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LEC PPC Agenda

Date: October 7, 2020

Subject: October 12, 2020 Lodi Energy Center Project Participant Committee Meeting

Location: 651 Commerce Drive, Roseville, CA 95678 OR via Teleconference

Time: 11:00 A.M.

***This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, Governor Newsom's Emergency Declaration related to COVID-19, and Governor Newsom's Executive Order N-29-20 issued on March 17, 2020 that allows attendance by LEC PPC Members, staff, and the public to participate and conduct the meeting by teleconference.

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In compliance with the Executive Department, State of California, Executive Order N-29-20, and the Brown Act, you may participate in the meeting via teleconference by:

<https://www.gotomeet.me/NCPALodi>

Dial: 1-872-240-3212

Access Code: 327-912-613

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 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

1. Review Safety Procedures

2. 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.

3. Meeting Minutes – Approval of September 14, 2020 Regular Meeting Minutes

MONTHLY REPORTS

4. Operational Report for September 2020 – (Rafael Santana)

5. Market Data Report for September 2020 – Verbal Report (Zakary Liske)

6. Monthly Asset Report for August 2020 – (Michael DeBortoli)

7. Bidding Strategies Report – Verbal Report and update regarding bidding strategies and regulation down revenues (Jesse Shields/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.

8. Treasurer's Report for August 2020 – Accept by all Participants

9. Financial Report for August 2020 – Approve by all Participants

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

11. Evoqua Water Technologies, LLC MTGSA – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Evoqua Water Technologies, LLC, for water services including condensate polisher/DI mix bed vessel services, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.

12. Ancon Marine dba Ancon MTGSA – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Ancon Marine dba Ancon, for specialized high pressure cleaning services, with a not to exceed amount of \$2,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.

13. Rege Construction, Inc. MTGSA – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Rege Construction, Inc., for maintenance services including grading, excavation, and paving, with a not to exceed amount of \$1,000,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members

14. Brian Davis dba Northern Industrial Construction MTGSA – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Brian Davis dba Northern Industrial Construction, for miscellaneous maintenance services including welding and safety/fire watch services, with a not to exceed amount of \$2,500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.

15. MP Environmental Services, Inc. MTGSA – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with MP Environmental Service, Inc., for removal and replacement of sulfur bins, phase separators, and vacuum truck services, with a not to exceed amount of \$3,000,000, for use at all facilities owned and/or operated by NCPA.

16. Pure Process Filtration, Inc. MTEMS – Staff is seeking a recommendation for approval of a five-year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Pure Process Filtration, Inc., for filters and filter storage, with a not to exceed amount of \$1,000,000, for use at NCPA CT's facilities only.

17. PMOA Schedule 1.00, Exhibit 5 – Staff is seeking approval to update PMOA Schedule 1.00, Exhibit 5 to reflect the current CAISO GMC rates.

Consent Items pulled for discussion: _____

BUSINESS ACTION ITEMS

18. NCPA CT Facilities – 2022 LEC Major Outages Parts Purchase – Staff is seeking a recommendation for approval of funds to purchase parts as per the Long Term Program (LTP) agreement between NCPA and Siemens, for a total not to exceed amount of \$2,500,000, and approval for these funds to come from the LEC Maintenance Reserve Fund.

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19. NCPA CT Facilities – First Amendment to Second Amended and Restated Ground Lease with the City of Lodi – Staff is seeking a recommendation for approval of a First Amendment to the Second Amended and Restated Ground Lease with the City of Lodi, adding additional Annex area to lease, increasing the total annual lease payments to \$1,040,620, with no change to the agreement term, for use at NCPA's CT Facilities.

20. NCPA CT Facilities – LEC Annex Land Improvement Project – Staff is seeking a recommendation for approval for the LEC Annex Land Improvement Project, granting authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA procurement policies and procedures, without further approval by the Commission, for a total not to exceed project amount of \$300,000, including approval for this project to be funded from the LEC Maintenance Reserve.

21. Amendment to LEC PMOA Schedule 11 – Staff will present for review and approval amendments to PMOA Schedule 11 (Management of Cap-and-Trade Program Compliance).

INFORMATIONAL/ DISCUSSION ITEMS

22. FY2020 Annual Billing Settlements Review – Staff will present a draft of LEC's FY2020 Annual Billing Settlement for the period of July 1, 2019 – June, 20, 2020.

23. Additional Operational Updates – Staff will provide an update on issues related to Operations.

ADJOURNMENT

Next Regular Meeting: Monday, November 9, 2020 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.



651 Commerce Drive
Roseville, CA 95678

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LEC PPC Meeting Minutes

Date: September 14, 2020

Time: 10:00am

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

Subject: Lodi Energy Center Project Participant Committee Meeting

1. Review Safety Procedures

The PPC reviewed the NCPA Safety Procedures and assigned safety roles.

2. Call Meeting to Order and Roll Call

The PPC meeting was called to order at 10:02am by Chairman Jiayo Chiang. He asked that roll be called for the Project Participants as listed below.

PPC Meeting Attendance Summary		
Participant	Attendance	Particulars / GES
Azusa - Torres	Present	2.7857%
BART - Lloyd	Absent	6.6000%
Biggs - Sorenson	Present	0.2679%
CDWR - Alqaser	Present	33.5000%
Gridley - Eckert	Absent	1.9643%
Healdsburg - Crowley	Absent	1.6428%
Lodi - Chiang	Present	9.5000%
Lompoc - Singh	Absent	2.0357%
MID - Costalupes	Present	10.7143%
Plumas-Sierra - Brozo	Absent	0.7857%
PWRPA - Bradley	Present	2.6679%
SVP - Wong	Present	25.7500%
Ukiah - Grandi	Absent	1.7857%
Summary		
Present	7	85.1858%
Absent	6	14.8142%
Quorum by #:	Yes	
Quorum by GES:	Yes	

Meeting Date:

September 14, 2020

Public Forum

Chairman Chiang asked if any members of the public were on the phone 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. George Morrow was the only member of the public present.

3. Meeting Minutes

The draft minutes from the August 10, 2020 were considered. The LEC PPC considered the following motion:

Date: 9/14/2020

Motion: The PPC approves the minutes from the August 10, 2020 regular LEC PPC meeting.

Moved by:

CDWR

Seconded by:

Lodi

Discussion: There was no further discussion

Vote Summary on Motion		
Participant	Vote	Particulars / GES
Azusa	Yes	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	7	85.1858%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	6	14.8142%
Result:		Motion Passes

MONTHLY REPORTS

4. Operational Reports for August 2020

Rafael Santana presented the Operational Report for August 2020. There were no OSHA recordable accidents and no NERC/WECC violations. There were 3 plant trips in August for vibration on startup, vibration probe issue and steam pressure regulating valve trouble. The next planned outage is April 2021. Planning continues for the steam turbine and generator six-week major outage in 2022/2023.

The operational report reflected monthly production of 145,060 MWH, 559 service hours, and equivalent operating availability of 98.6%. The report set for the Capacity Factor @ 302MW Pmax of 64.6%. There were 6 hot starts, 14 warm starts, and 0 cold starts during the month.

5. Market Data Report for August 2020

Zackary Liske mentioned the operating and financial settlement results for the month. LEC was committed to CAISO 31 out of 31 available days. Most runs were between 6-23 hours in the afternoons and evenings and 12 days straight runs in the month of August. There were 0 days not committed.

6. Monthly Asset Report

Michael DeBortoli presented the monthly asset report for July 2020. Michael mentioned the new plexos model changed the budget comparisons for LEC. The fixed costs were expected this month, with higher fuel costs. The month of July is tracking with similar performance from years past.

7. Bidding Strategies Report

Jesse Shields presented the Bidding Strategies Report for August 2020. Jesse reviewed bidding and calculating net start-up costs. Jesse reviewed DA and RT net revenues over the month with the Committee.

Consent Calendar (Items 8-12)

The consent calendar was considered. Chairman Chiang 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: 9/14/2020

Motion: The PPC approves the Consent Calendar items consisting of agenda items no.: **8.** Treasurer's Report for July 2020; **9.** Financial Report for July 2020; **10.** GHG Reports (excerpted from the Monthly ARB); **11.** Northwest Industrial Engine and Compressor Company MTGSA for engine, compressor, pump, and turbine inspections and maintenance services, not to exceed \$500,000, for use at all NCPA facilities and Members/SCPPA; **12.** Approval of the LEC 2021 Outage Schedule.

Moved by:
Seconded by:

SVP
CDWR

Discussion: There was no further discussion.

Vote Summary on Motion		
Participant	Vote	Particulars / GES
Azusa	Yes	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	7	85.1858%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	6	14.8142%
Result:	Motion Passes	

BUSINESS ACTION ITEMS

None

INFORMATIONAL ITEMS

13. Amendment to LEC PMOA Schedule 11

Tony Zimmer postponed the vote on the amendment to LEC PMOA Schedule 11. Tony mentioned staff is working on amending the LEC PMOA to reflect current business practices. This will include clarifying roles and responsibilities. The staff will present a more comprehensive schedule for voting next month.

14. Additional Operational Updates

Michael DeBortoli presented a PowerPoint presentation about the LEC forced outage in 2020 and the changes made for the new turbine. Michael mentioned the forced outage downtime was a blessing, since LEC runs less during the spring each year, due to hydro productions.

Michael DeBortoli presented a PowerPoint presentation about the hydrogen market. Michael mentioned the benefits of hydrogen. Hydrogen is green energy and could be less expensive than natural gas when incorporated with gas turbines. Michael is researching hydrogen storage & transportation options.

Adjournment

The next regular meeting of the PPC is scheduled for Monday, October 12, 2020 at 10:00am.

The meeting was adjourned at 11:02 am.

Submitted by: Melissa Conrad

DRAFT

Lodi Energy Center Project Participant Committee

Operational Report

Agenda Item No.: 4

Date: 10/12/2020

To: Lodi Energy Center Project Participant Committee

Safety

- OSHA Recordable: 0 Accidents.

Notice of Violations

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

Outage Summaries:

- 9/12 @ 00:00 - 9/16 @ 16:00: CTG Vibration Instrumentation Failure, OMS #9112733

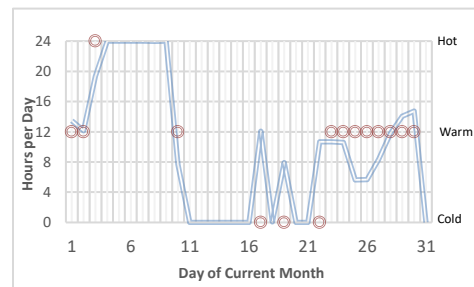
Planned Outage Summaries:

- April 1-30, 2021 Planned Outage
- 2022/2023 ST and Gen – Major Inspection (6 weeks outage)

Generating Unit Statistics:**Date:**

9/1/2020

1. Monthly Production	145,060	MWH
2. Productivity Factor		
a. Service Hours	559	Hours
b. Service Factor	75.2%	%
c. Capacity Factor @ 302MW Pmax	64.6	%
3. Equivalent Operating Availability (EOA)	98.6	%
4. Forced Outage Rate (FOR)	1.8	%



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	6,940	1.02%	49,110	\$13,818
Seg. 3 275 - 284	6971	6,976	0.07%	50,119	\$963
Seg. 4 250 - 275	7081	7,006	-1.06%	20,842	-\$6,283
Seg. 5 225 - 250	7130	7,109	-0.29%	11,641	-\$958
Seg. 6 200 - 225	7200	7,200	0.00%	2,614	\$2
Seg. 7 175 - 225	7450	7,549	1.32%	3,861	\$1,523
Seg. 8 165 - 175	7760	7,873	1.46%	2,680	\$1,217
	7,164	7,236	0.25%	140,868	\$10,281

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	0	-1	1	\$22
Seg. 3 275 - 284	0	-1	1	\$27
Seg. 4 250 - 275	1	-2	2	\$65
Seg. 5 225 - 250	1	-2	2	\$66
Seg. 6 200 - 225	2	-8	10	\$274
Seg. 7 175 - 225	4	-14	18	\$559
Seg. 8 165 - 175	0	-1	1	\$21
	7	-28	35	\$1,034

7. Starting Reliability

Start Type	Hot Starts	Warm Starts	Cold Starts
Number of Starts	6	14	0
Start Time Benchmark (Minutes)	75	110	200
Start Time Actual (Average Minute)	91	122	0
Start Time Deviation (%)	21%	11%	0%
Start Fuel Benchmark PMOA (mmBTU)	1,300	1,800	3,500
Start Fuel Actual (Average mmBTU)	1,089	1,086	0
Fuel Deviation (%)	-16%	-40%	0%
Costs of Fuel Deviations (\$)	-\$5,065	-\$39,970	\$0



LEC PPC Meeting

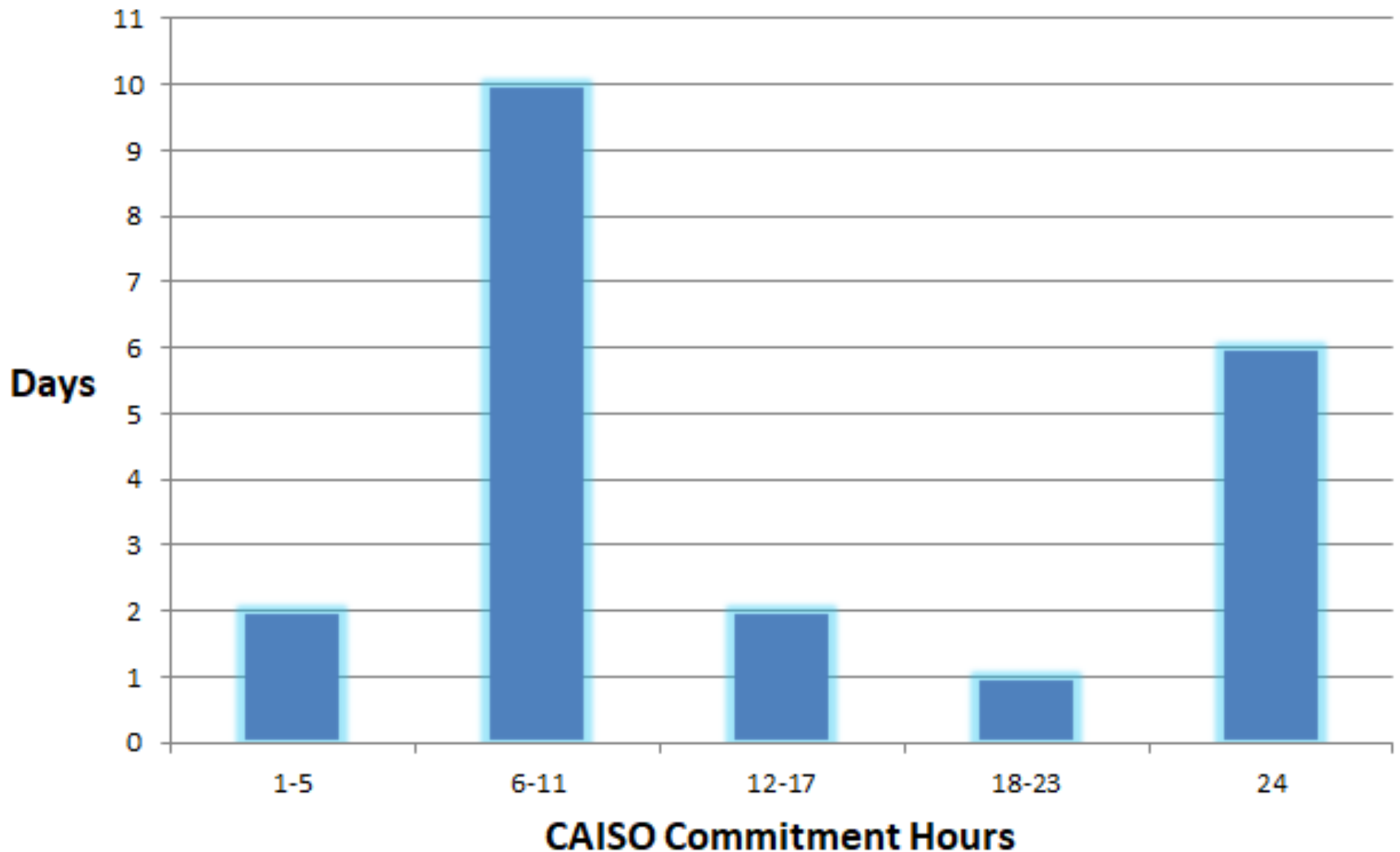
October 12, 2020

**September 2020 Market Financial
Results**

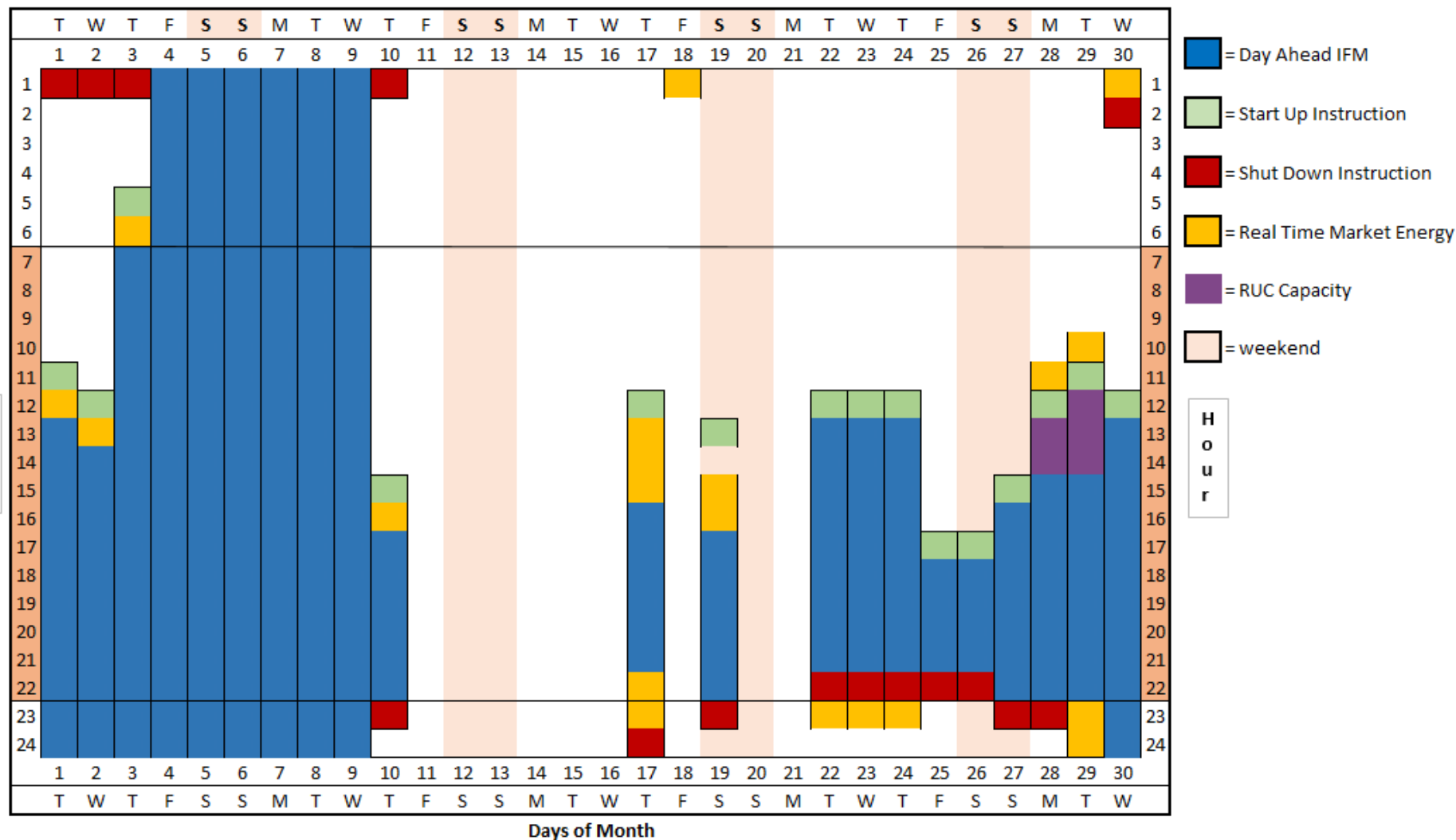
LEC Operational Results for September 2020

- Resource Adequacy Availability Metrics:
 - 91.05% - Monthly Assessment Generic Performance
 - 82.71% - Monthly Assessment Flexible Performance Vs
 - 96.5% Availability Standard
- RAAIM Non-Availability Charge Amount:
 - \$13,171 for Generic RA based on claimed 94.77 mw
 - \$37,162 for Flexible RA based on claimed 86.32 mw
- LEC was committed by CAISO for Market energy 18 of 30 available days
 - 3 days self-scheduled to perform CT testing
 - 5 days unavailable due to forced outage
 - 4 days not committed due to economics

Frequency Tabulation of Daily CAISO commitment hours for September 2020

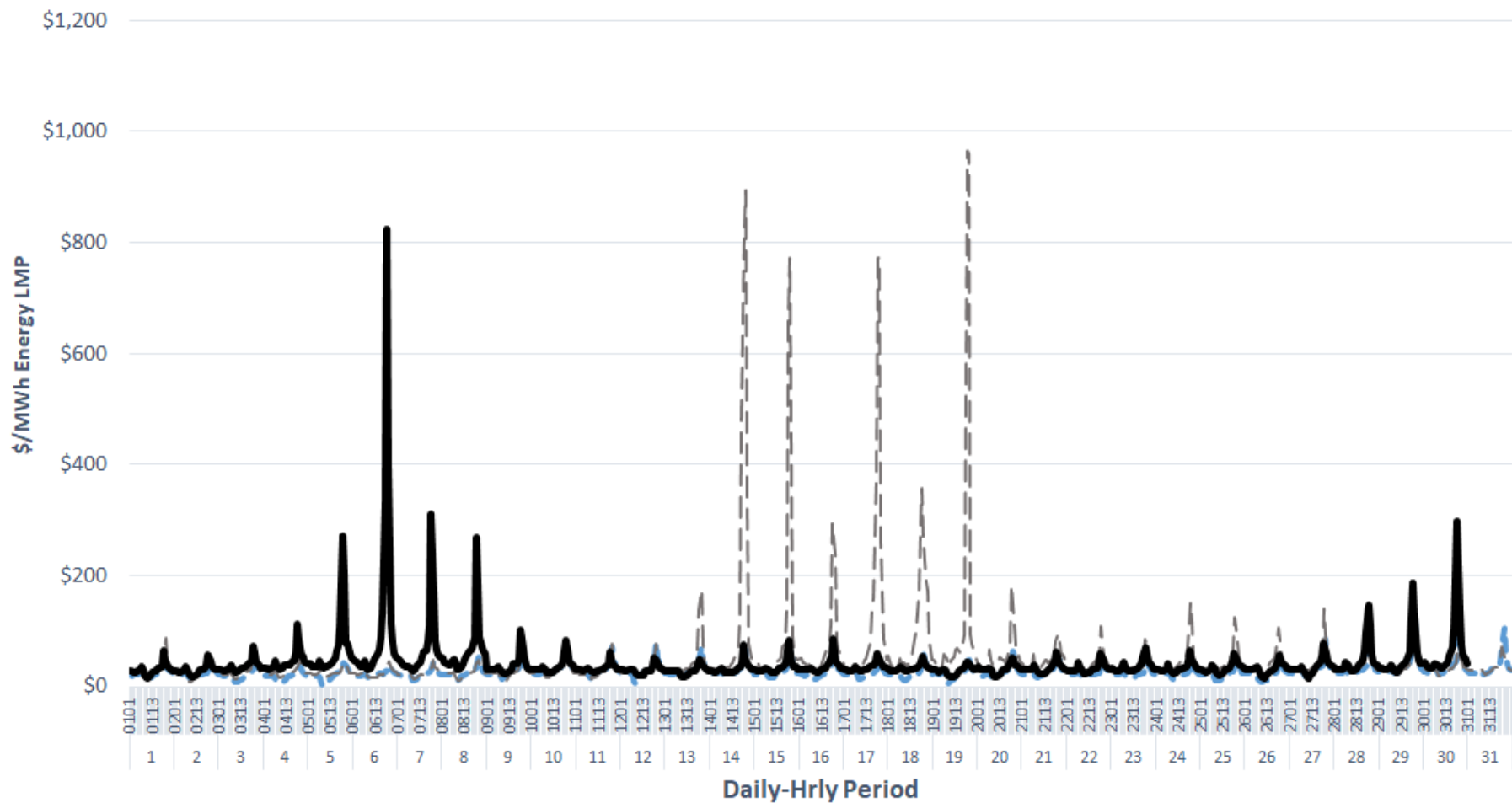


Daily CAISO Commitment Runs for September 2020

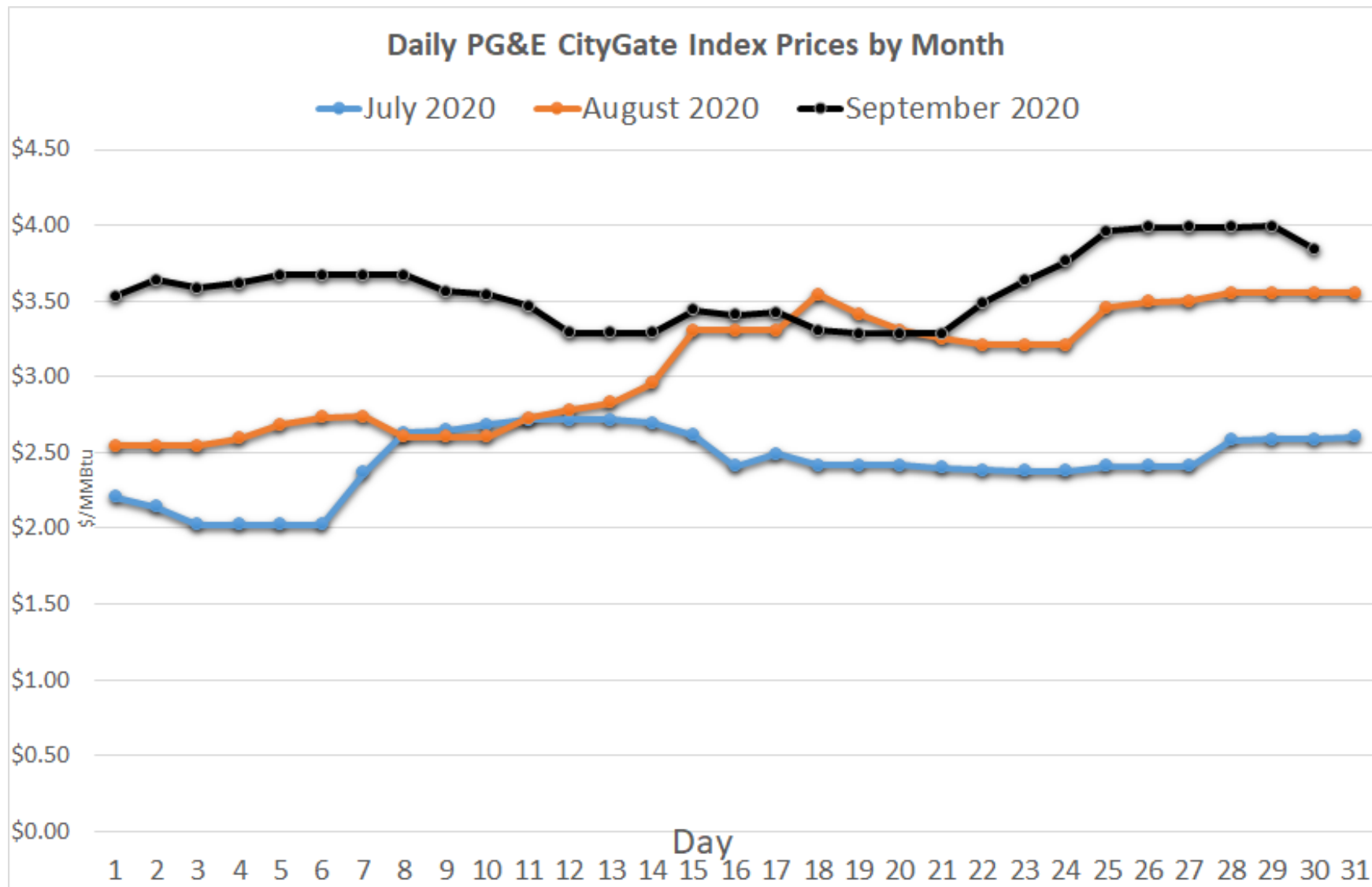


DA Energy LMP values by Month

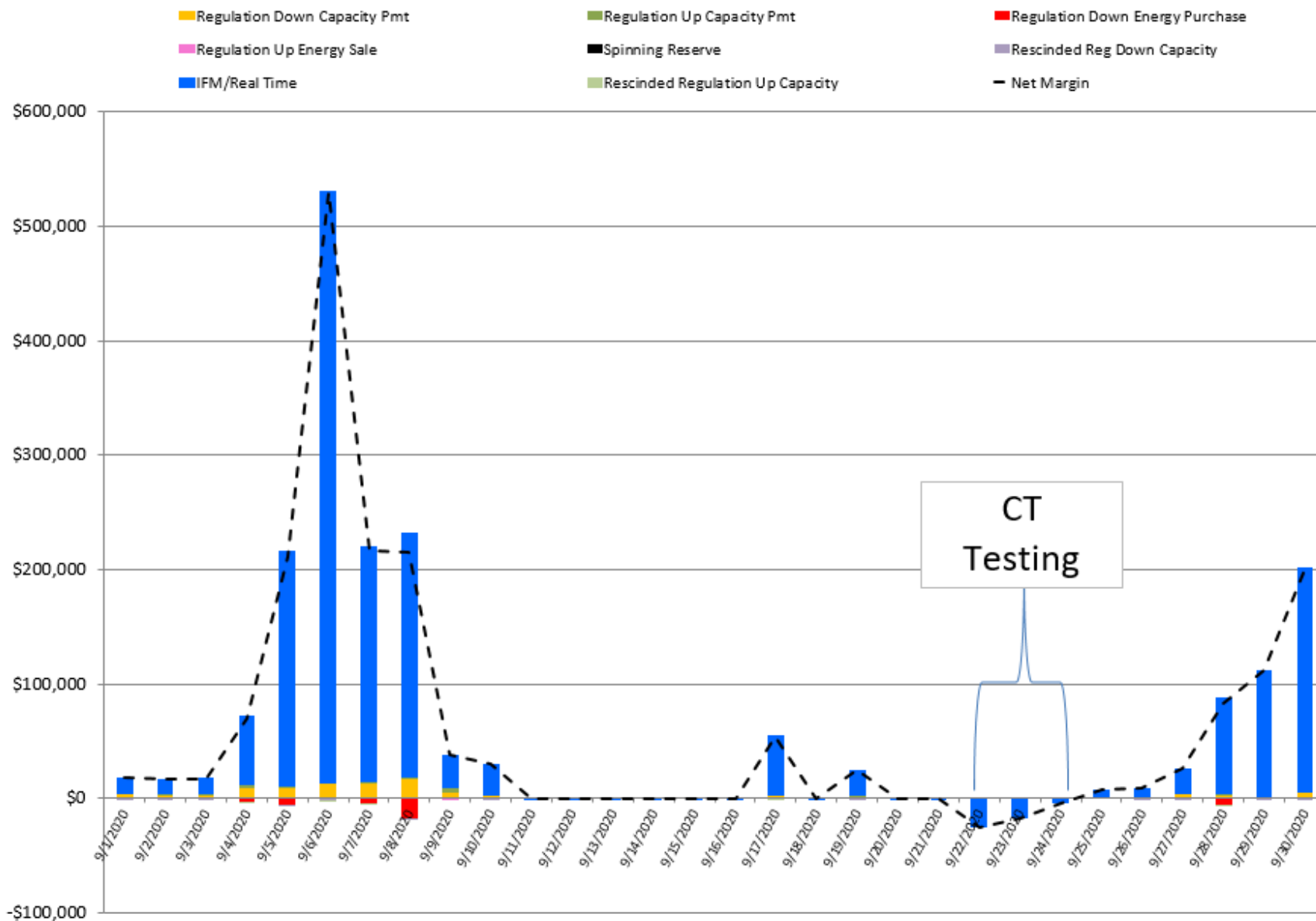
-- July 2020 -- August 2020 — September 2020



September 2020 Daily PG&E City Gate Gas Index



September 2020 LEC Daily Margin Profile by Product



September 2020 LEC Project Cumulative Monthly Margin

IFM/RTM Gross Revenues	\$ 4,687,300	
Regulation Up Capacity	\$ 15,000	
Regulation Down Capacity	\$ 94,100	
Spinning Reserve	\$ -	
Total Gross LEC Revenue		\$ 4,796,400
LEC CAISO GMC Costs	\$ (31,200)	
CAISO Energy & Capacity Buyback Costs	\$ (153,500)	
Total Monthly LEC Fuel Cost	\$ (2,020,700)	
Total Monthly GHG Obligation	\$ (505,200)	
Variable Operations & Maintenance Cost	\$ (236,000)	
Total Costs		\$ (2,946,600)
Net Cumulative Monthly Margin		\$ 1,849,800
Average Margin \$/MWh	\$	25.0

Comparison of Day Ahead Congestion LEC vs NP15 Trade Hub

Net_Amount by Day

September 2020 Cost of Congestion Component

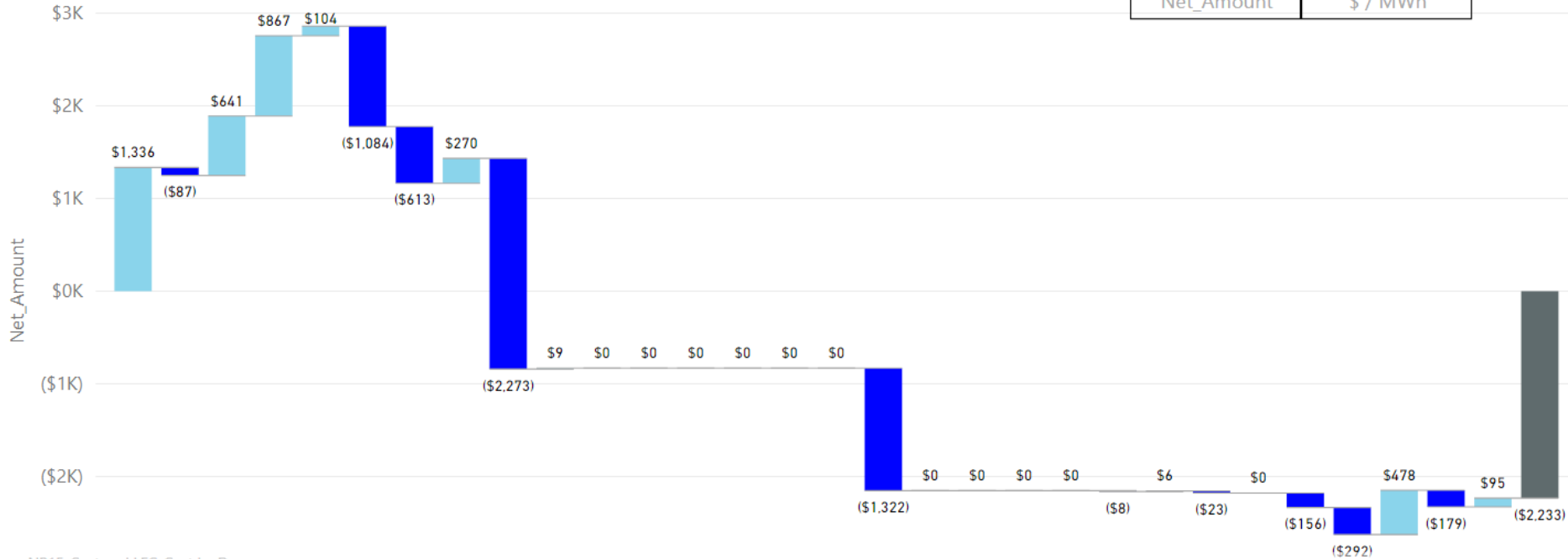
● Increase ● Decrease ● Total

(\$2,233)

(\$0.03)

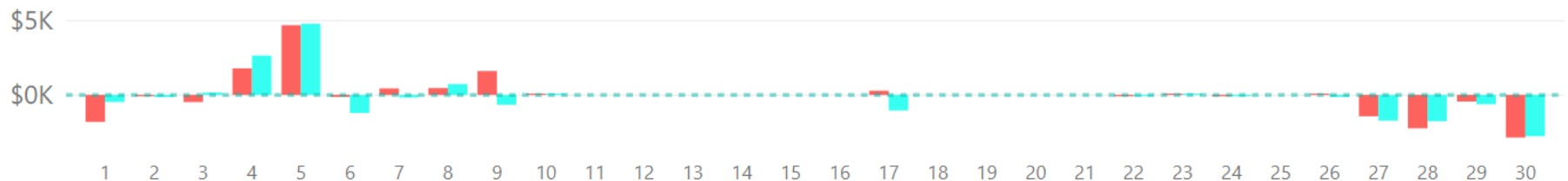
Net_Amount

\$ / MWh



NP15_Cost and LEC_Cost by Day

● NP15_Cost ● LEC_Cost



Comparison of Day Ahead Loss Component LEC vs NP15 Trade Hub

Net_Amount by Day

September 2020 Cost of Loss Component

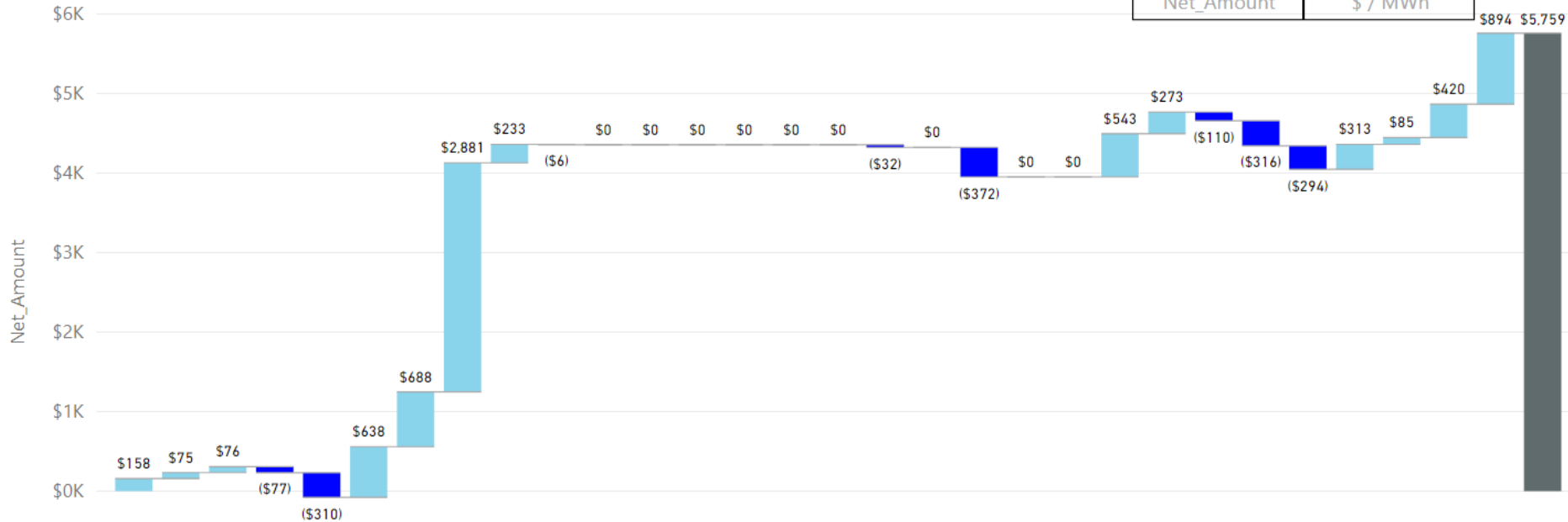
\$5,759

Net_Amount

\$0.08

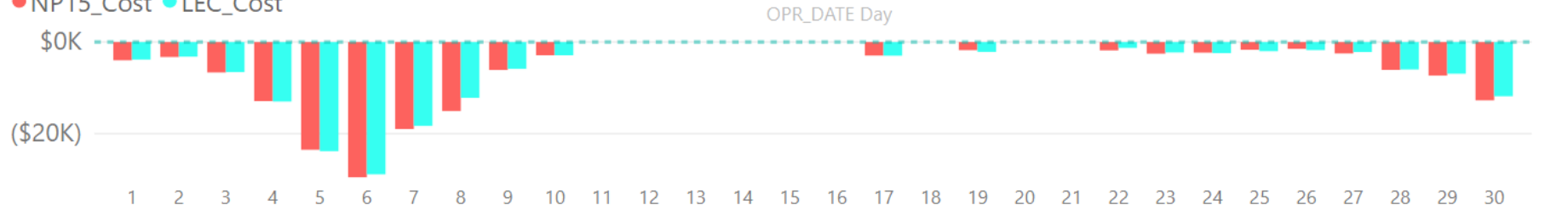
\$ / MWh

● Increase ● Decrease ● Total



NP15_Cost and LEC_Cost by Day

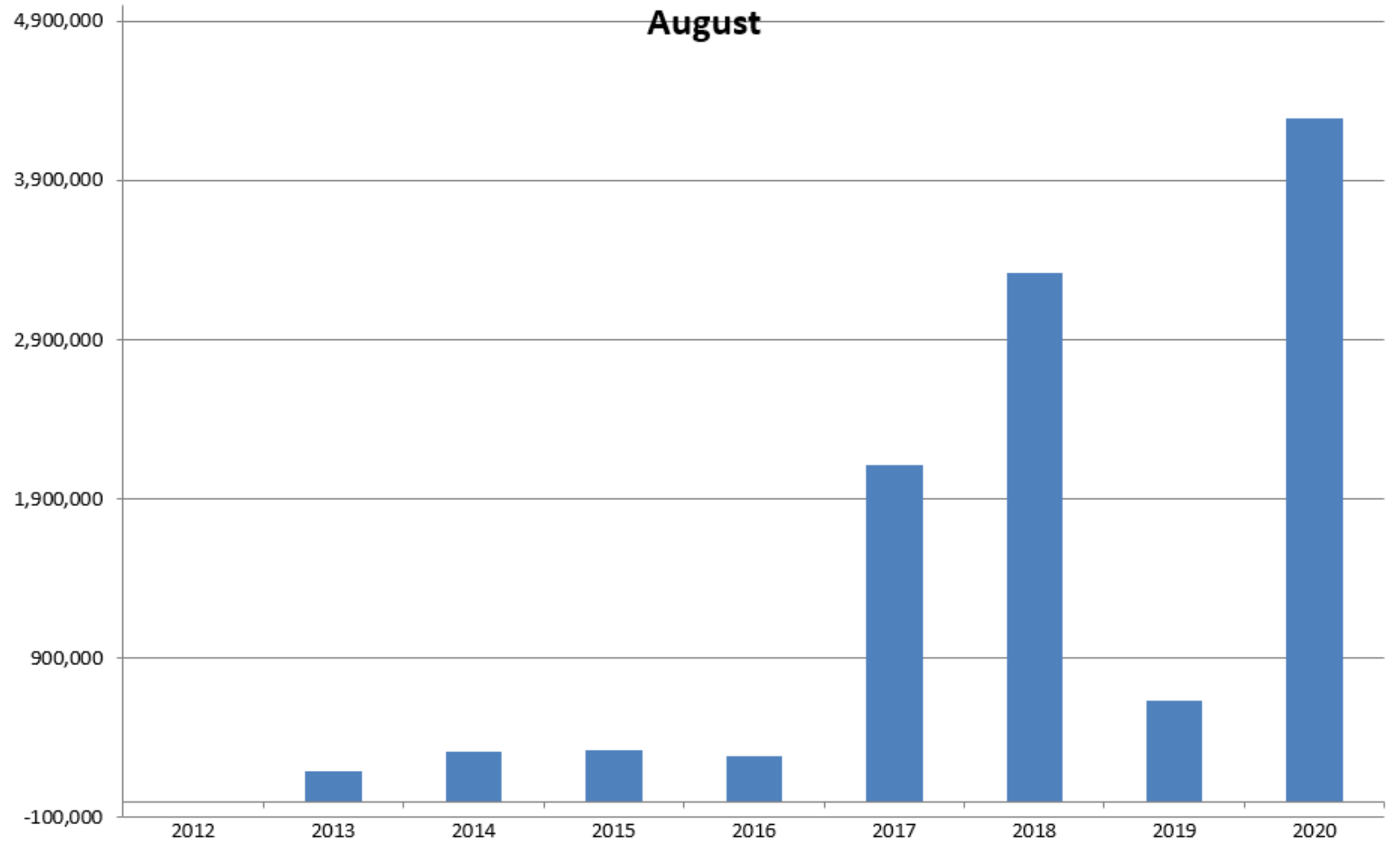
● NP15_Cost ● LEC_Cost



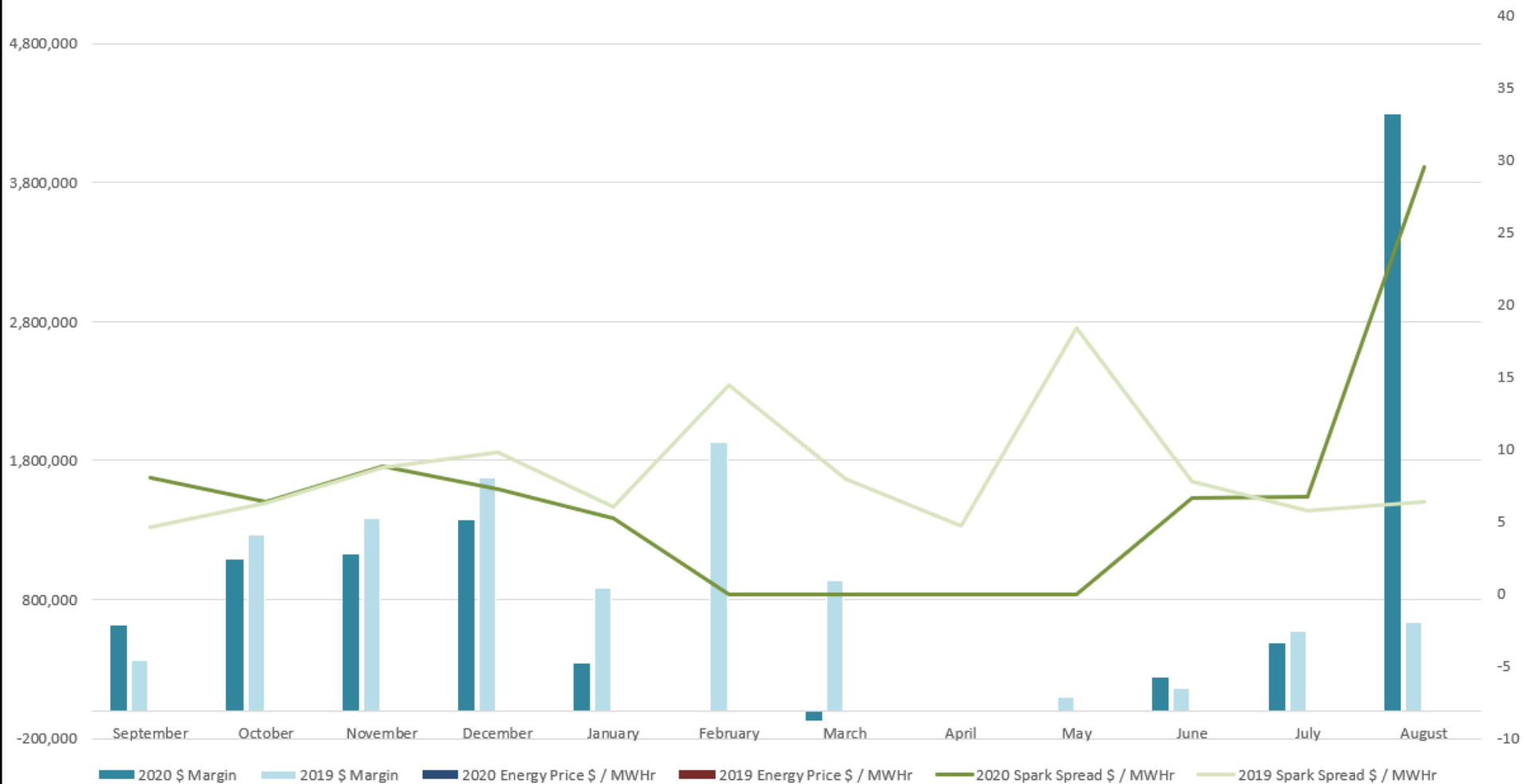
August Asset Report

		Most Recent		Above / (below)	Percent Difference	
	Actual	Forecast	Budget	Forecast	Above / (below)	
Revenue	9,389,288	5,605,056	9,757,020	3,784,232	68%	
VOM	4,637,633	3,254,731	6,052,359	1,382,902	42%	
Fixed	1,427,542	923,343	848,482	504,199	55%	Aux Pwr, T3K Annual, AB32 Fees
Projects	277,393	153,194	153,194	124,199	81%	
A&G	208,363	222,637	222,637	(14,274)	-6%	
Debt	2,168,653	2,168,653	2,168,653	0	0.00%	
Net Cost	669,704	(1,117,502)	311,696	1,787,206	-160%	
Net Annual Cost		(27,883,835)	(27,923,503)	\$39,667		
				Below budget by 0.14%		

Historical Margins

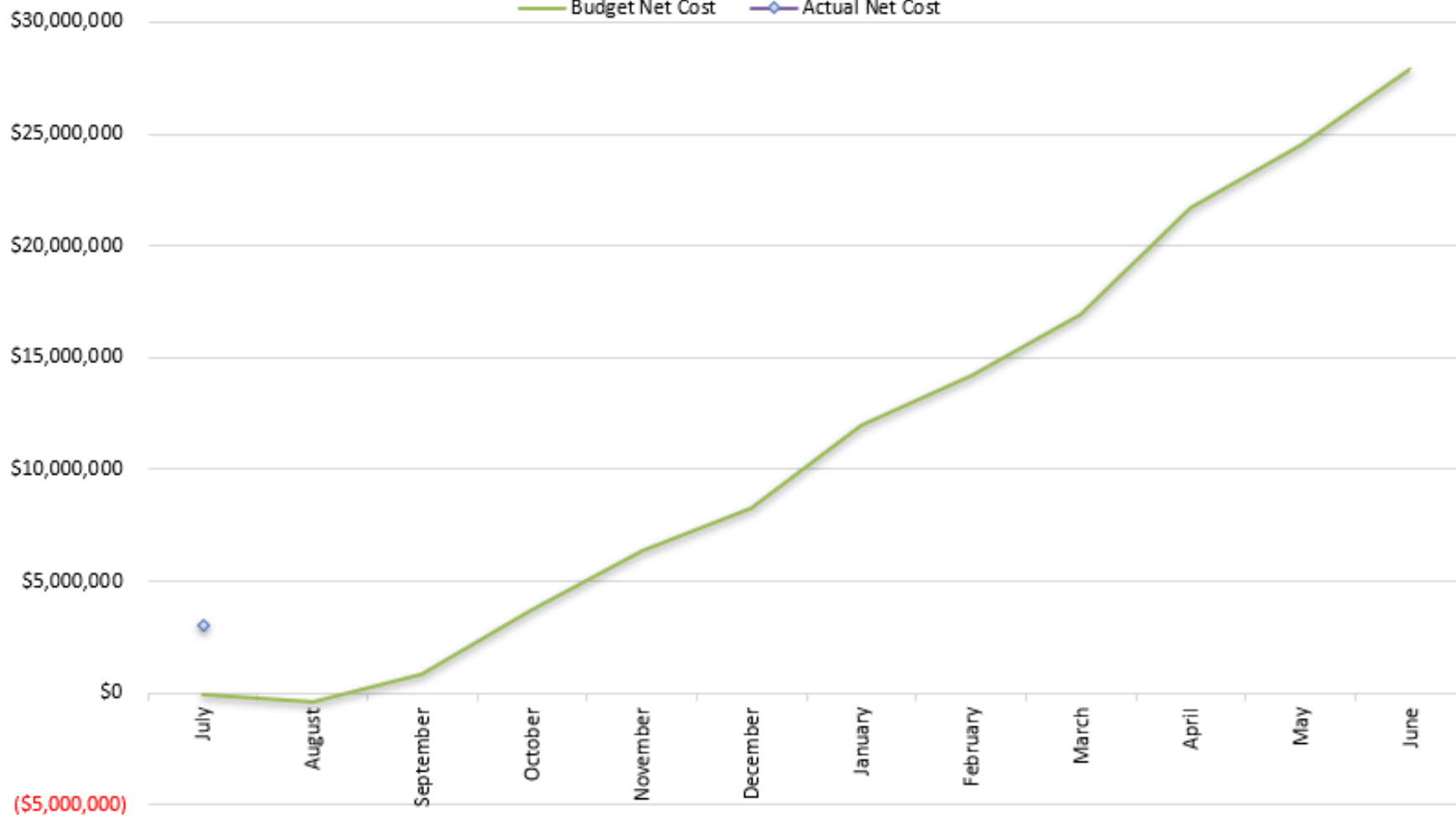


Historical Monthly Comparison



Cummulative Net Cost

Budget Net Cost Actual Net Cost



Lodi Energy Center
Monthly Budget Analysis
Expenditures
Report Date: 10/01/2020

	July	August	September	October	November	December	January	February	March	April	May	June	Year	FY2020 Budget	Percent Used	Comments
VOM	2,100,250	4,745,364	5,604,458	6,372,425	6,371,917	5,906,107	7,270,416	6,069,905	2,498,793	10,000	1,899,551	4,645,912	53,495,096	50,918,015	105.1%	
Capacity Factor	32%	65%	74%	72%	82%	70%	73%	76%	27%	0%	21%	63%	55%	54%	102.0%	Less than forecast
Fuel Consumed (mmBTU, estimated)	553,447	1,035,000	1,109,214	1,114,057	1,217,560	1,075,238	1,115,968	1,096,192	423,700	0	317,443	941,320	9,999,137	9,021,368	110.8%	
Avg Fuel Cost (\$/mmBTU)	2.51	3.21	3.45	3.50	3.70	3.95	3.96	3.96	4.49	0.00	4.52	3.72	3.68	3.65	100.7%	Higher than forecast
Power Produced (MWhr, estimated)	75,067	145,066	161,929	162,636	177,746	156,969	162,915	160,028	61,854	0	46,342	137,419	1,447,971	1,316,988	109.9%	
Avg Power Price (\$/MWhr)	37.12	64.43	55.07	41.25	42.38	46.95	49.72	45.17	44.87	0.00	48.62	44.86	47.78	49.94	95.7%	Higher than forecast
Operations / Variable / LTSA	32,219	107,731	156,414	907,840	167,310	153,009	1,228,415	152,369	10,000	10,000	10,000	10,000	2,945,308	5,436,362	54.2%	
Fuel (estimated)	1,387,262	3,318,378	3,824,699	3,901,510	4,507,843	4,247,163	4,417,479	4,343,538	1,903,243	0	1,433,686	3,498,885	36,783,687	32,955,703	111.6%	
AB32 GHG Offset (estimated)	508,424	950,218	1,078,447	1,083,156	1,183,788	1,045,414	1,143,663	1,123,397	434,215	0	325,321	964,681	9,840,724	8,695,359	113.2%	
CA ISO Charges (estimated)	172,345	369,037	544,897	479,919	512,975	460,522	480,858	450,600	151,334	0	130,544	172,345	3,925,377	3,830,591	102.5%	
Routine O&M (Fixed)	1,026,632	1,427,542	905,408	893,343	1,048,356	898,343	898,343	891,343	916,957	979,970	1,061,957	1,116,957	12,065,154	11,555,680	104.4%	
Maintenance / Fixed	311,545	463,173	222,065	205,000	300,000	205,000	205,000	205,000	205,000	205,000	350,000	205,000	3,081,783	2,717,065	113.4%	High Aux Load / T3K Annual
Administration	2,729	13,600	17,615	17,615	17,615	17,615	17,615	17,615	17,615	17,615	17,615	17,615	192,477	211,377	91.1%	
Mandatory Costs	36,623	190,530	5,000	10,000	7,000	15,000	15,000	8,000	33,614	33,614	33,614	33,614	421,608	309,455	136.2%	ARB32 Fees
Inventory Stock	0	0	0	0	0	0	0	0	0	0	0	0	0	-	0.0%	
Labor	482,419	566,447	450,000	450,000	513,013	450,000	450,000	450,000	450,000	513,013	450,000	650,000	5,874,892	5,789,039	101.5%	
Insurance	66,328	66,328	74,862	74,862	74,862	74,862	74,862	74,862	74,862	74,862	74,862	74,862	881,271	898,338	98.1%	
Power Management & Settlements	126,988	126,988	126,988	126,988	126,988	126,988	126,988	126,988	126,988	126,988	126,988	126,988	1,523,859	1,523,860	100.0%	
Other Costs	0	476	8,879	8,879	8,879	8,879	8,879	8,879	8,879	8,879	8,879	8,879	89,264	106,546	83.8%	
Projects	352,616	277,393	218,194	153,194	253,194	159,694	278,194	278,194	278,194	403,194	424,150	153,194	3,229,408	2,905,788	111.1%	
Maintenance Reserve	153,194	153,194	153,194	153,194	153,194	153,194	153,194	153,194	153,194	153,194	153,194	153,194	1,838,331	1,838,332	100.0%	
Operations & Maintenance Projects	-287,312	36,453	65,000	0	100,000	0	125,000	125,000	125,000	250,000	270,956	0	810,097	1,060,956	76.4%	
Capital Projects	486,734	87,746	0	0	0	6,500	0	0	0	0	0	0	580,980	6,500	8938.2%	
A&G	183,752	208,363	222,637	222,637	222,637	222,637	222,637	222,637	222,637	222,637	222,637	222,637	2,618,483	2,671,642	98.0%	
Administrative & General (Allocated)	160,659	198,558	193,161	193,161	193,161	193,161	193,161	193,161	193,161	193,161	193,161	193,161	2,290,825	2,317,930	98.8%	
Generation Services Shared	23,093	9,805	29,476	29,476	29,476	29,476	29,476	29,476	29,476	29,476	29,476	29,476	327,658	353,712	92.6%	
Total O&M Cost	3,663,250	6,658,662	6,950,697	7,641,600	7,896,104	7,186,781	8,669,591	7,462,079	3,916,581	1,615,801	3,608,295	6,138,700	71,408,142	68,051,125	104.9%	
Debt Service	2,168,653	2,168,653	2,168,653	2,168,653	2,168,653	2,168,653	2,168,653	2,168,653	2,168,653	2,168,653	2,168,653	2,168,653	26,023,835	26,023,835	100.0%	
Revenues	2,786,992	9,389,288	8,949,819	6,740,264	7,564,531	7,401,867	8,131,713	7,260,750	2,807,837	32,154	2,285,496	6,197,431	69,548,142	66,151,457	105.1%	
ISO Energy Sales (estimated)	2,786,450	9,346,750	8,917,665	6,708,110	7,532,377	7,369,713	8,099,559	7,228,596	2,775,683	0	2,253,343	6,165,277	69,183,524	65,765,612	105.2%	
Other Income	542	42,538	32,154	32,154	32,154	32,154	32,154	32,154	32,154	32,154	32,154	32,154	364,618	385,845		
Net	(\$3,044,911)	\$561,973	(\$169,531)	(\$3,069,989)	(\$2,500,226)	(\$1,953,568)	(\$2,706,531)	(\$2,369,982)	(\$3,277,397)	(\$3,752,301)	(\$3,491,451)	(\$2,109,922)	(\$27,883,835)	(\$27,923,503)	Below budget by 0.14%	



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LEC Treasurer's Report

AGENDA ITEM NO.: 8

Date: October 12, 2020

To: LEC Project Participant Committee

Subject: Treasurer's Report for the Month Ended August 31, 2020

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 \$319.

Investments - The carrying value of the LEC's investment portfolio totaled \$32,000,293 at month end. The current market value of the portfolio totaled \$32,177,985.

The overall portfolio had a combined weighted average interest rate of 0.836% with a bond equivalent yield (yield to maturity) of 0.688%. Investments with a maturity greater than one year totaled \$12,535,000. During the month \$5,670,347 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 1 basis point (from 0.10% to 0.11%) and rates on one year T-Bills remained unchanged at 0.13%.

To the best of my knowledge and belief, all securities held by LEC as of August 31, 2020 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,

Prepared by:

MONTY HANKS
Assistant General Manager/CFO
Administrative Services/Finance

SONDRA AINSWORTH
Treasurer-Controller

Attachments



Lodi Energy Center Project Participant Committee

LEC Financial Reports

AGENDA ITEM NO.: 9

Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: August 31, 2020 Financial Reports (Unaudited)

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

	August	
	2020	2019
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	\$ 73,312	\$ 74,643
Accounts receivable		
Others	6,548,955	-
Interest receivable	151	325
Inventory and supplies - at average cost	2,212,654	2,202,632
Prepaid insurance	220,388	169,968
Due from (to) Agency, net	15,793,150	25,138,096
TOTAL CURRENT ASSETS	24,848,610	27,585,664
RESTRICTED ASSETS		
Cash and cash equivalents	6,101,256	2,160,471
Investments	25,832,494	28,410,825
Interest receivable	50,454	112,168
TOTAL RESTRICTED ASSETS	31,984,204	30,683,464
ELECTRIC PLANT		
Electric plant in service	409,933,948	423,853,037
Less: accumulated depreciation	(97,233,888)	(98,606,845)
	312,700,060	325,246,192
Construction work-in-progress	-	182,398
TOTAL ELECTRIC PLANT	312,700,060	325,428,590
OTHER ASSETS		
Regulatory assets	29,035,465	24,886,437
TOTAL OTHER ASSETS	29,035,465	24,886,437
TOTAL ASSETS	398,568,339	408,584,155
DEFERRED OUTFLOWS OF RESOURCES		
Unamortized excess cost on advance refunding of debt, net	1,453,684	1,769,875
Asset retirement obligations	183,559	178,173
TOTAL DEFERRED OUTFLOWS OF RESOURCES	1,637,243	1,948,048
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	\$ 400,205,582	\$ 410,532,203

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

		August	
		2020	2019
LIABILITIES & NET POSITION			
CURRENT LIABILITIES			
Accounts and retentions payable	\$	3,322,750	\$ 2,215,355
Operating reserves		15,481,925	14,867,029
Current portion of long-term debt		12,515,000	12,040,000
Accrued interest payable		3,365,530	3,497,090
TOTAL CURRENT LIABILITIES		34,685,205	32,619,474
NON-CURRENT LIABILITIES			
Operating reserves and other deposits		73,285	1,158,817
Asset retirement obligations		183,559	178,173
Long-term debt, net		306,535,000	319,050,000
TOTAL NON-CURRENT LIABILITIES		306,791,844	320,386,990
TOTAL LIABILITIES		341,477,049	353,006,464
DEFERRED INFLOWS OF RESOURCES			
Regulatory credits		40,208,499	38,405,746
NET POSITION			
Invested in capital assets, net of related debt		2,386,815	(2,638,476)
Restricted		15,989,554	14,761,639
Unrestricted		143,665	6,996,830
TOTAL NET POSITION		18,520,034	19,119,993
TOTAL LIABILITIES AND NET POSITION	\$	400,205,582	\$ 410,532,203

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

		Two Months Ended August	
		2020	2019
SALES FOR RESALE			
Participants	\$	13,660,018	\$ 15,056,561
Other		12,029,533	7,966,061
TOTAL SALES FOR RESALE		25,689,551	23,022,622
OPERATING EXPENSES			
Operations		6,285,823	5,511,641
Depreciation		2,356,356	2,436,384
Purchased power		354,853	148,204
Maintenance		583,854	686,118
Administrative and general		989,806	871,791
Transmission		131,023	150,677
Intercompany (sales) purchases		32,897	65,667
TOTAL OPERATING EXPENSES		10,734,612	9,870,482
NET OPERATING REVENUES		14,954,939	13,152,140
OTHER REVENUES (EXPENSES)			
Interest expense		(2,300,095)	(2,381,641)
Interest income		(129,139)	208,440
Other		429,230	437,152
TOTAL OTHER REVENUES (EXPENSES)		(2,000,004)	(1,736,049)
FUTURE RECOVERABLE AMOUNTS		(94,838)	202,212
REFUNDS TO PARTICIPANTS		-	(19)
INCREASE IN NET POSITION		12,860,097	11,618,284
NET POSITION			
Beginning of year		5,659,937	7,501,709
End of period	\$	18,520,034	\$ 19,119,993

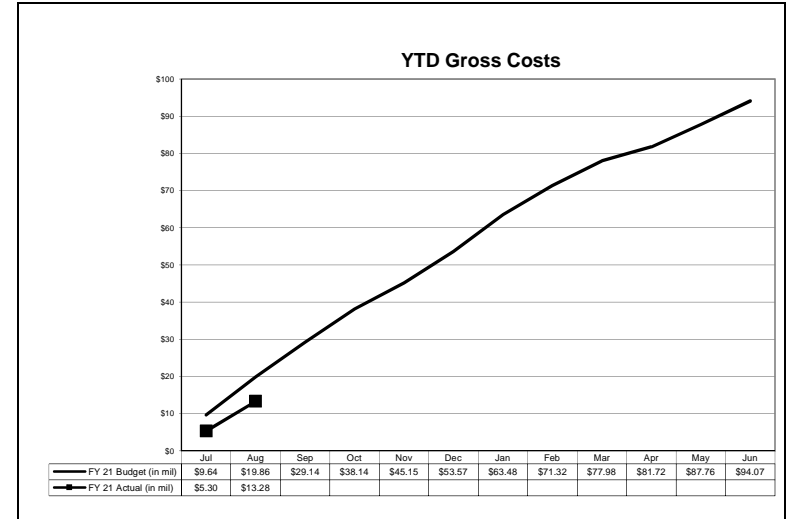
**Lodi Energy Center
FY 2021 Operating Costs
As of August 31, 2020**

	Annual Budget	Actual	Remaining	YTD % Remaining	Notes
Routine O&M Costs					
Variable	\$ 5,436,362	\$ 139,949	\$ 5,296,413	97%	
Fixed	2,717,065	774,718	1,942,347	71%	A
Administration	211,377	16,329	195,048	92%	
Mandatory Costs	309,455	227,153	82,302	27%	B
Routine O&M Costs without Labor	8,674,259	1,158,149	7,516,110	87%	
Labor	5,789,039	1,041,715	4,747,324	82%	
Total Routine O&M Cost	14,463,298	2,199,864	12,263,434	85%	
Other Costs					
Fuel	32,955,703	4,836,036	28,119,667	85%	
GHG Allowance Costs	8,695,359	16,680	8,678,679	100%	
CA ISO Charges	780,841	131,023	649,818	83%	
CA ISO Purchased Energy	3,049,750	354,853	2,694,897	88%	
Debt Service	26,023,835	4,337,306	21,686,529	83%	
Insurance	898,338	132,655	765,683	85%	
Other Costs	106,546	476	106,070	100%	
Generation Services Shared	353,712	32,897	320,815	91%	
Administrative & General (Allocated)	2,317,930	359,217	1,958,713	85%	
Power Management Allocated Costs	1,523,860	253,977	1,269,883	83%	
Total O&M Cost	91,169,172	12,654,984	78,514,188	86%	
Projects					
Operations & Maintenance	1,060,956	(250,860)	1,311,816	124%	C
Capital	6,500	574,480	(567,980)	0%	
Maintenance Reserve	1,838,332	306,389	1,531,943	83%	
Total Projects	2,905,788	630,009	2,275,779	78%	
Annual Cost	94,074,960	13,284,993	80,789,967	86%	
Less: Third Party Revenue					
Interest Income	385,845	40,095	345,750	90%	
ISO Energy Sales	55,590,251	11,911,127	43,679,124	79%	
Ancillary Services Sales	1,711,986	118,406	1,593,580	93%	
GHG Allowance Credits	8,463,375	-	8,463,375	100%	
Other Income	-	43,080	(43,080)	0%	
	66,151,457	12,112,708	54,038,749	82%	
Net Annual Cost to Participants	\$ 27,923,503	\$ 1,172,285	\$ 26,751,218	96%	
Total Variable Costs	50,918,015	5,461,861	45,456,154		
Total Fixed Costs	43,156,945	7,823,132	35,333,813		
	\$ 94,074,960	\$ 13,284,993	\$ 80,789,967		
Net Cumulative Generation (MWh)	1,316,988	220,127			
Total O&M Cost Per MWh	\$ 69.23	\$ 57.49			
Net Annual Cost Per MWh	\$ 21.20	\$ 5.33			

A - Slightly higher costs resulting from additional maintenance costs for annual outage.

B - Higher costs due to annual permit fees payment. Costs are expected to levelize for remainder of the year.

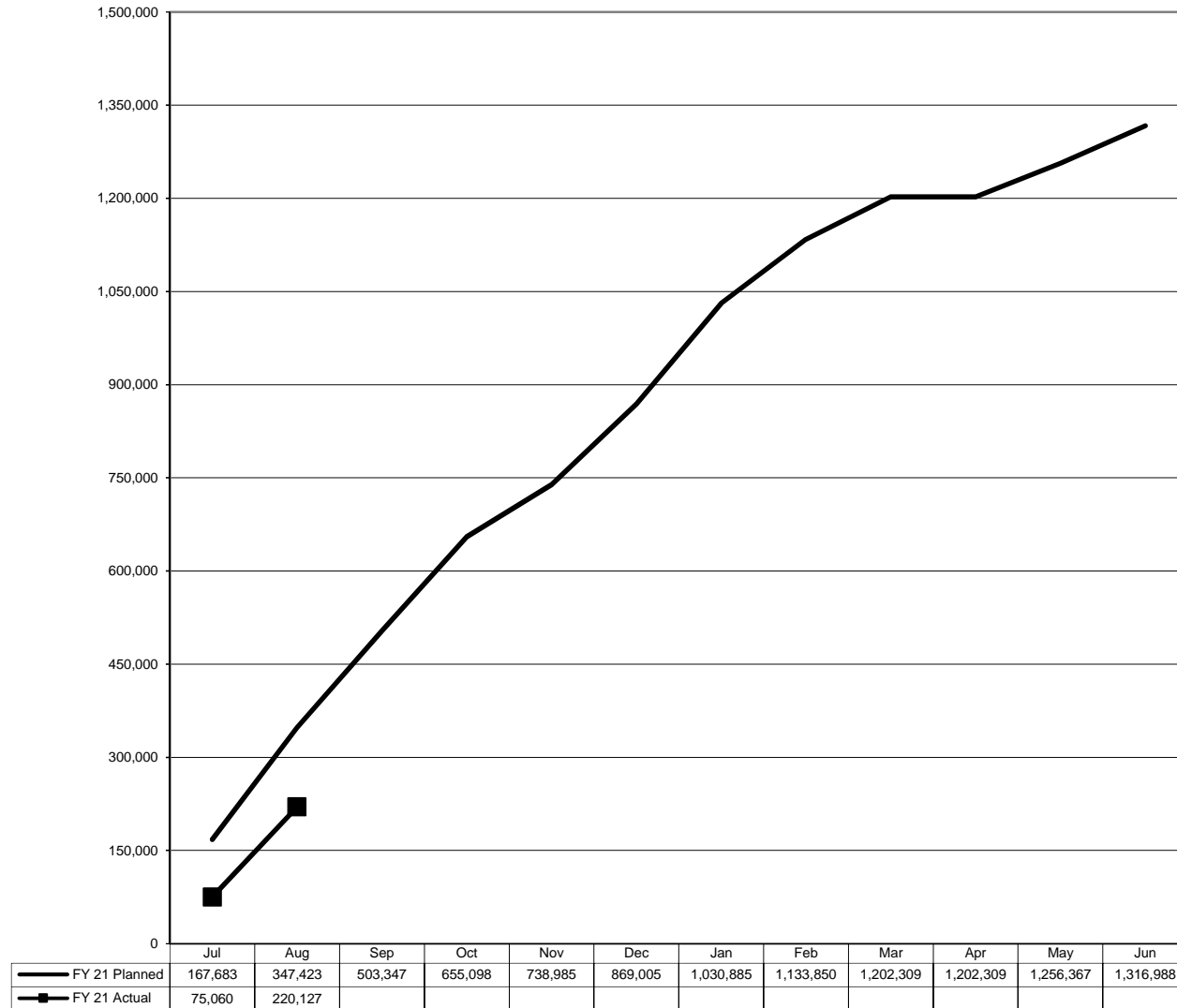
C - Amount includes prior year accrual reversal which will levelize when payment is made.



**Annual Budget
LEC Generation Analysis
Planned vs. Actual
FY 2021**

In MWh

Lodi Energy Center





Lodi Energy Center Project Participant Committee

LEC GHG Reports

AGENDA ITEM NO.: 10

Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: GHG Reports (excerpted from monthly ARB)

NCPA All Resources Bill Imports GHG Obligation Report (Cumulative)														
October 2020														
IDENTIFIER	AZU L&P	BART	Biggs	CDWR	Gridley	Healdsburg	Lodi	Lompoc	MID	Plumas	PWR	SVP	Ukiah	Total
Allocation Percentages														
Generation Entitlement Share(%)	2.79%	6.60%	0.27%	33.50%	1.96%	1.64%	9.50%	2.04%	10.71%	0.79%	2.67%	25.75%	1.79%	100.00%
Obligation Accounts														
Current MT Compliance Obligation (MTO) Balance (MT)	30,460	72,173	2,932	366,320	21,475	17,967	103,753	22,230	117,156	8,593	29,173	281,576	19,523	1,093,331
Current MT Compliance Instrument Account (MTA) Balance (MT)	32,244	72,309	3,329	371,688	21,908	18,289	104,293	22,590	120,162	8,463	29,199	346,685	19,644	1,170,803
MTA Shortfall (MT)	(1,784)	(136)	(397)	(5,368)	(433)	(322)	(540)	(360)	(3,006)	130	(26)	(65,109)	(121)	(77,472)
Monthly GHG Price \$/MT	18.39	18.39	18.39	18.39	18.39	18.39	18.39	18.39	18.39	18.39	18.39	18.39	18.39	18.39
GHG Minimum Cash Compliance Obligation (\$)	0	0	0	0	0	0	0	0	0	2,391	0	0	0	2,391
Current Month CCA Balance (\$)*	65,708	0	154	0	1,188	5,150	835	0	0	0	31,259	0	2,857	107,151
Net GHG Obligation (\$)	0	0	0	0	0	0	0	0	0	2,391	0	0	0	2,391

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

CY 2020 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for Lodi Energy Center													
IDENTIFIER	Actual										Estimated		CY 2020 Total
	January	February	March	April	May	June	July	August	September	October	November	December	
Energy (MWh)	64,890	0	0	0	0	36,730	75,070	145,066	153,083	162,631	176,356	158,335	972,161
Gas Schedule (MMBtu)	466,226	7	6	2	0	274,035	552,145	1,023,854	1,187,924	1,262,013	1,368,522	1,228,677	7,363,411
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
HVAC/Water Heater (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0
Monthly MT Obligation (MTO)	25,160	0	0	0	0	14,788	29,796	55,252	64,106	68,105	73,852	66,306	397,365
Annual Cal e-GGRT/MT Obligation True Up (MTO)	0	0	0	0	0	0	0	0	0	0	0	0	0
Cumulative MT Obligation (MTO)	860,187	860,187	860,187	860,187	860,187	874,975	904,771	960,023	1,024,129	1,092,234	1,166,086	1,232,392	1,232,392
Compliance Instrument Participant Transfers													
Carryover Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0
Auction Allowances	1,568	0	0	2,000	0	0	16,813	90,849	18,592	0	0	0	129,822
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Compliance Instrument Participant Transfers (MT)	1,568	0	0	2,000	0	0	16,813	90,849	18,592	0	0	0	129,822
NCPA Compliance Instrument Purchases													
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0
Offsets Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Compliance Instrument NCPA Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0
Compliance Instruments Internal Transfers (LEC from/to STIG)	0	0	0	0	0	0	0	0	0	0	0	0	0
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Monthly Activity (MT)	1,568	0	0	2,000	0	0	16,813	90,849	18,592	0	0	0	129,822
Cumulative MT Account Balance (MTA)	1,031,090	1,031,090	1,031,090	1,033,090	1,033,090	1,033,090	1,049,903	1,140,752	1,159,344	1,159,344	1,159,344	1,159,344	1,159,344
MTA Shortfall (MT)	(170,903)	(170,903)	(170,903)	(172,903)	(172,903)	(158,115)	(145,132)	(180,729)	(135,215)	(67,110)	6,742	73,048	73,048
Current Month CCA Balance (\$)	0	0	0	0	0	0	0	0	0	107,152	0	0	107,152
Monthly GHG Price	17.73	17.81	21.04	17.95	18.03	21.32	18.17	18.25	21.59	18.39	18.47	21.87	



Lodi Energy Center Project Participant Committee Staff Report

AGENDA ITEM NO.: 11

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: Evoqua Water Technologies, LLC – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with Evoqua Water Technologies, LLC for water treatment related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

Background

Water treatment related services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NCPA had a previous agreement in place with Evoqua Water Technologies, LLC, which is expiring. NCPA requested competitive bids specifically for the water treatment services required specifically for the CT facilities. Evoqua Water Technologies, LLC was one of the prospective bidders. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into a multi-task enabling agreement with Evoqua Water Technologies, LLC so established terms and conditions are in place should this vendor be the successful bidder on future projects. Execution of this enabling agreement will also increase the pool of qualified and proven vendors for these types of services. NCPA does not currently have any agreements in place with similar vendors.

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 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 \$1,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

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:

JOEL LEDESMA
Assistant General Manager
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with Evoqua Water Technologies, LLC



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
EVOQUA WATER TECHNOLOGIES, LLC**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Evoqua Water Technologies, LLC, a Delaware limited liability company with its office located at 210 Sixth Avenue, Suite 3300, Pittsburgh, PA 15222 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2020 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** ONE MILLION dollars (\$1,000,000.00) 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

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 thirty (30) 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 thirty (30) day period, Contractor is deemed to have waived its right to collect its final payment for the Requested Work from Agency. Additionally, invoices with errors will be returned to Contractor for correction. Contractor shall have thirty (30) days to resubmit corrected invoices. Any invoices not properly corrected or invoices that take longer than thirty (30) days to return, the Contractor is deemed to have waived its right to collect its final payment for the Requested Work from agency.

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 Pollution Insurance. Not Applicable.

4.5 All Policies Requirements.

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

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

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

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

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

4.6 Contractor's Obligation. Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are

and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and from and against all third party losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), for personal injury, death or damage to tangible property to the extent caused by negligence by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** If Contractor's Work involves its transporting hazardous materials, Contractor shall be deemed to be in exclusive possession and control of such materials and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of such materials, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Contractor or its agents complete transfer of such materials into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Contractor shall be responsible for all such notifications. Should Contractor be required to remedy or remove such materials as a result of a leak, spill, release or discharge of such materials into the environment at Agency's Site or elsewhere, Contractor agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** Contractor is an independent contractor and not an employee of Agency. Agency shall have the right to control Contractor only insofar as the results of Contractor's Work and assignment of personnel pursuant

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

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

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the

subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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

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

6.6 Maintenance Labor Agreement. If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.

7.3 Licenses and Permits. Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

7.4 Monitoring by DIR. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

7.5 Registration with DIR. During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.

7.6 Prevailing Wage Rates. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less

than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

In the event of termination, Contractor shall be entitled to compensation for Work satisfactorily completed as of the effective date of termination; Agency, however,

may condition payment of such compensation upon Contractor delivering to Agency any or all records or documents (as referenced in Section 9.1 hereof).

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

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

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

8.4.1 Immediately terminate the Agreement;

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

9.4 Confidential Information and Disclosure.

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

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

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

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

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

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

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

Section 10. PROJECT SITE.

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

10.2 Contractor's Equipment, Tools, Supplies and Materials. Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall

assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

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

Section 11. WARRANTY.

- 11.1 Nature of Work.** 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. Contractor warrants the services for ninety (90) days from performance ("Warranty Period").
- 11.2 Deficiencies in Work.** If Agency gives prompt written notice of breach of this warranty to Contractor within the Warranty Period, Contractor shall be obligated at its own expense, and as Agency's sole and exclusive remedy, 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. Unless otherwise agreed to in writing by Contractor, (i) Agency shall be responsible for any labor required to gain access to the work so that Contractor can assess the available remedies and (ii) Agency shall be responsible for all costs of installation of repaired or replaced work. If Contractor determines that any claimed breach is not, in fact, covered by this warranty, Agency shall pay Contractor its then customary charges for any repair or replacement made by Contractor. Contractor's warranty is conditioned on Agency (a) operating and maintaining the work in accordance with Contractor's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Contractor. Contractor's warranty does not cover damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Contractor) and (ii) media goods (such as, but not limited to, resin, membranes, or granular activated carbon media) once media goods are installed.
- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, to the extent assignable, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work

Section 12. Mix Bed Guarantee

- 12.1 Warranty.** Any deviations from the requirements, assumptions or conditions contained of this section 12 will void the warranty. Agency must ensure that all conditions set forth in this section, including all the feedwater water parameters listed in Exhibit A, ("Incoming Water") are met including Agency provided materials, equipment, facilities, utilities, and other things, described herein. This warranty shall be deemed void if Agency fails to meet any of the following obligations pertaining to media use and the system in which media is used.

For Lodi Energy Center Condensate Polishers, Contractor will guarantee, by way of an amendment to the Agreement, a throughput amount to be determined and mutually agreed upon, based upon the process as defined by the Throughput Volume Determination Plan by May 31, 2021 as per the treated water specifications outlined in Exhibit A ("Effluent Water"). If the parties are unable to mutually agree to the throughput amount by the date specified, the throughput guarantee will be void and Contractor will have no responsibility or liability as it relates to the throughput guarantee.

The warranty shall be deemed void if the Agency fails to meet the following influent water conditions:

- Feed water must not contain any oxidizing agents including, without limitation, chlorine, ozone or permanganate.
- Sequestrants, cleaning or treatment chemicals, and any other chemicals used in the system must be compatible with the media.
- Influent water to each vessel shall be free of entrained air to the extent that entrained air could disrupt media beds in any system.
- Bacteria levels in the influent and influent delivery mechanisms such as, for example, piping and manifolds in any well, shall be <5 cfu/ml. If Contractor Water Technologies is requested to backwash and sanitize a specific media bed after the start of a particular run then Condition a. applies. Furthermore, the detection of bacteria at any level in the influent and influent delivery mechanisms may compromise the media bed life. Therefore, Contractor assumed no responsibility or liability relating to the bacteriological quality of the incoming water or within the wells and shall bear no costs relating to media sterilization due to bacteria in the incoming water or elsewhere in the wells.
- Should any of the sodium, chloride, sulfate, phosphate, silica, specific conductivity, ammonia, total organic carbon, temperature range, temperature peak, and total iron values exceed the feedwater water parameters listed in Exhibit A, the warranted treatment volume will be adjusted and a new Warranty would be provided.

This section 12.1 does not require Agency to do any additional monitoring.

- 12.2 Remedies.** The sole remedy for each of Contractor's vessel that fails to reach 50% of this mix bed guarantee is a full credit for the regeneration cost will be applied to Agency's account. If a vessel reaches 50%-100% throughput, then a pro-rated credit for the regeneration cost will be applied to the Agency's account.

For example, if the throughput is 21,000,000 gallons, then the Agency would only pay for 70% of the price.

12.3 System Operation and Maintenance. Agency agrees, at its own expense, to at all times maintain the system as necessary for Contractor to fulfill its obligations hereunder. The design parameters (system, equipment and peripheral components) must be consistent with sound engineering practice and the system is operated within the design parameters. The system shall be operated and maintained in accordance with the written parameters provided in this supplied Media Bed Life Warranty. The warranty shall be deemed void if the Agency fails to meet the following system conditions:

- The media must be operationally protected against excessive hydraulic changes including, without limitation, water hammer, and rapid pressure swings.
- The system shall not be backwashed or the beds otherwise hydraulically altered once a service run has started, as this will reduce the expected throughput.
- The media must be maintained in a clean condition and must not be contaminated by particulate matter, colloidal or precipitated solids, biological growth or foreign materials (including but not restricted to cationic surfactants, solvents, soluble oils, free oils, lipids, and high molecular weight natural polymers.
- Agency must keep media moist at all times after installation.
- Media loss from the bed will be excluded from this warranty. Without limitation, loss of media due to failure of distributors, media traps, or other procedures are the responsibility of the Agency.
- Warranty does not apply if media bed is removed from service before the throughput is reached. Prematurely removing media for reasons including, without exceeding effluent water specifications, uranium loading or high differential pressure will void the warranty.

12.4 Water Monitoring. Agency is responsible for ensuring that frequent, adequate system performance data are routinely recorded in a systematic format that is regularly reviewed. Agency agrees to provide conductivity data on a daily basis, as well as total volume treated. Agency agrees to make this data available to Contractor on a reasonable basis at Contractor's reasonable request. Contractor reserves the right to obtain copies of calibration records for requested parameters.

12.5 Disputes. Should premature breakthrough occur, Contractor reserves the right to inspect installed media bed to investigate effects of flow characteristics. Inspection will include but not be limited to inspection of top of media bed to

ensure that no visible shifting or channeling has occurred, and the collection of water samples and spent media. Should it be determined by Evoqua that premature breakthrough has occurred due to improper operation, warranty will be void.

- 12.6** THE FOREGOING SETS FORTH CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTY AND REMEDY WITH RESPECT TO MEDIA BED LIFE. THIS IS NOT A PERFORMANCE GUARANTEE. CONTRACTOR LIABILITY UNDER THIS WARRANTY SHALL BE LIMITED TO DIRECT DAMAGES ONLY AND SHALL NOT EXCEED THE ANNUAL PRICE PAID TO CONTRACTOR UNDER THE CONTRACT. CONTRACTOR RESERVES THE RIGHT TO UPDATE THIS BED LIFE GUARANTEE ON A YEARLY BASIS.

FURTHERMORE, THE DETECTION OF BACTERIA AT ANY LEVEL IN THE INFLUENT AND INFLUENT DELIVERY MECHANISMS MAY COMPROMISE THE BED LIFE. THEREFORE, EVOQUA ASSUMES NO RESPONSIBILITY OR LIABILITY RELATING TO THE BACTERIOLOGICAL QUALITY OF THE INCOMING WATER OR WITHIN THE WELLS AND SHALL BEAR NO COSTS RELATING TO MEDIA STERILIZATION DUE TO BACTERIA IN THE INCOMING WATER OR ELSEWHERE IN THE WELLS.

- 12.7** THE WARRANTIES SET FORTH IN SECTIONS 11 AND 12 ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. CONTRACTOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE

Section 13. 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.

- 13.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 13.2** 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.
- 13.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.

- 13.4** 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.
- 13.5** 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.
- 13.6** 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.
- 13.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 13.8** 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.
- 13.9** 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.
- 13.10** 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 13.1, 13.2, 13.4, 13.5, and 13.6 hereof.

Section 14. MISCELLANEOUS PROVISIONS.

- 14.1 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.

- 14.2 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.
- 14.3 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.
- 14.4 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.
- 14.5 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.
- 14.6 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.*
- 14.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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.
- 14.8 Notices.** Any written notice to Contractor shall be sent to:

Evoqua Water Technologies LLC
Attention: Branch Manager
1440 Venture Lane
Turlock, CA 95380

With a Copy to:
Evoqua Water Technologies LL
Attention: General Counsel
210 Sixth Avenue, Suite 3300
Pittsburgh, PA 15222

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 14.9 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.
- 14.10 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.
- 14.11 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:
- 14.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 14.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 14.11.3** 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.
 - 14.11.4** 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.

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

14.11.6 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.*

14.12 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.

14.13 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.

14.14 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.

14.15 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.

Section 15. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, CONTRACTOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND EXCEPT FOR INDEMNITY OBLIGATIONS FOR THIRD PARTY CLAIMS FOR PERSONAL INJURY, DEATH OR DAMAGE TO TANGIBLE PROPERTY TO EXTENT OF CONTRACTOR'S NEGLIGENCE, CONTRACTOR'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT, SHALL NOT EXCEED ONE MILLION DOLLARS PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER

THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

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

NORTHERN CALIFORNIA POWER AGENCY

EVOQUA WATER TECHNOLOGIES, LLC

Date_____

Date_____

RANDY S. HOWARD,
General Manager

ROD MCNELLY,
Vice President/GM-GIS

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Evoqua Water Technologies, LLC ("Contractor") shall provide condensate polisher resin regeneration, DI mixed bed vessel rental and regeneration, RO & UF membrane cleaning, and other water treatment support services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA members:

CT Facilities services to include, but not be limited to the following:

Lodi Energy Center – Condensate Polisher

These units will be provided on a rental and exchange basis that will be charged \$100 per month per vessel rental and \$1,458.00 per exchange. The estimated exchange frequency is one (1) vessel per month but this number could change based on the feedwater to the vessels and resin performance. A minimum of two vessels are to be shipped for regeneration at any one time which will still allow for there to be sufficient resin capacity on site for the demineralization process. One vessel is to be in service, with one in standby and one in on-site inventory.

BOTTLE TYPES AND FUNCTIONS*

Num.	Vessel Size	Resin Type	Bottle Function
5	60 ft3 Steel Vessels	Mixed Bed	Removal of dissolved solids to produce de-ionized water

*Note: These vessels remain the property of Evoqua.

FEEDWATER/TREATED WATER SPECIFICATIONS

i. Condensate polisher feed water characteristics:

Parameter	Feed water	Unit
Sodium	< 3	ug/L
Chloride	< 3	ug/L
Sulfate	< 3	ug/L
Phosphate	< 3	ug/L
Silica	< 10	ug/L
Specific Conductivity	< 30	uS/cm
Ammonia (as NH3)	< 5	mg/L
Total Organic Carbon	< 300	ug/L
Temperature Range, normal	70-120	°F
Temperature - peak during bypass	160 for 30-60 min	°F
Total Iron	< 0.2	mg/L

ii. **Treated Water Specification:**

Parameter	Feed water	Unit
Sodium	< 1	ug/L
Chloride	< 1	ug/L
Sulfate	< 1	ug/L
Phosphate	< 1	ug/L
Silica	< 5	ug/L
Specific Conductivity	< 0.1	uS/cm
Temperature Range, normal	90	°F
Temperature - peak during bypass	160 for 30-60 min	°F

REGENERATION PROCEDURE QUALITY CONTROL, AND TROUBLESHOOTING

To provide increased reliability based on proximity, Evoqua worked to establish a reliable regeneration procedure specific for the NCPA condensate polisher resin that could be completed at our facility in Milpitas, CA. The general (approximately 8 hour) regeneration procedure is included below. Dedicated NCPA resin is regenerated alone and is not intermingled with our float resin or resin from another customer. The regeneration procedure is proprietary but we can share a more detailed summary upon request.

Procedure

- Vessel arrival and logging
- Resin separation anion/cation
- Inspect individual resin volume
- Add either or both anion and cation resin from NCPA maintained heel if necessary
- NaOH 50% anion soak – Extended
- HCl 36% cation soak – Extended
- Quality Check
 - <5ppb silica
 - >10 meg ohm resistivity

Quality Control and Troubleshooting

NCPA charges are received and segregated from all other resin as the first step to our quality control and tracking. Following the regeneration above, the following steps are completed to ensure that the resin processed meets the quality specification and run length anticipated:

- High purity DI Water rinse
- Measure rinse water for resistivity targeting >10megohm
- When resistivity target is reached – test rinse water for silica target is <5ppb
- Transfer to vessel, apply batch label, and make ready for shipment.

Troubleshooting is a subjective exercise based on the resin application and the issues being observed. However, a general approach to assessing performance includes:

- Interfacing with Operations to determine system performance
- Determining correct vessel resin volumes
- Vessel inlet/outlet water sampling
- Resin capacity testing

To ensure resin capacity, in addition the resin sampling associated with the current short run troubleshooting, we will conduct annual resin sampling before and after regeneration. Samples to be collected in Milpitas and transferred to Rockford for analysis.

A quality control report will be attached to and provided with the return of each vessel. The quality report will document the date and time the regeneration process started and finished, rinse water Silica, resistivity and chlorides, individual resin volumes as received, volume of resin added, heel volume remaining. Failure to provide the quality report will deem the vessel has not been regenerated. No charge will be incurred for such a vessel and it will be sent back unused for regeneration.

Agency's exhausted resin may be stored at Contractor's facility.

Lodi Energy Center – CT2 (STIG) Mixed Bed Polisher

These units and resin will be provided on a rental and exchange basis that will be charged \$265 per month per vessel rental and \$875.00 per exchange. The estimated exchange frequency is not readily predictable but based on historical data, we anticipate two (2) vessels per month. A minimum of two vessels are to be shipped for regeneration at any one time which will still allow for there to be sufficient resin capacity on site for the demineralization process.

BOTTLE TYPES AND FUNCTIONS*

Num.	Vessel Size	Resin Type	Bottle Function
8	60 ft3 Steel Vessels	Mixed Bed	Removal of dissolved solids to produce de-ionized water

*Note: These vessels remain the property of Evoqua.

CT1 – Lodi Peaker / Alameda Peaker Mixed Bed Polisher

These units and resin will be provided on a rental and exchange basis that will be charged \$18.75 per month per bottle rental and \$62.00 per exchange. The estimated exchange frequency is not readily predictable but based on historical data, we anticipate 64 bottles per year.

BOTTLE TYPES AND FUNCTIONS*

Facility	Num.	Bottle Size	Resin Type	Bottle Function
Lodi	16	3.6 ft3 FRP Bottles	Mixed Bed	Removal of dissolved solids to produce de-ionized water
Alameda	16	3.6 ft3 FRP Bottles	Mixed Bed	Removal of dissolved solids to produce de-ionized water

*Note: These vessels remain the property of Evoqua.

Deionized Mixed Bed Vessel and Bottle Specifications

Parameter	Unit	CT2 (STIG)	CT1 Lodi Peaker	CT1 Alameda Peaker
Quantity	No.	6 (4 in svc 2 stby)	12	16
Volume	Cubic Feet	60	3.6	3.6
Resistivity	Meg Ohm/cm	>10	>10	>10
Silica	Ug/L	<20	<20	<20

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:

CT Facilities costs:

<u>Cost Summary</u>	
<u>Item</u>	<u>Estimated Annual Cost</u>
Condensate Polisher Rental	\$6000/year
Condensate Polisher Regen	\$14,175/year
60 cu. ft. DI Vessel Rental	\$25,440/year
60 cu. ft. DI Vessel Regen	\$15,750/year*
3.6 cu. ft DI Vessel Rental	\$7,200/year
<u>Estimated Annual Total Cost</u>	<u>\$68,565/yr</u>

*based on historical exchange frequency

Pricing for services to be performed at other NCPA facilities, 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

Evoqua Water Technologies, LLC

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

Evoqua Water Technologies, LLC

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

NOT APPLICABLE

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)

EXHIBIT F

Throughput Volume Determination Plan

SUMMARY

Due to the high variability of throughput volumes observed over the past several years, a mutually equitable throughput guarantee could not be determined and included in the current contract renewal. Through review of the data and discussions between Evoqua and NCPA Operations staff, a plan was developed to determine and address the causes of the variability. With the variability addressed, we are confident a mutually agreeable throughput volume guarantee can be determined.

APPROACH

Evoqua observed a recent resin slurry operation, performed by NCPA. At the end of the slurry process, a significant amount of exhausted resin remained in the vessel, visually estimated to be between 10% - 15% of the resin load. Exhausted resin, when later mixed with regenerate resin, will impact the subsequent run by increasing leakage of inorganic constituents. In order to verify that this is the cause of short runs, a mutually-agreed-upon approach was developed to ensure all resin is removed during the slurry process. For the data to be meaningful, the effort will target three consecutive slurry/regeneration events. Historically, for successful runs, the average run time has been about 2.5 months. However, the duration is highly variable based upon plant operation. As a result, the process of generating the necessary data will take several months to complete.

ACTIONS

During each of the next three vessel slurry/regen operations:

- Contact Evoqua prior to initiating sluicing to allow for Evoqua participation
- NCPA to confirm all resin is removed during the sluicing process, preferably with photographs
- Evoqua to grab samples of spent resin prior to and after regeneration for analysis. Analysis will define the level of exhaustion on receipt and validate the efficacy of the regeneration process by measuring the H/OH conversion %.
- Evoqua to photo-verify removal of all resin from transport vessel prior to regeneration.
- Evoqua to quantify that the volume and ratio of spent resin received, and after regeneration. The target regenerated resin volume is 54 cuft with a 2:1 ratio of cation to anion.
- If required, Evoqua will add resin as required to meet the target volume and ratio
- NCPA to track analytical data (NCPA LEC Steam Cycle Chemistry Log) on a periodic basis, as well as total throughput achieved (Condensate Polisher Log) and share that data with Evoqua for mutual verification

Additional step for short run:

- Open 20" manway to inspect resin bed PRIOR to sluicing
- o Due to the high velocity operation, bed mixing is possible, and inspection may provide insight into this possible contributor to a short run

CONCLUSION

Data review after the conclusion of the three controlled vessel change outs will be used to identify a mutually agreeable throughput guarantee.



Lodi Energy Center Project Participant Committee Staff Report

AGENDA ITEM NO.: 12

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: Ancon Marine dba Ancon – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All Northern California Power Agency (NCPA) facilities, NCPA Members, SCPPA, and SCPPA Members.

Proposal

Approve the Multi-Task General Services Agreement with Ancon Marine dba Ancon for specialized high pressure cleaning, vacuum trucks, safety and fire watch , 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

Specialized high pressure cleaning, vacuum trucks, safety and fire watch services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. Ancon Marine dba Ancon is a new vendor whom NCPA has not had any previous agreements with. NCPA would like to enter into an agreement with this new vendor as an additional option when these types of services are needed.

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 has additional agreements in place with Gifford's Backhoe Services and Northern Industrial Construction 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 \$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:

JOEL LEDESMA
Assistant General Manager
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with Ancon Marine dba Ancon



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
ANCON MARINE DBA ANCON**

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 Ancon Marine, a corporation, doing business as Ancon, and also known as Ancon Marine, Inc. and Ancon Services (collectively "Ancon"), with its office located at 22707 Wilmington Avenue, Carson, CA 90745 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2020 ("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) 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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional/Environmental Liability Insurance. Contractor shall maintain professional/environmental liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate covering the Contractor's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim.

4.4 Pollution Insurance. Not Applicable

4.5 All Policies Requirements.

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

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

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

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

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONTRACTOR.

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of

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

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

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

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

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

Section 7. LEGAL REQUIREMENTS.

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

State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

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

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

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

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

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

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

Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

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

Section 11. WARRANTY.

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

accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.

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

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

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

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

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

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

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

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

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

Section 13. MISCELLANEOUS PROVISIONS.

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

- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

Rudy Ibarra
Operation Manager
Ancon Marine dba Ancon
3867 Teal Court
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, SCLPA or SCLPA 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.

SIGNATURES ON FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

ANCON MARINE DBA ANCON

Date _____

Date _____

RANDY S. HOWARD, General Manager

KRIS PALMERTON, Vice President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF WORK

Ancon Marine dba Ancon ("Contractor") shall provide specialized high pressure cleaning of industrial equipment services, including labor and materials for outages and general maintenance work, 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 include, but are not limited to the following:

- Tank Cleaning
 - Tank Cleaning
 - Waste Minimization
- Turnaround Services
 - Automated Pad Work
 - Fin Fan Exchanger
 - Fixed Tube Exchanger
 - Liquid Vacuum Trucks
 - Wet-Dry Vacuum Trucks
- Professional Services
 - Diversified Compliance Solutions (DCS)
 - Confined Space Technical Rescue Teams
 - Person in Charge (PIC) Services
 - Field Safety Professionals
 - Attendant Safety Watch, Fire Watch, Bottle Watch-Safety Overseers
- Emergency Response
 - Emergency Response

The Scope of Work specifically excludes any transport of hazardous materials.

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:

Following are rates for services including labor and/or required equipment:

(PREVAILING WAGE RATE SHEET TO BE INSERTED)

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

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

NOT APPLICABLE

EXHIBIT D

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Lodi Energy Center Project Participant Committee

Staff Report

AGENDA ITEM NO.: 13

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: Rege Construction – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All Northern California Power Agency (NCPA) facilities, NCPA Members, SCPPA, and SCPPA Members.

Proposal

Approve the Multi-Task General Services Agreement with Rege Construction for general maintenance services, including grading, excavation, and paving, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 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

General maintenance services, including grading, excavation, and paving, are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. Rege Construction is a new vendor whom NCPA has not had any previous agreements with. NCPA would like to enter into an agreement with this new vendor as an additional option when these types of services are needed.

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 has additional agreements in place with Epidendio Construction, Inc., Gifford's Backhoe Services, Northern Industrial Construction and Granite Construction Company (pending) 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 \$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:

JOEL LEDESMA
Assistant General Manager
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with Rege Construction



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Rege Construction, Inc., a corporation with its office located at 600 Santana Drive, Cloverdale, CA 95425 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2020 ("Effective Date") in Roseville, California.

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

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

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

Section 2. COMPENSATION. Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** ONE MILLION dollars (\$1,000,000) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable
AcctsPayable@ncpa.com

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable

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

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

4.5 All Policies Requirements.

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

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

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

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

4.5.5 Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the

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

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** If Contractor's Work involves its transporting hazardous materials, Contractor shall be deemed to be in exclusive possession and control of such materials and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of such materials, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Contractor or its agents complete transfer of such materials into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Contractor shall be responsible for all such notifications. Should Contractor be required to remedy or remove such materials as a result of a leak, spill, release or discharge of such materials into the environment at Agency's Site

or elsewhere, Contractor agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

6.2 Contractor Not Agent. Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

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

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

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.
- 9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.
- 9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

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

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

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

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

Section 10. PROJECT SITE.

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

10.2 **Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to

have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.

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

Section 11. WARRANTY.

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

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

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

- 12.10 If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

Section 13. MISCELLANEOUS PROVISIONS.

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

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

- 13.7 **Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

Bill Rege
President
Rege Construction, Inc.
600 Santana Drive
Cloverdale, CA 95425

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.

SIGNATURES ON FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

REGE CONSTRUCTION, INC.

Date_____

Date_____

RANDY S. HOWARD, General Manager

BILL REGE, President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Rege Construction, Inc. ("Contractor") shall provide routine, recurring, and usual maintenance services as requested by Northern California Power Agency ("Agency") for the preservation and protection of any facilities owned and/or operated by Agency, its Members, Southern California Public Power Authority ("SCPPA") or SCPPA members, including but not limited to grading, excavation, paving, concrete, gravel hauling, water hauling, seal coating, and labor and materials for miscellaneous maintenance services.

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

REGE CONSTRUCTION, INC.

GENERAL ENGINEERING CONTRACTOR • LIC #786253

Phone (707) 894-5143 • Fax (707) 894-5141

AVAILABLE EQUIPMENT WITH OPERATOR • PRICE LIST FOR 2020/21

Prices Subject to Change June 30, 2021

<u>TYPE</u>	<u>HOURLY RATE</u>
<u>Dozers</u>	
D6N Slopeboard/Ripper	210.00
D6R Slopeboard/Ripper	240.00
D8R Slopeboard/Ripper	310.00
<u>Grader</u>	
140H Grader	220.00
<u>Loaders</u>	
Bobcat 753	150.00
Cat 226	150.00
Cat 232	150.00
Cat289	170.00
Cat 950G 4yd	240.00
Cat 930M	220.00
John Deere 210LE	150.00
<u>Scrapers</u>	
Cat 613B	230.00
Cat 627H Double Engine	360.00
<u>Excavators</u>	
Cat 303C	150.00
Cat 305E	160.00
Cat 308	180.00
Cat 316E	220.00
Cat 320DL	220.00
Cat 323	250.00
Cat 329EL	300.00
Cat 336	330.00
Cat 349F	360.00
<u>Backhoes</u>	
John Deere 410	170.00
John Deere 415F	175.00
<u>Compactors</u>	
Cat 334D AC Roller	170.00
Cat 434D AC Roller	180.00
Cat 433C Smooth drum	180.00
Cat 563D Smooth drum	210.00
Cat 563D Padfoot	210.00
Cat 815F	260.00
Sheepsfoot	25.00

REGE CONSTRUCTION, INC.
 GENERAL ENGINEERING CONTRACTOR • LIC #786253
 Phone (707) 894-5143 • Fax (707) 894-5141

<u>TYPE</u>		<u>HOURLY RATE</u>
<u>Miscellaneous</u>		
Paver	Cat 650B 8'-16'	320.00
Water Truck	3,800 Gallon	130.00
Dump Truck	5 Yard	130.00
Dump Truck	10 Yard	135.00
End Dump	Reliance 20 Yard	135.00
Semi Bottom Dump	Fruehauf	135.00
Bottom Dump		135.00
Transfer	Reliance	135.00
Sheet Pile Tool	Pile Driver	100.00
Lowbed	KW/Murray	200.00
Cat 330 L Lodril	90,000lb Drill	350.00
Cat 725 Articulated Dump Truck		250.00
Chipper (Includes Laborer, Operator & Excavator)		550.00
Maserator/Mulching Attachment		50.00
Telehandler		150.00
Operator		110.00
Laborer		95.00
Sheet Pile Extractor Attachment		100.00

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

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.:14

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: Brian Davis dba Northern Industrial Construction – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities, NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members.

Proposal

Approve the General Manager of his designee to enter into a Multi-Task General Services Agreement with Brian Davis dba Northern Industrial Construction for general maintenance services, including but not limited to welding, safety/fire watch services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,500,000 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

General maintenance services, including but not limited to welding, safety/fire watch services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members. NCPA had a previous agreement in place with Brian Davis dba Northern Industrial Construction which is running low on funds and expiring. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on future projects. NCPA has in place for similar services with Gifford's Backhoe Services, Inc., Epidendio Construction, Inc. and pending agreements with Ancon Marine dba Ancon and Rege Construction.

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 seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the best overall value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

Fiscal Impact

Total cost of the agreement is not to exceed \$2,500,000 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:

JOEL LEDESMA
Assistant General Manager
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with Brian Davis dba Northern Industrial Construction



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
BRIAN DAVIS DBA NORTHERN INDUSTRIAL CONSTRUCTION**

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 Brian Davis dba Northern Industrial Construction, a sole proprietorship with its office located at P.O. Box 194, Kelseyville, CA 95451 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2020 ("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 FIVE HUNDRED THOUSAND dollars (\$2,500,000) 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

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

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

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

- 4.2.3 General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.
- 4.3 Professional Liability Insurance.** Not Applicable
- 4.4 Pollution Insurance** Not Applicable
- 4.5 All Policies Requirements.**
- 4.5.1 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.
- 4.5.2 Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.
- 4.5.3 Higher Limits.** If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.
- 4.5.4 Additional Certificates and Endorsements.** If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Contractor shall provide the certificates of insurance and policy endorsements, as referenced in Section 4.5.1, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.
- 4.5.5 Waiver of Subrogation.** Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.
- 4.6 Contractor's Obligation.** Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent

contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONTRACTOR.

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge

and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

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

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

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

- 6.6 Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

Section 7. LEGAL REQUIREMENTS.

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

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Contractor shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

- 8.4.1** Immediately terminate the Agreement;

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

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

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

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

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

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

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

subcontractors who have a need to know in connection with this Agreement.

Section 10. PROJECT SITE.

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

Section 11. WARRANTY.

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations

including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.

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

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

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

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

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

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

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

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

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

Section 13. MISCELLANEOUS PROVISIONS.

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

- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 13.7 Contract Administrator.** This Agreement shall be administered by Joel Ledesma, 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:

Brian Davis
Owner
Brian Davis dba Northern Industrial Construction
P.O. Box 194
Kelseyville, CA 95451

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

BRIAN DAVIS DBA NORTHERN
INDUSTRIAL CONSTRUCTION

Date_____

Date_____

RANDY S. HOWARD, General Manager

BRIAN DAVIS, Owner

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

Brian Davis dba Northern Industrial Construction ("Contractor") shall provide routine, recurring, and usual maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned and/or operated by Agency, its Members, Southern California Public Power Authority ("SCPPA") or SCPPA members, including but not limited to welding, safety/fire watch, and labor and materials for miscellaneous maintenance services.

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

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Rates on following page.

MANPOWER:	STRAIGHT TIME First 10 hr/day Mon-Thurs	OVERTIME Up to 12hrs day Mon-Thurs Fri- Sat 8 hrs	DOUBLE TIME Over 12 hrs/day
NIC Shop Rates	\$85.00/hr	\$95.00/hr	\$115.00/hr
General Foreman	\$ 65.00/hr	\$ 80.00/hr	\$ 90.00/hr
Working Leadman - Fitter, Welder, Millwright	\$ 75.00/hr	\$ 90.00/hr	\$ 100.00/hr
"B" Craft Person (Laborer)	\$ 55.00/hr	\$ 70.00/hr	\$ 85.00/hr
Call Out	4 hrs Minimum	OT Rate Applies	\$ 100.00/hr
Fire Watch (minimal tools)(site prep, weed eating, ect)	\$ 40.00/hr	\$ 55.00/hr	\$ 70.00/hr
Heavy Equipment Operator	\$ 75.00/hr	\$ 90.00/hr	\$ 100.00/hr
Spotter for Heavy Equipment	\$ 40.00/hr	\$ 55.00/hr	\$ 70.00/hr
PREVAILING WAGES PER LABOR CODES : EFFECTIVE TILL JUNE 2021			
General Foreman	\$97.00/hr	\$112.00/hr	\$132.00/hr
Welder/Fitter	\$100.00/hr	\$120.00/hr	\$140.00/hr
Laborer	\$91.00/hr	\$106.00 hr	\$126.00/hr
Heavy Equipment Operator	\$102.00/hr	\$117.00/hr	\$140.00/hr
Spotter for Heavy Equipment Operations	\$86.00/hr	\$101.00 hr	\$126.00/hr
EQUIPMENT & MATERIALS RATES:			
Vehicles:			
#28 2008 Dodge Dually Service Truck	\$40.00/hr		
#30 2000 F-350 White Service Truck	\$40.00/hr		
#32 2008 Ford Ranger	\$25.00/hr		
#36 2006 Dodge (Red 4-door)	\$30.00/hr		
#37 2013 International Boom Truck (Little Boom Truck)	\$55.00/hr		
#39 2001 Ford F-450 White Service Truck	\$40.00/hr		
#42 1997 Dodge 3500	\$40.00/hr		
#43 2000 Ford F-450	\$40.00/hr		
#44 04 3500 flatbed Dodge	\$35.00/hr		
#45 96 Toyota	\$25.00/hr		
#49 99 Ford F-550	\$45.00/hr		
#50 30K Boom Truck	\$65.00/hr		
#51 05 service body dodge	\$30.00/hr		
#52 14 3500 4x4 dodge	\$30.00/hr		
#53 19 4500 welding truck	\$40.00/hr		
#54 19 3500 welding truck	\$40.00/hr		
HEAVY EQUIPMENT RATE \$:			
#41 2007 Mini Excavator	\$50.00/hr		
#46 60' Manlift	\$40.00/hr		
#48 D4 Dozer	\$55.00/hr		
Tractor	\$30.00/hr		
TRAILER RATES:			
24 GVW Transport	\$20.00/hr		
20' Flat Bed Trailer	\$15.00/hr		
8' Dual Axle Box Trailer	\$15.00/hr		
14' Dual Axle Box Trailer	\$18.00/hr		
Confined Space Rescue Trailer	\$525/day		
MISC EQUIPMENT RATE \$:			
Certified Fresh Air Equipment	\$380.00/day		
Fire Suppression Equipment (Water Wagon)	\$100.00/day \$350.00/week \$1,000.00/month		
Concrete Saw	\$15.00/hr		
Jack Hammer	\$15.00/hr		
Pressure Washer	\$15.00/hr		
Rental Equipment/Manlift, etc	Cost plus 15%		
All Sub-Contractors	Cost plus 15%		
Materials	Cost plus 15%		
Per Diem (If required Per-Man night only)	\$125.00/night		
Travel Time (If required)	Straight Time Rates will apply		
HOT SHOT & MISC SERVICE RATES			
One Driver with One One-Ton Truck	\$90.00/hr		
One Driver with One Half-Ton Truck	\$85.00/hr		
Confined space rescuer Team =3	102.00/ per hr per person		
*Note: Hot Shots longer than 10hrs straight, additional driver required or allow 8 hrs down time with Per Diem			

All services will be billed according to Time & Material (T&M) Rates.

Prices are subject to change with 30 days' advance written notice provided to NCPA.

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

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.: 15

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: MP Environmental Services, Inc. – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All Northern California Power Agency (NCPA) Facilities.

Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with MP Environmental Services, Inc., for general maintenance services, which include but are not limited to removal and disposal of sulfur bins, hazardous material, phase separators, and vacuum truck services with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$3,000,000 over five years for use at all facilities owned and/or operated by NCPA.

Background

General maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA. NCPA had a previous agreement in place with MP Environmental Services, Inc., which is expiring. NCPA will be requesting competitive bids specifically for the sulfur bin hauling and disposal services required for the GEO facilities. MP Environmental Services, Inc. will be one of the prospective bidders. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into a multi-task enabling agreement with MP Environmental Services, Inc., so established terms and conditions are in place should this vendor be the successful bidder on future projects. Execution of this enabling agreement will also increase the pool of qualified and proven vendors for these types of services. NCPA currently has agreements in place for similar services with Patriot Environmental Services, Gifford's Backhoe Services, Fremouw Environmental Services, Inc., and a pending agreement with Ancon Marine dba Ancon.

Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place Patriot Environmental Services, Gifford's Backhoe Services, Fremouw Environmental Services, Inc., and Ancon Marine dba Ancon (pending) for similar services and seeks bids from as many qualified providers as possible. Bids are awarded to the vendor providing the overall best value to NCPA. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

Fiscal Impact

Upon execution, the total cost of the agreement is not to exceed \$3,000,000 over five years. 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:

JOEL LEDESMA
Assistant General Manager
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with MP Environmental Services, Inc.



**MULTI-TASK
GENERAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
MP ENVIRONMENTAL SERVICES, 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 MP Environmental Services, Inc., a California corporation with its office located at 3400 Manor Street, Bakersfield, CA 93308 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2020 ("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.
- 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** THREE MILLION dollars (\$3,000,000) 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 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

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

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

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

2.5 Timing for Submittal of Final Invoice. Contractor shall have ninety (90) days after completion of the Requested Work to submit its final invoice for the Requested Work. In the event Contractor fails to submit an invoice to Agency for

any amounts due within the ninety (90) day period, Contractor is deemed to have waived its right to collect its final payment for the Requested Work from Agency.

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

4.3 Professional Liability Insurance. Not Applicable

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

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

4.5 All Policies Requirements.

- 4.5.1 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.
- 4.5.2 Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.
- 4.5.3 Higher Limits.** If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.
- 4.5.4 Additional Certificates and Endorsements.** Not Applicable
- 4.5.5 Waiver of Subrogation.** Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.

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

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 5.1 **Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 **Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 **Transfer of Title.** If Contractor's Work involves its transporting hazardous materials, Contractor shall be deemed to be in exclusive possession and control of such materials and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of such materials, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Contractor or its agents complete transfer of such materials into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Contractor shall be responsible for all such notifications. Should Contractor be required to remedy or remove such materials as a result of a leak, spill, release or discharge of such materials into the environment at Agency's Site or elsewhere, Contractor agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

Section 6. STATUS OF CONTRACTOR.

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

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

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

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

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor

may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.

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

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

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

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Contractor shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1** Immediately terminate the Agreement;
 - 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
 - 8.4.3** Retain a different Contractor to complete the Work not finished by Contractor; and/or
 - 8.4.4** Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

Section 9. KEEPING AND STATUS OF RECORDS.

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

for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.

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

9.4 Confidential Information and Disclosure.

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

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

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

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

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

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

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

Section 10. PROJECT SITE.

10.1 **Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency 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. Agency will not 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 shall be solely as an accommodation and Agency shall have no 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 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.

- 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.

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 Joel Ledesma, 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:

Gina Blankenship
Facility Manager
MP Environmental Services, Inc.
3400 Manor Street
Bakersfield, CA 93308

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.

SIGNATURES ON FLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

MP ENVIRONMENTAL SERVICES, INC.

Date_____

Date_____

RANDY S. HOWARD, General Manager

GINA BLANKENSHIP, Facility Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A
SCOPE OF WORK

MP Environmental Service, Inc. ("Contractor") shall provide miscellaneous maintenance services which include labor, tools and vehicles to perform services as requested by Northern California Power Agency ("Agency") at any facilities owned and/or operated by Agency.

Services include but not limited to the following:

- Removal and replacement of sulfur bins
- Phase separators
- Vacuum truck services
- Provide, remove and disposal of debris/garbage bins (roll-top)
- Removal and disposal of hazardous material
- As requested, and on an occasional basis, provide labor for outages such as cleaning cooling tower basins and mercury tank rollover of media

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:



RATE SCHEDULE for Northern California Power Agency October 2020

General Terms and Conditions

- Rates based upon current General Prevailing Wage Determinations as published by California DIR. MP reserves the right to adjust rates based upon changes to applicable DIR Wage Determinations
- All rates are portal to portal from facility which dispatches equipment unless otherwise specified
- Rates not listed on this schedule will be furnished upon request
- All transportation services, field labor and equipment are subject to a 4-hour minimum charge
- Daily equipment rates are based upon 8-hours per day
- A variable Environmental & Energy Surcharge will apply to all charges
- Any disposal and/or laboratory analysis will be billed at cost plus 15%.
- Any subcontract services, equipment or materials not listed will be billed at cost plus 15%.
- Decontamination Requirements: Due to federal requirements, MP equipment must be decontaminated after every customer or waste stream usage. This may be performed at the disposal site, customer's location or an off-site facility. If performed at the customer location, the charges will be per MP's time and materials rate. If MP must go to an off-site facility, the charges will be billed at cost, plus 15% for the wash plus MP's time and materials rate.
- Only MP Environmental Service's personnel are authorized to deliver, pick up, operate or transfer MP equipment.



MP Environmental Services – Rate Schedule

Labor – California Prevailing Wage

Labor Classifications	ST	OT	PT
Project Manager	\$105.00	\$130.00	\$155.00
Supervisor	\$95.00	\$120.00	\$145.00
Health & Safety Coordinator	\$95.00	\$120.00	\$145.00
Equipment Operator	\$95.00	\$120.00	\$145.00
Technicians	\$75.00	\$95.00	\$105.00

Definitions:

Straight Time (ST)	First eight (8) hours in a work day, Monday through Friday
Over Time (OT)	Any time over eight (8) hours in a workday, the first eight (8) hours on a Saturday.
Premium Time (PT)	Any time over twelve (12) consecutive hours in a workday. All day on Sunday and the following holidays: <div><div>New Year's Day Memorial Day Independence Day Labor Day</div><div>Thanksgiving Day Day after Thanksgiving Christmas Day</div></div>
Emergency Response	Rates will be established at 1.50 times the appropriate rate for labor and equipment.
Per Diem	When applicable, will be at standard government rate based on work location



MP Environmental Services – Rate Schedule

Personal Protective Equipment

Protection Levels/PPE:	Rate	UOM
Level A (Composite Suit + Supplied Air)	\$450.00	Day/Person
Level B (Supplied Air)	\$225.00	Day/Person
Level B (Modified)	\$100.00	Day/Person
Level C	\$75.00	Day/Person
Level C (Modified)	\$65.00	Day/Person
Level D	\$35.00	Day/Person

Transportation Services

Transportation Equipment (Operated)	Rate – ST	Rate – OT	Rate – PT	UOM
Roll Off Truck– Single or Double	\$ 98.00	\$ 115.00	\$ 135.00	Hour
Vacuum Tank – 120 to 140 bbl, Mild or Stainless	\$ 98.00	\$ 115.00	\$ 135.00	Hour
Vacuum Tank – On Site Services	\$ 135.00	\$155.00	\$175.00	Hour
(FRP) Vacuum Tank – Strong Corrosives	\$ 205.00	\$222.00	\$ 242.00	Hour
Vacuum Truck – 50 to 60 bbl	\$ 98.00	\$ 115.00	\$ 135.00	Hour
End Dump	\$ 98.00	\$ 115.00	\$ 135.00	Hour
End Dump – High Side	\$ 115.00	\$ 132.00	\$ 152.00	Hour
Flatbed or Van – 45' to 53'	\$ 98.00	\$ 115.00	\$ 135.00	Hour
Low Bed (Equipment Transporter Permits Not Incl)	\$ 125.00	\$ 142.00	\$ 162.00	Hour
Transportation – Load Rates				
Roll-Off Transportation - Switch out loaded bins to HB Ag, Bakersfield, CA			\$2,200.00	Load
Roll Off Transportation – Switch out loaded bins to Kettleman, CA			\$1,880.00	Load
Roll Off Transportation – Switch out loaded bins to Waste Mgt, Arlington, OR			\$3,150.00	Load
Demurrage – After 1 hour loading/1 hour unloading			\$ 98.00	Hour

Additional load rates available upon request.

Roll-Off Containers & Consumables

	Rate	UOM
Roll Off Bin 20 Yard	\$12.00	Day
Roll Off Bin 30 Yard	\$12.00	Day
Roll Off Bin 40 Yard	\$12.00	Day
Vacuum Bin	\$50.00	Day
Dewatering Bin	\$55.00	Day
Intermodal Bin	\$60.00	Day
Bin Liners, Poly – 3 mil	\$35.00	Each
Bin Liners, Poly – 8 mil	\$85.00	Each
Bin Liners, Filter Cloth, 130 micron	\$150.00	Each

Demolition Equipment

Equipment (Un Operated)	Rate	UOM
CAT 330 With A Genesis GXP500R Shear	\$2,000.00	Day
CAT 330 With A Genesis GXP660R Shear	\$2,000.00	Day
Genesis 410R Concrete Processor	\$700.00	Day
Hydraulic Hammer (4,000lb Class)	\$500.00	Day
Hydraulic Hammer (8,000lb Class)	\$700.00	Day
Hydraulic Magnets (36" to 54")	\$300.00	Day
Grapple (Excavator Mounted)	\$200.00	Day

Excavation Equipment

Equipment (Un Operated)	Rate	UOM
CAT 303CR Mini Excavator With Hydraulic Thumb	\$250.00	Day
CAT 307 Excavator With Knuckle Boom	\$300.00	Day
CAT 322 Excavator With Hydraulic Thumb	\$850.00	Day
CAT 325 Excavator With Hydraulic Thumb	\$875.00	Day
CAT 328 Zero Clearance Excavator With Hydraulic Thumb	\$900.00	Day
CAT 336E Excavator With Hydraulic Thumb	\$1,300.00	Day
Long Reach Excavator (Quote As Needed)		
CAT 420F Backhoe With Hydraulic Thumb	\$350.00	Day

Loading Equipment

Equipment (Un Operated)	Rate	UOM
CAT 930H (IT) Wheel Loader	\$600.00	Day
CAT 962H (IT) Wheel Loader	\$850.00	Day
CAT 962H Wheel Loader	\$800.00	Day
CAT 966G Wheel Loader	\$975.00	Day
CAT Skid Steer (Rubber Tired)	\$250.00	Day
CAT Skid Steer (Tracked)	\$300.00	Day

Other Equipment

Equipment (Un Operated)	Rate	UOM
Water Truck (2600 gal. Two Axle)	\$400.00	Day
Water Truck (4000 gal. Three Axle)	\$550.00	Day
Water Buffalo (300 Gallon Towable)	\$200.00	Day
CAT Telehandler	\$550.00	Day
CAT 140H Motor Grader	\$750.00	Day
Articulating Haul Truck (30 Ton Capacity)	\$1,200.00	Day
Fork Lift – up to 5,000 lb.	\$400.00	Day
Dump Truck, 2 axle, 5 yard	\$300.00	Day
Pick Up Truck (un-operated)	\$150.00	Day
One Ton Truck w/ lift gate (un-operated)	\$25.00	Hour
Two Ton Truck (un-operated)	\$50.00	Hour
Emergency Response Trailer	\$200.00	Day
Light Tower, portable	\$155.00	Day
Pressure Washer, trailer mounted	\$300.00	Day
Drum Crusher	\$500.00	Day
Air Compressor – up to 185 CFM	\$250.00	Day

Hydro Excavation Equipment

Equipment (Un Operated)	Rate	UOM
Super Vac GAP-VAX HV 44 Series	\$150.00	Hour
Disposable Suction Hose – 4 Inch	\$2.00	Foot
Disposable Suction Hose – 6 Inch	\$4.00	Foot
Filter Socks (Requires 44 Socks Per Change)	\$12.65	Each

Solids Reduction & Tank Cleaning Equipment

Equipment (Un Operated)	Rate	UOM
Centrisys 21 Inch Two Phase Centrifuge (Un-Operated)	\$112.50	Hour
Centrisys 21 Inch Three Phase Centrifuge (Un-Operated)	\$137.50	Hour
400 KW Mobile Generator	\$105.00	Hour
Manway/ ROV Tank Cleaning Unit (Un-Operated)	\$125.00	Hour
Hydro Blaster 10,000 psi To 20,000 psi (Un-Operated) Includes One Gun, Pedal And a 100' Of hose.	\$145.00	Hour
Any additional hydro-blasting equipment, including consumables, not listed above would be billed at cost plus 15%		

Misc. Equipment

On Site Equipment	Rate	UOM
Hand Tools	\$50.00	Day
Small Power Tools, up to 2.5 HP	\$45.00	Day
Generator – up to 10 kw	\$125.00	Day
Trash Pump (2 Or 3 Inch)	\$45.00	Day
Wet/Dry Vacuum (5 gal.)	\$20.00	Day
Diaphragm Pump – up to 3" (Pneumatic)	\$85.00	Day
Cutting Torch	\$300.00	Day
Hepa Vac	\$40.00	Day

Safety Equipment

Safety Equipment	Rate	UOM
Confined Space Entry Equipment (per person	\$75.00	Day
Copus Blower (Intrinsically Safe)	\$125.00	Day
Intrinsically Safe Light	\$40.00	Day
Drum Pump	\$50.00	Day
LEL, O2, H2S Meter	\$85.00	Day
H2S Monitor	\$10.00	Day

Materials/Supplies

Description	Rate	UOM
End Dump Liners, floor only	\$45.00	Each
End Dump Liners, full	\$85.00	Each
Visqueen, 6mil, 10' x 100'	\$50.00	Roll
Visqueen, 6 mil 20' x 100'	\$150.00	Roll
Visqueen, 6 mil 40' x 100'	\$200.00	Roll
Drum Liners	\$3.00	Each
Clay based oil absorbent, 50 lb bag	\$10.00	Bag
Vemeculite	\$25.00	Bag
Degreaser (Simple Green, Monster, etc.)	\$20.00	Gal
Plastic pump, disposable	\$20.00	Each
Hazardous Waste Labels	\$2.00	Each
Colorimetric Tests	\$20.00	Each
pH Strips	\$8.50	Box
Duct Tape	\$4.00	Roll
Rags	\$45.00	Box
Drum Thieves	\$1.50	Each
Sample Jars	\$10.00	Each
Containers	New	Recon
Drum – 55 gal, metal, open head	\$80.00	\$ 60.00
Drum – 55 gal, metal, closed head	\$60.00	\$ 50.00
Drum – 55 gal, poly, open head	\$105.00	\$ 50.00
Drum – 55 gal, poly, closed hear	\$95.00	\$ 40.00
Drum – 30 gal, poly, open head	\$80.00	\$ 50.00
Drum – 30 gal, poly, closed head	\$70.00	\$ 40.00
Drum – 14 gal, poly, open head	\$60.00	\$ 40.00
Pail – 5 gal, poly with removable lid	\$20.00	
Over pack – 85 gal, poly	\$300.00	
Over pack – 85 gal, metal	\$240.00	
Cubic yard box	\$80.00	
Light tube box – 4 foot	\$70.00	
Light tube box – 8 foot	\$75.00	



Energy and Environmental Surcharge (EES)

MP Environmental Services, Inc. is committed to offering our customers a safe, environmentally compliant resource for their waste management needs at the best possible value. As such, we continually strive to control costs and minimize passing along frequent price increases to our customers.

Since implementing our current Fuel Surcharge in 2008, we have seen many operating costs increase significantly above other non-environmental industries. In addition to the volatility of diesel fuel and lubricants, we have seen increased costs in insurance premiums, permitting, and regulatory related issues; as well as the growing cost of maintaining EPA/DOT compliant equipment, including implementation of electronic logging.

To better address all the on-going changes in our industry, effective July 1, 2016 MP will replace its Fuel Surcharge with an Energy and Environmental Surcharge (EES).

Surcharge Calculation

The EES contains two main components, Energy Costs and Environmental Compliance costs.

Energy Costs

This component is tied to the US Department of Energy West Coast Monthly On Highway Diesel Price Index and will adjust monthly, based on the previous month's West Coast Monthly On Highway Diesel price published by EIA.

Price Per Gallon	Surcharge %
\$2.00 and below	1%
\$2.10 to \$2.19	2%
\$2.20 to \$2.29	3%
\$2.30 to \$2.39	4%
\$2.40 to \$2.49	5%
\$2.50 to \$2.59	6%
\$2.60 to \$2.69	7%
\$2.70 to \$2.79	8%

Price Per Gallon	Surcharge %
\$2.80 to \$2.89	9%
\$2.90 to \$2.99	10%
\$3.00 to \$3.09	11%
\$3.10 to \$3.19	12%
\$3.20 to \$3.29	13%
\$3.30 to \$3.39	14%
\$3.40 to \$3.49	15%
\$3.50 to \$3.59	16%

Note – surcharge will continue to increase at the rate of 1% per \$.10 per gallon above the cost of \$3.60 per gallon

Environmental Compliance

This component is designed to recover costs MP incurs on a nationwide basis associated with operating our business in an environmentally compliant manner and is currently set at 5.7%. The Environmental Compliance component is not specifically tied to any direct or indirect costs but rather is designed to maintain acceptable operating margins as we maintain regulatory compliance. The Environmental Compliance component of the surcharge will be reviewed annually and adjusted as needed.

The Energy Cost component and Environmental Compliance component will be added together to determine the total Energy and Environmental Surcharge (EES).

Applicability

The EES will apply to all charges, excluding sales tax, on an invoice and will be shown as a separate line item.

The EES is not a tax or surcharge imposed by or remitted to any government or regulatory agency. The EES will minimize the need for frequent price increases and enable MP to continue providing the quality service and professionalism our clients deserve.

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

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

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

NOT APPLICABLE

EXHIBIT E

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

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

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)



Lodi Energy Center Project Participant Committee Staff Report

AGENDA ITEM NO.: 16

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: Pure Process Filtration, Inc. – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies; Applicable to the following projects: Northern California Power Agency (NCPA) CT Facilities

Proposal

Approve the General Manager or his designee to enter into a Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Pure Process Filtration, Inc. for filter purchases and storage of goods, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for use at the NCPA CT facilities.

Background

Filter purchases and storage of filters are required from time to time for the operation and maintenance of the NCPA CT facilities. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor. NCPA desires to enter into this agreement so established terms and conditions are in place for future purchases and storage of goods. There are no additional executed for similar purchases and/or storage services.

Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time goods or services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA 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 goods/services needed at the time they are required.

Fiscal Impact

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

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:

JOEL LEDESMA
Assistant General Manager
Generation Services

Attachments: (1)

- Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Pure Process Filtration, Inc.



**MULTI-TASK
AGREEMENT FOR PURCHASE OF
EQUIPMENT, MATERIALS AND SUPPLIES
BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
PURE PROCESS FILTRATION, INC.**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency, with its main offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and Pure Process Filtration, Inc., ("Supplier"), whose principal office is located at 7429 Lampson Avenue, Garden Grove, CA 92841 (together sometimes referred to as the "Parties") as of _____, 2020 (the "Effective Date").

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

Section 2. PROJECT SITE. Goods provided under this Agreement by Supplier may include Goods delivered directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement Goods may be stored at Supplier's warehouse in Garden Grove, California.

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

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

Section 5. COMPENSATION. Agency hereby agrees to pay Supplier for the Goods an amount not to exceed ONE MILLION DOLLARS (\$1,000,000.00) as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges. This dollar amount is not a guarantee that Agency will pay that full amount to the Supplier, but is merely a limit of potential Agency expenditures under this Agreement.

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

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable
AcctsPayable@ncpa.com

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

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

- 6.1 **Workers' Compensation.** If Supplier employs any person, Supplier shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Supplier with limits of not less than one million dollars (\$1,000,000) per accident.
- 6.2 **Automobile Liability.** Supplier shall maintain automobile liability insurance for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle, whether or not owned by the Supplier, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with \$1,000,000 aggregate. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment utilized in the transport of the Goods to the Agency's Project Site.
- 6.3 **Commercial General Liability (CGL).** Supplier shall maintain commercial general liability coverage covering Goods, including product liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Supplier in regard to this Agreement with not less than \$3,000,000/\$5,000,000 aggregate for bodily injury and property damage, on an occurrence basis. No endorsement shall be attached limiting the coverage.

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

6.5 All Policies Requirements.

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

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

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

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

6.6 Pollution Insurance. Not Applicable.

Section 7. WARRANTY. In addition to any and all warranties provided or implied by law or public policy, or any other warranties provided by Supplier, Supplier warrants that all Goods are free from defects in design and workmanship; comply with applicable federal, state and local laws and regulations; are new, of good quality and workmanship, and free from defects; are suitably safe and sufficient for the purpose for which they are normally used; and are not subject to any liens or encumbrances. Supplier shall provide all Goods in accordance with all applicable engineering, construction and other codes and standards, in accordance with prudent electrical utility standards, and in accordance with the terms of this Agreement applicable to such Goods, all with the degree of high quality and workmanship expected from purveyors engaged in the practice of providing materials and supplies of a similar nature. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof, unless Supplier's warranty is for greater than one (1) year, in which case Supplier's warranty shall be applied), the Goods provided by Supplier under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Supplier shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

Section 8. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.

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

If Agency requests and Supplier agrees to store Goods at Supplier's Garden Grove, California location, title for stored Goods shall pass to Agency when Goods are secured at Supplier's location. As Supplier shall retain possession of the Goods, Supplier shall be responsible for providing insurance for any damage or injury to or caused by stored Goods while stored at Supplier's site and in transit until Agency accepts delivery at Agency's Site. Supplier agrees to store Goods consistent with any specifications by the manufacturer to maintain any warranties or guaranties provided by the manufacturer and consistent with good utility practice. Agency agrees to pay Supplier for Storage in accordance with the pricing provided in Exhibit B or as specified in a Purchase Order.

Section 9. MISCELLANEOUS PROVISIONS.

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

Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

9.13 Contract Administrator. This Agreement shall be administered by Joel Ledesma, 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.

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

Pure Process Filtration, Inc.
Attention: Melinda Limas
7429 Lampson Avenue
Garden Grove, CA 92841

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

9.15.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails,

the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

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

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

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

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

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

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

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

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

SIGNATURES ON FOLLOWING PAGE

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

NORTHERN CALIFORNIA POWER AGENCY

PURE PROCESS FILTRATION, INC.

Date: _____

Date: _____

RANDY S. HOWARD,
General Manager

MELINDA LIMAS,
President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

PURCHASE LIST / SCOPE OF WORK

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

- Filters for CT Facilities
- Storage of Goods at Supplier's Garden Grove, California location.

NOT APPLICABLE

EXHIBIT B

CERTIFICATION

Affidavit of Compliance for Suppliers

I, _____

(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 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 C

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 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: October 12, 2020
To: Lodi Energy Center Project Participant Committee
Subject: Revision to Exhibit 5 of PMOA Agreement Schedule 1.00

Proposal

Adopt revision of PMOA Exhibit 5 of Schedule 1.00 for revised 2020 CAISO Grid Management Charge (GMC) rates related to the Market Services Charge and System Operations Charge.

Background

The CAISO recovers its cost through unbundled grid management charges (GMC) composed of three volumetric charges and five associated fees and charges assessed to market participants. Each unbundled service has a corresponding service rate. With respect to the LEC Project, two of the CAISO's volumetric grid management rates, the Market Services Charge and System Operations Charge categories, are used as inputs into the Economic Operations bid calculation defined in Agreement Schedule 1.00 to the LEC PMOA (Project Management and Operations Agreement).

The CAISO issued a market notice on September 22, 2020 indicating that an increase in energy demand due to persistent high temperatures recently experienced in the Western U.S. has resulted in year-to-date over-recovery of the GMC specific to the two Market Services and System Operation service categories. As authorized by the CAISO Tariff, the CAISO will revert the rates for these two GMC categories that were in effect at the beginning of 2020 to better align forecasted actual GMC revenues to budgeted revenues. The revised GMC rates are effective trade date October 1, 2020 as indicated in the table below.

Charge Code	CAISO GMC Charge Code Name	Current 2020 Rate	Adjusted 2020 Rate	Difference	Unit of Measure
4560	GMC - Market Services Charge	\$0.1044	\$0.0994	-\$0.005	Awarded Schedules (MWh)
4561	GMC - System Operations Charge	\$0.2938	\$0.2788	-\$0.015	Metered Energy (MWh)
		\$0.3982	\$0.3782	-\$0.020	

The market services charge is assessed to the LEC Project based on awarded CAISO energy and ancillary service schedules while the system operations charge is based on metered generation quantities. NCPA includes these GMC rates into the Economic Operations bid calculation indicated in Agreement Schedule 1.00 under the defined term 'CAISO GMC' in order to internalize these costs in the awarded energy bid amount.

Fiscal Impact

There is no fiscal impact on an overall basis to Participants as these costs will be included in the Economic Operations bid calculation in order to achieve economic awards.

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.

Recommendation

NCPA staff recommends that the PPC pass a motion authorizing adopting the revised PMOA Exhibit 5 of Schedule 1.00 for the revised 2020 CAISO Grid Management Charge (GMC) rates.

Submitted by:



ROBERT W. CARACRISTI
Manager,
Information Services and Power Settlements

Attachments: (1)

- Red-lined version of PMOA Exhibit 5 of Schedule 1.00

EXHIBIT 5

CAISO Charges

The CAISO Charges component used to determine Economic Operations is calculated as shown in the table below:

Market Charge Code	CAISO Charge Code Name	Rate	Unit of Measure
4560	GMC - Market Services Charge	\$ 0.1044 .0994	per MWh
4561	GMC - System Operations Charge	\$ 0.2938 .2788	per MWh
Total GMC Amount		<u>\$ 0.3982.3782</u>	per MWh

Schedule 1.00 Exhibit 5

LEC Project Management and Operations Agreement

PPC Approved

Effective ~~6-1-2020~~10-1-2020



Lodi Energy Center Project Participant Committee Staff Report

AGENDA ITEM NO.: 18

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: Lodi Energy Center 2022 Major Parts Purchase

Proposal

Staff recommends that the Lodi Energy Center Project Participant Committee approve the LEC 2022 Major Parts Purchase as per the Long Term (LTP) agreement between NCPA and Siemens, and delegate authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the parts in accordance with NCPA Purchasing Policies and Procedures without further approval by the Commission, for a total cost not to exceed \$2,500,000, and approval for these funds to come from the LEC Maintenance Reserve Fund.

Background

The Lodi Energy Center has planned a major overhaul scheduled for 2022. During the outage, the LEC team will complete major maintenance work on equipment based on OEM recommendations for hours or starts that cannot be accomplished while operating the facility. NCPA will hire Siemens as per the Long Term Program (LTP) agreement to perform the work during the 2022 major outage.

Listed below are highlights of major work that will need parts for the LEC 2022 outage:

1. Steam Turbine
 - a. Disassembly and full inspection of Steam Turbine and inspection of internal components
 - b. Rotor Inspections
 - c. Overhaul steam control valves and Lube oil tank internal inspection
2. Steam Turbine Generator
 - a. Disassembly of Generator and full Electrical Testing and Maintenance
 - b. Rotor Inspections
 - c. Bearing refurbishment and cooler inspections
3. Combustion Turbine
 - a. Valve Maintenance (bleed valves, gas valves)
 - b. Auxiliary equipment inspections (kettle boilers, DAIS compressor)
4. CT Generator
 - a. Generator Electrical Testing and Maintenance

- b. Rotor Inspections
- c. Bearing refurbishment and cooler inspections

Selection Process

All of the parts are being ordered through Siemens as Siemens is the OEM for LEC Gas Turbine and Steam Turbine and will be conducting the work as per the LTP agreement with NCPA.

Fiscal Impact

The funds to complete the 2022 Major Parts Purchase in the amount of \$2,500,000.00 have been collected as part of the LEC Maintenance Reserve.

Environmental Analysis

These activities are categorically exempt under Class 1 and 2 from the provisions of the California Environmental Quality Act pursuant to Section 15301 (b) and 15302 (c) of the CEQA Guidelines. A Notice of Exemption was approved by the NCPA Commission on September 27, 2013 for this class of work and was filed in San Joaquin County.

Submitted by:

JOEL LEDESMA
Assistant General Manager
Generation Services



2022 LEC Major Outage Parts Purchase

Michael DeBortoli
March 3, 2020

2022 LEC Major Outage Parts

- All parts are being ordered thru Siemens as Siemens is the OEM for LEC turbines, alternate suppliers are not available for these units.

2022 LEC Major Outage Parts Costs Breakdown

NCPA has been collecting the funds under LEC Maint. Reserves for the purchase of parts needed for 2022 Major Overhaul.

Gas Turbine (Replacement Spares for new CT)	\$345,750.00
Gas Turbine Generator	\$62,100.00
Steam Turbine	\$1,767,195.67
Steam Turbine Generator	\$284,509.40
Major Parts Cost	\$2,459,555.07

Requesting Funds from LEC Maint. Reserves

\$2,500,000.00

Funding and Maintenance Reserve

Maintenance Reserve Balance (8/31)	\$3,890,944
Remaining FY21 Contributions	\$1,531,943
Spare Parts Purchase	(\$2,500,000)
Land Improvements	(\$300,000)
Other Planned work	(\$1,095,000)
End of FY21 Balance	\$1,527,887

5-Year Maintenance Reserve Projections

	FY21	FY22	FY23	FY24	FY25
Project Spending	\$3,895,000	\$2,845,000	\$1,765,000	\$1,785,000	\$1,660,000
Annual Contribution	\$1,838,332	\$1,875,102	\$1,912,754	\$1,951,310	\$1,998,142
End of FY Balance	\$1,527,887	\$557,988	\$705,743	\$872,053	\$1,210,194

Recommendation

- Staff recommends that Lodi Energy Center Project Participant Committee approve the LEC 2022 Major Outage Parts Purchase and delegate authority to the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the major outage in accordance with NCPA Purchasing Policies and Procedures without further approval by the Commission, for a total cost not to exceed \$2,500,000.



First Amendment to Second Amended and Restated Ground Lease with the City of Lodi

PPC Committee
October 12, 2020

Background

- The original Ground Lease was dated February 17, 1993 and effective January 1, 1993. An Amended and Restated Ground Lease was entered into on March 22, 2010. On April 29, 2013 the parties entered into a Second Amended and Restated Ground Lease.
- The Lodi Energy Center's planned major outage scheduled for 2022 requires many contingency parts, many of which will not be used and will need to be stored long term. Additional land is needed by NCPA for the parts storage and it is the desire of the parties to amend the Second Amended and Restated Ground Lease by adding additional land to the Leased Premises and to increase the annual rent to reflect the Agency's use of the Annex.
- It is recommended to place this item on consent calendar.

Lease Area



Rent

- Land Size is about same as CT2
- Rent is Same as CT2
- \$20,310 annual

Improvements

- Grade and level
- Fence
- Lighting
- Security
- \$300,000

Funding and Maintenance Reserve

Maintenance Reserve Balance (8/31)	\$3,890,944
Remaining FY21 Contributions	\$1,531,943
Spare Parts Purchase	(\$2,500,000)
Land Improvements	(\$300,000)
Other Planned work	(\$1,095,000)
End of FY21 Balance	\$1,527,887

5-Year Maintenance Reserve Projections

	FY21	FY22	FY23	FY24	FY25
Project Spending	\$3,895,000	\$2,845,000	\$1,765,000	\$1,785,000	\$1,660,000
Annual Contribution	\$1,838,332	\$1,875,102	\$1,912,754	\$1,951,310	\$1,998,142
End of FY Balance	\$1,527,887	\$557,988	\$705,743	\$872,053	\$1,210,194

Environmental Analysis

- The California Energy Commission (CEC) is the Lead Agency for CEQA review for LEC and related projects. The project was reviewed and approved by the CEC and the San Joaquin Council of Governments. Biological monitoring will be performed prior to and during land disturbance activities.

Proposal #1

- Delegate Authority to the General Manager or his designee to enter into a First Amendment to the Second Amended and Restated Ground Lease with the City of Lodi, with any non-substantial changes recommended and approved by the NCPA General Counsel, for the Annex land.

Proposal #2

- Delegate authority for the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA procurement policies and procedures, without further approval by the Commission, for the LEC Annex Land Improvement Project, for a total not to exceed project amount of \$300,000, including approval for this project to be funded from the LEC Maintenance Reserve.



Lodi Energy Center Project Participant Committee

Staff Report

AGENDA ITEM NO.: 19

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: First Amendment to Second Amended and Restated Ground Lease with the City of Lodi; Applicable to the following projects: Northern California Power Agency (NCPA) CT2 and LEC Facilities.

Proposal

Approve the General Manager or his designee to enter into a First Amendment to the Second Amended and Restated Ground Lease with the City of Lodi, with any non-substantial changes recommended and approved by the NCPA General Counsel, for the Annex land.

Background

The original Ground Lease was dated February 17, 1993 and effective January 1, 1993. An Amended and Restated Ground Lease was entered into on March 22, 2010. On April 29, 2013 the parties entered into a Second Amended and Restated Ground Lease.

LEC has been operating with a shared facilities warehouse between CT1, CT2 and LEC. Space has been tight for both parts storage and lay down space. As experienced during the LEC forced outage, when significant work is performed, there is not enough space onsite for laydown. Parts were stored outside the fence. In addition, LEC is preparing for the major on the steam turbine and generators, and in doing so, there will be a significant addition to the parts on hand. LEC has found that Sea Vans are effective and inexpensive for storage. In order to obtain extra space, NCPA negotiated with the City of Lodi to annex 2.3 acres of additional space and amend the existing lease agreement.

Selection Process

Not Applicable.

Fiscal Impact

CT2 Annual Rent	\$ 20,310.00
LEC Annual Rent	\$ 1,188,686.16
Annex Land Annual Rent (NEW)	\$ 20,310.00

The lease annex is expected to be utilized for only LEC. LEC FY21 budget for lease is \$1,194,809. The first year lease will be prorated from the start date, expected to be \$13,540. Total lease expenditures for the first year will be \$1,202,226.16. This is \$7,417.16 above the budgeted amount and can be absorbed in the existing budget.

Environmental Analysis

The California Energy Commission (CEC) is the Lead Agency for CEQA review for LEC and related projects. The project was reviewed and approved by the CEC and the San Joaquin Council of Governments. Biological monitoring will be performed prior to and during land disturbance activities.

Submitted by:

JOEL LEDESMA
Assistant General Manager
Generation Services

Attachments (2):

- Second Amended and Restated Ground Lease
- First Amendment to Second Amended and Restated Ground Lease

SECOND AMENDED AND RESTATED

GROUND LEASE

by and between

CITY OF LODI
(Landlord)

and

NORTHERN CALIFORNIA POWER AGENCY
(Tenant)

Dated April 29, 2013

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Exhibit A	Existing Recycled Water Facilities
Exhibit B	Lodi Treatment Plant Site
Exhibit C	Optioned Premises
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SECOND AMENDED AND RESTATED GROUND LEASE

THIS SECOND AMENDED AND RESTATED GROUND LEASE (this "**Lease**" or this "**Agreement**"), dated this 29th day of April, 2013, is entered into by and between the CITY OF LODI, a California municipality ("**Landlord**" or "**Lodi**"), and NORTHERN CALIFORNIA POWER AGENCY, a California joint powers agency ("**Tenant**"). Landlord and Tenant, and their successors and assigns, are singularly referred to as a "**Party**" and jointly referred to as the "**Parties**."

RECITALS

- A. WHEREAS, the Parties entered into that certain Ground Lease dated February 17, 1993 ("**Original Lease**"); entered that certain Amended and Restated Ground Lease dated March 22, 2010 ("**First Amended Lease**"); and entered into an Agreement to Supply Recycled Water dated March 22, 2010 ("**Recycled Water Agreement**") and
- B. WHEREAS, the Parties desire to amend and restate the First Amended Lease in its entirety as set forth below and rescind the Recycled Water Agreement effective January 1, 2013.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the First Amended Lease is amended and restated in its entirety and the Recycled Water Agreement is rescinded as follows:

1. Definitions

When used in this Agreement, the terms described below will have the meanings as set forth in this Section 1.

1.1 "**Base Rent**" is the rent for the CT2 site under the Lease and is defined further in Section 8.1.1.

1.2 "**Commencement Date**" means January 1, 1993, the date that the Original Lease commenced.

1.3 "**CT2 Project**" refers to the NCPA Combustion Turbine 2 Project, also known as the "STIG" plant, which is a LM5000 simple cycle electrical generating facility rated at a nominal generating capacity of 49.9 megawatts. The CT2 is located in Lodi, California on property near the City of Lodi White Slough Water Pollution Control Facility ("**WSWPCF**").

1.4 **"Easement Area"** refers to the easement on the east side of the Leased Premises for the construction and maintenance of a road and is more fully defined in Section 4.

1.5 **"Effective Date"** of this Second Amended and Restated Ground Lease is January 1, 2013.

1.6 **"Existing Recycled Water Facilities"** means those Lodi Recycled Water production and delivery facilities on the Lodi WSWPCF or within Lodi easements outside the WSWPCF site as of March 22, 2010, including without limitation, the filter plant, the filter plant pumps and appurtenances, conveyance facilities to and from the clearwell, the clearwell, the meter, the clearwell pumping station including effluent and backwash pumps, the 8-inch industrial Recycled Water pipeline from the clearwell to the terminating point at the CT2 Project, and those Lodi Recycled Water production, delivery and distribution facilities as of March 22, 2010 including, without limitation, recycled water storage tanks; generally shown on Exhibit A.

1.7 The **"Initial LEC Rent"** means the advanced annual rent to be paid for the portion of the Leased Premises to be used for the LEC and is more fully defined in Section 8.2.1.

1.8 **"Landlord"** refers to the City of Lodi, a California general law city.

1.9 **"Leased Premises"** or **"Premises"** refers to the real property in the City of Lodi that is the subject of this Lease, as more fully described in Section 3.

1.10 The **"Lodi Energy Center"** (**"LEC"**) is a natural gas-fired, combined-cycle electrical generating facility owned by NCPA and rated at a nominal generating capacity of 255 megawatts (MW). The LEC sits on a portion of the Leased Premises consisting of approximately 4.4 acres located adjacent to the Lodi WSWPCF to the east, treatment and holding ponds associated with the WSWPCF to the north, the existing STIG to the west, and the San Joaquin County Mosquito and Vector Control facility to the south.

1.11 The **"Lodi Treatment Plant Site"** means the area within the current WSWPCF treatment plant property boundaries as shown on Exhibit B.

1.12 The **"LEC Rent"** means the rent to be paid for the portion of the Leased Premises to be used for the LEC and is more fully defined in Section 8.2.1.

1.13 **"NPDES Permit"** means the National Pollution Discharge Elimination System permit issued by the Regional Water Quality Control Board-Central Valley Region ("RWQCB") to each Party respectively as the context requires.

1.14 The **"Original Lease"** refers to that certain Ground Lease dated February 17, 1993.

1.15 **"Offer"** refers to a bona fide offer from a third party to purchase all or a portion of the Leased Premises or the Optioned Premises.

1.16 **"Optioned Premises"** means the land near the Leased Premises more particularly described on the map and described in more detail in the legal description attached to the map in Exhibit C.

1.17 **"Party"** singularly refers to either the Landlord or the Tenant and "Parties" refers to the Landlord and Tenant collectively.

1.18 **"Project"** refers to the construction, operation and maintenance of power generation plants and incidental ancillary uses including without limitation, the transmission of energy.

1.19 **"Recycled Water" or "Reclaimed Water"** means the water that results from the treatment of wastewater, meets all applicable requirements established from time to time by pertinent federal and state agencies having jurisdiction and regulating the use of Recycled Water (including the RWQCB) and that is suitable for appropriate and approved non-potable uses, including without limitation the requirements of California Code of Regulations, Title 22, Division 4, Chapter 3 specifically for use in a cooling tower. For purposes of this Agreement, Recycled Water and Reclaimed Water are synonymous.

1.20 **"Recycled Water Facilities"** includes both Existing Recycled Water Facilities and facilities proposed to be constructed by Lodi or NCPA for the purpose of producing, delivering, storing and distributing Recycled Water.

1.21 **"Rental Obligations"** refers to the Landlord's obligations to provide access to the transmission lines, Recycled Water and allow interconnection with the natural gas pipeline.

1.22 **"Tenant"** refers to the Northern California Power Agency, a California joint powers agency.

1.23 **"Term"** refers to the term of the Lease as defined in Section 7.

1.24 **"Utilities"** refers to various utility lines, pipelines and a test well located on or below the Leased Premises.

1.25 **"WSWPCP"** refers to the White Slough Water Pollution Control Facility owned by Lodi and located in Lodi, California.

2. Recycled Water Agreement Rescinded.

The Parties agree, acknowledge and represent that NCPA is taking the Recycled Water from the WSWPCP as an accommodation to the City of Lodi and as a part of the consideration from NCPA to the City of Lodi. The Parties recognize that the primary value of the Premises is its unique location away from residential facilities, along a natural gas supply line, adjacent to a Recycled Water source and along a major transmission line. Accordingly, the Parties hereby rescind the Recycled Water Agreement effective January 1, 2013. The Recycled Water Agreement is replaced by the provisions of section 10 of this Agreement.

3. Premises.

Landlord leases to Tenant and Tenant leases from Landlord the real property in the City of Lodi, County of San Joaquin, California, described on the map in Exhibit D attached hereto and incorporated into this Agreement by reference (the **"Leased Premises"** or the **"Premises"**) for the term (described below) and upon the terms and conditions set forth in this Agreement.

4. Easements.

In addition to the Premises, Tenant employs additional land adjacent to the east side of the Leased Premises for a road to access the Premises. A map identifying the additional area (the **"Easement Area"**) is contained in Exhibit E attached to this Agreement and incorporated herein by this reference. Landlord likewise needs access to the Easement Area to maintain the adjacent berm. Tenant and Landlord entered into and recorded the Easement Agreement contained in Exhibit F attached to this Agreement and made a part hereof pursuant to which Tenant has been provided with an access and roadway easement across the Easement Area throughout the Term of this Lease as such may be extended. Tenant's rights to use the Easement Area are

exclusive aside from access rights reserved to Landlord as set forth in the Easement Agreement, which is affirmed hereby.

5. Use.

Tenant may use the Leased Premises for the Project and for any other lawful purpose.

6. Landlord's Retained Rights.

Landlord maintains various Utilities located on or below the Leased Premises. The Utilities are described more fully in Exhibit G attached hereto and incorporated herein by this reference. Landlord hereby retains the right to access the Leased Premises, upon seventy two (72) hours written notice to Tenant (except in the event of emergency), to repair, maintain or remove the Utilities. Landlord agrees not to interfere with Tenant's activities on the Premises and will expeditiously repair or replace any damage that Landlord causes on the Premises at Landlord's sole expense. With a minimum of seventy two (72) hours' notice to Landlord, Tenant, at its sole expense, may relocate any or all of Landlord's Utilities. The schedule for such relocation shall be at a time mutually agreed upon by the Parties. Tenant agrees to construct the facilities to standards reasonably acceptable to Landlord.

7. Term; Extension.

The Original Lease commenced on the Commencement Date. This Lease shall terminate (unless extended pursuant to this Section 7 or earlier terminated in accordance with the provisions of this Lease) on the Fiftieth (50th) anniversary of the Effective Date ("**Term**"). Under this Agreement and subject to Landlord's retained rights as described in Sections 4 and 6, Tenant's rights to exclusive possession of the Leased Premises shall commence on the Effective Date. Tenant shall have the right to extend the Term of this Lease on all the terms and conditions set forth herein for an additional period of fifty (50) years, to be exercised by written notice to Landlord during the last year of the initial Term of this Lease.

8. Rent.

8.1 Rent for CT2 Site.

8.1.1 Annual Rent.

On or before July 1 of each year during the Term of this Lease, Tenant agrees to pay to Landlord in advance annual rent ("**Base Rent**") in the amount of Twenty Thousand Three Hundred Ten Dollars (\$20,310) for the following Lease Year (i.e., each twelve (12) month period during the Term of this Lease, commencing on July 1 and ending on June 30).

8.2 Rent for LEC.

8.2.1 2012 Annual Rent.

As of the Effective Date of this Agreement, Tenant has already prepaid rent as required in the First Amended Lease in the amount of Forty Thousand Dollars (\$40,000) (the "**Initial LEC Rent**") for the period from July 1, 2012 through June 30, 2013; therefore, any prepaid rent for January 1, 2013 through June 30, 2013 shall be credited toward the rental payments called for in Section 8.2.2 of this Agreement.

8.2.2 Annual Rent 2013 and Forward.

Beginning on the Effective Date, the terms of this Section 8.2.2 shall determine annual rent. Tenant agrees to pay to Landlord annual rent in the amount of One Million Dollars (\$1,000,000.00) (the "**LEC Rent**"). Because the initial 2013 Lease Year for which LEC Rent is due and payable pursuant to this Section 8.2.2 will only contain six fiscal year months (based on a July 1 through June 30 fiscal year), rent shall be \$500,000 less the amount of prepaid rent under Section 8.2.1 above, if any. Commencing on the Effective Date, the LEC Rent will be paid on a monthly basis in twelve equal payments of Eighty Three Thousand, Three Hundred and Thirty Three Dollars (\$83,333.00) due and payable on or before the first of each month.

8.2.3 Annual Rental Adjustments.

For the first ten (10) years following the Effective Date, the LEC Rent will increase by two and one half percent (2.5%) annually starting in 2014. The rental increase will go into effect on July 1st of each year.

8.2.4 Rental Reduction During LEC Decommissioning.

It is anticipated that the LEC will be decommissioned at the end of its useful life. During the decommissioning period, when the LEC is no longer providing electricity in the commercial market, Tenant shall cease paying the full LEC Rent and for the decommissioning period. Instead, Tenant will pay annual rent based on the following calculation: The Initial LEC Rent multiplied by two and one half percent for up to ten years multiplied by the number of years the LEC has operated since July 1, 2014 ($\$40,000 \times 2.5\% \times (X-2014)$ = annual rent during LEC decommissioning). In no event will the rent calculated during decommissioning be greater than the rent under Section 8.2.3, above. Tenant will give Landlord one hundred and eighty days (180) notice of its intent to decommission the Project.

8.3 Rental Adjustments.

Other than as specified in this Section 8, there shall be no adjustment to the Base Rent or the LEC Rent payable pursuant to this Agreement.

8.3.1 Rent Offsets Permitted. LEC Rent shall be adjusted if Landlord cannot provide the real estate or related rights and services, including without limitation, Recycled Water in the amount of 4.38 acre feet per day ("**Rental Obligations**"), on a regular basis. In the event Landlord cannot provide its Rental Obligations, an offset may be made against the following month's rental payment based on the number of days that the Landlord could not meet its Rental Obligations under this Agreement for the LEC. Tenant may deduct Two Thousand Six Hundred and Eighty Eight Dollars and Seventeen Cents (\$2,688.17) per day multiplied by the rental adjustment of 2.5% per year as made under Section 8.2.3, that Landlord cannot meet the Rental Obligations. Such deduction will be taken off of the following month's LEC Rent.

8.3.2 On the ten (10) year anniversary of the Effective Date of this Agreement, and on every ten (10) year anniversary thereafter, either Tenant or Landlord may initiate a review of the then existing Base Rent and/or LEC Rent based on the market conditions at the time of the requested review. Such review must be conducted by a mutually acceptable neutral third party, who will be charged with reviewing all the Rental Obligations under this Agreement to arrive at a fair value for the Leased

Premises. The Parties will share equally in the cost of any mutually approved neutral third party's services. Any supported adjustment to the then existing Base Rent or LEC Rent may not vary by more than twenty-five percent (25%) up or down ($\pm 25\%$) from the then existing rent.

8.4 Payments.

All rent to be paid by Tenant to Landlord under this Agreement must be in lawful money of the United States of America and must be paid without deduction or offset-- unless otherwise permitted in this Lease, prior notice or demand, and at such place or places as may be designated from time to time by Landlord.

9. Utility Payments.

During the Term of this Lease, except for utility payments related to Landlord's Utilities, Tenant agrees to pay all charges and expenses in connection with utility services and to protect Landlord and the Leased Premises from all such charges and expenses.

10. Recycled Water.

10.1 Past Costs.

10.1.1 Lodi will not seek any compensation for its past costs associated with providing Recycled Water to the CT2 plant, or to other Existing Recycled Water Facilities constructed, or studies undertaken and completed, prior to the Effective Date of the Recycled Water Agreement.

10.1.2 Similarly, NCPA will not seek compensation from Lodi for the costs associated with the existing NCPA Recycled Water Facilities constructed, or studies undertaken and completed, prior to the Effective Date of the Recycled Water Agreement.

10.2 Development of Future Projects by Lodi.

Future Recycled Water projects may be developed by Lodi. However, Lodi's development of future projects may not affect NCPA's right to Recycled Water under this Agreement and may not diminish the quality, quantity, price, availability and delivery of Recycled Water. Lodi will inform NCPA of planning activities regarding

future Recycled Water projects. Joint planning efforts may be undertaken by the Parties through mutual agreement.

10.3 Agreement to use Recycled Water.

NCPA hereby agrees to use Recycled Water for the LEC and CT2 Projects. NCPA agrees to use the Recycled Water for the purposes of generating electricity. NCPA may also use its allocation to irrigate landscaping that is associated with its generating facilities. NCPA agrees to take the City's wastewater and consume the wastewater in the LEC or for irrigation purposes. However, NCPA does not guarantee wastewater consumption at any level because of various market and operational factors. Lodi will supply Recycled Water in the volume identified in this Section 10 and to the standards contained in California Code of Regulations, Title 22, for the specific use in power plants' cooling towers.

10.4 Responsibility at Delivery Point.

The delivery point of the Recycled Water will be the WSWPCF Clearwell Pumping Station. Lodi will be responsible for all facilities for the treatment, transportation, conveyance and storage of the Recycled Water up to the delivery point. NCPA will be responsible for the facilities for the treatment, transportation, storage, and use of Recycled Water from the point of delivery.

10.5 Quantity of Recycled Water for the LEC.

Lodi agrees to provide a minimum of 4.384 acre feet per day, totaling 1600 acre feet per year ("afy") of Recycled Water to the LEC in accordance with California Code of Regulations, Title 22, Division 4, Chapter 3. If requested and if available, Lodi will provide additional Recycled Water up to 2000 afy, meeting California Code of Regulations, Title 22, requirements.

10.6 Quantity of Recycled Water for the STIG.

Lodi agrees to provide a minimum of 1.687 acre feet per day of Recycled Water to the STIG in accordance with California Code of Regulations, Title 22, Division 4, Chapter 3.

10.7 Obligation to Supply Water.

Lodi will deliver Recycled Water twenty-four (24) hours per day. Lodi will supply the Recycled Water year round and will not ration Recycled Water to NCPA in the event of a drought. The amount of Recycled Water received by NCPA will be confirmed by monthly meter readings performed by NCPA. If Lodi fails to supply the minimum amount in a calendar year then NCPA may take reasonable steps to procure water from other vendors or suppliers without affecting its rights under this Agreement.

10.8 Interruption of Delivery.

10.8.1 The Parties acknowledge that it is impossible to anticipate all the events that may occur which would prevent Lodi from delivering Recycled Water to NCPA pursuant to the Agreement. In the event Lodi cannot provide a minimum 4.384 acre feet of the Recycled Water per day for the LEC, in addition to any other rights and remedies Tenant may have under this Agreement, Tenant may also offset Rent on a daily basis as provided in Section 8.3, above.

10.8.2 It is the intention of the Parties that Lodi may be relieved of the responsibility for providing Recycled Water when it is not reasonably within its means to do so, despite its best efforts to do so. In such case, the rental offset provisions in Section 8.3, above, will apply. Such events that may relieve Lodi of providing Recycled Water shall include but are not limited to:

10.8.2.1 A Force Majeure pursuant to Section 25.14,

10.8.2.2 Orders by regulatory bodies or a court of competent jurisdiction (changes in water use requirements), or

10.8.2.3 Equipment failure and unanticipated treatment upsets, notwithstanding Lodi's best efforts to maintain the equipment including, without limitation, the WSWPCP.

10.9 Water Quality Representation.

Notwithstanding the prior statements above regarding water quality, this Agreement does not guarantee water quality at any given time. A violation of Lodi's NPDES permit that affects its ability to deliver Title 22 water quality for use at the NCPA Power Plants is not to be construed as a breach of this Agreement. Lodi shall notify the on duty NCPA operator as soon as practical after it experiences such an occurrence.

10.10 Responsibility for Compliance with Law.

Lodi represents and warrants that it has complied with all laws related to its ability to provide Recycled Water and has enacted any and all appropriate resolutions or ordinances required to provide Recycled Water to NCPA. Each Party will be responsible for its own acts and omissions and for compliance with all applicable laws with respect to its respective undertakings under this Agreement, including without limitation all waste discharge requirements and warnings required by the RWQCB or otherwise in connections with Recycled Water. Should one Party learn or have reason to believe that a violation of such laws, statutes, ordinances, orders and/or regulations by itself or the other Party has occurred or is threatened, that Party must promptly so inform the other Party.

11. Repairs and Maintenance.

11.1 At all times during the term of this Lease, Tenant shall, at its cost and expense, maintain the Leased Premises and all improvements thereon in good order and repair and safe condition, including but not limited to, fences and roadways predominantly used by Tenant. Landlord must maintain the roadway easement up to the Leased Premises. Tenant will keep Landlord apprised of the volume and nature of truck traffic upon the Leased Premises.

11.2 Except as provided in this Agreement, Landlord shall not be obligated to make any changes, alterations, additions or repairs in, on or about the Leased Premises or any part hereof or any improvements installed thereon. Tenant waives all provisions of law that may impose a duty of repair on Landlord.

11.3 Tenant shall indemnify and save harmless Landlord against all actions, claims and damages by reason of (1) Tenant's failure to perform Tenant's obligations set forth in this Section 11, or (2) Tenant's nonobservance or nonperformance of any law, ordinance or regulation applicable to the Leased Premises, and any liability or duty to repair imposed by the laws of the State of California.

11.4 Tenant agrees to construct a perimeter fence around the Leased Premises.

11.5 Notwithstanding Tenant's obligations to maintain and repair the Property in this Section 11, Tenant will have no obligation to maintain or repair any of Landlord's Utilities identified in Exhibit G.

12. Mechanic's Liens.

12.1 Covenant Against Liens and Claims.

Tenant shall not allow or permit to be enforced against the Leased Premises or any part thereof, any mechanic's, material men's, contractor's or subcontractor's liens arising from any claim growing out of work of any construction, repair, restoration, operation, replacement or improvement, or any other claim or demand no matter how the same may arise. Tenant shall pay or cause to be paid all of said liens, claims or demands, arising as a result of Tenant's activities before any lawsuit is brought to enforce them against the Leased Premises. Tenant agrees to indemnify and hold the Landlord and the Leased Premises free and harmless from all liability for any and all such liens, claims and demands arising as a result of Tenant's activities, together with reasonable attorneys' fees and all costs and expenses incurred by Landlord in connection therewith except to the extent any such liens, claims, demands, fees, costs and expenses arise as a result of Landlord's actions or failure to act.

12.2 Tenant's Right to Contest Liens.

Notwithstanding anything to the contrary set forth above, if Tenant shall in good faith contest the validity of any such lien, claim or demand, then Tenant shall, at its expense, defend itself and Landlord against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Leased Premises.

12.3 Landlord Paying Claims.

In the event Tenant fails to pay and discharge or cause to be paid and discharged, when due and payable, any tax, assessment or other charge upon or in connection with the Leased Premises that is the responsibility of Tenant pursuant to this Lease, or any lien or claim for labor or material employed or used or any claim for damages arising out of Tenant's construction, repair, restoration, replacement,

maintenance and use of the Leased Premises and any improvements thereon, or any judgment on any contested lien or claim that results from Tenant's activities on the Leased Premises, or any insurance premium or expense in connection with the Leased Premises and improvements that Tenant is obligated to provide pursuant to this Lease, or any other claim, charge or demand which Tenant has agreed to pay or cause to be paid under the Terms of this Lease, and if Tenant, after ten (10) business days' written notice from Landlord to do so fails to pay and discharge the same, or in the event Tenant contests such tax, assessment, claim or charge then Landlord may, at its option, pay any such tax, assessment, insurance expense, lien, claim, charge or demand, or settle or discharge any action therefore, or judgment thereon, and all costs, expenses and other sums incurred or paid by Landlord in connection with any of the foregoing shall be paid by Tenant to Landlord upon demand, together with interest thereon at Bank of America's prime rate from the date incurred or paid. Any default in such repayment by Tenant will constitute a breach of the covenants and conditions of this Lease.

13. Insurance and Indemnity.

13.1 Landlord's Nonliability.

Except for (a) Landlord's Utilities; (b) Landlord's activities to maintain, install, remove or access its Utilities; or (c) any other negligent or willful act or omission by Landlord, its employees, agents, invitees or volunteers that results in injury or damage to persons or property, Landlord will not be liable for any loss, damage or injury of any kind to any person or property arising from Tenant's use of the Leased Premises, or any part thereof, or caused by any defect in any building, structure or other improvements thereon or in any equipment or other facility therein installed by Tenant, or caused by or arising from any act or omission of Tenant or any of its agents, employees, licensees or invitees, or by or from any accident on the Leased Premises or any fire or other casualty thereon, or occasioned by the failure of Tenant to maintain the Leased Premises and all improvements thereto in a safe condition, or arising from any other cause.

13.2 Indemnification of Landlord.

Notwithstanding anything to the contrary contained in this Lease, and irrespective of any insurance carried by Tenant for the benefit of Landlord under the terms of this Lease, Tenant agrees to protect, indemnify and hold the Landlord and the Leased Premises harmless from any and all damages and liabilities at any time occasioned by or arising out of (1) any act, activity or omission of Tenant, or of anyone holding under Tenant, or (2) the occupancy or use of the Leased Premises or any part thereof, by or under Tenant, or (3) any state or condition of the Leased Premises or any part thereof arising after the Commencement Date of the Original Lease and caused by Tenant.

13.3 Indemnification of Tenant.

Landlord agrees to indemnify, protect, hold harmless and defend Tenant, with counsel reasonably approved by Tenant, from and against any and all claims, causes of action, liabilities, damages and expenses arising out of or in any way related to actions by Landlord in entering into this Agreement, performing its obligations or assuming the benefits of this Agreement including without limitation, challenges to the validity of this Agreement. Tenant agrees to give Landlord timely notification of any claims or notices that would trigger the indemnification in this Section 13.3. Likewise, Landlord agrees to give Tenant timely notification of any claims or notices respecting this Agreement.

13.4 Liability Insurance.

Tenant must procure and maintain at all times during the Term of this Lease, at its sole cost and expense, a policy or policies of commercial general liability insurance by the terms of which NCPA is a named insured and the City of Lodi is an additional insured and are indemnified against liability for damage or injury to property or person, including death, of any person entering upon or using the Leased Premises or any improvements thereon or any part thereof, with a combined single limit for bodily injury and property damage in an amount of not less than Five Million Dollars (\$5,000,000). Such liability insurance policy or policies shall be stated to be primary and noncontributing with any insurance or self-insurance which may be carried by Landlord and shall contain a provision (provided such provisions are available without

increased premium) that the Landlord, although named as an additional insured shall nevertheless be entitled to recover under that policy for any loss, injury or damage to the Landlord, its agents and employees or the property of such persons by reason of the negligence of Tenant. Tenant may at its option self-insure upon the foregoing terms.

13.5 Certificate of Insurance.

All policies of insurance procured and maintained by Tenant hereunder shall be issued by companies having not less than Best's A: Class X rating and shall be issued in the name of the Landlord and Tenant for the mutual and joint benefit and protection of the Parties. Executed copies of all insurance policies or a certificate thereof shall contain a provision that not less than thirty (30) days' written notice shall be given to Landlord prior to the cancellation, reduction of coverage, expiration or any material change in any such policy.

13.6 Failure to Provide Insurance.

If Tenant fails or refuses to procure or to maintain insurance as required by this Lease or fails or refuses to furnish Landlord with required proof that the insurance has been procured and is in force and paid for, Landlord shall have the right at Landlord's election, upon ten (10) days' advance written notice, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as added rent due from Tenant with interest at the Bank of America prime rate, to be paid within thirty (30) days of demand. Landlord shall give prompt notice of the payments of such premiums, stating the amounts paid and the names of the insurer or insurers; and Landlord shall provide copies of insurance policies to Tenant.

13.7 Waiver of Subrogation.

Each Party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either Party in connection with any damage covered by any policy, provided obtaining such a waiver in each such policy is then available at a reasonable charge. This provision is intended to restrict each Party (as permitted by law) to recovery against insurance carriers to the extent of such coverage, and waive fully, for the benefit of each Party,

any rights or claims that might give rise to a right of subrogation by any insurance carrier.

14. Landlord's Covenants.

14.1 Water Supply to CT2 Project.

Landlord shall make available to Tenant Reclaimed Water for the CT2 project upon the terms and conditions contained in Section 10 of this Agreement.

14.2 Water Supply to the LEC Project.

Landlord agrees to make available to Tenant Reclaimed Water for the LEC project upon the terms and conditions contained in Section 10 of this Agreement.

14.3 Discharge of Water.

Landlord shall upon payment by Tenant of applicable connection fees, accept Tenant's domestic wastewater from the Project into the White Slough Water Pollution Control Facility or other suitable treatment plant at no cost to Tenant.

14.4 Stormwater.

Subject to the terms of Lodi's NPDES permit or other applicable stormwater discharge permit, Lodi agrees to accept storm water runoff from the Leased Premises under the "Will Serve Letter" dated October 17, 2008, attached hereto as Exhibit H.

15. Repair and Restoration.

If during the term of this Lease any building or improvement on the Leased Premises or any part thereof is damaged or destroyed by fire or other casualty, Tenant may, at its sole cost and expense, repair or restore the same or may elect not to repair or restore. If Tenant elects not to repair or restore, Tenant may in its sole discretion choose to terminate this Lease, in whole or in part, effective as of the date of such damage or destruction. Any monies received by Landlord as compensation for damage or loss to improvements installed by Tenant on the Premises shall be paid to Tenant and are hereby assigned to Tenant.

16. Assignment and Subletting.

Tenant may not encumber, assign, sublease or otherwise transfer this Lease, or any right or interest hereunder, or in or to any of the improvements constructed or installed on the Leased Premises, in whole or in part, without the prior written consent of Landlord which consent will not be unreasonably withheld, conditioned or delayed.

17. Default.

The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

17.1 Failure to pay an installment of rent or other sum;

17.2 Failure to pay any insurance premium, lien, claim, demand, judgment or other charge provided for in this Lease to be paid or caused to be paid by Tenant at the time and in the manner as provided in this Lease;

17.3 Failure to maintain the Leased Premises or cause the same to be maintained as provided for in this Lease;

17.4 Abandonment of the Leased Premises after completion of construction for a continuous period of one hundred twenty (120) days; or

17.5 Failure to perform or breach of any other covenant, condition or restriction provided for in this Lease.

18. Remedies in Event of Default.

Upon any default of Tenant, and in the event the default is due to the failure of Tenant to make the payment of any installment of rent or other sum when due, and in the event Tenant fails to remedy such default within ten (10) business days after written notice to do so, or upon any other default by Tenant, and in the event that Tenant fails to remedy such other default within thirty (30) days after written notice from Landlord so to do specifying the nature of such default, or if such default cannot be cured within thirty (30) days and Tenant has not commenced corrective action and prosecuted the same to completion with due diligence, or in the event that the default is of such a nature that it cannot be cured by any action of Tenant, then and in any of these events, in addition to any other remedy Landlord may have by operation of law, Landlord shall have the right but not the obligation without any further demand or notice, to reenter the

Leased Premises and eject all persons from the Leased Premises, using due process of law, and immediately terminate Tenant's right to possession of the Premises, and repossess the same by summary proceedings or other appropriate action, and Landlord will thereupon be entitled to receive from Tenant all damages allowed by law.

19. Estoppel Certificates.

Landlord and Tenant shall, respectively, at any time and from time to time upon not less than ten (10) business days prior written request by the other, deliver to the requesting Party an executed and acknowledged statement in writing certifying:

19.1 That this Lease is unmodified and in full force and effect or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications;

19.2 That to its knowledge the requesting Party is not in default under this Lease or if any such default exists, the specific nature and extent thereof;

19.3 The date to which rent and other charges have been paid in advance, if any; and

19.4 Such other information pertaining to this Lease as may reasonably be requested.

Each certificate delivered pursuant to Section 19 may be relied on by any prospective purchaser or transferee of the Leased Premises or of Landlord's or Tenant's interest hereunder or by any fee mortgagee of the Leased Premises or of Landlord's or Tenant's interest hereunder or by any assignee of any such mortgagee.

20. Ownership of Improvements.

Title to any buildings, improvements or fixtures which may be placed on the Premises by Tenant shall remain in Tenant. Landlord agrees to subordinate all rights, if any, which Landlord may have in any of such improvements to the rights of Tenant. Tenant may remove the improvements at any time during the term of this Lease. Any improvements remaining on the Premises after expiration or sooner termination of the Lease shall become the property of Landlord.

21. Payments and Notices.

Any notice to be given or other document to be delivered by either Party to the other Party may be given by personal delivery or may be deposited in the United States mail in the State of California, duly registered or certified, with postage prepaid, and addressed to the Party for whom it is intended as follows, or it may be sent via facsimile with a hard copy deposited in the United States mail addressed to the Party to whom it is intended with sufficient postage pre-paid and will be duly given upon receipt of successful transmission to the following facsimile numbers:

To Landlord: City of Lodi
 Attn: City Manager
 221 West Pine Street
 Lodi, CA 95240
 Facsimile: 209-333-6807

To Tenant: Northern California Power Agency
 Attn: Assistant General Manager
 Generation Services
 651 Commerce Drive
 Roseville, CA 95678
 Facsimile: 916-783-7693

Either Party may from time to time by written notice to the other Party designate a different address which shall be substituted for the one specified above. If any notice or other document is sent by registered or certified mail, as provided above, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof.

22. Right of First Refusal.

22.1 Right of First Refusal to Purchase Leased Premises.

Landlord shall not at any time during the Term of this Lease, as such may be extended, sell or convey or agree to sell or convey all or any portion of the Leased Premises without first having complied with the requirements of this Section 22. If Landlord desires to sell or convey all or any portion or portions of the Leased Premises, Landlord must obtain from a third party a bona fide arms' length offer (the "Offer") and Landlord must submit a written copy of the Offer to Tenant and must give Tenant forty-five (45) days within which to elect to meet the Offer. If Tenant elects to meet the Offer,

Tenant will give Landlord written notice thereof and closing must be held within forty-five (45) days thereafter, whereupon Landlord will convey to Tenant all or any portion of the Leased Premises which are the subject of the Offer. At closing, Landlord shall deliver to Tenant a grant deed, sufficient to convey to Tenant fee simple title to the subject portion of the Leased Premises free and clear of all liens, restrictions and encumbrances.

Landlord shall pay all transfer taxes in connection with such conveyance attributable solely to the land and not to the Improvements. Landlord and Tenant recognize the benefit to Landlord of Tenant's willingness to take the Recycled Water and the benefit to Tenant of locating the STIG and the LEC in an industrial area adjacent to transmission lines, a Recycled Water source and a natural gas pipeline for interconnection purposes. In the event that Tenant exercises its option under this Section 22, Lodi agrees to continue to provide Recycled Water in the quantity provided in this Agreement and Tenant agrees to compensate Landlord for its costs to provide the water. In the event, Landlord and Tenant cannot mutually agree on compensation for Lodi's costs to provide the water, then the Parties agree to a valuation by a mutually acceptable objective third party. This right of first refusal shall continue as to any and all portions of the Leased Premises throughout the Term of this Lease as such may be extended. In the event Tenant elects not to meet any Offer, Landlord may thereafter sell the portion or portions of the Leased Premises which are the subject of the Offer and subject to the terms of this Lease provided Landlord sells the Leased Premises only to the party who made the Offer and only strictly in accordance with the terms thereof and subject to Landlord's continued obligation to provide Recycled Water as required by this Agreement. To prevent Landlord from defeating the rights of Tenant hereunder, Landlord agrees that Landlord will at no time accept an offer to purchase all or any portion of the Leased Premises together with any other property of Landlord in contravention of Tenant's right to purchase the Leased Premises or to use of the Recycled Water.

22.2 Right of First Refusal to Lease Additional Land with Rental Obligations

At any time during the Term of this Lease, Landlord shall not rent, lease, or convey all or a portion of the Optioned Premises, without first having complied with this Section 22.2. If Landlord desires to rent, lease, sell or convey the Optioned

Premises, Landlord must obtain from a third party a bona fide arms' length offer ("Bona Fide Offer") after which Landlord must submit a copy of the Bona Fide Offer in writing to Tenant and must give Tenant forty-five (45) days within which to elect to meet the Bona Fide Offer. If Tenant elects to meet the Bona Fide Offer, Tenant will give Landlord written notice thereof and may lease the Optioned Premises under the same terms and conditions contained in the Bona Fide Offer. In the event that Tenant chooses not to exercise its rights under this Section 22.2, Landlord agrees that Tenant, as the Tenant with prior rights shall have the priority to all Rental Obligations including, without limitation, Recycled Water. Further, in the event Tenant elects not to meet any Bona Fide Offer, Landlord may thereafter rent, sell or convey the portion or portions of the Optioned Premises which are the subject of the Bona Fide Offer only to the party who made the Bona Fide Offer and only strictly in accordance with the terms thereof. This right of First Refusal will continue as to any and all portions of the Optioned Premises throughout the term of this Lease as such may be extended to prevent Landlord from defeating the rights of Tenant in this Section 22.2. Landlord agrees that Landlord will at no time accept an offer to rent, lease or purchase all or any portion of the Optioned Premises together with any other property of Landlord in contravention of Tenant's right to lease, rent or purchase the Optioned Premises. Notwithstanding Landlord's rights to solicit a Bona Fide Offer from third parties, Landlord agrees that it will not entertain an offer to rent, lease or purchase the Optioned Premises for use as an electric power generating facility prior to 2018. In the event Tenant does not exercise its Right of First Refusal under this Section 22.2 and the rental terms of the Bona Fide Offer are more favorable than the rental terms and conditions in this Agreement, Landlord agrees to modify the terms of this Agreement to match those in the Bona Fide Offer.

22.3 Right to Lease Additional Land with Rental Obligations.

Notwithstanding the Right of First Refusal in Section 22.2, above, and even without a Bona Fide Offer from a third party, Landlord grants to Tenant an option to lease additional land with all Rental Obligations, including without limitation, necessary access and utility easements and sufficient Recycled Water so that Tenant may construct accessory power related structures or a new power plant on all or any portion of the Optioned Premises. If the Parties cannot agree to a mutually acceptable

annual rent, then the Parties Agree to hire a mutually acceptable neutral third party who will value the land and the Rental Obligations and set a base rent for the Optioned Premises. The Parties agree to negotiate in good faith a ground lease agreement for the Optioned Premises with a term of no less than fifty (50) years. The term of the option in this Section 22.3 may be coterminous with the Term of this Lease as such may be extended.

23. Abandonment of Wells.

23.1 Abandonment and Closure of Injection Wells.

Upon termination of this Lease, Tenant, at its sole expense, will abandon and close any and all injection wells utilized on the Premises by Tenant. Such abandonment shall be done in compliance with all applicable state and federal laws and regulations and under the direction of the California Department of Oil and Gas.

23.2 Abandonment Of Southeast Corner Test Well. The Landlord at its sole expense will abandon and close the test well located in the southeast corner of the Premises and will abandon the well in a timeframe mutually agreed to by the Parties. Such abandonment shall be done in compliance with all applicable local, state and federal laws and regulations.

24. Dispute resolution.

24.1 Mediation.

The Parties agree to first submit any dispute arising out of or in connection with this Lease to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In such event, neither Party may proceed with arbitration until the completion of mediation, the mediation being an express condition precedent to further remedies. The Parties may, however, agree in writing to proceed directly to arbitration. Each Party will pay an equal share of the costs of retaining the professional mediator but will bear its own costs, including, but not limited to its own attorneys' fees associated with participating in any mediation.

24.2 Binding arbitration.

Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 24.1 above, either Party may give written

notice to the other Party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 24.2. The Party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the Parties shall select a single, mutually agreeable arbitrator. If the Parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("**JAMS**"), if such entity is then in existence, appoint an arbitrator in accordance with then current procedures. The arbitrator must be a retired judge of the Superior Court of California or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the San Joaquin Superior Court will appoint an arbitrator in accordance with its then current procedures.

24.2.1 The rules and procedures for arbitration shall be as follows:

24.2.2 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than one hundred and eighty (180) days after the date upon which the demand for arbitration is filed.

24.2.3 The arbitration proceedings must be conducted in San Joaquin County, California, at a time and location as agreed to in writing by the Parties, or in absence of an agreement, as designated by the arbitrator.

24.2.4 Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration. The California Evidence Code will generally guide the arbitrator in making such decisions.

24.2.5 The arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the Parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the arbitrator must follow and otherwise employ the standards for issuing such relief as defined by California law; provided,

however, that the arbitrator will have no authority or jurisdiction to enter an award, order, or decision for consequential, special, exemplary or punitive damages. The arbitrator may also grant such ancillary relief as is necessary to make effective the award, order, or decision, including the issuance of declaratory relief, compelling specific performance, or any other relief or action permitted by California law.

24.2.6 The provisions of CCP section 1283.05 are incorporated into this Agreement to arbitrate. Both Parties may conduct discovery (except issuance of interrogatories) as if the matter were pending before a Superior Court of the State of California and the arbitrator will have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either Party will have the right to demand in writing that the other Party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at the hearing. The responding Party's list(s) must be served personally or by registered or certified mail on the requesting Party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

24.2.7 Each Party may be represented by counsel.

24.2.8 No later than sixty (60) days following closing of the arbitration hearing, the arbitrator will make an award, order, or decision and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award, order, or decision. The arbitrator may include in his or her award, order, or decision pre-award interest and post-award interest at the legal rate where authorized by law. The Party against whom the award, order, or decision is made or remedy or relief ordered will have thirty (30) days after receipt of the award, order, or decision to commence and thereafter diligently pursue to completion any action or proceeding in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision. If the award, order, or decision is mailed, it will be deemed to be received within five (5) days after deposit in the mail.

24.2.9 If no such action or proceeding is timely commenced, the award, order, or decision will thereupon immediately become final. The Party against whom the award, order, or decision is made or remedy or relief ordered shall within

thirty (30) days after the award, order, or decision becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award, order, or decision. The Party in whose favor the award, order, or decision is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of San Joaquin a Judgment upon the award, order, or decision rendered by the arbitrator, which may thereafter be entered in the records of said court.

24.2.10 If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision, the Parties will have the right to seek vacation or modification of any portion of the award, order, or decision according to the grounds provided by California law at the time for the vacation or modification of an award, order, or decision in a non-judicial arbitration. The findings of fact of the arbitrator will be binding on all Parties and shall not be subject to further review except as allowed by the appeal provisions of this Section 24.2.10.

24.2.11 The arbitrator will be paid a per diem or hourly charge as established at the time of appointment. Each Party will bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the arbitrator's compensation, will be shared equally.

24.2.12 This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Lease, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

24.2.13 Unless otherwise provided in this Lease or otherwise agreed in writing, the Parties must continue to perform their respective obligations under this Lease during the pendency of arbitration proceedings.

24.2.14 Except as modified or stated to the contrary in this Section 24, the rules and procedures of the arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

25. Miscellaneous.

25.1 Attorneys' Fees.

Except as otherwise provided in Section 24 respecting attorneys' fees in mediation and arbitration, in the event any action is brought by Landlord or Tenant against the other to enforce or for the breach of any of the terms, covenants or conditions contained in this Lease, the prevailing Party shall be entitled to recover reasonable attorneys' fees to be fixed by the Court, together with costs of suit therein incurred.

25.2 Waiver.

No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of either Party to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default under this Lease.

25.3 Holding Over.

If Tenant holds over the Leased Premises after the expiration of the term hereof with the consent of Landlord, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations in this Lease, and Tenant hereby agrees to pay to Landlord the same monthly Rent as provided in this Lease; provided, however; that nothing herein contained may be construed to give Tenant any rights to so hold over and to continue in possession of the Leased Premises after the expiration of the term hereof.

25.4 Surrender at End of Term.

Upon the end of the Term of this Lease, as provided herein, or any extension thereof, or sooner termination of this Lease, Tenant shall surrender to Landlord all the Leased Premises, together with all improvements as hereinabove provided, and all fixtures. Upon surrender of the Premises, Tenant shall, if directed by the Landlord, remove at its own expense any and all equipment remaining thereon.

25.5 Lease Binding Upon Successors and Assigns.

Subject to the limitations on assignment and subleasing, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and inure to the benefit of not only Landlord and Tenant, but each of their successors and assigns. Whenever in this Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the successors and assigns of the Parties as if in every case expressed.

25.6 Inspection.

Landlord reserves the right for Landlord and Landlord's agents and representatives to enter upon the Leased Premises at any reasonable time with seventy-two (72) hours' advance written notice for the purpose of attending to Landlord's interest hereunder and to inspect the Leased Premises.

25.7 Relationship of Parties.

The parties acknowledge that Landlord is a member of the Tenant joint powers authority, and that as a member, it is a participant in both the CT2 and LEC Projects. Notwithstanding the foregoing, the relationship of the Parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that merely as a result of this Lease, Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venture with Tenant in the conduct of Tenant's business or otherwise, except as provided by the Phase 3 CT2 agreement or the LEC Power Sales and Project Management and Operations agreements or any similar agreement.

25.8 Time of the Essence.

Time is expressly declared to be of the essence of this Lease.

25.9 Memorandum of Lease.

This Agreement will not be recorded, but the Parties agree to execute and deliver an Amended and Restated Memorandum of this Lease in recordable form, which Memorandum shall be recorded in the office of the Recorder in San Joaquin County, California and which will supersede the memorandum of lease previously recorded with reference to the Original Lease.

25.10 Quitclaim.

At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord within five (5) days after written demand from Landlord to Tenant any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

25.11 Number and Gender.

Whenever the singular number is used in this Lease and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders, and the word "person" includes corporation, firm, entity or association. If there is more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several.

25.12 Headings and Titles.

The marginal headings or titles to the paragraphs of this Lease are not a part of this Lease and have no effect upon the construction or interpretation of any part of this Lease.

25.13 Entire Agreement.

This Lease and the Exhibits hereto contain the entire agreement of the Parties hereto with respect to the matters covered hereunder, and no previous written or oral agreements, statements or promises made by any Party to this Agreement respecting the lease of the Premises that are not contained in this Lease will be binding or valid.

25.14 Force Majeure.

Except as to the payment of rent, neither of the Parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the control of the Parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performances of this Lease.

25.15 Disclaimer of Representation.

Except as otherwise specifically provided in this Lease, Landlord has made no representations or warranties to the Tenant concerning the Leased Premises, the present use thereof or the suitability for Tenant's intended use of the property. The foregoing disclaimer includes, without limitation, topography, climate, air, water, water rights, utilities, present and future zoning, soil, subsoil, drainage, access to public roads, proposed routes of roads, or extension thereof, or effect of any state or federal environmental protection laws or regulations. Tenant represents and warrants to Landlord that Tenant and its representatives have made or will make their own independent inspection and investigation of the Leased Premises and Tenant, in entering into this Lease, is relying solely on such inspection and investigation. No patent or latent physical condition of Leased Premises, whether or not known or discovered, will affect the rights of either Party hereto. Any agreement, warranties or representations relating to this Lease and not expressly contained in this Agreement shall in no way bind either Tenant or Landlord. Landlord and Tenant waive any right or rescission and all claims for damages by reason of any statement, representations, warranty, promise and agreement, if any, not contained in this Lease.

25.16 Quiet Enjoyment.

This Lease is subject and junior only to all existing easements, covenants, conditions and restrictions and other matters and encumbrances of record as of the date of this Lease or that are a part of this Lease. As long as Tenant is not in default of any provision of this Lease, Tenant shall have quiet enjoyment of the premises.

25.17 Termination.

Tenant may terminate this Lease at any time upon six (6) months advance notice.

25.18 Severability.

In the event any portion of this Agreement is held invalid or unenforceable for any reason, the Parties agree that the rental of the STIG and LEC shall revert to and be governed by the First Amended Lease and the Recycled Water Agreement.

25.19 Counterparts.

This Lease may be executed in counterparts each of which is deemed an original, and all such counterparts constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated Ground Lease as of the date first set forth above.

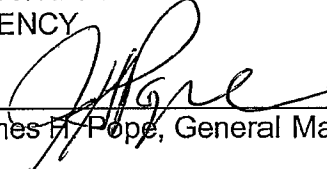
LANDLORD:

CITY OF LODI, a municipal corporation

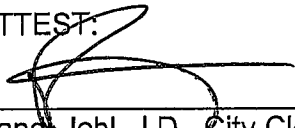

Konradt Bartlam, City Manager

TENANT:

NORTHERN CALIFORNIA POWER
AGENCY


James H. Pope, General Manager


ATTEST:


Randi Johl, J.D., City Clerk

ATTEST:


Denise Dow, Assistant Secretary

APPROVED AS TO FORM:


D. Stephen Schwabauer
City Attorney

APPROVED AS TO FORM:


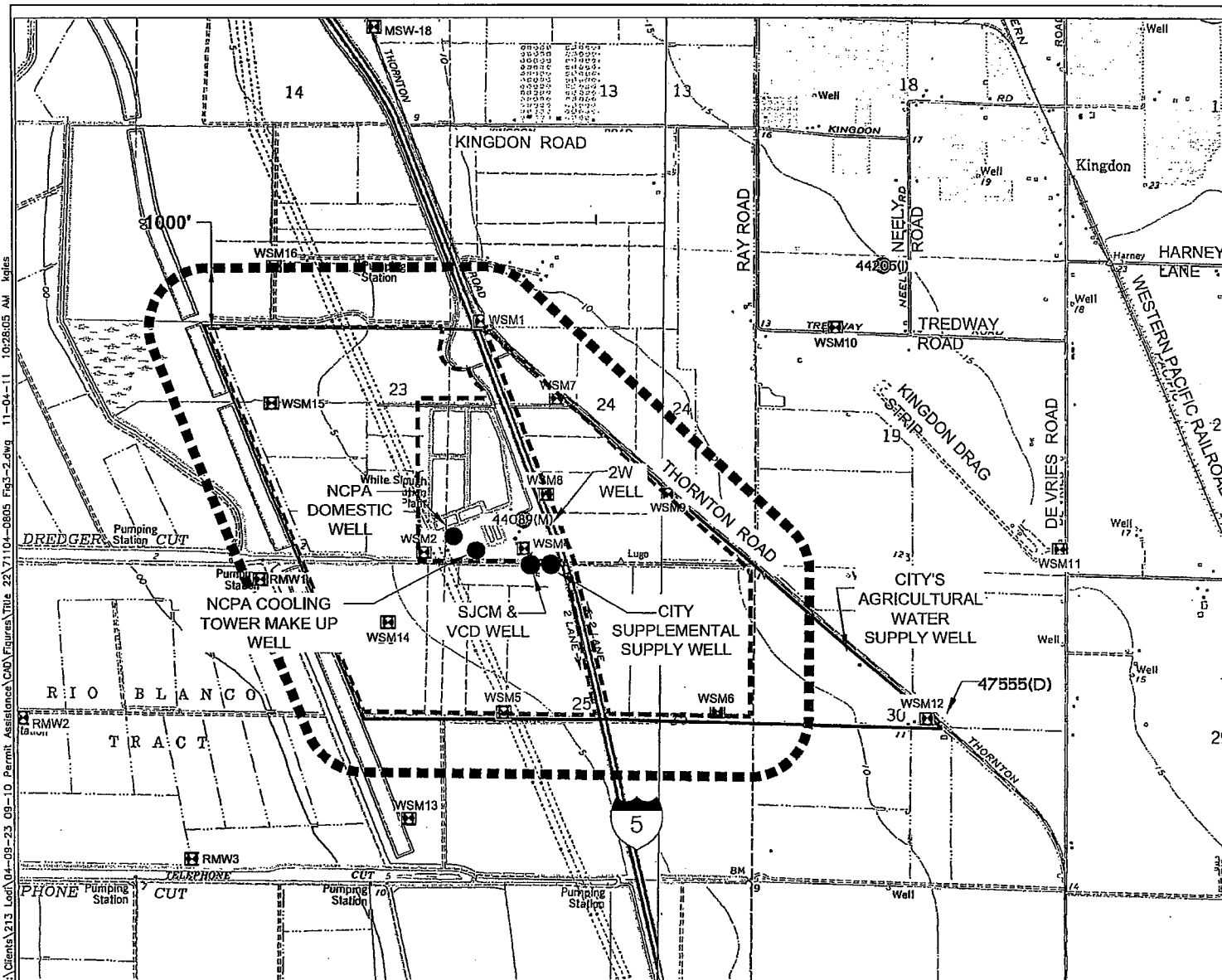
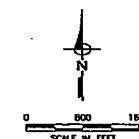

Michael F. Dean, General Counsel

Figure 3-2
City of Lodi
White Slough WPCF
Title 22 Engineering Report
WATER WELL LOCATIONS

- LEGEND**
- 0316(200) WELL WITH HYDROGRAPH FROM DWR WATER DATA LIBRARY
 - 47555(D) WELL WITH DWR DRILLER'S REPORT
 - EXISTING CITY-OWNED LA
 - WSM12 EXISTING MONITORING WELL
 - OTHER WATER WELLS IDENTIFIED NEAR USE AREA
 - REUSE AND BIOSOLIDS APPLICATION AREA
 - 1000' FT BOUNDARY

- NOTES**
- WELL IDENTIFICATION**
- (I) Irrigation
 - (D) Domestic
 - (M) Municipal or Industrial



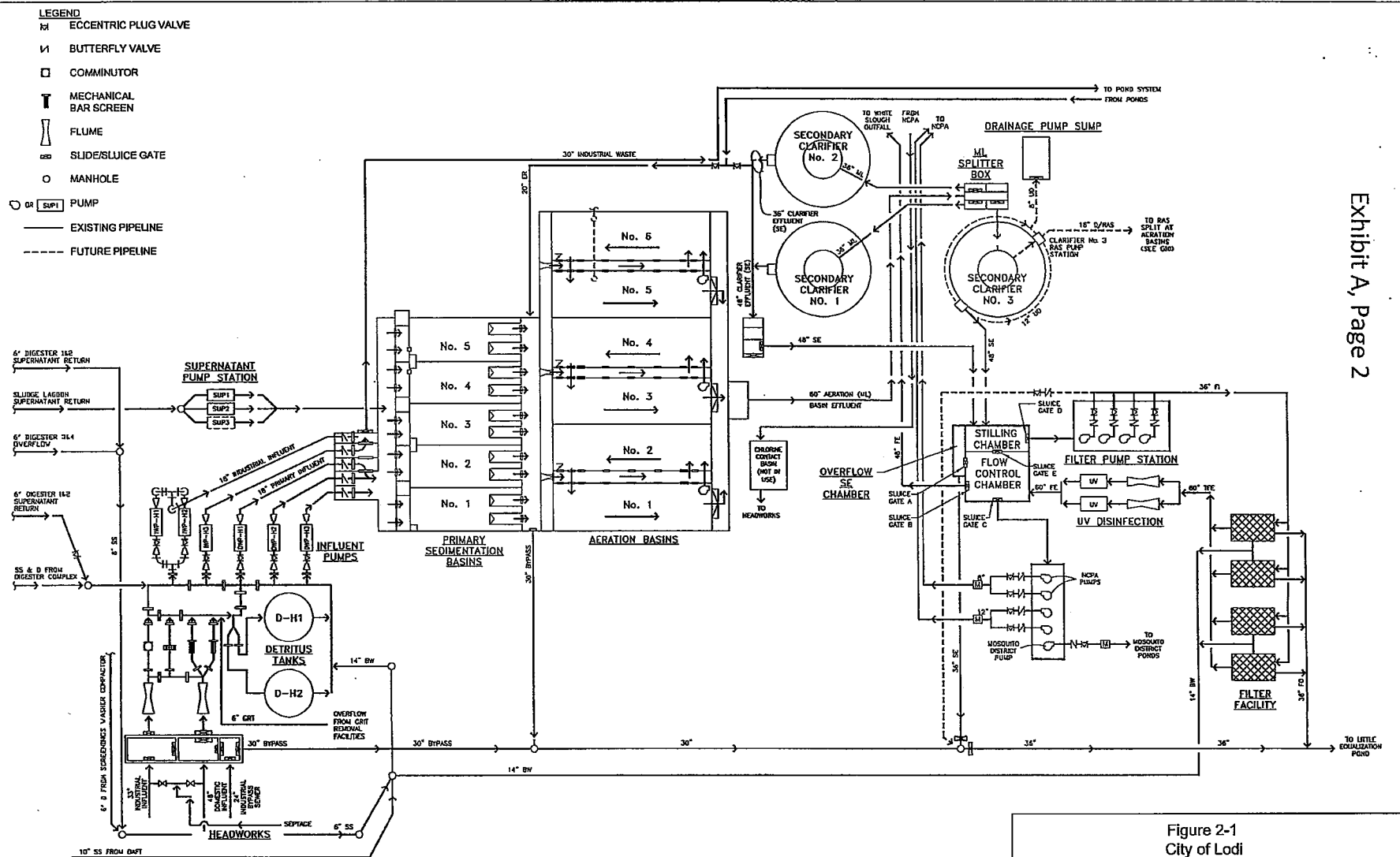


Figure 2-1
City of Lodi
White Slough WPCF
Title 22 Engineering Report
LIQUID FLOW SCHEMATIC

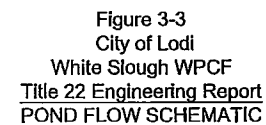
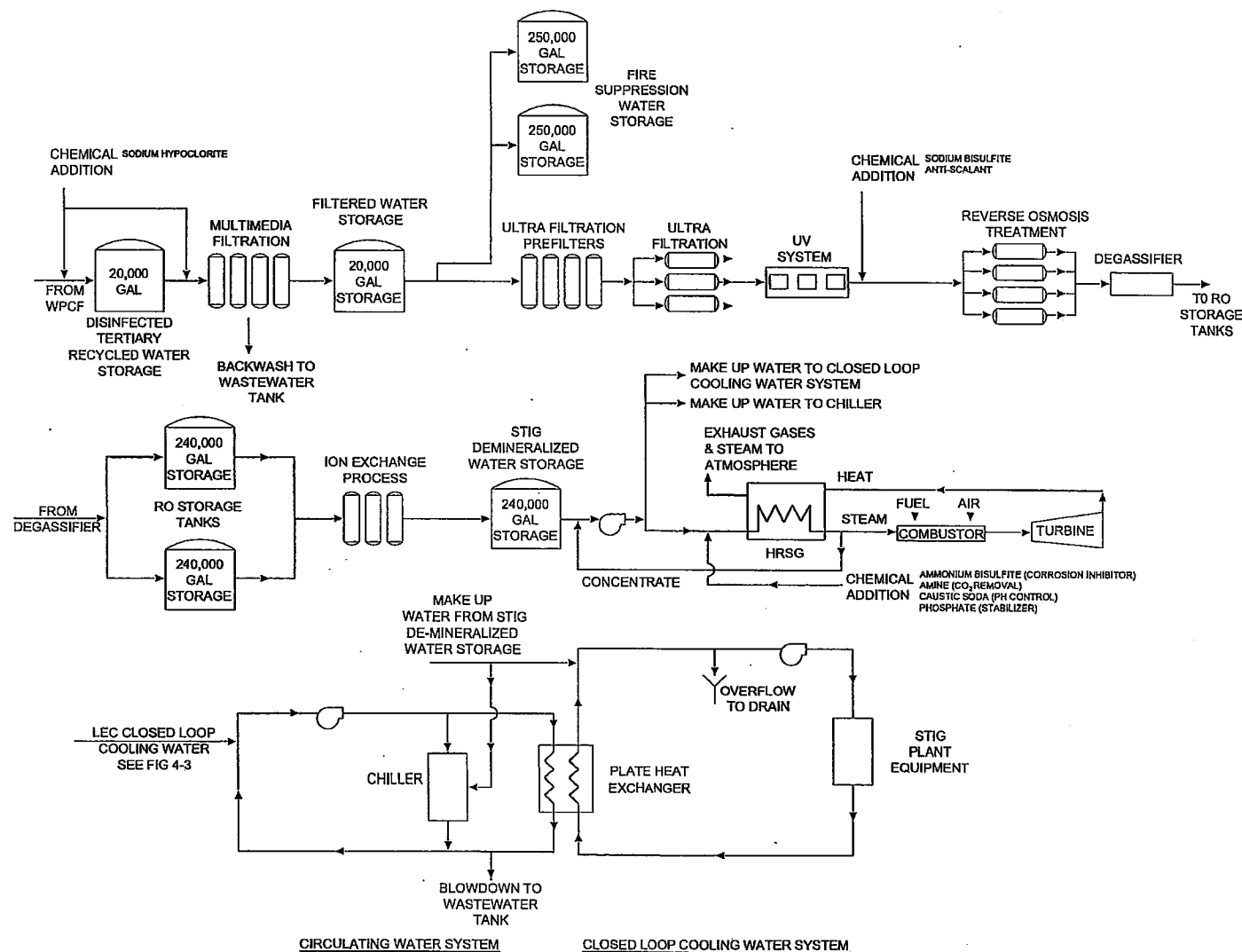


Figure 4-2
City of Lodi
White Slough WPCF
Title 22 Engineering Report
SCHEMATIC DIAGRAM
OF RECYCLED WATER
PROCESSES
IN THE
STIG PLANT



NOTE: SCHEMATIC DIAGRAM DOES NOT DEPICT ALL OF THE INTER-PROCESS PUMPING FACILITIES

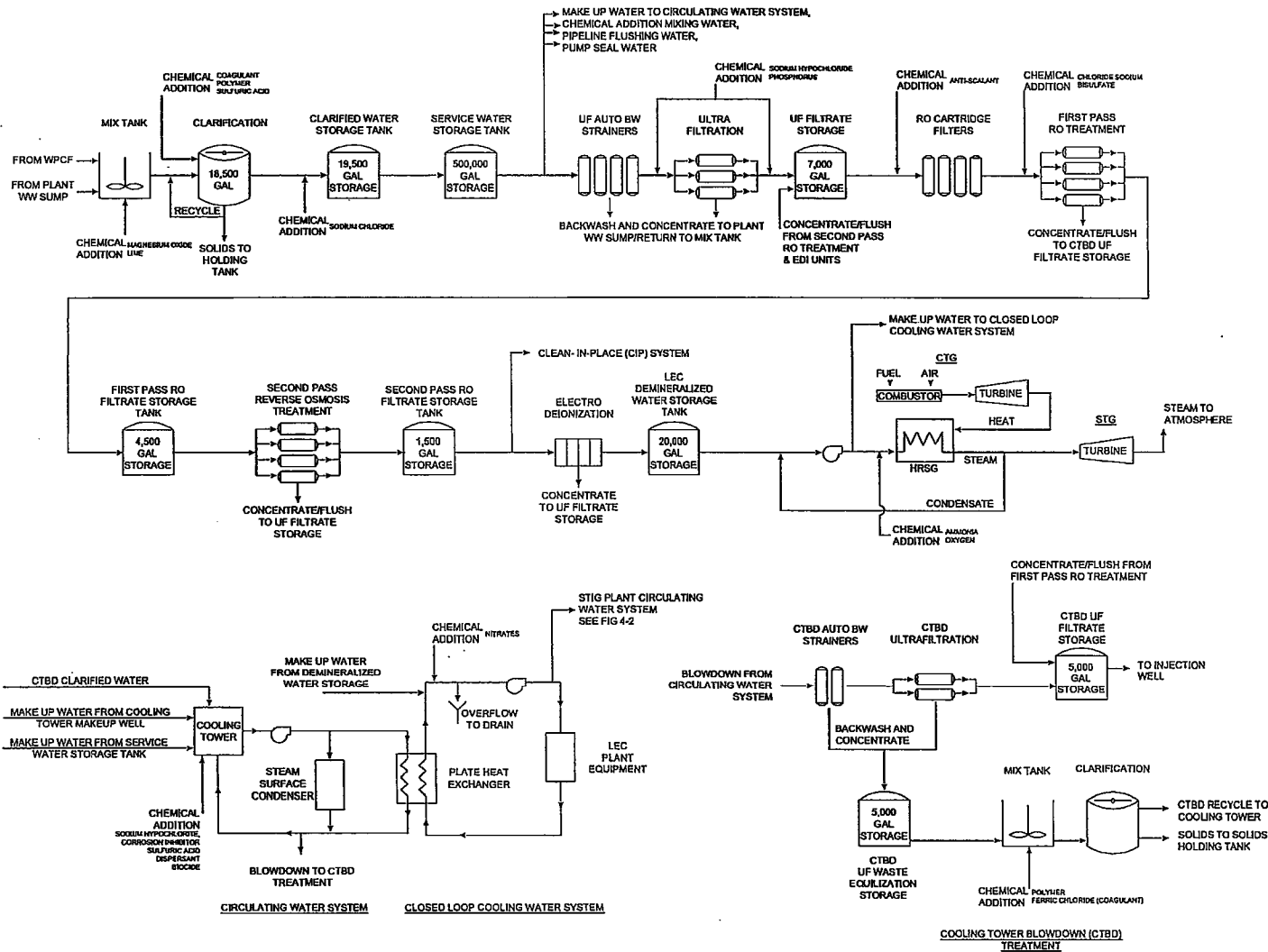


Figure 4-3
City of Lodi
White Slough WPCF
Title 22 Engineering Report
SCHEMATIC DIAGRAM
OF RECYCLED WATER
PROCESSES
IN THE
LEC PLANT

NOTE: SCHEMATIC DIAGRAM DOES NOT DEPICT ALL OF THE INTER-PROCESS PUMPING FACILITIES

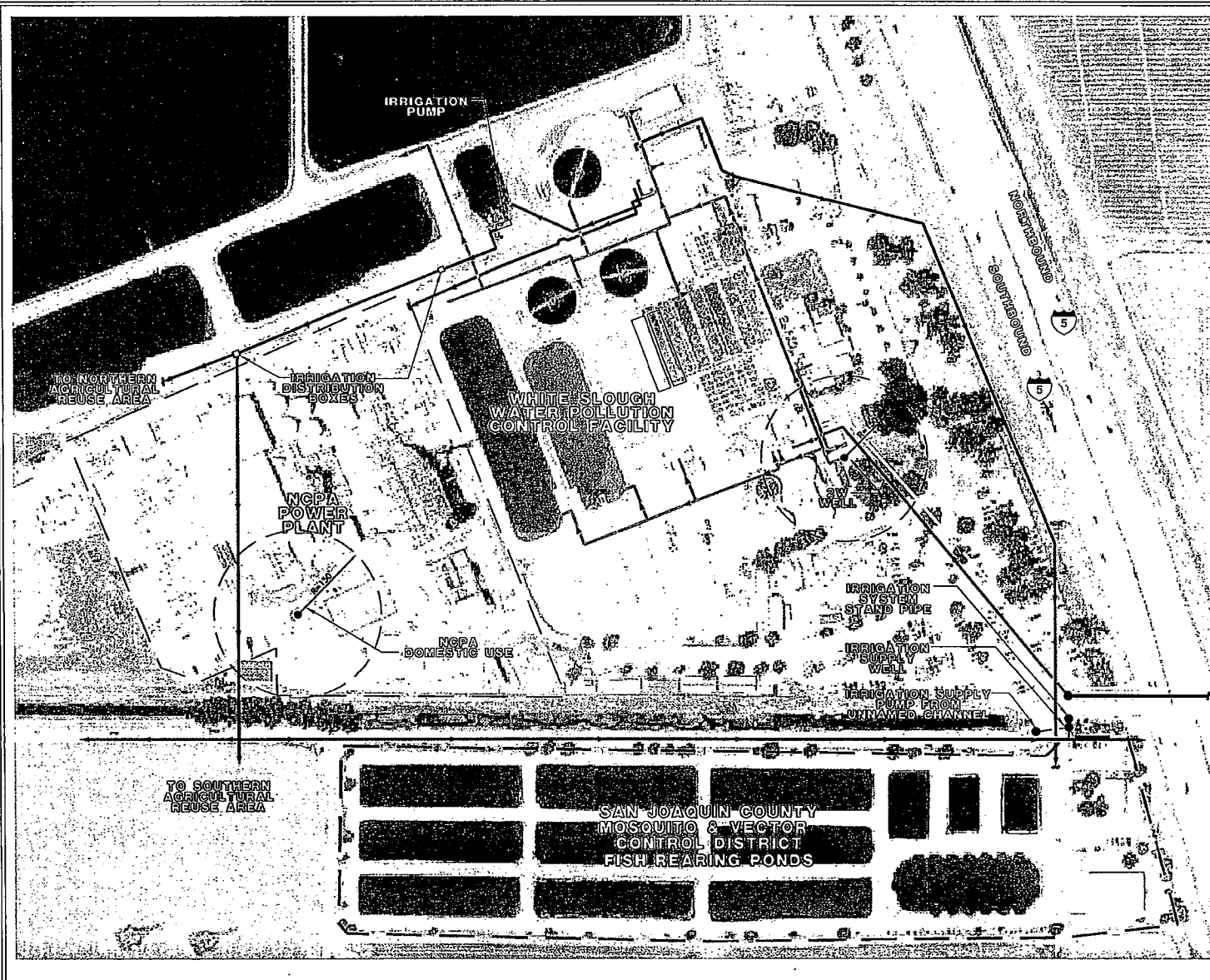


Figure 1-3
City of Lodi
White Slough WPCF
Title 22 Engineering Report
RECYCLED WATER SUPPLY TO
USE AREAS

Exhibit B

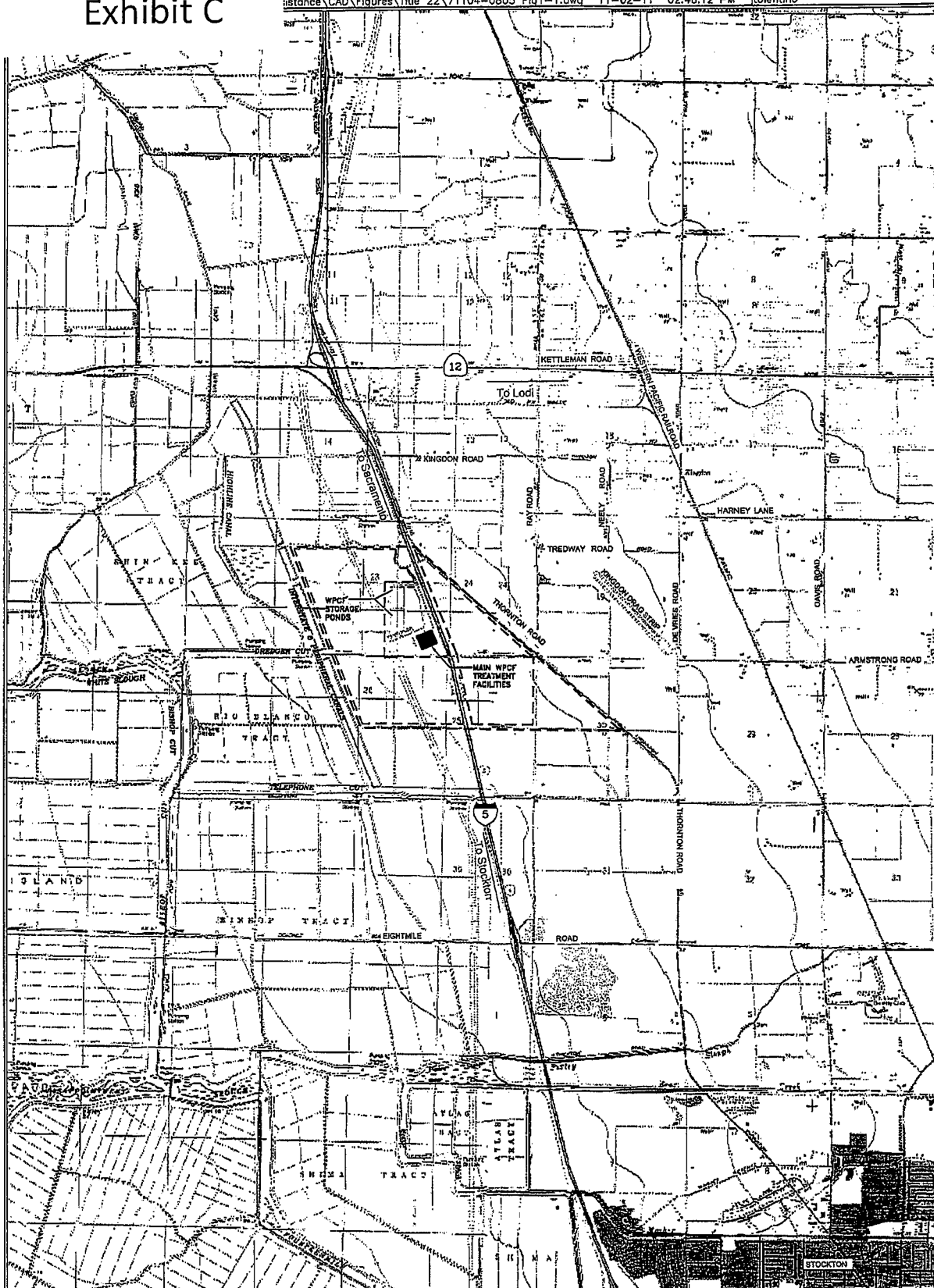
LEGEND:

- RECYCLED WATER SUPPLY PIPELINES
- SERVICE WATER (24") PIPELINE
- WASTEWATER INFLUENT SEWER
- MUNICIPAL WASTE WATER INFLUENT SEWER MANHOLE
- INDUSTRIAL WASTE WATER INFLUENT SEWER MANHOLE
- 2W WELL
- NCPA AND SJCM & VCD FENCING
- NCPA DOMESTIC USE WELL



Exhibit C

distance\CAD\Figures\Title 22\71104-0805 Fig1-1.dwg 11-02-11 02:48:12 PM itolentino



- LEGEND**
- Boundary of City-Owned Land
 - Boundary of Existing Effluent Irrigation Land Application Areas

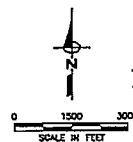
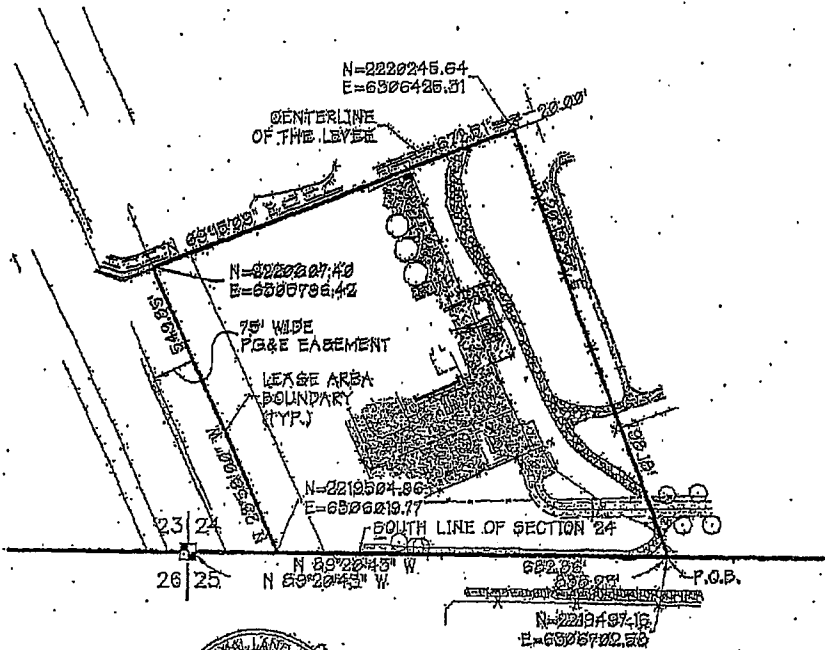


Figure 1-1
City of Lodi
White Slough WPCF
Title 22 Engineering Report
REUSE FACILITIES
LOCATION MAP





Exhibit D



9-31-2009

CARLTON
Engineering, Inc.



31JUL2009 2:04pm Exb1 B-LEASE

245 Piedmont Ave., Suite 1000, San Francisco, CA 94102
Tel: 415.777.1113 Fax: 415.777.1114

Exhibit D

Lease Area

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly described as follows:

BEGINNING AT A POINT on the South line of said Section 24, said with the Southwest corner of said Section 24 being North 89°20'43" West 882.23 feet, Thence South and Point of Beginning North 89°20'43" West 882.65 feet along said South line, thence along said South line along the East boundary of an easement granted to Pacific Gas & Electric Company described in that Deed dated September 6, 1977 recorded in Book 2013 of Official Records at Page 426, San Joaquin County Records, North 23°58'00" West 349.85 feet to a point measuring 20.00 feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Skimming Ponds, thence parallel with and 20.00 feet distant from the centerline of said levee North 69°15'09" East 672.51 feet, thence South 20°19'55" East 798.18 feet to the Point of Beginning.

Containing 16.1 Acres (692,050 Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 33 Page 175 with San Joaquin County Recorder's Office.



7-34-2009

Exhibit E

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 20.00 feet in width, the centerline of which is described as follows:

BEGINNING AT A POINT on the East boundary of a lease parcel to Northeast Chalfont Power Agency (NCPA) from which the Southwest corner of said Section 24 bears the following two (2) courses: 1) South $20^{\circ}19'35''$ East 88.95 feet along said East boundary to the South line of said Section 24, 2) North $89^{\circ}20'43''$ West 838.23 feet along the South line of said Section 24 to the Southwest corner thereof. Thence from said Point of Beginning North $89^{\circ}30'37''$ East 483.64 feet along the centerline of an existing asphalt road to the beginning of a curve to the left, thence through said curve to the left having a Radius of 273.31 feet, an Arc Length of 526.14, and being subtended by a Chord bearing North $34^{\circ}21'38''$ East 448.58 feet, thence North $20^{\circ}47'20''$ West 347.74 feet to the beginning of a curve to the right, thence through said curve to the right having a Radius of 84.46 feet, an Arc Length of 74.71 feet, and being subtended by a Chord bearing North $04^{\circ}34'09''$ East 72.29 feet, thence North $29^{\circ}55'37''$ East 44.45 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 88.86 feet, an Arc Length of 78.43 feet, and being subtended by a Chord bearing North $08^{\circ}34'48''$ East 75.91 feet, thence North $20^{\circ}46'02''$ West 1048.48 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 3013.60 feet, an Arc Length of 30.99 feet, and being subtended by a Chord bearing North $21^{\circ}43'04''$ West 109.89 feet, thence North $22^{\circ}40'06''$ West 489.23 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 1670.10 feet, an Arc Length of 109.96 feet, and being subtended by a Chord bearing North $24^{\circ}33'16''$ West 109.94 feet, thence North $25^{\circ}26'26''$ West 44.61 feet to the North line of the Southwest One-Quarter of said Section 24.

The sidelines of said strip of land shall be lengthened or shortened to terminate at the North line of the Southwest One-Quarter of said Section 24 and the East boundary of said NCPA Lease parcel, respectively.

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.

Containing 1.54 Acres (67,148 Sq. Ft.)



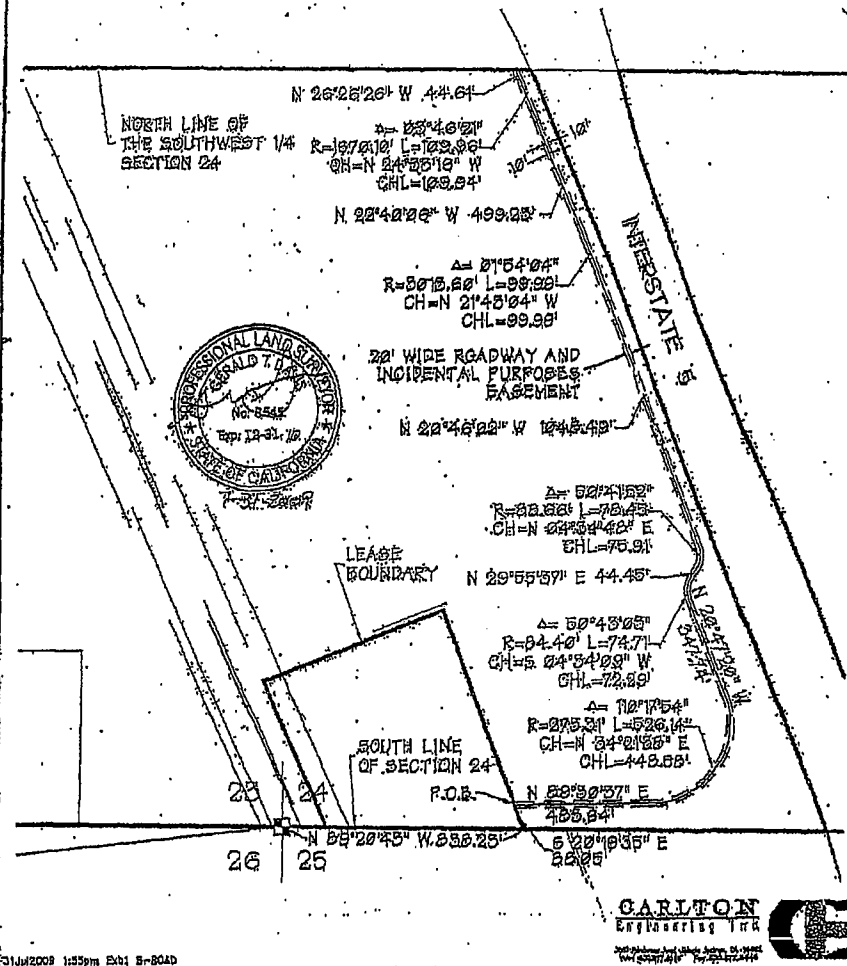


Exhibit F

EASEMENT AGREEMENT

Recording Requested by
and when Recorded, return to:

Northern California Power Agency
Attn: Assistant General Manager
651 Commerce Drive
Roseville, CA 95678

EXEMPT FROM RECORDING FEES PER GOVERNMENT
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

This Easement Agreement ("**Agreement**") is made and entered into this 22nd day of March, 2009, and is by and between the City of Lodi, a California municipality ("**City**") and the Northern California Power Agency, a California joint powers agency ("**NCPA**"). The City and NCPA, and their successors and assigns, are singularly referred to as a "**Party**" and jointly referred to as the "**Parties.**"

RECITALS

- A. The Parties entered into that certain Amended and Restated Ground Lease dated as of the same date as this Agreement for property located in the City adjacent to the White Water Slough Water Pollution Control Facility as more fully identified on the map attached hereto as Exhibit A (the "**Property**") for the purpose of constructing, operating and maintaining gas turbine power generation plants;
- B. NCPA is constructing a new gas turbine power plant on the Property and is in need of additional land adjacent to the east side of the Property, also identified in the map attached as Exhibit A to this Agreement, (the "**Land**") for the purpose of constructing a road;
- C. The City uses the Land to maintain the berm located immediately adjacent to the Land;
- D. The Parties recognize that their uses for the Land are not mutually exclusive and that the City can provide NCPA with a non-exclusive easement to construct its road while at the same time maintaining the City's access to maintain the berm.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easement. The City hereby grants, conveys, and dedicates to NCPA for use as a roadway or buffer over the Land identified on Exhibit A and more fully defined in the legal description attached hereto as Exhibit B (the "Easement"). NCPA's right to use the Land will be exclusive with the exception of the City's use to maintain, construct or reconstruct the berm shown in Exhibit A. The City covenants that, save the rights retained by the City to maintain the berm, it will not grant any rights to any other persons or entities.
2. Character of Easement. The Easement granted in this Agreement is expressly for the benefit of NCPA to use as a roadway for access to, or buffer adjacent to the Lodi Energy Center Project located on the Property. The Property is thus the dominant estate and the Land upon which the Easement is located is the servient estate. The Easement created by this Agreement is appurtenant to the Property that is the dominant estate to which it relates, shall run with the land and may not be transferred, assigned or encumbered except as an appurtenance to the dominant estate.
3. Easement Runs with the Land/Successors and Assigns. Each covenant contained in this Agreement (a) constitutes a covenant running with the Land; (b) binds successors in interest of each Party, and (c) will inure to the benefit of each Party's successors in interest. Any person or entity accepting a deed or other instrument conveying, granting, leasing or assigning any property affected or benefitted by this Agreement or any portion thereof or interest therein will take title subject to this Agreement, and such person will be deemed to have assumed all of the applicable obligations imposed in this Agreement with regard to such property regardless of whether this Agreement is mentioned in the deed, lease or other instrument. Whenever a reference in this Agreement is made to the City or NCPA, the reference will be deemed to also mean a reference to the successors in interest of each Party, or the Parties, as applicable, as if in every case so expressed.

4. Term of Easement. This Agreement will remain in full force and effect concurrently with the term of the Amended and Restated Ground Lease and any extensions thereto.
5. Rent. The rent for the easement will be \$1.00 per year and will be paid in advance on or before July 1st of each year.
6. Maintenance of the Easement. NCPA will, at its sole cost, maintain the Easement in a safe condition as appropriate for the use to which NCPA will put the Easement. In the event NCPA installs a roadway, it will be for the sole use of NCPA and will not be made a public roadway. NCPA will not be required to install curbs, gutters or sidewalks, or paint any markings on the road. The road will not be available for access or use by the general public. The City will, at its sole cost, maintain the berm adjacent to the roadway.
7. No Barriers. The Parties agree that absent the written consent of the Parties and with the exception of the berm, no wall, fence, or barrier of any kind which impairs or impedes access to, or use of, the Easement will be constructed or maintained on or adjacent to the Easement, nor will the Parties do anything that will prevent, impair or discourage the use or exercise of the entire Easement or the free access and movement across the Easement area.
8. Indemnification. NCPA will indemnify, defend, protect and hold harmless, the City, its elected and appointed officials, employees, and agents from and against all claims, demands, liabilities, judgments, losses, costs and expenses arising out of or related to NCPA's or its agent's, employee's or invitee's use and maintenance of the Easement. The City will indemnify, defend, protect and hold harmless, NCPA, its elected and appointed officials, employees, and agents from and against all claims, demands, liabilities, judgments, losses, costs and expenses arising out of or related to the City's or its agent's, employee's or invitee's use of the Easement and maintenance of the berm.
9. Insurance. At all times during the term of this Agreement, NCPA shall include the Easement in the insurance it is obligated to maintain on the Property under the Amended and Restated Ground Lease.

10. Default/Remedies. An "Event of Default" under this Agreement occurs if either Party fails to comply with any of the covenants or obligations in this Agreement or fails to commence to cure with reasonable diligence such failure within ten (10) days after receipt of written notice from the other Party of the default. Upon the occurrence of an Event of Default under this Agreement, the aggrieved Party may pursue all remedies at law or in equity, including without limitation, the remedy of specific performance of this Agreement.

11. Dispute Resolution

11.1 Mediation. The Parties agree to first submit any dispute arising out of or in connection with this Agreement to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In such event, neither Party may proceed with arbitration until the completion of mediation, the mediation being an express condition precedent to further remedies. The Parties may, however, agree in writing to proceed directly to arbitration. Each Party will pay an equal share of the costs of retaining the professional mediator but will bear its own costs, including, but not limited to its own attorneys' fees associated with participating in any mediation.

11.2 Binding arbitration. Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 11.1 above, either Party may give written notice to the other Party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 11.2. The Party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the Parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an arbitrator in accordance with then current procedures. The arbitrator must be a retired judge of the Superior Court of California or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the

Presiding Judge of the San Joaquin Superior Court will appoint an arbitrator in accordance with its then current procedures.

11.2.2 The rules and procedures for arbitration shall be as follows:

11.2.2.1 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

11.2.2.2 The arbitration proceedings must be conducted in San Joaquin County, California, at a time and location as agreed to in writing by the Parties, or in absence of an agreement, as designated by the arbitrator.

11.2.2.3 Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration. The California Evidence Code shall generally guide the arbitrator in making such decisions.

11.2.2.4 The arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the Parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the arbitrator must follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the arbitrator will have no authority or jurisdiction to enter an award, order, or decision for consequential, special, exemplary or punitive damages. The arbitrator may also grant such ancillary relief as is necessary to make effective the award, order, or decision, including the issuance of declaratory relief, compelling specific performance, or any other relief or action permitted by California law.

11.2.2.5 Both Parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the arbitrator will have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either Party will have the right to demand in writing that the other Party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at

hearing. The responding Party's list(s) must be served personally or by registered or certified mail on the requesting Party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

11.2.2.6 Each Party may be represented by counsel.

11.2.2.7 No later than sixty (60) days following closing of the arbitration hearing, the arbitrator will make an award, order, or decision and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award, order, or decision. The arbitrator may include in his or her award, order, or decision pre-award interest and post-award interest at the legal rate where authorized by law. The Party against whom the award, order, or decision is made or remedy or relief ordered will have thirty (30) days after receipt of the award, order, or decision to commence and thereafter diligently pursue to completion any action or proceeding in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision. If the award, order, or decision is mailed, it will be deemed to be received within five (5) days after deposit in the mail.

11.2.2.8 If no such action or proceeding is timely commenced, the award, order, or decision will thereupon immediately become final. The Party against whom the award, order, or decision is made or remedy or relief ordered shall within thirty (30) days after the award, order, or decision becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award, order, or decision. The Party in whose favor the award, order, or decision is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of San Joaquin a Judgment upon the award, order, or decision rendered by the arbitrator, which may thereafter be entered in the records of said court.

11.2.2.9 If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision, the Parties will have the right to seek vacation or modification of any portion of the award, order, or decision according to the grounds provided by California law at the time for the vacation or modification of

an award, order, or decision in a non-judicial arbitration. The findings of fact of the arbitrator will be binding on all Parties and shall not be subject to further review except as allowed by the appeal provisions of this Section 11.2.2.9.

11.2.2.10 The arbitrator will be paid a per diem or hourly charge as established at the time of appointment. Each Party will bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the arbitrator's compensation, will be shared equally.

11.2.2.11 This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Agreement, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

11.2.2.12 Unless otherwise provided in this Agreement or otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of arbitration proceedings.

11.2.2.13 Except as modified or stated to the contrary in this Section 11, the rules and procedures of the Arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

12. Memorandum of Agreement. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of Agreement substantially in the form of Exhibit C hereto. NCPA shall cause such Memorandum of Agreement to be recorded against the Property in the County of San Joaquin Recorder's Office within three (3) business days after the execution thereof. The Parties agree to record a reconveyance of the Easement upon termination of the Amended and Restated Ground Lease.

13. Miscellaneous.

13.1 Payments and Notices. Any notice to be given or other document to be delivered by either Party to the other Party may be given by personal delivery or may be deposited in the United States mail in the State of California, duly registered or certified, with postage prepaid, and addressed to the Party for whom intended as follows, or it

may be sent via facsimile and will be duly given upon receipt of successful transmission to the following facsimile numbers:

To City: City of Lodi
Attn: City Manager
221 West Pine Street
Lodi, CA 95240
Facsimile: 209-333-6807

To NCPA: Northern California Power Agency
Attn: Assistant General Manager
Generation Services
651 Commerce Drive
Roseville, CA 95678
Facsimile: 916-783-7693

Either Party may from time to time by written notice to the other Party designate a different address which shall be substituted for the one specified above. If any notice or other document is sent by registered or certified mail, as provided above, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof.

13.2 Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions in this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of either Party to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default under this Agreement.

13.3 Holding Over. If NCPA holds over the Leased Premises (as that term is defined in the Amended and Restated Ground Lease) after the expiration of the term of the Amended and Restated Ground Lease with the consent of City, either express or implied, this Agreement shall likewise remain in full force and effect for as long as the Amended and Restated Ground Lease remains in full force and effect, subject to all the covenants, conditions and obligations in this Agreement.

13.4 Relationship of Parties. It is expressly understood and agreed that merely as a result of this Agreement, the City does not in any way nor for any purpose become a partner of NCPA or a joint venture with NCPA in the conduct of NCPA's business or otherwise, except as provided by the Phase 2 and Phase 3 combustion turbine project number 2 agreements or the LEC agreements or any similar agreement.

13.5 Severability. If any term, provision, covenant or condition contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement will continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

13.6 Attorneys' Fees. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall recover attorneys' fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action in addition to any other relief awarded, and such attorneys' fees and costs shall be included in any judgment in such action.

13.7 Time of the Essence. Time is expressly declared to be of the essence in this Agreement.

13.8 Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender includes the feminine and neuter genders, and the word "person" includes corporation, firm, entity or association.

13.9 Headings and Titles. The marginal headings or titles to the sections of this Agreement are not a part of this Agreement and have no effect upon the construction or interpretation of any part of this Agreement.

13.10 Entire Agreement. This Agreement and the Exhibits hereto contain the entire agreement between the Parties with respect to the matters covered hereunder, and no other previous agreement, statement or promise made by any Party hereto which is not contained in this Agreement shall be binding or valid.

13.11 Force Majeure. Except as to the payment of rent, neither of the Parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the

control of the Parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performances of this Agreement.

13.12 Termination. NCPA may terminate this Agreement at any time upon six (6) months advance notice, but in all cases, the Easement granted in this Agreement will terminate concurrently with the termination of the Amended and Restated Ground Lease.

13.13 Counterparts. This Agreement may be executed in counterparts each of which is deemed an original, and all such counterparts constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY:

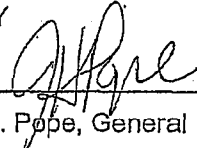
CITY OF LODI, a municipal corporation


Blair King, City Manager

Date: 5/6/10


NCPA:

NORTHERN CALIFORNIA POWER
AGENCY

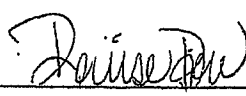

James H. Pope, General Manager

Date: 3/22/10

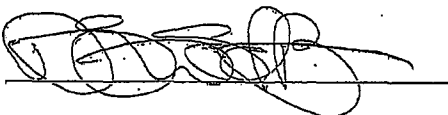
ATTEST:


Randi John, J.D., City Clerk

ATTEST


Denise Dow, Assistant Secretary

APPROVED AS TO FORM:



APPROVED AS TO FORM:



D. Stephen Schwabauer,
City Attorney

Michael F. Dean,
General Counsel

ACKNOWLEDGMENT

State of California
County of San Joaquin

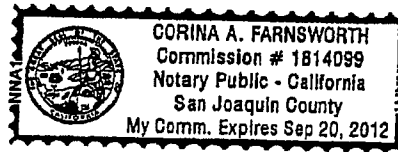
On 5/6/2010 before me, Corina A. Farnsworth, Notary Public
(insert name and title of the officer)

personally appeared Blair King,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Corina A. Farnsworth (Seal)



STATE OF CALIFORNIA

)

) ss

COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT LIST

Exhibit A Map of the Property
Exhibit B Legal Description
Exhibit C Memorandum of Easement

EXHIBIT C

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California is described as follows:

A portion of that certain parcel described in Book 1021 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 26.00 feet in width, the rightline of which shall be shortened or extended to terminate respectively at the South line of said Section 24 and 20.00 feet measured at a right angle from the centerline of a levee, the West line of which is described as follows:

BEGINNING AT A POINT on the South line of said Section 24 from which the Southwest corner of said Section 24 bears North $89^{\circ}20'43''$ West 838.23 feet. Thence from said Point of Beginning North $20^{\circ}19'35''$ West 798.18 feet to a point measuring 20.00 feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Sliding Ponds.

Containing 0.5 Acres (20885 Sq. Ft.)

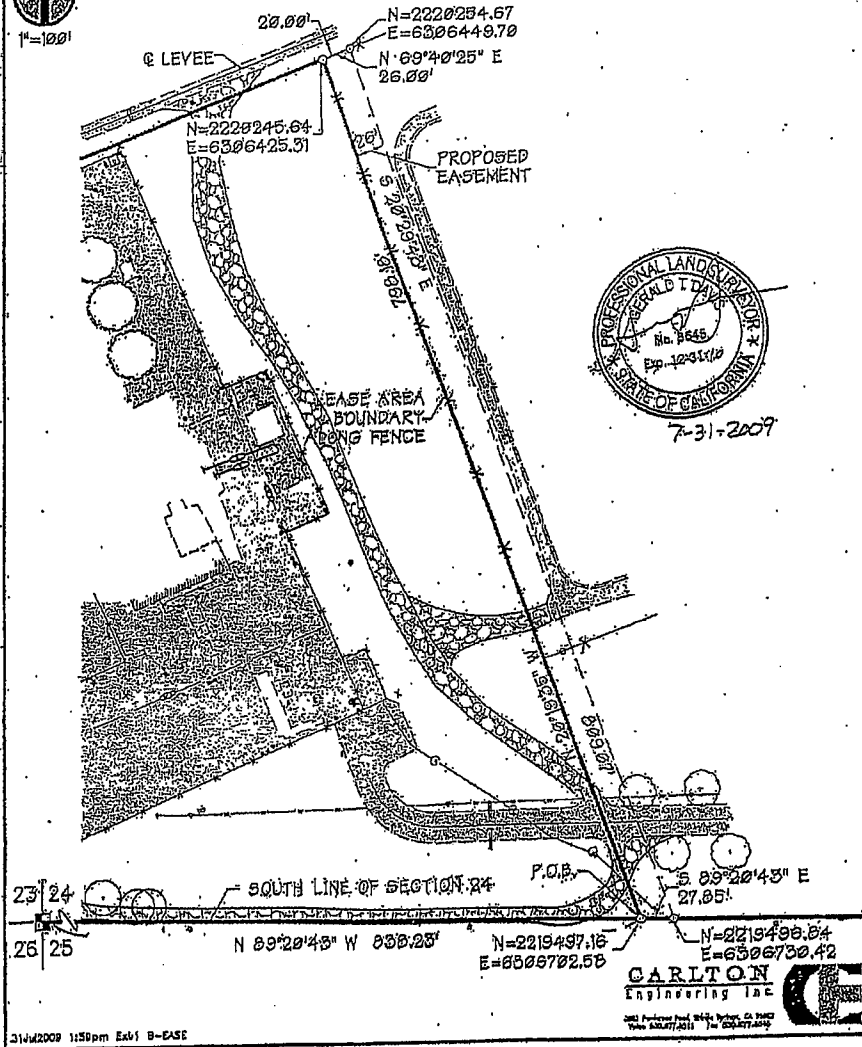
This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.



7-21-2009



Easement Exhibit C



Recording Requested by
and when Recorded, return to:

Northern California Power Agency
Attn: Assistant General Manager
651 Commerce Drive
Roseville, CA 95678

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE
§§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF EASEMENT

This Memorandum of Easement (this "Memorandum") dated as of 3/22/10, ~~2009~~, is made by and between the City of Lodi, a municipal corporation ("City") and the Northern California Power Agency, a California joint powers agency ("NCPA"). The City and NCPA are jointly referred to as the "Parties."

Pursuant to an Easement Agreement by and between the City and NCPA (the "Easement Agreement"), the City has granted to NCPA an easement, on the terms and conditions set forth in the Easement Agreement on real property located in the City of Lodi, San Joaquin County, California and more particularly described in Attachment 1 attached hereto and incorporated herein (the "Easement Area"). NCPA's use of the Easement Area shall be exclusive, with the exception of the City's right to use the Easement Area for maintenance, construction or reconstruction of the berm shown on Attachment 2 attached hereto and incorporated herein.

This Memorandum incorporates all of the terms and provisions of the Easement Agreement as though fully set forth herein. The term of the Easement Agreement runs concurrently with the term of the Amended and Restated Ground Lease on the dominant estate.

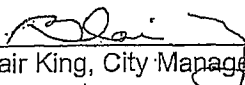
This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Easement Agreement. In the event of any inconsistency between this Memorandum and the Easement Agreement, the Easement Agreement shall control.

This Memorandum and the Easement Agreement shall bind and inure to the benefit of the Parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date first written above.

CITY:

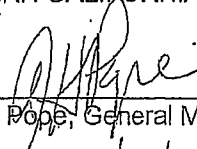
CITY OF LODI, a municipal corporation


Blair King, City Manager

Date: 5/6/10

NCPA:

NORTHERN CALIFORNIA POWER AGENCY


James H. Pope, General Manager

Date: 3/22/10

ATTACHMENT LIST

Attachment 1 Map of Property
Attachment 2 Legal Description

ATTEST:

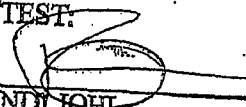

RANDI JOELL
City Clerk

EXHIBIT C

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 25.00 feet in width, the sides of which shall be horizontal or extended to terminate respectively at the South line of said Section 24 and 20.00 feet measured at a right angle from the centerline of a levee, the West line of which is described as follows:

BEGINNING AT A POINT on the South line of said Section 24 from which the Southwest corner of said Section 24 bears North $89^{\circ}20'43''$ West 838.20 feet. Thence from said Point of Beginning North $20^{\circ}19'35''$ West 798.18 feet to a point measuring 20.00 feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Siding Pond.

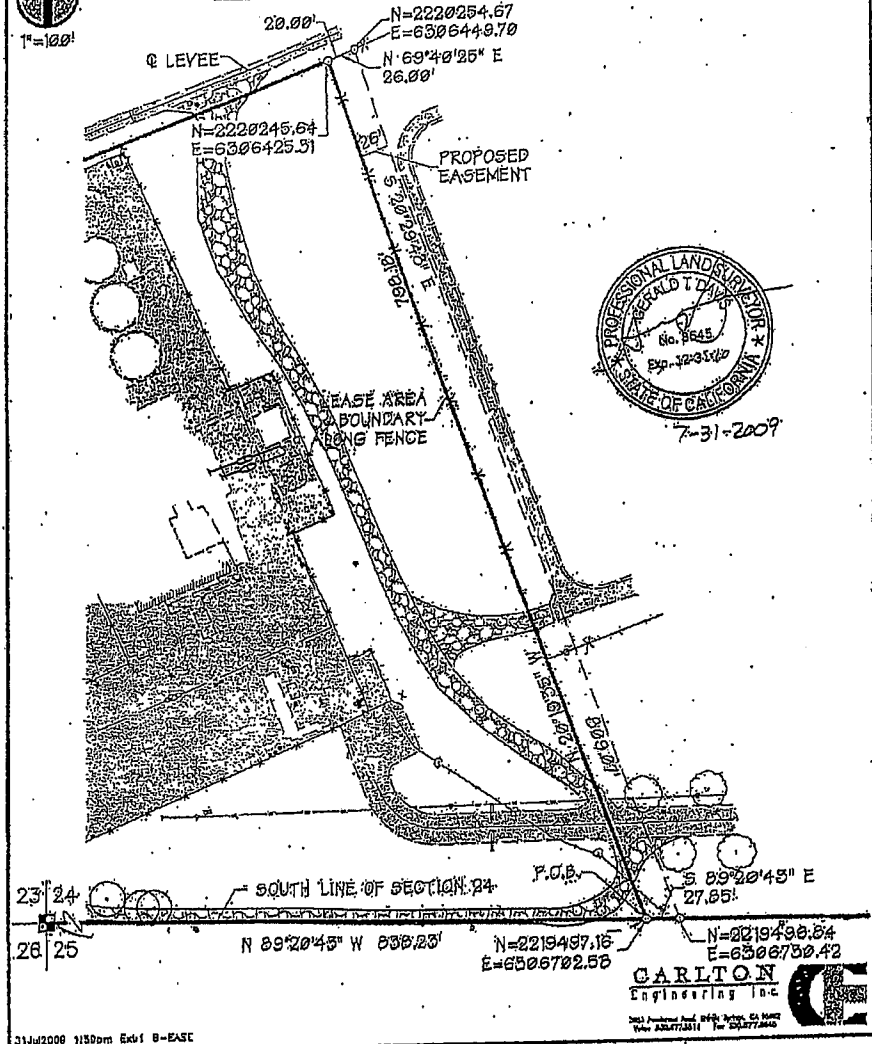
Containing 0.5 Acres (20,885 Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.





Easement Exhibit C



ACKNOWLEDGMENT

State of California
County of San Joaquin

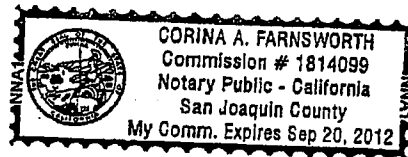
On 5/6/2010 before me, Corina A. Farnsworth, Notary Public
(insert name and title of the officer)

personally appeared Blair King
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in
~~his/her~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Corina A. Farnsworth (Seal)



STATE OF CALIFORNIA

)

) ss

COUNTY OF _____

)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

Exhibit H

APPENDIX 2D

Will-Serve Letter from the City of Lodi

CITY COUNCIL

JOHN BECKMAN, Mayor
SUSAN HITCHCOCK
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNE L. MOUNCE

CITY OF LODI
PUBLIC WORKS DEPARTMENT

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6706
FAX (209) 333-6710
EMAIL pwdept@lodi.gov
<http://www.lodi.gov>

BLAIR KING

City Manager

SUSAN J. BLACKSTON

City Clerk

D. STEPHEN SCHWABAUER

City Attorney

RICHARD C. PRIMA, JR.

Public Works Director

November 29, 2005

Randall Blank, Environmental, Health & Safety Manager
Northern California Power Agency
P.O. Box 1478
Lodi, CA 95241

SUBJECT: Site for NCPA Electric Generating Plant at Lodi White Slough Water Pollution Control Facility at 12745 North Thornton Road, Lodi, CA, 95242

The City of Lodi is pleased to confirm availability of the site for a new NCPA Electric Generating Facility adjacent to the existing NCPA STIG Plant located on City property at its White Slough Water Pollution Control Facility. A "Will Serve" letter for water supply is being sent separately. Pursuant to City Council approval on November 16, 2005, the City can provide:

- Permanent site space for the Plant itself, substation improvements, drying beds and associated access and utility corridors.
- Temporary easements for construction and staging

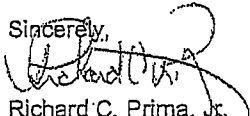
The City cannot commit to accepting process return flow, as preliminary indications are that the salinity levels, and possibly temperature, of the City's total wastewater discharge would be raised to unacceptable levels for Delta discharge and possibly even for land disposal. While the City is willing to work with NCPA on possible mitigations that would allow such discharge, perhaps on a temporary basis, the City believes NCPA should plan the Plant for zero discharge. Discharge of domestic sewage from the Plant is permitted. However, potable water supplies are not available at the City's Facility.

Current City policy requires the applicant to fund/construct the improvements necessary to reliably serve your project. In addition, regular service charges for waste treatment, as established by the City, would apply.

While the current lease for the existing STIG Plant contemplates a second, similar-sized generating unit, should modifications of the lease be necessary to accommodate the larger proposed unit, the City will work with NCPA to resolve any issues.

The City of Lodi wishes to fully cooperate with you on this project and trusts that Lodi will be given favorable consideration in project participation allocations. We look forward to working with you on the various details to make this project a success for all.

Sincerely,


Richard C. Prima, Jr.
Public Works Director

RCP/pmf

cc: Blair King, City Manager
David Dockham, Interim Electric Utility Director
Del Kerlin, Assistant Wastewater Treatment Superintendent

J:\WHITE SLOUGH\NCPA_WILLSERVELETTER.DOC



**FIRST AMENDMENT TO SECOND AMENDED AND RESTATED
GROUND LEASE BY AND BETWEEN THE CITY OF LODI
AND NORTHERN CALIFORNIA POWER AGENCY**

This First Amendment to Second Amended and Restated Ground Lease Dated April 29, 2013 ("First Amendment") is entered into between the City of Lodi, a California municipality ("Lodi" or "Landlord") and Northern California Power Agency ("Agency" or "Tenant"), a public entity, with its main office located at 651 Commerce Drive, Roseville, CA 95678, (collectively the "Parties") as of _____, 2020 ("Effective Date").

RECITALS

- A. WHEREAS, the Parties entered into a Ground Lease dated February 17, 1993; and
- B. WHEREAS, the Parties entered into an Amended and Restated Ground Lease dated March 22, 2010; and
- C. WHEREAS, the Parties entered into the Second Amended and Restated Ground Lease dated April 29, 2013 (the "Second Amended Lease"); and
- D. WHEREAS, the Parties desire to amend the Second Amended Lease by adding additional land (as defined in Section 1.1 below and referenced as the "Annex") to the Leased Premises or Premises as those terms are defined in Section 1.9 of the Second Amended Lease; and
- E. WHEREAS, the Parties desire to increase the annual rent to reflect the Agency's use of the Annex; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Second Amended Lease as follows:

Section 1. DEFINITIONS. The additional terms used and defined below will added to the Second Amended Lease and have the meanings as set forth in this Section 1. All capitalized terms not defined herein have the meanings set forth in the Second Amended Lease.

- 1.1. Annex.** "Annex" is the additional lease area to the west of the Leased Premises or Premises as more fully described in the legal description and depicted in the graphic provided in Exhibit 1, attached hereto and made a part hereof.
- 1.2. Annex Annual Rent.** "Annex Annual Rent" shall be the annual sum provided in Section 2.1 below and paid by Agency to Lodi for the Annex.
- 1.3. Leased Premises or Premises.** "Leased Premises" or "Premises" as defined in Section 1.9 of the Second Amended Lease is increased to include the Annex.

Section 2. LEASE TERMS.

- 2.1 Rent.** On or before July 1 of each year during the Term of this First Amendment, Tenant agrees to pay to Landlord in advance as the Annex Annual Rent the sum of Twenty Thousand Three Hundred Ten Dollars (\$20,310) for the following Lease Year (i.e., each twelve (12) month period during the Term of this Lease, commencing on July 1 and ending on June 30 of the following calendar year). The first year Annex Annual Rent will be prorated from the Effective Date to the end of the twelve (12) month period (i.e., June 30, 2021).
- 2.2 Landlord's Retained Rights.** The Annex contains monitoring wells that belong to the Landlord. The Landlord will continue to own, retain rights of access to and ability to maintain the wells. Landlord's monitoring wells are shown on Exhibit 2 ("Monitoring Wells"), attached hereto and made a part hereof. Landlord hereby retains the right to access the Annex, upon forty eight (48) hours written notice to Tenant (except in the event of emergency), to repair, maintain or remove the Monitoring Wells. Landlord agrees not to interfere with Tenant's activities on the Premises and will expeditiously repair or replace any damage that Landlord causes on the Premises at Landlord's sole expense. The Landlord would consider a request by Tenant to, at its sole expense, relocate Landlord's existing Monitoring Wells that lie within the limits of the Annex and Leased Premises, under the condition Landlord receives written authorization from the Regional Water Quality Control Board for the proposed relocation of the Monitoring Wells. The schedule for any relocation shall be at a time mutually agreed upon by the Parties. Tenant agrees to construct any relocated Monitoring Wells to standards acceptable to Landlord and the Regional Water Quality Control Board.
- 2.3 Term.** Once executed the term of this First Amendment will begin on the Effective Date and shall run coterminous with the Second Amended Lease.
- 2.4 Termination.** Tenant may terminate this First Agreement at any time upon six (6) months advance written notice.

Section 3. COUNTERPARTS. This First Amendment may be executed in counterparts each of which is deemed an original, and all such counterparts constitute one and the same agreement.

Except as otherwise stated in this First Amendment, all other terms and conditions of the Second Amended Lease remain unchanged and applicable to Tenant's lease of the Annex from Landlord.

SIGNATURES ON FOLLOWING PAGE

///

///

The Parties have executed this First Amendment as of the latest date signed by either Party and such date shall become the Effective Date.

LANDLORD:

CITY OF LODI, a Municipal Corporation

Stephen Schwabauer, City Manager

ATTEST:

Jennifer Cusmir, City Clerk

APPROVED AS TO FORM:

Janice D. Magdich, City Attorney

TENANT:

NORTHERN CALIFORNIA POWER
AGENCY

Randy S. Howard, General Manager

ATTEST:

Cary Padgett, Assistant Secretary of the
Commission

APPROVED AS TO FORM:

Jane E. Luckhardt, General Counsel

EXHIBIT 1

ANNEX LEGAL DESCRIPTION

EXHIBIT 1 - PAGE 1

LEGAL DESCRIPTION

LOCATED IN THE CITY OF LODI, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:


BEING A PORTION OF LAND LYING WITHIN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 23 AND WITHIN THE SOUTH 1/2 OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 7, PAGE 9, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 23, THENCE ALONG THE SOUTH LINE OF SAID SECTION 23, N89°55'00"W, 557.26 FEET; THENCE LEAVING SAID SECTION LINE, N00°11'05"W, 227.71 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°11'05"W, 70.00 FEET; THENCE N67°17'42"E, 546.00 FEET; THENCE S23°27'46"E, 161.00 FEET; THENCE S86°33'04"W, 78.00 FEET; THENCE S23°27'24"E, 136.00 FEET; THENCE N87°37'59"W, 550.62 FEET TO THE POINT OF BEGINNING.

CONTAINING 101,581 SQUARE FEET OR 2.332 ACRES.

SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED UNDER MY SUPERVISION:


ARMANDO D. DUPONT,
P.L.S. 778

CAL VADA

SURVEYING, INC.

411 JENKS CIRCLE, SUITE 205, CORONA, CA. 92880-1782

PHONE: 951-280-9960

FAX: 951-280-9746

Job No 20498

www.calvada.com

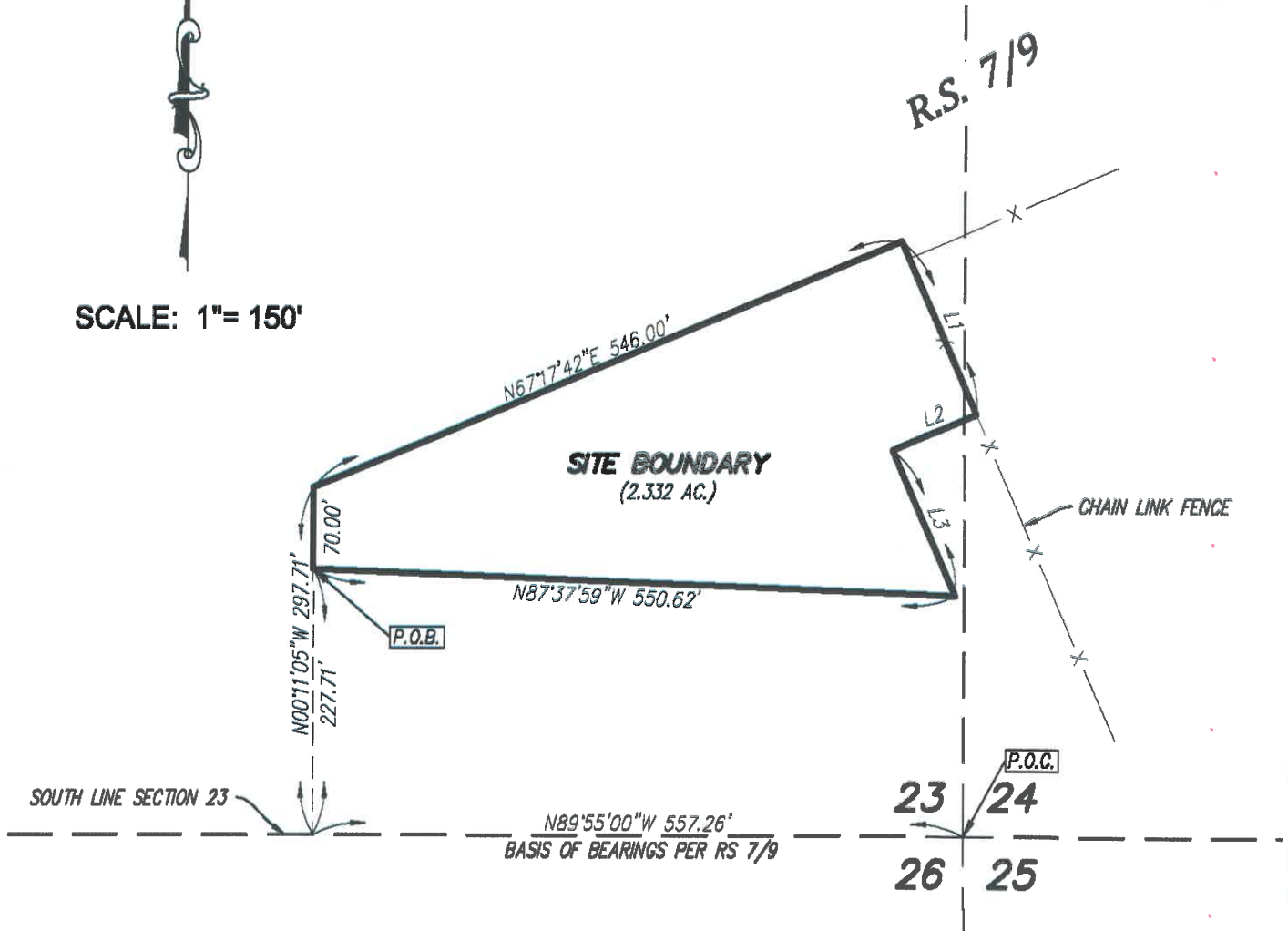
GS-AGY-2013-001

EXHIBIT 1 - PAGE 2

PLAT TO ACCOMPANY LEGAL DESCRIPTION



SCALE: 1"= 150'



PREPARED UNDER MY SUPERVISION:

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S23°27'46"E	161.00'
L2	S66°33'04"W	78.00'
L3	S23°27'24"E	136.00'



ARMANDO D. DUPONT,
P.L.S. 778

CAL VADA

SURVEYING, INC.

411 JENKS CIRCLE, SUITE 205, CORONA, CA. 92880-1782

PHONE: 951-280-9980

FAX: 951-280-9746

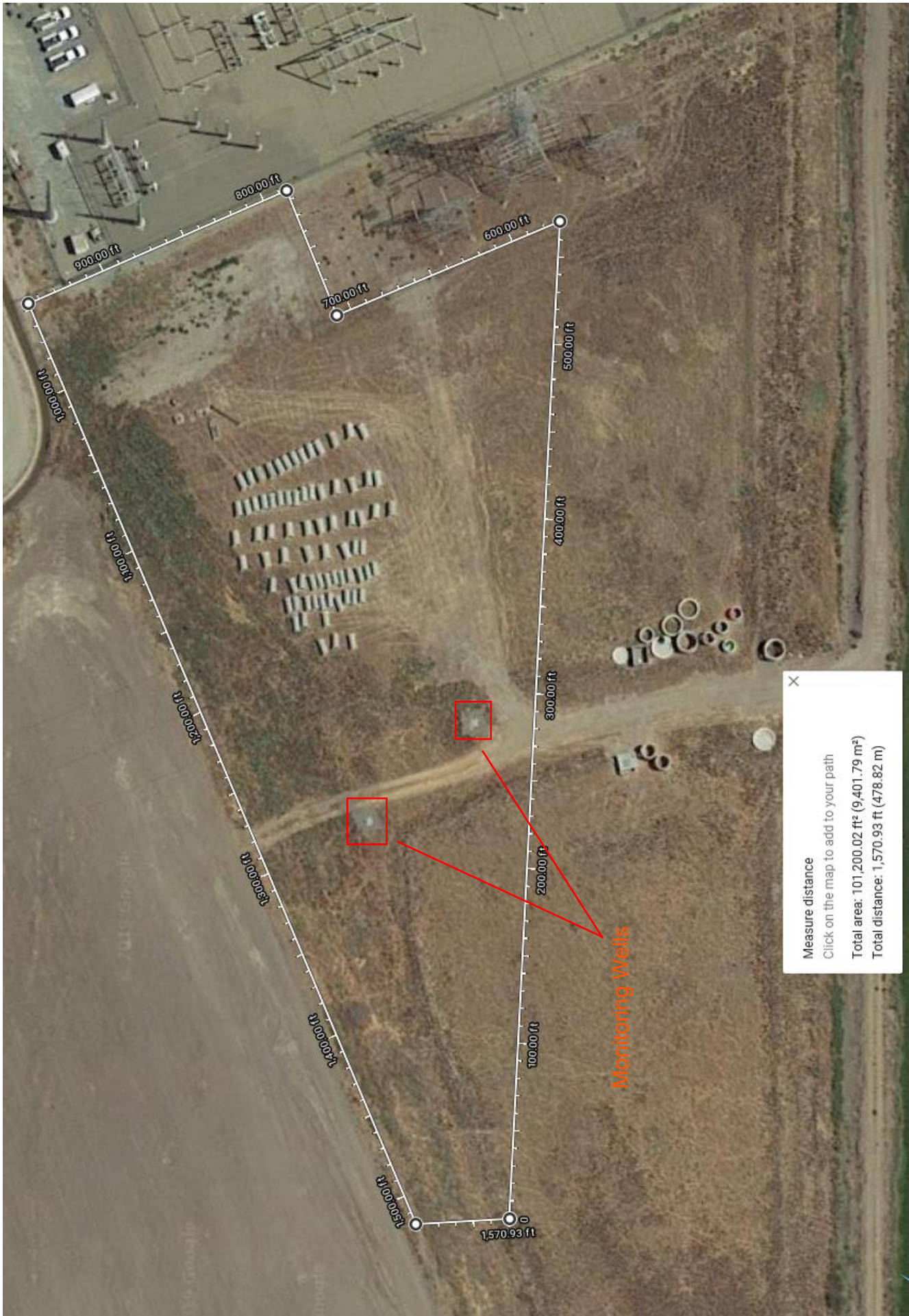
Job No 20498

www.calvada.com

GS-AGY-2013-001

EXHIBIT 2
MONITORING WELLS

EXHIBIT 2



Date
2/26/2020

Figure 2
Storage Area
2.32 Acres



Lodi Energy Center Project Participant Committee Staff Report

AGENDA ITEM NO.: 20

Date: October 8, 2020

Meeting Date: October 12, 2020

To: Lodi Energy Center Project Participant Committee

Subject: LEC Annex Land Improvement Project; Applicable to the following projects:
Northern California Power Agency (NCPA) CT2 and LEC Facilities.

Proposal

Approve and delegate authority for the General Manager or his designee to award bids, execute agreements, and to issue purchase orders for the project in accordance with NCPA Procurement Policies and Procedures, without further approval by the Commission for the LEC Annex Land Improvement Project, for a total not to exceed project amount of \$300,000, including approval for this project to be funded from the LEC Maintenance Reserve.

Background

The original Ground Lease was dated February 17, 1993 and effective January 1, 1993. An Amended and Restated Ground Lease was entered into on March 22, 2010. On April 29, 2013 the parties entered into a Second Amended and Restated Ground Lease.

LEC has been operating with a shared facilities warehouse between CT1, CT2 and LEC. Space has been tight for both parts storage and lay down space. As experienced during the LEC forced outage, when significant work is performed, there is not enough space onsite for laydown. Parts were stored outside the fence. In addition, LEC is preparing for the major on the steam turbine and generators, and in doing so, there will be a significant addition to the parts on hand. LEC has found that Sea Vans are effective and inexpensive for storage. In order to obtain extra space, NCPA negotiated with the City of Lodi to annex 2.3 acres of additional space and amend the existing lease agreement.

In order to use the land, NCPA will need to make some minor improvements. It will be leveled with a new base material installed for a firm surface that will be usable in the rainy season. It will also include fencing to secure the area. In addition, lights, and security will be incorporated.

Selection Process

Not Applicable.

Fiscal Impact

The land improvements will cost \$300,000. Because of the change of scope of work in the LEC major, funds are available in the Maintenance Reserve to pay for these costs. Balances and projections for Maintenance reserver are in the tables below.

Balances

Maintenance Reserve Balance (8/31)	\$3,890,944
Remaining FY21 Contributions	\$1,531,943
Spare Parts Purchase	(\$2,500,000)
Land Improvements	(\$300,000)
Other Planned work	(\$1,095,000)
End of FY21 Balance	\$1,527,887

5-Year Maintenance Reserve Projections

	FY21	FY22	FY23	FY24	FY25
Project Spending	\$3,895,000	\$2,845,000	\$1,765,000	\$1,785,000	\$1,660,000
Annual Contribution	\$1,838,332	\$1,875,102	\$1,912,754	\$1,951,310	\$1,998,142
End of FY Balance	\$1,527,887	\$557,988	\$705,743	\$872,053	\$1,210,194

Environmental Analysis

The California Energy Commission (CEC) is the Lead Agency for CEQA review for LEC and related projects. The project was reviewed and approved by the CEC and the San Joaquin Council of Governments. Biological monitoring will be performed prior to and during land disturbance activities.

Submitted by:

JOEL LEDESMA
Assistant General Manager
Generation Services

Attachments (0):