



12745 N. Thornton Road  
Lodi, CA 95242

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## LEC PPC Agenda

**Date:** September 6, 2018

**Subject:** September 10, 2018 Lodi Energy Center Project Participant Committee Meeting

**Location:** 12745 N. Thornton Road, Lodi, CA and/or Posted Teleconference Locations

**Time:** 10:00 a.m.

\*\*\* In compliance with the Brown Act, you may participate in person at the meeting location or via teleconference at one of the locations listed below. In either case, please: (1) post this notice at a publicly accessible location at the participation location at least 72-hours before the meeting begins, and (2) have a speaker phone available for any member of the public who may wish to attend at your location.

NCPA 651 Commerce Drive Roseville, CA 95678	NCPA 12745 N. Thornton Road Lodi, CA 95241	CITY OF HEALDSBURG 401 Grove Street Healdsburg, CA 95448
BAY AREA RAPID TRANSIT 300 Lakeside Drive, 16 <sup>th</sup> Floor Oakland, CA 94612	CITY OF GRIDLEY 685 Kentucky Street Gridley, CA 95948	CITY OF LOMPOC 100 Civic Center Plaza Lompoc, CA 93438
CITY OF BIGGS 465 "C" Street Biggs, CA 95917	PLUMAS-SIERRA RURAL ELECTRIC COOP 73233 Highway 70 Portola, CA 96122	POWER & WATER RESOURCES POOLING AUTHORITY 106 Polo Rd Glenwood Springs, CO 81601
CALIFORNIA DEPARTMENT OF WATER RESOURCES 2135 Butano Drive, Suite 100 Sacramento, CA 95825	SILICON VALLEY POWER/CITY OF SANTA CLARA 1500 Warburton Avenue, Santa Clara, CA 95050	CITY OF UKIAH 300 Seminary Avenue Ukiah, CA 95482
CITY OF AZUSA 729 N. Azusa Avenue Azusa, CA 91702		

*Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916.781.3636 in advance of the meeting to arrange for such accommodations.*

*The Lodi Energy Center Project Participant Committee may take action on any of the items listed on this Agenda regardless of whether the matter appears on the Consent Calendar or is described as an action item, a report, or an information item. If this Agenda is supplemented by staff reports, they are available to the public upon written request. Pursuant to California Government Code Section 54957.5, the following is the location at which the public can view Agendas and other public writings: NCPA, 651 Commerce Drive, Roseville, CA or [www.ncpa.com](http://www.ncpa.com)*

**1. Call Meeting to Order and Roll Call**

**PUBLIC FORUM**

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

**2. Meeting Minutes – Approval of {Meeting Date} Regular Meeting Minutes**

**MONTHLY REPORTS**

**3. Operational Report for August 2018 – (Jeremy Lawson)**

**4. Market Data Report for August 2018 – Verbal Report (Mike Whitney)**

**5. Monthly Asset Report for July 2018 – (Michael DeBortoli)**

**6. Bidding Strategies Report – Verbal Report and update regarding bidding strategies and regulation down revenues (Ken Goeke)**

**CONSENT CALENDAR**

All items on the Consent Calendar are considered routine and will be approved without discussion by a single roll call vote. Any Project Participant or member of the public may remove any item from the Consent Calendar. If an item is removed, it will be discussed separately following approval of the remainder of the Consent Calendar. Prior to the roll call vote to approve the Consent Calendar, the Participants will be polled to determine if any Participant wishes to abstain from one or more items on the Consent Calendar.

**7. Treasurer's Report for August 2018 – Accept by all Participants**

**8. Financial Report for August 2018 – Approve by all Participants**

**9. GHG Reports (excerpted from Monthly ARB) – Accept by all Participants**

**10. Advanced Turbine Support, LLC MTCSA – Staff is seeking approval of a five-year Multi-Task Consulting Services Agreement with Advanced Turbine Support, LLC for borescope**

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inspections and non-destructive testing services, with a not to exceed amount of \$250,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.

- 11. Ernie and Sons Scaffolding dba Unique Scaffold MTGSA** – Staff is seeking approval of a five-year Multi-Task General Services Agreement with Ernie and Sons Scaffolding dba Unique Scaffold for scaffolding services, with a not to exceed amount of \$2,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.
- 12. Fairchild and Wells dba Fairchild and Associates MTCSA** – Staff is seeking approval of a Multi-Task Consulting Services Agreement with Fairchild and Wells dba Fairchild and Associates for well related consulting services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members
- 13. Burns and McDonnell First Amendment to MTPSA** – Staff is seeking approval of a First Amendment to the five year Multi-Task Professional Services Agreement with Burns and McDonnell, updating the not to exceed amount from \$1,000,000 to \$4,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.
- 14. ABB, Inc. MTGSA** – Staff is seeking approval of a five-year Multi-Task General Services Agreement with ABB, Inc. for generator inspection, testing, troubleshooting, winding and repair, with a not to exceed amount of \$10,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.
- 15. Nozomi Networks, Inc. MTCSA** – Staff is seeking approval of a five-year Multi-Task Consulting Services Agreement with Nozomi Networks, Inc., for cyber security consulting, vulnerability testing and solutions, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.
- 16. Western Hydrologic Consulting, LLP MTCSA** – Staff is seeking approval of a five-year Multi-Task Consulting Services Agreement with Western Hydrologic Consulting, LLP for environmental regulatory compliance report, forecasting/modeling, and design services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.
- 17. Petrochem Insulation, Inc. MTGSA** – Staff is seeking approval of a five-year Multi-Task General Services Agreement with Petrochem Insulation, Inc., for pipe maintenance, including sound abatement and scaffolding, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.
- 18. Rodney Bray MTCSA** – Staff is seeking approval of a five-year Multi-Task Consulting Services Agreement with Rodney Bray for consulting services and supervision, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, SCPPA Members.
- 19. MFP Connect, LLC MTCSA** – Staff is seeking approval of a five-year Multi-Task Consulting Services Agreement with MFP Connect, LLC for energy workforce services on an interim basis

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and to mentor staff for success in public power, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, SCPPA Members.

- 20. Update to PMOA Schedule 6.00** – Staff is seeking approval of an update to PMOA Schedule 6.00, adding Manny Robledo as City of Azusa's Primary Representative to the LEC PPC.

Consent Items pulled for discussion: \_\_\_\_\_

### **BUSINESS ACTION ITEMS**

None

### **CLOSED SESSION**

- 21. Conference with Legal Counsel** – Existing litigation pursuant to California Government Code Section 54956.9(d)(1): One case:

- a. Pacific Gas and Electric Company's (U 39 G) 2019 Gas Transmission and Storage Rate Case, *Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2019 – 2021*, California Public Utilities Commission Application 17-11-009 (filed November 17, 2017).

### **INFORMATIONAL/ DISCUSSION ITEMS**

- 22. Additional Operational Updates** – Staff will provide an update on issues related to Operations.

### **ADJOURNMENT**

Next Regular Meeting: October 8, 2018 at 10:00 a.m.

*Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916.781.3636 in advance of the meeting to arrange for such accommodations.*





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# LEC PPC Meeting Minutes

**Date:** August 13, 2018

**Time:** 10:00 AM

**Location:** Lodi Energy Center – 12745 N. Thornton Rd, Lodi, CA 95242 and by teleconference

**Subject:** Lodi Energy Center Project Participant Committee Meeting

## 1. Call Meeting to Order and Roll Call

The PPC meeting was called to order at 10:00 AM by Chairman Martin Caballero. He asked that roll be called for the Project Participants as listed below.

PPC Meeting Attendance Summary		
Participant	Attendance	Particulars / GES
Azusa - Lehr	Absent	2.7857%
BART - Lloyd	Absent	6.6000%
Biggs - Sorenson	Present	0.2679%
CDWR - Alqaser	Present	33.5000%
Gridley - Borges	Absent	1.9643%
Healdsburg - Crowley	Absent	1.6428%
Lodi - Price	Present	9.5000%
Lompoc - Singh	Absent	2.0357%
MID - Braden	Present	10.7143%
Plumas-Sierra - Brozo	Absent	0.7857%
PWRPA - Bradley	Present	2.6679%
SVP - Hance	Present	25.7500%
Ukiah - Grandi	Absent	1.7857%
Summary		
Present	6	82.4001%
Absent	7	17.5999%
Quorum by #:	No	
Quorum by GES:	Yes	
Meeting Date:	August 13, 2018	

## **Public Forum**

Chairman Caballero asked if any members of the public were present in Lodi or at any of the other noticed meeting locations who would like to address the PPC on any agenda items or on any item within the jurisdiction of the LEC PPC and not listed on the agenda. No members of the public were present.

## **2. Meeting Minutes**

The draft minutes from the July 9, 2018 Regular Meeting were considered. The LEC PPC considered the following motion:

**Date:** 8/13/2018

**Motion:** The PPC approves the minutes from the July 9, 2018 Regular Meeting as presented or *including any edits discussed at today's meeting.*

**Moved by:** CDWR

**Seconded by:** Biggs

**Discussion:** There was no further discussion.

Vote Summary on Motion		
Participant	Vote	Particulars / GES
Azusa	Absent	2.7857%
BART	Absent	6.6000%
Biggs	Yes	0.2679%
CDWR	Yes	33.5000%
Gridley	Absent	1.9643%
Healdsburg	Absent	1.6428%
Lodi	Yes	9.5000%
Lompoc	Absent	2.0357%
Modesto	Yes	10.7143%
Plumas-Sierra	Absent	0.7857%
PWRPA	Yes	2.6679%
Silicon Valley Power	Yes	25.7500%
Ukiah	Absent	1.7857%
Vote Summary		
Total Ayes	6	82.4001%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	7	17.5999%
Result:		Motion Passed

## **MONTHLY REPORTS**

### **3. Operational Reports for July 2018**

Jeremy Lawson presented the Operational Report for July 2018. There were no OSHA recordable accidents, no NERC/WECC or permit violations, and no forced outages. There was a brief outage on July 19<sup>th</sup> when Siemens was conducting flex fire testing. There are no changes to the 2018 outage schedule.

The operational report reflected monthly production of 172,943 MWH, 663 service hours, and equivalent operating availability of 100%. The report set for the Capacity Factor @ 280MW Pmax of 83% and 302MW Pmax of 77%. There were 0 hot starts, 6 warm starts, and 0 cold starts during the month.

### **4. Market Data Report for July 2018**

Mike Whitney presented the operating and financial settlement results for the month. LEC was committed to CAISO 31 out of 31 available days. Most startups were for long-term runs in the month of July. The Plant earned RA incentive payments of \$16.7k for Generic RA and \$6.5k for Flexible RA. The LEC had a record month for revenues, with a total of \$4.8mm (the previous record for the month of July was \$2.1mm).

### **5. Monthly Asset Report**

Mike DeBortoli presented the monthly asset report for June 2018. Mike reported that June saw strong revenues, although variable costs were not in line with budget amount. Mike reviewed the factors which contributed to the increased costs. Mike reviewed the monthly historical comparisons as well as the 12-month history.

### **6. Bidding Strategies Report**

Bernard Erlich presented the Bidding Strategies Report for July 2018. Bernard reviewed bidding and calculating net start-up costs. Bernard reviewed DA and RT net revenues over the month with the Committee.

### **Consent Calendar (Items 7 – 19)**

The consent calendar was considered. Chairman Caballero asked if any Participant wished to have any item removed for separate discussion. Hearing no requests, he then asked if any Participant wished to abstain from one or more items on the Consent Calendar. There were no abstentions. The LEC PPC considered the following motion:

**Date:** 8/13/2018

**Motion:** The PPC approves the Consent Calendar items consisting of agenda items no. **7.** Treasurer's Report for July 2018; **8.** Financial Reports for July 2018; **9.** GHG Reports excerpted from monthly ARB; **10.** Titan Crane & Rigging

MTGSA not to exceed \$500,000 for trucking and crane services, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **11.** Eaton Corporation MTGSA not to exceed \$2,000,000 for electrical services, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **12.** Montrose Air Quality Services, LLC MTGSA not to exceed \$250,000 for rate, source and emissions testing, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, or SCPPA Members; **13.** KW Emerson, Inc. MTGSA not to exceed \$1,000,000 for maintenance services, including earthwork, asphalt patching, utility easement work, and minor road and tunnel maintenance, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **14.** Danick Mechanical MTGSA not to exceed \$1,000,000 for T&M maintenance services, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **15.** Tetra Engineering Group, Inc. MTPSA not to exceed \$1,000,000 for inspections related to HRSG, power piping, and engineering consulting services, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **16.** Electrical Maintenance Consultants MTGSA not to exceed \$2,000,000 for electrical related services, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **17.** Pengo Wirelines of California MTPSA not to exceed \$750,000 for downhole wirelines services, for use at all NCPA Generation Services facilities; **18.** PMOA Schedule 1.00, Exhibit 5 update to reflect the current CAISO GMC rates; **19.** 2019 LEC Outage Schedule for LEC

**Moved by:**  
**Seconded by:**

**Lodi**  
**CDWR**

**Moved by:**  
**Seconded by:**

**Lodi**  
**CDWR**

Discussion: There was no further discussion

Vote Summary on Motion		
Participant	Vote	Particulars / GES
Azusa	Absent	2.7857%
BART	Absent	6.6000%
Biggs	Yes	0.2679%
CDWR	Yes	33.5000%
Gridley	Absent	1.9643%
Healdsburg	Absent	1.6428%
Lodi	Yes	9.5000%
Lompoc	Absent	2.0357%
Modesto	Yes	10.7143%
Plumas-Sierra	Absent	0.7857%
PWRPA	Yes	2.6679%

Silicon Valley Power	Yes	25.7500%
Ukiah	Absent	1.7857%
<b>Vote Summary</b>		
Total Ayes	6	82.4001%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	7	17.5999%
	Result: Motion passed.	

## **BUSINESS ACTION ITEMS**

### **20. NCPA Wildfire Mitigation**

Ron Yuen gave background on the NCPA Wildfire Mitigation Plan. On January 1, 2017, Public Utilities Code 8387 was passed, requiring publicly owned electric utilities and electric cooperatives to adopt a board-approved plan that describes mitigation measures to minimize wildfire risk of their electric lines and equipment.

Ron summarized the method used by NCPA to identify high risk areas. NCPA used Tree Mortality Zone maps in conjunction with CPUC Fire Threat maps. Currently, no LEC facilities are in high risk wildfire areas.

Ron reviewed the mitigation measure put into place. NCPA's Wildfire Mitigation Plan will consist of policies which NCPA had previously put into place, including its Vegetation Management Policy (NCPA-GS-305), and a number of Operations and Maintenance Safe Practice procedures, including NCPA's Hot Work Procedure (NCPA-GS-111), Welding Safety Procedure (NCPA-GS-115), and Electric Safety Procedure (NCPA-GS-103).

Ron explained that there was no immediate fiscal impact, and no environmental review would be required. The Commission would be responsible for reviewing and approving the plan, including any necessary revision. Ron outlined some of the potential causes for future revisions, including changes to the wildfire risk area or regulatory requirements.

The LEC PPC considered the following motion:

**Date:** 8/13/2018

**Motion:** The PPC approves the Wildfire Mitigation Plan as required by the Public Utilities Code 8387, as it applies to the NCPA LEC facility.

**Moved by:** Lodi

**Seconded by:** CDWR

Discussion: There was no further discussion

<b>Vote Summary on Motion</b>		
<b>Participant</b>	<b>Vote</b>	<b>Particulars / GES</b>
Azusa	Absent	2.7857%
BART	Absent	6.6000%
Biggs	Yes	0.2679%
CDWR	Yes	33.5000%
Gridley	Absent	1.9643%
Healdsburg	Absent	1.6428%
Lodi	Yes	9.5000%
Lompoc	Absent	2.0357%
Modesto	Yes	10.7143%
Plumas-Sierra	Absent	0.7857%
PWRPA	Yes	2.6679%
Silicon Valley Power	Yes	25.7500%
Ukiah	Absent	1.7857%
<b>Vote Summary</b>		
Total Ayes	6	82.4001%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	7	17.5999%
Result:	The Motion Passed	

## **CLOSED SESSION**

### **21. Adjourned to Closed Session**

The PPC adjourned to Closed Session at 11:10 AM. A Closed Session discussion was had pursuant to California Government Code Section 54956.9(d)(1) regarding Pacific Gas and Electric Company's 2019 Gas Transmission and Storage Rate Case, *Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2019 – 2021*, California Public Utilities Commission Application 17-11-009 (filed November 17, 2017).

At 11:22 AM the Committee returned to Open Session. General Counsel Jane Luckhardt advised that no reportable action was taken during the Closed Session.

## **INFORMATIONAL ITEMS**

### **22. LEC CT Main Transformer Update**

Aaron Werner presented an update to the Committee on the status of the CT Main Transformer. The history of the chain of ownership of the current transformer was reviewed, as well as the service history. There was a comprehensive inspection in 2013, similar in scope to the latest inspection, and while elevated gas levels were recorded in 2013, no findings or damage was

found. In the latest inspection, there was clear damage to the unit, indicating a core shift/rotation, as well as insulation damage. There were also increasing levels of gases recorded. Photos of damage found in the latest inspection were shared with the Committee.

NCPA staff has been working with GE, and have reviewed potential causes. GE was unable to confirm any causes, although they made a number of suggestions.

Aaron reviewed the options for repair with the Committee. While the idea of refurbishing the current unit is appealing from a cost-standpoint, he cautioned that there is the potential that opening the unit up for repairs could cause the current issues to become worse, or even cause irreparable damage to the unit. Renting a unit would also not be a viable solution.

Staff is recommending that the unit be replaced. While staff is not currently seeking a formal motion, they would like the general consensus of the Committee to explore the option of replacement of the unit. The estimated cost for a replacement unit would be around \$2mm, not including additional funds for installation. The lead-time for a replacement would likely be one year, possibly longer.

The Committee agreed that staff could move forward with obtaining estimates for replacement of the unit, on the condition that this would not commit us to move forward with this plan, and that staff would bring this back to the Committee for formal approval prior to moving forward.

### **23. Additional Operational Updates**

There were no additional operational updates at this time.

### **Adjournment**

The next regular meeting of the PPC is scheduled for Monday, September 10, 2018.

The meeting was adjourned at 11:23 AM.

Submitted by: Michelle Schellentrager

# **Lodi Energy Center Project Participant Committee**

## **Operational Report**

**Agenda Item No.: 3**

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**Date:** 9/10/2018

**To:** Lodi Energy Center Project Participant Committee

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### **Safety**

- OSHA Recordable: 0 Accidents.

### **Notice of Violations**

- Permits: 0 Violations Issued.
- NERC/WECC: 0 Violations Issued.

### **Outage Summaries:**

- No outages.

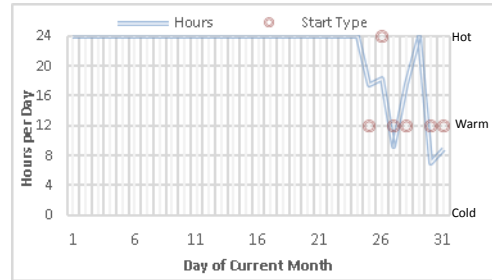
### **Planned Outage Summaries:**

- 2019 April – Generator Inspections, Main Transformer Inspections, and DCS Upgrade
- 2021/2022 CT - Major Inspection (6 weeks outage)



**Generating Unit Statistics:****Date:** 8/1/2018

1. Monthly Production 177,842 MWH
2. Productivity Factor
- a. Service Hours 679 Hours
  - b. Service Factor 91.2 %
  - c. Capacity Factor @ 302MW Pmax 79.1 %
3. Equivalent Operating Availability (EOA) 100.0 %
4. Forced Outage Rate (FOR)
- a. Total LEC Plant FOR 0.0 %



## 5. Heat Rate Deviation

## a. Fuel Cost (Not Current Market Price)

4.00 \$/mmBTU

MW Range	PMOA HR BTU/kW- Hr	Average HR BTU/kW-Hr	Deviation %	Production MWH	Cost \$
Seg. 1 296 +	6850	0	0.00%	0	\$0
Seg. 2 284 - 296	6870	7,013	2.08%	142	\$81
Seg. 3 275 - 284	6971	6,952	-0.27%	2,347	-\$176
Seg. 4 250 - 275	7081	6,975	-1.49%	16,315	-\$6,892
Seg. 5 225 - 250	7130	7,042	-1.23%	4,693	-\$1,644
Seg. 6 200 - 225	7200	7,140	-0.84%	2,953	-\$714
Seg. 7 175 - 225	7450	7,377	-0.98%	3,800	-\$1,109
Seg. 8 165 - 175	7760	7,726	-0.43%	1,948	-\$263
	7,164	7,175	-0.87%	32,197	-\$10,717

## 6. AGC Control Deviation

MW Range	High Dev MWH	Low Dev MWH	Total Dev MWH	Cost \$
Seg. 1 296 +	0	0	0	\$0
Seg. 2 284 - 296	1	0	1	\$24
Seg. 3 275 - 284	188	-173	361	\$10,040
Seg. 4 250 - 275	205	-687	892	\$24,900
Seg. 5 225 - 250	58	-33	91	\$2,576
Seg. 6 200 - 225	37	-38	75	\$2,154
Seg. 7 175 - 225	17	-44	61	\$1,801
Seg. 8 165 - 175	1	-3	4	\$130
	508	-978	1,486	\$41,623

## 7. Starting Reliability

Start Type	Hot Starts	Warm Starts	Cold Starts
Number of Starts	1	5	0
Start Time Benchmark (Minutes)	75	110	200
Start Time Actual (Average Minute)	63	91	0
Start Time Deviation (%)	-16%	-18%	0%
Start Fuel Benchmark PMOA (mmBTU)	1,300	1,800	3,500
Start Fuel Actual (Average mmBTU)	1,117	1,698	0
Fuel Deviation (%)	-14%	-6%	0%
Costs of Fuel Deviations (\$)	-\$730	-\$2,049	\$0

**Definitions:**

1. Monthly Production = Plant Net MWH's
2. Capacity Factor
  - a. Service Hours = In Production or in Service State
  - b. Service Factor =  $SH / PH \times 100\%$
  - c. Capacity Factor =  $Production / 302MW \times PH$
  - d. Capacity Factor =  $Production / 280MW \times PH$
3. Monthly Equivalent Availability Factor (EAF) =  $(AH - EPDH - EFDH) / PH \times 100\%$
4. Forced Outage Rate =  $(FOH / (FOH + SH)) \times 100\%$
5. Heat Rate Deviation (HRD)
  - a. Fuel Cost = Cost of Fuel in \$/mmBTU
  - b. Average Heat Rate = The Average Heat Rate for the given Range
  - c. Heat Rate Deviation =  $(Heat\ Rate\ Average - Heat\ Rate\ Expected) / Heat\ Rate\ Expected \times 100\%$
  - d. Production = The Sum of Production for the given Range
  - e. Costs of Heat Rate Deviations =  $(Average\ Heat\ Rate - Expected\ Heat\ Rate) \times Production \times Cost\ of\ Fuel$
6. AGC Deviation-
  - a. MWH's = AGC Set Point Generation - LEC Actual Generation
  - b. Cost of Deviations = Fuel Cost x Heat Rate x Generation
7. Starting Reliability
  - a. Number of Starts = Start Count for Hot, Warm, and Cold
  - b. Start Time = Average Time from 0 Fuel Flow to Pmin
  - c. Start Fuel = Average Fuel Consumption to Pmin
  - d. Cost of Fuel Deviation =  $(Actual\ Fuel\ Consumed - Expected\ Fuel) \times Cost\ of\ Fuel$



# Market Settlement Results for August 2018

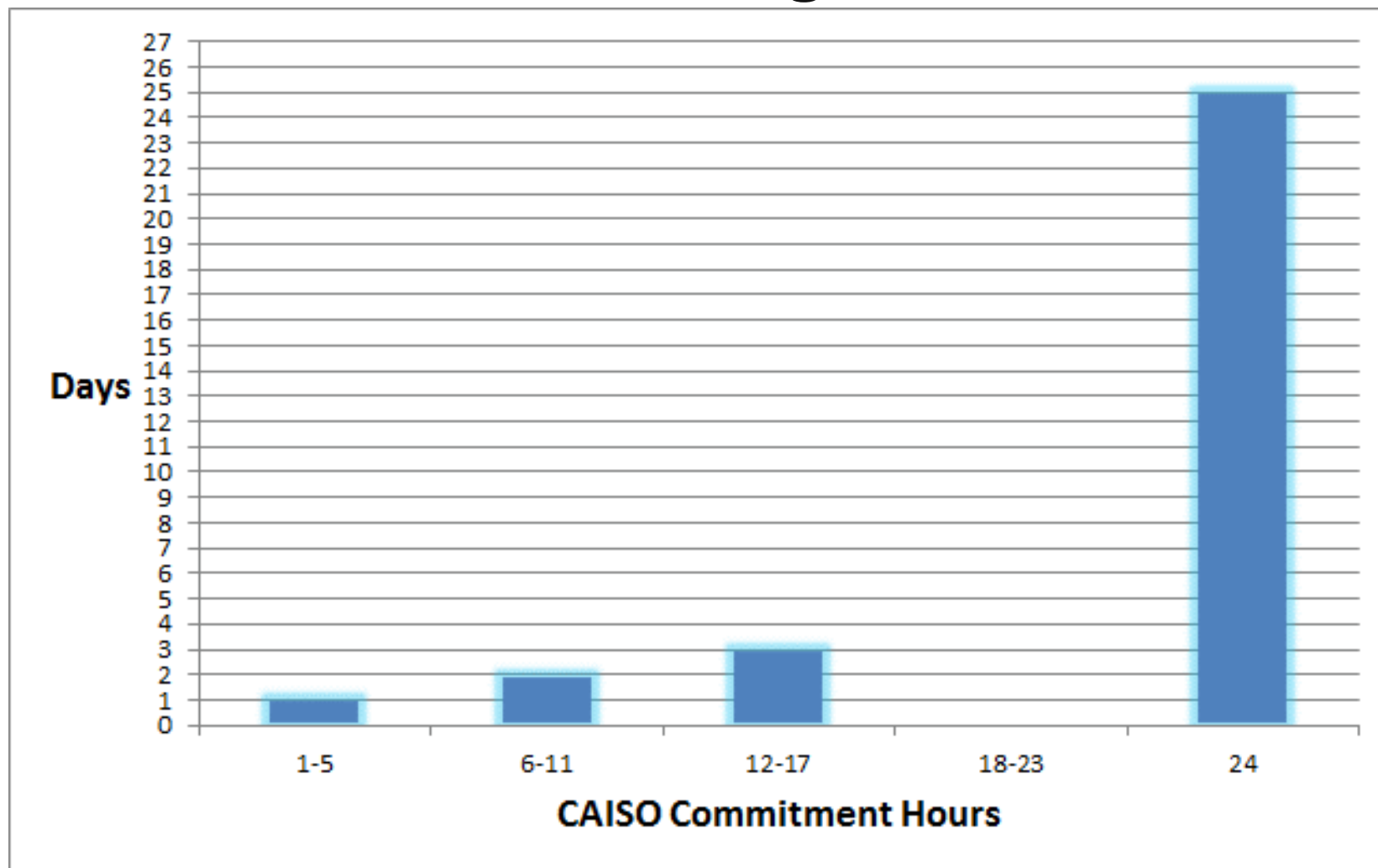
LEC PPC Meeting  
September 10, 2018



## LEC Operational Results for August 2018

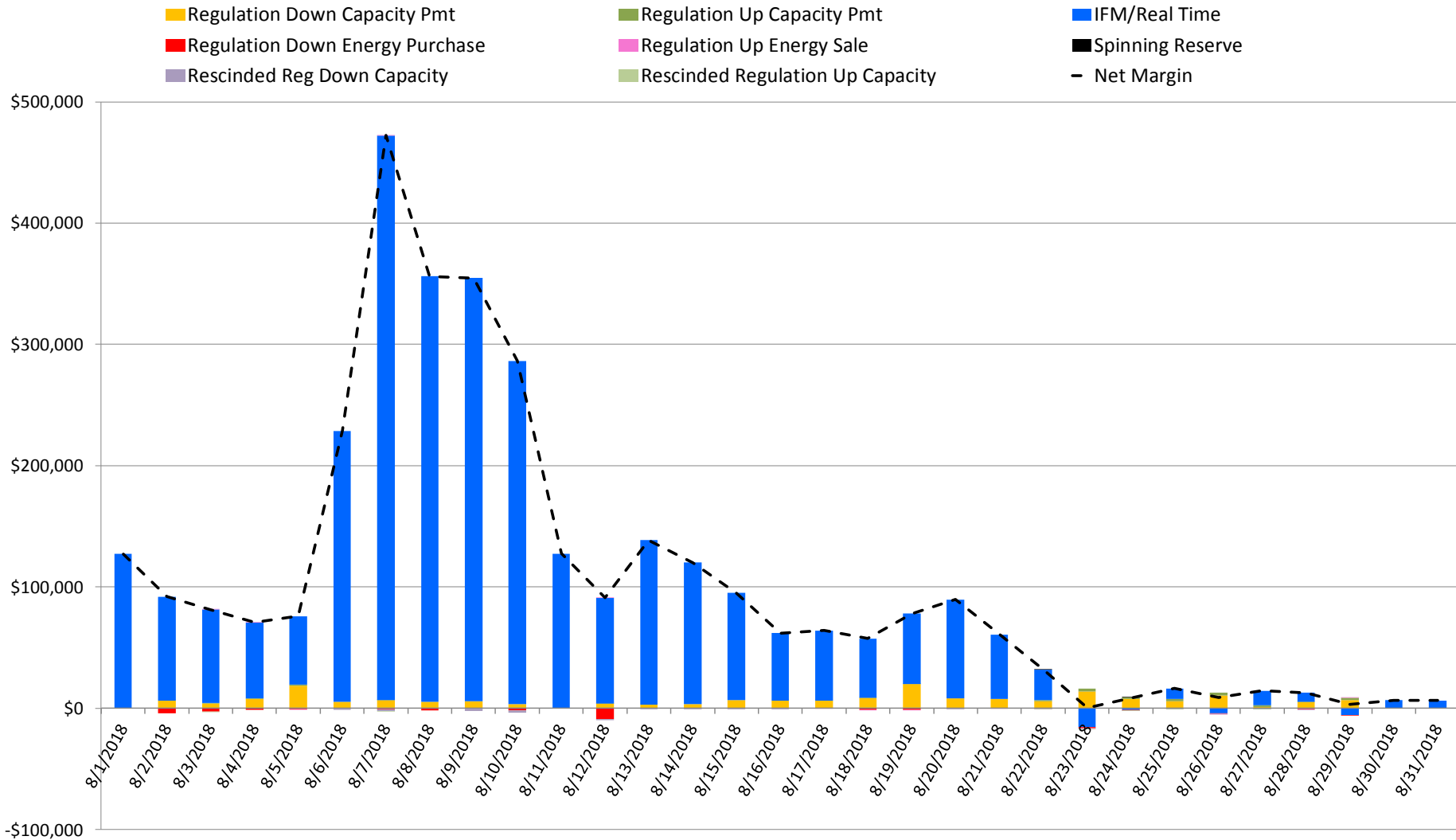
- Resource Adequacy Availability Metrics:
  - 100% - Monthly Assessment Generic Performance
  - 100% - Monthly Assessment Flexible Performance
- Vs
- 96.5% Availability Standard
- Estimated RA incentive payments of
  - \$23.5K for Generic RA
  - \$ 0.5K for Flexible RA
- LEC was committed by CAISO for Market energy 31 of 31 available days
  - 0 days not committed due to forced outage
  - 0 days not committed due to economics

# Frequency Tabulation of Daily CAISO commitment hour runs for August 2018



[illegible]

# August 2018 LEC Daily Margin Profile by Product



## August 2018 LEC Project Cumulative Monthly Margin

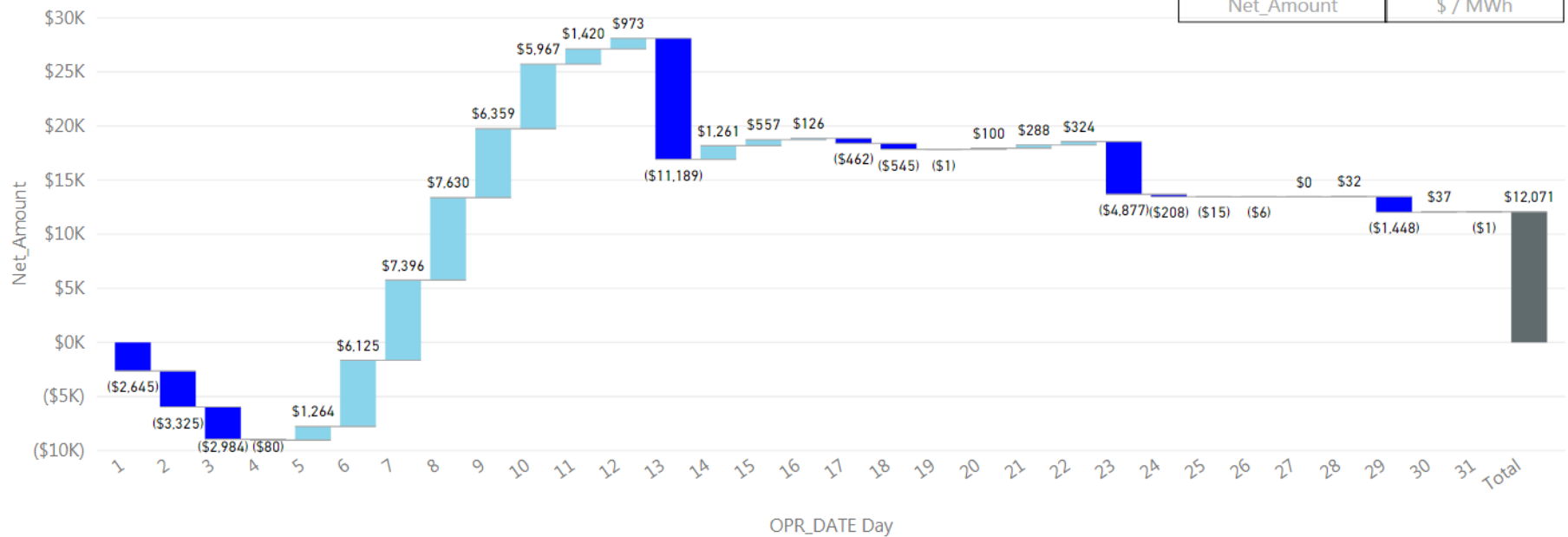
IFM/RTM Gross Revenues	\$ 9,711,500	
Regulation Up Capacity	\$ 20,900	
Regulation Down Capacity	\$ 233,100	
Spinning Reserve	\$ 600	
Total Gross LEC Revenue		\$ 9,966,100
LEC CAISO GMC Costs	\$ (76,300)	
CAISO Energy & Capacity Buyback Costs	\$ (235,700)	
Total Monthly LEC Fuel Cost	\$ (4,719,400)	
Total Monthly GHG Obligation	\$ (1,023,800)	
Variable Operations & Maintenance Cost	\$ (593,900)	
Total Costs		\$ (6,649,100)
Net Cumulative Monthly Margin		\$ 3,317,000
Average Margin \$/MWh	\$	18.7



# Comparison of Day Ahead Congestion LEC vs NP15 Trade Hub

Net\_Amount by Day

● Increase ● Decrease ● Total



**\$12.1K**

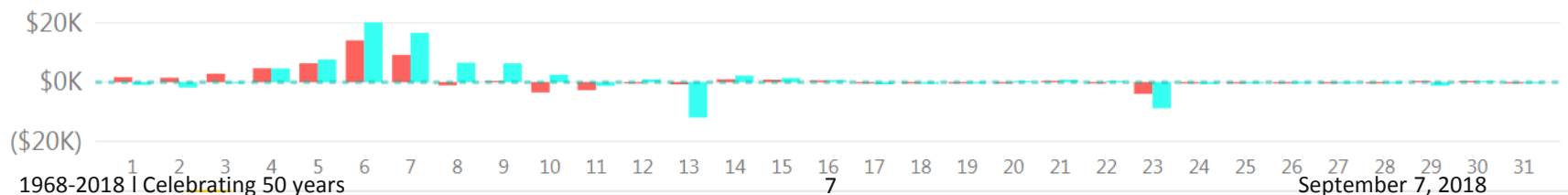
Net\_Amount

**\$0.07**

\$ / MWh

NP15\_Cost and LEC\_Cost by Day

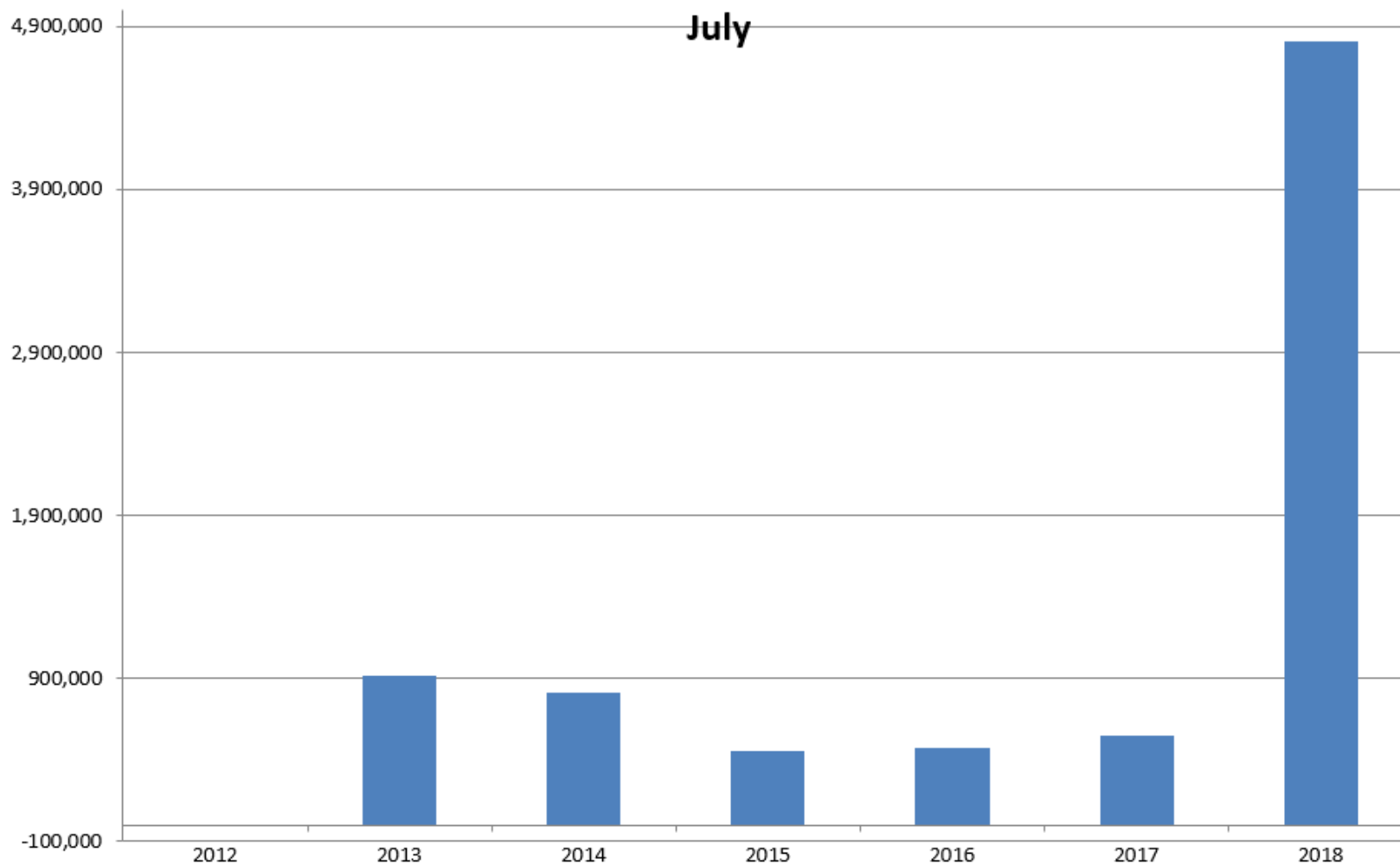
● NP15\_Cost ● LEC\_Cost



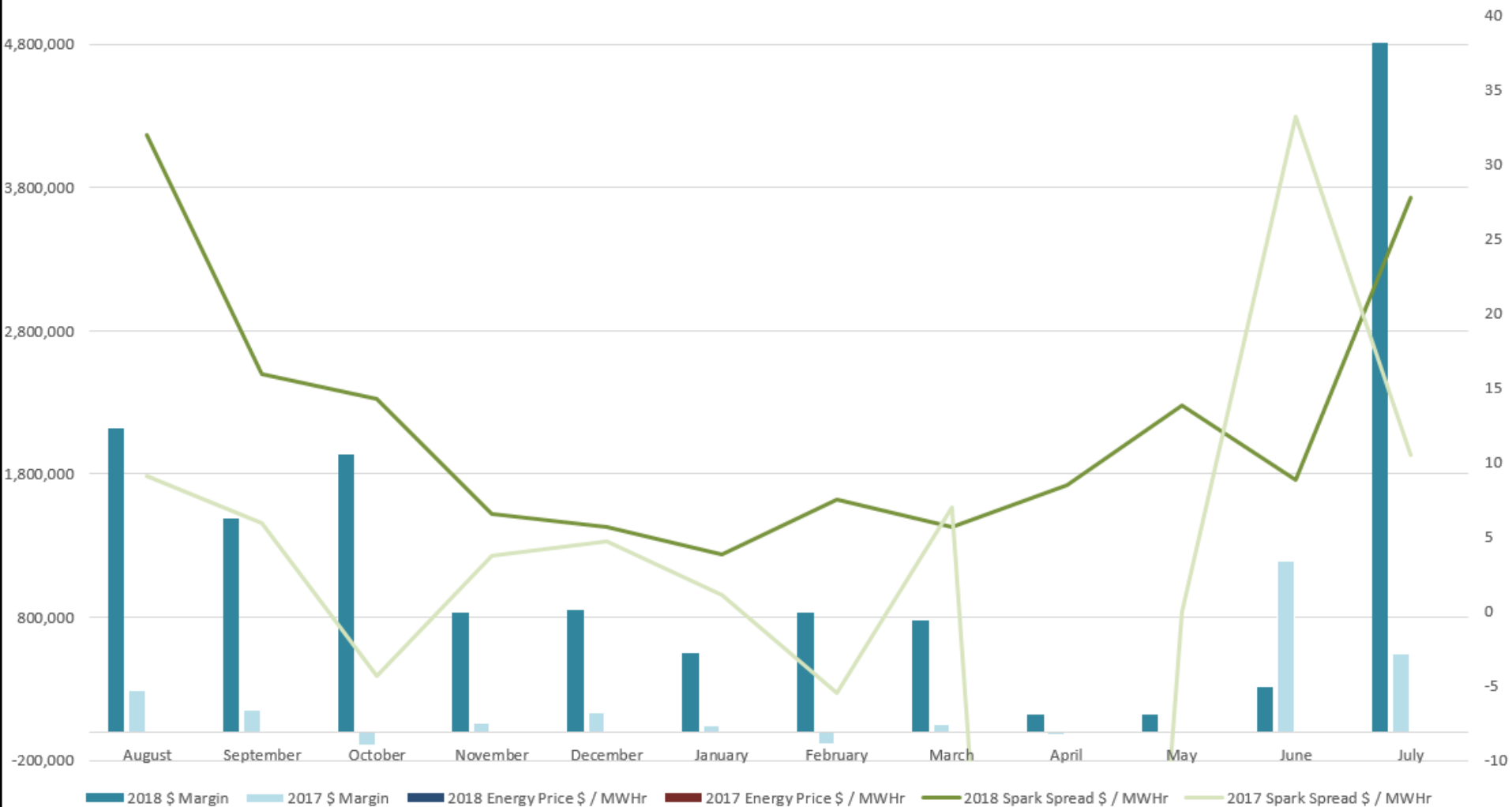
# July Asset Report

		Most Recent		Above / (below)	Percent Difference	
	Actual	Forecast	Budget	Forecast	Above / (below)	
Revenue	10,560,770	7,178,416	5,323,136	3,382,354	47%	
VOM	5,762,637	4,959,071	4,167,896	803,566	16%	
Fixed	869,905	798,347	798,347	71,558	9%	Lease Pmt Timing
Projects	121,759	121,759	121,759	0	0%	
A&G	179,446	212,587	212,587	(33,141)	-16%	
Debt	2,173,321	2,173,321	2,173,321	0	0.00%	
Net Cost	1,453,702	(1,086,669)	(2,150,774)	2,540,371	-234%	
Net Annual Cost		(20,738,153)	(33,714,242)	\$12,976,089		
				Below budget by 38.49%		

# Historical Margins



### Historical Monthly Comparison



Lodi Energy Center  
Monthly Budget Analysis  
Expenditures  
Report Date: 09/04/2018

	July	August	September	October	November	December	January	February	March	April	May	June	Year	FY2017 Budget	Percent Used	Comments
VOM	5,762,637	6,320,612	6,044,360	5,947,041	2,215,016	6,694,856	7,707,562	4,298,643	1,846,407	743,403	712,522	2,452,552	50,745,611	45,870,926	110.6%	
Capacity Factor	83%	97%	95%	74%	31%	102%	101%	68%	24%	0%	9%	33%	60%	53%	112.6%	
Fuel Consumed (mmBTU, estimated)	1,236,043	1,383,405	1,318,714	1,059,750	427,810	1,455,680	1,437,479	910,906	337,712	0	127,917	451,456	10,146,873	8,933,236	113.6%	
Avg Fuel Cost (\$/mmBTU)	3.43	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.42	3.61	11.6%	
Power Produced (MWHr, estimated)	172,951	201,957	192,513	154,708	62,454	212,508	209,851	132,979	49,301	0	18,674	65,906	1,473,802	1,304,122	113.0%	
Avg Power Price (\$/MWHr)	61.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.17	39.19	18.3%	
Operations / Variable / LTSA	451,014	277,403	265,702	1,256,572	91,601	290,801	1,330,359	189,419	93,210	743,403	50,644	452,731	5,492,860	4,733,381	116.0%	
Fuel (estimated)	4,238,046	4,841,919	4,633,543	3,770,228	1,751,923	5,140,005	5,098,739	3,299,082	1,452,843	0	548,112	1,556,388	36,330,829	33,092,116	109.8%	
AB32 GHG Offset (estimated)	1,003,831	1,116,014	1,063,827	854,916	345,121	1,174,319	1,189,855	753,991	279,537	0	105,882	373,687	8,260,980	7,494,769	110.2%	
CA ISO Charges (estimated)	69,746	85,275	81,288	65,325	26,371	89,731	88,609	56,150	20,817	0	7,885	69,746	660,943	550,660	120.0%	
Routine O&M (Fixed)	869,905	922,421	798,347	1,111,335	1,330,321	798,347	798,347	798,347	966,848	1,308,260	999,463	798,347	11,500,286	11,428,728	100.6%	
Maintenance / Fixed	287,217	217,958	217,958	217,958	375,000	217,958	217,958	217,958	375,000	550,000	400,000	217,958	3,512,921	3,443,662	102.0%	Timing 2 leases in one month
Administration	4,265	16,412	16,412	16,412	16,412	16,412	16,412	16,412	25,000	16,412	16,412	16,412	193,382	205,529	94.1%	
Mandatory Costs	36,157	135,000	10,926	10,926	35,000	10,926	10,926	10,926	10,926	10,926	30,000	10,926	323,567	298,336	108.5%	
Inventory Stock	0	0	0	0	0	0	0	0	0	0	0	0	0	-	0.0%	
Labor	421,755	422,129	422,129	422,129	460,000	422,129	422,129	422,129	425,000	600,000	422,129	422,129	5,283,791	5,284,165	100.0%	
Insurance	0	0	0	312,988	312,988	0	0	0	0	0	0	0	625,976	625,976	100.0%	
Power Management & Settlements	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	1,446,134	1,446,134	100.0%	
Other Costs	0	10,411	10,411	10,411	10,411	10,411	10,411	10,411	10,411	10,411	10,411	10,411	114,516	124,926	91.7%	
Projects	121,759	173,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	221,759	121,759	121,759	1,613,107	1,613,107	100.0%	
Maintenance Reserve	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	1,461,107	1,461,107	100.0%	
Operations & Maintenance Projects	0	52,000	0	0	0	0	0	0	0	0	0	0	52,000	52,000	100.0%	
Capital Projects	0	0	0	0	0	0	0	0	0	100,000	0	0	100,000	100,000	100.0%	
A&G	179,446	212,587	212,587	212,587	212,587	212,587	212,587	212,587	212,587	212,587	212,587	212,587	2,517,902	2,551,043	98.7%	
Administrative & General (Allocated)	158,787	181,840	181,840	181,840	181,840	181,840	181,840	181,840	181,840	181,840	181,840	181,840	2,159,027	2,182,080	98.9%	
Generation Services Shared	20,659	30,747	30,747	30,747	30,747	30,747	30,747	30,747	30,747	30,747	30,747	30,747	358,875	368,963	97.3%	
Total O&M Cost	6,933,747	7,629,379	7,177,052	7,392,721	3,879,683	7,827,548	8,840,255	5,431,335	3,147,601	2,486,008	2,046,331	3,585,245	66,376,907	61,463,804	108.0%	
Debt Service	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	26,079,852	26,079,852	100.0%	
Revenues	10,560,770	12,175,174	9,500,828	6,486,196	2,919,736	9,656,586	9,115,752	5,300,762	2,223,449	4,331	1,024,248	2,750,775	71,718,606	53,829,414	133.2%	
ISO Energy Sales (estimated)	10,560,770	11,988,396	9,332,495	6,294,975	2,778,521	9,465,058	8,915,722	5,182,396	2,207,538	0	998,627	2,712,455	70,436,954	52,414,938	134.4%	
Other Income	0	186,778	168,333	191,221	141,215	191,528	200,030	118,366	15,911	4,331	25,621	38,320	1,281,652	1,414,476		
Net	\$1,453,702	\$2,372,474	\$150,455	(\$3,079,847)	(\$3,133,268)	(\$344,284)	(\$1,897,824)	(\$2,303,895)	(\$3,097,473)	(\$4,654,998)	(\$3,195,404)	(\$3,007,791)	(\$20,738,153)	(\$33,714,242)	Below budget by 38.49%	



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# LEC Treasurer's Report

AGENDA ITEM NO.: 7

**Date:** September 10, 2018  
**To:** LEC Project Participant Committee  
**Subject:** Treasurer's Report for the Month Ended August 31, 2018

In compliance with NCPA policy and State of California Government Code Sections 53601 and 53646(b), the following monthly report is submitted for your information and acceptance.

Cash - At month end cash totaled \$43,194.

Investments - The carrying value of the LEC's investment portfolio totaled \$30,450,663 at month end. The current market value of the portfolio totaled \$29,963,610.

The overall portfolio had a combined weighted average interest rate of 2.002% with a bond equivalent yield (yield to maturity) of 1.667%. Investments with a maturity greater than one year totaled \$17,370,000. During the month \$2,378,585 was invested.

Funds not required to meet annual cash flow are reinvested and separately reported as they occur.

Interest Rates - During the month, rates on 90 day T-Bills increased by 12 basis point (from 2.00% to 2.12%) and rates on one year T-Bills increased by 5 basis points (from 2.42% to 2.47%).

To the best of my knowledge and belief, all securities held by LEC as of August 31, 2018 are in compliance with the Agency's investment policy. There are adequate cash flow and investment maturities to meet next month's cash requirements.

## Environmental Analysis

The Treasurer's report will 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.

Respectfully submitted,

MONTY HANKS  
Assistant General Manager/CFO  
Administrative Services/Finance

Prepared by:

SONDRA AINSWORTH  
Treasurer-Controller

Attachments

# **LODI ENERGY CENTER**

## **TREASURER'S REPORT**

**AUGUST 31, 2018**

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<b>DETAIL REPORT OF INVESTMENTS</b>	<b>APPENDIX</b>

**Northern California Power Agency/Lodi Energy Center**  
**Treasurer's Report**  
**Cash & Investment Balance**  
**August 31, 2018**

	CASH	INVESTMENTS	TOTAL	PERCENT	INVESTMENTS at MARKET
<b>MANDATORY FUNDS</b>					
Debt Service Account	898	6,846,926	6,847,824	22.46%	6,846,778
Debt Service Reserve	-	12,213,302	12,213,302	40.05%	11,878,406
O & M Reserve	-	11,317,567	11,317,567	37.11%	11,165,558
	898	30,377,795	30,378,693	99.62%	29,890,742
<b>ADDITIONAL PROJECT FUNDS</b>					
GHG Cash Account	-	72,868	72,868	0.24%	72,868
Transmission Upgrade Escrow <sup>1</sup>	42,296	-	42,296	0.14%	-
Participant Deposit Account	-	-	-	0.00%	-
	<b>\$ 43,194</b>	<b>\$ 30,450,663</b>	<b>\$ 30,493,857</b>	<b>100.00%</b>	<b>\$ 29,963,610</b>

**NOTE A -Investment amounts shown at book carrying value.**

<sup>1</sup> Amount held in escrow



**Northern California Power Agency/Lodi Energy Center**  
**Treasurer's Report**  
**Cash Activity Summary**  
**August 31, 2018**

	RECEIPTS			EXPENDITURES			CASH INCREASE / (DECREASE)
	OPS/CONSTR	INTEREST (NOTE B)	INVESTMENTS (NOTE A)	OPS/CONSTR	INVESTMENTS (NOTE B)	INTER-COMPANY/ FUND TRANSFERS	
<b>MANDATORY FUNDS</b>							
Debt Service Account	\$ 1,613	\$ 1,816	\$ 297	\$ (1,613)	\$ (2,350,113)	\$ 2,348,137	137
Debt Service Reserve	-	950	-	-	(950)	-	-
O & M Reserve	-	27,522	-	-	(27,522)	-	-
	1,613	30,288	297	(1,613)	(2,378,585)	2,348,137	137
<b>ADDITIONAL PROJECT FUNDS</b>							
GHG Cash Account	-	-	-	-	-	-	-
Transmission Upgrade Escrow <sup>1</sup>	-	9	-	-	-	-	9
Participant Deposit Account	-	-	-	-	-	-	-
<b>TOTAL</b>	<b>\$ 1,613</b>	<b>\$ 30,297</b>	<b>\$ 297</b>	<b>\$ (1,613)</b>	<b>\$ (2,378,585)</b>	<b>\$ 2,348,137</b>	<b>\$ 146</b>

NOTE A -Investment amounts shown at book carrying value.

NOTE B -Net of accrued interest purchased on investments.

<sup>1</sup> Amount held in escrow

**Northern California Power Agency/Lodi Energy Center**  
**Treasurer's Report**  
**Investment Activity Summary**  
**August 31, 2018**

	PURCHASED	SOLD OR MATURED	(NON-CASH) DISC/(PREM) AMORT	(NON-CASH) GAIN/(LOSS) ON SALE	INVESTMENTS	
					TRANSFERS	INCREASE / (DECREASE)
<b>MANDATORY FUNDS</b>						
Debt Service Account	2,350,113	(297)	8,034	-	-	2,357,850
Debt Service Reserve	950	-	(6,693)	-	-	(5,743)
O & M Reserve	27,522	-	(1,532)	-	-	25,990
	<b>\$ 2,378,585</b>	<b>\$ (297)</b>	<b>\$ (191)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,378,097</b>
<b>ADDITIONAL PROJECT FUNDS</b>						
GHG Cash Account	-	-	-	-	-	-
Participant Deposit Acct.	-	-	-	-	-	-
<b>TOTAL</b>	<b>\$ 2,378,585</b>	<b>\$ (297)</b>	<b>\$ (191)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,378,097</b>

**Less Non- Cash Activity**

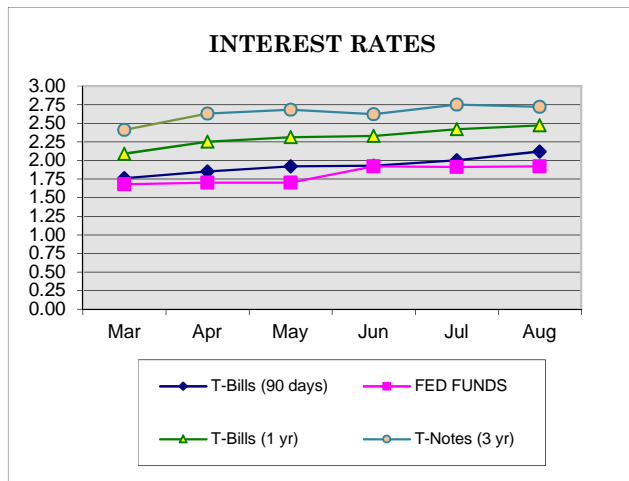
Disc/(Prem) Amortization & Gain/(Loss) on Sale	<b>191</b>
Net Change in Investment --Before Non-Cash Activity	<b>\$ 2,378,288</b>

**NOTE A -Investment amounts shown at book carrying value.**

**Northern California Power Agency  
Lodi Energy Center  
Interest Rate/Yield Analysis  
August 31, 2018**

	<b>WEIGHTED AVERAGE INTEREST RATE</b>	<b>BOND EQUIVALENT YIELD</b>
<b>OVERALL COMBINED</b>	<b>2.002%</b>	<b>1.667%</b>
Debt Service Account	2.038%	2.080%
Debt Service Reserve	2.344%	1.641%
O & M Reserve	1.611%	1.445%
GHG Cash Account	1.899%	1.899%

<b>KEY INTEREST RATES</b>		
	<b>CURRENT</b>	<b>PRIOR YEAR</b>
Fed Fds (Ovrnight)	1.92%	1.16%
T-Bills (90da.)	2.12%	1.01%
Agency Disc (90da.)	2.05%	1.01%
T-Bills (1yr.)	2.47%	1.23%
Agency Disc (1yr.)	2.27%	1.18%
T-Notes (3yr.)	2.72%	1.47%



**Northern California Power Agency  
Total Portfolio  
Investment Maturities Analysis  
August 31, 2018**

Type	0-7 Days	8-90 Days	91-180 Days	181-270 Days	271-365 Days	1-5 Years	6-10 Years	Total	Percent
US Government Agencies	\$ -	\$ -	\$7,452	\$ -	\$ 1,025	\$ 17,370	\$ -	\$ 25,847	85.21%
Corporate Bonds (MTN)	-	-	-	-	-	-	-	-	0.00%
US Bank Trust Money Market	144	-	-	-	-	-	-	144	0.47%
Commercial Paper	-	-	-	-	-	-	-	-	0.00%
Investment Trusts (LAIF)	1,787	-	-	-	-	-	-	1,787	5.89%
U.S.Treasury Market Acct.	47	-	-	-	-	-	-	47	0.16%
U.S.Treasury Bill/Note	-	2,361	63	-	85	-	-	2,509	8.27%
Certificates of Deposit	-	-	-	-	-	-	-	-	0.00%
Total Dollars	\$ 1,978	\$2,361	\$7,515	\$0	\$1,110	\$17,370	\$0	\$ 30,334	100.00%
Total Percents	6.52%	7.78%	24.77%	0.00%	3.66%	57.26%	0.00%	100.00%	

Investments are shown at Face Value, in thousands.

# **NORTHERN CALIFORNIA POWER AGENCY**

## **Detail Report Of Investments**

### **APPENDIX**

**Note:**                **This appendix has been prepared to comply with  
Government Code section 53646.**



Northern California Power Agency  
Treasurer's Report  
08/31/2018

LEC Issue#1 2010A DS Fund

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
US Bank Trust	USB	800	0.600	07/01/2013	800		1	0.600	800	SYS79003	79003	800
U.S. Treasury	USBT	722,000	2.055	08/31/2018	718,291	11/29/2018	89	2.094	718,433	912796QL6	26662	718,332
Federal Home Loan Ba	USBT	1,271,000	2.030	07/31/2018	1,262,041	12/03/2018	93	2.072	1,264,200	313385R73	26639	1,264,335
Fund Total and Average		\$ 1,993,800	2.038		\$ 1,981,132		92	2.080	\$ 1,983,433			\$ 1,983,467

LEC Issue #1 2010B DS Fund

US Bank Trust	USB	733	0.600	07/01/2013	733		1	0.600	733	SYS79004	79004	733
U.S. Treasury	USBT	729,000	2.055	08/31/2018	725,255	11/29/2018	89	2.094	725,399	912796QL6	26663	725,296
Federal Home Loan Ba	USBT	1,460,000	2.030	07/31/2018	1,449,709	12/03/2018	93	2.072	1,452,189	313385R73	26640	1,452,344
Fund Total and Average		\$ 2,189,733	2.038		\$ 2,175,697		92	2.079	\$ 2,178,321			\$ 2,178,373

LEC Issue #2 2010A DS Fund

US Bank Trust	USB	867	0.600	07/01/2013	867		1	0.600	867	SYS79011	79011	867
U.S. Treasury	USBT	436,000	2.055	08/31/2018	433,760	11/29/2018	89	2.094	433,846	912796QL6	26664	433,785
Federal Home Loan Ba	USBT	838,000	2.030	07/31/2018	832,093	12/03/2018	93	2.072	833,517	313385R73	26641	833,605
Fund Total and Average		\$ 1,274,867	2.038		\$ 1,266,720		92	2.079	\$ 1,268,230			\$ 1,268,257

LEC Issue #2 2010B DS Fund

US Bank Trust	USB	219	0.600	07/01/2013	219		1	0.600	219	SYS79012	79012	219
U.S. Treasury	USBT	350,000	2.055	08/31/2018	348,202	11/29/2018	89	2.094	348,271	912796QL6	26665	348,222
Federal Home Loan Ba	USBT	702,000	2.030	07/31/2018	697,052	12/03/2018	93	2.072	698,244	313385R73	26642	698,319
Fund Total and Average		\$ 1,052,219	2.038		\$ 1,045,473		92	2.080	\$ 1,046,734			\$ 1,046,760

LEC Issue#1 2017A DS Fund

U.S. Treasury	USBT	124,000	2.055	08/31/2018	123,363	11/29/2018	89	2.094	123,387	912796QL6	26666	123,370
Federal Home Loan Ba	USBT	248,000	2.030	07/31/2018	246,252	12/03/2018	93	2.072	246,673	313385R73	26643	246,699
Fund Total and Average		\$ 372,000	2.038		\$ 369,615		92	2.080	\$ 370,060			\$ 370,069

GRAND TOTALS:

\$ 6,882,619	2.038	\$ 6,838,637	92	2.080	\$ 6,846,778.	\$ 6,846,926
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\*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.

Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 08/31/2018



Northern California Power Agency  
Treasurer's Report

08/31/2018

LEC Issue #1 2010 DSR Fund

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
US Bank Trust	USB	81,585	0.600	07/01/2013	81,585		1	0.600	81,585	SYS79005	79005	81,585
U.S. Treasury	USB	85,000	1.625	02/27/2018	84,641	06/30/2019	302	1.945	84,442	912828WS5	26538	84,778
Federal Farm Credit	USB	4,360,000	1.660	06/08/2016	4,360,000	05/25/2021	997	1.659	4,233,734	3133EGBZ7	26337	4,360,000
Federal Home Loan Mt	USB	150,000	1.125	07/28/2017	146,648	08/12/2021	1,076	1.699	143,321	3137EAE9	26454	147,554
Federal Home Loan Ba	USB	4,100,000	2.125	08/28/2017	4,168,306	06/10/2022	1,378	1.760	4,001,477	313379Q69	26463	4,153,907
Fund Total and Average		\$ 8,776,585	1.860		\$ 8,841,180		1162	1.701	\$ 8,544,559			\$ 8,827,824

LEC Iss#1 2010B BABS Subs Resv

US Bank Trust	USB	36,637	0.600	07/01/2013	36,637		1	0.600	36,637	SYS79006	79006	36,637
U.S. Treasury	USB	38,000	1.823	02/27/2018	37,349	01/31/2019	152	1.872	37,656	912796PP8	26534	37,707
Federal Home Loan Ba	USB	2,145,000	3.375	07/28/2017	2,255,146	06/12/2020	650	1.540	2,170,418	313370E38	26455	2,213,282
Fund Total and Average		\$ 2,219,637	3.305		\$ 2,329,132		631	1.530	\$ 2,244,711			\$ 2,287,626

LEC Issue #2 2010B DSR BABS

US Bank Trust	USB	23,064	0.600	07/01/2013	23,064		1	0.600	23,064	SYS79013	79013	23,064
U.S. Treasury	USB	25,000	1.823	02/27/2018	24,572	01/31/2019	152	1.872	24,774	912796PP8	26535	24,808
Federal Home Loan Ba	USB	1,025,000	4.375	07/28/2017	1,082,708	07/01/2019	303	1.400	1,041,298	3133XU3G6	26456	1,049,982
Fund Total and Average		\$ 1,073,064	4.238		\$ 1,130,344		293	1.394	\$ 1,089,136			\$ 1,097,854
GRAND TOTALS:		\$ 12,069,286	2.344		\$ 12,300,656		984	1.641	\$ 11,878,406			\$ 12,213,304

\*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types.

Investments with less than 6 months to maturity use an approximate method, all others use an exact method.

Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 08/31/2018

Investment #26337 FFCB

Callable anytime



Northern California Power Agency  
Treasurer's Report  
08/31/2018

LEC O & M Reserve

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Local Agency Investm												
Union Bank of Califo	UBOC	1,714,390	1.899	07/01/2013	1,714,390		1	1.899	1,714,390	SYS70047	70047	1,714,390
Federal National Mtg	UBOC	47,059	0.002	07/18/2013	47,059		1	0.002	47,059	SYS70041	70041	47,059
Federal Home Loan Ba	USB	2,933,000	1.875	08/28/2015	2,998,142	02/19/2019	171	1.220	2,927,486	3135G0ZA4	26248	2,941,748
Federal National Mtg	UBOC	3,615,000	1.540	06/30/2017	3,613,952	06/05/2020	643	1.550	3,547,363	3130ABJQ0	26440	3,614,370
		3,000,000	1.300	06/30/2016	3,000,000	06/30/2020	668	1.300	2,929,260	3136G3UJ2	26341	3,000,000
Fund Total and Average		\$ 11,309,449	1.611		\$ 11,373,543		427	1.445	\$ 11,165,558			\$ 11,317,567
GRAND TOTALS:		\$ 11,309,449	1.611		\$ 11,373,543		427	1.445	\$ 11,165,558			\$ 11,317,567

\*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.

Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 08/31/2018





Northern California Power Agency  
Treasurer's Report  
08/31/2018

LEC GHG Auction Acct

Issuer	Trustee / Custodian	Stated Value	Interest Rate	Purchase Date	Purchased Price	Maturity Date	Days to Maturity	Bond* Equiv Yield	Market Value	CUSIP	Investment #	Carrying Value
Local Agency Investm		72,868	1.899	07/01/2013	72,868		1	1.899	72,868	SYS70046	70046	72,868
Fund Total and Average		\$ 72,868	1.899		\$ 72,868		1	1.899	\$ 72,868			\$ 72,868
GRAND TOTALS:		\$ 72,868	1.899		\$ 72,868		1	1.899	\$ 72,868			\$ 72,868

\*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.  
Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 08/31/2018



**Lodi Energy Center Project Participant Committee**

**LEC Financial Reports**

AGENDA ITEM NO.: 8

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**Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** August 31, 2018 Financial Reports (Unaudited)

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**NORTHERN CALIFORNIA POWER AGENCY  
LODI ENERGY CENTER  
STATEMENTS OF NET POSITION  
UNAUDITED**

		August	
		2018	2017
<b>ASSETS</b>			
<b>CURRENT ASSETS</b>			
Cash and cash equivalents	\$	72,868	\$ 71,843
Interest receivable		117	113
Inventory and supplies - at average cost		2,110,855	2,110,854
Prepaid insurance		157,092	156,232
Due from (to) Agency, net		29,195,029	14,627,455
<b>TOTAL CURRENT ASSETS</b>		<b>31,535,961</b>	<b>16,966,497</b>
<b>RESTRICTED ASSETS</b>			
Cash and cash equivalents		3,993,010	1,642,450
Investments		26,444,331	28,214,416
Interest receivable		80,701	82,159
<b>TOTAL RESTRICTED ASSETS</b>		<b>30,518,042</b>	<b>29,939,025</b>
<b>ELECTRIC PLANT</b>			
Electric plant in service		423,810,113	423,640,289
Less: accumulated depreciation		(83,989,256)	(69,376,092)
		339,820,857	354,264,197
Construction work-in-progress		182,398	107,024
<b>TOTAL ELECTRIC PLANT</b>		<b>340,003,255</b>	<b>354,371,221</b>
<b>OTHER ASSETS</b>			
Unamortized excess cost on advance refunding of debt, net		2,079,045	-
Regulatory assets		23,923,562	22,012,959
<b>TOTAL OTHER ASSETS</b>		<b>26,002,607</b>	<b>22,012,959</b>
<b>TOTAL ASSETS</b>	<b>\$</b>	<b>428,059,865</b>	<b>\$ 423,289,702</b>

**NORTHERN CALIFORNIA POWER AGENCY  
LODI ENERGY CENTER  
STATEMENTS OF NET POSITION  
UNAUDITED**

	August	
	2018	2017
<b>LIABILITIES &amp; NET POSITION</b>		
<b>CURRENT LIABILITIES</b>		
Accounts and retentions payable	\$ 4,816,906	\$ 2,116,484
Operating reserves	13,892,987	12,740,146
Current portion of long-term debt	11,480,000	10,355,000
Accrued interest payable	3,642,169	4,008,173
<b>TOTAL CURRENT LIABILITIES</b>	<b>33,832,062</b>	<b>29,219,803</b>
<b>NON-CURRENT LIABILITIES</b>		
Operating reserves and other deposits	1,717,088	1,715,973
Long-term debt, net	331,175,963	340,866,410
<b>TOTAL NON-CURRENT LIABILITIES</b>	<b>332,893,051</b>	<b>342,582,383</b>
<b>TOTAL LIABILITIES</b>	<b>366,725,113</b>	<b>371,802,186</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>		
Regulatory credits	40,787,645	42,049,664
<b>NET POSITION</b>		
Invested in capital assets, net of related debt	(15,280,423)	(14,515,578)
Restricted	14,769,176	14,773,372
Unrestricted	21,058,354	9,180,058
<b>TOTAL NET POSITION</b>	<b>20,547,107</b>	<b>9,437,852</b>
<b>TOTAL LIABILITIES AND NET POSITION</b>	<b>\$ 428,059,865</b>	<b>\$ 423,289,702</b>

**NORTHERN CALIFORNIA POWER AGENCY  
LODI ENERGY CENTER  
STATEMENT OF REVENUES, EXPENSES  
& CHANGES IN NET POSITION  
UNAUDITED**

		<b>Two Months Ended August</b>	
		<b>2018</b>	<b>2017</b>
<b>SALES FOR RESALE</b>			
Participants	\$	13,159,178	\$ 8,356,697
Other		20,658,887	5,648,228
<b>TOTAL SALES FOR RESALE</b>		<b>33,818,065</b>	<b>14,004,925</b>
<b>OPERATING EXPENSES</b>			
Operations		10,483,094	4,582,735
Depreciation		2,435,739	2,434,714
Purchased power		574,324	454,267
Maintenance		632,553	534,803
Administrative and general		810,502	836,753
Transmission		169,512	285,559
Intercompany (sales) purchases		20,659	40,317
<b>TOTAL OPERATING EXPENSES</b>		<b>15,126,383</b>	<b>9,169,148</b>
<b>NET OPERATING REVENUES</b>		<b>18,691,682</b>	<b>4,835,777</b>
<b>OTHER REVENUES (EXPENSES)</b>			
Interest expense		(2,459,668)	(2,600,302)
Interest income		576,749	194,837
Other		359,780	439,418
<b>TOTAL OTHER REVENUES (EXPENSES)</b>		<b>(1,523,139)</b>	<b>(1,966,047)</b>
<b>FUTURE RECOVERABLE AMOUNTS</b>		<b>-</b>	<b>360,505</b>
<b>REFUNDS TO PARTICIPANTS</b>		<b>135,031</b>	<b>(14)</b>
<b>INCREASE IN NET POSITION</b>		<b>17,303,574</b>	<b>3,230,221</b>
<b>NET POSITION</b>			
Beginning of year		3,243,533	6,207,631
End of period	\$	20,547,107	\$ 9,437,852

**Lodi Energy Center  
FY 2019 Operating Costs  
As of August 31, 2018**

	Annual Budget	Actual	Remaining	YTD % Remaining	Notes
<b>Routine O&amp;M Costs</b>					
Variable	\$ 4,733,380	\$ 615,315	\$ 4,118,065	87%	<b>A</b>
Fixed	3,443,662	507,697	2,935,965	85%	
Administration	205,529	6,072	199,457	97%	
Mandatory Costs	298,336	101,740	196,596	66%	
Routine O&M Costs without Labor	8,680,907	1,230,824	7,450,083	86%	
Labor	5,284,165	827,385	4,456,780	84%	<b>B</b>
Total Routine O&M Cost	13,965,072	2,058,209	11,906,863	85%	
<b>Other Costs</b>					
Fuel	33,092,116	8,921,210	24,170,906	73%	
CA ISO Charges	550,660	169,512	381,148	69%	
CA ISO Purchased Energy	5,113,848	574,324	4,539,524	89%	<b>C</b>
Debt Service	26,079,852	4,346,642	21,733,210	83%	
Insurance	625,976	-	625,976	100%	
Other Costs	124,926	23,014	101,912	82%	
Generation Services Shared	368,963	45,659	323,304	88%	
Administrative & General (Allocated)	2,182,080	308,787	1,873,293	86%	<b>C</b>
Power Management Allocated Costs	1,446,134	241,022	1,205,112	83%	
Total O&M Cost	83,549,627	16,688,379	66,861,248	80%	
<b>Projects</b>					
Operations & Maintenance	52,000	5,046	46,954	90%	<b>C</b>
Capital	100,000	-	100,000	100%	
Maintenance Reserve	1,461,107	243,518	1,217,589	83%	
Total Projects	1,613,107	248,564	1,364,543	85%	
Annual Cost	85,162,734	16,936,943	68,225,791	80%	
<b>Less: Third Party Revenue</b>					
Interest Income	385,845	32,803	353,042	91%	<b>C</b>
ISO Energy Sales	52,414,938	20,254,574	32,160,364	61%	
Ancillary Services Sales	1,028,631	404,313	624,318	61%	
	53,829,414	20,691,690	33,137,724	62%	
Net Annual Cost to Participants	\$ 31,333,320	\$ (3,754,747)	\$ 35,088,067	112%	
<b>Total Variable Costs</b>	43,490,004	10,280,361	33,209,643		
<b>Total Fixed Costs</b>	41,672,730	6,656,582	35,016,148		
	<u>\$ 85,162,734</u>	<u>\$ 16,936,943</u>	<u>\$ 68,225,791</u>		
<b>Net Cumulative Generation (MWh)</b>	1,304,122	350,780			
<b>Total O&amp;M Cost Per MWh</b>	\$ 64.07	\$ 47.58			
<b>Net Annual Cost Per MWh</b>	\$ 24.03	\$ (10.70)			

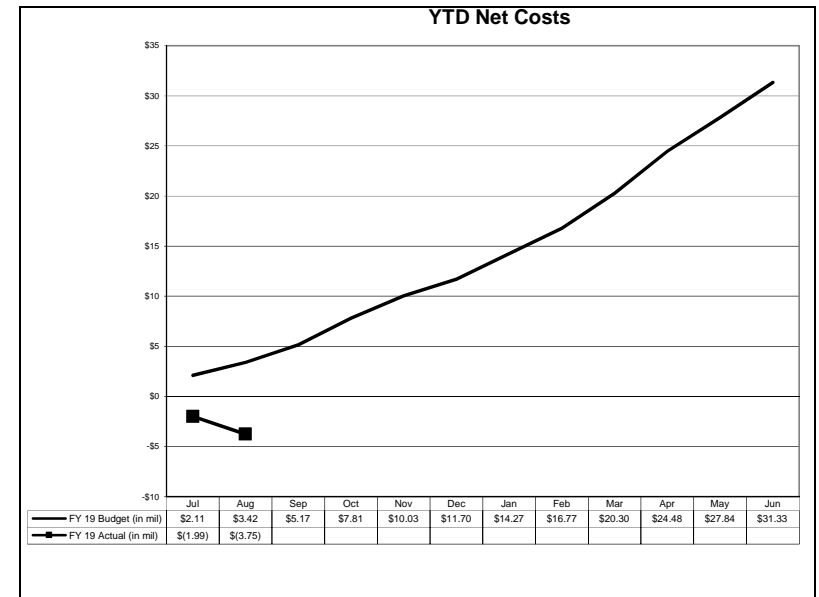
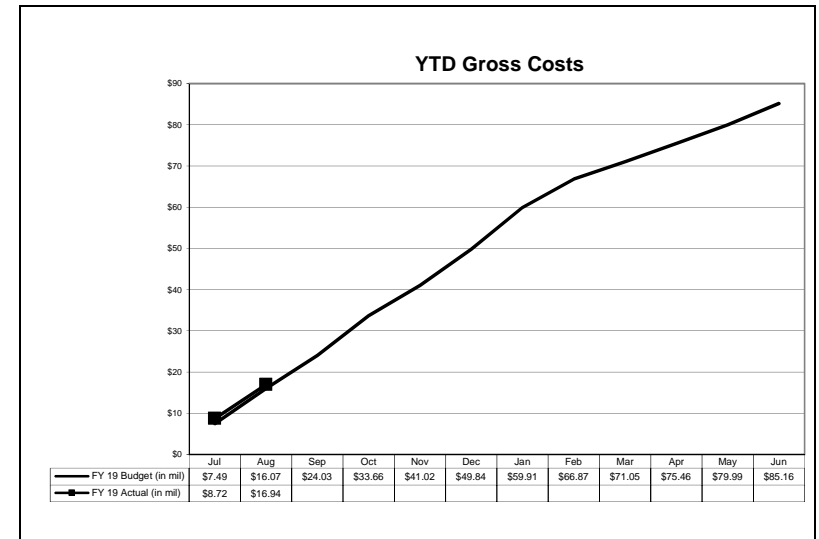
**Footnotes:**

**General** - The plant ran every day during the month.  
August payroll, A&G allocation and generation services allocation are estimated.

**A** - Payments for annual CEC fee.

**B** - Higher fuel costs due to higher generation.

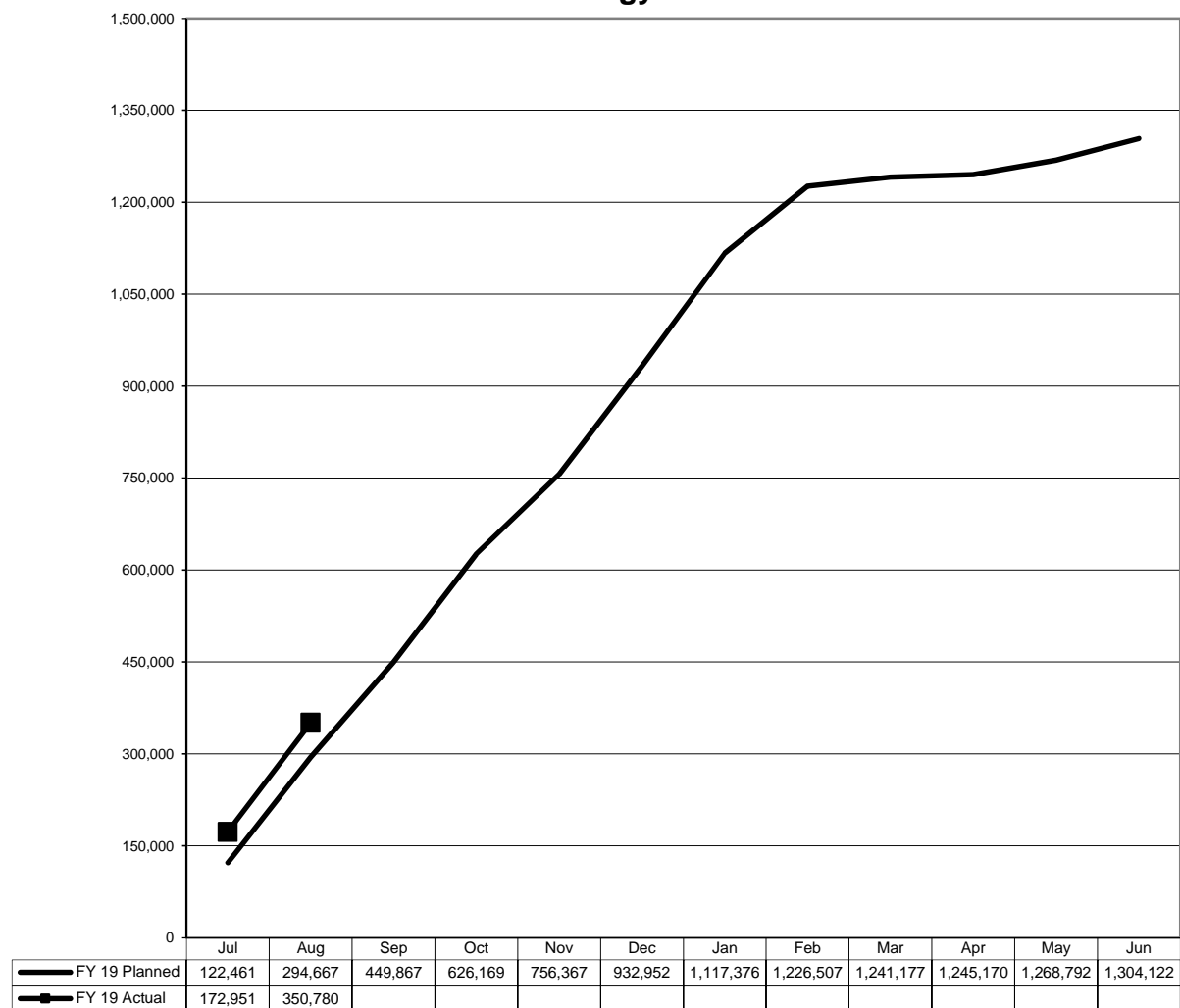
**C** - Higher than budgeted CA ISO costs due to higher generation.



**Annual Budget  
LEC Generation Analysis  
Planned vs. Actual  
FY 2019**

In MWh

## Lodi Energy Center





## **Lodi Energy Center Project Participant Committee**

### **LEC GHG Reports**

AGENDA ITEM NO.: 9

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**Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** GHG Reports (excerpted from monthly ARB)

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2013 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual													Compliance Year 2013		
IDENTIFIER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Charge Code	Source
Energy (MWh)	0	82,787	101,925	128,167	134,284	32,545	80,153	122,492	94,615	92,091	98,739	105,078	138,068	1,210,944		Forecast/Meter
Gas Schedule (MMBtu)	0	593,484	723,038	894,657	952,529	229,724	579,650	870,331	673,965	650,250	692,396	738,008	965,292	8,563,324		Forecast/Meter
Emissions Factor (MT/MMBtu)	0	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054			MARS
HVAC/Water Heater (MT)													86,000			
Monthly MT Emissions (MT)	0	32,027	39,019	48,280	51,403	12,397	31,281	46,967	36,371	35,091	37,365	39,827	52,178	462,206		derived
Cumulative MT Obligation (MT)	0	32,027	71,046	119,326	170,730	183,127	214,407	261,375	297,745	332,836	370,201	410,028	462,206	462,206		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	92,695	5,350	0	13,644	105,000	50,632	30,628	1,600	102,200	12,594	37,500	0	46,290	498,133		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total Compliance Instrument Participant Transfers (MT)	92,695	5,350	0	13,644	105,000	50,632	30,628	1,600	102,200	12,594	37,500	0	46,290	498,133		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	47,000	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	47,000	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0			CITSS
Total Monthly Activity (MT)	139,695	5,350	0	13,644	105,000	50,632	30,628	1,600	102,200	12,594	37,500	0	46,290	545,133		derived
Cumulative MT Account Balance [MTA] (MT)	139,695	145,045	145,045	158,689	263,689	314,321	344,949	346,549	448,749	461,343	498,843	498,843	545,133	545,133		derived
MTA Shortfall (MT)	(139,695)	(113,018)	(73,999)	(39,363)	(92,959)	(131,194)	(130,542)	(85,174)	(151,004)	(128,507)	(128,642)	(88,815)	(82,927)	(82,927)	MTA SHORTFALL	derived

2014 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual												Compliance Year 2014	Cumulative Totals		
IDENTIFIER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Total	Charge Code	Source
Energy (MWh)	136,604	156,089	120,489	55,378	71,210	51,037	118,473	69,006	178,831	197,715	51,636	106,338	1,312,806	2,523,750		Forecast/Meter
Gas Schedule (MMBtu)	951,700	1,092,730	858,805	391,272	512,068	371,695	836,762	496,327	1,251,547	1,371,546	372,826	759,691	9,266,969	17,830,293		Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054		MARS
HVAC/Water Heater (MT)												173,000				
Monthly MT Emissions (MT)	51,358	58,969	46,345	21,115	27,634	20,059	45,156	26,784	67,540	74,015	20,120	41,170	500,265	962,471		derived
Cumulative MT Obligation (MT)	513,564	572,533	618,879	639,994	667,628	687,686	732,842	759,626	827,166	901,181	782,385	823,555	823,555	823,555		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	102,347	40,000	48,066	25,000	1,290	163,248	0	0	13,586	50,520	80,350	350	524,757	1,022,890		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total Compliance Instrument Participant Transfers (MT)	102,347	40,000	48,066	25,000	1,290	163,248	0	0	13,586	50,520	80,350	350	524,757	1,022,890		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	138,916	0	138,916	138,916		CITSS
Total Monthly Activity (MT)	102,347	40,000	48,066	25,000	1,290	163,248	0	0	13,586	50,520	80,350	350	524,757	1,069,890		derived
Cumulative MT Account Balance [MTA] (MT)	647,480	687,480	735,546	760,546	761,836	925,084	925,084	925,084	938,670	989,190	930,624	930,974	930,974	930,974		derived
MTA Shortfall (MT)	(133,916)	(114,947)	(116,667)	(120,552)	(94,208)	(237,398)	(192,242)	(165,458)	(111,504)	(88,009)	(148,239)	(107,419)	(107,419)	(107,419)	MTA SHORTFALL	derived

2015 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual												Compliance Year 2015	Cumulative Totals		
IDENTIFIER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Total	Charge Code	Source
Energy (MWh)	196,019	151,600	184,507	181,244	91,067	142,275	103,883	137,266	131,608	165,737	75,231	131,779	1,692,216	4,215,967		Forecast/Meter
Gas Schedule (MMBtu)	1,368,474	1,073,330	1,299,294	1,269,481	646,027	1,009,450	740,553	971,283	927,730	1,171,129	541,136	940,340	11,958,227	29,788,520		Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054				MARS
HVAC/Water Heater (MT)																
Monthly MT Emissions (MT)	73,850	57,922	70,116	68,508	34,863	54,475	39,964	52,415	50,065	63,200	29,202	50,745	645,326	1,607,796		derived
Cumulative MT Obligation (MT)	897,404	955,327	1,025,443	1,093,951	1,128,814	1,183,288	1,223,252	1,275,668	1,325,733	1,388,933	593,540	644,285	644,285	644,285		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	41,342	250	172,100	15,000	86,000	107,327	104,000	26,021	0	58,201	375	200	610,816	1,633,706		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total Compliance Instrument Participant Transfers (MT)	41,342	250	172,100	15,000	86,000	107,327	104,000	26,021	0	58,201	375	200	610,816	1,633,706		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	824,595	0	824,595	963,511		CITSS
Total Monthly Activity (MT)	41,342	250	172,100	15,000	86,000	107,327	104,000	26,021	0	58,201	375	200	610,816	1,680,706		derived
Cumulative MT Account Balance [MTA] (MT)	972,316	972,566	1,144,666	1,159,666	1,245,666	1,352,993	1,456,993	1,483,014	1,483,014	1,541,215	716,995	717,195	717,195	717,195		derived
MTA Shortfall (MT)	(74,912)	(17,239)	(119,223)	(65,715)	(116,852)	(169,705)	(233,741)	(207,346)	(157,281)	(152,282)	(123,455)	(72,910)	(72,910)	(72,910)	MTA SHORTFALL	derived

2016 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual												Compliance Year 2016	Cumulative Totals		
IDENTIFIER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Total	Charge Code	Source
Energy (MWh)	97,230	27,160	91,578	45,437	3,423	66,596	76,008	31,653	25,597	20,636	17,488	28,418	531,223	4,747,190		Forecast/Meter
Gas Schedule (MMBtu)	695,120	194,179	678,033	339,504	27,754	485,792	547,510	234,782	192,679	158,835	158,835	214,109	3,927,132	33,715,652		Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054				MARS
HVAC/Water Heater (MT)																
Monthly MT Emissions (MT)	37,512	10,479	36,590	18,321	1,498	26,216	29,546	12,670	10,398	8,572	8,572	11,554	211,928	1,819,724		derived
Cumulative MT Obligation (MT)	681,798	692,276	728,867	747,188	748,686	774,901	804,448	817,118	827,516	836,087	650,684	662,238	662,238	662,238		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	211,481	0	2,500	31,000	0	55,000	0	56,600	0	0	0	0	356,581	1,990,287		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total Compliance Instrument Participant Transfers (MT)	211,481	0	2,500	31,000	0	55,000	0	56,600	0	0	0	0	356,581	1,990,287		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	193,975	0	193,975	1,157,486		CITSS
Total Monthly Activity (MT)	211,481	0	2,500	31,000	0	55,000	0	56,600	0	0	0	0	356,581	2,037,287		derived
Cumulative MT Account Balance [MTA] (MT)	928,676	928,676	931,176	962,176	962,176	1,017,176	1,017,176	1,073,776	1,073,776	1,073,776	879,801	879,801	879,801	879,801		derived
MTA Shortfall (MT)	(246,878)	(236,400)	(202,309)	(214,988)	(213,490)	(242,275)	(212,728)	(256,658)	(246,260)	(237,689)	(229,117)	(217,563)	(217,563)	(217,563)	MTA SHORTFALL	derived

2017 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center															
IDENTIFIER	Actual											Compliance Year 2017	Cumulative Totals	Charge Code	Source
	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total		
Energy (MWh)	38,917	15,337	7,086	0	3,436	35,997	54,015	66,209	93,620	136,041	126,574	149,304	726,534	1,088,590	Forecast/Meter
Gas Schedule (MMBtu)	301,781	115,019	59,077	0	29,558	266,056	403,302	464,997	675,267	969,402	901,245	1,063,441	5,249,146	7,830,656	Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054			MARS
HVAC/Water Heater (MT)															
Monthly MT Emissions (MT)	16,286	6,207	3,188	0	1,595	14,358	21,764	25,094	36,441	52,314	48,636	57,389	283,270	2,102,994	derived
Cumulative MT Obligation (MT)	678,524	684,731	687,919	687,919	689,514	703,872	725,636	750,729	787,170	839,484	824,748	882,136	882,136	882,136	derived
Compliance Instrument Participant Transfers (to LEC)															
Auction Allowances	0	0	5,000	0	0	0	0	0	67,058	0	20,500	92,321	184,879	2,175,166	CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total Compliance Instrument Participant Transfers (MT)	0	0	5,000	0	0	0	0	0	67,058	0	20,500	92,321	184,879	2,175,166	
														0	
NCPA Compliance Instrument Purchases (for LEC)														0	
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000	CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000	
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	63,372	0	63,372	1,220,858	CITSS
Total Monthly Activity (MT)	0	0	5,000	0	0	0	0	0	67,058	0	20,500	92,321	184,879	256,666	derived
Cumulative MT Account Balance [MTA] (MT)	879,801	879,801	884,801	884,801	884,801	884,801	884,801	884,801	951,859	951,859	908,987	1,001,308	1,001,308	1,001,308	derived
MTA Shortfall (MT)	(201,277)	(195,070)	(196,882)	(196,882)	(195,287)	(180,929)	(159,165)	(134,072)	(164,689)	(112,375)	(84,239)	(119,172)	(119,172)	(119,172)	MTA SHORTFALL derived

2018 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Estimated	Estimated	Estimated	Estimated	Estimated	Compliance Year 2018 Total	Cumulative Totals Total		
IDENTIFIER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER			Charge Code	Source
Energy (MWh)	141,193	110,674	138,464	14,747	8,838	35,406	172,949	165,981	173,262	139,237	56,209	191,257	1,348,217	6,821,941		Forecast/Meter
Gas Schedule (MMBtu)	1,007,872	801,081	997,246	115,836	73,178	270,922	1,220,655	1,195,061	1,247,484	1,002,508	404,702	1,377,052	9,713,597	48,678,395		Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054		0		MARS
HVAC/Water Heater (MT)														0		
Monthly MT Emissions (MT)	54,390	43,230	53,816	6,251	3,949	14,620	65,873	64,491	67,320	54,100	21,840	74,313	524,194	2,627,189		derived
Cumulative MT Obligation (MT)	879,138	922,368	976,184	982,435	986,384	1,001,005	1,066,877	1,131,369	1,198,689	1,252,790	1,274,629	1,348,942	1,348,942	1,348,942		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	159,100	0	34,940	16,885	53,452	35,500	33,232	140,431	0	0	0	0	473,540	2,648,706		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total Compliance Instrument Participant Transfers (MT)	159,100	0	34,940	16,885	53,452	35,500	33,232	140,431	0	0	0	0	473,540	2,648,706		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	1,220,858		CITSS
Total Monthly Activity (MT)	159,100	0	34,940	16,885	53,452	35,500	33,232	140,431	0	0	0	0	473,540	2,695,706		derived
Cumulative MT Account Balance [MTA] (MT)	1,068,087	1,068,087	1,103,027	1,119,912	1,173,364	1,208,864	1,242,096	1,382,527	1,382,527	1,382,527	1,382,527	1,382,527	1,382,527	1,382,527		derived
MTA Shortfall (MT)	(188,949)	(145,719)	(126,843)	(137,477)	(186,980)	(207,859)	(175,219)	(251,158)	(183,838)	(129,737)	(107,898)	(33,585)	(33,585)	(33,585)	MTA SHORTFALL	derived

NCPA All Resources Bill LEC GHG Obligation Detail Report (Cumulative) September 2018																
IDENTIFIER	AZUSA	BART	BIGGS	CDWR	GRI	HEA	LOD	LOM	MID	PLU	PWRPA	SNCL	UKI	TOTAL	Charge Code	Source
Allocation Percentages																
Generation Entitlement Share %	2.7857%	6.6000%	0.2679%	33.5000%	1.9643%	1.6428%	9.5000%	2.0357%	10.7143%	0.7857%	2.6679%	25.7500%	1.7857%	100%		MARS
Obligation Accounts																
Current MT Compliance Obligation (MTO) Balance (MT)	35,025	82,983	3,369	443,023	24,698	20,657	119,027	25,547	134,714	9,877	33,544	323,762	22,452	1,278,678		derived
Current MT Compliance Instrument Account (MTA) Balance (MT)	34,502	82,984	3,934	581,475	26,428	22,092	140,691	26,422	142,355	10,313	37,469	323,762	22,452	1,454,879		derived
MTA Shortfall (MT)	523	(0)	(565)	(138,452)	(1,731)	(1,435)	(21,664)	(876)	(7,641)	(436)	(3,925)	0	0	(176,202)	MTA SHORTFALL	Derived
Monthly GHG Price \$/MT	15.15	15.15	15.15	15.15	15.15	15.15	15.15	15.15	15.15	15.15	15.15	15.15	15.15	15.15	MTA SHORTFALL	ICE Index
GHG Minimum Cash Compliance Obligation (\$)	7,920	0	0	0	0	0	0	0	0	0	0	5	0	7,925	MTA SHORTFALL	Derived
Current Month CCA Balance (\$)*	60,991	0	143	0	1,103	4,780	755	0	0	0	0	0	2,652	70,424	CCA BALANCE	Accounting
Net GHG Obligation (\$)	0	0	0	0	0	0	0	0	0	0	0	5	0	5	NET GHG OBLIG	Derived

\* The Current Month CCA Balance (\$) consists of the current cash balance plus any outstanding balance of Net GHG Obligation (\$) billed but not yet received.



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 10

**Date:** August 1, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Advanced Turbine Support, LLC – Five Year Multi-Task Consulting Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the Multi-Task Consulting Services Agreement with Advanced Turbine Support, LLC for borescope inspections and non-destructive testing services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$250,000 over 5 years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

Borescope inspections and non-destructive testing services are required from time to time related to project support at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has a similar agreement in place with Air New Zealand Engineering Services and seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$250,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

### 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.



Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task Consulting Services Agreement with Advanced Turbine Support, LLC



## **MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND ADVANCED TURBINE SUPPORT, LLC**

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 Advanced Turbine Support, LLC, a Florida limited liability company, with its office located at 6280 SW 103<sup>rd</sup> Street, Gainseville, FL 32608 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2018 ("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 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** TWO HUNDRED FIFTY THOUSAND dollars (\$250,000.00) 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 for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

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

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

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

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

mobile equipment to the extent coverage may be excluded from general liability insurance.

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

**4.3 Professional Liability Insurance.** 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.** If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

**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.

**4.6 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this

Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

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

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

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

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of 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 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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Advanced Turbine Support, LLC  
Attention: Rick Ginder  
6280 SW 103<sup>rd</sup> Street  
Gainesville, FL 32608

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, SCCPA and/or a SCCPA member (collectively for the purposes 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

ADVANCED TURBINE SUPPORT, LLC

Date\_\_\_\_\_

Date\_\_\_\_\_

\_\_\_\_\_  
**RANDY S. HOWARD**

General Manager

\_\_\_\_\_  
**CHRIS MCGINLEY,**

Operations Manager / Controller

Attest:

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

Approved as to Form:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Advanced Turbine Support, LLC (“Consultant”) shall provide borescope inspection and non-destructive testing 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.

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

- Borescope Inspections
- Non-Destructive Testing

## **EXHIBIT B**

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

Compensation for all tasks, including hourly fees and expenses, shall not exceed amount as set forth in Section 2 of this Agreement.

Pricing for services to be performed varies at NCPA, NCPA Member or SCPPA locations and 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.



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 11

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**Date:** August 2, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Ernie & Sons Scaffolding dba Unique Scaffold – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the Multi-Task General Services Agreement with Ernie & Sons Scaffolding dba Unique Scaffold for scaffolding services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over 5 years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

Scaffolding services are required from time to time related to project support at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has similar agreements in place with Brand Energy (pending) and Performance Contracting and seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$2,000,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with Ernie & Sons Scaffolding dba Unique Scaffold



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
ERNIE & SONS SCAFFOLDING DBA UNIQUE SCAFFOLD**

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 Ernie & Sons Scaffolding dba Unique Scaffold, with its office located at 1960 Olivera Road, Concord, CA 94520 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2018 ("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** TWO MILLION dollars (\$2,000,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

**2.1 Invoices.** 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 \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

**4.2.2 Automobile Liability.** 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 \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

**4.3 Professional Liability Insurance.** 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 be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

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 \$50.00 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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Ernie & Sons Scaffolding dba Unique Scaffold  
Attention: John Soto  
1960 Olivera Road  
Concord, CA 94520

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

ERNIE & SONS SCAFFOLDING DBA  
UNIQUE SCAFFOLD

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**JOHN SOTO**, Vice President / Co-Owner

Attest:

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

Approved as to Form:

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

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

Ernie & Sons Scaffolding dba Unique Scaffold ("Contractor") shall provide scaffolding 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.

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

- Assemble, safety tag scaffold, inspect scaffold, modify scaffold structures, disassemble scaffold
- Contractor is responsible for inspecting and tracking scaffold materials being stored and erected to ensure scaffold quality is within the Cal-OSHA requirements and Industry Standard Guidelines.

## 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:

#### Lodi Rates:

Effective July 1<sup>st</sup> 2018 per our Carpenters Union Negotiation (46 Northern California Counties Master Agreement) thru June 30<sup>th</sup> 2023, Time & Material Labor Rates/Scaffolding material supply service on the current above-mentioned project (s) are:

\* Labor rates are valid from July 1, 2018 through June 30, 2019 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 3 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$93.60	\$120.70	\$147.47	\$93.60

\* Labor rates are valid from July 1, 2019 through June 30, 2020 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 3 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$98.00	\$125.05	\$153.08	\$97.64

\* Labor rates are valid from July 1, 2020 through June 30, 2021 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 3 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$101.90	\$129.40	\$158.72	\$101.12

\* Labor rates are valid from July 1, 2021 through June 30, 2022 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 3 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$105.94	\$133.86	\$164.48	\$104.71

\* Labor rates are valid from July 1, 2022 through June 30, 2023 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 3 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$110.13	\$138.41	\$170.38	\$108.42

- Scaffold material rental for 90 days are included in the rates. Rental after 90 days will be charged as follows.
  - July 1, 2018 – June 30, 2019 \$0.09 per-piece, per-day, plus tax.
  - July 1, 2019 – June 30, 2020 \$0.10 per-piece, per-day, plus tax.
  - July 1, 2020 – June 30, 2021 \$0.11 per-piece, per-day, plus tax.
  - July 1, 2021 – June 30, 2022 \$0.12 per-piece, per-day, plus tax.
  - July 1, 2022 – June 30, 2023 \$0.13 per-piece, per-day, plus tax.
    - Rental will stop once Unique Scaffold is notified that the scaffold is no longer needed.

## Alameda Rates:

Effective July 1<sup>st</sup> 2018 per our Carpenters Union Negotiation (46 Northern California Counties Master Agreement) thru June 30<sup>th</sup> 2023, Time & Material Labor Rates/Scaffolding material supply service on the current above-mentioned project (s) are:

\* Labor rates are valid from July 1, 2018 through June 30, 2019 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 1 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$97.62	\$126.35	\$155.52	\$97.62

\* Labor rates are valid from July 1, 2019 through June 30, 2020 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 1 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$101.93	\$131.48	\$161.92	\$101.93

\* Labor rates are valid from July 1, 2020 through June 30, 2021 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 1 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$105.73	\$136.09	\$167.81	\$105.73

\* Labor rates are valid from July 1, 2021 through June 30, 2022 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 1 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$109.66	\$140.84	\$173.87	\$109.66

\* Labor rates are valid from July 1, 2022 through June 30, 2023 and will be negotiated on an annual basis to factor the union rate increase.

<u>Area 1 Labor Rates</u>	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>Travel Time</u>
Per Hour	\$113.74	\$145.73	\$180.10	\$113.74

- Scaffold material rental for 90 days are included in the rates. Rental after 90 days will be charged as follows.
  - July 1, 2018 – June 30, 2019 \$0.09 per-piece, per-day, plus tax.
  - July 1, 2019 – June 30, 2020 \$0.10 per-piece, per-day, plus tax.
  - July 1, 2020 – June 30, 2021 \$0.11 per-piece, per-day, plus tax.
  - July 1, 2021 – June 30, 2022 \$0.12 per-piece, per-day, plus tax.
  - July 1, 2022 – June 30, 2023 \$0.13 per-piece, per-day, plus tax.
    - Rental will stop once Unique Scaffold is notified that the scaffold is no longer needed.

- Consumables such as wire, nails, toe-board and small tools are included in the pricing.
  - Other consumables, i.e. full sheets of plywood, safety netting, I-beams or any other items uncommonly used for day to day scaffold use will be billed at cost plus 10%.
- Freight will be billed at cost plus 10%.
- Third Party rental equipment will be billed at cost plus 10%.
- Shrink wrap material/ accessories that are used per-request will be billed per (½ roll and or full roll) 12mil 30' x 100'.
 

○ July 1, 2018 – June 30, 2019	\$600.18 per full roll.	\$300.09 per half roll.
○ July 1, 2019 – June 30, 2020	\$618.19 per full roll.	\$309.09 per half roll.
○ July 1, 2020 – June 30, 2021	\$636.73 per full roll.	\$318.37 per half roll.
○ July 1, 2021 – June 30, 2022	\$655.83 per full roll.	\$327.92 per half roll.
○ July 1, 2022 – June 30, 2023	\$675.51 per full roll.	\$337.75 per half roll.
- Budget pricing will be provided for all projects prior to starting work, with the exception of emergency call out work. Pricing for this work will provided in a timely manner.
- All work will be done in accordance with NCCRC Agreement.
- Unique Scaffold will coordinate directly with NCPA on work being performed and at the sole discretion of on-site Manager(s).
- Unique Scaffold's project manager's responsibilities shall include inspection and tracking of all scaffold materials being stored and erected to ensure scaffold quality is within the Cal – OSHA requirements and Industry Standard Guidelines.
- No back charge for work by others on or incidental to our work under this Agreement will be accepted by or paid by us unless we have entered into written agreement relative to said charges prior to the performance of such work.
- Bid assumes that a material stocking area will be provided in close proximity to the area being erected or dismantle.
- Bid excludes cost of site-specific safety orientation or drug testing.
- Prices quoted are based on reasonable site access, allowed and/or provided by Customer.
- Pricing is based on Union wages.
- This proposal is subject to acceptance within 60 days.
- Our rates are based on prompt payment. Invoices not paid after 30 days will be subject to California State maximum interest rate of ½% per month on unpaid balance.
- Bid assumes that a forklift (crane etc.) will be available for our use in loading and unloading trucks and moving equipment around the jobsite.
- At your request, we shall make alterations and repairs at your expense. Unless otherwise specified herein, no alterations to our work shall be made by you without our written consent. Additional Labor and/or rental beyond the original scope of work will be performed on a Time & Material basis, with additional rental equipment charges to be charged at rates mentioned above.
- Any un-scheduled work/call outs will be a minimum of 4 hours per man & a 2 hour minimum per man (with travel time (if applicable)) in the event job gets cancelled due to customer/owner schedule change and or weather.

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.

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(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)



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 12

**Date:** September 5, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Fairchild & Wells, Inc. dba Fairchild & Associates – Five Year Multi-Task Consulting Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the Multi-Task Consulting Services Agreement with Fairchild & Wells, Inc. dba Fairchild & Associates for well inspections and testing services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over 5 years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

Well inspections and testing services are required from time to time related to project support at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has a similar agreement in place with CH2M Hill and AECOM Technical Services and seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$500,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

### 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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task Consulting Services Agreement with Fairchild & Wells, Inc. dba Fairchild & Associates



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
FAIRCHILD & WELLS, INC., dba FAIRCHILD & ASSOCIATES**

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 Fairchild & Wells, Inc., dba Fairchild & Associates, a corporation with its office located at 14711 Barryknoll Lane, #37, Houston, TX 77079 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2018 ("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 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 (\$500,000.00) 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 for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

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

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

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

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

mobile equipment to the extent coverage may be excluded from general liability insurance.

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

**4.3 Professional Liability Insurance.** 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.** If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

**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.

**4.6 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this



Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

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

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

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

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

**6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of 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 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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Fairchild & Wells, Inc., dba Fairchild & Associates  
Attention: James W. Fairchild  
14711 Barryknoll Lane, #37  
Houston, TX 77079

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, SCCPA and/or a SCPPA member (collectively for the purposes 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.

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

NORTHERN CALIFORNIA POWER AGENCY

FAIRCHILD & WELLS, INC., dba  
FAIRCHILD & ASSOCIATES

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**JAMES W. FAIRCHILD,**  
President

Attest:

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

Approved as to Form:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Fairchild & Wells, Inc. dba Fairchild & Associates ("Consultant") shall provide well related consulting 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.

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

- Well Inspections
- Well Testing

## **EXHIBIT B**

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

Compensation for all tasks, including hourly fees and expenses, shall not exceed 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:

James W. Fairchild, President	\$310.00/Hour
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Expenses at cost plus 10.0%

Pricing for services to be performed at NCPA Member or SCLPA 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.



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 13

**Date:** September 5, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Burns and McDonnell Engineering Company, Inc. – First Amendment to Five Year Multi-Task Professional Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the First Amendment to the Multi-Task Professional Services Agreement with Burns and McDonnell Engineering Company, Inc. for consulting services, including transmission and distribution planning, feasibility studies, forecasting, and other studies and planning services, with any non-substantial changes recommended and approved by the NCPA General Counsel, increasing the not to exceed amount from \$1,000,000 to \$4,000,000, for use at all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA members.

### Background

Various consulting services are required at the NCPA, Members, SCPPA, and SCPPA Member locations from time to time, including feasibility studies, transmission and distribution planning, forecasting and resource planning, power and renewable project development, and other studies and planning services. NCPA entered into a five year Multi-Task Professional Services Agreement with Burns and McDonnell Engineering Company, Inc. effective October 26, 2016 for an amount not to exceed \$1,000,000. The Agency is currently utilizing this vendor for an on-going solar project, and multiple Members have utilized this vendor through NCPA's Support Services Program, and this agreement is running low on funds. This amendment will increase the not to exceed amount from \$1,000,000 to \$4,000,000. This agreement is still available for use at any facility owned and/or operated by the Agency, its Members, SCPPA, or SCPPA Members.

### Selection Process

This five year contract does not commit NCPA to any expenditure of funds. When these services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place other enabling agreements for similar services with Black & Veatch Construction, Inc. and Worley Parsons. NCPA will seek bids from as many qualified providers as possible and enter into additional enabling agreements as needed. The bid is awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$4,000,000, to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (2)

- Multi-Task Professional Services Agreement with Burns and McDonnell Engineering Company, Inc.
- First Amendment to Multi-Task Professional Services Agreement with Burns and McDonnell Engineering Company, Inc.



**MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
BURNS & MCDONNELL ENGINEERING COMPANY, INC.**

This agreement for professional services ("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 Burns & McDonnell Engineering Company, Inc., a Missouri corporation, with its office located at 9400 Ward Parkway, Kansas City, MO 64114 ("Consultant") (together sometimes referred to as the "Parties") as of Oct. 26, 2016 ("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 Work attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified in the appropriate Purchase Order.

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end five (5) years from the date this Agreement was signed by Agency; provided that if Services due under a Purchase Order are still outstanding at that time, the Agreement shall end upon completion of such Services.
- 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 in the same geographical location and for which Consultant is providing the Services ("Standard of Care"). Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein. If Consultant fails to meet the foregoing Standard of Care, Consultant will re-perform at its own cost, and without reimbursement from the Agency, the Services necessary to correct negligent errors and omissions which are caused by Consultant's failure to comply with the above standards and practices, and which are reported to Consultant within one year from the completion of such Services. This obligation to re-perform the Services necessary to correct negligent errors and omissions which are caused by Consultant's failure to comply with the above Standard of Care is Consultant's sole obligation and Agency's sole and exclusive remedy with respect to defects in the quality of the Services.
- 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 business 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 fails to respond within such time and agree to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement, and its Exhibits, the Purchase Order is deemed rejected and Agency shall not be bound by the Purchase Order issued to Consultant.

**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. 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 one million dollars (\$1,000,000) per accident, each employee by disease, and policy limit by disease.
- 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 a claim, for bodily injury, death, personal injury and broad form property damage which may be caused by the operations of Consultant. The policy shall provide a limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least

as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering Commercial General Liability. No endorsement shall be attached limiting coverage which is materially related to the Scope of Work under this Agreement.

**4.2.2 Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering a loss or liability, including the cost of defense of an 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 limit of \$1,000,000 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 or Excess Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella/excess 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 errors and omissions. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

**4.4 All Policies Requirements.**

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

**4.4.2 Notice of Cancellation of Coverage.** Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount below the

amounts required herein, cancellation, or modification adverse to Agency making Consultant non-compliant with the requirements herein of the policies referenced in Section 4.

**4.4.3 Additional Certificates and Endorsements.** If Consultant provides services to Agency members, SCPPA and/or SCPPA members, Agency shall have the right to require the Consultant to provide certificates of insurance and/or 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.

**4.5 Waiver of Subrogation.** The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

**4.6 Consultant's Obligation.** Consultant shall be solely responsible for requiring 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 require 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 for bodily injury (including death) or property damage to the extent caused by 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 that 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, recklessness, or willful misconduct of the Agency.

Notwithstanding the foregoing, in the event Consultant defends the Agency and it is ultimately determined or agreed to that the Consultant was either not negligent or was only partially negligent with respect to the loss, liability, claim, suit, action or damages, the Agency agrees that it shall promptly reimburse Consultant for such proportion of the Consultant's costs incurred in defending the Agency that is not attributable to the negligence of the Consultant.

## **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 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 insured in all respects commensurate with the size of the subcontract.
- 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, including any written waivers and releases, 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 deliverable 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 DELIVERABLES.**

**9.1 Deliverables Created as Part of Consultant's Performance.** All deliverables in electronic or any other form, that Consultant prepares pursuant to this Agreement and that relate to the matters covered hereunder shall become the property of the Agency upon full payment of all amounts properly due hereunder. 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. Any and all deliverables are prepared specifically, and intended to be utilized exclusively for the project and location contemplated under the Agreement. Any completion, extension, or modification of deliverables by Agency or others without participation by Consultant, or written authorization by Consultant, or any reuse by Agency of Consultant's deliverables or work product other than for the specific purpose intended will be at Agency's sole risk and without liability or legal exposure to Consultant. Consultant shall retain ownership of Consultant's prior developed intellectual property (including standard drawings and specifications, computer programs and models,

copyrights, trade secrets, patented, patent pending, or other patentable technology, processes, or business practices).

**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. In no event shall Agency be entitled to audit the composition of any agreed upon fixed rates or percentage multipliers nor shall it be entitled to audit any rates, charges, costs, hours worked or expenses related to work performed on a lump sum or fixed price basis. Notwithstanding the preceding sentence, Consultant understands and agrees that Agency can make no representations or promises concerning the scope or extent of an audit by the State Auditor.

**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"). During the term of this Agreement and five (5) years thereafter, the Receiving Party shall: (a) hold the Disclosing Party's Confidential Information in confidence; (b) take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential

Information; and (c) return or destroy all Confidential Information (including all copies thereof) within thirty (30) days of receipt of a written request from the Disclosing Party.

**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 Ken Speer, Assistant 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:

Burns & McDonnell  
Attn. Mr. Adam Young, PE, Project Manager  
9400 Ward Parkway  
Kansas City, MO 64114

With a copy sent to:  
Burns & McDonnell  
Attn: General Counsel  
9400 Ward Parkway,  
Kansas City, MO 64114

Any written notice to Agency shall be sent to:

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

With a copy to:

Michael F. Dean  
General Counsel  
Northern California Power Agency  
Meyers Nave  
555 Capitol Mall, Suite 1200  
Sacramento, CA 95814

- 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.
- 10.16 Agency Provided Information.** Consultant shall have no liability for defects in the Services attributable to Consultant's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by Agency or third parties not under contract to Consultant (collectively, for purposes of this Section 10.16, "Third Party Information"); provided, however, that: (1) this provision shall not excuse Consultant's failure to perform the Services to the Standard of Care in Section 1.2 of this Agreement; and (2) where the scope of services includes checking or verifying the accuracy of Third Party Information, this provision shall not excuse Consultant from performing such checking or verifying to the Standard of Care in Section 1.2.

**10.17 Contractor Safety.** Consultant shall be responsible for the safety of its own employees at all times during the performance of any Services. Consultant's safety program shall include all requisite components required under Federal, state and local regulations and, if applicable, shall comply with all Agency or project site programs.

**10.17.1** Consultant shall not be responsible for: (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with work related to the Services; (b) the failure of any of Agency's other contractors or consultants or their respective employees, subcontractors, vendors, or other project participants, not under contract to Consultant, to fulfill contractual responsibilities to Agency or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction; provided, however, that this Section 10.17.1 shall not apply where the Services specified in a Purchase Order specifically include these responsibilities.

**10.17.2** Consultant shall not have the authority to direct, control or stop the work of Agency's contractors or consultants or their respective employees, subcontractors or vendors; provided, however, that this Section 10.17.2 shall not apply where the Services specified in a Purchase Order specifically include these responsibilities.

**10.18 Cost Estimates.** Estimates and projections prepared by Consultant relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on Consultant's experience, qualifications, and judgment as a design professional. Since Consultant has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction contractors' procedures and methods, unavoidable delays, construction contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, Consultant does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost estimates and projections prepared by Consultant.

**10.19 Contractor Liability.** In no event shall either Party or its subcontractors or subconsultants, of any tier, be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental, exemplary or consequential damages, such as, but not limited to, delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of the equipment or system, non-operation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchase or replacement equipment, systems or power. In addition, to the fullest extent permissible by law, and notwithstanding any other provision of this Agreement or any Purchase Order, the total liability, in the aggregate, of Consultant, its officers, directors, shareholders, employees, agents, subcontractors and subconsultants, and any of them, to Agency and anyone claiming by,

through or under Agency, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Services or this Agreement or any Purchase Order from any claim, including, but not limited to, tort claims, claims of negligence (of any degree), professional errors or omissions, breach of contract, breach of warranty, indemnity claims and strict liability of Consultant, its officers, directors, shareholders, employees, agents, subcontractors and subconsultants, and any of them, shall not exceed Two Million dollars (\$2,000,000.00).

- 10.20 Hazardous Materials.** "Hazardous Waste" means any toxic or radioactive substance so defined under applicable federal, state or local laws or regulations. "Pre-Existing Contamination" is any Hazardous Waste present at the job site that was not brought onto such site by Consultant or at the direction of Consultant. Notwithstanding anything in this Agreement to the contrary, title to, ownership of, and legal responsibility and liability for Pre-Existing Contamination shall at all times remain with Agency. Agency agrees to release, defend, indemnify, and hold Consultant harmless from and against any and all liability and claims, including attorneys' fees, that may in any manner arise in any way directly or indirectly from such Pre-Existing Contamination. This indemnification obligation shall survive the completion or termination of the Agreement.

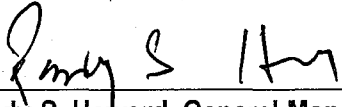
The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

BURNS & MCDONNELL ENGINEERING  
COMPANY, INC.


Date 11/7/16

Date 10/26/16

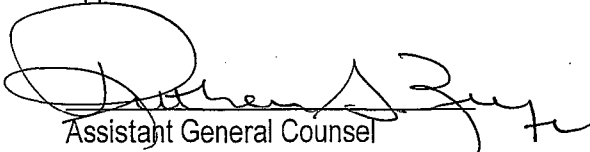
  
Randy S. Howard, General Manager

  
Jeff Greig, Senior Vice President

Attest:

  
Assistant Secretary of the Commission

Approved as to Form:

  
Assistant General Counsel

## EXHIBIT A

### SCOPE OF SERVICES

Burns & McDonnell ("Consultant") shall provide the Northern California Power Agency ("Agency") and, pursuant to Section 1.4 of the Agreement, Agency members, the Southern California Public Power Authority ("SCPPA"), and SCPPA members, with consulting services related to project support and plant operations as needed. The scope of the Consulting services performed under the Agreement will be defined on an individual Purchase Order basis.

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

- Feasibility Studies
- Business Model Development
- Forecasting and Resource Planning
- Transmission & Distribution Planning
- Technology Assessments
- Power Project Development
- Renewable Resource Development
- Valuations and Appraisals
- Cost of Service and Rate Studies
- Engineer of Record
- NERC Compliance
- Environmental Studies & Permitting
- Conceptual Design
- Cost Estimating
- Contract Planning
- Engineering Services (preliminary and detailed)
- Engineering Studies
- Execution Planning
- Operations and Maintenance Evaluation and Support
- Vendor Quality Assurance
- Construction Management
- Start-up and Commissioning Service
- Customer Information System Services
- Meter Data Management System Services
- Advanced Metering Infrastructure Services
- Smart Grid Solutions
- Technology Advisory Services
- Project Management Services
- Smart Grid Consulting Services

## **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. Consultant may increase the rates once per calendar year by an amount not to exceed three percent (3%) per year after the first year of the Agreement. Consultant shall notify Agency of any rate increase in writing at least thirty (30) calendar days prior to the effective date of the increase. The hourly rates for providing professional services and method of expense reimbursement is included on the following page within Exhibit B.

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.

### Schedule of Hourly Professional Service Billing Rates

Position Classification	Classification Level	Hourly Billing Rate
General Office *	5	\$62.00
Technician *	6	76.00
Assistant *	7	87.00
	8	119.00
	9	139.00
Staff *	10	157.00
	11	171.00
Senior	12	189.00
	13	209.00
Associate	14	218.00
	15	231.00
	16	235.00
	17	240.00

**NOTES:**

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. For any nonexempt personnel in positions marked with an asterisk (\*), overtime will be billed at 1.5 times the hourly labor billing rates shown.
3. Project time spent by corporate officers will be billed at the Level 17 rate plus 25 percent.
4. For outside expenses incurred by Burns & McDonnell, such as authorized travel and subsistence, and for services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
5. A technology charge of \$9.95 per labor hour will be billed for normal computer usage, computer aided drafting (CAD) long distance telephone, fax, photocopy and mail services. Specialty items (such as web and video conferencing) are not included in the technology charge.
6. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt. A late payment charge of 1.5% per month will be added to all amounts not paid within 30 days of the invoice date.
7. The services of contract/agency and/or any personnel of a Burns & McDonnell subsidiary or affiliate shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
8. The rates shown above are effective for services through December 31, 2016, and are subject to revision thereafter.

Form BMR1016



EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

Jeffrey J. Greig SVP

(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:

BURNS & McDONNELL ENGINEERING COMPANY, 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]  
(Signature of officer or agent)

Dated this 26<sup>th</sup> day of October, 20 16.

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.

2676668.10



October 26, 2016

Ken Speer  
Assistant General Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

Re: Exhibit C Certification – Affidavit of Compliance for Contractors

Dear NCPA:

As an officer of Burns & McDonnell Engineering Company, Inc., I acknowledge receipt of Exhibit C of the Multi-Task Professional Services Agreement (Agreement) titled, *Certification – Affidavit of Compliance for Contractors*. As requested, I have executed the Exhibit C Certification in order to finalize the Agreement.

This letter summarizes the understanding of our two parties, Northern California Power Agency (NCPA) and Burns & McDonnell Engineering Company, Inc. (Party or Parties), regarding the purpose and intent of the Exhibit C Certification.

- The Exhibit C Certification is a requirement of the California Energy Commission. It is a standard form and neither Party can edit or revise the document.
- Burns & McDonnell Engineering Company, Inc. agrees to conduct the required background investigation for any employee, contractor, or subcontractor that intends to visit the subject facility, as required pursuant to the Exhibit C Certification.
- Both Parties acknowledge that as of the Effective Date of the Agreement, no assignments regarding the subject facility have been planned or authorized and consequently, no background investigations have been required or been undertaken pursuant to the Exhibit C Certification.

If you have any comments or questions, please contact me at your earliest convenience at [jgreig@burnsmcd.com](mailto:jgreig@burnsmcd.com) or 816-822-3392.

Submitted,

A handwritten signature in black ink, appearing to read "Jeff Greig", written over a horizontal line.

Jeff Greig  
Senior Vice President, Burns & McDonnell



Northern California Power Agency

October 26, 2016

Page 2

ACKNOWLEDGED:

Northern California Power Agency

Jimmy S. I. GM  
Name & Title

11/7/14  
Date



February 2, 2018

Linda Stone  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

RE: Agreement for Professional Engineering Services

Dear Linda,

As indicated in our existing agreements, Burns & McDonnell annually adjusts its Schedule of Hourly Rates for Professional Services.

Enclosed is our Schedule of Hourly Professional Services Billing Rates effective for services performed for the above listed projects for January 1, 2018, through December 31, 2018.

We thank you for the opportunity to continue serving you.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Underwood". The signature is fluid and cursive, with the first and last names being more prominent.

Chris Underwood  
General Manager

CU / ad

Enclosure Attachment  
cc: BMR1018  
cc: Adam Young

## Schedule of Hourly Professional Service Billing Rates

<b>Position Classification</b>	<b>Classification Level</b>	<b>Hourly Billing Rate</b>
General Office *	5	\$63.00
Technician *	6	79.00
Assistant *	7	91.00
	8	122.00
	9	148.00
Staff *	10	169.00
	11	185.00
Senior	12	204.00
	13	227.00
Associate	14	236.00
	15	244.00
	16	249.00
	17	252.00

### NOTES:

- Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
- For any nonexempt personnel in positions marked with an asterisk (\*), overtime will be billed at 1.5 times the hourly labor billing rates shown.
- Project time spent by corporate officers will be billed at the Level 17 rate plus 25 percent.
- For outside expenses incurred by Burns & McDonnell, such as authorized travel and subsistence, and for services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
- A technology charge of \$9.95 per labor hour will be billed for normal computer usage, computer aided drafting (CAD) long distance telephone, fax, photocopy and mail services. Specialty items (such as web and video conferencing) are not included in the technology charge.
- Monthly invoices will be submitted for payment covering services and expenses during the preceding month(s). Invoices are due upon receipt. A late payment charge of 1.5% per month will be added to all amounts not paid within 30 days of the invoice date.
- The services of contract/agency and/or any personnel of a Burns & McDonnell subsidiary or affiliate shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
- The rates shown above are effective for services through December 31, 2018, and are subject to revision thereafter.



**FIRST AMENDMENT TO MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND BURNS AND MCDONNELL  
ENGINEERING COMPANY, INC.**

This First Amendment (“Amendment”) to Multi-Task Professional Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Burns and McDonnell Engineering Company, Inc. (collectively referred to as “the Parties”) as of \_\_\_\_\_, 201\_.

WHEREAS, the Parties entered into a five year Multi-Task Professional Services Agreement dated effective October 25, 2016, (the “Agreement”) for Burns and McDonnell Engineering Company, Inc. to provide consulting services (“Work”), as more specifically detailed in the Agreement to Agency; and

WHEREAS, the Agency now desires to amend the Agreement to increase the total compensation authorized by the Agreement from a “NOT TO EXCEED” amount of \$1,000,000 to a ‘NOT TO EXCEED amount of \$4,000,000; and

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

WHEREAS, in accordance with Section 8.2 all changes to the Agreement must be in writing and signed by all the Parties; and

NOW, THEREFORE, the Parties agree as follows:

1. **Section 2—Compensation** of the Agreement is amended and restated to read as follows:

Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** FOUR MILLION dollars (\$4,000,000) 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.

The remainder of Section 2 of the Agreement is unchanged.

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

///

///

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

NORTHERN CALIFORNIA POWER AGENCY

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

Attest:

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

Approved as to Form:

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

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

BURNS AND MCDONNELL ENGINEERING  
COMPANY, INC.

\_\_\_\_\_  
**CHRIS UNDERWOOD, General Manager**



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 14

**Date:** August 21, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** ABB, Inc. – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve Multi-Task General Services Agreement with ABB, Inc. for generator inspection, testing, troubleshooting and repair services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$10,000,000 over five years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

In July 2018, ABB completed the acquisition of GE's Industrial Solutions division which includes the generator rewind personnel and knowledge formerly wielded by GE. ABB has renamed this division Electrification Products Industrial Solutions (EPIS). GE (now ABB-EPIS) offers support to power plant operators through emergency services, maintenance repair and overhaul (MRO) programs and other asset monitoring services. ABB-EPIS, has acquired very experienced players in the field. NCPA has personal experience with GE's (now ABB-EPIS) innovation solutions being used by CTs to provide synchronous generator testing modeling services and at the GEO to install control equipment at the Bear Canyon Pump Station. Most notably, in June 2017 when NCPA's Hydroelectric facility experienced a stator ground fault in its Collierville Unit 2 Generator, GE helped get the facility back online in record time when even the original equipment manufacturer was unresponsive to requests for assistance. GE mobilized an onsite crew to bypass the problem and was able to get the unit back to production for summer generation - saving thousands by reducing plant down time.

To date, NCPA has been using small general service agreements painstakingly negotiated each time services are needed at each individual facility. The emergency repair at Hydro highlighted the need for an agreement that preempts having to negotiate a contract in an emergency situation with much less favorable terms and that extends to all facilities. NCPA has had a successful relationship with GE (now ABB-EPIS) through their reliable service and solutions-oriented teams. Authorization of this Multitask General Services Agreement would allow NCPA and its members to continue being able to call on them for emergency and general maintenance services, as needed, to maintain generation assets under the most favorable terms and conditions able to be negotiated.



### Selection Process

This five year contract does not commit NCPA to any expenditure of funds. When these services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place (specify other enabling agreements) for similar services. NCPA will seek bids from as many qualified providers as possible and enter into additional enabling agreements as needed. The bid is awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed (\$10,000,000) over (five) years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

### 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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments (2):

- Resolution
- Multi-Task General Services Agreement with ABB, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
ABB INC.**

This agreement for general services ("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 ABB, Inc., a corporation with its office located at 305 Gregson Drive, Cary, NC 27511 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 201\_ ("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. Agency may direct Contractor to remove from carrying out any part of the Work any of Contractor's personnel where the person (1) is incompetent or negligent in the performance of their duties; or (2) is engaged in activities which are contrary or detrimental to the interests of Agency Contractor shall, immediately comply upon receiving written notice from Agency of such direction, and provide a suitable replacement for the person removed.
- 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. If Contractor does not respond in writing within

seven days of the date of the Agency's issuance of the Purchase Order that Contractor will perform the Requested Work on the terms and conditions set forth in the Purchase Order, then Contractor shall be deemed to have declined to perform the Work set forth in the Purchase Order. If Contractor agrees in writing to perform the Requested Work, the Contractor also agrees 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** ten million dollars (\$10,000,000) 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 Payment.** Unless a longer period is provided in Contractor's written quotation, Agency shall make monthly payments, based on invoices received, for Work performed in conformance with this Agreement, 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. For each calendar month, that payment is late for Work performed in conformance with this Agreement, Agency shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

- 2.3     Payment of Taxes.** Contractor is solely responsible for the payment of all federal, state and local taxes (other than sales, use or value-added tax, fees, duties and surcharges {"Agency Taxes"}), based on net income, gross income or gross receipts, and all employment taxes, incurred under this Agreement. For Agency Taxes which are to be paid by the Agency for a Purchase Order, Contractor shall so indicate in writing when responding to a Purchase Order, as well as indicating a good- faith estimate of the not-to-exceed amount of such taxes.
- 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 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 limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.
- 4.2.2     Automobile Liability.** 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 limit of \$1,000,000 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 Intentionally Omitted.**

**4.4 Intentionally Omitted.**

**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, 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 Intentionally Omitted.**

**4.5.4 Additional Certificates and Endorsements.** If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Agency shall the right to require Contractor to provide the certificates of insurance and/or policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.

**4.6 Intentionally Omitted.**

**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 Contractor's employees 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
- 5.2 Scope.** Contractor agrees to protect, defend, hold harmless and indemnify Agency, Agency members, and each of their officers, Commissioners and employees from and against any third party claim, injury, liability, loss, cost and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Agency or Agency Members shall become liable arising from Contractor's negligence or willful misconduct, with respect to or in any way connected with the Work performed by Contractor pursuant to this Agreement. For purposes of Contractor's indemnity obligation, no part of the products Contractor supplies under this Agreement or Site is considered third party property.
- 5.3 Transfer of Title/Risk of Loss.** Title to products and risk of loss shall pass to Agency upon delivery DDP.

## **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 and ensure its agents, or subcontractors providing Work under this Agreement secure workers' compensation insurance for their employees. .

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,. Agency may not assign this Agreement or any interest therein without the prior written approval of Contractor. 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 to the same extent as set forth under Section 4..

**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 be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

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 \$50.00 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.**

**8.1.1** Agency may terminate this Agreement for cause if Contractor (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of this Agreement. However, before Agency can terminate this Agreement, Agency shall first give written notice of the alleged material breach and Contractor shall have thirty calendar days in which to cure the alleged breach.

**8.1.2** Contractor may terminate this Agreement for cause if Agency (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of this Agreement, including, but not limited to, failing to make any payment when due for such Work that has been satisfactorily performed and in conformance with the Agreement. However, before Contractor can terminate this Agreement, Contractor shall first give written notice of the alleged material breach and Agency shall have thirty calendar days in which to cure the alleged breach

### **8.2 Payment upon Termination of Agreement.**

**8.2.1** If Agency terminates this Agreement pursuant to Section 8.1, (i) Contractor shall reimburse Agency the difference between that portion of the Agreement price allocable to the terminated scope and the actual amounts reasonably incurred by Agency to complete

that scope, and (ii) Agency shall pay to Contractor the portion of the Agreement price allocable to Work performed in conformance with the Agreement before the effective date of termination. The amount due for Work performed in conformance with the Agreement shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in this Agreement (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in this Agreement, at Contractor's then-current standard time and material rates, subject to the limitation of section 8.2.1 (i) hereof. Agency, however, may condition payment of such compensation upon Contractor first delivering to Agency any or all records or documents (as referenced in Section 9.4.4 hereof).

**8.2.2** If Contractor terminates this Agreement pursuant to Section 8.1, Agency shall pay to Contractor the portion of the Agreement price allocable to Work performed in conformance with the Agreement before the effective date of termination. The amount due for Work performed in conformance with the Agreement shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in this Agreement (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in this Agreement, at Contractor's then-current standard time and material rates, subject to the limitation of section 8.2.1 (i) hereof. Agency, however, may condition payment of such compensation upon Contractor first delivering to Agency any or all records or documents (as referenced in Section 9.4.4 hereof).

**8.2.3** Either Agency or Contractor may terminate a Purchase Order upon twenty (20) days advance written notice if there is an excusable event (as described herein) lasting longer than one hundred and twenty (120) days. In such case, Agency shall make payment to Contractor amounts consistent with the entirety of Section 8.2.1

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

**8.4** **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.

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

**9.1** **Intellectual Property.** Each party shall retain ownership of all Confidential Information and intellectual property it had prior to this Agreement. The Parties expressly agree that this Agreement does not include any developed or customized products. To the extent the Parties become aware of the need to create developed or customized Products or Services, the Parties agree to enter into a separate joint development agreement as an amendment to this Agreement

**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 one (1) a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under a particular Purchase Order.

**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 to the Contractor under a particular Purchase Order.

**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 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.** Barring an emergency situation, the parties anticipate Contractor will not be using Agency equipment. Agency may provide cranes, operated by Agency or other agency contractors.

## **Section 11. WARRANTY.**

- 11.1 Nature of Work.** Contractor warrants that products shall be delivered free from defects in material, workmanship and title and that services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. The warranty for products shall expire one (1) year from first use or thirty-six months from delivery, whichever is longer, except that software is warranted for ninety (90) days from installation and usability. The warranty for services shall expire one (1) year after completion of the service. 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.** If during the term of the applicable warranty 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 warranty 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 in conformance with this Agreement. If despite Contractor's reasonable efforts, a non-conforming product cannot be repaired or replaced, or non-conforming services cannot be re-performed, Contractor shall refund or credit monies paid by Agency for such non-conforming products and services.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency warranties and extended warranties, assignable from suppliers of equipment and material used in the Work.
- 11.4 Access for Warranty Work.** Agency shall bear the costs of access for Contractor's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Agency's facility), de-installation, decontamination, re-installation and transportation of defective products to Contractor and back to Agency. In the event of a defect or Contractor's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Agency's facility), de-installation, decontamination, re-installation and transportation of defective products to Contractor and back to Agency,,

Agency shall provide clear access to the defective work at the site. For purposes of this section, "access" shall mean an opportunity or ability to enter, approach, or pass to and from defective work. "Access" shall not include any uncovering, disassembly or reassembly of parts or hardware required for Contractor to perform Contractor's warranty obligations to the extent that such uncovering, disassembly or reassembly of parts or hardware was within Contractor's original scope of work. If any uncovering, disassembly or reassembly of parts or hardware is necessary for Contractor to perform its warranty obligations, Contractor shall reimburse Agency for any costs or expenses related to such uncovering, disassembly or reassembly of parts or hardware if such uncovering, disassembly or reassembly of parts or hardware was within Contractor's original scope of work.

- 11.5 Warranty Conditions.** The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of products provided by Contractor in writing, (b) Agency keeping accurate and complete records of operation and maintenance during the warranty period and providing Contractor access to those records, and (c) modification or repair of products or services only as authorized by Contractor in writing. Failure to meet any such conditions renders the warranty null and void. Contractor is not responsible for normal wear and tear.

- 11.6 Exclusive Warranty.** This Article 11 provides the exclusive remedies for all claims based on failure of or defect in products or services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article 11 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**

**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** **Intentionally omitted.**
- 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, SCLPA or SCLPA 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.
- 12.11** Contractor has no responsibility or liability for the pre-existing condition of Agency's equipment or the Site. Prior to Contractor starting any work at Site, Agency will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Agency's equipment or the Site that Contractor may encounter while performing under this Agreement.

- 12.12 If Contractor encounters hazardous conditions in Agency's equipment or at the Site that require special handling or disposal, Contractor is not obligated to continue work affected by the hazardous conditions. In such an event, Agency shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Contractor's work under the Agreement may safely proceed, and Contractor shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in Contractor's cost of, or time required for, performance of any part of the work, as mutually agreed upon by the Parties.. Agency shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated by Agency or its contractors in the course of Contractor's work at the Site. The term Hazardous Materials, as used herein, is 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, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.").

## **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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

ABB, Inc.  
Attention: Carl Stewart, Senior Sales Manager  
305 Gregson Drive  
Cary, NC 27511

Any written notice to Agency shall be sent to:

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

With a copy to:

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

**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** Subject to applicable state law, and notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Agreement including Section 13.2, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in Article 9 or to seek interim or conservatory measures. .
- 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-signatory 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.

**Section 14. EXCUSABLE EVENTS.**

- 14.1** Contractor shall not be liable or considered in breach of its obligations under this Agreement to the extent that Contractor's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Agency or Agency's contractors or suppliers, to the extent that Contractor could not have reasonably foreseen or anticipated the event as set forth herein..
- 14.2** If Contractor believes such cause or excusable event has occurred, Contractor shall give written notice thereof to Agency, including the triggering event, the length of the anticipated delay, and Contractor's efforts to minimize the delay. The parties will each evaluate and then mutually agree in writing the extent to which Contract's schedule or performance may be adjusted.

**Section 15. CHANGES.**

- 15.1** Each party may at any time propose changes in the schedule or scope of Work. Contractor is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.
- 15.2** The scope, Purchase Order price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Contractor resulting from a change, after Contractor's proposal date, in Agency's site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. However, no adjustment will be made on account of a general change in Contractor's manufacturing or repair facilities resulting from a change in laws or regulations applicable to such facilities. Unless otherwise agreed by the parties, pricing for additional Work arising from such changes shall be as set forth in Exhibit B.

**Section 16. LIMITATIONS OF LIABILITY.**

- 16.1** The total liability of Contractor for all claims of any kind arising from or related to the formation, performance or breach of this Agreement, or any products or services, shall be (i) two times the amount of the Purchase Order for Purchase Orders of \$50,000 or more or (ii) the greater of two times the amount of the Purchase Order or \$50,000 for Purchase Orders under \$50,000.
- 16.2** Contractor shall not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of replacement power, cost of capital, downtime costs, increased operating costs , any special, consequential, incidental, indirect, or

punitive damages, or claims of Agency's members for any of the foregoing types of damages.

- 16.3** All Contractor liability shall end upon expiration of the applicable warranty period, provided that Agency may continue to enforce a claim for which it has given written notice prior to that date, as applicable under this Agreement, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.
- 16.4** Contractor shall not provide advice or assistance that is not required for the work scope under this Agreement.
- 16.5** If Agency is supplying products or services to a third party, or using products or services at a facility owned by a third party, Agency shall require that the third party agree, for the benefit of and enforceable by Contractor, to be bound by all the limitations included in this Article 16, by requiring the third party to execute the Agency's Support Services Program Agreement or similar agreement.
- 16.6** For purposes of this Article 16, the term "Contractor" means Contractor, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Article 16 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Contractor's liability.

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

NORTHERN CALIFORNIA POWER AGENCY

ABB INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**GREGORY DICKMAN, Electrification  
Products (EPIS) Global Commercial  
Leader, Lifecycle Solutions**

Attest:

---

Assistant Secretary of the Commission

Approved as to Form:

---

Jane Luckhardt, General Counsel

## **EXHIBIT A**

### **SCOPE OF WORK**

ABB Inc. ("Contractor") shall provide the following services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by the Agency, its Members, SCPPA, or SCPPA Members, including:

- Generator Ground Fault Detection
- Generator Inspection
- Generator Testing
- Generator Troubleshooting
- Generator Winding Cleaning
- Other maintenance services, as necessary

## 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:



#### Commercial Rates - Effective: July, 2018

8-Hour Daily Rates U.S. Dollar			
Service Description	Weekday	Saturday	Sunday / Holiday
Field Services			
Field Engineer	\$2,155	\$3,118	\$4,074
Specialized Field Engineer	\$2,619	\$3,815	\$4,998

Service Center			
Service Technician	\$1,691	\$2,442	\$3,146
Service Tech Work Leader	\$1,771	\$2,542	\$3,306
Service Center Specialist	\$2,147	\$3,106	\$4,058

Phone Support	\$1,300/case
Critical Power Emergency Standby Retainer	\$2,200/month

#### Tooling Rates

IR Camera	\$75/day	\$300/week
Vibration Test Set	\$125/day	\$500/week
Online Motor Test Set	\$250/day	\$1,000/week
Offline Motor Test Set	\$250/day	\$1,000/week
Primary Current Injection Set	\$350/day	\$1,400/week
Relay Test Set	\$500/day	\$2,000/week
Power Factor Test Set	\$500/day	\$2,000/week
Vacuum Oil Processor	\$2,500/day	

#### Field Engineer

Service is technical advice and counsel from field personnel based on sound engineering, manufacturing, installation, and operation practices as applicable to the equipment. Such services may include analysis, adjustment, programming, and other similar services. They do not include supervision or management of purchaser's employees, agents or other contractors and do not include design effort.

#### Specialized Field Engineer

These services include installation, commissioning, repair, service, maintenance, and upgrade work associated with:

- Medium voltage motors, & generators
- Paralleling Switchgear
- Synchronous motors & generators, including excitation
- Medium voltage drives
- Legacy drive products, including: DC/AC2000, DC/DV/AC300, Innovation, Siltron & Valutrol
- Legacy control systems including: Series 5 & Series 6
- Specialty power system studies, including: Harmonic, Transient Switching & Grounding
- Shipboard and offshore work, with a minimum 14-hour / day billing. Platform work requires a pay differential.

#### Service Center

Service Technician: Craftsmen experienced in the inspection, test, installation, service, and repair of one or more of the following equipment types:

- Transformer (Mechanical, Electrical, Fluid & LTC)
- Motors, Drives & Controls Equipment
- Switchgear
- Mechanical
- Hydro (Electrical, Mechanical & Controls)

Service Center Work Leader: Provides on-site and in shop, hands on leadership of ABB craftsmen on a per shift basis.

Service Center Specialist: Provides overall coordination and technical leadership on-site and in shop of service craftsmen and Work Leaders.

ABBs' field service engineers and consulting experts are on call to provide a wide range of service and repairs on both ABB and non-ABB equipment and engineered systems in Industrial and Balance-Of-Plant Power Plant Systems.

For more information contact your local ABB office or call our 24x7 customer service center at 888-434-7378 or 540-387-8617

#### Typical Installations, Services, Repairs, and Products:

- Transformer (Including Mechanical, Electrical, Fluid & LTC)
- Power Delivery Equipment
- Motors, Drives and Controls Equipment
- Distributed Control Systems and Programmable Logic Controls
- Instrumentation Related to Process Control and Automation Systems
- Marine Electrical Systems
- Power System Studies

#### Rate Terms

1. Work greater than 8 hours per day is billed per hour: Overtime Double Time

Field Engineer	\$359.00	\$478.00
Specialized Field Engineer	\$446.00	\$594.00
Service Technician	\$272.00	\$362.00
Service Tech Work Leader	\$287.00	\$382.00
Service Center Specialist	\$357.00	\$476.00

For less than 24-hour response, a 1.35 multiplier is used for daily, overtime and double time rates.

Overtime applies to billable weekday hours 9-12. Double Time applies to: Billable weekday hours greater than 12, Saturday hours greater than 8, Sundays and holidays.

2. Preparation, travel, and report writing time will be charged at the applicable rate (i.e., daily rates, overtime and double time) on a round trip basis with point of departure based on the location of the ABB Representative's office/service center.

3. Additional travel and living expenses include:

Overnight stay	\$160 per day
Air Travel / Rental Car charges	Cost + 20%

Notes: Additional T&L charges may apply for high cost of living areas.

4. Travel and living expenses outside the continental U.S.A., will be billed at a cost plus 20% minimum, or consult with your local ABB representative for a local per diem rate.
5. Materials, subcontract labor and equipment required to support ABB will be provided at cost + 35%.
6. All equipment is F.O.B. shipping point, seller's dock, with freight prepaid and charged 3% of material price (a minimum per shipment charge of \$100.00 shall apply). Seller reserves the right to select the method of transportation provided for all products unless specified by the client not less than 72 hours prior to shipment. Any premium transportation or required special handling is in addition and shall be for the account of the Buyer.
7. Consult with local ABB office to determine applicable charges for other special tooling and/or test equipment or any taxes, fees or VAT that may be in addition to the above rates. Minimum daily billing of 8 hours for all services provided including standby time. A minimum order of \$500.00 shall apply for a parts/material only order.
8. All rates are for hours worked, traveled, or on standby and are based on ABB's standard terms and conditions of sale (Form ES 104 Rev 4). Price and data subject to change without notice. This quotation is not valid for PCB services, off shore or confined locations.
9. Phone Support is a service provided on the phone by a Field Engineer for limited hardware and software troubleshooting services.
10. Employee screening costs as required by the customer will be provided as follows:

Custom drug screen or background check	\$100
TWIC Card	\$250
BOISET + HUET	\$1,500

Notes: All travel time to complete the screenings will be billed at the applicable hourly rate as set forth in 1 above plus expenses. All other specialty training will be billed at cost + 20%.

11. All time to complete site specific training will be billed at the applicable hourly rate as set forth in 1 above plus expenses.
12. A Critical Power Emergency Standby Retainer provides access to a qualified ABB Field Engineer at the customer site on the same day the need is identified by the customer. All time to support the emergency service, including travel to and from the customer site, will be billed at the applicable hourly rate as set forth in 1 above, however the 1.35 multiplier applied to work with less than 24hrs notice is waived.

\*\* The Standard and Applicable rates shown on this sheet assume that services are being performed at a location that is not subject to a Location Premium which is an additional charge/rate that may be assessed for remote, inconvenient, confined or offshore work sites. Please contact ABB to see if a Location Premium applies to your location.

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,

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(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

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(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.

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(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,

\_\_\_\_\_

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

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

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

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

2890414.5



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 15

**Date:** August 23, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Nozomi Networks, Inc. – Five Year Multi-Task Consulting Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the Multi-Task Consulting Services Agreement with Nozomi Networks, Inc. for cyber security monitoring, vulnerability testing and solutions, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five (5) years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

NCPA has made an effort to improve their ability to defend its assets against cyber threats. In response to this identified risk, NCPA's Operational Technology Working Group (OTWG) reached out to several vendors to conduct a long-term study to prove the concept of continuous monitoring of operational technology. The goal of monitoring is twofold. First, to be able to monitor for potential threats and secondly to detect any credible threats or security breaches made. After review of the study results, Nozomi Networks emerged as the most agile, capable and cost effective option for building a monitoring system that integrates with NCPA's current assets and information technology (IT) structure. Nozomi Networks is a leader in the Industrial Control Systems (ICS) cyber security field and brings valuable experience and solutions to the table. Given the current climate and sensitivity to cyber security vulnerabilities and criticality of the generating assets being protected, having established relationships with vendors in the security space is important to continuous operations.

### Selection Process

This five year contract does not commit NCPA to any expenditure of funds. When these services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA will seek bids from multiple providers when services are needed and enter into additional enabling agreements as needed. The bid is awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed (\$500,000) over (five) years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task Consulting Services Agreement with Nozomi Networks, Inc.



## **MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND NOZOMI NETWORKS 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 Nozomi Networks Inc. a corporation with its office located at 120 2<sup>nd</sup> Street, 4th Floor, San Francisco, CA 94105 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 20\_\_ ("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 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 for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

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

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

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

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



mobile equipment to the extent coverage may be excluded from general liability insurance.

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

**4.3 Professional Liability Insurance.** Intentionally omitted.

**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.** If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

**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.

**4.6 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this

Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

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

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

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

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of 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 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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 10.8 Notices.** Any written notice to Consultant shall be sent to:

Nozomi Networks Inc.  
120 2<sup>nd</sup> Street, 4th Floor  
San Francisco, CA 94105

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, SCCPA and/or a SCPPA member (collectively for the purposes 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

NOZOMI NETWORKS INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**EDGARD CAPDEVIELLE, CEO**

Attest:

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

Approved as to Form:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Nozomi Networks Inc. ("Consultant") shall provide the following services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by the Agency, its Members, SCPPA, or SCPPA Members, including:

- Evaluate networks for cyber security vulnerabilities;
- Provide reports, suggestions and solutions for making networks more secure;
- Commissioning solutions; and
- Other consulting services as needed.

## **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:

- Hourly consulting fee: \$206/hour

Travel and expenses, if applicable, will be billed at actual cost, in addition to the hourly rate described above.

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.



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 16

**Date:** August 21, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Western Hydrologics LLC – Five Year Multi-Task Consulting Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the Multi-Task Consulting Services Agreement with Western Hydrologics for forecasting, modeling and other informational tools, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five (5) years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

Jeffrey Meyer and Jared Emery, formerly of ECORP Consulting, have formed a new entity Western Hydrologics LLP. NCPA has worked with ECORP Consulting for the last five years, however, that relationship has been almost exclusively with Jeffrey Meyer and Jared Emery. Recent NCPA work with the pair includes an operations forecasting model applicable to the North Fork Stanislaus River to produce runoff forecasts to aid in planning water releases.

### Selection Process

This five year contract does not commit NCPA to any expenditure of funds. When these services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA will seek bids from multiple providers when services are needed and enter into additional enabling agreements as needed. The bid is awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed (\$1,000,000) over (five) years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task Consulting Services Agreement with Western Hydrologics LLP



## **MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND WESTERN HYDROLOGICS, LLP**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Western Hydrologics, LLP, a partnership with its office located at 1440 Millertown Road, Auburn, CA 95603 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 20\_\_ ("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 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** 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 \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

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

mobile equipment to the extent coverage may be excluded from general liability insurance.

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

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

**4.4 All Policies Requirements.**

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

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

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

**4.4.4 Additional Certificates and Endorsements.** If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and

policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

**4.5.5 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.

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

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

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

**5.2 Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims that 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 that 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 sole 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 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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency’s representative. All correspondence shall be directed to or through the representative.

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

Jeffrey K. Meyer, Principal  
Western Hydrologic Consulting  
P.O. Box 7192  
Auburn, CA 95604

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, SCCPA and/or a SCPPA member (collectively for the purposes 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

WESTERN HYDROLOGICS, LLP

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**JEFFREY K. MEYER, Principal**

Attest:

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

Approved as to Form:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Western Hydrologics, LLP ("Consultant") shall provide the following services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by the Agency, its Members, SCPPA, or SCPPA Members, including:

- Monitoring the State Water Resource Control Board's (SWRCB) ongoing activities and decision making process related to implementation of unimpaired flow criteria for the San Joaquin and Sacramento Rivers;
- Advising NCPA of opportunities in the public process where NCPA could provide further input to mitigate risk;
- Analyzing impacts of the proposed SWRCB unimpaired flows on the North Fork Stanislaus Hydroelectric Project and/or Central Valley Project hydropower;
- Water and runoff modeling;
- Power generation modeling;
- Water rights modeling, analysis, and/or reporting;
- Development of Technical Documents, Reports, and Presentations;
- Attendance at meetings; and
- Other misc. engineering tasks.

## 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:



#### "Attachment A"

#### RATE SCHEDULE FOR PROFESSIONAL SERVICES<sup>1</sup>

Project Principal .....	\$200.00
Senior Water Resources Engineer .....	\$175.00

#### Expense Reimbursement/Other:

1. Computer, facsimile, and telephone are included in the billing rates, and there is no additional charge.
2. Copies (color and black and white), equipment and other direct expenses are reimbursed with a 5% administrative handling charge (excluding per diem).
3. Subcontractor expenses are reimbursed with a 5% administrative handling charge.
4. Mileage is reimbursed at current IRS rate with a 14% administrative handling charge.
5. Per Diem, depending upon location, may be charged where overnight stays are required.
6. Expert Witness Testimony, including Depositions, is billed at time and a half.
7. When non-standard billing is requested, time spent by office administrative personnel in invoice preparation is a cost to the project and charged as technical labor.

<sup>1</sup> Rates effective June 2018 and are subject to change. Depending on the project requirements, titles may vary.

□

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

The rates set forth above are valid from June 2018 and may be subject to an annual escalation of up to 5% per year, effective upon 30 days' prior written notice to NCPA.

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.



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 18

**Date:** September 5, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Rodney Bray – Five Year Multi-Task Consulting Services Agreement;  
Applicable to the following projects: All NCPA locations and Members, SCPPA,  
and SCPPA Members

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### Proposal

Approve the Multi-Task Consulting Services Agreement with Rodney Bray for assisting in development of new or production well workover, interpretation of well analysis reports and supervision during drilling operations, 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 all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA members.

### Background

Assisting in development of new or production well workover, interpretation of well analysis reports and supervision during drilling operations are required from time to time related to project support at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Selection Process

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

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$500,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.



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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task Consulting Services Agreement with Rodney Bray



## **MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND RODNEY BRAY**

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 Rodney Bray, a sole proprietorship with its office located at 18940 Grange Road, Middletown, CA 95461 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2018 ("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 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 for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

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

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

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

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

mobile equipment to the extent coverage may be excluded from general liability insurance.

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

**4.3 Professional Liability Insurance.** 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.** If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

**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.

**4.6 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this

Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

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

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

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

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of 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 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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Rodney Bray  
18940 Grange Road  
Middletown, CA 95461

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, SCCPA and/or a SCPPA member (collectively for the purposes 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

RODNEY BRAY

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**RODNEY BRAY, Owner**

Attest:

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

Approved as to Form:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Rodney Bray ("Consultant") shall provide consulting services as requested by the Northern California Power Agency ("Agency") at any Facilities owned or operated by NCPA, its Members, Southern California Power Authority (SCPPA) and SCPPA members.

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

- Assist in the development of new or production well workover plans and bid packages for drilling rig operations.
- Day or night supervision at the drill rig site for all drilling activities performed at the work site
- Supervising the operation of the drill rig and all of the contractors that will be working on the drill rig site, with an emphasis on safety and the environment. The Consultant is expected to keep track of costs while attempting to manage the drilling operation in the most fiscally responsible method possible.
- Interpretation of well analysis reports and assistance to derive best solutions.

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

**Rodney Bray**  
**18940 Grange Rd.**  
**Middletown CA 95461**  
**Cell 707-291-6066**  
**Email [rbray55@gmail.com](mailto:rbray55@gmail.com)**

#### 2018 Rate Sheet

##### Geysers area prices:

1. 24 hours per day drilling supervision = \$1,500 per day.  
Note: Daily rate includes vehicle mileage and meal allowance.
2. 12 hours per day drilling supervision = \$1,250 per day
3. Any approved expenses will be added to invoice at cost with receipts.
4. Hourly Rate = \$125 per hour with 4 hour minimum. Hourly rate only applies to office work or well planning and is not applicable for work at the job site.

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.



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 17

**Date:** August 16, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Petrochem Insulation, Inc. – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the Multi-Task General Services Agreement with Petrochem Insulation, Inc. for maintenance to include but not limited to insulation on steam piping and tanks, noise abatement, scaffolding, fireproofing and other necessary 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 all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA members.

### Background

Insulation maintenance, noise abatement, scaffolding, fireproofing and other necessary services are required from time to time at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority (SCPPA), or by SCPPA Members.

### Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has similar agreements in place with Sunshine Metal Clad, Ernie & Sons Scaffolding dba Unique Scaffolding, Brand Energy Services and seeks bids from as many qualified providers as possible and enter into additional enabling agreements as needed. The bid is awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$500,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with Petrochem Insulation, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
PETROCHEM INSULATION, 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 PetroChem Insulation, Inc., a corporation with its office located at 2300 Clayton Road, Concord, CA 94520 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2018 ("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) 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 \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability,. 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 \$1,000,000 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.** 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 to the extent caused by the sole or gross negligence or willful misconduct 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 be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

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 \$50.00 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 and request of Agency. 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, except to the extent loss or damage is caused by the sole or gross negligence or willful misconduct of Agency or entity. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's risk, except to the extent loss or damage is caused by the sole or gross negligence or willful misconduct of Agency or entity. 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 material defects in 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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

PetroChem Insulation, Inc.  
Martin Kindred  
Division Manager  
945 Teal Drive  
Benicia, CA 94510

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

PETROCHEM INSULATION, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**MARTIN KINDRED, Division Manager**

Attest:

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

Approved as to Form:

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

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

PetroChem Insulation, Inc. ("Contractor") shall perform maintenance work as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by NCPA, its Members, Southern California Power Authority (SCPPA) and SCPPA members.

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

- Insulation on steam piping and tanks throughout the Geysers Geothermal Facility to control temperature and improve noise abatement
- Noise abatement at Bear Canyon 1 Pump Station
- Insulation services as requested
- Additional maintenance related services, including scaffolding, fireproofing, and other miscellaneous tasks.

This Scope of Work does not include any work related to lead and asbestos abatement. Such services would be subject to a separate written agreement.

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:

#### Compensation Schedule & Hourly Fees

##### Petrochem – Hourly Labor Rates

Straight Time	2018	2019	2020	2021	2022
Superintendent	\$120	\$126	\$135	\$140	\$145
Foreman	\$115	\$120	\$126	\$135	\$140
Journeyman	\$110	\$115	\$120	\$125	\$130

Overtime	2018	2019	2020	2021	2022
Superintendent	\$165	\$175	\$182	\$192	\$200
Foreman	\$160	\$170	\$176	\$185	\$195
Journeyman	\$155	\$155	\$160	\$165	\$170

Double Time	2018	2019	2020	2021	2022
Superintendent	\$215	\$225	\$240	\$250	\$260
Foreman	\$210	\$220	\$230	\$245	\$255
Journeyman	\$205	\$215	\$226	\$238	\$250

Rates apply to all services provided by Petrochem. Scaffold rental, material, consumables and third party services are our cost plus 15% mark-up

Travel Time is paid each way at straight time rate

Per diem: \$200/day for each employee if required

Pickup Truck: \$110/day      Flatbed: \$150/day

Pricing for any services will be performed on a Time & Material Basis (T&M) or quoted as requested by NCPA authorized personnel

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**

**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)





## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 19

**Date:** September 5, 2018

**Meeting Date:** September 10, 2018

**To:** Lodi Energy Center Project Participant Committee

**Subject:** MFP Connect, LLC – Five Year Multi-Task Consulting Services Agreement;  
Applicable to the following projects: All NCPA locations and Members, SCPPA,  
and SCPPA Members

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### Proposal

Approve the Multi-Task Consulting Services Agreement with MFP Connect, LLC for the provision of energy workforce services to fill critical skills gaps on an interim basis and mentor staff for success in public power, 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, its members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA members.

### Background

With the increase in retirements from the aging work force, NCPA and the labor market overall face challenges with fewer replacement workers in specialized industries and for craft positions. To fill this gap in knowledge, MFP Connect, LLC (MFP) provides workforce solutions for the public power industry to fill vacant positions during a recruitment process and on a short-term basis for critical roles, to lead special projects, prepare compensation studies, and to mentor and train existing employees by transferring years of specialized knowledge and experience.

### Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not to exceed \$1,000,000 over five years to be used out of NCPA approved budgets or passed through to its Members through the Support Services Program as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task Consulting Services Agreement with MFP Connect, LLC



## **MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND MFP CONNECT, LLC**

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 MFP Connect, LLC, a limited liability company, with its office address P. O. Box 1310, Conifer, CO 80433 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2018, ("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 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** One Million and no/100 dollars (\$1,000,000.00) 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 for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

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

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

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

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

mobile equipment to the extent coverage may be excluded from general liability insurance.

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

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

**4.4 All Policies Requirements.**

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

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

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

**4.4.4 Additional Certificates and Endorsements.** If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

**4.5.5 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.

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

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

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

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

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

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of 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 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 Monty Hanks, CFO/Assistant 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:

Mr. Carl Mycoff, Manager  
MFP Connect, LLC  
P.O. Box 1310  
Conifer, CO 80433

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, SCCPA and/or a SCPPA member (collectively for the purposes 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

MFP CONNECT, LLC

Date\_\_\_\_\_

Date\_\_\_\_\_

\_\_\_\_\_  
**Randy S. Howard, General Manager**

\_\_\_\_\_  
**Carl Mycoff, Manager**

Attest:

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

Approved as to Form:

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

**EXHIBIT A**  
**SCOPE OF SERVICES**

MFP Connect, LLC ("Consultant") shall provide energy workforce services to fill critical skills gaps on an interim basis and mentor staff for success in public power as requested by the Northern California Power Agency ("Agency") at facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members. The services shall include but not be limited to:

- Identify specific needs for services
- Prepare Compensation Studies to provide compensation data, comprehensive market analysis and salary recommendations for executive, managerial, specialty, and craft-level roles in the utility industry
- Provide personnel services on a temporary basis
  - Fill vacant positions during a recruitment process
  - Function in short-term, but critical roles
  - Lead special projects
  - Mentor and train existing employees by transferring years of specialized knowledge and experience



## **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.

Pricing for services to be performed 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.

# Agreement Schedule 6.00

## Contact List

### Northern California Power Agency

Northern California Power Agency  
Attn: Michael DeBortoli, Lodi Energy Center Manager  
651 Commerce Drive  
Roseville, California, 95678  
Telephone: (209) 210-5000  
Facsimile: (209) 333-5215  
Email: [michael.debortoli@ncpa.com](mailto:michael.debortoli@ncpa.com)

With copies to:

Northern California Power Agency  
Attn: Ken Speer, Assistant General Manager – Generation Services  
651 Commerce Drive  
Roseville, California, 95678  
Telephone: (916) 781-4201  
Facsimile: (916) 783-7693  
Email: [ken.speer@ncpa.com](mailto:ken.speer@ncpa.com)

Northern California Power Agency  
Attn: David Dockham, Assistant General Manager – Power Management  
651 Commerce Drive  
Roseville, California, 95678  
Telephone: (916) 781-4256  
Facsimile: (916) 783-4252  
Email: [dave.dockham@ncpa.com](mailto:dave.dockham@ncpa.com)

### City of Azusa

City of Azusa  
Azusa Light & Water Department  
Attn: ~~George Morrow~~ Manny Robledo, Electric Utility Director  
729 N. Azusa Avenue  
P.O. Box 9500  
Azusa, California 91702-9500  
Telephone: (626) 812-5219  
Facsimile: (626) 334-3163  
Email: [gmorrow@ci.azusa.ca.us](mailto:gmorrow@ci.azusa.ca.us) [mrobledo@azusaca.gov](mailto:mrobledo@azusaca.gov)

### Bay Area Rapid Transit District

Bay Area Rapid Transit District  
Attn: Connee Lloyd  
300 Lakeside Drive, 16<sup>th</sup> Floor  
Oakland, California 94612-3534  
Telephone: (510) 464-6435 or (510) 915-2509  
Facsimile: (510) 464-6118  
Email: [clloyd@bart.org](mailto:clloyd@bart.org)

### Modesto Irrigation District

Modesto Irrigation District  
Attn: James McFall, Resource Planning and Development Manager  
P.O. Box 4060  
1231 Eleventh Street  
Modesto, California 95352  
Telephone: (209) 526-1521  
Facsimile: (209) 526-7575  
Email: [jamesm@mid.org](mailto:jamesm@mid.org)

### California Department of Water Resources:

Department of Water Resources  
Attention: John Yarbrough, Chief Power Planning and Contract Management  
2135 Butano Drive, Suite 100  
Sacramento, California 95835  
Telephone: (916) 574-0665  
Facsimile: (916) 574-0660  
Email: [john.yarbrough@water.ca.gov](mailto:john.yarbrough@water.ca.gov)

### Plumas-Sierra Rural Electric Cooperative

Plumas-Sierra REC  
Attn: Bob Marshall, General Manager  
73233 Highway 70  
Portola, California 96122-7064  
Telephone: (530)832-4261  
Facsimile: (530)832-6070  
Email: [marshall@psln.com](mailto:marshall@psln.com)

### City of Biggs

City of Biggs  
Attn: Mark Sorensen, City Administrator  
465 "C" Street  
P.O. Box 307  
Biggs, California 95917-0307  
Telephone: (530) 868-5493  
Facsimile: (530) 868-5239  
Email: [biggs1@biggs-ca.gov](mailto:biggs1@biggs-ca.gov)

### City of Gridley

City of Gridley  
Attn: Gary Davidson, Council Member  
685 Kentucky Street  
Gridley, California 95948-2117  
Telephone: (530) 933-4061  
Facsimile: (530) 846-3229  
Email: [davidsongdd@yahoo.com](mailto:davidsongdd@yahoo.com)

### City of Healdsburg

City of Healdsburg  
Attn: Terry Crowley, Electric Utility Director  
401 Grove Street  
Healdsburg, California 95448  
Telephone: (707) 431-3340  
Facsimile: (707) 431-2710  
Email: [tcrowley@ci.healdsburg.ca.us](mailto:tcrowley@ci.healdsburg.ca.us)

### City of Lodi

City of Lodi  
Attn: Elizabeth Kirkley, Utility Director  
1331 S. Ham Lane  
Lodi, California 95242  
Telephone: (209) 333-6828 or (209) 200-1107  
Facsimile: (209) 333-6839  
Email: [ekirkley@lodi.gov](mailto:ekirkley@lodi.gov)

### City of Lompoc

City of Lompoc  
Attn: Tikan Singh  
100 Civic Center Plaza  
P.O. Box 8001  
Lompoc, California 93438-8001  
Telephone: (805) 736-1261 (switchboard)  
Facsimile: (805) 875-8399  
Email: [t\\_singh@ci.lompoc.ca.us](mailto:t_singh@ci.lompoc.ca.us)

### Silicon Valley Power

Silicon Valley Power  
Attn: John Roukema, Electric Utility Director  
1500 Warburton Avenue  
Santa Clara, California 95050  
Telephone: (408) 261-5490  
Facsimile: (408) 249-0217  
Email: [jroukema@siliconvalleypower.com](mailto:jroukema@siliconvalleypower.com)

### City of Ukiah

City of Ukiah  
Attn: Mel Grandi, Utility Director  
300 Seminary Avenue  
Ukiah, California 95482  
Telephone: (707) 463-6295 or (209) 747-0546  
Facsimile: (707) 463-6740  
Email: [mgrandi@cityofukiah.com](mailto:mgrandi@cityofukiah.com)

### Power and Water Resources Pooling Authority

Power and Water Resources Pooling Authority  
Attn: Bruce McLaughlin  
Braun, Blaising, McLaughlin & Smith, P.C.  
915 L Street, Suite 1480  
Sacramento, CA 95815  
Telephone: (916) 326-5812 (main) (916) 531-5566 (direct)  
Email: [mclaughlin@braunlegal.com](mailto:mclaughlin@braunlegal.com)



The Canyon City — Gateway to the American Dream

August 23, 2018

Randy S. Howard, General Manager  
Northern California Power Agency ("NCPA")  
651 Commerce Drive  
Roseville, CA 95678-6411

SUBJECT: Appointment of Manny Robledo as Azusa's Representative at NCPA

Dear Mr. Howard,

Effective August 13, 2018, Mr. Manny Robledo has assumed the office of Director of Utilities with the City of Azusa ("Azusa"), and Mr. Robledo is hereby appointed as Azusa's primary representative to NCPA. As such, Mr. Robledo will serve as a member of the Lodi Energy Center Project Participant Committee and all other applicable NCPA committees and working groups. Mr. Robledo may also designate alternate representatives to represent Azusa in his absence.

Mr. Robledo's contact information is as follows:

Manny Robledo  
Director of Utilities  
Azusa Light and Water  
mrobledo@azusaca.gov  
Office: 626-812-5219  
Mobile: 714-293-9363  
729 N. Azusa Avenue  
Azusa, CA 91702

Please don't hesitate to call me with any questions.

Sincerely,

Sergio Gonzalez  
City Manager