year Multi Task General Services Agreement for specialized industrial protective coating related services, with a not to exceed amount of \$500,000 for use at any facilities owned and/or operated by NCPA, NCPA Members, SCPPA. And SCPPA Members. NCPA has similar agreements in place with Farwest Insulation Contracting and a pending agreement with Toledo Industrial Coatings. The Facilities Committee had no further questions on this item.

**FISCAL IMPACT:**

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

**Motion:** A motion was made by Brad Wilke and seconded by Alan Harbottle recommending Commission approval of the Five-Year Multi-Task General Services Agreement between NCPA and Blackhawk Painting Co., Inc., for specialized industrial protective coating related services, with a not to exceed amount of \$500,000, for use at any facilities owned and/or operated by NCPA, NCPA Members, SCPPA and SCPPA Members. The motion carried by a majority of those Committee Members present on a roll call vote as follows: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, and Santa Clara. The motion passed.

5. **All NCPA Facilities – Thatcher Company of California, Inc. MTEMS –** The Plant Manager presented background information on this current NCPA vendor and reported that the current agreement with Thatcher is expiring and is requesting Commission approval of a Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies between NCPA and Thatcher Company of California, Inc. for chemical purchases, with a not to exceed amount of \$2,500,000, for use at any facilities owned and/or operated by NCPA. NCPA has similar agreements in place with Brenntag Pacific, Inc., Hill Brothers Chemical Company, Industrial Solution Services, Northstar Chemical, and Univar Solutions. The Facilities Committee had no further questions on this item.

**FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$2,500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

**Motion:** A motion was made by Jiayo Chiang and seconded by Monica Nguyen recommending Commission approval of a Five-Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies between NCPA and Thatcher Company of California, Inc. for chemical purchases, with a not to exceed amount of \$2,500,000, for use at any facilities owned and/or operated by

NCPA. The motion carried by a majority of those Committee Members present on a roll call vote as follows: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Roseville, and Santa Clara. ABSTAIN = Redding. The motion passed.

- 6. All NCPA Facilities, Members, SCPPA – Kobelco Compressors America, Inc. First Amendment to MTGSA** – The Plant Manager presented background information on this current NCPA vendor to provide off-site fuel gas compressor overhaul related services as requested. He explained that NCPA's Lodi Energy Center had a mechanical seal fail on the Gas Compressor "B" and the compressor needs to be sent to Kobelco for maintenance. The Plant Manager stated that the current agreement does not have enough funds left to cover the anticipated repair costs, therefore requesting Commission approval to enter into a First Amendment to the MTGSA with Kobelco Compressors America, Inc. for off-site fuel gas compressor overhaul related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$200,000 to \$1,000,000 and amending Section 11 – Warranty to add clarifying language regarding equipment warranty as requested by the vendor, with no change to the contract term, for continued use by any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. The Facilities Committee asked why the need for the increase in funds, in which the Plant Manager explained that the increase in funds is to mitigate any risks the vendor may find. NCPA reached out to other vendors who were unable to secure parts. Kobelco, located in Japan, is the OEM for LEC's fuel gas compressors, and as such, NCPA does not have additional agreements in place for similar services. The Committee had no further questions.

**FISCAL IMPACT:**

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

**Motion:** A motion was made by Monica Nguyen and seconded by Cliff Wagner recommending Commission approval of the First Amendment to the five-year Multi-Task General Services Agreement with Kobelco Compressors America, Inc. for off-site fuel gas compressor overhaul related services, increasing the not to exceed amount from \$200,000 to \$1,000,000 and amending Section 11 – Warranty to add clarifying language regarding equipment warranty as requested by the vendor, with no change to the contract term, for continued use by any facilities owned and/or operated by NCPA, NCPA members, SCPPA and SCPPA Members. The motion carried by a majority of those Committee Members present on a roll call vote as follows: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, and Santa Clara. The motion passed.

- 7. BART Meter Data Management Agent Services Agreement** – Power Management staff provided background information on the existing Single Member Services Agreement (SMSA) that exists between NCPA and San Francisco Bay Area Rapid Transit District (BART), explaining that NCPA can acquire services of a third party (with BART authorization) to supply meter data management services to obtain, process, adjust, validate, and maintain BART's settlement quality meter data in accordance with the CAISO Tariff. Trimark has historically been the provider of these critical Meter Data Management Agent Services (MDMA) on behalf of NCPA for BART to ensure BART can schedule, transact, and perform settlements in accordance with the CAISO Tariff requirements. Trimark is the sole sourced vendor providing these specialized services, as no other vendors have this software capability in place. These services and agreement is for use at BART facilities only.

**FISCAL IMPACT:**

The MDMA Agreement includes a not to exceed amount of \$300,000 for a term of two (2) years.

Pursuant to the BART SMSA, all charges and costs for MDMA Services supplied to NCPA on behalf of BART, will be passed through to BART by including such charges and costs in BART's All Resources Bill. Purchase orders referencing the terms and conditions of the agreement will be issued in accordance with NCPA's procurement policies and procedures.

**Motion:** A motion was made by Brad Wilke and seconded by Brian Schinstock recommending Commission approval of the Meter Data Management Agent Services Agreement between NCPA and Trimark Associates, Inc. (MDMA Agreement), and to authorize NCPA's General Manager to enter into the MDMA Agreement on behalf of NCPA, including any non-substantive modifications to the MDMA Agreement approved by the NCPA General Counsel. The motion carried by a majority of those Committee Members present on a roll call vote as follows: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Palo Alto, Redding, Roseville, and Santa Clara. ABSTAIN = Port of Oakland. The motion passed.

- 8. NCPA Geothermal Facility – 2025 Geothermal Plant #2 Diesel Tank Project –** The Geothermal Plant Manager presented background information on NCPA's Geo Plant #2 underground single walled diesel storage tank that supplies fuel for a back-up auxiliary generator and for the Plant #2 fire pump system. As a result of Senate Bill 445, it requires that all single walled underground storage tanks (UST) containing hazardous substances (such as diesel) be removed from service by December 31, 2025. Project funds have been spent to date on preliminary engineering, California Energy Commission (CEC) oversight, and procurement of an above-ground diesel tank. Further engineering construction package is under review and CEC approval is still needed before the project can be put out for bid and the tank installed. Staff is requesting Commission approval authorizing the 2025 Plant #2 Diesel Tank Project and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total not to exceed amount of \$1,036,836. The Facilities Committee asked the Plant Manager if there are challenges that this project is facing that could increase costs, in which staff explained that they are working with the insurance carrier, who is recommending they install a blast wall to protect surrounding structures from any potential damages.

**FISCAL IMPACT:**

Project costs of \$248,917 have already been spent for preliminary engineering and the purchase of an above-ground diesel tank. To complete the project, additional funds of \$587,919 were encumbered under Commission Resolution 24-116 for the 2025 Geothermal Plant #2 Diesel Tank Project. Combined with \$200,000 budgeted in FY 2025, there is a total of \$787,919 available for the 2025 Geothermal Plant #2 Diesel Project. These funds will be used to complete the engineering work, obtain CEC approval, procurement of additional materials, and installation and commissioning of the new tank. The total cost of this project is estimated not to exceed \$1,036,836. Estimated project costs may require further adjustment based on the bids received. Any requests for additional funds will be brought back to the Commission at that time

**Motion:** A motion was made by Brian Schinstock and seconded by Brad Wilke recommending Commission approval of Resolution 24-127 authorizing the 2025 Plant #2 Diesel Tank Project and delegating authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total not to exceed amount of \$1,036,836. The motion carried by a majority of those Committee Members present on a roll call vote as follows: YES = Alameda, Biggs, Gridley, Lodi, Lompoc, Roseville, and Santa Clara. ABSTAIN = Palo Alto, Port of Oakland, and Redding. The motion passed.



## **INFORMATIONAL ITEMS**

- 9. New Business Opportunities** – Power Management Staff reviewed key projects from the proposals received for the Renewable Energy Resources and Energy Storage Resources. The projects are listed below.

### **Vine Hill**

4.4 Solar

- **Status:** A draft PPA has been provided to the Seller for their review and consideration

### **Las Camas**

200 MW Solar + 100 MW BESS

- **Status:** NCPA is currently working with the Seller to develop a Letter of Intent (LOI) to engage in prospective PPA negotiations

### **Maestro**

200 MW Solar + 200 MW BESS

- **Status:** NCPA has entered into a Letter of Intent with the Seller, and PPA negotiations are contingent on the result of the Cluster 15 Interconnection Studies

### **Trolley**

300 MW BESS

- **Status:** A draft PPA has been provided to the Seller for their review and consideration

### **Sonrisa Solar Park**

100 MW Solar + 92 MW BESS

- **Status:** NCPA is currently reviewing a draft PPA received from Seller

### **Wildcat**

100 MW PV (with up to 100 MW BESS option)

- **Status:** NCPA is currently working with the Seller to develop a Letter of Intent (LOI) to engage in prospective PPA negotiations

- 10. Review of Power Supply Assumptions** – Power Management Staff provided an overview of the Power Supply Assumptions for the FY 2026 Annual Budget Schedule. SAS OR software is used to optimize generation output as a function of hourly prices, plant operations constraints, outages, and hydro conditions. Average rain, snow, and temperatures are used for the forecast. Key input variables were reviewed by staff, and such input variables were used in the forward curves from EOX's November 29, 2024 model run was used as inputs to the FY 2026 gas and power prices. Staff reviewed the specific data that was used for NCPA Projects including Geo, Hydro, LEC CTs. Summaries of the model outputs were presented and reviewed by the Committee. Optimization models were run starting December 3, 2024 and will be distributed to Plant Managers for review. The preliminary load-resource balances that will be used in the FY 2026 budget process will be ready for Members review and consideration by January 14, 2025.

- 11. NCPA Generation Services Plant Updates** – Plant Staff provided the Committee with an update on current plant activities and conditions.

**CTs** – CT1 had 7 Ghost starts and 6 actual of 3 forecasted. FYTD total is 134 starts. CT2 had 0 starts of 0 forecasted. FYTD total is 41 starts.

- **Outages**

- **CT1 Lodi** – On November 1, 2024 from 1345 thru 1800, unit forced out. Ratchet pump motor intermittent start failures. Replaced motor brushes
- On November 6, 2024 from 1300 thru 1400, Received low SF6 alarm on our main CB52L, 60Kv circuit breaker. Replaced a leaky gauge and topped off breaker. OMS 16890757
- **CT1 Alameda U1/U2** – On November 7, 2024 from 1000 thru 1200, Telemetry outage for updates. OMS 16897255 & 16897264
- **CT2 STIG** – Unit is no longer operational, forced outage has been extended thru December 31, 2024 @ 2359

**CT2 Additional Operational Report** - On November 15, 2024, Hill Bros. was onsite early to transfer approximately 4700 gallons of ammonia from our tank to their truck. Began offload and the tank liquid unloading valve had a wisp of ammonia leaking from the threads. Offload was stopped to address leak and continued with offload. Vacuum was pulled on tank to replace needle valve; tank was leak tested and refilled. Ammonia regulator to CT2 was blocked off as part of decommissioning.

- Next steps: flush all boiler chemical feed lines and drain boiler for lay up and Isolate and blind flange natural gas to GT and file unit dormant status for Air Permit

- **CT1 Lodi Run Hours**

- YTD hours **130.87 of 200** Allowed (based on calendar year)

- **CT1 Alameda Diesel Hours**

- U1= 6.74 hrs. of 42 (in any consecutive 12-month period)
- U2= 4.14 hrs. of 42 (in any consecutive 12-month period)

- **Planned Outages**

- CT1 Alameda U1/U2- January 1<sup>st</sup> - 31<sup>st</sup>, 2025
- CT1 Lodi – May 1<sup>st</sup> - 31, 2025

- **Safety**

- No issues to report

- **Environmental**

- No issues to report
- Certified Unified Program Agency (CUPA) – Inspectors came onsite on November 21, 2024 to review HMBP, SPCC and RMP programs. CUPA inspection is every 3 years

**Geo** – The average net generation for the month of November was 92.3 MW. The total net generation was 68.7 GWhrs. CY 2024 net generation goal = 640.8 GWh. CY forecast net generation = 575 GWhrs YTD. The CY actual net generation = 575.6 GWhrs at 0.1% above the forecast. Plant 1 down for PG&E transmission line outage November 8-9, 2024.

The Plant Manger shared the impacts of the recent Bomb Cyclone that hit Northern California. During the month of November there was measured 18.46 inches of precipitation.

- **Key Projects Updates**

- **Plant 1, Unit 2 Turbine Work** – RTS assumed responsibility and agreed to reimburse NCPA for “Warranty Work” related items. All final reports have been received and are under review by NCPA

**Plant 2 – U4 Cooling Tower Project: Stair maintenance, Header and Nozzle Fan Replacement** - Both stairwells have been rebuilt and are now 100% complete. The fan walkways are 95% completed. The new fans and hubs are being built on the ground. Installation with a crane is scheduled over the next 2 weeks. The team also cleaned the cooling water distribution headers and unplugged the spray nozzles. The unit back pressure improvement was evident after the completion.

- Plant 2 – Fire System Alarm Annunciators –Started in Oct. – In Progress – 30%
- Plant 2 – Cooling Tower Fans & Stairs – Nov. – In Progress – 70%
- SEGEP Air Compressors – Parts arriving in Jan.
- Plant 2 – Underground Storage Tank – FY 2025 – Eng.
- Plant 2 – MCC 480V Project – Install in 2025 – Construction Bid Package under review
- Plant 1 & 2 Spring 2025 Outages – Planning – Will bring to Jan. Commission for approval

#### **Other Work-**

- WAPA 230KV, 21KV scope for 2025 outages – Report is under review
- Plant performance testing and monitoring for GEO for all 3 Units - Ongoing
- A Drilling Program and Geothermex Modeling are ongoing – 2025, 2026, 2027
- The Budget Process is underway

**Hydro** – During the month of November, Collierville (CV) Power House was at 50% availability due to the U1 Outage for the runner repairs. New Spicer Meadows (NMS) Powerhouse was at 100% availability.

#### ▪ **New Spicer Meadows Reservoir Storage**

- 16,938 acre feet (af) decrease (14%) month-over-month
- 121,088 af to 104,150 af
- 55% capacity

#### **Current Events**

- CV U1 runners A and B are OOS due to cracking. CV has three total runners with 35 years of service. Cavitation and erosion damage require regular repairs increasing over time. Power Engineering is performing root cause analysis and developing a repair plan
  - Initial assessment indicates stress-induced fatigue. Vendor recommends removing all stress fractures and replacing with new material and comprehensive heat treatment
  - The process involves a controlled temperature rise to approx. 1,150F, followed by a gradual cooling phase, aimed at restoring the runner's structural integrity
- CV Unit1 Runner returned to service scheduled for December 31, 2024
- Runner B repair is in progress
- Runner A repair process will begin once runner B is back in service
- Alpine Dam Face Maintenance – Crews are repairing holes in the face of Lake Alpine Main Dam
- CV Yard Pavement Repairs – Pavement repairs in progress which included the semi-annual Camp 9 access road patching work
- Sno-Cat Maintenance – Performing track swap, idler wheel replacement, and alignment
- McKays Sediment Transfer - Meeting scheduled for December 10, 2024 to review the landowner's proposed term sheet
- Negotiation Meeting with DOE staff on November 20, 2024 for the Upper Utica Grant - Working currently on Community Benefits (altered) RFI: 16 additional questions

**12. Planning and Operations Update** – Staff provided a verbal update on following key planning and operating activities:

- Resource Integrations
  - Lodi Strategic Reserve Resource – Complete**
  - Scarlet II – Dec 2025
  - Other PV / BESS integrations
- Market Readiness
  - Situational awareness
- Resource Development
  - ZWEDC – pending PPA execution
  - NCPA Renewable RFP – Under Review
- Active CAISO stakeholder process
  - IEP, RA, CRR, TPP, other

**ADJOURNMENT**

The meeting was adjourned at 12:06 pm by the Committee Chair.

**Northern California Power Agency  
December 4, 2024 Facilities Committee Meeting  
Attendance List**

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

<b><u>MEMBER</u></b>	<b><u>NAME</u></b>
<b>ALAMEDA</b>	
<b>BART</b>	
<b>BIGGS</b>	Bo Sheppard
<b>GRIDLEY</b>	
<b>HEALDSBURG</b>	
<b>LODI</b>	Gi'ayo Chiang
<b>LOMPOC</b>	
<b>PALO ALTO</b>	
<b>PLUMAS-SIERRA REC</b>	
<b>PORT OF OAKLAND</b>	
<b>REDDING</b>	
<b>ROSEVILLE</b>	Brian Schinstock
<b>SANTA CLARA</b>	Basil Wong
<b>SHASTA LAKE</b>	
<b>TID</b>	
<b>UKIAH</b>	

**Northern California Power Agency  
December 4, 2024 Facilities Committee Meeting  
Attendance List**

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

[illegible]





# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Custom Valve Solutions, Inc. dba Custom Valve Solutions – Five Year Multi-Task General Services Agreement for Specialty Machining and Motor Maintenance Related Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

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

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

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Custom Valve Solutions, Inc. dba Custom Valve Solutions for specialty machining and motor maintenance related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

## **BACKGROUND:**

Various specialty machining and motor maintenance related services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar services with Atlas Copco (pending), Caltrol Inc., Dahl-Beck, Industrial Electrical Co., Industrial Service Solutions and Martech.

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$1,500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

### **PENDING COMMITTEE APPROVALS:**

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task General Services Agreement with Custom Valve Solutions, Inc. dba Custom Valve Solutions

## RESOLUTION 25-XX

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH CUSTOM VALVE SOLUTIONS, INC. DBA CUSTOM VALVE SOLUTIONS

(reference Staff Report XXX:25)

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

WHEREAS, Custom Valve Solutions, Inc. dba Custom Valve Solutions is a provider of these services; and

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

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into said Multi-Task General Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
CUSTOM VALVE SOLUTIONS, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Custom Valve Solutions, Inc., an S-corporation, with its office located at 1101 Nimitz Avenue, Suite 100, Vallejo, CA 94592 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 ("Effective Date") in Roseville, California.

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

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

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

**Section 2. COMPENSATION.** Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** ONE MILLION FIVE HUNDRED THOUSAND dollars (\$1,500,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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



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

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

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

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

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

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

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

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

**4.3 Professional Liability Insurance.** Not Applicable.

**4.4 Pollution Insurance.** Not Applicable.

**4.5 All Policies Requirements.**

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

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

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

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

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

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

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

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

## **Section 6. STATUS OF CONTRACTOR.**

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

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

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

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

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

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

## **Section 7. LEGAL REQUIREMENTS.**

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

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

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

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

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

## **Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

**8.4.1** Immediately terminate the Agreement;

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



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

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

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

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

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

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

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

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

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

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

## **Section 10. PROJECT SITE.**

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

## **Section 11. WARRANTY.**

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

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

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

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

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

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

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

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

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

**Section 13. MISCELLANEOUS PROVISIONS.**

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

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

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

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

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

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

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

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

Custom Valve Solutions, Inc.  
Attention: Joseph Romero  
1101 Nimitz Avenue, Suite 100  
Vallejo, CA 94592

Any written notice to Agency shall be sent to:

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

With a copy to:

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



- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
  - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
  - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
  - 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
  - 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

**13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

CUSTOM VALVE SOLUTIONS, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**EDWARD KUMISCA,**  
President

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**  
**SCOPE OF WORK**

Custom Valve Solutions, Inc. ("Contractor") shall provide specialty machining services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

- Machining
- Balancing
- Hydroelectric Services
- AC/DC Motor Rewind and Rebuild
- Rebuild or Re-Manufacturing of Equipment
- Specialty Maintenance
- Valve and Actuator Specialty Maintenance

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

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

2024-2025 FIELD LABOR AND EQUIPMENT RATES  
BASED ON PREVAILING WAGE RATES FOR MILLWRIGHT AREA 3, SAN JOAQUIN  
COUNTY  
July 2024 – July 2025

<i>1<sup>ST</sup> SHIFT</i>			
CLASSIFICATION	ST HOUR	OT HOUR	DT HOUR
Machinist/ Mechanic Tech	\$195.98	\$235.17	\$270.31
Supervisor	\$195.98	\$235.17	\$270.31
Project Lead	\$195.98	\$235.17	\$270.31
Actuator/ CV Tech	\$195.98	\$235.17	\$270.31
Safety Manager	\$195.98	\$235.17	\$270.31

<i>2<sup>ND</sup> SHIFT</i>			
CLASSIFICATION	ST HOUR	OT HOUR	DT HOUR
Machinist/ Mechanic Tech	\$195.98	\$235.17	\$270.31
Supervisor	\$195.98	\$235.17	\$270.31
Project Lead	\$195.98	\$235.17	\$270.31
Actuator/ CV Tech	\$195.98	\$235.17	\$270.31
Safety Manager	\$195.98	\$235.17	\$270.31

Straight Time, Over Time, and Double Time at a minimum are paid in compliance with California State Law. Emergency after hour call outs will be billed at Double Time rate. After hour call outs are a minimum four hour per man charge.

Field rates are portal to portal.

#### EQUIPMENT RATES

Field Service Truck	\$120 day/ \$600 week/ \$2,200 month
Mobile Machine Shop*	\$850 day/ \$4,000 week/ \$12,000 month
EFCO Machines (each)	\$150 day/ \$750 week/ \$2,200 month
Hy Torq/Rad Gun	\$105 day/ \$525 week/ \$1,950 month
Other Equipment	Price per Application
Rental Equipment	Cost plus 20% plus pick up and delivery
Field Service Mileage	\$IRS Rates
Tolls	At cost
Field SV Test Stand	\$150 day
Trailer Drayage	Cost plus 20%
Electronic SV Tester	\$500 day
Positive Material Identification	\$165 hour/ 1 hour minimum

\*Mobil Machine Shop rates do not include transportation (See Trailer Drayage). Customer is required to provide power and plant compressed air, or additional costs will be customer's responsibility.

#### **MATERIAL RATES**

Parts and Materials	Cost plus 20% plus freight, tax and delivery
Inventoried Items	Cost plus 20% plus tax and delivery
Sub Contacted Services	Cost plus 20%

#### **FIELD COSTS**

Lodging	Cost plus 20% (not to exceed current IRS rates)
Per Diem	\$45.00/day (not to exceed current IRS rates)
Airfare	Cost plus 20% (not to exceed current IRS rates)
Local Transportation	At Cost plus 20% (not to exceed current IRS rates)

#### **HOLIDAY PAY**

Employees required to work on Holidays will be paid as if it is their seventh consecutive day; at a minimum of time and one half, and at a maximum of double time for the following Holidays. Custom valve recognizes the following Holidays: New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the Day After, and Christmas Day. Certain Holidays may be celebrated on days other than which they fall on.

#### **CANCELLATION POLICY**

If a job is cancelled with sufficient notice, there is no cancelation charge.

If a job is cancelled with insufficient notice the client will be liable for all expenses associated with preparing for this project

Job Postponement and/ or Delayed Start Times may result in paid Stand By Time, if adequate time is not allowed for employees to be assigned to other jobs or projects.

#### **OTHER COSTS**

A hazardous waste fee (HWF) based on 2% of the labor total, will apply to all shop work. On work solely performed in the field, there will be no HWF if the client disposes of all wastes generated on site.

A consumables charge based on 2% of the labor total will apply to all work.

Upon 30 days advance notice and no more than once each calendar year, Contractor may increase rates for new Purchase Orders. If NCPA does not accept the increased rates, NCPA may terminate this Agreement.

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

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

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

---

(Name of person signing affidavit)(Title)

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

Custom Valve Solutions, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

---

(Signature of officer or agent)

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

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

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

**NOT APPLICABLE**

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)





# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Integrity Inspections – Five Year Multi-Task General Services Agreement for Specialty Mechanical and Inspection Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

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

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

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Integrity Inspections for specialty mechanical and inspection services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

## **BACKGROUND:**

Various specialty mechanical and inspection services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar services with Premium Inspection Company and Team industrial Services.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

### **PENDING COMMITTEE APPROVALS:**

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task General Services Agreement with Integrity Inspections

## RESOLUTION 25-XX

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH INTEGRITY INSPECTIONS

(reference Staff Report XXX:25)

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

WHEREAS, Integrity Inspections is a provider of these services; and

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

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

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

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



## **MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND INTEGRITY INSPECTIONS**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Integrity Inspections, an S-Corp, with its office located at 23073 County Road, Esparto, CA 95627 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.5 All Policies Requirements.**

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

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

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

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

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



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

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

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

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

## **Section 6. STATUS OF CONTRACTOR.**

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

System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

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

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

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

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

- 6.4 **Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 **Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 **Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

## **Section 7. LEGAL REQUIREMENTS.**

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

applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

## **Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

**8.4.1** Immediately terminate the Agreement;

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

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

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

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

**9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.

**9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.

**9.4 Confidential Information and Disclosure.**

**9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

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

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

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

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

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

**9.4.4 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are

necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

## **Section 10. PROJECT SITE.**

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

## **Section 11. WARRANTY.**

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in

design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.

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

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

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

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

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

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

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



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

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

### **Section 13. MISCELLANEOUS PROVISIONS.**

- 13.1** **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2** **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3** **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this

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

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

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

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

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

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

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

Integrity Inspections  
Attention: Jay Locatelli  
23073 County Road  
Esparto, CA 95627

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
  - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
  - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
  - 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
  - 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

**13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

INTEGRITY INSPECTIONS

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**JAY LOCATELLI,**  
Owner / CEO

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**  
**SCOPE OF WORK**

Integrity Inspections ("Contractor") shall provide specialty mechanical and inspection services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA members, Southern California Public Power Authority (SCPPA), or SCPPA members.

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

**On-Steam Services:**

- Energy Management
- Emissions Control
- Engineering and Project Management Services

**Turnaround/Outage Services:**

- 3-D Measurement and Inspection Services
- Inspection (NDE/NDT)
- Engineering and Outage Management Services

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

## **EXHIBIT B**

### **COMPENSATION SCHEDULE AND HOURLY FEES**

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

## NDE SERVICES

Call-Out NDE Services may refer to the following:

(Billable rate is based off the technicians certifications held):

- Magnetic Particle Inspection
- Ultrasonic Inspection Shear and Phased Array
- Radiographic Inspection CR, DR, & Conventional
- Penetrant Inspection
- Positive Material Identification LIBS & XRF
- Eddy Current, Remote Field Testing, and IRIS Inspection
- API/Visual Inspection/Drone Inspections
- AutoCAD Services
- Data Entry Services
- Advanced Technologies, including, but not limited to:
  - Computerized Radiography
  - Phased Array Ultrasonics
  - Eddy Current Array

### Labor <sup>1</sup>

	<u>S.T.</u>	<u>O.T.</u>	<u>P.T.</u>
Group I ASNT Level II & III	\$162.00	\$243.00	\$324.00
Group 2 AWS CWI	\$157.00	\$235.50	\$314.00
Group 3	\$145.00	\$217.50	\$290.00
Group 4 NACE & Level I	\$136.00	\$204.00	\$272.00

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**Equipment - NDE****Magnetic Particle Equipment** <sup>1&2</sup>**Rate UOM**

Magnetic Particle Portable Blacklight	\$60.00 Shift
Magnetic Particle Portable Yoke	\$60.00 Shift
Temp Gun	\$25.00 Shift
Light Meter	\$30.00 Shift
Magnetic Particle Machines and Accessories (0-6000 amps)	\$1,000.00 Shift

**Ultrasonic Equipment** <sup>1&2</sup>**Rate UOM**

Ultrasonic Thickness Meter	\$125.00 Shift
Ultrasonic Flaw Detector	\$200.00 Shift
AUT System	\$950.00 Shift
Phased Array Unit	\$900.00 Shift
HydroFORM Scanner / Chain Scanner	\$300.00 Shift
Cobra Tube Scanner	\$300.00 Shift
Transducers	Cost + 15 %

**Radiographic Equipment** <sup>1&2</sup>**Rate UOM**

Pick-up Truck Mounted Darkroom	\$135.00 Shift
Mobile Dark Room Trailer	\$525.00 Week
Selenium 75 Source	\$375.00 Shift
Iridium 192 Source	\$135.00 Shift
Cobalt 60 Source	\$750.00 Shift
Computerized Radiography (CR) <sup>3</sup>	\$800.00 Shift
Digital Radiography (DR)	\$800.00 Shift

**Positive Material Identification Equipment** <sup>1&2</sup>**Rate UOM**

Positive Material Identification	\$600.00 Shift
Positive Material Identification with Carbon Content	\$950.00 Shift
Ferrite Tester / Hardness Tester	\$200.00 Shift

**Hardness Testing Equipment** <sup>1&2</sup>**Rate UOM**

Impression Tester	\$175.00 Shift
Electronic Tester	\$200.00 Shift

**Eddy Current/Remote Field Testing/IRIS Inspection** <sup>1&2</sup>**Rate UOM**

Ferrous & Non-Ferrous Tester (ET/RFT)	\$975.00 Shift
IRIS Tester	\$975.00 Shift
Surface Eddy Current Tester	\$975.00 Shift
Specialty Probe Cost	Cost + 15 %
Calibration standards (Special Order Only)	Cost + 15 %

**Remote Access Equipment** <sup>1&2</sup>**Rate UOM**

Remote Access Truck	\$200.00 Shift
Remote Access Kit	\$250.00 Shift

**Tank Inspection Equipment** <sup>1&2</sup>**Rate UOM**

MFE Floor Scanner	\$825.00 Shift
Tank Crawler	\$725.00 Shift

**Remote Viewing****Rate UOM**

Borescope	\$725.00 Shift
Drone	\$1,500.00 Shift



*Note: Shift is defined as 12 hours or less unless stated otherwise.*

<sup>1</sup> A minimum equipment charge of 1 single shift per day applies.

<sup>2</sup> All Equipment rates are based on a single shift operation.

<sup>3</sup> 20 plates are provided with equipment package, additional may be charged for use or damages caused  
Rental Equipment charged at cost +15%

**Consumable Materials - NDE**

	<b><u>Rate</u></b>	<b><u>UOM</u></b>
Radiographic Film	\$0.25	Inch
Dry Magnetic Powder	\$40.00	Pound
14 AM Prepared Bath (Aerosol)	\$40.00	Can
Bulk Wet Magnetic Particle	\$40.00	Quart
Aerosol Cleaner	\$40.00	Can
Aerosol Penetrant	\$40.00	Can
Aerosol Penetrant Developer	\$40.00	Can
Cold Couplant (Ambient to 120°F)	\$40.00	Quart
Medium Temperature Couplant (120°F to 400°F)	\$40.00	Ounce
High Temperature Couplant (400°F to 900°F)	\$100.00	Tube

**Miscellaneous**

	<b><u>Rate</u></b>	<b><u>UOM</u></b>
Utility Vehicle	\$110.00	Shift
Portable Generator w/fuel	\$55.00	Day
All Third Party Rental Equipment, Supplies, Materials, Freight	Cost + 15%	
RT Welder Qualification Coupon (ST) Flat Rate	\$300.00	Per Coupon
RT Welder Qualification Coupon (OT) Flat Rate	\$450.00	Per Coupon
RT Welder Qualification Coupon (DT) Flat Rate	\$600.00	Per Coupon
Destructive Machine	\$800.00	Shift

**Travel, Meals & Lodging**

	<b><u>Rate</u></b>	<b><u>UOM</u></b>
Lodging & Meals	\$250.00	Per Day / Person
Meals	\$80.00	Per Day / Person
Mileage (Minimum 20 miles per Trip)	Per IRS Rates	
Airfares (Timekeeper rates may apply for Managing)	Cost + 15%	
Rental Vehicle and Gasoline	Cost + 15%	
Lodging - (where adequate or affordable lodging is unavailable)	Cost + 15%	

Whenever possible, Integrity Inspections LLC will assign personnel living in the area closest to the project. In the event that employee requirements exceed the available labor pool in the closest area or the required Level is not available, we will draw on the personnel resources of other regions and additional travel charges will apply.

### **Conditions**

Four (4) hour minimum labor charge will apply to all local work in town, unless otherwise stated; A Eight (8) hour minimum will apply to all out of town employees.

Call-Out after 3pm may result in OT/DT Charges, 24 Hour Notice Required.

Local Mobilization/Demobilization from Benicia, CA which includes loading and transporting of equipment will be charged at applicable Labor rates.

Out of town employees traveling from outside a 50 mile radius, travel time will be charged portal to portal and at the regular, overtime or premium rate, whichever is applicable at the time the travel occurs.

Standby rates for lost time due to delays beyond our control are charged at the applicable hourly rate for labor 8 hour minimum and equipment by the shift minimum.

Any client Site-Specific Orientation, Background Investigations, or medical examinations  
Example: Fresh Air Training, will be charged at the applicable hourly labor rates.

A technician performing dual or multiple services/methods during a single mobilization will be charged at the higher of the applicable rates.

A 2 -5 % annual increase will be submitted for approval in writing to procurement for all rates contained herein; the anniversary date of the submittal will be in conjunction with the contract award date.

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

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

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

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

---

(Name of person signing affidavit)(Title)

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

Integrity Inspections

(Company name)

for contract work at:

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

(Project name and location)

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

---

(Signature of officer or agent)

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

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

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

**NOT APPLICABLE**

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 24, 2025

**SUBJECT:** Jacobs Engineering Group, Inc. – Five Year Multi-Task Professional Services Agreement for Project Support Related Consulting and Engineering Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Jacobs Engineering Group, Inc. for project support related consulting and engineering services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

## **BACKGROUND:**

Various project support related consulting and engineering services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar services with Black & Veatch, GHD Inc., HDR Engineering, Power Engineers, Thermal Engineering and Worley Group Inc.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.



Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task Professional Services Agreement with Jacobs Engineering Group, Inc.

## RESOLUTION 25-XX

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK PROFESSIONAL SERVICES AGREEMENT WITH JACOBS ENGINEERING GROUP, INC.

(reference Staff Report XXX:25)

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

WHEREAS, Jacobs Engineering Group, Inc. is a provider of these services; and

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

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into said Multi-Task Professional Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



## MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND JACOBS ENGINEERING GROUP INC.

This Professional 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 Jacobs Engineering Group Inc., a Delaware corporation with its office located at 1999 Bryan Street, Suite 3500, Dallas, TX 75201 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 ("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 by the Purchase Order issued for those particular Services therein.

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Care.** Consultant shall perform the Services in accordance with the standard of care exercised by professional consultants/engineers working in and for the load serving utility industry in the locale where the Services are performed under this Agreement ("Standard of Care"). 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, promptly upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant will include Services directly to the Agency.
- 1.5 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses to perform the Requested Services. If Consultant agrees to perform the Requested Services or begins to perform the Requested Services, 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 TWO MILLION** dollars (\$2,000,000.00) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable  
[AcctsPayable@ncpa.com](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. 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 by Consultant with limits of one million dollars (\$1,000,000.00) per accident. For clarity, Jacobs must require any subcontractor to also meet these requirements for any and all persons employed by that subcontractor consistent with Sections 4.5 and 6.3.

**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 loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which arise out of the operations of Consultant under this Agreement. The policy shall provide a limit of \$2,000,000 per occurrence/\$2,000,000 general 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.

- 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 combined single limit of \$2,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

**4.3 Professional Liability Insurance.** Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate covering the Consultant's negligent 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 three (3) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within three (3) 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) the required policy endorsements to the policies referenced in Section 4.2, including the Agency as an additional insured on the Commercial General Liability and Auto Liability and any umbrella insurance policies 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 Reserved.**

**4.4.4 Additional Certificates and Endorsements.** Reserved.

**4.4.5 Waiver of Subrogation.** With the exception of Professional Liability policy, Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers'

Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for the work performed by Consultant and its employees.

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

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

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and the required 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 the damages or claims for damages, caused by Consultant, whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of the Consultant in its performance of Services under this Agreement. Consultant shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency. [.]
- 5.3 Warranty.** Consultant warrants that its Services will be performed in accordance with the Standard of Care. Following completion of its Services and for a period of twelve (12) months thereafter, if the Services provided hereunder do not conform to the warranty above stated and the same is reported to Consultant by Agency in writing promptly, generally within seven (7) days, after recognition thereof, Consultant shall, at no cost to Agency, furnish all remedial Services required in connection therewith as soon as reasonably possible after receipt of such report from Agency. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED. This section does not change the indemnity requirements specified

in Section 5.2, the obligation to provide professional services consistent with the Standard of Care specified in Section 1.2, nor does it relieve Consultant from liability should Consultant's Services result in damage to Agency's equipment or impact Agency's operations.

**5.4 Construction Phase Services.** [Reserved.]

**5.5 Limitation of Liability.** Consultant's liability for Agency's damages will, in the aggregate, not exceed four million dollars (\$4,000,000).

**5.6 Consequential Damages.** In no event shall either Party, its affiliated corporations, its members, commissioners, officers, employees, or any of its subcontractors be liable for any incidental, indirect, special, punitive, or consequential damages.

**Section 6. STATUS OF CONSULTANT.**

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

Consultant shall indemnify 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 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 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. If due to licensing, tax, or other local requirements, the Consultant is required to perform a Purchase Order through one of its affiliates, then Consultant will give notice to Agency of such circumstances and if Agency provide prior written approval, then Consultant may subcontract that work to Consultant's applicable affiliate. 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 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, and which are not cured within seven (7) days or where Agency has received written notice from Contractor that Contractor is working to cure and are not subsequently cured within fourteen (14) calendar days of receiving written notice from Agency, Agency's remedies shall include, but not be limited to, the following:

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

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

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Notwithstanding the foregoing, the Parties acknowledge that during the course of performing its services Consultant may provide or otherwise make available to Agency its proprietary data, concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software, works of authorship, software and hardware architecture, databases, tools, and other background technologies that Consultant developed or licensed from third parties independent of the services and prior to the Effective Date ("Pre-Existing Consultant Material"). Consultant shall retain all right, title and interest, including intellectual property rights, in the Pre-Existing Consultant Material. Subject to the terms and conditions of this Agreement, Consultant hereby grants to Agency a non-exclusive, non-transferable, royalty-free license to utilize the Pre-Existing Consultant Material solely for the purpose of Agency's project. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency; provided that, Agency's audit rights shall not extend to any component of lump sum compensation, or to the make-up of any agreed upon hourly rates or multipliers. 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. If Confidential Information is provided orally, it must be followed up in writing within fourteen (14) calendar days that it is considered Confidential 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, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

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

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

**9.4.4 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information,

subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

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

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

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

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

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

Jacobs Engineering Group Inc.  
Attention: Chuson McFadden  
1999 Bryan Street, Suite 3500  
Dallas, TX 75201

With a copy to:

Jacobs Engineering Group Inc.  
Attn: Legal Department  
1999 Bryan Street, Suite 3500  
Dallas, TX 75201

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**10.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**10.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**10.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.

**10.16 Force Majeure.** Any delays in or failure of performance by Consultant or Agency, other than a fourteen (14) business days for the payment of money when a party or its financial institution is subject to a cyber-attack or similar action that impacts its financial systems or that of its financial institution, shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Agency or Consultant, as the case may be, including but not limited to, acts of God or the public enemy; compliance with any order or request of any governmental authority; fires, floods, explosion, accidents; riots, strikes or other regional concerted acts of workmen, whether direct or indirect; or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of Agency or Consultant respectively. In the event that any event of force majeure as herein defined occurs, the party claiming force majeure must notify the other party as soon as possible but no later than five (5) business days after the event causing delay occurs. Either party shall be entitled to a day for day extension of time for performance of its Services or payment under this Agreement.

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

NORTHERN CALIFORNIA POWER AGENCY

JACOBS ENGINEERING GROUP INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**CHUSON MCFADDEN,**  
Senior Director of Operations

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel



## **EXHIBIT A**

### **SCOPE OF SERVICES**

Jacobs Engineering Group Inc. ("Consultant") shall provide consulting and engineering services related to project support and plant operations to the Northern California Power Agency ("Agency"):

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

- Feasibility Studies
- Business Model Development
- Conceptual Design Cost
- Estimating Contract
- Planning
- Architecture/Engineering Services (preliminary and detailed)
- Engineering Studies
- Execution Planning
- Construction Management Services
- Permitting
- Grant Application Support
- Project Management, Program Management

THIS CONTRACT CANNOT BE USED FOR ENGINEERING (BEYOND PRELIMINARY PERMITTING ANALYSES), CONSTRUCTION INCLUDING PROJECT MANAGEMENT AND PROGRAM SUPPORT OF THE LEC HYDROGEN PROJECT. THE LEC HYDROGEN CONTRACT WILL BE BID SEPARATELY AND NEGOTIATED SEPARATELY WITH THE WINNING ENTITY ACCEPTING ADDITIONAL RESPONSIBILITY COMMENSURATE WITH THE LARGER CONTRACT.

## **EXHIBIT B**

### **COMPENSATION SCHEDULE AND HOURLY FEES**

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



	2024	2025	2026	2027	2028	2029
Energy & Power Standard Rates	\$/hour	\$/hour	\$/hour	\$/hour	\$/hour	\$/hour
Project Principal	\$ 306	\$ 319	\$ 332	\$ 345	\$ 359	\$ 373
Program Director	\$ 235	\$ 245	\$ 255	\$ 265	\$ 276	\$ 287
Project Manager	\$ 208	\$ 217	\$ 226	\$ 235	\$ 244	\$ 254
Senior Process Engineer	\$ 240	\$ 250	\$ 260	\$ 270	\$ 281	\$ 292
Process Engineer	\$ 184	\$ 191	\$ 199	\$ 207	\$ 215	\$ 224
Jr Process Engineer	\$ 118	\$ 122	\$ 127	\$ 132	\$ 137	\$ 142
Senior Mechanical Engineer	\$ 186	\$ 194	\$ 202	\$ 210	\$ 218	\$ 227
Mechanical Engineer	\$ 135	\$ 140	\$ 146	\$ 152	\$ 158	\$ 164
Junior Mechanical Engineer	\$ 108	\$ 112	\$ 116	\$ 121	\$ 126	\$ 131
Senior Electrical Engineer	\$ 265	\$ 275	\$ 286	\$ 297	\$ 309	\$ 321
Electrical Engineer	\$ 189	\$ 196	\$ 204	\$ 212	\$ 220	\$ 229
Junior Electrical Engineer	\$ 132	\$ 138	\$ 144	\$ 150	\$ 156	\$ 162
Senior Controls Engineer	\$ 265	\$ 275	\$ 286	\$ 297	\$ 309	\$ 321
Controls Engineer	\$ 208	\$ 217	\$ 226	\$ 235	\$ 244	\$ 254
Junior Controls Engineer	\$ 147	\$ 153	\$ 159	\$ 165	\$ 172	\$ 179
Senior Structural Engineer	\$ 191	\$ 199	\$ 207	\$ 215	\$ 224	\$ 233
Structural Engineer	\$ 142	\$ 148	\$ 154	\$ 160	\$ 166	\$ 173
Junior Structural Engineer	\$ 110	\$ 115	\$ 120	\$ 125	\$ 130	\$ 135
Senior Civil Engineer	\$ 191	\$ 199	\$ 207	\$ 215	\$ 224	\$ 233
Civil Engineer	\$ 142	\$ 148	\$ 154	\$ 160	\$ 166	\$ 173
Junior Civil Engineer	\$ 110	\$ 115	\$ 120	\$ 125	\$ 130	\$ 135
Senior Environmental Engineer	\$ 191	\$ 199	\$ 207	\$ 215	\$ 224	\$ 233
Environmental Engineer	\$ 142	\$ 148	\$ 154	\$ 160	\$ 166	\$ 173
Junior Environmental Engineer	\$ 110	\$ 115	\$ 120	\$ 125	\$ 130	\$ 135
Senior Fire Protection/Life Safety Engineer	\$ 191	\$ 199	\$ 207	\$ 215	\$ 224	\$ 233
Fire Protection/Life Safety Engineer	\$ 142	\$ 148	\$ 154	\$ 160	\$ 166	\$ 173
Junior Fire Protection/Life Safety Engineer	\$ 110	\$ 115	\$ 120	\$ 125	\$ 130	\$ 135
Sr Cost Estimator	\$ 257	\$ 268	\$ 279	\$ 290	\$ 302	\$ 314
Cost Estimator	\$ 182	\$ 189	\$ 197	\$ 205	\$ 213	\$ 222
Sr Scheduler	\$ 233	\$ 242	\$ 252	\$ 262	\$ 272	\$ 283
Scheduler	\$ 182	\$ 189	\$ 197	\$ 205	\$ 213	\$ 222

Document Controls	\$ 147	\$ 153	\$ 159	\$ 165	\$ 172	\$ 179
Site Construction Manager	\$ 220	\$ 228	\$ 237	\$ 246	\$ 256	\$ 266
Architectural Design Principal	\$ 270	\$ 280	\$ 291	\$ 303	\$ 315	\$ 328
Senior Architect	\$ 172	\$ 178	\$ 185	\$ 192	\$ 200	\$ 208
Architect	\$ 135	\$ 140	\$ 146	\$ 152	\$ 158	\$ 164
Junior Architect	\$ 98	\$ 102	\$ 106	\$ 110	\$ 114	\$ 119
Senior Designer	\$ 152	\$ 158	\$ 164	\$ 171	\$ 178	\$ 185
Designer	\$ 123	\$ 127	\$ 132	\$ 137	\$ 142	\$ 148
Drafter / CADD Operator	\$ 88	\$ 92	\$ 96	\$ 100	\$ 104	\$ 108
Senior Commissioning Agent	\$ 233	\$ 242	\$ 252	\$ 262	\$ 272	\$ 283
Commissioning Technician	\$ 151	\$ 157	\$ 163	\$ 170	\$ 177	\$ 184
Project Controls Administrator	\$ 147	\$ 153	\$ 159	\$ 165	\$ 172	\$ 179
Project Coordinator	\$ 98	\$ 102	\$ 106	\$ 110	\$ 114	\$ 119

Upon 30 days advance notice and no more than once each calendar year, Consultant may increase rates for new Purchase Orders. If NCPA does not accept the increased rates, NCPA may terminate this Agreement.

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

Jacobs Engineering Group Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Matheson Tri-Gas, Inc. – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for CEMS EPA Gases Purchases; Applicable to the following: All Northern California Power Agency (NCPA) Facilities

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc. for CEMS EPA gases purchases, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA.

## **BACKGROUND:**

Various CEMS EPA gases are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar purchases with Airgas USA, LLC (GEO use only) and North Bay Gas.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc.



**RESOLUTION 25-XX**

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

**(reference Staff Report XXX:25)**

WHEREAS, various CEMS EPA gases are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA); and

WHEREAS, Matheson Tri-Gas, Inc. is a provider of these gases; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Matheson Tri-Gas, Inc. to provide such gases as needed at any facilities owned and/or operated by NCPA; and

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

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

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES “BO” SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



**MULTI-TASK  
AGREEMENT FOR PURCHASE OF  
EQUIPMENT, MATERIALS AND SUPPLIES  
BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
MATHESON TRI-GAS, INC.**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency, with its main offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and Matheson Tri-Gas, Inc., ("Supplier"), whose principal office is located at 909 Lake Carolyn Pkwy., Suite 1100, Irving, TX 75039 (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 (the "Effective Date").

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

**Section 2. PROJECT SITE.** Goods provided under this Agreement by Supplier may include Goods delivered directly to the designated "Project Site", as that term is used herein and as specified in the Purchase Order, shall mean the site for delivery, DDP.

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

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

**Section 5. COMPENSATION.** Agency hereby agrees to pay Supplier for the Goods an amount not to exceed ONE MILLION DOLLARS (\$1,000,000.00) 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.

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

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

- 5.2 **Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.
- 5.3 **Timing for Submittal of Final Invoice.** Supplier shall have ninety (90) days after delivery of the Requested Goods to submit its final invoice for the Requested Goods. In the event Supplier fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Supplier is deemed to have waived its right to collect its final payment for the Requested Goods from Agency.

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

- 6.1 **Workers' Compensation.** If Supplier employs any person, Supplier shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Supplier with limits of not less than one million dollars (\$1,000,000) per accident.
- 6.2 **Automobile Liability.** Supplier shall maintain automobile liability insurance for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle, whether or not owned by the Supplier, on or off Agency premises. The policy shall provide a minimum limit of \$3,000,000 per each accident, with \$5,000,000 aggregate. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment utilized in the transport of the Goods to the Agency's Project Site.
- 6.3 **Commercial General Liability (CGL).** Supplier shall maintain commercial general liability coverage covering Goods, including product liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Supplier in regard to this Agreement with not less than \$3,000,000/\$5,000,000 aggregate for bodily injury and property damage, on an occurrence basis.

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

**6.5 All Policies Requirements.**

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

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

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

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

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

**Section 7. WARRANTY.** In addition to any and all warranties provided or implied by law or public policy, or any other warranties provided by Supplier, Supplier warrants that all Goods comply with applicable federal, state and local laws and regulations; are new, meet the applicable specifications set forth in the applicable exhibit hereto, and are not subject to any liens or encumbrances. Supplier makes no other warranty of any kind, either express or implied, including, but not limited to, those arising under the Uniform Commercial Code ("UCC"), the

implied warranties of merchantability and/or fitness for a particular purpose, even if Supplier is aware of the intended purpose of the Good(s). If any Good(s) shall not be as warranted, Agency shall notify Supplier and shall be permitted to reject the nonconforming Good(s). Failure of Agency to give notice to Supplier of a claim based on the Good(s) delivered hereunder within sixty (60) days from receipt of the Good(s) in question shall constitute an unconditional waiver by Agency of all claims with respect to such Good(s). Agency's sole and exclusive remedy for each unexcused failure of Supplier to deliver Good(s) to Agency (i) when requested by Agency, (ii) in the amounts requested by Agency, and/or (iii) otherwise conforming to the express warranties made by Supplier hereunder, shall be to obtain, at no charge, a quantity of Good(s) from Supplier which Supplier so failed to deliver.

**Section 8. Default and Remedies.** (a) Any of the following shall be considered a "Default": (i) either party commits a breach of any of its representations, duties or obligations arising under this Agreement and fails to remedy such default within five (5) business days after receipt of written notice of default, (ii) a petition is brought by or against either party under any bankruptcy or insolvency laws seeking any reorganization, arrangement, liquidation, dissolution or similar relief with respect to a party or that party shall make an assignment for the benefit of creditors or if a receiver is appointed for that party, or (iii) if, in the reasonable opinion of Supplier, Agency's credit has become impaired. (b) If a Default has occurred and is continuing, either party may exercise any or all of the following remedies without notice or leave of court: (i) terminate this Agreement upon two (2) business days' notice, (ii) cease making or taking deliveries of Good(s), (iii) impose new payment terms, including cash on delivery, (iv) follow the alternative dispute resolution provisions specified in this Agreement.

## **Section 9. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.**

**9.1 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, each party acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

### **9.2 Scope.**

- (a) SUPPLIER SHALL ASSUME THE RISK FROM AND HOLD HARMLESS AGENCY AND ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS FROM AND AGAINST CLAIMS (INCLUDING THIRD PARTY CLAIMS), DEMANDS, LOSSES, REASONABLE ATTORNEYS' FEES ("CLAIMS"), SUSTAINED AS A RESULT OF BODILY INJURY OR PROPERTY DAMAGE ARISING AS A RESULT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE SUPPLIER, OR ANY OF THE SUPPLIER'S EMPLOYEES, REPRESENTATIVES OR AGENTS; PROVIDED THAT, THE SUPPLIER IS AFFORDED THE RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT FOR ANY MATTER FOR WHICH SUPPLIER ASSUMES LITIGATION

UNDER THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SUPPLIER SHALL NOT BE CONSIDERED NEGLIGENT WITH RESPECT TO ANY CLAIM DUE TO PRODUCT QUALITY UNDER THIS AGREEMENT THAT IS NOT IN BREACH OF THE WARRANTY SET FORTH IN SECTION 7. THE ASSUMPTION OF RISK AND HOLD HARMLESS PROVISIONS OF THIS SECTION 9.2 AND THE REMEDY PROVISIONS OF SECTION 8 SET FORTH THE ENTIRE LIABILITY AND OBLIGATION OF SUPPLIER AND THE SOLE AND EXCLUSIVE REMEDY FOR AGENCY FOR ANY DAMAGES DIRECTLY OR INDIRECTLY RELATED TO THIS AGREEMENT, OR THE PROVISION OR USE OF ANY PRODUCT OR SERVICE HEREUNDER, WHETHER UNDER SECTION 8, TORT, CONTRACT, OR ANY OTHER THEORY OF LAW OR EQUITY. ANY RECOVERY OBTAINED UNDER THIS SECTION 9.2, SHALL BE REDUCED BY THE AMOUNT OF ANY TAX BENEFIT OR INSURANCE RECOVERY RECEIVED FROM THE SUPPLIER'S INSURANCE RECEIVED BY AGENCY WITH RESPECT TO THE SUBJECT MATTER OF SUCH CLAIM.

- (b) AGENCY SHALL ASSUME THE RISK FROM AND HOLD HARMLESS SUPPLIER AND ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS FROM AND AGAINST CLAIMS (INCLUDING THIRD PARTY CLAIMS), DEMANDS, LOSSES, REASONABLE ATTORNEYS' FEES ("CLAIMS"), SUSTAINED AS A RESULT OF BODILY INJURY OR PROPERTY DAMAGE ARISING AS A RESULT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE AGENCY, OR ANY OF THE AGENCY'S EMPLOYEES, REPRESENTATIVES OR AGENTS; PROVIDED THAT, THE AGENCY IS AFFORDED THE RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT FOR ANY MATTER FOR WHICH AGENCY ASSUMES LITIGATION UNDER THIS SECTION.

- 9.3 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 10. FORCE MAJEURE.** Supplier's performance of its obligations hereunder shall be subject to floods, earthquakes or other natural disasters or acts of God, strikes, labor disturbances, fires, accidents, acts of terrorism, wars, failure of normal sources of supply, restraint of government, state of emergency or any other cause beyond Supplier's reasonable control. Deliveries of Good(s) hereunder shall be made by Supplier from the distribution center(s) normally serving the Consuming Location(s). If sufficient Good(s) from the distribution center(s) becomes unavailable, Supplier may, in its sole and absolute discretion, divide such Good(s) as may be available among its various customers and Supplier shall also exercise commercially reasonable efforts to obtain Good(s) from other sources either within or separate from Supplier's regular production and distribution center(s) until sufficient Good(s) from the applicable distribution center(s) is again available. Supplier shall notify Agency in writing of any such unavailability of Good(s) and Agency shall have the right to decline any such replacement Good(s). However, if Agency accepts any such replacement Good(s), Agency shall pay all additional costs associated therewith if such additional costs are provided and approved by Agency in advance.

**Section 11. LIMITATIONS OF LIABILITY.**

- 11.1 Agency acknowledges that there are hazards associated with the use and storage of the Good(s) and the Cylinder(s) and Agency shall be responsible for warning, training and protecting (as appropriate) Agency's employees, customers and others who may be exposed to such hazards due to Agency's storage and use of Good(s) and/or Cylinder(s). Agency assumes all risk of loss and liability for damage, or injury to persons or to property of Agency or others arising out of the Agency's storage and/or use of the Good(s) and/or Cylinder(s) whether used singly or in combination with other substances.**
- 11.2 SUPPLIER shall make available to Agency all relevant Safety Data Sheets ("SDS") and, upon Agency's written request, provide them to Agency directly. Agency is aware that OSHA regulations may require Agency to develop and implement a written chemical hazard communications program for Agency's employees with respect to the Good(s). Agency understands that the Good(s) must not be used without first consulting the SDS. Agency shall provide all persons who might become exposed to the Good(s) with copies of the SDS.**
- 11.3 IN NO EVENT SHALL SUPPLIER BE LIABLE TO AGENCY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, LIQUIDATED OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR BUSINESS OPPORTUNITY OR INTEREST, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.**
- 11.4 NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY HEREIN OR IN ANY OTHER DOCUMENT, EXCEPT FOR PROPERTY DAMAGE OR PERSONAL INJURY CAUSED BY SUPPLIER'S NEGLIGENCE OR WILLFUL MISCONDUCT, SUPPLIER'S AGGREGATE LIABILITY FOR ANY DAMAGES HOWSOEVER OCCURRING, WHETHER BASED IN TORT,**

**WARRANTY, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER THEORY OF LAW SHALL BE LIMITED TO AND NOT EXCEED THE AGGREGATE OF THE AMOUNTS PAID AND PAYABLE TO SUPPLIER PURSUANT TO THIS AGREEMENT WITH RESPECT TO SUCH CALENDAR YEAR. THE FOREGOING MONETARY CAP WILL NOT AFFECT NOR APPLY TO AMOUNTS COVERED BY INSURANCE REQUIRED TO BE MAINTAINED BY SUPPLIER UNDER SECTION 6. NO ACTION ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE GOOD(S), CYLINDER(S) OR THIS AGREEMENT MAY BE BROUGHT BY AGENCY MORE THAN ONE HUNDRED AND EIGHTY (180) DAYS AFTER THE CAUSE OF ACTION HAS ACCRUED.**

**Section 12. DELIVERIES.** (a) Supplier shall deliver the Good(s) to Agency either in high pressure cylinders (along with all fittings and protective caps) whether owned, leased or otherwise provided by Supplier ("Cylinder(s)"). Supplier shall not be obligated, but shall if so requested, have the right to make deliveries of Good(s) in a quantity less than seventy five percent (75%) of or in excess of one hundred ten percent (110%) of Agency's Estimated Monthly Volume ("Nonstandard Deliveries"). If Agency continues to request Nonstandard Deliveries for a period of ninety (90) consecutive days or more, Supplier shall be permitted to increase prices but may only do so, once in a calendar year and only after providing an explanation to Agency 30 days in advance. Additionally, should Supplier elect to make Nonstandard Deliveries, Agency shall reimburse Supplier for any and all other documented and reasonable expenses or costs that Supplier may incur. (b) Supplier may refuse to deliver Good(s) to the Project Site if Supplier reasonably believes that the Project Site itself is unsafe or violates any applicable law or regulation. Supplier shall advise Agency of the reasons for non-delivery as soon as reasonably practical and may condition future deliveries of Good(s) upon corrective action by Agency. (c) All Good(s) shall be delivered DDP. Supplier's delivery vehicle. Title and risk of loss or damage as to Good(s) and Cylinder(s) shall pass to Agency upon delivery by Supplier to the Project Site and acceptance by Agency. (d) Agency will allow Supplier to make deliveries twenty four (24) hours per day, seven (7) days per week. In the event Agency requires deliveries on a more restrictive basis, causes frequent delivery delays or requests the delivery of Good(s) upon less than forty eight (48) hours prior notice or otherwise changes the terms of Supplier's access to the Project Site, then Agency will reimburse Supplier for any reasonable additional costs incurred by Supplier. (e) Agency and Supplier shall verify inventory of Good(s) at the Project Site every six (6) months, whether or not Supplier installs a telemetry system for measuring the Good(s) inventory in the Cylinder(s). If Supplier fails to verify inventory in any six (6) month period, any inventory determinations made by agency shall be deemed accurate.

**Section 13. CYLINDERS.** (a) Agency shall, at Agency's sole cost and expense: (i) Provide and/or reimburse Supplier for the costs and expenses of any applicable certificates, permits, governmental or insurance company annual inspection fees requested by NCPA or needed for NCPA facilities for the Cylinder(s). (ii) Notify Supplier immediately of any unsafe or irregular condition involving any Cylinder, including any damage to or malfunction of the Cylinder(s). Agency shall not tamper with, modify or repair the Cylinder(s). (iii) Prohibit the use or storage of oil, grease or lubricants or any flammable or combustible materials in, on or near the Cylinder(s). (iv) Comply with applicable laws, regulations, rules and ordinances concerning Agency's use and storage of the Good(s) and Cylinder(s). including, but not limited to, zoning, licensing, permitting and all relevant reporting obligations. (b) Agency shall not suffer or allow



said Cylinder(s) to become subject to any lien, claim or encumbrance. Agency shall not remove any labels or evidence of ownership affixed to the Cylinder(s). Title to all Cylinder(s) shall at all times remain with Supplier and, upon termination or expiration of this Agreement, Supplier may remove Cylinder(s) with reasonable notice. Cylinder(s) located on the Project Site shall remain in the sole and exclusive possession of Agency for the Term until removed by Supplier. **(c)** UNTIL THE CYLINDER(S) ARE RETURNED TO SUPPLIER, ALL RISK OF LOSS OR DAMAGE TO THE CYLINDER(S) IS HEREBY ASSUMED BY BUYER UNLESS AND TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUPPLIER. FOR CYLINDER(S) DAMAGED BEYOND REPAIR, BUYER SHALL PAY TO SUPPLIER, ON DEMAND, THE FULL REPLACEMENT VALUE OF THE CYLINDER(S) AT SUPPLIER'S THEN CURRENT VALUATIONS. FOR DAMAGE TO CYLINDER(S) THAT SUPPLIER IS ABLE TO REPAIR. **(d)** Agency shall not permit anyone other than Supplier to fill the Cylinder(s) with Good(s).

#### **Section 14. MISCELLANEOUS PROVISIONS.**

- 14.1 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.
- 14.2 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.
- 14.3 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.
- 14.4 Construction of Agreement.** The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.
- 14.5 Supplier's Status.** Supplier is an independent contractor and not an employee or agent of NCPA.
- 14.6 Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.
- 14.7 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.
- 14.8 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.

- 14.9 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 14.10 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 14.11 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 14.12 Conflict of Interest.** Supplier may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Supplier in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Supplier shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 14.13 Contract Administrator.** This Agreement shall be administered by the Assistant General Manager, Generation Services, or his/her designee, who shall act as the Agency’s representative. All correspondence shall be directed to or through the representative.
- 14.14 Notices.** Any written notice to Supplier shall be sent to:

Matheson Tri-Gas, Inc.  
Attention: Elijah Smolen, Regional General Manager  
1377 Cleveland Avenue  
Santa Rosa, CA 95401

With a copy to:  
Matheson Tri-Gas, Inc.  
909 Lake Carolyn Pkwy., Suite 1100  
Irving, TX 75039

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

- 14.15.1** Each party shall designate a senior management or executive level representative to negotiate any dispute.
- 14.15.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 14.15.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 14.15.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 14.15.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 14.15.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**14.16 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Supplier's Proposal (if any), the Agreement shall control. In the case of any conflict between the terms of this Agreement and the Purchase Order, 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.

- 14.17 Certification as to California Energy Commission.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit B.
- 14.18 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit C.
- 14.19 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.
- 14.20 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.

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

NORTHERN CALIFORNIA POWER AGENCY

MATHESON TRI-GAS, INC.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

\_\_\_\_\_  
**ELIJAH SMOLEN,** General Manager

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## EXHIBIT A

### PURCHASE LIST

As requested by Agency, Supplier shall provide Equipment, Materials and Supplies ("Goods") including:

Part Number	Description	Estimated Monthly Volume	Unit of Measure	Unit Price	Daily Rental Rate
HE UHP300	HELIUM UHP SZ 300 (1L)	1	Cylinders	\$330.00	\$0.255
HG G2173101	NITROGEN RES 1A CGA580BR 255CF	1	Cylinders	\$445.50	\$0.280
HX G2671789	5.5PPM NITRIC OXIDE,NITROGEN EPA	1	Cylinders	\$217.80	\$0.280
HX G2673071	9 PPM NITRIC OXIDE, NITROGEN	1	Cylinders	\$217.80	\$0.280
HX G2673287	18% OXYGEN, NITROGEN EPA 1R	1	Cylinders	\$193.60	\$0.280
HX G2673459	90 PPM NITRIC OXIDE, NITROGEN	1	Cylinders	\$217.80	\$0.280
HX G2696153	90PPM NO, 2500PPM CO, NITROGEN	1	Cylinders	\$242.00	\$0.280
HX G2690175	8.5 PPM NH3 BAL AIR	1	Cylinders	\$440.00	\$0.280
HX G2678039	2.5 PPM NO BAL N2	1	Cylinders	\$217.80	\$0.280
HY B6-300	HYDROGEN IND 6-PACK SIZE 300	10	Packs	\$384.88	\$1.897
HX G2680595	5.5 PPM NO 5.5 PPM CO BAL N2	1	Cylinders	\$242.00	\$0.280
HX G2688807	11COMP NATURAL GAS (89.57% CH4) CERT 1A 350BR 242CF 6.86M3	1	Cylinders	\$1373.01	\$0.280
HX G2696151	25 PPM NO 800 PPM CO BAL N2	1	Cylinders	\$242.00	\$0.280
HX G2696152	55 PPM NO 1700 PPM CO BAL N2	1	Cylinders	\$242.00	\$0.280
HX G2680537	9 PPM NO 9 PPM CO BAL N2	1	Cylinders	\$242.00	\$0.280
HX G2672426	5.5% O2 BAL N2	1	Cylinders	\$193.60	\$0.280
HX G2673286	11% O2 BAL N2	1	Cylinders	\$193.60	\$0.280
HX G2672865	25 PPM NO BAL N2	1	Cylinders	\$217.80	\$0.280
HX G2675481	54 PPM NO BAL N2	1	Cylinders	\$217.80	\$0.280
HG G1186101	SULFUR HEXAFLUORIDE	1	Cylinders	\$2073.60	\$0.280
HX G2676491	22.5% O2 BAL N2	1	Cylinders	\$193.60	\$0.280
HX G2672880	13.75% O2 BAL N2	1	Cylinders	\$193.60	\$0.280
HX G2672829	6.25% O2 BAL N2	1	Cylinders	\$193.60	\$0.280
HX G2678039	2.5 PPM NO BAL N2	1	Cylinders	\$242.00	\$0.280
HX G2696145	90 PPM NO 45 PPM CO BAL N2	1	Cylinders	\$242.00	\$0.280
HX G2696146	55 PPM NO 27.5 PPM CO BAL N2	1	Cylinders	\$242.00	\$0.280
HX G2696147	25 PPM NO 12.5 PPM CO BAL N2	1	Cylinders	\$242.00	\$0.280
AC SM	ACETYLENE IND SIZE SMALL	1	Cylinders	\$82.50	\$0.280
AR 60	ARGON IND SIZE 60	1	Cylinders	\$44.00	\$0.255
AR 300	ARGON IND SIZE 300	1	Cylinders	\$88.00	\$0.255

<i>CD 50</i>	<i>CARBON DIOXIDE 50LB</i>	<i>6</i>	<i>Cylinders</i>	<i>\$25.75</i>	<i>\$0.255</i>
<i>FG 30</i>	<i>PROPYLENE IND SZ 30</i>	<i>1</i>	<i>Cylinders</i>	<i>\$68.73</i>	<i>\$0.255</i>
<i>NI 250</i>	<i>NITROGEN IND SZ 250</i>	<i>1</i>	<i>Cylinders</i>	<i>\$33.00</i>	<i>\$0.255</i>
<i>NI B6-300</i>	<i>NITROGEN IND BANK 6 SZ 300</i>	<i>1</i>	<i>Packs</i>	<i>\$130.60</i>	<i>\$2.25</i>
<i>NI L180-350</i>	<i>NITROGEN IND 180L 350PSI LIQ</i>	<i>2</i>	<i>Dewars</i>	<i>\$143.75</i>	<i>\$1.897</i>
<i>OX 250</i>	<i>OXYGEN IND SZ 250</i>	<i>1</i>	<i>Cylinders</i>	<i>\$27.50</i>	<i>\$0.255</i>

All other pricing for Products, Cylinders and other related costs and services not otherwise specified above shall be subject to MTG's then current pricing for similarly situated customers.  
Delivery: \$38.50  
Hazmat: \$16.50

**EXHIBIT B**

**CERTIFICATION**

**Affidavit of Compliance for Suppliers**

I, \_\_\_\_\_

(Name of person signing affidavit)(Title)

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

Matheson Tri-Gas, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

Matheson Tri-Gas, Inc.

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

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

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





# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Process Measurement Group dba Toledo Industrial Coatings – Five Year Multi-Task General Services Agreement for Specialized Industrial Protective Coatings Related Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Process Measurement Group dba Toledo Industrial Coatings for specialized industrial protective coatings related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members.

## **BACKGROUND:**

Routine, recurring and usual specialized industrial protective coatings related services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA and SCPPA Members. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar services with Blackhawk Painting Co., Inc. (pending) and Farwest Insulation Contracting.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

### **PENDING COMMITTEE APPROVALS:**

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task General Services Agreement with Process Measurement Group dba Toledo Industrial Coatings

**RESOLUTION 25-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH PROCESS  
MEASUREMENT GROUP DBA TOLEDO INDUSTRIAL COATINGS**

**(reference Staff Report XXX:25)**

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

WHEREAS, Process Measurement Group dba Toledo Industrial Coatings is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with Process Measurement Group dba Toledo Industrial Coatings to provide such services as needed at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members; and

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

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

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
PROCESS MEASUREMENT GROUP DBA TOLEDO INDUSTRIAL COATINGS**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Process Measurement Group dba Toledo Industrial Coatings, a corporation, with its office located at 1316 Church Street, Roseville, CA 95678 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 ("Effective Date") in Roseville, California.

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

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

not respond within the seven day period specified, then Contractor will have agreed to perform the Requested Work on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

**4.3 Professional Liability Insurance.** Not Applicable.

**4.4 Pollution Insurance.** If Contractor's Work involves its transporting hazardous materials, then Contractor shall obtain and maintain Contractors' Pollution Liability Insurance of not less than two million dollars (\$2,000,000) for any one occurrence and not less than four million dollars (\$4,000,000) aggregate. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim. Such insurance shall be on "an occurrence" basis. In addition, Contractor shall ensure that such insurance complies with any applicable requirements of the California Department of Toxic Substances Control and California regulations relating to the transport of hazardous materials (Health & Safety Code sections 25160 *et seq.*).

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

**4.5 All Policies Requirements.**

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

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

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

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



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

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

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

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

**5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

**5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

**5.3 Transfer of Title.** If Contractor's Work involves its transporting hazardous materials, Contractor shall be deemed to be in exclusive possession and control of such materials and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of such materials, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Contractor or its agents complete transfer of such materials 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, Contractor shall be responsible for all such notifications. Should Contractor be required to remedy or remove such materials as a result of a leak, spill, release or discharge of such materials into the environment at Agency's Site or elsewhere, Contractor 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 6. STATUS OF CONTRACTOR.**

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

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

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

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

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

## **Section 7. LEGAL REQUIREMENTS.**

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

permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

## **Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

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

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

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property

of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.

**9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.

**9.4 Confidential Information and Disclosure.**

**9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

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

**9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any

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

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

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

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

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

## **Section 10. PROJECT SITE.**

**10.1** **Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.

**10.2** **Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for

which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

## **Section 11. WARRANTY.**

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance,



provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.

- 12.8 Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9 Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10 If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

### **Section 13. MISCELLANEOUS PROVISIONS.**

- 13.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 **Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

Process Measurement Group dba Toledo Industrial Coatings  
Attention: Jesse Toledo  
1316 Church Street  
Roseville, CA 95678

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

PROCESS MANAGEMENT GROUP DBA  
TOLEDO INDUSTRIAL COATINGS

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**JESSE TOLEDO,**  
CFO/COO

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**

**SCOPE OF WORK**

Process Measurement Group dba Toledo Industrial Coatings ("Contractor") shall provide routine and recurring T&M specialized industrial protective coatings as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Surface Prep (Abrasive Blasting, Water Jetting, and other forms)
- Specialized Industrial Protective Coatings
- Floor Polishing and Epoxies

Contractor may provide services at all Project Site Locations.

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

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

	DIR PW Hrly Rate 2024	DIR PW OT 2024	Single Day Rate 2024	DIR PW Hrly Rate 2025	DIR PW OT 2025	Single Day Rate 2025	DIR PW Hrly Rate 2026	DIR PW OT 2026	Single Day Rate 2026	Standard Hourly Rate	Standard OT Rate	Standard Single Day Rate
<b>Staffing</b>												
Superintendent			\$0.00			\$0.00			\$0.00	\$60.00	\$90.00	\$480.00
Foreman			\$0.00			\$0.00			\$0.00	\$55.00	\$82.50	\$440.00
General Laborer	\$63.81	\$81.44	\$510.48	\$66.31	TBD	\$530.48	\$70.81	TBD	\$566.48	\$0.00	\$0.00	\$0.00
Coating Applicator Specialist 1	\$65.98	\$87.51	\$527.84	\$68.48	TBD	\$547.84	\$72.98	TBD	\$583.84	\$0.00	\$0.00	\$0.00
Coating Applicator Specialist 2	\$65.98	\$87.51	\$527.84	\$68.48	TBD	\$547.84	\$72.98	TBD	\$583.84	\$0.00	\$0.00	\$0.00
Confined Space Attendant			\$0.00			\$0.00			\$0.00	\$35.00	\$52.50	\$280.00
CDPH Lead Supervisor			\$0.00			\$0.00			\$0.00	\$50.00	\$75.00	\$400.00
CDPH Lead Worker			\$0.00			\$0.00			\$0.00	\$42.00	\$63.00	\$336.00

<b>Equipment</b>	<b>Hourly</b>	<b>Daily</b>	<b>Weekly</b>	<b>4 Weeks</b>
<b>Compressors</b>				
185cfm	\$30.25	\$242.00	\$596.00	\$1,600.00
375-450cfm	\$38.69	\$296.00	\$819.00	\$2,568.00
700-900	\$49.50	\$383.00	\$1,018.00	\$3,412.00
1600cfm	\$125.35	\$935.00	\$2,745.00	\$6,908.00
<b>Generator</b>				
Smaller Gen	\$5.76	\$46.08	\$184.32	\$552.96
25KVA	\$38.38	\$307.00	\$699.00	\$815.00
70KVA	\$48.75	\$390.00	\$1,100.00	\$2,496.00

<b>Blast Pots</b>	<b>Hourly</b>	<b>Daily</b>	<b>Weekly</b>	<b>4 Weeks</b>
8 Ton	\$11.90	\$333.33	\$1,333.33	\$4,000.00
600Lb	\$8.63	\$241.67	\$966.67	\$2,900.00
Hoses and controls	\$8.93	\$250.00	\$1,000.00	\$3,000.00
Recovery System	\$26.79	\$750.00	\$3,000.00	\$9,000.00
Recovery System Hoses	\$7 ft.			
Air Dryer 1600cfm	\$27.38	\$191.67	\$766.67	\$2,300.00
<b>Sprayers</b>	<b>Hourly</b>	<b>Daily</b>	<b>Weekly</b>	<b>4 Weeks</b>
Plural Sprayer	\$148.50	\$1,100.00	\$2,700.00	\$11,890.00
Single Leg Sprayer	\$28.10	\$220.40	\$881.60	\$2,644.80
Electrical/ Pressure Pot	\$20.00	\$85.00	\$340.00	\$1,020.00
<b>Forklift</b>	<b>Hourly</b>	<b>Daily</b>	<b>Weekly</b>	<b>4 Weeks</b>
4k Lift Truck	\$56.65	\$453.20	\$1,210.00	\$3,630.00
6k Reach	\$69.88	\$559.00	\$1,309.00	\$3,213.00
10k Reach	\$103.25	\$826.00	\$2,079.00	\$5,271.00

<b>Other Rental Rates:</b>	<b>Hourly</b>	<b>Daily</b>	<b>Weekly</b>	<b>4 Weeks</b>
Dehumidifier	\$93.75			
1 elec 167amps	\$30.60	\$765.00	\$2,295.00	\$6,885.00
1 propane				
2 elec 80 amps	\$18.00	\$450.00	\$1,350.00	\$4,050.00
2 propane				
3 elec 66 amps	\$15.33	\$383.33	\$1,150.00	\$3,450.00
3 propane				
Pump	\$7.39			
Trucks	\$37.50	\$300.00		
<b>Trailers</b>	<b>Hourly</b>	<b>Daily</b>	<b>Weekly</b>	<b>4 Weeks</b>
7K	\$15.00	\$93.00	\$352.00	\$715.00
<b>Electrical tools</b>	\$0.99			



<b>Other Rates:</b>		
Travel	Current IRS rates	
Perdiem	\$40 Daily	Hotel Daily + 5%
<b>Markup Rates</b>		
Shop Rates	\$75- \$85 Hr	
Materials	10.0%	
Equipment	15%	
Diesel/Gas	\$10-\$12 gallon	
Mob/Demob	Number of hours worked using rates above	
Labor Multiplier Rate	2.20	

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

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

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

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

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

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

Process Measurement Group dba Toledo Industrial Coatings

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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

**EXHIBIT D**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

Process Measurement group dba Toledo Industrial Coatings

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

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

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

**NOT APPLICABLE**

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Airgas USA, LLC – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for CEMS EPA Gas Purchases; Applicable to the following: All Northern California Power Agency (NCPA) Facilities.

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Airgas USA, LLC for CEMS EPA gas purchases, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years, for use at any facilities owned and/or operated by NCPA.

## **BACKGROUND:**

CEMS EPA gases are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has an agreement in place for similar services with Matheson Tri-Gas, Inc.

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$1,500,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Airgas USA, LLC

**RESOLUTION 25-XX**

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

**(reference Staff Report #XXX:25)**

WHEREAS, CEMS EPS gases are periodically, are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA; and

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

WHEREAS, the NCPA Commission has reviewed the Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Airgas USA, LLC to provide such products as needed at any facilities owned and/or operated by NCPA; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into said Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years, for use at any facilities owned and/or operated by NCPA.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY





**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 made by and between the Northern California Power Agency, a joint powers agency, with its main offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and Airgas USA, LLC, ("Supplier"), whose principal office is located at 920 Piner Road, Santa Rosa, CA 95403 (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 (the "Effective Date").

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

**Section 2. PROJECT SITE.** Goods provided under this Agreement by Supplier may include Goods delivered directly to the Agency The "designated Project Site", as that term is used herein, shall mean the site for delivery, DDP, at a facility owned and/or operated by Agency.

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

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

**Section 5. COMPENSATION.** Agency hereby agrees to pay Supplier for the Goods an amount not to exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges. This dollar amount is not a guarantee that Agency will pay that full amount to the Supplier, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

- 5.2 **Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.
- 5.3 **Timing for Submittal of Final Invoice.** Supplier shall have ninety (90) days after delivery of the Requested Goods to submit its final invoice for the Requested Goods. In the event Supplier fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Supplier is deemed to have waived its right to collect its final payment for the Requested Goods from Agency.

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

- 6.1 **Workers' Compensation.** If Supplier employs any person, Supplier shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Supplier with limits of not less than one million dollars (\$1,000,000) per accident.
- 6.2 **Automobile Liability.** Supplier shall maintain automobile liability insurance for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle, whether or not owned by the Supplier, on or off Agency premises. The policy shall provide a minimum limit of \$2,000,000 per each accident, with \$6,000,000 aggregate. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment utilized in the transport of the Goods to the Agency's Project Site.
- 6.3 **Commercial General Liability (CGL).** Supplier shall maintain commercial general liability coverage covering Goods, including product liability, and also including sudden and accidental pollution coverage, 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 \$2,000,000/\$6,000,000 aggregate for bodily injury and property damage, on an occurrence basis.

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

**6.5 All Policies Requirements.**

**6.5.1 Verification of Coverage.** Prior to beginning any work under this Agreement, Supplier shall, at the sole option of the Agency, provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the automobile liability policy and the CGL policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement and that Agency's insurance is excess and non-contributing, but only with respect to those matters for which Airgas is obligated to indemnify Agency under the terms of this agreement and only to the extent of Airgas' said indemnification obligation

**6.5.2 Notice of Reduction in or Cancellation of Coverage.** Supplier agrees to provide prior written notice of any cancellation or reduction in scope or amount of the insurance required under this Agreement.

**6.5.3 Waiver of Subrogation.** Supplier agrees to waive subrogation up to the policy limits specified herein, but only with respect to those matters for which Airgas is obligated to indemnify Agency under the terms of this agreement and only to the extent of Airgas' s indemnification obligation.

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

**6.6 Pollution Insurance.** Deleted due to sudden and accidental pollution insurance provided under CGL.

**SECTION 7. WARRANTY.** Supplier warrants that, at the time of delivery, all gas Goods furnished hereunder will comply with Compressed Gas Association (CGA) guidelines. Any other Goods sold by Supplier will conform to Supplier's or manufacturer's standard specifications. Supplier makes no warranty with respect to non-gas Goods manufactured by others, but will, on request, to the extent permitted, pass on to Agency any applicable manufacturer's warranty. Supplier warrants that the services shall be performed in a good and workmanlike manner. SUPPLIER SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, OR WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE. SUPPLIER MAKES NO WARRANTIES OF ANY KIND FOR ANY TECHNICAL ADVICE PROVIDED BY SUPPLIER TO AGENCY AND ASSUMES NO OBLIGATION OR LIABILITY FOR ANY SUCH TECHNICAL ADVICE WITH REFERENCE TO THE USE OF PRODUCTS OR RESULTS WHICH MAY BE OBTAINED THEREFROM, AND ALL SUCH ADVICE IF GIVEN AND ACCEPTED IS AT AGENCY'S SOLE RISK.

## **SECTION 8. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.**

- 8.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Supplier from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Supplier acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 8.2 Scope.** Supplier shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all third party claims for injury (including death) loss or of any damage to the person or property of any third party 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 caused by any negligent acts or omissions by Supplier, its officers, officials, agents, and employees, in performing their duties under this contract, 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. For avoidance of doubt, third party includes Agency's employees.
- 8.3 Transfer of Title.** Supplier shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Supplier or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Supplier shall be responsible for all such notifications. Should Supplier be required to remedy or remove Goods as a result of a leak, spill, release or discharge of Goods into the environment at Agency's Site or elsewhere, Supplier agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

## **SECTION 9. MISCELLANEOUS PROVISIONS.**

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

- 9.2 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 9.3 **Compliance with Applicable Law.** Supplier shall comply with all applicable federal, state, and local laws, rules and regulations in regard to this Agreement and the Goods supplied hereunder.
- 9.4 **Construction of Agreement.** The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.
- 9.5 **Supplier's Status.** Supplier is an independent contractor and not an employee or agent of NCPA.
- 9.6 **Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.
- 9.7 **Governing Law.** This Agreement and all matters pertaining to it, shall be governed by the laws of the State of California and venue shall lie in federal or state courts located in Sacramento County, California.
- 9.8 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 9.9 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 9.10 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 9.11 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 9.12 **Conflict of Interest.** Supplier may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Supplier in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Supplier shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial

interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

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

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

Airgas USA, LLC  
Michael Myr  
920 Piner Road  
Santa Rosa, CA 95403

With a copy to:

Airgas USA, LLC  
6790 Florin Perkins Road #300  
Sacramento CA, 95828-2604

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

**9.15.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement

by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

**9.15.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

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

**9.15.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**9.16 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Supplier's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Supplier's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Supplier's Proposal (if any), the Purchase Order shall control.

**9.17 Certification as to California Energy Commission.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit B.

**9.18 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Supplier shall, at the same time it executes this Agreement, execute Exhibit C.

**9.19 No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.

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

**9.21 Excuse of Performance.** Supplier shall not be liable for failure to perform if prevented by circumstances beyond its reasonable control

**9.22 Allocation.** If sufficient goods are not available from Supplier's normal source of supply for any reason, Supplier may allocate goods among its own requirements and its customers. Supplier will make reasonable efforts to obtain additional Goods from other sources if and only if confirmed in writing by Agency, that

Agency will pay a higher fee to cover all additional costs associated with such goods.

**9.23 Remedies; Limitation of Liability.** NEITHER SUPPLIER NOR SUPPLIER'S SUPPLIERS OF GOODS ("SUPPLIER'S SUPPLIERS") SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES. SUPPLIER'S SOLE LIABILITY AND AGENCY'S SOLE REMEDY FOR ANY DAMAGES CAUSED BY DELIVERY OF NON-CONFORMING PRODUCTS AND/OR SUPPLIER'S FAILURE TO DELIVER PRODUCTS SHALL BE LIMITED TO, AT SUPPLIER'S OPTION, THE REFUND OF THE PURCHASE PRICE OR REPLACEMENT OF THE PRODUCT OR SERVICE IN QUESTION.

BUT FOR SUPPLIERS INDEMNITY OBLIGATIONS IN SECTION 8.2, SUPPLIER'S SOLE LIABILITY AND AGENCY'S SOLE REMEDY DURING THE TERM OF THIS AGREEMENT FOR ALL OTHER CLAIMS, LOSSES, OR DAMAGES ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT OR ITS PERFORMANCE HEREUNDER SHALL BE LIMITED TO \$100,000 FOR EACH OCCURRENCE AND \$300,000 FOR THE ENTIRE TERM OF THE AGREEMENT. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, AND SHALL APPLY EVEN WHERE SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART, BY THE NEGLIGENCE, GROSS NEGLIGENCE OR ACTS AND OMISSIONS OF THE PARTY CLAIMING DAMAGES OR THE PARTY FROM WHOM DAMAGES ARE SOUGHT. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL NOT APPLY TO SUPPLIER'S INDEMNIFICATION OBLIGATIONS.

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

NORTHERN CALIFORNIA POWER AGENCY      AIRGAS USA, LLC

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

\_\_\_\_\_  
**MATTHEW B. WHITTON, President –  
NCN Region**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel



## EXHIBIT A PURCHASE LIST

As requested by Agency, Supplier shall provide Equipment, Materials and Supplies ("Goods") at any facilities owned and/or operated by Agency and in accordance with the Rates set forth below:

Airgas P/N	Airgas Product Description	Cylinder Size	Purity	Price
	<b>Lodi Energy Center</b>			
<b>Certified Mixes</b>				
X02AI99C15A3299	8ppm NH3/ bal Air	150A [141 cf.]	Cert	\$183.00
<b>EPA Protocols</b>				
E02NE15AC427	2.5ppm NO/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NE15AC007	5.5ppm NO/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI99E15A0065	80ppm NO/ bal N2	150A [141 cf.]	EPA	\$185.00
E03NI99E15AC470	2.5ppm NO, 2.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
E03NI99E15A03L5	5.5ppm NO, 5.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
E03NI99E15A01L7	25ppm NO, 800ppm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
E03NI99E15AC0J9	55ppm NO, 1700ppm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
E03NI99E15A03NO	9ppm NO, 8ppm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
E03NI99E15ACLD8	90ppm NO, 2500ppm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
E02NI82E15AC071	18% O2/ bal N2	150A [141 cf.]	EPA	\$158.00
E02NI94E15AC220	5.5% O2/ bal N2	150A [141 cf.]	EPA	\$158.00
E02NI89E15AC155	11% O2/ bal N2	150A [141 cf.]	EPA	\$158.00
NI CZ200	Nitrogen- CEMS [99.9999%] grade	200	CEMS	\$97.00
	<b>STIG</b>			
E02NI77E15A0084	22.5% O2/ bal N2	150A [141 cf.]	EPA	\$158.00
E02NI86E15AC044	13.75 O2/ bal N2	150A [141 cf.]	EPA	\$158.00
E02NI93E15AC043	6.25% O2/ bal N2	150A [141 cf.]	EPA	\$158.00
E02NI99E15A0047	EP 25 PPM NC/NI 15A	150A [141 cf.]	EPA	\$185.00
E02NI99E15A0131	9 ppm NO/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI99E15A1532	EP 54PPM NC / NI 15A	150A [141 cf.]	EPA	\$345.00
E02NI99E15A3576	EP 90PPM NC/NI 15A	150A [141 cf.]	EPA	\$225.00
E02NI99E15AC1T1	5.5 ppm NO/ bal N2	150A [141 cf.]	EPA	\$185.00
E02NI99E15AC427	2.5 ppm NO/ bal N2	150A [141 cf.]	EPA	\$185.00
E03NI99E15A2718	90ppm NO, 45ppm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
E03NI99E15A3818	55ppm NO, 27.5ppm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
E03NI99E15A3819	25ppm NO, 12.5pm CO/ bal N2	150A [141 cf.]	EPA	\$225.00
<b>Industrial</b>				
AC 4	Acetylene	Size 4	Ind.	\$22.74/CCF
AR 300	Argon - Industrial	300	Ind.	\$40.80
NI 160LT230	Nitrogen - Industrial Liquid	160LT	Ind.	\$127.57
NI 160LT350	Nitrogen - Industrial Liquid	160LT	Ind.	\$120.40
NI 180LT230	Nitrogen - Industrial Liquid	180LT	Ind.	\$140.00
NI 180LT350	Nitrogen - Industrial Liquid	180LT	Ind.	\$128.54
NI 250	Nitrogen - Industrial	250	Ind.	\$16.00
OX 250	Oxygen - Industrial	250	Ind.	\$10.50
PP 100	Propylene	100 LB	Ind.	\$279.84
SH CP200	Sulfur Hexafluoride	200	CP	\$1,425.00
X10ME90C15A7764	CT 10 Comp/ME 15A	150A [141 cf.]	Ind.	\$925.00
<b>Ammonia</b>				
*Anhydrous (R-Grade)		Ton		\$700.00
*Aqueous (19%)		Solution Lb.		\$0.50

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.

\*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:** \$5.00 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.

**Liquid Dewar Rental:** \$1.50 per Dewar per day.

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

**Hazmat Fee:** \$6.45/ delivery

**\*\*Cylinder Rental Invoices are exempt from Hazmat Fees\*\***



AIRGAS USA, LLC  
1825 ARNOLD INDUSTRIAL WAY  
CONCORD CA 94520-5314  
T: 925-825-8822  
F: 925-825-0215

## QUOTATION

YOU CAN PLACE THIS ORDER  
ON [WWW.AIRGAS.COM](http://WWW.AIRGAS.COM)

**Quote For:** 2119124  
NCPA POWER PLANT 1  
12000 RIDGE RD  
MIDDLETOWN CA 95461-9585

**Sold To:** 2137885  
NORTHERN CALIF POWER AGENCY  
651 COMMERCE DR  
ROSEVILLE CA 95678-6411  
T: 916-781-4214

Quote Number	2012374208
Quote Date	03/15/2024
Prepared By	Jacob Lenau
Contact Phone	+1 916-379-1000 EXT 149
Account Manager	MICHAEL MYR
PO Number	
Release Number	
Ordered By	

Item	Material/Description	Plant	Order Qty	UM	Vol/Wt	UM	Unit Price	UM	Ext Price
10	<b>AC 4</b> ACETYLENE SIZE 4 CGA 510 1 CL = 1.32 HH	W162	1	CL	132	FT3	67.88	HH	89.60 (H)
20	<b>AC AA4</b> ACETYLENE AA GR 2.6 SIZE 4 ATOMIC ABSORPTION GRADE CGA 510	W162	1	CL	132	FT3	359.53	CL	359.53 (H)
30	<b>AR 250</b> ARGON INDUSTRIAL SIZE 250 CGA 580	W162	1	CL	281	FT3	167.64	CL	167.64 (H)
40	<b>AR 300</b> ARGON INDUSTRIAL SIZE 300 CGA 580	W162	1	CL	336	FT3	302.50	CL	302.50 (H)
50	<b>AR CD25250</b> ARGON 75 CD 25 SIZE 250 CGA 580	W162	1	CL	312	FT3	154.75	CL	154.75 (H)
60	<b>AR UHP300</b> ARGON UHP GR 5.0 SIZE 300 CGA 580	W162	1	CL	336	FT3	515.73	CL	515.73 (H)
70	<b>E02NI77E15A0084</b> EP 22.5% OXYGEN BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 590	W162	1	CL	147	FT3	907.50	CL	907.50 (H)
80	<b>E02NI86E15AC044</b> EP 13.75% OXYGEN BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 590 (OXYGEN 12.5-15%) CUSTOM MIX	W162	1	CL	146	FT3	907.50	CL	907.50 (H)
90	<b>E02NI89E15AC155</b> EP 11% OXYGEN BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 590 (OXYGEN 10-12%) CUSTOM MIX	W162	1	CL	145	FT3	651.00	CL	651.00 (H)
100	<b>E02NI93E15AC043</b> EP 6.25% OXYGEN BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 590 (OXYGEN 5-7.5%) CUSTOM MIX	W162	1	CL	145	FT3	907.50	CL	907.50 (H)
110	<b>E02NI94E15AC220</b> EP 5.5% OXYGEN BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 590 (OXYGEN 5-6%) CUSTOM MIX	W162	1	CL	145	FT3	651.00	CL	651.00 (H)



AIRGAS USA, LLC  
1825 ARNOLD INDUSTRIAL WAY  
CONCORD CA 94520-5314

T: 925-825-8822  
F: 925-825-0215

## QUOTATION

Item	Material/Description	Plant	Order Qty	UM	Vol/Wt	UM	Unit Price	UM	Ext Price
120	<b>E02NI99E15A0131</b> EP 9PPM NITRIC OXIDE BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 660	W162	1	CL	144	FT3	907.50	CL	907.50 (H)
130	<b>E02NI99E15A1532</b> EP 54PPM NITRIC OXIDE BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 660	W162	1	CL	144	FT3	733.00	CL	733.00 (H)
140	<b>E02NI99E15A3576</b> EP 90PPM NITRIC OXIDE BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 660	W162	1	CL	144	FT3	907.50	CL	907.50 (H)
150	<b>E02NI99E15AC1T1</b> EP 5.5PPM NITRIC OXIDE BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 660 NITRIC OXIDE 5.2-5.8PPM CUSTOM MIX	W162	1	CL	144	FT3	792.00	CL	792.00 (H)
160	<b>E03NI99E15A2718</b> EP 45PPM CARBON MONOXIDE 90PPM NITRIC OXIDE BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 660	W162	1	CL	144	FT3	1,111.00	CL	1,111.00 (H)
170	<b>E03NI99E15A3818</b> EP 27.5PPM CARBON MONOXIDE 55PPM NITRIC OXIDE BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 660	W162	1	CL	144	FT3	1,111.00	CL	1,111.00 (H)
180	<b>E03NI99E15A3819</b> EP 12.5PPM CARBON MONOXIDE 25PPM NITRIC OXIDE BALANCE NITROGEN SIZE 150A EPA PROTOCOL STANDARD CGA 660	W162	1	CL	144	FT3	1,111.00	CL	1,111.00 (H)
190	<b>HE BL300</b> HELIUM BALLOON GR SIZE 300 CGA 580	W162	1	CL	292	FT3	714.14	CL	714.14 (H)
200	<b>HE UHP300</b> HELIUM UHP GR 5.0 SIZE 300 CGA 580	W162	1	CL	292	FT3	1,678.14	CL	1,678.14 (H)
210	<b>HY C62</b> HYDROGEN INDUSTRIAL SZ 200 6PK CGA 350	W162	1	CR	1,182	FT3	425.55	CR	425.55 (H)
220	<b>NI 250</b> NITROGEN INDUSTRIAL SIZE 250 CGA 580	W162	1	CL	256	FT3	133.10	CL	133.10 (H)
230	<b>NI C65</b> NITROGEN INDUSTRIAL SIZE 250 6PK CGA 580	W162	1	CR	1,536	FT3	406.19	CR	406.19 (H)
240	<b>NI CZ200</b> NITROGEN CEM-CAL ZERO GRADE 5.5 SIZE 200 CGA 580 BATCH ANALYZED C OF A INCLUDED	W162	1	CL	235	FT3	544.50	CL	544.50 (H)
250	<b>NI UHP300</b> NITROGEN UHP GR 5.0 SIZE 300 CGA 580	W162	1	CL	304	FT3	293.55	CL	293.55 (H)



AIRGAS USA, LLC  
1825 ARNOLD INDUSTRIAL WAY  
CONCORD CA 94520-5314  
T: 925-825-8822  
F: 925-825-0215

## QUOTATION

Item	Material/Description	Plant	Order Qty	UM	Vol/Wt	UM	Unit Price	UM	Ext Price
260	<b>NS AA200</b> NITROUS OXIDE AA GR 2.6 SIZE 200 CGA 326	W162	1	CL	60 LBS		468.20	CL	468.20 (H)
270	<b>OX 250</b> OXYGEN INDUSTRIAL SIZE 250 CGA 540	W162	1	CL	281 FT3		51.59	CL	51.59 (H)
280	<b>PR 33</b> PROPANE INDUSTRIAL 32 LB FOR FORKLIFT USE CGA 790	W162	1	CL	32 LBS		60.32	CL	60.32 (H)
290	<b>SH CP200</b> SULFUR HEXAFLUORIDE CP GR 2.8 SIZE 200 CGA 590	W162	1	CL	115 LBS		4,890.33	CL	4,890.33 (H)
300	<b>X10ME90C15A7764</b> CT 0.03% HEXANE 0.1% ISOPENTANE 0.1% N PENTANE 0.1% NEOPENTANE 0.3% ISOBUTANE 0.3% N BUTANE 1% CARBON DIOXIDE 2.5% NITROGEN 5% ETHANE BALANCE METHANE SIZE 150A CERTIFIED STANDARD-SPEC CGA 350	W162	1	CL	177 FT3		2,107.00	CL	2,107.00 (H)
	Delivery Flat Fee								53.49
	Fuel Surcharge Flat								14.20
	Airgas Hazmat Charge (H) - see Itemized Charges on reverse or visit <a href="http://www.Airgas.com/terms-of-sale">www.Airgas.com/terms-of-sale</a>								7.52

Incoterms	Airgas Truck
Shipping Method	Airgas Truck
Payment Terms	NET 30

Quote Amount	24,135.07
Sales Tax	2,051.48
Quote Total	26,186.55

PLEASE REFER TO THIS QUOTATION WHEN ORDERING.

TERMS AND PRODUCT PRICING ARE VALID UNTIL 04/13/2024

SURCHARGES, TAXES & FREIGHT MAY NOT BE INCLUDED OR MAY CHANGE AT TIME OF BILLING.

Airgas reserves the right to decline or cancel any order at any time prior to shipment. For more information about returns and cancellations, please visit us online at [Airgas.com/terms-of-sale](http://Airgas.com/terms-of-sale).

Comments :

Upon 30 days advance notice and no more than once each calendar year, Airgas USA, LLC may increase rates for new Purchase Orders. If NCPA does not accept the increased rates, NCPA may terminate this Agreement.

**EXHIBIT B**

**CERTIFICATION**

**Affidavit of Compliance for Suppliers**

I, \_\_\_\_\_

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for contract work at:

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

(Project name and location)

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

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

for hazardous materials delivery to:

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

(Project name and location)

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** American Industrial Scaffolding, Inc. – Five Year Multi-Task General Services Agreement for Scaffolding and Insulation Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

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

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



## **RECOMMENDATION:**

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with American Industrial Scaffolding, Inc. for scaffolding and insulation services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

## **BACKGROUND:**

Scaffolding and insulation services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. NCPA currently has an agreement in place with American Industrial Scaffolding, Inc., which agreement is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA has agreements in place for similar services with Unique Scaffold, Sunshine Metal Clad, Inc, Farwest Insulation Contracting and Bayside Insulation & Construction, Inc.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task General Services Agreement with American Industrial Scaffolding

**RESOLUTION 25-XX**

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

**(reference Staff Report #XXX:25)**

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

WHEREAS, American Industrial Scaffolding, Inc. is a provider of these services; and

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

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

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

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES “BO” SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
AMERICAN INDUSTRIAL SCAFFOLDING, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and American Industrial Scaffolding, Inc., a corporation with its office located at 5056 Commercial Circle, Suite B, Concord, CA 94520-8574 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

**4.3     Professional Liability Insurance.** Not Applicable

**4.4     Pollution Insurance.** Not Applicable

**4.5     All Policies Requirements.**

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

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

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

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

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

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

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

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

## **Section 6. STATUS OF CONTRACTOR.**

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

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

Contractor shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages,



expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Contractor's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

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

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

## **Section 7. LEGAL REQUIREMENTS.**

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

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

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

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

## **Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

- 8.4.1** Immediately terminate the Agreement;
- 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- 8.4.3** Retain a different Contractor to complete the Work not finished by Contractor; and/or

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

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

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without

reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

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

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

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

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

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

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

## **Section 10. PROJECT SITE.**

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

## **Section 11. WARRANTY.**

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

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

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

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the

Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.

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

### **Section 13. MISCELLANEOUS PROVISIONS.**

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



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

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

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

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

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

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

Albert Curiel  
VP Operations  
American Industrial Scaffolding, Inc.  
5056 Commercial Circle, Suite B  
Concord, CA 94520-8574

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
  - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
  - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
  - 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
  - 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

**13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

AMERICAN INDUSTRIAL SCAFFOLDING,  
INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**BILL WRIGHT, President & CEO (Owner)**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**  
**SCOPE OF WORK**

American Industrial Scaffolding, Inc. ("Contractor") shall provide scaffolding and insulation services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by NCPA, its Members, Southern California Public Power Authority (SCPPA) and SCPPA members.

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

- Scaffolding
  - Scaffold Design and Project Planning
  - Erection and Dismantling
  - Maintenance
- Insulation
  - Hot and Cold Insulation
  - Removal Thermal Blankets – Manufacture and Installation
  - Heat Tracing
  - Fireproofing

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

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

#### 2024 Prevailing Wage Rates:

##### Scaffolder

ST	\$119.52
OT	\$154.97
DT	\$191.97

##### Insulator

ST	\$121.38
OT	\$165.50
DT	\$209.60

Scaffolder and Insulator Rates include working Lead and working Foreman

Subsistence / Per Diem	\$100/day (billed at actual payment requirements of prevailing wage w/o OH or Margin)
Travel	\$60/trip (based on actual payment requirements of prevailing wage w/o OH or Margin)
Vehicles	\$75/day

Apprentice Rates will be billed at actual cost required by union assignment level and prevailing wage requirements + 25% for W/C & GL Insurance, Testing, Safety, Overhead, and Profit

Rates subject to change if Prevailing Rates change.

Upon 30 days advance notice and no more than once each calendar year, Contractor may increase rates for new Purchase Orders. If NCPA does not accept the increased rates, NCPA may terminate this Agreement.

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

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

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

---

(Name of person signing affidavit)(Title)

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

---

(Company name)

for contract work at:

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

(Project name and location)

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

---

(Signature of officer or agent)

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

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

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

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)





# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Community Tree Service, LLC – Five Year Multi-Task General Services Agreement for Vegetation Management Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

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

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

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Community Tree Service, LLC for vegetation management services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

## **BACKGROUND:**

Vegetation management services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA has agreements in place for similar services with Northern Industrial Construction and Konocti Ridge Corporate dba California Exterminators Alliance.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task General Services Agreement with Community Tree Service, LLC

**RESOLUTION 25-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH COMMUNITY  
TREE SERVICE, LLC**

**(reference Staff Report #XXX:25)**

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

WHEREAS, Community Tree Service, LLC is a provider of these services; and

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

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

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

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
COMMUNITY TREE SERVICE LLC**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Community Tree Service, LLC, a limited liability company with its office located at 416 Salinas Road, Royal Oaks, CA 95076 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025, ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

**4.3 Professional Liability Insurance.** Not Applicable

**4.4 Riggers Liability Insurance.** If the Services involve moving, hoisting, lifting, picking, erecting, lowering, rigging, or use of a crane, Contractor shall maintain Riggers Liability Insurance, unless Commercial General Liability insurance covers these services, in an amount not less than the full replacement cost of the property, materials or equipment being moved, hoisted, lifted, picked, erected, lowered, rigged or craned. There shall be no sublimit for the property of others in the Contractor's care, custody or control.

**4.5 Pollution Insurance.** Not Applicable

**4.6 All Policies Requirements.**

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

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

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

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

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

**4.7 Contractor's Obligation.** Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work



are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

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

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

## **Section 6. STATUS OF CONTRACTOR.**

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

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

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

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

- 6.5 **Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 **Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

## **Section 7. LEGAL REQUIREMENTS.**

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

State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

## **Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

## **Section 10. PROJECT SITE.**

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

## **Section 11. WARRANTY.**

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in

accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.

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

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

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

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

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

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

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



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

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

### **Section 13. MISCELLANEOUS PROVISIONS.**

- 13.1** **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2** **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 13.7 Contract Administrator.** This Agreement shall be administered by Generation Services, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 13.8 Notices.** Any written notice to Contractor shall be sent to:

Steve Nigro  
Vice President of Sales  
Community Tree Service, LLC  
416 Salinas Road  
Royal Oaks, CA 95076  
M: 931-854-5513  
Steve.nigro@communitytree.com

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
  - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
  - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
  - 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
  - 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

**13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

COMMUNITY TREE SERVICE, LLC

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**STEVE NIGRO, Vice President of Sales**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**  
**SCOPE OF WORK**

Community Tree Service LLC ("Contractor") shall provide vegetation management services as requested by the Northern California Power Agency ("Agency") at any facilities owned and/or operated by the Agency, its Members, Southern California Public Power Authority (SCPPA), or SCPPA Members, including:

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

- Tree removal
- Pruning
- Chipping
- Land clearing

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

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

Community Tree Service Rate Sheet, Through June 30, 2025		
Equipment Rental Rates Per Hour	Normal Prevailing Wage Rate	*Emergency Prevailing
Tractor with any other attachment (i.e., grapple loader, shovel, skidder grapple, sweeper or any other applicable attachment for tree work)	\$72.28	\$101.22
Tractor with a Heavy Duty Brush Mower Attachment	\$120.39	\$168.49
Small Masticator	\$87.30	\$122.22
Medium Masticator	\$145.50	\$203.69
Large Masticator	\$261.89	\$366.65
Crane Rental - 25 Ton Capacity	\$180.88	\$253.23
Crane Rental - 40 Ton Capacity	\$233.64	\$327.10
Crane Rental - 60 Ton Capacity	\$390.98	\$547.37
Tow Behind Stump Grinder	\$73.61	\$103.09
Stump Grinder on Tracks	\$100.21	\$140.34
Walk Behind Stump Grinder	\$66.90	\$93.68
Bucket Truck (up to 75')	\$84.03	\$117.64
Bucket Truck (up to 100')	\$133.10	\$186.34
12" Capacity Brush Chipper	\$58.45	\$81.83
18" Capacity Brush Chipper	\$84.04	\$117.66
24" Capacity Brush Chipper	\$105.22	\$147.31
20" Capacity Brush Chipper on Tracks	\$182.16	\$255.02
Traffic Control Equipment (to typically include, 10 signs and up to 100 cones)	\$44.78	\$62.76
Traffic Control Controllable Message Board Sign	\$23.92	\$33.49
Mobile Light Tower	\$38.41	\$53.77
Grapple Loader	\$139.79	\$195.71
3-Axle Grapple Loader	\$168.07	\$235.30
Grapple Loader With End Dump	\$208.35	\$291.69
Chip Truck	\$42.02	\$58.82
3-Axle Truck for Debris Hauling	\$66.19	\$93.11
2-Axle Truck for Debris Hauling	\$51.22	\$71.73
2-Axle 4WD Truck for Debris Hauling	\$53.10	\$74.38
3-Axle Roll Off Truck with 30-40 Yard Capacity Box	\$128.04	\$179.25
1-Axle Trailer	\$19.24	\$26.93
2-Axle Trailer	\$38.41	\$53.77
3-Axle Trailer	\$51.22	\$71.73
6 Ton Mini Excavator with Grapple Attachment	\$80.04	\$112.07
6 Ton Mini Excavator with Mower Attachment	\$118.83	\$166.23
9 Ton Excavator	\$119.36	\$167.10

15 Ton Excavator	\$158.69	\$285.92
Mini Skid Steer Loader With Grapple Attachment	\$87.40	\$122.36
Mini Skid Steer Loader With Mower Attachment	\$134.44	\$188.22
Ditch Witch	\$68.00	\$95.20
Water Buffalo	\$47.89	\$65.40
**MISC. Equipment for a 2-Man Crew	\$22.40	\$31.37
**MISC. Equipment for a 3-Man Crew	\$30.38	\$42.51
**MISC. Equipment for a 4-Man Crew	\$38.41	\$53.77
**MISC. Equipment for a 5-Man Crew and up	\$44.17	\$61.84
Sennebogen 718	\$409.50	\$573.30
Sennebogen 738	\$448.50	\$627.90
Albach Diamant 2000	\$487.50	\$682.50
Horizontal Grinder Model 3680 Beast	\$787.50	\$1102.50
Curtain Air Burner	\$175.00	\$245.00
Tigercat Feller Buncher	\$375.00	\$525.00
<b>Personnel Rates Per Hour</b>		
Arborist Reports (to include, consulting, site supervision, reports, project management and arborist equipment operation)	\$108.92	\$152.48
Qualified Applicator License	\$112.74	\$157.86
Equipment Operator	\$100.21	\$140.34
Heavy Equipment Operator	\$121.56	\$170.18
Climber	\$117.66	\$164.73
Groundsmen/General Labor	\$82.70	\$117.35
Foreman	\$100.21	\$140.34
Flagger	\$87.08	\$121.94
<b>Arborist Equipment Per Hour</b>		
Pesticide Applicator/Spraying Rig	\$82.70	\$117.59
Backpack Sprayer	\$23.89	\$33.48
<b>Please Note:</b> All tree prices are approximate and prices may vary depending on hazardous conditions such as climate, electrical hazards or any other hazardous conditions. Any additional equipment or personal will be charged accordingly.  <b>**MISC. equipment</b> includes chainsaws, pole saws, ropes, pulleys, blowers, weed trimmers, climbing saddle, spikes, cleaning and or climbing equipment. These are all used on an as needed basis		<b>*Emergency Prevailing Wage Rates</b> will apply for evenings, weekends, overtime, and unplanned emergency work.

Upon 30 days' advance notice and no more than once each calendar year, Contractor may increase rates for new Purchase Orders. If NCPA does not accept the increased rates, NCPA may terminate this Agreement.

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

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

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

---

(Name of person signing affidavit)(Title)

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

---

(Company name)

for contract work at:

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

(Project name and location)

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

---

(Signature of officer or agent)

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

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



**EXHIBIT D – NOT APPLICABLE**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

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

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

**EXHIBIT E – NOT APPLICABLE**

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

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

The undersigned hereby certifies and agrees that:

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

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** GeothermEx, Inc. – Five Year Multi-Task Consulting Services Agreement for Geothermal Reservoir Numerical Simulations; Applicable to the following: Geothermal Facility.

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approval of Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with GeothermEx, Inc. for geothermal reservoir numerical simulations services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at the Geothermal Facility.

## **BACKGROUND:**

GeothermEx, Inc. is a leading expert in geothermal reservoir numerical modeling, based in Richmond, CA. While most reservoir modeling companies focus on oil and gas, GeothermEx, Inc. specializes in geothermal-specific modeling, making them unique to other vendors in the same general field. They perform consulting work world-wide on numerous geothermal assets (more than any other company in the world) and are experienced professionals in this subject matter. Thus, NCPA Staff recommends awarding this contract to GeothermEx under NCPA's sole source procurement justification specified in NCPA's Purchasing Manual.

Geothermal reservoir numerical simulations services are required from time to time for the operation and maintenance of NCPA's Geothermal Facility. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor services are required. Because of the highly-specialized nature of this type of reservoir numerical modeling, NCPA does not have any agreements in place for similar services with additional vendors at this time.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

As described above, GeothermEx is in the judgement of NCPA Staff the world leader in geothermal field modeling and analysis. Thus, NCPA Staff requests the Commission approve this agreement as a sole source provider.

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task Consulting Services Agreement between NCPA and GeothermEx, Inc.

**RESOLUTION 25-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH  
GEOTHERMEX, INC.**

**(reference Staff Report #XXX:25)**

WHEREAS, geothermal reservoir numerical simulations services are required from time to time for the operation and maintenance of NCPA's Geothermal Facility; and

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

WHEREAS, GeothermEx, Inc. is a leading expert in geothermal reservoir numerical modeling, based in Richmond, CA. While most reservoir modeling companies focus on oil and gas, GeothermEx, Inc. specializes in geothermal-specific modeling, making them unique to other vendors in the same general field. They perform consulting work world-wide on numerous geothermal assets (more than any other company in the world) and are experienced professionals in this subject matter; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task Consulting Services Agreement with GeothermEx, Inc. to provide such services as needed at the Geothermal Facility; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into said Multi-Task Consulting Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at the Geothermal Facility.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY





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

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and GeothermEx, Inc., a corporation with its office located at 3260 Blume Drive, Suite 220, Richmond, CA 94806 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 ("Effective Date") in Roseville, California.

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

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



Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** ONE MILLION dollars (\$1,000,000) 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 Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable  
[AcctsPayable@ncpa.com](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 \$2,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

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

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

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

**4.3 Professional Liability Insurance.** Not Applicable

**4.4 All Policies Requirements.**

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

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

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

**4.4.4 Additional Certificates and Endorsements.** Not Applicable.

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

**4.5 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that 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 Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

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

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

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

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

## **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 delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

- 8.2 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.4 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1 Immediately terminate the Agreement;
  - 8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or
  - 8.4.4 Charge Consultant the difference between the costs to complete the Services that is unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

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

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in

electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

**9.4 Confidential Information and Disclosure.**

**9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

**9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in 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, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

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

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

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

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

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

**10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested



exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

- 10.7 Contract Administrator.** This Agreement shall be administered by Generation Services, Assistant General Manager, or his/her designee, who shall act as the Agency’s representative. All correspondence shall be directed to or through the representative.
- 10.8 Notices.** Any written notice to Consultant shall be sent to:

Minh Pham  
Reservoir Engineering Manager  
3260 Blume Drive, Suite 220  
Richmond, CA 94806

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
  - 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
  - 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
  - 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
  - 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute

resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**10.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**10.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**10.15 No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.

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

NORTHERN CALIFORNIA POWER AGENCY

GEOTHERMEX, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**ANN ROBERTSON-TAIT, President**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## **EXHIBIT A**

### **SCOPE OF SERVICES**

GeothermEx, Inc. ("Consultant") shall provide geothermal reservoir numerical simulations, as requested by Northern California Power Agency ("Agency") at the Geothermal Facility.

Services to include, but not limited to the following:

- Provide a New software platform
  - Create new model in a new software platform to improve understanding of the reservoir
  - Update the model, calibrating it against operating data
  - De-coupling of the pipeline network studies
  - Expand reservoir simulations
- Consulting: Geophysical studies
  - Study to determine the health and viability of the reservoir
    - Reducing injection at saturated sites
    - Increasing injection at superheated sites
    - Reducing the production rate to prolong the production lifetime
  - During normal operations assist during well workover projects

Note: All work will be done off-site remotely.

## 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 of the Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Labor Category	GeothermEx Personnel	Fully Loaded Rate (USD/hour)
Principal Geothermal Consultant	Balamir, Henneberger, Lovekin, Pham, Robertson-Tait	\$430
Senior Geothermal Consultant	Hackett, Lewis, Perdana, Salinas, Sullera, Parent, Iglesias	\$335
Geothermal Consultant	Ames, Bantis, Pinilla, Puthur, Thomas, Tran, Hasby	\$270
Geothermal Technician	Zavala	\$230
Administrative Support	Rentschler-Moreno, Saddler	\$110

Upon 30 days' advance notice and no more than once each calendar year, Consultant may increase rates for new Purchase Orders. If NCPA does not accept the increased rates, NCPA may terminate this Agreement.

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.



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Stephens Mechanical Corporation – Five Year Multi-Task General Services Agreement for Miscellaneous Mechanical Maintenance Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approval of Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Stephens Mechanical Corporation for miscellaneous mechanical maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years, for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

## **BACKGROUND:**

Miscellaneous mechanical maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA has utilized this vendor in the past, and has a good working relationship with this vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future purchases. NCPA has agreements in place for similar services with Hudson Mechanical Inc., Reliable Turbine Services LLC, and Performance Mechanical, Inc.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task General Services Agreement between NCPA and Stephens Mechanical Corporation



**RESOLUTION 25-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH  
STEPHENS MECHANICAL CORPORATION**

**(reference Staff Report #XXX:25)**

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

WHEREAS, Stephens Mechanical Corporation is a provider of these services; and

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

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

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

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



## **MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND STEPHENS MECHANICAL CORPORATION**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Stephens Mechanical Corporation, a corporation with its office located at Physical Address: 497 Edison Ct #D, Fairfield, CA 94534 Mailing Address: P.O. Box 30663, Walnut Creek, CA 94598 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

**4.3     Professional Liability Insurance.** Not Applicable

**4.4     Pollution Insurance.** Not Applicable

**4.5     All Policies Requirements.**

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

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

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

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

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

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

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

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against 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 caused by the acts or omissions by Contractor, its officers, officials, agents, and employees, in the performance of the Work, except as caused by and to the extent of the concurrent, sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** Not Applicable.

**Section 6. STATUS OF CONTRACTOR.**

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

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

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

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

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

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

## **Section 7. LEGAL REQUIREMENTS.**

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

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



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

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

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

## **Section 8. TERMINATION AND MODIFICATION.**

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

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

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

- 8.4.1** Immediately terminate the Agreement;

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

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

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

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

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

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

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

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

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

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

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

## **Section 10. PROJECT SITE.**

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

## **Section 11. WARRANTY.**

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

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

- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.
- 11.4** Contractor's Warranty shall not apply in the event Contractor is not present and supervising any commissioning/startup of any of Contractor's Work, and when plant conditions have experienced a process change (including but not limited to spikes in temperature or pressure, vibrations, unit shutdowns, or chemical composition changes)

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.

- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

### **Section 13. MISCELLANEOUS PROVISIONS.**

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

- 13.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 13.7 Contract Administrator.** This Agreement shall be administered by Assistant General Manager, Generation Services or his/her designee, who shall act as the Agency’s representative. All correspondence shall be directed to or through the representative.
- 13.8 Notices.** Any written notice to Contractor shall be sent to:

Paul Stephens  
President  
Stephens Mechanical Corporation  
P.O. Box 30663  
Walnut Creek, CA 94598

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
  - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
  - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.



- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

**13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**13.15 No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third-party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

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**13.16 Limitation of Liability.** Notwithstanding anything to the contrary, neither Party shall be liable to the other for any consequential, indirect, incidental, special, liquidated or punitive damages (including but not limited to loss of use, revenue or profits, inventory or use charges, cost of capital or claims of customers) howsoever caused. Contractors total liability with respect to this Agreement or any breach thereof, whether based on contract, warranty, tort (including negligence), strict liability, or otherwise, shall not exceed Two Million Dollars (\$2,000,000.00). In the case of Contractor winning a bid for a major overhaul necessitating an increase in the not to exceed amount specified in Section 2 to a level in excess of Two Million Dollars (\$2,000,000), this limitation of liability shall be increased to the total value of this Agreement as revised in Section 2.

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

NORTHERN CALIFORNIA POWER AGENCY

STEPHENS MECHANICAL  
CORPORATION

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**PAUL STEPHENS, President**

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## EXHIBIT A

### SCOPE OF WORK

Stephens Mechanical Corporation ("Contractor") shall provide miscellaneous mechanical maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

#### Plant Maintenance

- ACC blades, gearboxes
- Piping modification
- Compressor maintenance
- Motor, Pump replacements, etc.
- All other balance of plant work

#### Overhauls

- Turbines
  - Steam, Gas, Hydro
- Generators
  - Air Cooled, Hydrogen Cooled

#### Engines

- Wartsila

#### Compressors

- Reciprocating, Centrifugal, Axial

#### Gearboxes

- All Types

#### Pumps

- Engineered Pumps

#### Outages

- Major equipment overhauls and balance of plant support

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

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

**NCPA**  
**Millwrights – Master Labor Agreement**  
**July 1, 2024 – June 30, 2025**

**Area #1 - Field Labor Rates**

Classification	Day Shift			Night Shift		
	Straight Time	Overtime	Double Time	Straight Time	Overtime	Double Time
Superintendent / Project Manager	\$183	\$248	\$312	\$187	\$254	\$321
General Foreman	\$171	\$230	\$289	\$175	\$237	\$298
Working Foreman	\$165	\$221	\$277	\$170	\$228	\$286
Millwright - Journeyman	\$152	\$202	\$253	\$157	\$209	\$261
8th Period Apprentice	\$147	\$195	\$242	\$151	\$201	\$251
7th Period Apprentice	\$142	\$187	\$232	\$146	\$194	\$241
6th Period Apprentice	\$137	\$180	\$222	\$141	\$186	\$231
5th Period Apprentice	\$132	\$172	\$212	\$136	\$179	\$221
4th Period Apprentice	\$117	\$149	\$187	\$120	\$155	\$195
3rd Period Apprentice	\$114	\$141	\$177	\$117	\$148	\$185
2nd Period Apprentice	\$105	\$129	\$160	\$108	\$134	\$169
1st Period Apprentice	\$98	\$120	\$145	\$101	\$124	\$153
Field Machinist	\$171	\$238	\$305	\$176	\$246	\$316
Shop Machinist	\$155	\$218	\$281	\$160	\$226	\$291
Timekeeper	\$101	\$124	\$148	\$103	\$127	\$153
Safety Supervisor	\$125	\$161	\$206	\$128	\$167	\$213

The rates listed above are effective in the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

### Area #'s 2 & 3 - Field Labor Rates

Classification	Day Shift			Night Shift		
	Straight Time	Overtime	Double Time	Straight Time	Overtime	Double Time
Superintendent / Project Manager	\$183	\$248	\$312	\$187	\$254	\$321
General Foreman	\$171	\$230	\$289	\$175	\$237	\$298
Working Foreman	\$165	\$221	\$277	\$170	\$228	\$286
Millwright - Journeyman	\$147	\$194	\$242	\$151	\$201	\$250
8th Period Apprentice	\$142	\$187	\$232	\$146	\$194	\$241
7th Period Apprentice	\$137	\$180	\$223	\$142	\$186	\$231
6th Period Apprentice	\$133	\$173	\$213	\$137	\$179	\$222
5th Period Apprentice	\$129	\$166	\$204	\$132	\$172	\$212
4th Period Apprentice	\$114	\$143	\$178	\$117	\$149	\$187
3rd Period Apprentice	\$111	\$136	\$169	\$114	\$142	\$177
2nd Period Apprentice	\$103	\$125	\$153	\$106	\$130	\$162
1st Period Apprentice	\$96	\$116	\$138	\$99	\$121	\$147
Field Machinist	\$171	\$238	\$305	\$176	\$246	\$316
Shop Machinist	\$155	\$218	\$281	\$160	\$226	\$291
Timekeeper	\$101	\$124	\$148	\$103	\$127	\$153
Safety Supervisor	\$125	\$161	\$206	\$128	\$167	\$213

The rates listed above are effective in the following counties: Monterey, San Benito, Santa Cruz, Sacramento, Yolo, San Joaquin, Western Placer, and Western El Dorado.

### Area #4 - Field Labor Rates

Classification	Day Shift			Night Shift		
	Straight Time	Overtime	Double Time	Straight Time	Overtime	Double Time
Superintendent / Project Manager	\$183	\$248	\$312	\$187	\$254	\$321
General Foreman	\$171	\$230	\$289	\$175	\$237	\$298
Working Foreman	\$165	\$221	\$277	\$170	\$228	\$286
Millwright - Journeyman	\$145	\$191	\$237	\$149	\$197	\$246
8th Period Apprentice	\$140	\$184	\$228	\$144	\$191	\$237
7th Period Apprentice	\$135	\$177	\$219	\$140	\$184	\$227
6th Period Apprentice	\$131	\$170	\$210	\$135	\$177	\$218
5th Period Apprentice	\$128	\$163	\$200	\$131	\$170	\$209
4th Period Apprentice	\$113	\$140	\$175	\$116	\$147	\$184
3rd Period Apprentice	\$110	\$133	\$166	\$113	\$140	\$175
2nd Period Apprentice	\$102	\$123	\$150	\$105	\$128	\$159
1st Period Apprentice	\$95	\$115	\$136	\$98	\$119	\$144
Field Machinist	\$171	\$238	\$305	\$176	\$246	\$316
Shop Machinist	\$155	\$218	\$281	\$160	\$226	\$291
Timekeeper	\$101	\$124	\$148	\$103	\$127	\$153
Safety Supervisor	\$125	\$161	\$206	\$128	\$167	\$213

The rates listed above are effective in the following counties: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Eastern El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Nevada, Eastern Placer, Plumas, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba.

## Southern California – Field Labor Rates

Classification	Day Shift			Night Shift		
	Straight Time	Overtime	Double Time	Straight Time	Overtime	Double Time
Superintendent / Project Manager	\$183	\$248	\$312	\$187	\$254	\$321
General Foreman	\$171	\$230	\$289	\$175	\$237	\$298
Working Foreman	\$141	\$194	\$248	\$144	\$199	\$255
Millwright - Journeyman	\$129	\$177	\$225	\$132	\$182	\$232
10 <sup>th</sup> Period Apprentice	\$124	\$170	\$216	\$127	\$175	\$223
9 <sup>th</sup> Period Apprentice	\$121	\$164	\$208	\$124	\$168	\$214
8 <sup>th</sup> Period Apprentice	\$118	\$157	\$199	\$120	\$162	\$205
7 <sup>th</sup> Period Apprentice	\$115	\$150	\$190	\$117	\$155	\$196
6 <sup>th</sup> Period Apprentice	\$113	\$147	\$185	\$116	\$152	\$192
5 <sup>th</sup> Period Apprentice	\$112	\$144	\$181	\$114	\$148	\$187
4 <sup>th</sup> Period Apprentice	\$108	\$137	\$172	\$111	\$142	\$178
3 <sup>rd</sup> Period Apprentice	\$99	\$123	\$155	\$101	\$127	\$161
2 <sup>nd</sup> Period Apprentice	\$97	\$119	\$149	\$99	\$123	\$155
1 <sup>st</sup> Period Apprentice	\$95	\$117	\$145	\$97	\$120	\$151
Pre-Apprentice	\$92	\$112	\$136	\$94	\$116	\$142
Field Machinist	\$171	\$238	\$305	\$176	\$246	\$316
Shop Machinist	\$155	\$218	\$281	\$160	\$226	\$291
Timekeeper	\$101	\$124	\$148	\$103	\$127	\$153
Safety Supervisor	\$125	\$161	\$206	\$128	\$167	\$213

The rates listed above are effective in the following counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

### Work Hours

Work hours as specified by the Local 102 Millwrights Master Labor Agreement apply. The generalized work hours are as follows: Overtime will be charged at the applicable rate for all work over eight hours per day and for the first eight hours on Saturday. Overtime will be charged for all work performed outside the regular or established shift, and for the first unscheduled shift. Double Time will be charged for work beyond eight hours on Saturday, and for all work on Sundays and Holidays.

### Show-Up Time

A four-hour minimum for show-up time will apply for each worker at the applicable rate whether work is performed or not. There is an eight-hour minimum for all work after four hours for each worker at the applicable rate.

### Standby Time

Any delays preventing SMC or its subcontractors from performing work that is beyond their control, standby time will be billed at the applicable rate.

**Emergency Call-Out**

When called out to perform work outside of an established schedule, a minimum of eight hours at the applicable overtime or double time rate will be billed.

**Third Party Items**

All outside services, parts, materials, consumables, rentals, fuel for rentals, freight, and subcontractors will be billed at cost plus 15%.

**Safety Training / Background**

Site specific or customer specific safety training will be billed at cost, plus the applicable hourly rates for all time spent on training. Site or customer specific background checks or drug testing will be billed at cost plus 15%.

**Subsistence and Travel**

Subsistence and lodging for workers requiring overnight accommodations will be billed at the U.S. General Services Administration rate for the city the work is performed in.

Travel time will be billed at the IRS standard mileage rate for workers requiring overnight accommodation. Workers will receive "Travel In" and "Travel Out". Mileage will not be billed on working days.

**Exclusions**

Rates do not include consumables, sales or use taxes, permits, bonds, or special licenses for specific projects.

**Payment Terms**

Net 30 Days



**Field Equipment Rates**  
**July 1, 2024 – June 30, 2025**

<b>Equipment</b>	<b>Shift</b>	<b>Daily</b>	<b>Weekly</b>
Service Truck & Tools	\$430		
Flatbed Truck		\$270	
Crew Cab Truck	\$265		
Tool Trailer		\$495	\$2,475
Flatbed Trailer		\$95	
Welding Machine		\$125	\$625
Laser Alignment Kit		\$485	\$2,425
Laser Level Alignment Kit		\$515	\$2,575
Laser Bore Alignment Kit		\$1,285	\$6,425
Laser Internal Alignment Kit		\$1,285	\$6,425
Hy-Torque Wrench Set		\$475	\$2,375
Turbine Kit		\$515	\$2,575
Engine Kit		\$270	\$1,350
Rigging Kit		\$200	\$1,000
Metric Kit		\$285	\$1,425
Pallet of Cribbing		\$50	\$250
Grout Kit		\$150	\$750
FME Cabinet		\$125	\$625
SCR Cleaning Kit		\$280	\$1,400
Respirator Cabinet		\$300	\$1,500
Wash Station		\$165	\$825
Rescue Equipment		\$235	\$1,175
Multi Ton Movers		\$160	\$800
Portable Generator		\$115	\$575
Multi Gas Meter		\$165	\$825
Mag Base Drill		\$150	\$750
Skid Rotor Stand		\$225	\$1,125
Dual Rotor Stands		\$155	\$775
Field Machining Equipment		By Quote	

Rates subject to change if Prevailing Rates change.

Upon 30 days advance notice and no more than once each calendar year, Contractor may increase rates for new Purchase Orders. If NCPA does not accept the increased rates, NCPA may terminate this Agreement.

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

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

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

---

(Name of person signing affidavit)(Title)

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

---

(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 24.

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 D**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

DATED: \_\_\_\_\_

Name of Employer

Stephens Mechanical Corporation

\_\_\_\_\_  
(Authorized Officer & Title)

Paul Stephens, President

P.O. Box 30663

Walnut Creek, CA 94598



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Summit Line Construction, Inc. – Five Year Multi-Task General Services Agreement for Power Pole Line Maintenance Related Services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities (except the Lodi Energy Center), NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

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

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

## **RECOMMENDATION:**

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement with Summit Line Construction, Inc for power pole line inspection and maintenance related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at any facilities owned and/or operated by NCPA (except the Lodi Energy Center), NCPA Members, by SCPPA, and SCPPA Members.

## **BACKGROUND:**

Power pole line inspection and maintenance related services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA (except the Lodi Energy Center), NCPA Members, by SCPPA, and SCPPA Members. Summit Line Construction, Inc. is a new vendor for NCPA. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. Additionally, adding this vendor will increase the pool of qualified vendors for these types of services. NCPA has agreements in place for similar services with Western Area Power Administration (WAPA), Wilson Utility Construction Company, and Intren, LLC (pending).

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

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

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Multi-Task General Services Agreement with Summit Line Construction, Inc.



**RESOLUTION 25-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT WITH SUMMIT LINE  
CONSTRUCTION, INC**

**(reference Staff Report #XXX:25)**

WHEREAS, various power pole line inspection and maintenance related services, are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA) (except the Lodi Energy Center), NCPA Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, Summit Line Construction, Inc. is a provider of these services; and

WHEREAS, the NCPA Commission has reviewed the Multi-Task General Services Agreement with Summit Line Construction, Inc. to provide such services as needed at any facilities owned and/or operated by NCPA (except the Lodi Energy Center), NCPA Members, by SCPPA, and SCPPA Members; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at any facilities owned and/or operated by NCPA (except the Lodi Energy Center), NCPA Members, by SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
SUMMIT LINE CONSTRUCTION, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Summit Line Construction, Inc., a C corporation with its office located at 441 W. Power Line Road, Heber City, UT 84032 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2025 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

**2.4 Authorization to Perform Work.** The Contractor is not authorized nor obligated to perform any Work or incur any costs whatsoever under the terms of this Agreement until execution of a Purchase Order from the Contract Administrator.

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

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

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

- 4.1 Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of one million dollars (\$1,000,000) per accident.

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

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

**4.2.2 Automobile Liability.** Contractor shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Contractor, on or off Agency premises. The policy shall provide limit of \$2,000,000 per each accident. 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.

**4.2.4 Aircraft Liability Insurance.** Contractor shall maintain aircraft liability insurance, covering both owned and non-owned aircraft, in connection with performance of work under this Agreement in an amount for combined single limit for bodily injury, property damage and passengers of Five Million Dollars (\$5,000,000).

**4.3 Professional Liability Insurance.** Not Applicable.

**4.4 Pollution Insurance.** Not Applicable.

**4.5 All Policies Requirements.**

**4.5.1 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the Agency as an additional insured pursuant and subject to ISO forms CG 20 10 12 19 and/or CG 20 37 12 19 for Commercial General Liability, and standard forms for policies other than Commercial General Liability, but only to the extent of Contractor's expressly assumed indemnification obligations under this Agreement and declaring such insurance primary in regard to Work performed pursuant to this Agreement to the extent of Contractor's assumed obligations hereunder.

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

**4.5.3 Higher Limits.** Omitted.

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

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

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

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

- 5.1 **Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 **Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all third-party where third party includes Agency employees 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 Contractor, its officers, officials, agents, and employees in and during the performance of the Work, except as caused by the negligence of Agency.

5.3 **Limitation of Liability.**

Notwithstanding anything to the contrary:

- (1) Under no circumstance shall contractor be liable for special, exemplary, consequential, indirect, incidental or punitive, losses, damages, costs and expenses including but not limited to loss of profit, loss of revenue, loss of use and business interruption, even in such damages were or should have been known to the parties at the time of entering into this agreement.
- (2) Contractor's aggregate, maximum liability, to Agency, Agency indemnitees, and Third-party non-indemnitees, regardless of theory or cause of action, under this Agreement, is equal to (I) the fee paid to Contractor hereunder or purchase order giving rise to the claim for claims for which insurance is not required hereunder; and (II) with respect to losses covered by policies of insurance Contractor is required to obtain and maintain under this Agreement, the coverage amounts required under this Agreement for the policy covering such loss. Notwithstanding anything to the contrary, this limitation of liability set forth in this subsection shall not apply to third party claims for which Contractor owes an indemnification obligation hereunder.

- (3) Contractor is not indemnifying Agency for its liability to Third Parties under inverse condemnation or strict liability for property damage caused by wildfire, except to the extent the wildfire at issue is caused by Contractor's or any Contractor Party's negligence.

**5.4 Transfer of Title.** Not Applicable.

**Section 6. STATUS OF CONTRACTOR.**

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

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

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

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

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

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will



maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

Contractor shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Contractor shall forfeit as a penalty to Agency \$200.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Contractor or by any subcontractor under

Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

## **Section 8. TERMINATION AND MODIFICATION.**

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

In the event of termination, Contractor shall be entitled to compensation for Work satisfactorily completed as of the effective date of termination, subsequent demobilization, all equipment/materials ordered for which the Customer has not paid, costs incurred with respect to arrangements put in place in the expectation of completing the project and an agreed amount for foregone profit and overhead; Agency, however, may condition payment of such compensation upon Contractor delivering to Agency any or all records or documents (as referenced in Section 9.1 hereof).

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

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

- 8.4 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, upon five (5) days' notice and opportunity to cure Agency's remedies shall include, but not be limited to, the following:

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

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

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.
- 9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in

confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

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

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

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

**9.4.3.3** Disclosure by Agency in response to a request pursuant to the California Public Records Act; provided, Agency shall notify the Contractor upon the receipt of a public records request prior to the disclosure.

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

## **Section 10. PROJECT SITE.**

**10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons

and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, brought to the Project site by Contractor.

- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

## **Section 11. WARRANTY.**

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement and the one (1) year period following the earlier date of Agency's use or possession, or date of completion of the work performed under the particular Purchase Order, any equipment, supplies or other materials or

Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's reasonable satisfaction. Contractor will not be liable for warranty breaches or non-compliance which is attributable to acts or omissions of others, including, but not limited to, the failure to maintain equipment, failure to follow operating procedures or maintenance manual requirements such as ordinary wear and tear, or other intervening works carried out by the Agency or third parties.

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

The express warranties of Contractor, as set forth in this Section 11 represent Agency's sole remedy and recourse for defective work and are exclusive and in lieu of all other warranties and remedies, whether statutory or implied (including, but not limited to, all warranties of merchantability and fitness for a particular purpose, latent defects and all warranties arising from course of dealing or usage of trade), and Contractor hereby disclaims, and Agency hereby waives, any and all such other warranties and remedies.

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be

due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.

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

### **Section 13. MISCELLANEOUS PROVISIONS.**

- 13.1** **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2** **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 13.7 Contract Administrator.** This Agreement shall be administered by the Assistant General Manager, Generation Services, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 13.8 Notices.** Any written notice to Contractor shall be sent to:

Dylan Welsh, President  
Summit Line Construction, Inc.  
447 W. Power Line Road  
Heber City, UT 84032

With a copy to

General Counsel  
Summit Line Construction, Inc.  
447 W. Power Line Road  
Heber City, UT 84032

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation where such documents and services are provided by Contractor.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute.
  - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association ("AAA") to expedite the resolution of the dispute.
  - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be

concluded within fifteen (15) days from the commencement of the mediation.

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

**13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

**13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

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**13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCLPPA or SCLPPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

SUMMIT LINE CONSTRUCTION, INC.

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
**Randy S. Howard,**  
General Manager

\_\_\_\_\_  
**Dylan Welsh,**  
President

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**  
**SCOPE OF WORK**

Summit Line Construction, Inc. ("Contractor") shall provide pole inspections and construction services as requested by the Northern California Power Agency ("Agency") at any facilities owned and operated by Agency (except Lodi Energy Center), NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

Services to include, but not limited to the following:

- Pole Inspections, treatment and restoration
- Electrical Distribution Construction
- Transmission Construction
- Substation Construction
- All Voltage Level Maintenance
- High-Voltage Design & Construction Management

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

## **EXHIBIT B**

### **COMPENSATION SCHEDULE AND HOURLY FEES**

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

- See price breakdown in attached Summit Line Construction, Inc. Exhibit B document.

Contractor may revise hourly rates each year upon the giving of 30 days' advanced written notice to NCPA. If the parties cannot agree to revised hourly rates, NCPA may terminate the Agreement.

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

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

Exhibit B  
NCPA  
Master Service Agreement



441 W Powerline Rd  
Heber City, UT 84032  
**PHONE** 435.657.0721  
**WEB** summitlineconstruction.com

## California Labor and Equipment Rates

June 1, 2024 - May 31, 2025

JOB TITLE OR CLASSIFICATION	Fully Burdened Labor Rates	
	Straight Time	Double Time
Journeyman Lineman	\$ 157.74	\$ 260.65
General Foreman	\$ 181.65	\$ 305.47
Cable Splicer Foreman	\$ 169.20	\$ 282.20
Foreman	\$ 169.20	\$ 282.20
Underground Foreman	\$ 169.20	\$ 282.20
Cable Splicer	\$ 157.74	\$ 260.65
Line Equipment Man	\$ 134.79	\$ 217.22
Groundman	\$ 112.24	\$ 174.38
Powderman	\$ 141.62	\$ 231.48
Fabricator Tech	\$ 122.21	\$ 198.97
Fabricator Tech Trainee (0-2000 hrs)	\$ 116.19	\$ 187.32
Lineman-Welding	\$ 163.44	\$ 271.36
Foreman Substation Technician	\$ 169.20	\$ 282.20
Substation Technician	\$ 157.74	\$ 260.65
Substation Technician Trainee( 1st Year)	\$ 113.23	\$ 175.50
Substation Technician Trainee( 2nd Year)	\$ 129.50	\$ 206.98
Substation Technician Trainee( 3rd Year)	\$ 145.75	\$ 238.47
Apprentice 1st Period - 60% of J/L	\$ 113.02	\$ 175.16
Apprentice 2nd Period - 65% of J/L	\$ 118.43	\$ 185.63
Apprentice 3rd Period - 70% of J/L	\$ 123.84	\$ 196.11
Apprentice 4th Period - 75% of J/L	\$ 129.26	\$ 206.60
Apprentice 5th Period - 80% of J/L	\$ 134.67	\$ 217.08
Apprentice 6th Period - 85% of J/L	\$ 140.06	\$ 227.55
Apprentice 7th Period - 90% of J/L	\$ 145.48	\$ 238.03
Mechanic	\$ 134.79	\$ 217.22
Safety Manager	\$ 157.74	\$ 260.65

## California Labor and Equipment Rates

June 1, 2024 - May 31, 2025

Equipment	Hourly Rate	Weekly Rate
105' Bucket Truck	\$ 272.59	\$ 8,722.88
80' Bucket Truck	\$ 143.73	\$ 4,599.36
65' Bucket Truck	\$ 104.09	\$ 3,330.88
55' Bucket Truck	\$ 86.74	\$ 2,775.68
100 Ton Crawler Crane	\$ 867.33	\$ 27,754.56
90 Ton All Terrain	\$ 743.43	\$ 23,789.76
100 Ton All Terrain	\$ 768.21	\$ 24,582.72
110 Ton All Terrain	\$ 792.98	\$ 25,375.36
50 Ton Crane Truck	\$ 230.47	\$ 7,375.04
35 Ton Crane Truck	\$ 173.47	\$ 5,551.04
Digger Derrick 60'	\$ 173.47	\$ 5,551.04
Digger Derrick 45'	\$ 99.13	\$ 3,172.16
Track Bucket 90-100'	\$ 421.27	\$ 13,480.64
Track DT-80	\$ 359.32	\$ 11,498.24
Marooka	\$ 173.47	\$ 5,551.04
Pickup	\$ 39.65	\$ 1,268.80
Winch Truck	\$ 61.96	\$ 1,982.72
Mechanics Truck	\$ 86.74	\$ 2,775.68
Backhoe	\$ 74.35	\$ 2,379.20
Backhoe Trailer	\$ 19.83	\$ 634.56
Tractor	\$ 81.78	\$ 2,616.96
Tractor Trailer	\$ 29.74	\$ 951.68
4 Drum Puller 10,000'	\$ 143.73	\$ 4,599.36
4 Drum Puller 15,000'	\$ 190.81	\$ 6,105.92
52" Tensioner	\$ 111.52	\$ 3,568.64
72" Tensioner	\$ 136.29	\$ 4,361.28
Rewind Machine (sgl Drum)	\$ 123.90	\$ 3,964.80
Dist 3 Place Reel Trailer	\$ 61.96	\$ 1,982.72
Small Reel Tender	\$ 14.88	\$ 476.16
Hard-Line Puller (3 Drum)	\$ 334.55	\$ 10,705.60
Trans 3 Reel Trailer	\$ 91.70	\$ 2,934.40
Air Drill	\$ 215.59	\$ 6,898.88
Small Pressure Digger	\$ 297.38	\$ 9,516.16
Large Pressure Digger	\$ 669.08	\$ 21,410.56
V-Groove Puller	\$ 218.08	\$ 6,978.56
Water Truck	\$ 86.74	\$ 2,775.68
Dump Truck	\$ 86.74	\$ 2,775.68
D8 Cat	\$ 235.42	\$ 7,533.44

## California Labor and Equipment Rates

June 1, 2024 - May 31, 2025

## California Labor and Equipment Rates

June 1, 2024 - May 31, 2025

D7 Cat	\$ 198.25	\$ 6,344.00
D6 Cat	\$ 178.42	\$ 5,709.44
D5 Cat	\$ 153.65	\$ 4,916.80
6000lb Exten Fork Lift	\$ 59.48	\$ 1,903.36
8000lb Exten Fork Lift	\$ 69.39	\$ 2,220.48
10,000lb Exten Fork Lift	\$ 96.65	\$ 3,092.80
12,000lb Exten Fork Lift	\$ 123.90	\$ 3,964.80
Trackhoe 30 Ton	\$ 173.47	\$ 5,551.04
Trackhoe 20 Ton	\$ 136.29	\$ 4,361.28
Front End Loader	\$ 171.00	\$ 5,472.00
Mini-X	\$ 61.96	\$ 1,982.72
Skid Steer Loader	\$ 44.61	\$ 1,427.52
Crawler Carrier	\$ 166.03	\$ 5,312.96
Rubber Tire Carrier	\$ 86.74	\$ 2,775.68
Hot Stick Trailer	\$ 61.96	\$ 1,982.72
Wells Cargo Trailer	\$ 14.88	\$ 476.16
Office Trailer	\$ 14.88	\$ 476.16
Pole Trailer	\$ 14.88	\$ 476.16
80' Extendable Trailer	\$ 37.18	\$ 1,189.76
6X6 Ranger	\$ 34.70	\$ 1,110.40
Slinger Truck	\$ 210.64	\$ 6,740.48
72" Bundle tensioner	\$ 359.32	\$ 11,498.24



**NOT APPLICABLE**

**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.

**EXHIBIT D – Not Applicable**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit) (Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

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

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

**EXHIBIT E – Not Applicable**

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

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

The undersigned hereby certifies and agrees that:

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

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)



# Commission Staff Report - *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Osmose Utilities Services, Inc.– Five Year Multi-Task Professional Services Agreement for Contact Voltage Surveys; Applicable to the following: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

<b>FROM:</b>	Marty Hostler	<b>METHOD OF SELECTION:</b>
	Compliance Manager	N/A
<b>Division:</b>	Executive Services	<i>If other, please describe:</i>
<b>Department:</b>	Compliance	

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

Approve Resolution 25-XX authorizing the General Manager or his designee to enter into a Five-Year Multi-Task Professional Services Agreement with Osmose Utilities Services, Inc. for Contact Voltage Surveys with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

## **BACKGROUND:**

Contact voltage surveys may be required from time to time for the safety of NCPA, NCPA members, and SCPPA members' workforce and the public. Objects such as power distribution equipment, streetlights, traffic signals, playground equipment, fences, etc. may become contact voltage faults caused by unseen degradation of underground electrical infrastructure. Contact voltage surveys are a tool some utilities may use to detect potential hazardous issues.

Osmose is a Hometown Connections partner and the only known vendor that performs contact voltage surveys, therefore, NCPA does not have any agreements in place for similar services with additional vendors at this time.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

This enabling agreement does not commit NCPA to any expenditure of funds. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

## **ENVIRONMENTAL ANALYSIS:**

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

## **COMMITTEE REVIEW:**

Pending Committee review.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

**AFTER LEC PPC APPROVAL:** On January 6, 2025 the Lodi Energy Center Project Participant Committee reviewed and approved the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 25-XX
- Five-Year Multi-Task Professional Services Agreement with Osmose

**RESOLUTION 25-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A MULTI-TASK PROFESSIONAL SERVICES AGREEMENT WITH OSMOSE  
UTILITIES SERVICES, INC.**

**(reference Staff Report #XXX:25)**

WHEREAS, contact voltage surveys are required from time to time for the safety of the Northern California Power Agency (NCPA), NCPA member, and Southern California Public Power (SCPPA) members' workforce and the public; and

WHEREAS, Osmose Utilities Services, Inc. (OSMOSE) is a provider of these services; and

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

WHEREAS, OSMOSE is the only known vendor that performs these services and is a Hometown Connections partner; and

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

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

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

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

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



## **MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND OSMOSE UTILITIES SERVICES, INC**

This Professional 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 Osmose Utilities Services, Inc., a corporation with its office located at 635 Highway 74 S, Peachtree City, GA 30269 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, ("Effective Date") in Roseville, California.

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

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



perform the Requested Services or does not respond within the seven day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

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

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

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

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable  
[AcctsPayable@ncpa.com](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. 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 caused by the operations of Consultant. The policy shall provide a minimum limit of \$2,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability. 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, caused by the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$2,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and

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

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

**4.3 Professional Liability Insurance.** Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least two (2) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within two (2) 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 two (2) 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. The Agency's status as additional insured shall only apply to the alleged negligent acts or failure to act by Consultant.

**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 Intentionally omitted.**

**4.4.4 Additional Certificates and Endorsements.** If Consultant provides services to Agency members, SCPPA and/or SCPPA members, Consultant shall provide certificates of insurance and policy

endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or Agency member for which the Services are to be performed.

**4.4.5 Waiver of Subrogation.** Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

**4.5 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that 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, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant in its performance of Services under this Agreement. Consultant shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they are caused by such claims ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Consultant agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Consultant.

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's

unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

- 6.4 **Certification as to California Energy Commission.** If requested by the Agency, Consultant shall, at the same time it executes this Agreement, execute Exhibit C.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant.

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1** Immediately terminate the Agreement;
  - 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.4.3** Retain a different consultant to complete the Services not finished by Consultant; and/or
  - 8.4.4** Charge Consultant the difference between the costs to complete the Services that are 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 specifically for the Agency pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

**9.4 Confidential Information and Disclosure.**

**9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

**9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in 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, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.



**9.4.3.2** Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

**9.4.3.3** Disclosure by Agency in response to a request pursuant to the California Public Records Act.

**9.4.4 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

## **Section 10. MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 10.7 Contract Administrator.** This Agreement shall be administered by Randy Howard, General Manager, or his 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:

Francesco Zimbardi  
Vice President – Contracts & Project Management  
Osmose Utilities Services, Inc.  
635 Highway 74 S  
Peachtree City, GA 30269

Any written notice to Agency shall be sent to:

Randy S. Howard  
General Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt  
General Counsel  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

- 10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:

- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**10.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**10.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**10.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide services to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this Section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

OSMOSE UTILITIES SERVICES, INC

Date\_\_\_\_\_

Date\_\_\_\_\_

\_\_\_\_\_  
**RANDY S. HOWARD**

General Manager

\_\_\_\_\_  
**FRANCESCO ZIMBARDI**

VP, Contracts and Project Management

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## EXHIBIT A

### SCOPE OF SERVICES

Osmose Utilities Services, Inc. ("Consultant") shall provide services related to Contact Voltage Surveys as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by NCPA, its Members, the Southern California Power Authority ("SCPPA"), or SCPPA Members.

#### **Osmose® Power Survey™ Mobile Contact Voltage Detection**

##### **Project:**

Complete a thorough field survey of the designated underground areas in the Utility's service territory using the patented Power Survey™ Mobile Asset Assessment Vehicle (MAAV).

##### **Schedule:**

Start date will be negotiated, scheduled and survey completed as agreed to by the Utility and Osmose. The schedule provides for mobile scans to be conducted during nighttime hours when streetlights are illuminated (9:00 pm to 5:00 am or 10:00 pm to 6:00 am), as directed by the Utility.

Surveys will cover all publicly accessible surface roads in the designated areas, excluding highways, parkways, tunnels, bridges, and roads within city parks. Roads broader than three lanes or built with a center median will be surveyed twice, once for each side. Ultra-wide avenues with service roads will be surveyed on the service roads as well.

##### **Working Day:**

Every day except Saturday's, Sunday's and Holidays. Due to testing taking place at night, a typical work week begins Sunday night and ends Friday morning.

##### **Scope:**

The survey is to be completed in the most efficient, thorough and accurate manner possible. Osmose shall be solely and completely responsible for:

1. The safety, efficiency, and adequacy of Osmose's plant, equipment, materials and methods.
2. Any damage or injury resulting from the failure, or improper maintenance, use, or operation of Osmose's plant, equipment, and methods.
3. Conditions of the Project Site, including safety of all persons and property during performance of the Work.

### Mobile Detection:

When a structure is verified to have contact voltage potentials greater than 1 volt, Osmose personnel will:

- Test all conductive structures within a 30-foot radius of the initial discovery
- Measure the harmonic content (THD)
- Create a record of the findings electronically along with GPS coordinates and time stamp
- Report each object to the Utility, generating a unique work order for each object found energized at a location

### Assigned Personnel:

The MAAV teams represent a deployment of one MAAV system per shift and two technicians. The MAAV operators report their findings to dispatchers which are in Osmose Utilities Services' 24 hours per day 7 days per week control center located in Secaucus, New Jersey.

All Osmose personnel are subjected to extensive background, criminal, and motor vehicle history screening prior to their date of hire. In addition, periodic follow up screening is performed for the duration of employment at Osmose. Random drug and alcohol testing are also performed prior to every employee's hiring and as required by the Agreement and requested by the Agency in writing. Osmose complies with all federal and state laws regarding drug and alcohol testing.

In addition to crews assigned to field testing, Osmose Utilities Services will also support the project with a Client Manager, Operations Director, Quality Assurance Team, Data Manager, and Program Engineer.

### Data Collection and Transfer:

Contractor shall deliver a GIS map containing the information below and be updated daily to show a unique master event number (parent), unique facility event number (child), event location, Voltage, Voltage (with shunt), third harmonic, quarter section, qualified ground, structure identification number and approximate address of all energized objects. The following components shall be documented in an Excel database and delivered to the Utility Project Manager each business day if any voltage is discovered:

- Test all conductive structures within a 30-foot radius of the initial discovery
- Measure the harmonic content (THD)
- Create a record of the findings electronically along with GPS coordinates and time stamp
- Report each object to the Utility, generating a unique work order for each object found energized at a location

To be provided by Utility:

Datasets that indicate boundaries or locations of system assets\areas to focus scanning efforts to be provided. GIS files such as shapefiles or extracts containing latitude and longitude information are preferred. However, images or PDF's can be utilized to generate operational boundaries as well. The dataset file and maps contain proprietary information and shall not be copied or distributed without the Utility's consent.

To be provided by Osmose:

All necessary equipment to fulfill the terms of the contract including but not limited to training, tools, measuring equipment, vehicles, safety gear, permits, computers, etc. will be included in the unit cost of testing.

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed FIVE HUNDRED THOUSAND dollars (\$500,000) for the Services subject to Section 2 of the Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Osmose® Power Survey™ Rate	
<p>Mobile Contact Voltage Detection Survey of designated underground areas in the contracted utility's service area.</p> <p>Work to be performed includes:</p> <ul style="list-style-type: none"><li>– Contact voltage scanning utilizing the MAAV system and crew, working 8 hours per night in predefined areas.</li><li>– 24 hours / 7-day dispatch team to coordinate efforts between Osmose field crews and the contracted utility</li><li>– Full-time client manager &amp; data manager</li><li>– Highly trained and certified Osmose technicians</li><li>– Data storage</li><li>– GPS and paper map recording and storage</li><li>– Customizable daily program reports</li><li>– Quality control technicians</li><li>– Use of professional engineering services</li><li>– All necessary equipment to fulfill the terms of the contract including but not limited to training, tools, measuring equipment, vehicles, safety gear, permits, computers, etc. will be included in the cost of testing and will not be considered incidental.</li><li>– A kickoff meeting will be scheduled for all key personnel prior to the commencement of any work.</li></ul>	<p><b>Survey Rate:</b> <b>\$10,000 per 8-hour shift/\$1,250 per hour</b></p> <p><b>With a minimum of 8 hours per contract</b></p> <p><b>Mobilization\ Demobilization Fee:</b> <b>\$4,500 per deployment</b></p> <p><b>Assumes no breaks in survey schedule when contracting multiple utilities</b></p>



Contractor warrants to Owner that the Work under this Proposal shall be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Work is performed so as to ensure that the services performed are correct and appropriate for the purposes contemplated in this Proposal and related specifications. Contractor shall use appropriate numbers of personnel with suitable training, education, experience and skill to perform the Work in accordance with the Contract requirements.

Contractor warrants that the Mobile Contact Detection Survey Work is substantially accurate at the time it is performed; however, Owner recognizes that Contractor can only detect and report on conditions at the time of the Work is performed. Changes in conditions may result in a change in the results of the Work. Owner acknowledges that Contractor's Work will only be accurate as of the date of performance.

Due to current economic conditions beyond our control, primarily driven by cost increases in labor, materials, freight, lodging, fuel and supply chain constraints, Osmose reserves the right to request an equitable adjustment to the pricing during the term of the contract. Any proposed price increase must be submitted in writing with a 30-day notice. Pricing shown on the price schedule is subject to an adjustment based on the Consumer Price Index on the first day of each fiscal quarter (January, April, July, October) for the term of the contract, and any extensions.

Total pricing for services to be performed at NCPA Member or SCPA locations will be quoted at the time services are requested.

NOTE: As a public agency, NCPA shall not reimburse 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.



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** U.S. Department of Energy 247 Hydroelectric Grant Agreements; Applicable to the following: NCPA's Hydroelectric Facilities

**AGENDA CATEGORY:** Discussion/Action

<b>FROM:</b>	Michael DeBortoli	<b>METHOD OF SELECTION:</b>
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Hydroelectric	

<b>IMPACTED MEMBERS:</b>		
All Members	<input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>
Alameda Municipal Power	<input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Palo Alto <input checked="" type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>
City of Healdsburg	<input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>
		City of Shasta Lake <input type="checkbox"/>
		City of Ukiah <input checked="" type="checkbox"/>
		Plumas-Sierra REC <input checked="" type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input type="checkbox"/>
<i>If other, please specify</i>		
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## **RECOMMENDATION:**

Approve Resolution 25-XX authorizing the Commission to accept the conditional grant funding agreements associated with The Infrastructure Investment and Jobs Act Provision 40333 (Energy Policy Act 2005 Section 247) and delegating the authority to the General Manager or his designee to execute Department of Energy (DOE)-generated agreements for the funding towards five (5) NCPA projects for a total funding value not-to-exceed \$5,000,000. Individual projects receiving grant funding have either already been approved by the Commission or are set to be brought to the Commission for approval at a later date and all relate to FERC Project No. 2409.

## **BACKGROUND:**

With the impending change of administration in Washington D.C. on January 20, 2025, the Trump Administration may change the funding priorities set by the Biden Administration when President Trump takes office. To ensure that NCPA is in the best possible position to be eligible to receive grant funding for these projects, NCPA Staff requests authorization for NCPA's General Manager or his designee to sign the agreement(s) once received from DOE. NCPA experienced this short timeframe for signature from the DOE by allowing NCPA less than three weeks to sign an agreement after seeing it for the first time. NCPA now has an example of what these future agreements contain via the Fully Conditional Agreement for Upper Utica Dam Maintenance, which was approved by the NCPA General Manager as the total grant available for FERC Project No. 11563 is under \$250,000.

Signed into law on November 15, 2021, The Infrastructure Investment and Jobs Act, also known as The Bipartisan Infrastructure Law (BIL), allows for the investment of \$553.6 million to maintain and enhance existing hydroelectric facilities to ensure generators continue to provide clean electricity, while integrating renewable energy resources such as wind and solar, improving dam safety, and reducing environmental impacts.

A portion of the BIL, specifically Provision 40333 (EPA 2005 Section 247), invests in capital improvements directly related to improving grid resiliency, improving dam safety, and environmental improvements. On September 5, 2024, the United States Department of Energy (DOE) Grid Deployment Office announced the selection of 293 capital improvement projects for negotiations across 33 states to receive over \$430 million in Maintaining and Enhancing Hydroelectricity Incentive payments.

BIL Provision 40333 allows for payments up to 30% of the costs of the applicable capital improvement with a maximum of \$5 million to a single FERC project within a single fiscal year. All five projects are within FERC Project No. 2409. Additionally, only costs incurred after November 15, 2021 are eligible for payments.

NCPA submitted six projects for consideration under BIL Provision 40333, all of which were accepted to the next round, Award Negotiation. This requested approval is for five of the six projects. The Fully Conditional Agreement for Upper Utica Dam Maintenance within FERC Project No. 11563 for a total grant amount less than \$250,000 has already been executed by NCPA's General Manager and is attached as an example of the agreements that DOE will likely issue for the remaining five grant applications. The following are the grant applications under consideration:

### Clarks Creek Flood Risk Reduction Project

As currently configured, the Collierville powerhouse and adjoining switchyard are susceptible to being damaged and forced offline during flooding events. Existing surface water drainage features have proven inadequate to pass significant floods. Existing drainage features were damaged in storm events occurring in December 2019 and January 2023, partially flooding and threatening powerhouse operations. This project will upgrade hydraulic capacity and harden the drainage system to improve resiliency for future hydrologic conditions, thereby protecting the 253 MW Collierville Powerhouse and Switchyard during large storm events.

### Collierville Powerhouse Sump Oil Water Separator

The mechanical equipment at Collierville utilizes a variety of lubricants and turbine oils. While these fluids are well-contained, the intricate nature of the mechanical systems leaves the possibility that these fluids mix with water draining from other systems in the powerhouse. The powerhouse is designed so that drain water flows to the Utility Vault Sump where it is pumped into the tailrace. Existing measures are in place to ensure that contaminated water does not leave the powerhouse; however, as part of NCPA's ongoing commitment to protect valuable environmental resources, an oil water separator will be installed in line with the water leaving the sump. The separator will provide an additional level of protection to the environment. In tandem with existing water quality protection measures, this will ensure that only clean water leaves the powerhouse, minimizing the environmental impact of NCPA's operations.

### Collierville Transformer Maintenance

The Collierville Powerhouse is a 253 MW, highly flexible, fast-ramping generator, which is used by the project operator, NCPA, as well as the California Independent System Operator (CAISO), and the Grid Operator (PG&E) to help balance loads, integrate other renewables, and to provide ancillary services including voltage control service and frequency response service. The generator step-up transformers at Collierville Powerhouse are critical components in providing these services. The objective of this project is to increase the reliability and resiliency of the transformers by upgrading and replacing key components, including bushings and tank seals. This will help minimize the environmental footprint of the transformers by reducing the risk of oil leakage. Further, it will extend the operational life of the transformers and allow Collierville to continue to provide needed flexibility and ramping to the grid.

### McKays 17KV Hardening Project

To power various operational and surveillance apparatus at McKays Point Diversion Dam, 17KV power is run from the local distribution network to the dam. Most of this circuit is underground, with a short section running overhead. The overhead section is susceptible to wildfire and storm damage, which can result in loss of power at the dam site. This would mean losing control of the Collierville Intake structure and would force the Collierville Powerhouse offline. The McKays 17KV Fire Hardening Project will replace the overhead portion of the 17KV feeder circuit with fire-resistant materials to improve its resiliency and reliability. This will help ensure that dam safety monitoring and power generation are uninterrupted.

### McKays Point Sediment Removal Project

McKays Point has collected 460,000 cubic yards of sedimentation due to events largely driven by atmospheric river storms that induced landslides upstream of the reservoir. Sediment from these events has traveled into the reservoir and into other critical zones of the hydroelectric facility, including the power tunnel intake, low level outlet, and accumulated sediment sitting against the dam. The objective of this project is to remove much of the deposited sediment to restore storage capacity to the reservoir to increase powerhouse generation flexibility, reduce sediment loading on the dam, restore the sediment trap upstream of the cofferdam, reduce the likelihood

of turbine damage due to sediment, and reduce the hazard of the power intake tunnel infilling with sediment.

#### Upper Utica Dam Maintenance

The DOE grant agreement for this project, for \$185,939.68, was signed by NCPA General Manager on December 31, 2024 and involves the separate FERC Project No. 11563. We received the agreement on December 19, 2024 and DOE required the signed agreement to be returned by January 7, 2025. The objective of this work is to correct potential stability deficiencies, enhance dam safety, and responsibly preserve the historic character of the over 100-year-old Lake Alpine, Utica, and Union Dams.

Lake Alpine Dam; repair the upstream gunite, restore the downstream face dry-laid stone (as mandated by the CA Division of Safety of Dams and FERC), and repair the seepage weir to restore structural integrity of the dam, reduce seepage, and allow for more accurate seepage monitoring, as required by the FERC Dam Safety Surveillance Monitoring Plan.

Union Dam; repair areas of mortar deficiency to reduce increased seepage and comply with dam safety best management practices, while preserving the historic character of the structure.

Utica Dam; repair concrete spalling to reduce seepage and ensure the continued structural integrity of the dam face, replace the low level outlet operator motor to maintain critical dam safety remote operability.

#### FISCAL IMPACT:

The projects submitted for participation in the BIL grants were previously identified by NCPA staff as either current or future projects. All the projects have already incurred at least some reimbursable costs, with the Upper Utica Dam Maintenance being complete and Collierville Powerhouse Sump Oil Water Separator having incurred most costs.

Project Title	Estimated Cost	Grant Reimbursement
Clarks Creek Flood Risk Reduction Project	\$2,208,012	\$631,241
Collierville Powerhouse Sump Oil Water Separator	\$296,090	\$117,000
Collierville Transformer Maintenance	\$1,731,236	\$431,528
McKays 17KV Hardening Project	\$912,433	\$173,321
McKays Point Sediment Removal Project	\$67,000,000	\$3,646,910
		<b>\$5,000,000</b>

Grant funding maximum amounts were calculated during the initial application and the current costs are estimates. The maximum grant funding amount is up to 30% of the allowable project costs, as indicated in the table above.

#### SELECTION PROCESS:

For all vendor services related to these projects, NCPA has and will solicit competitive bids from multiple vendors to perform the work required for each project as necessary. NCPA will bid the specific scope of work consistent with grant requirements, should NCPA receive grant funding,

and NCPA procurement policies and procedures. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

For current and future procurement associated with these projects, NCPA has or will follow procurement policies and procedures.

#### **ENVIRONMENTAL ANALYSIS:**

Each of these projects have or will require NCPA Commission approval through specific project approvals or budget approvals prior to initiating each individual project. Once the individual projects are sufficiently refined and brought before the Commission for approval, NCPA staff will evaluate whether each individual project qualifies for an exemption under CEQA for ongoing maintenance activities to existing facilities or whether additional environmental review is needed. The approval of these DOE generated conditional grant agreements will simply provide a potential for reimbursement of some of the project costs. The conditional grant agreements do not guarantee funding and thus, the conditional agreements have no impact on the environment and therefore, are not a project under CEQA. Each project has been or will be individually reviewed for CEQA compliance.

#### **COMMITTEE REVIEW:**

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025, the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (3):

- Resolution 25-XX
- DOE Conditional Award Letter
- DOE Energy Policy Act of 2005 Section 247 Agreement – Upper Utica Dam Maintenance (Sample)

## **RESOLUTION 25-XX**

### **RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY AUTHORIZING NCPA PARTICIPATION IN U.S. Department of Energy 247 Hydroelectric Grant Funding Agreements**

**(reference Staff Report #XXX:25)**

WHEREAS, on November 15, 2021, the Infrastructure Investment and Jobs Act, known as the Bipartisan Infrastructure Law (BIL) was signed into law, allowing up to \$553.6 million in funding from the United States Department of Energy (DOE) to maintain and enhance existing hydroelectric facilities to ensure generators continue to provide clean electricity, while integrating renewable energy resources such as wind and solar, improving dam safety, and reducing environmental impacts;<sup>1</sup> and

WHEREAS, a portion of the BIL, specifically Provision 40333 (EPA 2005 Section 247), invests in capital improvements directly related to improving grid resiliency. On September 5, 2024, the DOE Grid Deployment Office announced the selection of 293 capital improvement projects across 33 states to receive over \$430 million in Maintaining and Enhancing Hydroelectricity Incentive payments; and

WHEREAS, the Grid Deployment Office (GDO) of the DOE has authorized up to \$5 million in grant funding to each FERC Project License, not to exceed 30% of actual costs for each project within the FERC Project License; and

WHEREAS, Northern California Power Agency (NCPA) has requested grant funding for five projects under FERC P2409 License, which are Clarks Creek Flood Risk Reduction Project, Collierville Powerhouse Sump Oil Water Separator, Collierville Transformer Maintenance, McKays 17KV Hardening Project and McKays Point Sediment Removal Project; and

WHEREAS, Northern California Power Agency (NCPA) has requested grant funding for one project for FERC P11563 License as Upper Utica Dam Maintenance for Lake Alpine Dam, Union Dam and Utica Dam; and

WHEREAS, DOE has approved grant funding reimbursement up to \$5 million for the five projects under FERC P2409 License and \$185,939 for the one project under FERC P11563 License for the NCPA Hydroelectric facilities; and

WHEREAS, NCPA's budget as presented to DOE for the five FERC P2409 License projects was an estimated total cost of \$72,147,771.00 for development activities including engineering and environmental work and maintenance work; and

WHEREAS, NCPA's budget as presented to DOE for the one FERC P11563 License project was an estimated total cost of \$619,798.94 for development activities including engineering and environmental work and maintenance dam work. The DOE grant funding Agreement DE-GR00000095 for \$185,939 has been approved and signed by the General Manager on December 31, 2024; and

WHEREAS, the approval of these DOE generated agreements has no impact on the environment and therefore not a project under CEQA. Each project is individually reviewed for CEQA compliance; and

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<sup>1</sup> [BIL provision 40333 and Section 247: Maintaining and Enhancing Hydroelectricity Incentives | Department of Energy](#)



NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the Commission to accept the conditional grant funding agreements associated with The Infrastructure Investment and Jobs Act Provision 40333 (Energy Policy Act 2005 Section 247) and delegates the authority to the General Manager or his designee to execute Department of Energy (DOE)-generated agreements for the funding towards five (5) NCPA projects for a total funding value not-to-exceed \$5,000,000. Individual projects receiving grant funding have either already been approved by the Commission or are set to be brought to the Commission for approval at a later date and all relate to FERC Project No. 2409.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025, by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



**Department of Energy**  
Washington, DC 20585

December 19, 2024

SENT VIA ELECTRONIC MAIL

Jake Eymann  
NORTHERN CALIFORNIA POWER AGENCY  
P.O. Box 2280  
Murphys, CA 95247  
jake.eymann@ncpa.com

SUBJECT: Fully Conditional Agreement for Maintaining and Enhancing Hydroelectricity Incentive  
Section 247 of EPOA 2005, Control No. 3088-1588

Dear Jake Eymann:

On September 5, 2024, the U.S. Department of Energy (DOE) sent you a letter stating that your application has been recommended for negotiation of an incentive award by the Grid Deployment Office (GDO) for the Maintaining and Enhancing Hydroelectricity Incentive (EPOA 2005 Section 247) Program (DE-FOA-0003088). This letter is to inform you that your capital improvement project is eligible for a Fully Conditional Agreement (Agreement) because construction of the project will be completed before December 31, 2024. This notification does not guarantee a DOE funded payment, as funding will only be disbursed upon successful completion of the negotiation requirements outlined in the September 5, 2024, letter, conditions being lifted from the Agreement, and final reporting requirements being satisfied. Please carefully read the Fully Conditional Agreement included with this letter and, to accept it, submit the signed agreement by **12PM EST on January 7, 2025**, to the [hydroelectricincentives@hq.doe.gov](mailto:hydroelectricincentives@hq.doe.gov) mailbox.

DOE makes no commitment to issue a payment and assumes no financial obligation with the issuance of this letter. Selectees will not receive a full award until award negotiations are complete and conditions are lifted. Only an award document signed by GDO obligates DOE to support a project.

The negotiation process must be complete by June 30, 2025, to lift the conditions, unless an extension is granted by GDO. You must be responsive during negotiations (i.e., provide requested documentation) and meet the stated negotiation deadlines, as specified in the Agreement. DOE reserves the right to terminate award negotiations at any time for any reason.

**Incentive Payment Details:**

GDO may issue a conditional award where federal funds are obligated but not released until successful completion of negotiations are reached to the satisfaction of GDO and successful demonstration of project completion. Performance against this award is, therefore, at the Selectee's own risk, and payments for costs incurred for the Selectee's project may not be made until the Selectee and DOE

complete negotiations and the Selectee satisfies the requirements of this incentive award. GDO does not guarantee or assume any obligation to reimburse costs incurred by the Selectee during the negotiation process. Failure by the Selectee to provide an application with supporting documentation acceptable to GDO, or failure to complete negotiations or requirements of the incentive award, may be deemed noncompliance. Based on such noncompliance, GDO may unilaterally terminate or suspend this award and de-obligate all funds.

On behalf of GDO, I would like to congratulate you on your selection for a Fully Conditional Agreement. I look forward to working with you to successfully complete negotiations. If you have any questions or concerns or you believe you cannot provide signature by the specified date, please contact the Hydropower Incentives Program at [hydroelectricincentives@hq.doe.gov](mailto:hydroelectricincentives@hq.doe.gov).

Sincerely,

A handwritten signature in black ink that reads "Shana Wiseman". The signature is written in a cursive, flowing style.

Shana Wiseman  
Hydroelectric Incentives Program Manager

FULLY CONDITIONAL AGREEMENT FOR  
Upper Utica Dam Maintenance  
Energy Policy Act of 2005 Section 247  
Maintaining and Enhancing Hydroelectricity Incentive

Signature Page

NORTHERN CALIFORNIA POWER AGENCY and the Grid Deployment Office, an office within the United States Department of Energy, enter into this Fully Conditional Agreement to achieve the project objectives and the technical milestones and deliverables stated in this Fully Conditional Agreement.

Recipient Signature and Date

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Grid Deployment Office Signature and Date

---

**FULLY CONDITIONAL AGREEMENT FOR****Upper Utica Dam Maintenance****Energy Policy Act of 2005 Section 247****Maintaining and Enhancing Hydroelectricity Incentive****Agreement Number: DE-GR0000095****Recipient: NORTHERN CALIFORNIA POWER AGENCY****Control Number: 3088-1588****Project Title: Upper Utica Dam Maintenance (“Project”)**

NORTHERN CALIFORNIA POWER AGENCY (“Recipient”) and the Grid Deployment Office (“GDO”), an office within the United States Department of Energy (“DOE”), enter into this Fully Conditional Agreement (“Agreement”) to achieve the project objectives and the technical milestones and deliverables stated herein. The Recipient and GDO together are referred to as the Parties, and when the Parties have completed negotiations for an incentive under Section 247 of the Energy Policy Act of 2005 (“Award”), GDO will issue an award modification, and the following documents will be added to the Award:

Attachment 1	Statement of Project Objectives
Attachment 2	Federal Assistance Reporting Checklist and Instructions
Attachment 3	Performance Report Narrative (Semi-Annual)
Attachment 4	Performance Report Narrative (Final)
Attachment 5	Budget Document
Attachment 6	Documentation Required for Final Incentive Payment
Attachment 7	Community Benefits Outcomes and Objectives
Attachment 8	Davis Bacon Act Wage Determination

The following are incorporated into this Agreement by reference:

- Section 40333 of Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL).
- Section 247 of Public Law 109-58, also known as the Energy Policy Act of 2005.
- The Recipient’s application as approved by DOE.

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## Agreement Articles

## **Section I. General & Recipient Provisions**

### **1.1 Conditional Availability of Funds**

Notwithstanding the obligation of funds reflected in Article 2.1, the Parties hereby agree that the availability of funds to the Recipient for payment of costs incurred by the Recipient is conditioned upon GDO's review and approval of the Recipient's application and the completion of negotiations for the Award. The Recipient is prohibited from invoicing for or receiving federal funds for the Award at this time. No funds shall be made available to the Recipient for payment and DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient during the negotiation process.

When the Parties have completed negotiations for this Award, the GDO will issue a modification to this award making available the obligated amount for payment in accordance with the payment terms contained in the Award. The Recipient may then receive payment for allowable incurred costs in accordance with the negotiated payment terms.

Many of the Articles that appear herein will appear in the same form in the fully executed award agreement, but are not necessarily applicable until the Award is fully negotiated and executed by GDO and the Recipient. The Articles that appear herein are provided in order to allow the Recipient to begin reviewing them in furtherance of understanding the obligations and duties applicable to the Award. Some Articles reference attachments; however, Attachments 1-8 may or may not be included in future Award modifications unless and until the Parties successfully complete negotiations. Upon execution of the award, some of the Articles that appear herein may be superseded by updated Articles, as applicable; some Articles such as this "Conditional Availability of Funds" Article—may be removed; and others may be added, depending on the specific circumstances pertaining to the particular Project or Award.

Failure by the Recipient to provide an application with supporting documentation and Attachments 1-8 in substance and in a manner acceptable to GDO, or failure to complete negotiations by June 30, 2025, may be deemed noncompliance. Based on such noncompliance, GDO may unilaterally terminate or suspend this award and deobligate the amounts obligated. In such case, the Recipient shall not be reimbursed for costs incurred at the Recipient's risk, as described above.

### **1.2 Program Authority**

This Agreement is entered into under [42 U.S.C. 7256](#) and [42 U.S.C. 15883](#) and is a transaction other than a procurement, grant, cooperative agreement, or loan. Only those terms or requirements set forth in this agreement and required by law for other transaction agreements awarded under [42 U.S.C. 7256\(a\)](#) are applicable.

### 1.3 Legal Effect

This agreement is valid only if it is in writing and is signed, either in writing using “wet ink” or electronically. The Recipient may accept or reject the Agreement.

### 1.4 Flow Down Requirement

The Recipient agrees to apply the terms and conditions of this Award to all subrecipients, subcontractors, and vendors, and to require their strict compliance therewith.

### 1.5 Points of Contact

To promote timely and effective agreement administration, correspondence delivered to the Government under this agreement shall reference the agreement number, title, and subject matter, and shall be subject to the following procedures:

All correspondence to DOE shall be addressed to the Technical Project Officer (TPO) for this Agreement, as follows:

Madden Sciubba

[hydroelectricincentives@hq.doe.gov](mailto:hydroelectricincentives@hq.doe.gov)

All correspondence to Recipient shall be addressed as follows:

**Recipient Point of Contact**

Jake Eymann

209-728-1387

P.O. Box 2280

Murphys, CA 95247

[jake.eymann@ncpa.com](mailto:jake.eymann@ncpa.com)

During the Period of Performance specified in this Agreement Recipient shall timely notify DOE of any change in the Recipient point of contact, but no later than 10 business days following such change.

### 1.6 Scope of the Agreement

See Attachment 1 – Statement of Project Objectives (SOPO), to the extent the SOPO is incorporated into this Agreement.

The Following Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards—found in [2 CFR Part 200](#)—shall apply and are incorporated into this Agreement:

- A. Financial Management found in [2 CFR 200.302](#)
- B. Record Retention and Access found in [2 CFR 200.334 through 200.338](#)
- C. Remedies for Noncompliance found in [2 CFR 200.339 through 200.343](#)
- D. Post-closeout adjustments and continuing responsibilities found in [2 CFR 200.345](#)
- E. Collection of Amounts Due found in [2 CFR 200.346](#)
- F. Cost Principles found in [2 CFR Part 200 Subpart E](#) and as incorporated in [2 CFR Part 910](#)
- G. Audit Requirements found in [2 CFR Part 200 Subpart F](#)

## **1.7 Reporting Requirements**

The reporting requirements for this Agreement are identified in Attachment 2, Federal Assistance Reporting Checklist. Instructions accompany the checklist.

Failure to comply with the reporting requirements outlined in Attachment 2 is considered a material noncompliance with the terms of this Agreement. Noncompliance may result in suspension or termination of this Agreement and withholding of future agreements.

## **1.8 Financial Reporting and Records**

The Recipient shall maintain records in accordance with commercially acceptable business practices to account for all funding under this Agreement. The Recipient's relevant financial records are subject to examination or audit on behalf of government and/or the Comptroller General for a period not to exceed three (3) years after final payment of this Agreement. Consistent with [2 CFR 200.334 through 200.338](#), the Recipient is required to retain records relating to this Agreement.

DOE or its authorized representative, shall have direct access to complete records and information of the Recipient, to the extent necessary to audit and ensure full accountability for all amounts reimbursed by the Government under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon at least six weeks prior written notice and shall be subject to the security requirements of the audited party.

## **1.9 Milestones and Deliverables**

Attachment 1, Statement of Project Objectives, establishes milestones and deliverables. If the Recipient fails to achieve two or more technical milestones and deliverables, DOE may renegotiate the Statement of Project Objectives. Alternatively, DOE may deem the Recipient's failure to achieve these technical milestones and deliverables to be material noncompliance

with the terms and conditions of this agreement and take action to suspend or terminate the agreement.

### **1.10 Review Meetings**

DOE may hold periodic review meetings in which the Recipient is required to participate. Review meetings enable DOE to assess the work performed under this Agreement and determine whether the Recipient has timely achieved the technical milestones and deliverables stated in Attachment 1 to this Agreement.

DOE shall determine the frequency of review meetings and select the day and time of each review meeting and shall do so in a reasonable and good faith manner. DOE will provide the Recipient with reasonable notice of the review meetings.

For each review meeting, the Recipient is required to provide a comprehensive overview of the project, including:

- The Recipient's technical progress compared to the Milestone Summary Table stated in Attachment 1 to this Agreement.
- The Recipient's actual expenditures compared to the approved budget in Attachment 5 to this Agreement.
- Other subject matter specified by the DOE TPO.

### **1.11 Site Visits**

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Recipient must provide, and must require subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

### **1.12 System for Award Management**

The Recipient is required to be registered in the System for Award Management (SAM) at the signing of this Agreement, during performance, and through final payment. This requires that the Recipient must maintain current information in SAM, including reviewing and updating the information at least annually after the initial registration, but more frequently as needed.

Registered in the System for Award Management means that:

- The Recipient has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity

(CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 into SAM;

- The Recipient has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;
- The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Recipient will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- The Government has marked the record “Active”.

Unique entity identifier means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers and additional information about registration procedures.

### **1.13 Audits**

The Recipient must provide any information, documents, site access, or other assistance requested by DOE or federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the recipient’s records relating to this award.

DOE may conduct a final audit at the end of the performance period (or the termination of this Agreement, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the agreement, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE may audit or review the Recipient’s financial records or administrative records relating to this Agreement at any time. Audits or reviews may be performed to determine if the Recipient has an adequate financial management system to estimate, bill, and record Federal Government expenditures in accordance with the criteria in [2 CFR 200.302](#), Generally Accepted Accounting Principles (GAAP), Generally Accepted Government Accounting Standards (GAGAS), and Standard Form 1408. Government-initiated audits are generally paid for by DOE. DOE will endeavor to provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

### **1.14 Closeout**

The Recipient agrees to provide DOE all documents requested to closeout this Agreement. The closeout of this Agreement does not affect (1) the right of the DOE to disallow costs and recover

funds on the basis of a later audit or other review; (2) the requirement for the Recipient to return any funds due as a result of later refunds, corrections or other transactions, including final indirect cost billing rate adjustments; and (3) the ability of the DOE make financial adjustments to a previously closed agreement resolving indirect cost payments and making final payments.

### **1.15 Federal Stewardship**

DOE will exercise normal federal stewardship in overseeing the project activities performed under this Agreement. Stewardship activities include, but are not limited to, conducting site visits, if necessary; reviewing performance and financial reports; providing technical assistance; assuring compliance with agreement articles; and reviewing technical performance during and after project completion to ensure that the project objectives have been accomplished.

### **1.16 Indemnity**

The Recipient shall indemnify DOE and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of DOE officers, agents, or employees.

### **1.17 Notification Requirements**

Prior DOE approval is required for the following:

- Change in scope.
- Milestone changes.
- Significant budget changes.

Immediately notify DOE of any activity listed below in relation to the Recipient:

- Any casualties and/or deaths at the project.
- Any activities involving the Federal Energy Regulatory Commission (FERC) license or a license amendment particular to this Project, including but not limited to transfer of license, surrender of license, or issuance of a new license.
- Any and all activity that will have a material negative effect on project performance.

Notification shall be in writing, detail the event, and detail the impact the event will have on the project. Upon notification of any of such activity, DOE reserves the right to conduct a review of this Agreement to determine the Recipient's compliance with the required elements of this Agreement. If DOE review determines that there are significant deficiencies or concerns with the Recipient's performance under this Agreement, DOE reserves the right to impose additional requirements, as needed.

### **1.18 Insolvency, Bankruptcy of Receivership**

Should the Recipient, or the Recipient's parent or subsidiary entities, become insolvent, file for bankruptcy, or receivership the following apply:

- A. The Recipient shall immediately, but no later than five days, notify DOE of the occurrence of any of the following events:
  - 1) The Recipient or the Recipient's parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act;
  - 2) The Recipient's consent to the institution of an involuntary case under the Bankruptcy Act against the Recipient or the Recipient's parent;
  - 3) The filing of any similar proceeding for or against the Recipient or the Recipient's parent, or the Recipient's consent to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the Recipient, under any other applicable state or federal law; or
  - 4) The Recipient's insolvency due to its inability to pay debts generally as they become due.
- B. Such notification shall be in writing and shall:
  - 1) Specifically set out the details of the occurrence of an event referenced in paragraph A;
  - 2) Provide the facts surrounding that event; and
  - 3) Provide the impact such event will have on the project being funded by this Agreement.

Upon the occurrence of any of the four events described in paragraph A. of this article, DOE reserves the right to conduct a review of this Agreement to determine the Recipient's compliance with the required elements of this Agreement (including such items as progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with the Recipient's performance under this Agreement, DOE reserves the right to impose additional requirements, as needed.

Failure of the Recipient to comply with this article may be considered a material noncompliance of this Agreement.

### **1.19 Corporate Felony Conviction and Federal Tax Liability Assurances**

This article applies to Recipients that are organized as corporations. A corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States, but not foreign corporations. It includes both for- and non-profit organizations.

By entering into this Agreement, the Recipient attests that its corporation has not been convicted of a felony criminal violation under federal law in the 24 months preceding the date of signature. The Recipient further attests that its corporation does not have any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have



lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## **1.20 Community Benefits Plan**

The Recipient must meet the stated objectives and milestones set forth in its Community Benefits Outcomes and Objectives, which is incorporated into this Agreement as Attachment 7.

## **1.21 Signage**

The Recipient is encouraged to display DOE Investing in America signage during and after construction. Guidance can be found at: (<https://www.energy.gov/design>). Expenditures for such signage shall be a permitted eligible cost of the project.

## **1.22 Remedies for Noncompliance**

If a Recipient fails to comply with the U.S. Constitution, federal statutes, regulations or the articles of a Federal Agreement, DOE may impose additional conditions, as described in § 200.208. If the DOE determines that noncompliance cannot be remedied by imposing additional conditions, DOE may take one or more of the following actions, as appropriate in the circumstances:

- A. Temporarily withhold cash payments pending correction of the deficiency by the Recipient or more severe enforcement action by the DOE.
- B. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- C. Wholly or partly suspend or terminate the federal award.
- D. Initiate suspension or debarment proceedings as authorized under [2 CFR part 180](#) and DOE regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a federal awarding agency).
- E. Withhold further federal awards for the project or program.
- F. Take other remedies that may be legally available.

## **1.23 Termination**

GDO may terminate this Agreement in part or its entirety if the Recipient fails to comply with the Articles of this Agreement or pursuant to the Articles of this Agreement, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities. The Recipient may terminate this Agreement by sending to GDO written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the DOE determines in the case of partial termination that the reduced or modified portion of this Agreement will not accomplish the purposes for which this Agreement was made, the DOE may terminate this Agreement in its entirety.

- A. When DOE terminates an Agreement prior to the end of the period of performance due to the Recipient's material failure to comply with the Agreement terms and conditions, DOE must report the termination to the Office of Management and Budget (OMB) designated integrity and performance system accessible through SAM.
  - 1) The information required under [§ 200.340 paragraph \(b\)](#) is not to be reported to designated integrity and performance system until the Recipient either-
    - i) Has exhausted its opportunities to object or challenge the decision, see [§ 200.342](#); or
    - ii) Has not, within 30 calendar days after being notified of the termination, informed DOE that it intends to appeal DOE's decision to terminate.
- B. If DOE, after entering information into the designated integrity and performance system about a termination, subsequently:
  - 1) Learns that any of that information is erroneous, DOE must correct the information in the system within three business days;
  - 2) Obtains an update to that information that could be helpful to other Federal awarding agencies, DOE is strongly encouraged to amend the information in the system to incorporate the update in a timely way.
- C. DOE must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the Recipient asserts within seven calendar days to DOE, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, DOE must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, DOE must resolve the issue in accordance with the agency's Freedom of Information Act procedures. (b or c) When an Agreement is terminated or partially terminated, both the DOE and the Recipient remain responsible for compliance with the requirements in [§§ 200.344](#) and [200.345](#).

## 1.24 Notification of Termination Requirement

In the event of the termination of this Agreement the following notification procedures will be followed:

- A. DOE must provide to the Recipient a notice of termination.
  - 1) If the Agreement is terminated for the Recipient's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or articles of this Agreement, the notification must state that-
    - i) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM;
- B. The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;

- C. Federal awarding agencies that consider making a federal award to the Recipient during that five-year period must consider that information in judging whether the Recipient is qualified to receive the federal award, when the Federal share of the federal award is expected to exceed the simplified acquisition threshold over the period of performance;
- D. The Recipient may comment on any information the OMB-designated integrity and performance system contains about the Recipient for future consideration by federal awarding agencies. The Recipient may submit comments to the awardee integrity and performance portal accessible through SAM.
- E. Federal awarding agencies will consider Recipient comments when determining whether the Recipient is qualified for a future Federal award.
  - 1) Upon termination of a Federal award, the Federal awarding agency must provide the information required under the Federal Funding Accountability and Transparency Act (FFATA) to the Federal website established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by [41 U.S.C. 417b](#) and [31 U.S.C. 3321](#) and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at [2 CFR part 180](#).

## **1.25 Effects of Suspension and Termination**

Costs to the Recipient resulting from financial obligations incurred by the Recipient during a suspension or after termination of an agreement is not allowable unless the DOE expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

- A. The costs result from financial obligations which were properly incurred by the Recipient before the effective date of suspension or termination, and are not in anticipation of it; and
- B. The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

## **1.26 Changes**

Any change that alters the project scope, milestones or deliverables requires prior written approval of the DOE. DOE may deny reimbursement for any failure to comply with the requirements in this article.

As the result of changing circumstances at any point during the term of this Agreement, progress or results may indicate that a change to this Agreement may be necessary to achieve the requirements of the Award. Recommendations for modifications, including justifications to support those changes, will be documented in writing, and submitted by the Recipient to the TPO. This documentation will detail the technical, schedule, and financial impact of the proposed

modification. Agreement modifications will be approved in writing by the Parties. The DOE is not obligated to pay for any costs related to modifications until formally agreed to by DOE and the Recipient. For minor or administrative modifications (e.g., changes to the paying office or appropriation data), Recipient approval is not required.

New or modified activities/locations are subject to additional National Environmental Policy Act (NEPA) review and are not authorized for federal funding until the TPO provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or change locations prior to written authorization from the TPO, the Recipient does so at risk of not receiving federal funding for those activities, and such costs may not be recognized as allowable.

### **1.27 Fraud, Waste, and Abuse**

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of DOE activities. The OIG maintains a hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

The Recipient must disclose in writing, in a timely manner, to DOE or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. (See [31 U.S.C. 3321](#), and [41 U.S.C. 2313](#)).

## **Section II. Financial Provisions**

### **2.1 Maximum Obligation**

The maximum obligation of the DOE is limited to \$5,000,000, but may not exceed 30 percent of the costs of the applicable Project, and is conditioned upon the Recipient successfully completing the capital improvement project, and is further subject to the terms outlined in Article 1.1 – Conditional Availability of Funds. Funding is contingent upon availability of federal funds appropriated by Congress for the purpose of this program and as otherwise outlined in this Fully Conditional Agreement.

Recipient can receive no more **than** \$393,970, the amount initially requested in Recipient's application, even if total costs equal more than the amount initially requested. If total costs are less than what was initially estimated in the application, the funding amount will be reduced to reflect 30 percent of the total costs. The Recipient must refund any excess payments received from DOE, including any costs determined unallowable.

## 2.2 Decontamination and/or Decommissioning Costs

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (1) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (2) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this agreement, whether said work was performed prior to or subsequent to the effective date of the agreement.

## 2.4 Cost Principles/Allowable Costs

This Agreement governs an incentive payment under [42 U.S.C. § 15883](#) and the only allowable costs are those for capital improvements directly related to grid resiliency, improving dam safety, and environmental improvements. This Agreement is not federal financial assistance as that term is defined at [2 CFR 200.1](#).

However, for purposes of this Agreement, DOE determines the allowability of costs in accordance with the cost principles established at [2 CFR Part 200 Subpart E](#) and as amended by [2 CFR Part 910](#), and [48 CFR 31.2](#), as applicable based on Recipient's organization type. All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs. Such records must be adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable, and allocable, and comply with the appropriate cost principles. Upon request, the Recipient is required to provide such records to DOE, and such records are subject to audit. Failure to provide DOE with adequate supporting documentation may result in a determination that those costs are unallowable.

## 2.5 Pre-Award Costs

The Recipient is authorized to request reimbursement for costs incurred on or after November 15, 2021, if:

- A. Such costs are allowable;
- B. Such costs are not otherwise restricted by NEPA or the National Historic Preservation Act (NHPA) requirements; and
- C. Such costs are not otherwise restricted by any other article of this Agreement.

## 2.6 Payment

The Recipient is required to submit reimbursement requests (invoices) electronically through DOE's Oak Ridge Financial Service Center Vendor Inquiry Payment Electronic Reporting System (VIPERS). To access and use VIPERS, the Recipient is required to enroll and login to the VIPERS

website (<https://vipers.doe.gov/>). Only the Recipient may submit reimbursement requests to DOE.

DOE will disburse payments under this Agreement through Automated Clearing House VIPERS. The Recipient may check the status of its payments at the VIPERS website. All payments are made by electronic funds transfer to the bank account identified on the Bank Information Form that the Recipient filed with the U.S. Department of Treasury.

The Recipient may submit its final invoice to DOE only after:

- A. It has submitted all required reports, including proof of completion of the Project and evidence documenting the improvement as outlined in Attachment 6 – Documentation Required for Final Incentive Payment, to the extent it is incorporated into this Agreement, and;
- B. DOE has provided written notification that the reports have been accepted and validated, and that the Recipient may submit its final invoice.

The DOE approving official will approve the invoice as soon as practical, but not later than 30 days after the Recipient's request is received, unless the billing is improper, or the Recipient fails to comply with the articles of this Agreement. Upon receipt of an invoice payment authorization from the DOE approving official, the payment will be disbursed to the Recipient.

### Documentation Required

Every invoice submitted by the Recipient must include:

- A. A Standard Form 270 *Request for Advance or Reimbursement*;
- B. A "Reimbursement Request Spreadsheet," which must contain the following information.
  - 1) A table listing of all project invoices, i.e., an Invoice Table. The table must include the invoice date, invoice number, vendor name, time period covered by the invoice, task the invoice is associated with, and invoice amount, and sum of all invoices.
- C. Copies of all cumulative invoices must be submitted for the final, comprehensive record. The copies of invoices should be organized in a manner that allows efficient review by DOE when comparing copies of invoices to the Invoice Table; and supporting documentation, which may consist of summary information (e.g., printouts from internal financial systems) or detailed documentation (e.g., invoices on appropriate letterhead, timecards, travel vouchers).

This information should be organized in a manner consistent with how invoices were presented on semi-annual and/or final Performance Report Narratives. Upon request by the TPO, the Recipient is required to provide DOE with additional supporting documentation to explain or justify particular expenditures for which it is seeking reimbursement.

## **2.7 Potentially Duplicative Funding Notice**

If the Recipient has or receives any other award of federal funds for activities that potentially overlap with the activities funded under this Agreement, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Agreement. If there are identical cost items, the Recipient must promptly notify the TPO in writing of the potential duplication, ensure appropriate use of multiple program funds, and eliminate any inappropriate duplication of funding.

Section 247 funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related OMB guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL.

## **2.8 Collection of Amounts Due**

Any funds paid to the Recipient in excess of the amount to which the Recipient is finally determined to be entitled under the terms of this Agreement constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, DOE may reduce the debt by:

- A. Making an administrative offset against other requests for reimbursements;
  - 1) Withholding advance payments otherwise due to the Recipient; or
  - 2) Other action permitted by federal statute.

Except where otherwise provided by statutes or regulations, DOE will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

## **Section III. Miscellaneous Provisions**

### **3.1 Performance of Work in the United States**

All work under this Agreement must be performed in the United States (i.e., the Recipient must expend 100 percent of the total project cost in the United States), unless the Recipient receives advance written authorization from DOE to perform certain work overseas. If the Recipient fails to comply with the Performance of Work in the United States requirement, DOE may deny reimbursement for the work conducted outside the United States and such costs may not be reimbursed if the work is performed by the Recipient, contractors or other project partners.



### **3.2 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment**

Recipients and subrecipients are prohibited from obligating or expending project funds (federal and non-federal funds) as set forth in [2 CFR 200.216](#):

- A. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  - 1) Procure or obtain covered telecommunications equipment or services;
  - 2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
  - 3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.
- B. As described in section 889 of [Public Law 115-232](#), “covered telecommunications equipment or services” means any of the following:
  - 1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
  - 2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
  - 3) Telecommunications or video surveillance services provided by such entities or using such equipment;
  - 4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- C. For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- D. In implementing the prohibition under section 889 of [Public Law 115-232](#), heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered



telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

- E. When the Recipient or Subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The Recipient or Subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.
- F. For additional information, see section 889 of [Public Law 115-232](#) and [§ 200.471](#).

### Definitions as Used in this Article

- A. *Covered foreign country* – means The People's Republic of China.
- B. *Covered telecommunications equipment or services* means (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation [or any subsidiary or affiliate of such entities]; (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- C. *Critical technology* means (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or (ii) For reasons relating to regional stability or surreptitious listening; (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal

Regulations (relating to export and import of nuclear equipment and material); (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

- D. *Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

### Prohibition

Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 ([Pub. L. 115-232](#)) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

The Recipient is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in [Federal Acquisition Regulation 4.2104](#).

### Exceptions

This clause does not prohibit the Recipient from providing:

- A. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- B. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

### Reporting Requirement

In the event the Recipient identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Agreement performance, or the Recipient is notified of such by a contractor at any tier or by any other source, the Recipient shall report the following information: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier CAGE code (if known); brand; model number (original equipment manufacturer

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in the preceding clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Recipient shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. The Recipient shall insert the substance of this clause, including this paragraph in all contracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

### **3.3 Foreign National Participation and Post-Agreement Due Diligence Reviews**

A “foreign national” is defined as any person who is not a U.S. citizen by birth or naturalization. If the Recipient (including any of its contractors) anticipates involving foreign nationals in the performance of this Agreement, the Recipient must, upon DOE’s request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval.

The volume and type of information required may depend on various factors associated with this Agreement. The TPO will notify the Recipient if this information is required. DOE may elect to deny a foreign national’s participation in this Agreement. Likewise, DOE may elect to deny a foreign national’s access to a DOE sites, information, technologies, equipment, programs, or personnel. DOE’s determination to deny participation or access is not appealable.

During the period of performance of this Agreement, DOE may conduct ongoing due diligence reviews, through government resources, to identify potential risks of undue foreign influence. In the event a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in this Agreement.

### **3.4 Export Control**

The United States Government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the United States to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” The Recipient is responsible for ensuring compliance with all applicable United States export control laws and regulations relating to any work performed under this Agreement. The Recipient must immediately report to DOE any export control violations related to the project funded under this Agreement, at the Recipient or subcontractor level, and provide the corrective action(s) to prevent future violations.

### **3.5 Foreign Collaboration Considerations**

The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations, or governments in connection with its DOE-funded agreement scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement. The Recipient must provide DOE with a written list of all existing foreign collaborations, organizations, and governments in which has entered in connection with its DOE-funded agreement scope.

In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the Recipient in support of and/or related to this Agreement, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on this Agreement but resulting in provision of a thing of value from or to the agreement must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by Recipient staff in accordance with the Recipient's standard policies and procedures.

### **3.6 Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement should be American-made.

### **3.7 Davis-Bacon Act Requirements**

This Award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 on an award funded directly by or assisted in whole or in part by funds made available under this Award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not

less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The recipient must comply with all Davis-Bacon Act requirements, including but not limited to:

- A. Ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subrecipient or contract awards.
- B. Being responsible for compliance by any subrecipient or contract with the Davis-Bacon labor standards.
- C. Receiving and reviewing certified weekly payrolls submitted by all subrecipients and contractors for accuracy and to identify potential compliance issues.
- D. Maintaining original certified weekly payrolls for three years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- E. Conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subrecipients and contractors and as requested or directed by the DOE.
- F. Cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.
- G. Posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.
- H. Notifying GDO of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this award, subrecipient award, contract or subcontract.
- I. Preparing and submitting to GDO, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year, in accordance with the reporting instructions in Attachment 2, Federal Assistance Reporting Checklist.

The recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. GDO will notify the recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Recipient must ensure the timely submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act.

The Department of Energy has contracted with LCPtracker, a third-party DBA electronic payroll compliance software application. A waiver for the use of LCPtracker may be granted to a particular recipient if they are unable or limited in their ability to use or access the software.

#### **Davis-Bacon Act Electronic Certified Payroll Submission Waiver**

A waiver must be granted before the start of work subject to Davis-Bacon Act requirements (e.g., construction, alteration, or repair work). The Recipient does not have the right to appeal DOE's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon Act provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

### **3.8 National Environmental Policy Act (NEPA)**

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of federal funds. Based on information available, DOE has not issued a final NEPA determination for this project.

The Parties hereby agree that the availability of funds to the Recipient for payment of costs incurred by the Recipient is conditioned upon the final NEPA determination. No funds, therefore, shall be made available to the Recipient for payment, and DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient prior to written authorization from GDO.

Should the Recipient elect to undertake activities or change locations prior to authorization from GDO, the Recipient does so at risk of not receiving federal funding for those activities and such costs may not be recognized as allowable.

### **3.9 Organizational Conflicts of Interest**

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization ([2 CFR 200.318\(c\)\(2\)](#)). The Recipient must disclose in writing any potential or actual organizational conflict of interest to the TPO. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian Tribe. For a list of the information that must be included the disclosure, see Section VI. of the [DOE interim Conflict of Interest Policy for Financial Assistance](#).

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds. Otherwise, DOE may terminate this Agreement in accordance with [2 CFR 200.340](#) unless continued performance is determined to be in the best interest of the Federal Government.

The Recipient must flow down the requirements of the interim conflicts of interest policy to any contracting non-federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring subcontractor compliance with this article. If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian Tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

### **3.10 Compliance with Federal, State, and Municipal Law, and Inconsistency with Federal Law**

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Agreement. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Agreement. Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Agreement must be referred to the DOE TPO for guidance.

### **3.12 Nondisclosure and Confidentiality Agreement Assurances**

The following nondisclosure and confidentiality agreement assurances must be met by the Recipient:

- A. By entering into this Agreement, the Recipient attests that it does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.
- B. The Recipient further attests that it does not and will not use any federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
  - 1) *“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and*



*specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”*

- C. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a federal department or agency governing the nondisclosure of classified information.
- D. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

### **3.13 Lobbying**

By accepting funds under this Agreement, the Recipient agrees that none of the funds obligated via this agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in [18 U.S.C. § 1913](#). This restriction is in addition to those prescribed elsewhere in statute and regulation.

### **3.14 Prohibition Related to Foreign Government-Sponsored Talent Recruitment Programs**

Persons participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk are prohibited from participating in this Agreement. The Recipient must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the Recipient must notify DOE within five (5) business days upon learning that an owner of the Recipient or subrecipient or individual on the project team is or is believed to be participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk.

DOE may modify and add requirements related to this prohibition to the extent required by law.



Definitions for this article include:

- A. Foreign Government-Sponsored Talent Recruitment Program – An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.
- B. Foreign Country of Risk – DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

### **3.15 Affirmative Action and Pay Transparency Requirements**

All Federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- A. Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- B. Recipients and contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors, and subcontractors.
- C. Recipients, subrecipients, contractors, and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor’s Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP’s Technical Assistance Guide should be consulted to gain an understanding of the requirements and

possible actions the recipients, subrecipients, contractors, and subcontractors must take. See OFCCP's Technical Assistance Guide at:

<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf>.

Additional, for construction projects valued at \$35 million or more and lasting more than one year, recipients, subrecipients, contractors, and subcontractors may be selected by OFCCP to participate in the Mega Construction Project Program. DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the award. This program offers extensive compliance assistance with EO 11246. For more information regarding this program, see <https://www.dol.gov/agencies/ofccp/Mega-Construction-Project-Program>.

### 3.16 Impacted Indian Tribes

If any activities anticipated to take place under this Agreement could potentially impact the resources or reserved rights of Indian Tribe(s), as defined in [25 U.S.C. § 5304 \(e\)](#), then the Recipient/Awardee agrees to develop and maintain active and open communications with the potentially impacted Indian Tribe(s), during the period of performance of the Agreement, and, if necessary, after the end of the Agreement. If the Recipient proposes any activities that could impact Tribal resources or reserved rights, including but not limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights, the Recipient must notify DOE. The Recipient/Awardee must coordinate with DOE on all Tribal interactions. DOE will determine if formal government-to-government consultation is needed, and DOE will conduct that consultation accordingly.

- Tribal lands is as defined in 25 U.S.C. §§ 3501(2), (3), (4)(A) and (13).
- Indian Tribe is as defined in 25 U.S.C. § 5304 (e).

### 3.17 Buy American Requirement for Infrastructure Projects

#### A. Definitions

**Components** See [2 CFR 184.3](#) "Definitions."

**Construction Materials** See [2 CFR 184.3](#) "Definitions."

**Buy America Preference, Buy America Requirement, or domestic content procurement preference** means a requirement that no amount of funds made available through a program for "federal financial assistance" (as that term is defined in [2 CFR 184.1](#) as opposed to [2 CFR 200.1](#)) may be obligated for an infrastructure project unless—

- 1) all iron and steel used in the project are produced in the United States;
- 2) the manufactured products used in the project are produced in the United States; or
- 3) the construction materials used in the project are produced in the United States.

**Infrastructure** See [2 CFR 184.4](#) (c) and (d).

**Manufactured Products** See [2 CFR 184.3](#) "Definitions."

**Predominantly of iron or steel** See [2 CFR 184.3](#) "Definitions."

**Infrastructure Project-** See [2 CFR 184.3](#) "Definitions."

**Public-** The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered "public" if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be "utilized primarily for a public purpose" if it is privately operated on behalf of the public or is a place of public accommodation.

**B. Buy America Requirement for Infrastructure Projects (Buy America Requirement)**

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

- 1) All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- 2) All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. See [2 CFR 184.5](#) for determining the cost of components for manufactured products; and
- 3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. See [2 CFR 184.6](#) for construction material standards.

The Buy America Requirement only applies to those articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to the infrastructure in the project. As

such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

The Buy America Requirement only applies to an article, material, or supply classified into one of the following categories\* based on its status at the time it is brought to the work site for incorporation into an infrastructure project:

- (i) Iron or steel products;
- (ii) Manufactured products; or
- (iii) Construction materials;

The Buy America Requirement only applies to the iron or steel products, manufactured products, and construction materials used for the construction, alteration, maintenance, or repair of public infrastructure in the United States when those items are consumed in, incorporated into, or permanently affixed to the infrastructure. An article, material, or supply incorporated into an infrastructure project should not be considered to fall into multiple categories, but rather must meet the Buy America Preference Requirement for only the single category in which it is classified.

All iron and steel, manufactured products, and construction materials used in the infrastructure project must be produced in the United States.

\* Section 70917(c) of the BABA states that “construction materials” do not include cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. Section 70917(c) materials are excluded from Construction materials. Asphalt concrete pavement mixes are typically composed of asphalt cement (a binding agent) and aggregates such as stone, sand, and gravel. Accordingly, asphalt is also excluded from the definition of Construction materials.

Section 70917(c) materials, on their own, are not manufactured products. Further, Section 70917(c) materials should not be considered manufactured products when they are used at or combined proximate to the work site—such as is the case with wet concrete or hot mix asphalt brought to the work site for incorporation. However, when certain Section 70917(c) materials (such as stone, sand, and gravel) are used to produce a manufactured product, such as is

precast concrete processed into a specific shape or form, and is in such state when brought to the work site, then that product is subject to the BABA requirements.

Further clarification is provided in [2 CFR 184](#) on the circumstances under which a determination is made that Section 70917(c) materials should be treated as components of a manufactured product. That determination is based on consideration of: (i) the revised definition of the “manufactured products” at [2 CFR 184.3](#); (ii) a new definition of “section 70917(c) materials” at [2 CFR 184.3](#); (iii) new instructions at [2 CFR 184.4\(e\)](#) on how and when to categorize articles, materials, and supplies; and (iv) new instructions at [2 CFR 184.4\(f\)](#) on how to apply the Buy America preference by category.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

### **C. Certification of Compliance**

Recipients must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this award.

Recipients must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption provided in [2 CFR 184.8](#), are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the recipient. Recipients must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

### **D. Waivers**

When necessary, recipients may apply for, and DOE may grant, a waiver from the Buy America Requirement. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

- Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
- Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation;
- A description of the market research conducted that includes who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research; and
- Anticipated impact to the project if no waiver is issued.

How to submit a waiver: Requests to waive the application of the Buy America Requirement must be submitted in writing to GDO through the TPO.

DOE may request, and the Recipient must provide, additional information for consideration of this waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

### **3.18 Transparency of Foreign Connections**

The Recipient must notify GDO within 15 business days of learning of the following circumstances in relation to the Recipient and subrecipients:

- The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
- Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
- Any current or pending change in ownership structure of the Recipient or subrecipients that increases foreign ownership related to a country of risk;
- Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
- Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
- Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2024

**SUBJECT:** Geothermal Plants 2025 Spring Outages Project; Applicable to the following:  
NCPA Geothermal Facility

**AGENDA CATEGORY:** Discussion/Action

<b>FROM:</b>	Michael DeBortoli	<b>METHOD OF SELECTION:</b>
	Assistant General Manager	<i>Competitive Pricing Process</i>
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Geothermal	

<b>IMPACTED MEMBERS:</b>		
All Members	<input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>
Alameda Municipal Power	<input checked="" type="checkbox"/>	City of Lompoc <input checked="" type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Gridley	<input checked="" type="checkbox"/>	City of Roseville <input checked="" type="checkbox"/>
City of Healdsburg	<input checked="" type="checkbox"/>	City of Santa Clara <input checked="" type="checkbox"/>
		City of Shasta Lake <input type="checkbox"/>
		City of Ukiah <input checked="" type="checkbox"/>
		Plumas-Sierra REC <input checked="" type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input type="checkbox"/>
<i>If other, please specify</i>		
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## RECOMMENDATION:

Approve Resolution 25-XX authorizing the Geothermal Plants 2025 Spring Outages and delegating authority to the General Manager or his designee to award bids, execute agreements, and issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total cost not to exceed \$3,525,000, to be funded from the approved FY 2025 Geothermal Budget and the Geothermal Maintenance Reserve Fund, and authorization to spend \$1,800,000 from the Maintenance Reserve for this work.

## BACKGROUND:

NCPA's Geothermal Plants 1 and 2 require annual, routine maintenance to ensure continued reliable operation of the facilities. During the planned outages, the Geothermal Facilities team will complete preventative and predictive maintenance work on equipment that cannot be worked on while the units operate without affecting the facility's output. NCPA will hire several contractors to support the maintenance team during the 2025 Spring Outages.

Listed below are highlights of major work to be performed at each Plant as a part of the 2025 Spring Outages:

### Plant 1 (U1&2) - May 1<sup>st</sup> thru May 31<sup>st</sup>, 2025

Plant	Category	Cost
Plant 1	Mechanical	\$ 200,000
Plant 1	Electrical	\$ 300,000
Plant 1	Cleaning & Inspections	\$ 185,000
Plant 1	Stretford System	\$ 600,000
Plant 1	Cooling Tower	\$ 20,000
Plant 1	Turbine	\$ 175,000
Plant 1	Balance of the Plant	\$ 250,000
Plant 1 Total		\$ 1,730,000

### Plant 2 (U4) - March 1<sup>st</sup> thru March 31<sup>st</sup>, 2025

Plant	Category	Cost
Plant 2	Mechanical	\$ 300,000
Plant 2	Electrical	\$ 135,000
Plant 2	Cleaning & Inspections	\$ 245,000
Plant 2	Stretford System	\$ 530,000
Plant 2	Cooling Tower	\$ 50,000
Plant 2	Turbine	\$ 85,000
Plant 2	Balance of the Plant	\$ 200,000
Plant 2 Total		\$ 1,545,000

Plant 1&2	Contingency	\$ 250,000
	<b>Total Funding Needed</b>	<b>\$ 3,525,000</b>

#### FISCAL IMPACT:

The total cost is anticipated not to exceed \$3,525,000. A breakdown of the project costs is shown in the table below.

Plant	Cost
Plant 1	\$1,730,000
Plant 2	\$1,545,000
Contingency	\$250,000
<b>Total Project Cost</b>	<b>\$3,525,000</b>

Funding to complete the Geothermal Facility Plants 2025 Spring Outages Project will come from the combined use of funds from the approved FY 2025 Geothermal Budget and the Geothermal Maintenance Reserve. A breakdown of the specific funding sources is shown in the table below.

FY 2025 Budget	Budget	Comments
Routine Maint. (March and May Total)	\$900,000	FY25 Maintenance Budget
Plant 1 Cooling Towers Scoping & Engineering	\$575,000	FY25 Approved Project - Remaining Funds
Bently Nevada 3500 Monitoring System for U1&4	\$250,000	FY25 Approved Projects
Balance of Plant Work, Contingent Maintenance, Well Replacement /Workover	\$1,800,000	Maintenance Reserve
<b>Total Funding Needed</b>	<b>\$3,525,000</b>	

As shown in the table above, funds totaling \$1,800,000 for the Project will come from the Geothermal Maintenance Reserve account. A breakdown of the Geothermal Maintenance Reserve schedule, as well as the 5-year maintenance projections, is shown in the table below.

#### GEO Maintenance Reserve Schedule:

Balances		
Geo Maintenance Reserve (6/30/24)	\$3,555,073	
FY 2024 & 2025 Contributions	\$5,332,452	
Expenses - Plant 1 Unit 2 Overhaul	(\$2,200,000)	
Emergency Eyewash Stations	(\$140,000)	
Warranty Coverage Authorization (Previously Approved \$750k)	(\$93,920)	This is the total spent, the vendor covered the majority of the cost.
FY 25 Spring Outage Work	(\$1,800,000)	
End of FY 2025 Budget Funds	\$4,653,605	

## 5 year Maintenance Projection

	2026	2027	2028	2029	2030
<b>BEGINNING BALANCE</b>	4,653,605	7,086,368	9,621,875	7,528,336	3,808,227.38
<b>Contributions</b>	5,460,263	5,591,270	5,591,270	5,725,551	5,863,190.00
<b>PLANNED SPENDING</b>					
<b>Included in Budget</b>					
Plant 1 Unit 1 Overhaul				(6,831,000)	
Plant 1 Unit 2 Overhaul					(7,070,085.00)
Emergency Eyewash Stations					
Plant 1 Unit 2 Turbine Overhaul					
Plant 2 Unit 4 Overhaul			(6,600,000)		
Well Replacement Workover - 25 Spring Outage	(2,000,000)	(2,000,000)		(1,500,000)	
Balance of Plant Work - 25 Spring Outage	(515,000)	(530,450)	(546,364)	(562,754)	(579,637.00)
Contingent maintenance - 25 Spring Outage	(512,500)	(525,313)	(538,445)	(551,906)	(565,704.00)
<b>Commission Meeting Added</b>					
Plant 1 Unit 2 Overhaul - Warranty Related					
<b>PROJECTED ENDING BALANCE</b>	<b>7,086,368</b>	<b>9,621,875</b>	<b>7,528,336</b>	<b>3,808,227</b>	<b>1,455,991.38</b>

### SELECTION PROCESS:

NCPA is currently soliciting competitive bids from multiple vendors to perform the services required for this project. NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA will issue purchase orders based on the cost and availability of the services needed at the time the services are required.

### ENVIRONMENTAL ANALYSIS:

This project consists of routine, recurring maintenance to the existing equipment listed above. This project will not change the function, size, or operation of the equipment. These activities are categorically exempt under Class 1, 2, 3, 4, and 11 from the provisions of the California Environmental Quality Act pursuant to Sections 15301 (b), 15302 (c), 15303, 15304 and 15311 of the CEQA Guidelines. A Notice of Exemption was approved by the NCPA Commission on October 24, 2024 for this class of work and was filed in both Sonoma and Lake County. Thus, this project conforms to these exemptions and no environmental review is necessary.

### COMMITTEE REVIEW:

Pending Committee review and approval.

**AFTER FACILITIES APPROVAL:** On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments:

- Resolution 25-XX

**SR: XXX:25**

DRAFT

## **RESOLUTION 25-XX**

### **RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE GEOTHERMAL PLANTS 2025 SPRING OUTAGES PROJECT**

**(reference Staff Report #XXX:25)**

WHEREAS, the Northern California Power Agency (NCPA) operates and maintains on behalf of the project owners a Geothermal facility near Middletown, CA consisting of two power plants with containment areas, 78 steam production and injection wells; and

WHEREAS, in accordance with proper maintenance of the facility, NCPA's Geothermal (Geo) Plant 1 and 2 facilities will be conducting their annual outages in March and May of 2025; and

WHEREAS, during the outages, the Geothermal team will complete preventative maintenance work on equipment that cannot be worked on while the unit is operating without affecting the output of the facility. NCPA will hire a number of contractors to perform work during the outage; and

WHEREAS, the total cost is anticipated not to exceed \$3,525,000. The sources for the funding is from the combined use of Maintenance Reserve, remaining project, and Routine Fixed funds from the 2025 approved Budget; and

WHEREAS, NCPA is currently preparing to solicit competitive bids from multiple vendors to perform the services required for this project; and

WHEREAS, this project consists of routine, recurring maintenance to the existing equipment listed above. This project will not change the function, size, or operation of the equipment. These activities are categorically exempt under Class 1, 2, 3, 4, and 11 from the provisions of the California Environmental Quality Act pursuant to Sections 15301 (b), 15302 (c), 15303, 15304 and 15311 of the CEQA Guidelines. A Notice of Exemption was approved by the NCPA Commission on October 24, 2024 for this class of work and was filed in both Sonoma and Lake County. Thus, this project conforms to these exemptions and no environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes Geothermal Plants 2025 Spring Outages and delegating authority to the General Manager or his designee to award bids, execute agreements, and issue purchase orders for the project in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, for a total cost not to exceed \$3,525,000, to be funded from the approved FY 2025 Geothermal Budget and the Geothermal Maintenance Reserve Fund, and authorization to spend \$1,800,000 from the Maintenance Reserve for this work.

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PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025, by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY



# Commission Staff Report – *DRAFT*

**COMMISSION MEETING DATE:** January 23, 2025

**SUBJECT:** Approval of Second Phase Agreement for Combustion Turbine Project Number Two Repower Project

**AGENDA CATEGORY:** Discussion/Action

<b>FROM:</b>	Michael DeBortoli	<b>METHOD OF SELECTION:</b>
	Assistant General Manager	N/A
Division:	Generation Services	<i>If other, please describe:</i>
Department:	Generation Services	

<b>IMPACTED MEMBERS:</b>					
All Members	<input type="checkbox"/>	City of Lodi <input checked="" type="checkbox"/>	City of Shasta Lake	<input type="checkbox"/>	
Alameda Municipal Power	<input type="checkbox"/>	City of Lompoc	<input checked="" type="checkbox"/>	City of Ukiah	<input type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Palo Alto	<input type="checkbox"/>	Plumas-Sierra REC	<input type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Redding	<input type="checkbox"/>	Port of Oakland	<input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Roseville	<input checked="" type="checkbox"/>	Truckee Donner PUD	<input type="checkbox"/>
City of Healdsburg	<input type="checkbox"/>	City of Santa Clara	<input type="checkbox"/>	Other	<input type="checkbox"/>
<i>If other, please specify</i>					
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## **RECOMMENDATION:**

Approve Resolution 25-XX for (1) Commission approval of the Second Phase Agreement for Combustion Turbine Project Number Two Repower Project (Second Phase Agreement), and authorizing the General Manager of Northern California Power Agency (NCPA) or their designee, to enter into the Second Phase Agreement on behalf of NCPA, including any modifications to the Second Phase Agreement approved by NCPA's General Counsel, and (2) upon approval and execution of the Second Phase Agreement, Commission approval and authorization for the General Manager or their designee to award bids, execute agreements, and to issue purchase orders for work as described in the Second Phase Agreement, and (3) Commission approval and authorization for NCPA to use certain CT2 Repower Project Participant funds currently held by NCPA in the CT2 Project decommissioning and reserve accounts to fund certain Second Phase Agreement Activities on behalf of the CT2 Repower Project Participants, as shall be further coordinated with the CT2 Repower Project Participant Designated Representatives.

## **BACKGROUND:**

Pursuant to the Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two-Unit One (CT2 Project), dated as of August 1, 1992, including amendments thereto, (the "CT2 Third Phase Agreement") the Project Participants<sup>1</sup> (hereinafter referred to as "CT2 Project Participants") entered into the CT2 Third Phase Agreement to provide for the construction, operation and financing of the CT2 Project, the sale by NCPA of capacity and energy of the CT2 Project to the CT2 Project Participants, and the security for the bonds to be issued to finance the CT2 Project. The CT2 Project has reached its end of life and is no longer serviceable; therefore, unless the CT2 Project is repowered the CT2 Project will be decommissioned.

Certain CT2 Project Participants<sup>2</sup> (the "CT2 Repower Project Participants") are interested in retaining or developing power generation to meet the future electric demands of their electric customers, and now desire to repower the CT2 Project (the "CT2 Repower Project") to extend the period of time during which the CT2 Repower Project can operate to meet the electric demands of their electric customer. Pursuant to Section 6.3.2 of the Amended and Restated Facilities Agreement, the "Second Phase" of a NCPA Project consists of all work performed after one or more NCPA Members has signed a Second Phase Agreement with NCPA for project surveys, preliminary investigations, study, design, or development, but before a Third Phase Agreement for the NCPA Project becomes effective.

To accomplish the goal of repowering the CT2 Project, the CT2 Repower Project Participants desire NCPA to develop surveys, preliminary investigations, cost estimates, project schedules, and other studies required to complete the CT2 Repower Project. The CT2 Repower Project Participants further desire NCPA to develop, issue and select equipment through requests for proposals, and place deposits on long lead time CT2 Repower Project equipment to obtain queue positions in the factory for production.

Therefore, NCPA, working in coordination with the CT2 Repower Project Participants, has developed the Second Phase Agreement to provide all means necessary for NCPA to conduct all Second Phase Agreement Activities and work associated with the development of the CT2

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<sup>1</sup> The CT2 Project Participants include the Cities of Alameda, Lodi, Lompoc and Roseville.

<sup>2</sup> The CT2 Repower Project Participants include the Cities of Lodi, Lompoc and Roseville.



Repower Project on behalf of the CT2 Repower Project Participants, and to enable and obligate the CT2 Repower Project Participants to pay for all Project Costs incurred by NCPA for undertaking the foregoing activities. Each CT2 Repower Project Participant and their respective Project Participation Percentage is listed below:

<b>Participant</b>	<b>Project Participation Percentage</b>	<b>Project Participation MW</b>
City of Lodi	45.892%	22.90
City of Lompoc	10.020%	5.00
City of Roseville	44.088%	22.00
<b>Total</b>	<b>100.000%</b>	<b>49.90</b>

Contingent upon CT2 Repower Project Participant agreement and support, it is expected that the resulting work product produced by NCPA in accordance with the Second Phase Agreement will be presented as a recommendation to the Commission for the further development and construction of the CT2 Repower Project, and a new Third Phase Agreement is expected to be presented to the Commission for review and approval. Contemporaneously, NCPA will seek final approval from the CT2 Repower Project Participants through a new Third Phase Agreement for the Project that would govern the rights and obligations of NCPA and CT2 Repower Project Participants related to the financing, design, construction, operation, and sale and purchase of energy and capacity from the CT2 Repower Project. NCPA will also separately develop and seek final approval of an agreement to terminate the existing CT2 Third Phase Agreement, to allocate and settle any ongoing or undischarged liabilities, credits or obligations from the CT2 Third Phase Agreement to the CT2 Project Participants and/or CT2 Repower Project Participants, until such liabilities, credits, or obligations are satisfied in full.

For your reference, a copy of the Second Phase Agreement has been attached to this staff report for your reference.

#### **FISCAL IMPACT:**

By executing the Second Phase Agreement, each CT2 Repower Project Participant acknowledges and agrees to be bound by the terms and conditions of the Second Phase Agreement, and that the Second Phase Agreement is written as a “take-or-pay” agreement; therefore, any and all Project Costs incurred by NCPA under this Second Phase Agreement shall be allocated and charged to each CT2 Repower Project Participant in proportion to such CT2 Repower Project Participant’s Project Participation Percentage as set forth in Exhibit A of the Second Phase Agreement.

Upon approval and execution of the Second Phase Agreement and subject to subsequent approval of one or more CT2 Repower Project Participants, NCPA shall be authorized to use certain CT2 Repower Project Participant funds currently held by NCPA in the CT2 Project decommissioning and reserve accounts to fund certain Second Phase Agreement Activities on behalf of the CT2 Repower Project Participants. Total Project Costs associated with the Second Phase Agreement Activities are estimated to be approximately \$5,118,964.00, but all actual Project Costs incurred by NCPA will be invoiced to the CT2 Repower Project Participants in accordance with the Second Phase Agreement.

**SELECTION PROCESS:**

Upon Commission approval of the Second Phase Agreement, NCPA will request bids for the specific scope of work contained in the Second Phase Agreement consistent with NCPA procurement policies and procedures. NCPA will issue purchase orders based on cost and availability of the services needed at the time the services are 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:**

On January 8, 2025 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (1):

- Resolution 25-XX
- Second Phase Agreement

## **RESOLUTION 25-XX**

### **RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE CT2 REPOWER SECOND PHASE AGREEMENT**

**(reference Staff Report XXX:25)**

WHEREAS, NCPA operates the Combustion Turbine Project Number Two ("CT2 Project") on behalf of Project Participants; and

WHEREAS, the equipment that makes up the CT2 Project is inoperative, no longer serviceable, and as a result, the NCPA CT2 Project has reached the end of life; and

WHEREAS, NCPA and the Project Participants are interested in retaining or developing power generation to meet the future electric demands of the Participants and their electric customers. NCPA proposes to repower the CT2 Project (the "CT2 Repower Project" or the "Project") to extend the period during which the CT2 Project can operate; and

WHEREAS, pursuant to Section 6.3.2 of the Amended and Restated Facilities Agreement, the "Second Phase" of a NCPA Project consists of all work performed after one or more NCPA Members has signed a Second Phase Agreement with NCPA for project surveys, preliminary investigations, study, design, or development, but before a Third Phase Agreement for the NCPA Project becomes effective; and

WHEREAS, the Participants desire NCPA to design, develop cost estimates, develop project schedules, and develop other studies required to complete the Project. The Participants further desire NCPA to develop, issue and select equipment through requests for proposals, and place deposits on long lead time Project equipment to obtain queue positions in the factory for production; and

WHEREAS, this Agreement will enable NCPA, on behalf of the Participants, to provide all means necessary for NCPA to conduct all Second Phase Agreement Activities and work associated with the development of the Project, and to enable and obligate the Participants to pay for all Project Costs incurred by NCPA for undertaking the foregoing activities; 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 (1) approves of the Second Phase Agreement for Combustion Turbine Project Number Two Repower Project (Second Phase Agreement), and authorizes the General Manager of Northern California Power Agency (NCPA) or their designee, to enter into the Second Phase Agreement on behalf of NCPA, including any modifications to the Second Phase Agreement approved by NCPA's General Counsel, and (2) upon approval and execution of the Second Phase Agreement, the Commission approves and authorizes the General Manager or their designee to award bids, execute agreements, and to issue purchase orders for work as described in the Second Phase Agreement, and (3) the Commission approves and authorizes for NCPA to use certain CT2 Repower Project Participant funds currently held by NCPA in the CT2 Project decommissioning and reserve accounts to fund certain Second Phase Agreement Activities on behalf of the CT2 Repower Project Participants, as shall be further coordinated with the CT2 Repower Project Participant Designated Representatives.

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PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2025 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

\_\_\_\_\_  
JAMES "BO" SHEPPARD  
CHAIR

ATTEST:

\_\_\_\_\_  
CARRIE A. POLLO  
ASSISTANT SECRETARY

**DRAFT**

**SECOND PHASE AGREEMENT  
FOR  
COMBUSTION TURBINE PROJECT NUMBER TWO  
REPOWER PROJECT**

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This SECOND PHASE AGREEMENT FOR COMBUSTION TURBINE PROJECT NUMBER TWO REPOWER PROJECT (this "Agreement") is dated as of \_\_\_\_\_, 20\_\_ by and among the Northern California Power Agency, a joint powers agency of the State of California ("NCPA"), and the signatories to this Agreement other than NCPA ("Participants"). NCPA and the Participants are referred to herein individually as a "Party" and collectively as the "Parties".

## **RECITALS**

A. NCPA has heretofore been duly established as a public agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities, and improvements for the generation and transmission of electric capacity and energy for resale.

B. Each of the Participants is a signatory to the Joint Powers Agreement which created NCPA and therefore is a Member.

C. Each of the Participants to this Agreement have executed the Amended and Restated Facilities Agreement, dated October 1, 2014, which establishes the framework under which Project Agreements are created for the development, design, financing, construction, and operation of specific NCPA Projects.

D. NCPA and the Participants are interested in retaining or developing power generation to meet the present and future electric demands of the Participants and their electric customers.

E. Each Participant is authorized by its Constitutive Documents to obtain electric capacity and energy for its present or future requirements, through contracts with NCPA or otherwise.

F. NCPA proposes to repower the Combustion Turbine Project Number Two (the “CT2 Repower Project” or the “Project”) to extend the period of time during which the Combustion Turbine Project Number Two can operate to meet the electric demands of the Participants and their electric customers.

G. Pursuant to Section 6.3.2 of the Amended and Restated Facilities Agreement, the “Second Phase” of a NCPA Project consists of all work performed after one or more NCPA Members has signed a Second Phase Agreement with NCPA for project surveys, preliminary investigations, study, design, and/or development, but before a Third Phase Agreement for the NCPA Project becomes effective.

H. The Participants desire NCPA to develop surveys, preliminary investigations, cost estimates, project schedules, and other studies required to complete the Project.



I. The Participants further desire NCPA to develop, issue and select equipment through requests for proposals, and place deposits on long lead time Project equipment to obtain queue positions in the factory for production.

J. This Agreement is intended to enable NCPA on behalf of the Participants to provide all means necessary for NCPA to conduct all Second Phase Agreement Activities and work associated with the development of the Project, and to enable and obligate the Participants to pay for all Project Costs incurred by NCPA for undertaking the foregoing activities.

K. Contingent upon Participant agreement and support, it is expected that the resulting work product produced by NCPA in accordance with this Agreement will be presented as a recommendation to the Commission for the further development and construction of the Project, and an associated Third Phase Agreement is expected to be presented to the Commission for review and approval. Contemporaneously, NCPA will (i) seek final approval from Participants through a Third Phase Agreement for the Project that would govern the rights and obligations of NCPA and Participants related to the financing, design, construction, operation, and sale and purchase of energy and capacity from the Project, and (ii) separately develop and seek final approval of an agreement to terminate the existing Agreement for Construction, Operation and Financing of Combustion Turbine Project Number Two-Unit One, dated as of August 1, 1992, including any amendments thereto, (the "CT2 Third Phase Agreement"), to allocate and settle any

ongoing or undischarged liabilities, credits or obligations from the CT2 Third Phase Agreement to the CT2 Third Phase Agreement participants or Participants, until such liabilities, credits, or obligations are satisfied in full; provided, however, regarding liability associated with project decommissioning, the CT2 Third Phase Agreement participants and Participants have agreed in principle to allocate any ongoing or undischarged liabilities, credits or obligations pertaining to project decommissioning in accordance with the principles set forth in the Memorandum of Understanding for CT2 Third Phase Agreement Decommissioning ("Decommissioning MOU") dated as of \_\_\_\_\_, 20\_\_.

L. Each of the Parties intends to observe the provisions of this Agreement in good faith and shall cooperate with all other Parties in order to achieve the full benefits of joint action.

M. The Parties desire to equitably allocate Project Costs incurred by NCPA under this Agreement among the Participants as further set forth herein.

N. The Participants further desire, insofar as possible, to insulate other Members who are not Participants, from risks inherent in the services and transactions undertaken on behalf of the Participants pursuant to this Agreement.

NOW, THEREFORE, the Parties agree as follows:

## **Section 1. Definitions.**

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 1 of this Agreement shall have the meaning indicated in Section 1 of the Power Management and Administrative Services Agreement, dated October 1, 2014:

1.1.1 “Administrative Services Costs” means that portion of the NCPA administrative, general and occupancy costs and expenses, including those costs and expenses associated with the operations, direction and supervision of the general affairs and activities of NCPA, general management, treasury operations, accounting, budgeting, payroll, human resources, information technology, facilities management, salaries and wages (including retirement benefits) of employees, facility operation and maintenance costs, taxes and payments in lieu of taxes (if any), insurance premiums, fees for legal, engineering, financial and other services, power management services, general settlement and billing services and general risk management costs, that are charged directly or apportioned to the provision of services under this Agreement.

Administrative Services Costs as separately defined herein and used in the context of this Agreement is different and distinct from the term Administrative Services Costs as defined in Section 1 of the Power Management and Administrative Services Agreement.

1.1.2 “Agreement” means this Second Phase Agreement for Combustion Turbine Project Number Two Repower Project, including all Exhibits attached hereto.

1.1.3 “All Resources Bill” has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.4 “CAISO” means the California Independent System Operator Corporation, or its functional successor.

1.1.5 “Commission” has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.6 “Constitutive Documents” means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder with respect to the governance of NCPA, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts, or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its city charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant’s governing body.

1.1.7 “Defaulting Participant” has the meaning set forth in Section 6.2.

1.1.8 “Electric System” has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.9 “Energy” means electric energy expressed in units of kWh or MWh.

1.1.10 “Event of Default” has the meaning set forth in Section 6.2.

1.1.11 “Member First Right of Refusal” has the meaning set forth in Section 8.2.

1.1.12 “MW” means megawatt.

1.1.13 “MWh” means megawatt hour.

1.1.14 “NCPA” has the meaning set forth in the Recitals hereto.

1.1.15 “Participant” has the meaning set forth in the recitals of this Agreement.

1.1.16 “Participant First Right of Refusal” has the meaning set forth in Section 8.2.

1.1.17 “Party” or “Parties” has the meaning set forth in the preamble hereto; provided that “Third Parties” are entities that are not Party to this Agreement.

1.1.18 “Power Management and Administrative Services Agreement” means the NCPA Power Management and Administrative Services Agreement, dated as of October 1, 2014 between NCPA and the Members who are signatories to that agreement by which NCPA provides Power Management and Administrative Services.

1.1.19 “Project” means the Combustion Turbine Project Number Two Repower Project as defined in the Recitals of this Agreement.

1.1.20 "Project Costs" are costs associated with the Project authorized pursuant to this Agreement, including but not limited to, any Administrative Services Costs incurred by NCPA while performing its duties in accordance with this Agreement, and all costs incurred by NCPA associated with preliminary selection and procurement of long lead time Project equipment.

1.1.21 "Project Participation Percentage" has the meaning set forth in the Power Management and Administrative Services Agreement, and are set forth in Exhibit A of this Agreement.

1.1.22 "Revenue" means , with respect to each Participant, all income, rents, rates, fees, charges, and other moneys derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System; (c) the proceeds derived by the Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System; and (d) the proceeds derived by Participant directly or indirectly from the consignment and sale of freely allocated

greenhouse gas compliance instruments into periodic auctions administered by the State of California under the California Cap-and-Trade Program, provided that such proceeds are a permitted use of auction proceeds, but the term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Participant or (ii) contributions from customers for the payment of costs of construction of facilities to serve them.

1.1.23 "Second Phase Agreement Activities" has the meaning set forth in Section 2 of this Agreement.

1.1.24 "Term" has the meaning set forth in Section 9.

1.1.25 "Third Party" means an entity (including a Member) that is not Party to this Agreement.

1.1.26 "Transfer of Rights" has the meaning set forth in Section 8.1.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," "Appendix", "Schedule", or "Exhibit" shall mean a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law,

regulation or ordinance shall be a reference to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended from time to time, or its successor. A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. A reference to a “day” shall mean a Calendar Day unless otherwise specified. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

**Section 2. Purpose.** The purpose of this Agreement is to set forth the terms and conditions under which NCPA shall: (i) develop proposals, schedules, and cost estimates for development of the Project; (ii) solicit proposals for and negotiate agreements for preliminary engineering and preliminary equipment selection and procurement; (iii) evaluate financing options, solicit proposals for Project financing and create a Project financing plan; (iv) engage in all activities related to these basic purposes as further set forth in Exhibit B of this Agreement (the “Second Phase Agreement Activities”), and (v) specify the rights and obligations of the Parties.

**Section 3. Authority and Duties.**

3.1 Authority of NCPA. Upon the Effective Date of this Agreement, NCPA is hereby authorized to commence work pertaining to its duties under this Agreement to complete the Second Phase Agreement Activities. NCPA shall perform the duties and



Second Phase Agreement Activities described in Section 3.2 and Exhibit B to support development of the Project. NCPA, on behalf of itself and the Participants, shall also act as lead or responsible agency for the purposes of any environmental review of or notice of exemptions for the Project, shall act as project manager for all activities, and is responsible for engaging necessary professional services, including those of NCPA staff.

3.2 Duties of NCPA. NCPA shall perform the duties and Second Phase Agreement Activities described in this Section 3.2 and Exhibit B to support development of the Project.

3.2.1 Owner Engineers Support. NCPA shall retain the services of a professional Owners Engineer whom will provide engineering and project management roles throughout the duration of the project. The owner's engineer will provide support from the projects start to finish, assisting with all aspects of the project.

3.2.2 Project Interconnection. NCPA shall coordinate activities required to interconnect the Project to the applicable transmission system, including submitting applications, seeking any required permits, conducting studies, and performing other required actions and duties working with Pacific Gas and Electric Company and the CAISO to support development of applicable interconnection requirements and agreement.

3.2.3 Project Engineering and Design. NCPA shall develop preliminary engineering designs and plans for Project construction, operations, and decommissioning. As part of these activities, NCPA shall develop a comprehensive Project development schedule, including timelines, costs estimates, procedures for tracking and document control support, and recommendations for preliminary equipment selection and procurement proposals (RFP) for all equipment, creating the construction budget and cash flow projection, and establishing the timeline for Phase 3.

3.2.4 Preliminary Equipment Procurement. NCPA shall solicit proposals for and negotiate agreements for preliminary engineering and preliminary equipment selection and procurement, and further set forth in Exhibit B of this Agreement. Upon the Effective Date of this Agreement, the Participants hereby authorize the General Manager to negotiate and enter into agreements for preliminary selection and procurement to secure ordering placement and equipment plans for long lead time Project equipment, including, but not limited to, the Project engine and controls package and Project retrofit exhaust package.

3.2.5 Environmental Permitting and Requirements. NCPA shall conduct all preliminary environmental permitting and requirements and supporting document control, including, but not limited to, requirements associated with CEQA, air permitting and pollution control. NCPA shall analyze and develop a recommendation for acquisition of criteria pollutant offsets, carbon allowances or other

applicable compliance instruments required to support Project construction and operations.

3.2.6 Other Duties. NCPA shall perform other duties and requirements as are further set forth and described in Exhibit B of this Agreement.

3.3 Participant Duties. The duties of the Participants under this Agreement are to:

3.3.1 Make timely payment of all Project Costs.

3.3.2 The Participants hereby agree to conduct all necessary work, secure all necessary authorities, transmit all necessary forms, and to work collaboratively to complete all activities in a timely manner.

3.3.3 Upon execution of this Agreement, each Participant shall identify a Designated Representative who will represent that Participant as part of an ad hoc committee. The ad hoc committee shall be responsible for reviewing the information developed by NCPA staff to achieve the purposes of this Agreement. A Participant may change the designation of its Designated Representative at any time upon providing written confirmation to NCPA.

#### **Section 4. Billing and Cost Allocation.**

4.1 Participant Payment Obligations and Cost Allocation. By executing this Agreement, each Participant acknowledges and agrees to be bound by the terms and conditions of the Agreement, and that the Agreement is written as a “take-or-pay”

agreement. Any Project Costs incurred by NCPA under this Agreement shall be allocated and charged to each Participant in proportion to such Participant's Project Participation Percentage as set forth in Exhibit A. The Project Participant Percentages of each Participant may be revised upon execution of a Third Phase if any Participant withdraws in whole or in part and/or a new Participant join. Notwithstanding the foregoing, Participants are responsible for all obligations and actual costs incurred up to the effective date of changes to participation levels.

4.2 Third Phase Agreement Funding and Participation. The Third Phase Agreement that supersedes and replaces this Agreement, if any, shall provide for reimbursement, retirement or refunding of (i) any preliminary expenditures including financing costs, architectural, engineering, surveying, soil testing, debt issuance costs, and (ii) expenditures relating to the acquisition, construction, and commissioning of the Project, of any expenditure of the Participants incurred in accordance with this Agreement, out of final long-term financing of the Project, or other funding method, including but not limited to cash payments.

4.3 Invoices. NCPA will issue an invoice to each Participant for its share of Project Costs, and all other costs for services provided in accordance with this Agreement and the Amended and Restated Facilities Agreement. Such invoice may be either the All Resources Bill or separate special invoice, as determined by NCPA. At NCPA's discretion, invoices may be issued to Participants using electronic media or physical distribution.

4.4 Payment of Invoices. All invoices delivered by NCPA (including the All Resources Bill) are due and payable thirty (30) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day.

4.5 Late Payments. Any amount due and not paid by a Participant in accordance with Section 4.3 shall be considered late and 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 then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

4.6 Billing Disputes. A Participant may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days after the date of such invoice; nonetheless the Participant shall pay the full amount billed when due. If a Participant does not timely question or dispute the accuracy of any invoice in writing, then the invoice shall be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, then NCPA shall issue a corrected invoice and refund any amounts that may be due to the Participant. If NCPA and the Participant fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after the Participant has disputed it, then the General Manager shall promptly submit the dispute to the Commission for resolution. If the Commission and the Participant fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days after its submission to the Commission, then the dispute may then be

resolved under the mediation and arbitration procedures set forth in Section 12 of this Agreement; provided, however, that prior to resorting to either mediation or arbitration proceedings, the full amount of the disputed invoice must be paid by the Participant.

4.7 Billing Data and Examination of Books and Records.

4.7.1 Billing Data. NCPA shall make billing data available to the Participants in the All Resources Bill, or other invoice, or upon request. NCPA may also, at its sole discretion, make billing support information available to Participants using electronic media (e.g. electronic data portal). Procedures and formats for the provision of such electronic data submission may be established by the Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require the Participants to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

4.7.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

**Section 5. Cooperation and Further Assurances.** Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are consistent with the provisions of this Agreement and which do not involve the assumption

of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

**Section 6. Participant Covenants and Defaults**

6.1 Each Participant covenants and agrees: (i) to make payments to NCPA, from its Electric System Revenues, of its obligations under this Agreement as an operating expense of its Electric System; (ii) to fix the rates and charges for services provided by its Electric System, so that it will at all times have sufficient Revenues to meet the obligations of this Agreement, including the payment obligations; (iii) to make all such payments due NCPA under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any reasonable dispute exists; and (iv) to operate its Electric System, and the business in connection therewith, in accordance with Good Utility Practices.

6.2 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Participant (the “Defaulting Participant”):

(i) the failure of any Participant to make any payment in full to NCPA when due;

(ii) the failure of a Participant to perform any covenant or obligation of this Agreement where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure; provided, that this subsection shall not apply to any failure to make payments specified by subsection 6.2 (i));

(iii) if any representation or warranty of a Participant material to the services provided hereunder shall prove to have been incorrect in any material respect when made and the Participant does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days after the date of receipt of notice from NCPA demanding cure; or

(iv) if a Participant is in default or in breach of any of its covenants or obligations under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement.

6.3 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces; provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager using telephone communication within two (2) Business Days after the onset of the Uncontrollable Force, and provide subsequent written notice to the General Manager and all other Parties within ten (10) Business Days after the onset of the Uncontrollable Force, describing its nature



and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch; provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

6.4 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 6.2 above, as may be applicable, provided, however, upon request of the Defaulting Participant the Commission may waive the default at its sole discretion, where such waiver shall not be unreasonably withheld.

6.5 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 6.2, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Participant, NCPA may take any or all of the following actions:

(i) suspend the provision of services under this Agreement to such Defaulting Participant; or

(ii) demand that the Defaulting Participant provide further assurances to guarantee the correction of the default, including the collection of a surcharge or increase in electric rates, or such other actions as may be necessary to produce necessary Revenues to correct the default.

#### 6.6 Effect of Suspension.

6.6.1 Generally. The suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

6.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with subsection 6.5(i), then such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney's fees, the fees and expenses of other experts, including auditors and accountants, or other reasonable and necessary costs associated with such suspension and any portion of the Project Costs that were not recovered from such Participant as a result of such suspension.

## **Section 7.    Administration of Agreement**

7.1    Commission. The Commission is responsible for the administration of this Agreement. Each Participant shall be represented by its Commissioner or their designated alternate Commissioner (“Alternate”) pursuant to the Joint Powers Agreement. Each Commissioner shall have authority to act for the Participant represented with respect to matters pertaining to this Agreement.

7.2    Forum. Whenever any action anticipated by this Agreement is required to be jointly taken by the Participants, such action shall be taken at regular or special meetings of the NCPA Commission.

7.3    Quorum. For purposes of acting upon matters that relate to administration of this Agreement, a quorum of the Participants shall consist of those Commissioners, or their designated Alternate, representing a numerical majority of the Participants.

7.4    Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement. A unanimous vote of all Participants shall be required for action regarding any Transfer of Rights as described in Section 8 of this Agreement. For all other matters pertaining to this Agreement, a majority vote of the Participants shall be required for action; provided, however, upon the demand of any Participant the vote shall be by Project Participation Percentage and sixty five percent (65.00%) or greater affirmative vote shall be required to take action.

## **Section 8.   Transfer of Rights by Participants**

8.1     A Participant has the right to make transfers, sales, assignments and exchanges (collectively “Transfer of Rights”) of any portion of its Project Participation Percentage and rights thereto, subject to the approval provisions in Section 7.4 of this Agreement. If a Participant desires to transfer all or a portion of its Project Participation Percentage for a specific time interval, or permanently, then NCPA will, if requested by such Participant, use its best efforts to effectuate the Transfer or Rights for the applicable portion of the Participant’s Project Participation Percentage.

8.2     Unless otherwise set forth in this Agreement, before a Participant may request a Transfer of Rights for all or a portion of its Project Participation Percentage pursuant to Section 8.1 to any person or entity other than a Participant, it shall give all other Participants the right to purchase the Project Participation Percentage on the same terms and conditions (“Participant First Right of Refusal”). Before a Participant may transfer all or a portion of its Project Participation Percentage pursuant to Section 8.1 to any person or entity other than a Member, it shall give all Members the right to purchase the Project Participation Percentage on the same terms and conditions (“Member First Right of Refusal”). If a Participant exercises its Participant First Right of Refusal or a Member exercises its Member First Right of Refusal pursuant to this Section 8.2, a Participant or Member shall exercise its respective First Right of Refusal within thirty (30) days of receipt of notice of said proposed Transfer of Rights from the transferring

Participant; provided, however the transferring Participant may grant additional time for a Participant or Member to receive any required approvals from its jurisdictional authority to complete a Transfer of Rights at its sole discretion.

No Transfer of Rights shall relieve a Participant of any of its obligations under this Agreement except to the extent that NCPA receives payment of these obligations from a transferee, or the transferee assumes all obligations under this agreement from the transferring Participant.

**Section 9. Term and Termination.** This Agreement shall become effective when it has been duly executed by all Participants, and delivered to and executed by NCPA (the “Effective Date”). NCPA shall notify all Participants in writing of the Effective Date. This Agreement shall commence on the Effective Date and shall continue until the Agreement terminates, which shall occur when:

9.1 All activities pursuant to this Agreement are terminated by NCPA in its discretion; or

9.2 Upon the effective date of a Third Phase Agreement with one or more Participants for the Project, or

9.3 Upon nine years and eleven months after the Effective Date.

**Section 10. Withdrawal of Participants.** No Participant may withdraw from this Agreement except as otherwise provided for herein.

**Section 11. Settlement of Disputes and Arbitration.** The Parties agree to make best efforts to settle all disputes among themselves connected with this Agreement as a matter of normal business under this Agreement. The procedures set forth in Section 10 of the Power Management and Administrative Services Agreement shall apply to all disputes that cannot be settled by the Participants themselves; provided, that the provisions of Section 4.5 shall first apply to all disputes involving invoices prepared by NCPA.

**Section 12. Miscellaneous**

12.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. Confidential or trade secret information shall be marked or expressly identified as such.

If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any other Party's (the "Supplying Party") confidential data or information, which the Receiving Party has possession of ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days after receipt of the Disclosure Request. Within three (3) Business Days after receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the

Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party's costs reasonably incurred with respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, and the Receiving Party's attorney's fees; or

(ii) that the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

12.2 Indemnification and Hold Harmless. Subject to the provisions of Section 12.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing boards, officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

12.3 Several Liabilities. No Participant shall, in the first instance, be liable under this Agreement for the obligations of any other Participant or for the obligations of NCPA incurred on behalf of other Participants. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of each Participant under this Agreement is, in the first instance, a several obligation and not a joint obligation with those of the other Participants.

Notwithstanding the foregoing, the Participants acknowledge that any debts or obligations incurred by NCPA under this Agreement on behalf of any of them shall be borne solely by such Participants in proportion to their respective Project Participation Percentages, and not by non-Participant Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

In the event that a Participant should fail to pay its share of the debts or obligations incurred by NCPA as required by this Agreement, the remaining Participants shall, in proportion to their Project Participation Percentages, pay such unpaid amounts and shall be reimbursed by the Participant failing to make such payments.

12.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER



DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE, OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

12.5 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the Commission or the governing body of a Participant, as applicable. Any such waiver by the Commission in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

12.6 Amendments.

12.6.1 Amendments in General. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

12.6.2 Approval and Amendment of Exhibits. Any amendment to Exhibit B attached hereto shall take effect after being approved by the Commission in a manner consistent with the voting procedures set forth in Section 7.4 of this Agreement, without the requirement of an approval of the individual Participants' governing bodies.

12.7 Assignment of Agreement.

12.7.1 Binding Upon Successors. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

12.7.2 No Assignment. Neither this Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, which consent shall not be unreasonably withheld.

12.8 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

12.9 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

12.10 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

12.11 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered to a Participant's Commissioner or Alternate, and to the General Manager, or shall be transmitted to the Participant and the General Manager at the addresses shown on the signature pages hereof. The designation of such addresses may be changed at any time by written notice given to the General Manager who shall thereupon give written

notice of such change to each Participant. All such notices shall be deemed delivered when personally delivered, two (2) Business Days after deposit in the United States mail first class postage prepaid, or on the first Business Day following delivery through electronic communication.

12.12 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

12.14 Venue. In the event that a Party brings any action 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.

12.15 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, then each Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

12.16 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 13.2 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

12.17 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

IN WITNESS WHEREOF, NCPA and each Participant have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.

NORTHERN CALIFORNIA  
POWER AGENCY  
651 Commerce Drive  
Roseville, CA 95678

\_\_\_\_\_  
By: Randy S. Howard  
Title: General Manager  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
By: Jane E. Luckhardt  
Its: General Counsel  
Date: \_\_\_\_\_

Attestation (if applicable):

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF LODI  
221 W. Pine Street  
Lodi, CA 95240

CITY OF LOMPOC  
100 Civic Center Plaza  
Lompoc, CA 93436

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By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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Its: City Attorney  
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CITY OF ROSEVILLE  
2090 Hilltop Circle  
Roseville, CA 95747

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**EXHIBIT A**  
**PROJECT PARTICIPATION PERCENTAGES**

The following is the list of Participants who are signatory to this Agreement, and their respective Project Participation Percentage share of the Project:

<b>Participant</b>	<b>Project Participation Percentage</b>	<b>Project Participation MW</b>
City of Lodi	45.892%	22.90
City of Lompoc	10.020%	5.00
City of Roseville	44.088%	22.00
<b>Total</b>	<b>100.000%</b>	<b>49.90</b>

## EXHIBIT B

### Second Phase Agreement Activities

Pursuant to this Agreement and this Exhibit B, NCPA shall perform the following Second Phase Agreement Activities on behalf of the Participants to support development of the Project. The estimated Project Cost for each Second Phase Agreement Activities is listed herein, but such estimated Project Cost line items are subject to change based on actual costs incurred by NCPA.

<b>Second Phase Agreement Activities</b>	<b>Estimated Project Cost</b>
Owner Engineers	\$ 1,054,376
Interconnection Repower Study	\$ 50,000
Plans and Designs	\$ 464,887
Engine and Controls	\$ 1,800,000
Retrofit Exhaust Package	\$ 955,000
Balance of Plant (BOP), Control, and Electric Inlet Heater/Chillers	\$ 294,700
California Environmental Quality Act (CEQA) Consultant	\$ 100,000
Legal Consultant	\$ 100,000
Document Control Consultant	\$ 100,000
Air Permit Consultant	\$ 100,000
Green House Gas Offset Consultant	\$ 100,000
<b>Total Estimated Project Costs</b>	<b>\$ 5,118,964</b>