



12745 N. Thornton Road  
Lodi, CA 95242

phone (209) 333-6370  
fax (209) 333-6374  
web www.ncpa.com

## LEC PPC Agenda

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**Date:** October 30, 2019

**Subject:** November 4, 2019 Lodi Energy Center Project Participant Committee Meeting

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

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

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

.....

|   |   |   |
|---|---|---|
| NCPA<br>651 Commerce Drive<br>Roseville, CA 95678   | NCPA<br>12745 N. Thornton Road<br>Lodi, CA 95241  | CITY OF HEALDSBURG<br>401 Grove Street<br>Healdsburg, CA 95448                            |
| BAY AREA RAPID TRANSIT<br>300 Lakeside Drive, 16 <sup>th</sup> Floor<br>Oakland, CA 94612           | CITY OF GRIDLEY<br>685 Kentucky Street<br>Gridley, CA 95948                               | CITY OF LOMPOC<br>100 Civic Center Plaza<br>Lompoc, CA 93438                              |
| CITY OF BIGGS<br>465 "C" Street<br>Biggs, CA 95917  | PLUMAS-SIERRA RURAL<br>ELECTRIC COOP<br>73233 Highway 70<br>Portola, CA 96122             | POWER & WATER RESOURCES<br>POOLING AUTHORITY<br>106 Polo Rd<br>Glenwood Springs, CO 81601 |
| CALIFORNIA DEPARTMENT OF<br>WATER RESOURCES<br>2135 Butano Drive, Suite 100<br>Sacramento, CA 95825 | SILICON VALLEY POWER/CITY OF<br>SANTA CLARA<br>881 Martin Avenue<br>Santa Clara, CA 95050 | CITY OF UKIAH<br>300 Seminary Avenue<br>Ukiah, CA 95482                                   |
| CITY OF AZUSA<br>729 N. Azusa Avenue<br>Azusa, CA 91702   |   |   |

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

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

**1. 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 October 7, 2019 Regular Meeting Minutes**

**MONTHLY REPORTS**

**4. Operational Report for October 2019 – (Jeremy Lawson)**

**5. Market Data Report for October 2019 – Verbal Report (Zakary Liske)**

**6. Monthly Asset Report for September 2019 – (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 September 2019 – Accept by all Participants**

**9. Financial Report for September 2019 – Approve by all Participants**

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

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11. **Brown & Kysar, Inc. MTPSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Professional Services Agreement with Brown & Kysar, Inc. for engineering related 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. **Hatton Crane & Rigging, Inc. MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Hatton Crane & Rigging, Inc. for crane and rigging support services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.
13. **Contra Costa Electric, Inc. MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Contra Costa Electric, Inc. for electrical maintenance services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.
14. **CTi Controltech MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with CTi Controltech for boiler and burner maintenance services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.
15. **American Cooling Tower, Inc. MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with American Cooling Tower, Inc. for cooling tower maintenance services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.
16. **Process Innovations, Inc. MTCSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task Consulting Services Agreement with Process Innovations, Inc. for OSIsoft PI software support services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.
17. **Reliability Optimization, Inc. MTCSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task Consulting Services Agreement with Reliability Optimization, Inc. for predictive maintenance 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.
18. **RAM Mechanical, Inc. MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with RAM Mechanical, Inc. for general T&M mechanical maintenance 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.
19. **Custom Valve Solutions, Inc. dba Custom Valve Solutions MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Custom Valve Solutions, Inc. dba Custom Valve Solutions for machining services, with a not to exceed amount of \$1,500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.
20. **Farwest Insulation Contracting MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Farwest Insulation Contracting for

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insulation related services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.

- 21. Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy for chiller maintenance and inspection 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.
- 22. American Industrial Scaffolding, Inc. MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with American Industrial Scaffolding, Inc. for scaffolding and insulation 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.
- 23. Di Drill Survey Services, Inc. MTCSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task Consulting Services Agreement with Di Drill Survey Services, Inc. for labor and equipment for downhole wirelines services, with a not to exceed amount of \$1000,000, for use at all facilities owned and/or operated by NCPA.

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

#### **BUSINESS ACTION ITEMS**

- 24. FY2019 Annual Billing Settlements** – Staff is seeking a recommendation for approval of the FY2019 Annual Billing Settlements for the period of July 1, 2018 through June 30, 2019.
- 25. 2020 Major Insurance Renewal** – Staff is seeking a recommendation for approval of the NCPA Major Insurance renewals for 2020.

#### **INFORMATIONAL/ DISCUSSION ITEMS**

- 26. MSG Modeling Market Simulation** – Staff will provide an informational update on efforts to model LEC as a multi-stage generator in the CAISO's Fall market simulation.
- 27. Additional Operational Updates** – Staff will provide an update on issues related to Operations.

#### **ADJOURNMENT**

Next Regular Meeting: December 9, 2019 at 10:00 a.m.

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



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# LEC PPC Meeting Minutes

**Date:** October 7, 2019

**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 10:00am 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 - Robledo                | Present    | 2.7857%           |
| BART - Lloyd                   | Absent     | 6.6000%           |
| Biggs - Sorenson               | Present    | 0.2679%           |
| CDWR - Alqaser                 | Present    | 33.5000%          |
| Gridley - Borges               | Present    | 1.9643%           |
| Healdsburg - Crowley           | Absent     | 1.6428%           |
| Lodi - Chiang                  | Present    | 9.5000%           |
| Lompoc - Singh                 | Absent     | 2.0357%           |
| MID - Caballero                | Present    | 10.7143%          |
| Plumas-Sierra - Brozo          | Present    | 0.7857%           |
| PWRPA - Bradley                | Absent     | 2.6679%           |
| SVP - Hance                    | Present    | 25.7500%          |
| Ukiah - Grandi                 | Absent     | 1.7857%           |
| Summary                        |            |                   |
| Present                        | 8          | 85.2679%          |
| Absent                         | 5          | 14.7321%          |
| Quorum by #:                   | Yes        |                   |
| Quorum by GES:                 | Yes        |                   |

Meeting Date:

October 7, 2019

### **Public Forum**

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

### **3. Meeting Minutes**

The draft minutes from the September 9, 2019 Regular Meeting were considered. The LEC PPC considered the following motion:

**Date:** 10/7/2019

**Motion:** The PPC approves the minutes from the September 9, 2019 Regular Meeting as presented including any edits discussed at today's meeting.

**Moved by:**

**CDWR**

**Seconded by:**

**Lodi**

**Discussion:** There was no further discussion

| <b>Vote Summary on Motion</b> |               |                          |
|-------------------------------|---------------|--------------------------|
| <b>Participant</b>            | <b>Vote</b>   | <b>Particulars / GES</b> |
| Azusa                         | Yes           | 2.7857%                  |
| BART                          | Absent        | 6.6000%                  |
| Biggs                         | Yes           | 0.2679%                  |
| CDWR                          | Yes           | 33.5000%                 |
| Gridley                       | Yes           | 1.9643%                  |
| Healdsburg                    | Absent        | 1.6428%                  |
| Lodi                          | Yes           | 9.5000%                  |
| Lompoc                        | Absent        | 2.0357%                  |
| Modesto                       | Yes           | 10.7143%                 |
| Plumas-Sierra                 | Absent        | 0.7857%                  |
| PWRPA                         | Absent        | 2.6679%                  |
| Silicon Valley Power          | Yes           | 25.7500%                 |
| Ukiah                         | Absent        | 1.7857%                  |
|                               |               |                          |
| <b>Vote Summary</b>           |               |                          |
| Total Ayes                    | 7             | 84.4822%                 |
| Total Noes                    | 0             | 0.0000%                  |
| Total Abstain                 | 0             | 0.0000%                  |
| Total Absent                  | 6             | 15.5178%                 |
| Result:                       | Motion Passes |                          |

## **MONTHLY REPORTS**

### **4. Operational Reports for September 2019**

Jeremy Lawson presented the Operational Report for September 2019. There were no OSHA recordable accidents, no NERC/WECC or permit violations, and no forced outages. Jeremy Lawson mentioned a high temperature CT re-heater trip occurred on September 22nd. They reviewed the operational procedure to resolve the issue. The upcoming major outage for the CT main transformer replacement in May 2020 is still on tract. The 6 week CT major inspection may occur in the Spring or Fall of 2022, based on the number of starts at that time.

The operational report reflected monthly production of 76,527 MWH, 302 service hours, and equivalent operating availability of 99.9%. The report set for the Capacity Factor @ 302MW Pmax of 35.2%. There was 1 hot start, 6 warm starts, and 2 cold starts during the month.

### **5. Market Data Report for September 2019**

Zackary Liske presented the operating and financial settlement results for the month. LEC was committed to CAISO 18 out of 30 available days. Most startups were for mid to long-term runs with 7 24-hour runs in the month of September. Chairman Chiang mentioned we ran the same as the previous month.

### **6. Monthly Asset Report**

Michael DeBortoli presented the monthly asset report for August 2019 and included the new cumulative net cost slide. Michael mentioned the market is lower than forecasted. The month of August is good, however, not as good as the last two years.

### **7. Bidding Strategies Report**

Jesse Shields presented the Bidding Strategies Report for September 2019. 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 8-15)**

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:** 10/7/2019

**Motion:** The PPC approves the Consent Calendar items consisting of agenda items no.:  
**8.** GHG Reports (excerpted from Monthly ARB); **9.** Thatcher Company of

California, Inc. MTEMS for chemical purchases, not to exceed \$2,500,000 over five years, for use at all NCPA facilities; **10.** TEAM Industrial Services, Inc. MTGSA for specialty mechanical and inspection services, not to exceed \$500,000 over five years, for use at all NCPA facilities and Members/SCPPA; **11.** ANZGT Field Services, LLC MTGSA for gas turbine maintenance services, not to exceed \$2,500,000 over five years, for use at all NCPA facilities and Members/SCPPA; **12.** Environex, Inc. MTPSA for catalyst testing related services, not to exceed \$1,000,000 over five years, for use at all NCPA facilities and Members/SCPPA; **13.** Hill Brothers Chemical Company MTEMS for chemical purchases, not to exceed \$2,500,000 over five years, for use at all NCPA facilities; **14.** Matheson Tri-Gas, Inc. MTEMS for gases, welding supplies, and cylinder rental services, not to exceed \$1,000,000 over five years, for use at all NCPA facilities; **15.** Utilicast, LLC First Amendment to MTCSA, increasing the NTE from \$200,000 to \$1,000,000, for continued use at all NCPA facilities and Members/SCPPA.

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

**CDWR**  
**MID**

Discussion: There was no further discussion.

| <b>Vote Summary on Motion</b> |               |                          |
|-------------------------------|---------------|--------------------------|
| <b>Participant</b>            | <b>Vote</b>   | <b>Particulars / GES</b> |
| Azusa                         | Yes           | 2.7857%                  |
| BART                          | Absent        | 6.6000%                  |
| Biggs                         | Yes           | 0.2679%                  |
| CDWR                          | Yes           | 33.5000%                 |
| Gridley                       | Yes           | 1.9643%                  |
| Healdsburg                    | Absent        | 1.6428%                  |
| Lodi                          | Yes           | 9.5000%                  |
| Lompoc                        | Absent        | 2.0357%                  |
| Modesto                       | Yes           | 10.7143%                 |
| Plumas-Sierra                 | Absent        | 0.7857%                  |
| PWRPA                         | Absent        | 2.6679%                  |
| Silicon Valley Power          | Yes           | 25.7500%                 |
| Ukiah                         | Absent        | 1.7857%                  |
| <b>Vote Summary</b>           |               |                          |
| Total Ayes                    | 7             | 84.4822%                 |
| Total Noes                    | 0             | 0.0000%                  |
| Total Abstain                 | 0             | 0.0000%                  |
| Total Absent                  | 6             | 15.5178%                 |
| Result:                       | Motion Passes |                          |

## **BUSINESS ACTION ITEMS**

NONE.

### **INFORMATIONAL ITEMS**

#### **16. PG&E Negotiated Gas Transmission Rate Agreement Update**

Michael DeBortoli mentioned the new three year PG&E negotiated transmission rate agreement is in effect through 2022.

#### **17. FY2019 Annual Billing Settlements Review**

Sondra Ainsworth presented information on the FY2019 annual billing statement results. The preliminary results indicate higher generation than forecasted. The Committee was presented with details to O&M, Labor, Other Costs and Projects. Sondra shared net projected refund amounts for all LEC participants.

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Sondra shared the next steps with the Committee. Accounting will bring this back for approval at the November 4<sup>th</sup> LEC PPC Meeting. It will then be presented for approval at the December 5<sup>th</sup> Commission Meeting.

#### **18. Overview of FY2021 Budget Process and Approach**

Sondra Ainsworth presented the general budget review process, mission, vision, strategies and recommendations for the FY2020/21 budget, along with the timeline. Chairman Chiang asked for a comparison between the FY2019/2020 budget increase for salaries and benefits. Sondra reviewed and confirmed the projected target increase for the FY2021 budget is similar.

#### **19. Additional Operational Updates**

None.

### **Adjournment**

The next regular meeting of the PPC is scheduled for Monday November 4, 2019 at 10:00am.

The meeting was adjourned at 10:47am.

Submitted by: Melissa Conrad

# **Lodi Energy Center Project Participant Committee**

## **Operational Report**

**Agenda Item No.: 4**

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**Date:** 11/04/2019

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

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### **Safety**

- OSHA Recordable: 0 Accidents.

### **Notice of Violations**

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

### **Outage Summaries:**

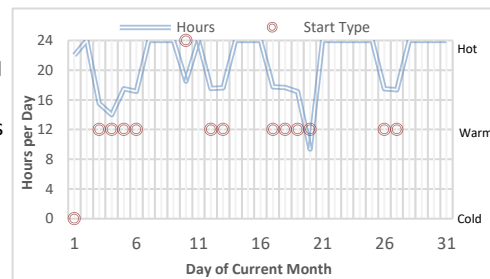
- None.

### **Planned Outage Summaries:**

- 2020 MAY – CTG Main Transformer Replacement
- 2022/2023 CT – Major Inspection (6 weeks outage)

**Generating Unit Statistics:****Date:** 10/1/2019

|  |         |       |
|--|---------|-------|
| 1. Monthly Production                      | 171,499 | MWH   |
| 2. Productivity Factor                     |         |       |
| a. Service Hours                           | 645     | Hours |
| b. Service Factor                          | 86.6%   | %     |
| c. Capacity Factor @ 302MW Pmax            | 76.3    | %     |
| 3. Equivalent Operating Availability (EOA) | 100.0   | %     |
| 4. Forced Outage Rate (FOR)                | 0.0     | %     |



|   |               |
|---|---------------|
| 5. Heat Rate Deviation                  |               |
| a. Fuel Cost (Not Current Market Price) | 4.00 \$/mmBTU |

| MW Range         | PMOA HR<br>BTU/kW-Hr | Average HR<br>BTU/kW-Hr | Deviation<br>% | Production<br>MWH | Cost<br>\$ |
|------------------|----------------------|-------------------------|----------------|-------------------|------------|
| Seg. 1 296 +     | 6850                 | 0                       | 0.00%          | 0                 | \$0        |
| Seg. 2 284 - 296 | 6870                 | 6,888                   | 0.26%          | 23,681            | \$1,703    |
| Seg. 3 275 - 284 | 6971                 | 6,922                   | -0.70%         | 88,774            | -\$17,333  |
| Seg. 4 250 - 275 | 7081                 | 6,962                   | -1.68%         | 38,705            | -\$18,422  |
| Seg. 5 225 - 250 | 7130                 | 6,999                   | -1.83%         | 13,100            | -\$6,853   |
| Seg. 6 200 - 225 | 7200                 | 7,120                   | -1.12%         | 2,407             | -\$774     |
| Seg. 7 175 - 225 | 7450                 | 7,377                   | -0.99%         | 704               | -\$207     |
| Seg. 8 165 - 175 | 7760                 | 7,698                   | -0.80%         | 335               | -\$83      |
|                  | 7,164                | 7,138                   | -1.19%         | 167,706           | -\$41,969  |

## 6. AGC Control Deviation

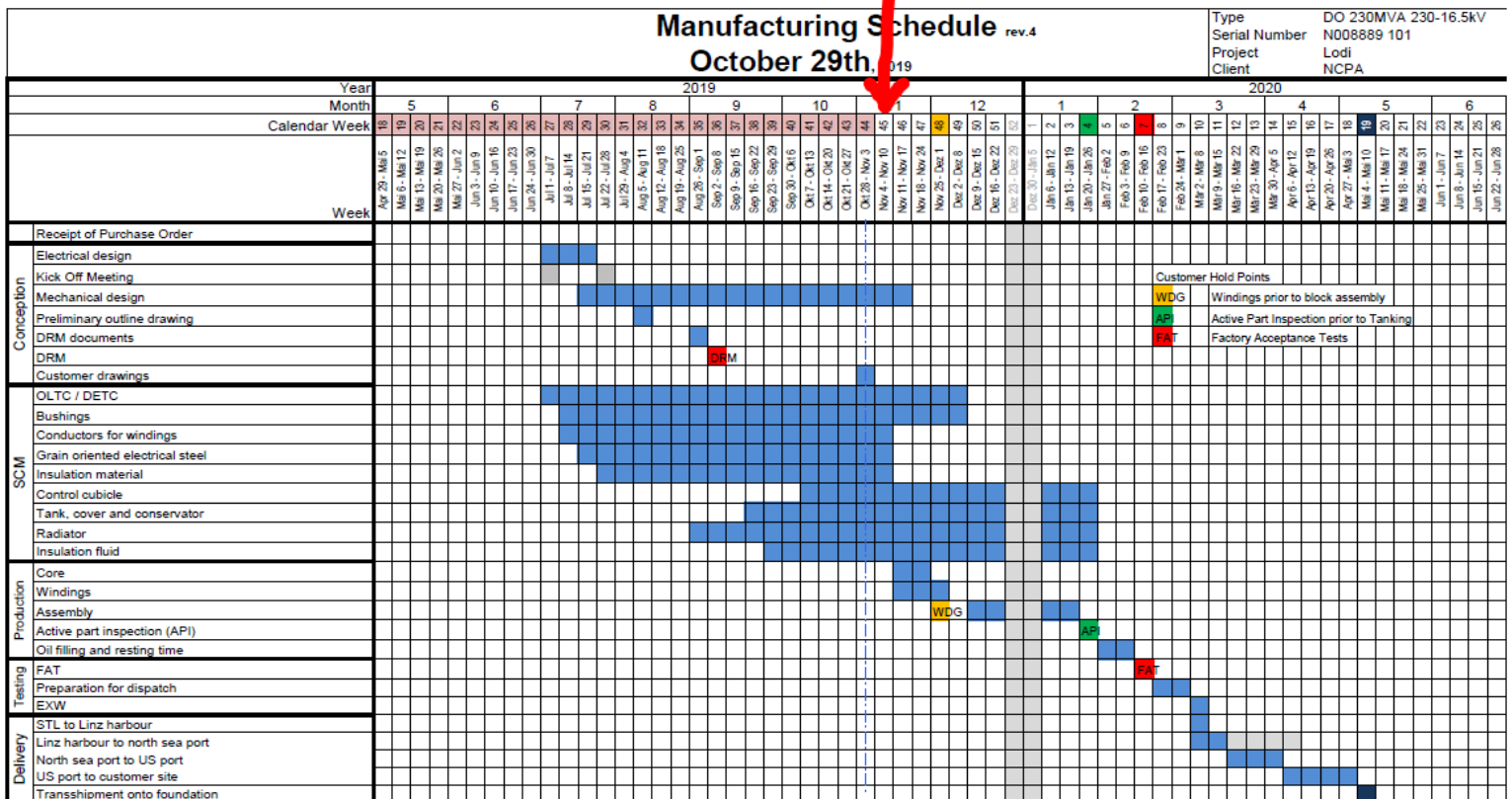
| MW Range         | High Dev<br>MWH | Low Dev<br>MWH | Total Dev<br>MWH | Cost<br>\$ |
|------------------|-----------------|----------------|------------------|------------|
| Seg. 1 296 +     | 0               | 0              | 0                | \$0        |
| Seg. 2 284 - 296 | 0               | 0              | 0                | \$0        |
| Seg. 3 275 - 284 | 0               | -34            | 34               | \$942      |
| Seg. 4 250 - 275 | 3               | -11            | 14               | \$391      |
| Seg. 5 225 - 250 | 2               | -3             | 5                | \$129      |
| Seg. 6 200 - 225 | 1               | -5             | 6                | \$163      |
| Seg. 7 175 - 225 | 0               | -9             | 9                | \$272      |
| Seg. 8 165 - 175 | 0               | 0              | 0                | \$5        |
|                  | 6               | -62            | 68               | \$1,902    |

## 7. Starting Reliability

| Start Type                         | Hot Starts | Warm Starts | Cold Starts |
|------------------------------------|------------|-------------|-------------|
| Number of Starts                   | 1          | 12          | 1           |
| Start Time Benchmark (Minutes)     | 75         | 110         | 200         |
| Start Time Actual (Average Minute) | 86         | 76          | 193         |
| Start Time Deviation (%)           | 15%        | -31%        | -4%         |
| Start Fuel Benchmark PMOA (mmBTU)  | 1,300      | 1,800       | 3,500       |
| Start Fuel Actual (Average mmBTU)  | 1,647      | 1,404       | 3,984       |
| Fuel Deviation (%)                 | 27%        | -22%        | 14%         |
| Costs of Fuel Deviations (\$)      | \$1,387    | -\$18,992   | \$1,935     |

Pre-Filter Change Out







# **LEC PPC Meeting**

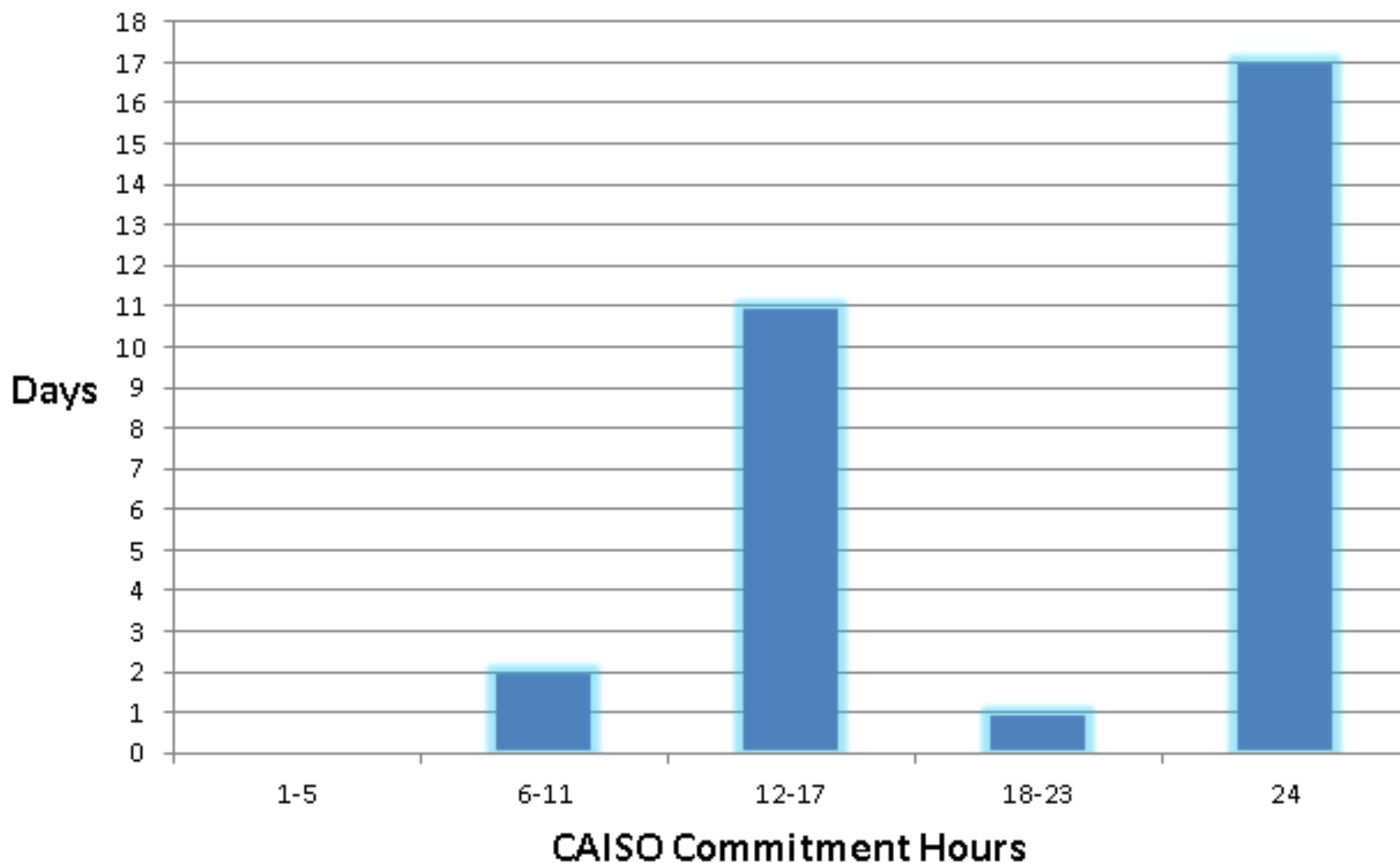
**November 4, 2019**

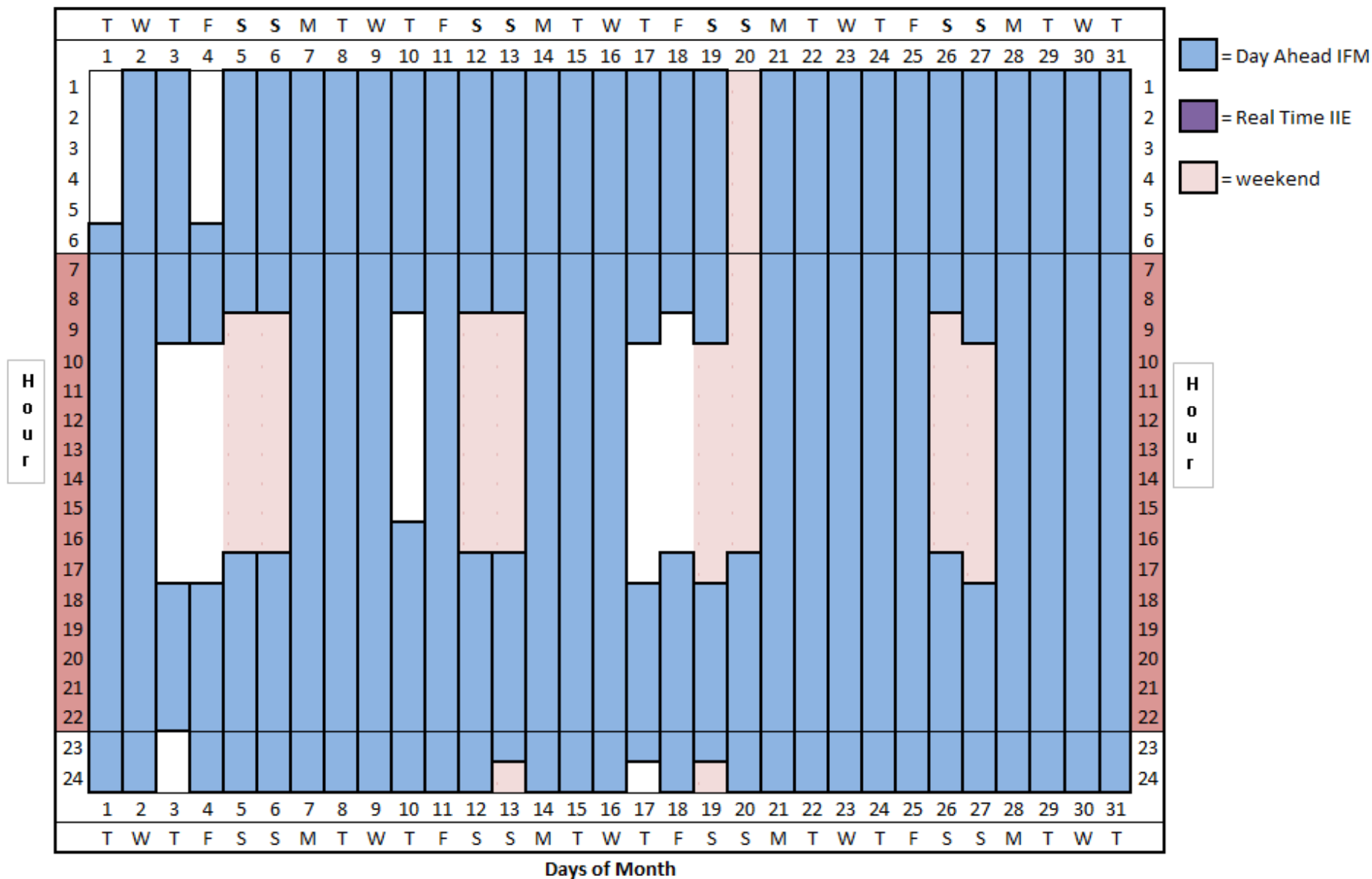
**October 2019 Market Financial Results**

## LEC Operational Results for October 2019

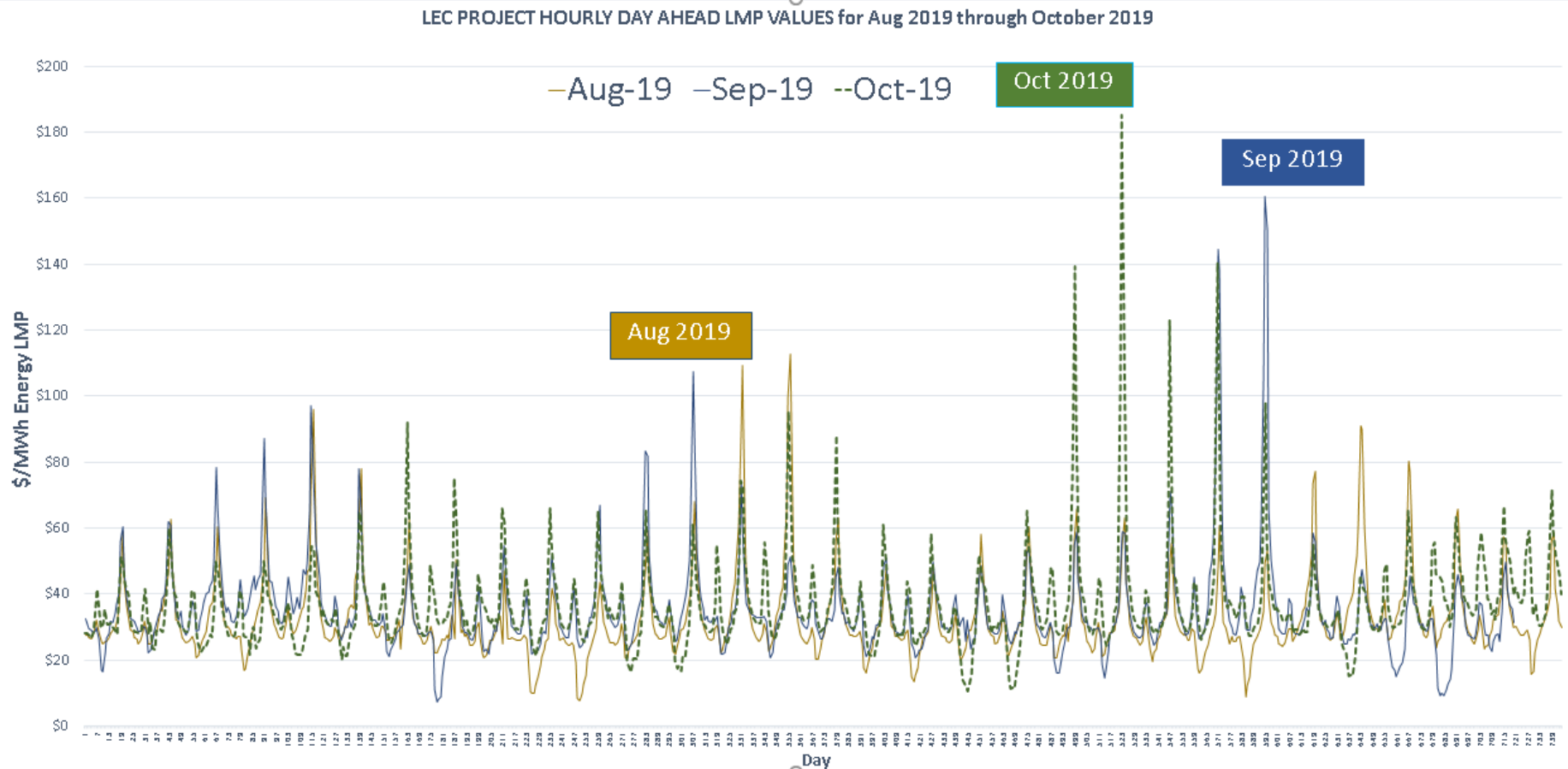
- Resource Adequacy Availability Metrics:
  - 100% - Monthly Assessment Generic Performance
  - 100% - Monthly Assessment Flexible Performance
  - Vs
  - 96.5% Availability Standard
- ***Estimated*** RAAIM Incentive Payment amounts:
  - \$21,900 for Generic RA based on claimed 128.51 mw
  - \$9,600 for Flexible RA based on claimed 58.08 mw
- LEC was committed by CAISO for Market energy 31 of 31 available days
  - 0 days not committed due to planned/forced outage
  - 0 days not committed due to economics

## Frequency Tabulation of Daily CAISO commitment hours for October 2019

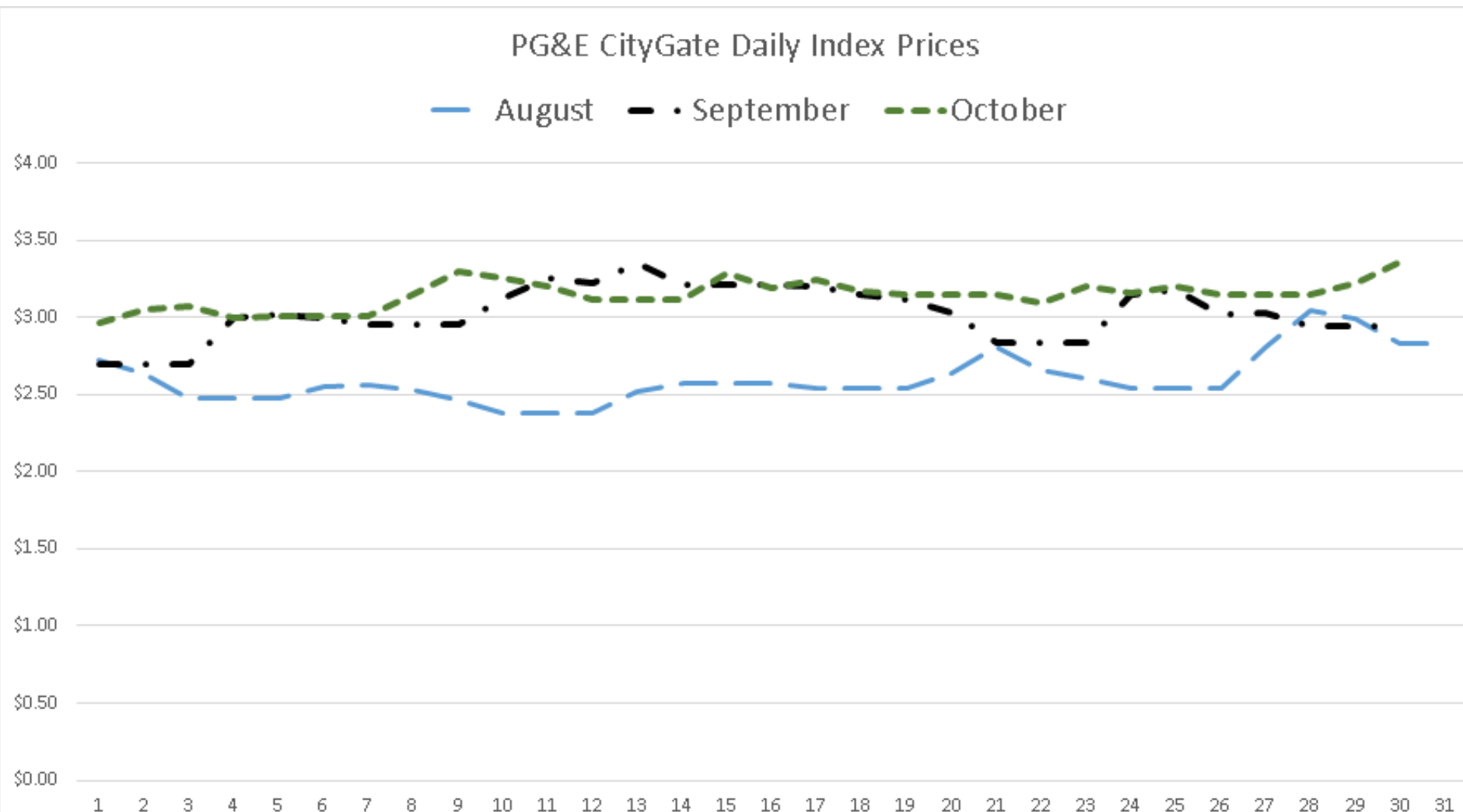




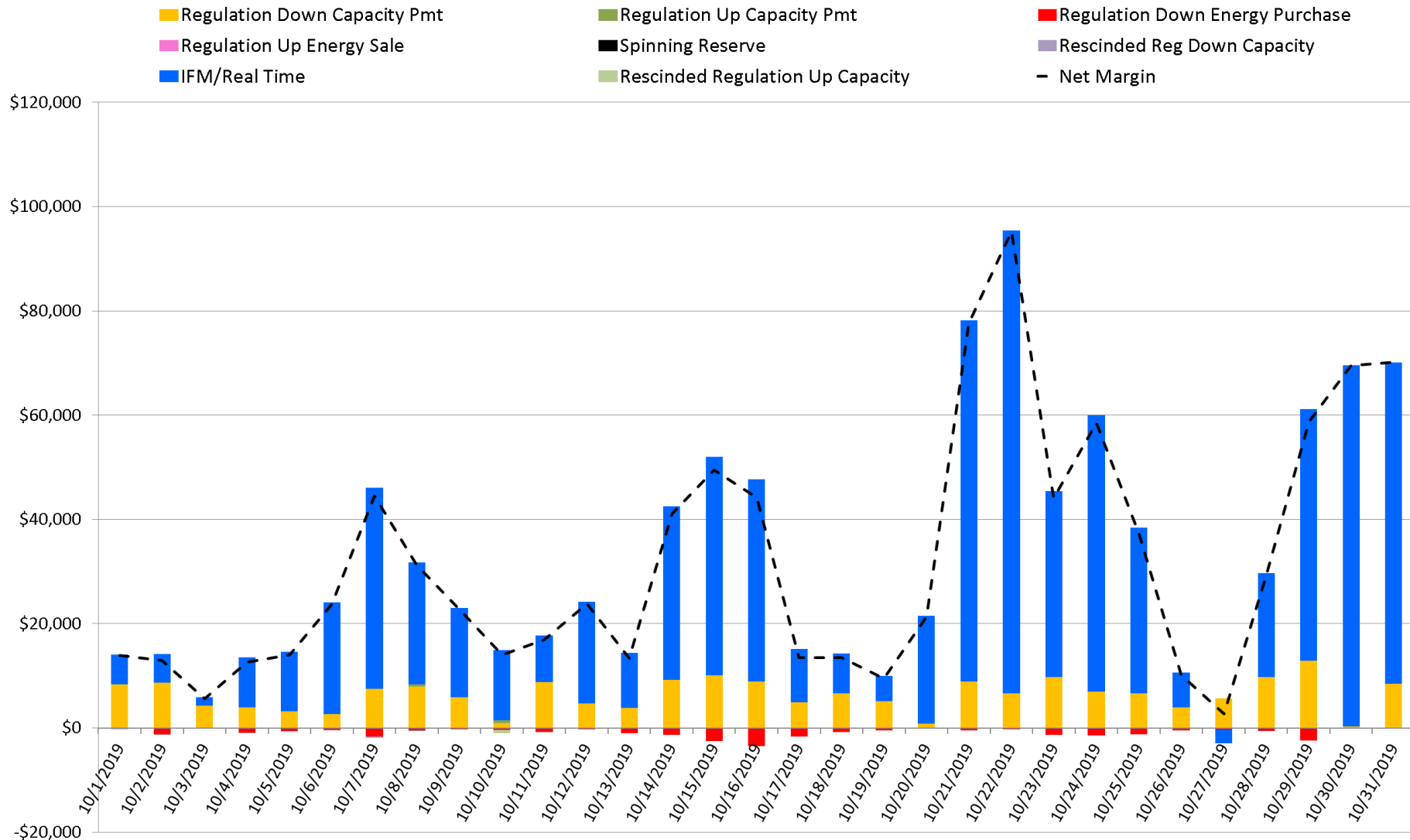
# October 2019 Day Ahead Energy LMP values experienced several high peak prices



# October 2019 Daily PG&E CityGate Gas Index edged a little higher from past months



# October 2019 LEC Daily Margin Profile by Product



## October 2019 LEC Project Cumulative Monthly Margin

|  |                |                |
|--|----------------|----------------|
| IFM/RTM Gross Revenues                 | \$ 6,910,100   |                |
| Regulation Up Capacity                 | \$ 1,000       |                |
| Regulation Down Capacity               | \$ 195,900     |                |
| Spinning Reserve                       | \$ -           |                |
| Total Gross LEC Revenue                |                | \$ 7,107,000   |
| LEC CAISO GMC Costs                    | \$ (70,600)    |                |
| CAISO Energy & Capacity Buyback Costs  | \$ (161,800)   |                |
| Total Monthly LEC Fuel Cost            | \$ (4,124,800) |                |
| Total Monthly GHG Obligation           | \$ (1,122,000) |                |
| Variable Operations & Maintenance Cost | \$ (538,700)   |                |
| Total Costs                            |                | \$ (6,017,900) |
| Net Cumulative Monthly Margin          |                | \$ 1,089,100   |
| Average Margin \$/MWh                  | \$             | 6.4            |

# Comparison of Day Ahead Congestion LEC vs NP15 Trade Hub

Net\_Amount by Day

● Increase ● Decrease ● Total

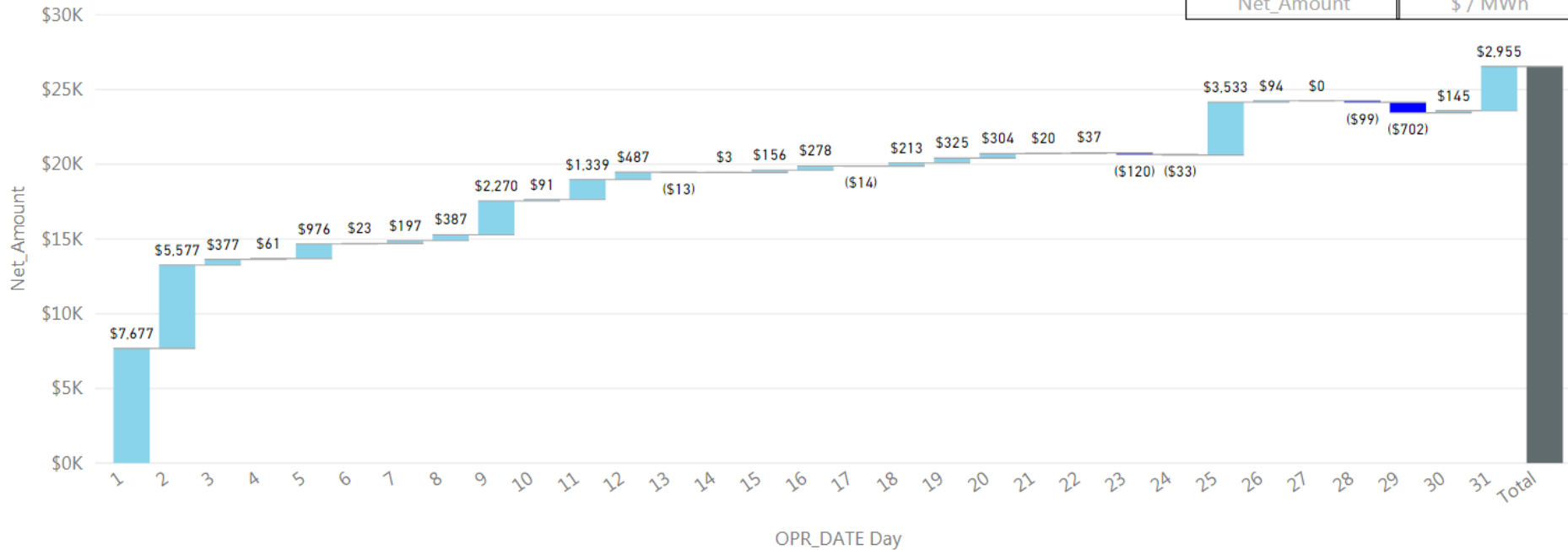
Cost of Congestion Component

**\$26.5K**

Net\_Amount

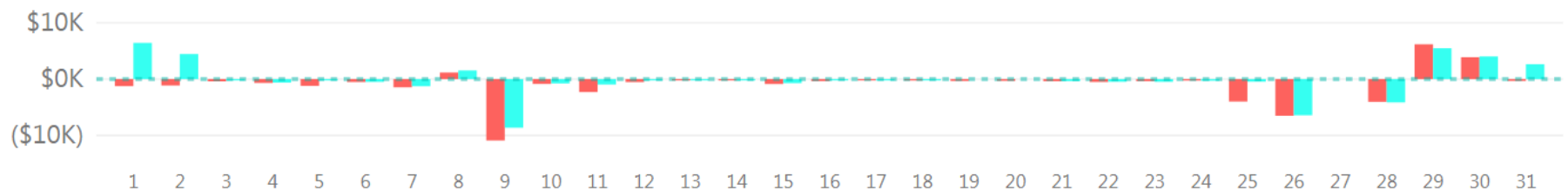
**\$0.16**

\$ / 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

● Increase ● Decrease ● Total

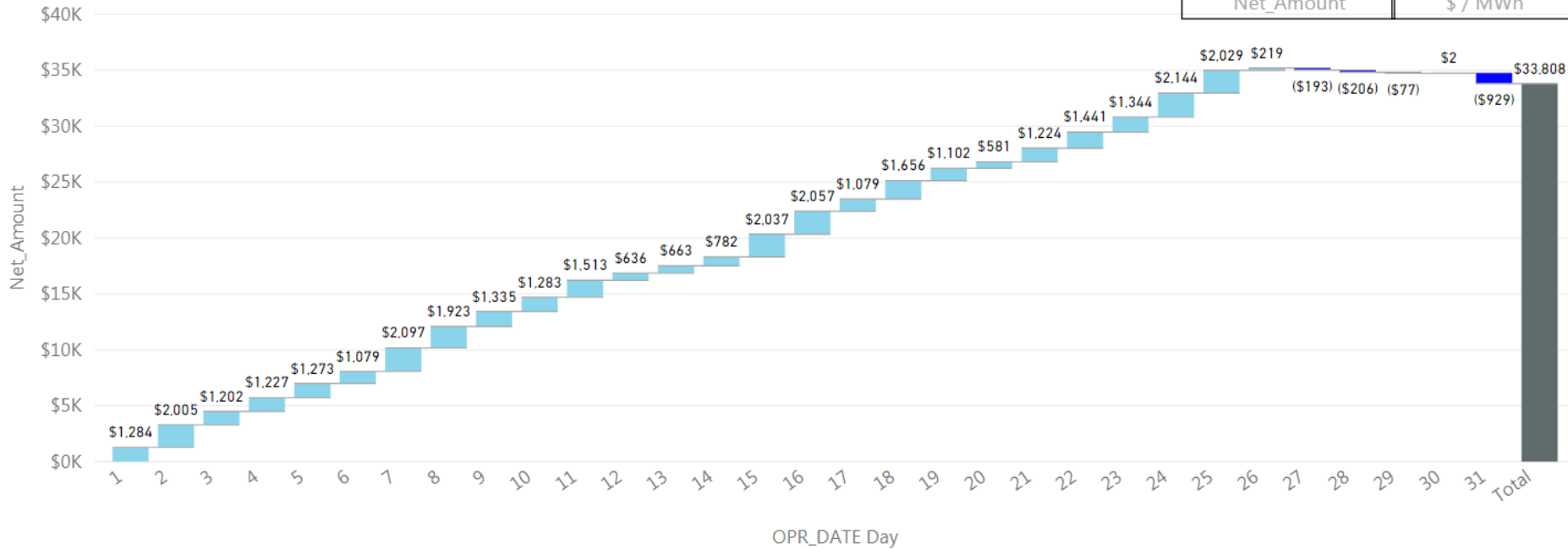
Cost of Loss Component

**\$33.8K**

Net\_Amount

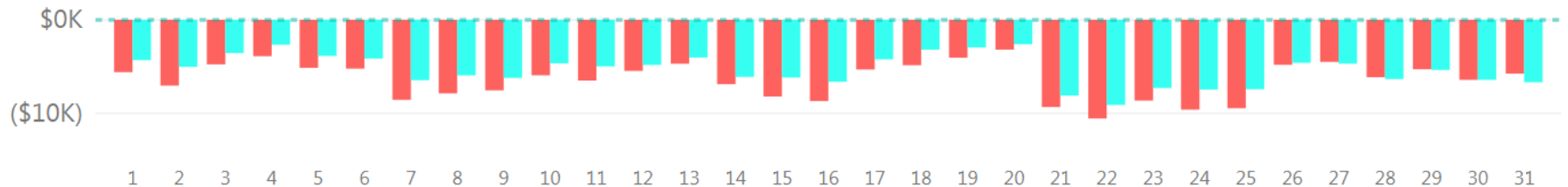
**\$0.20**

\$ / MWh



NP15\_Cost and LEC\_Cost by Day

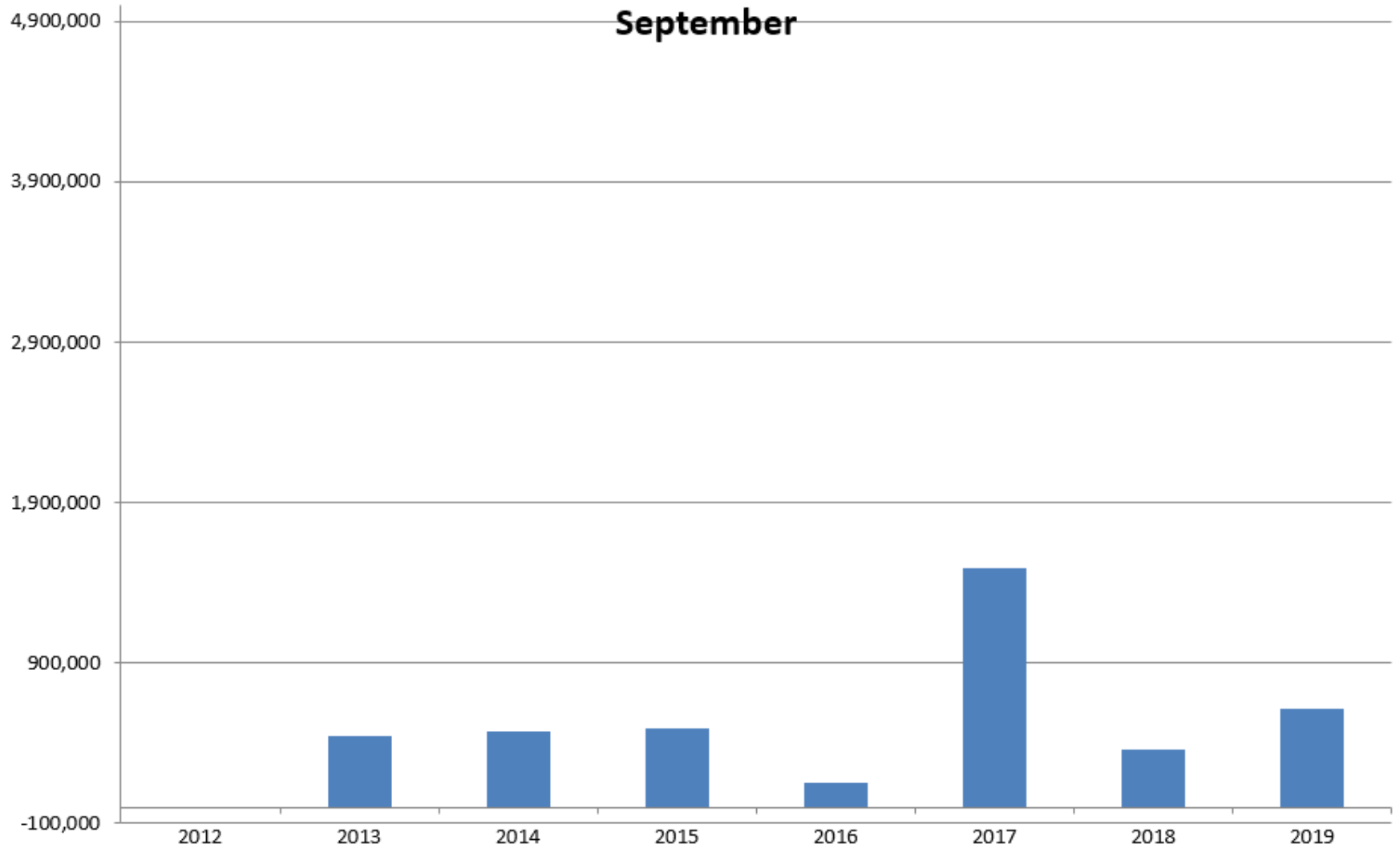
● NP15\_Cost ● LEC\_Cost



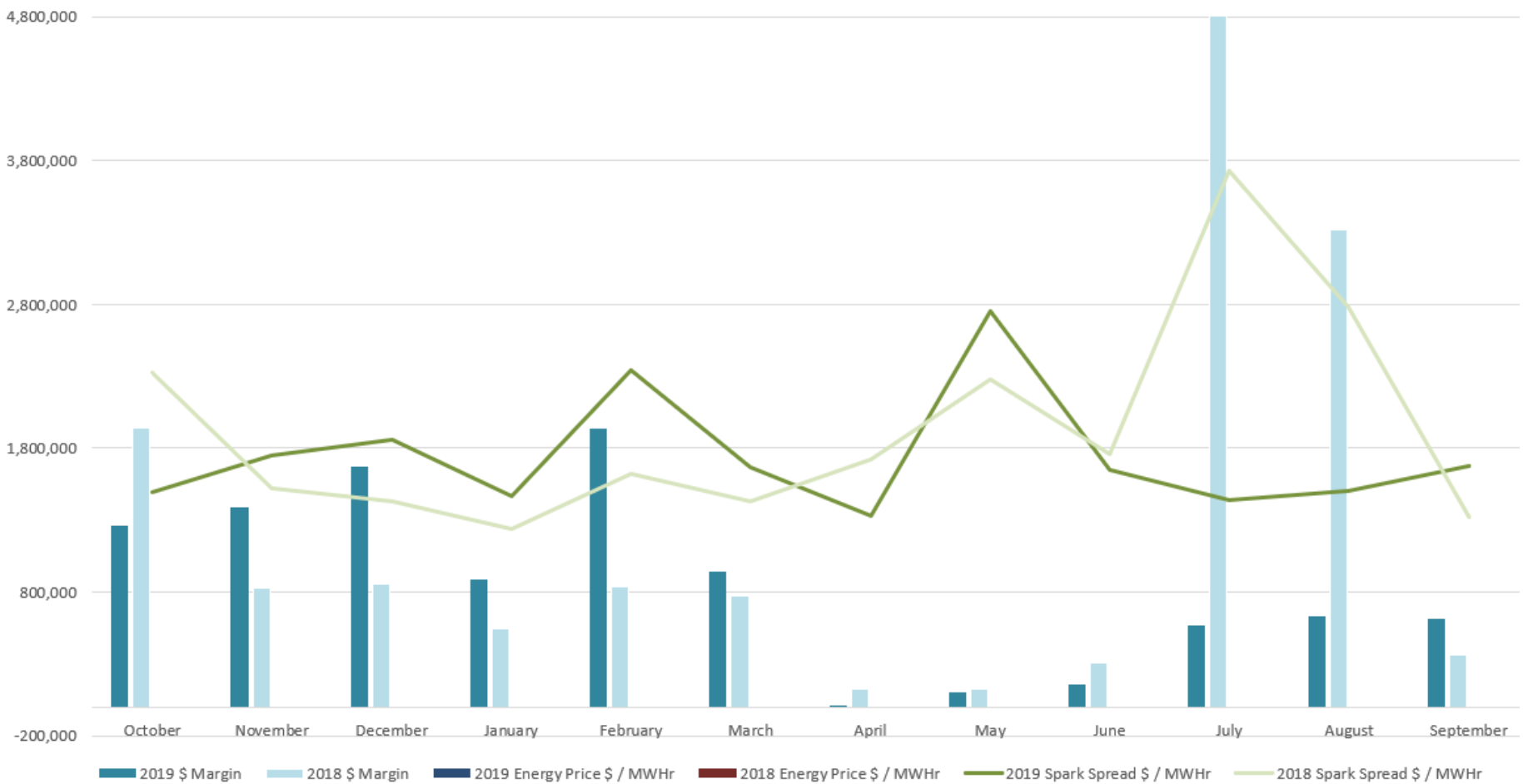
# September Asset Report

|                    |             | Most Recent  |              | Above /<br>(below)        | Percent<br>Difference |   |
|--------------------|-------------|--------------|--------------|---------------------------|-----------------------|---|
|                    | Actual      | Forecast     | Budget       | Forecast                  | Above /<br>(below)    |   |
| Revenue            | 3,346,118   | 4,837,302    | 9,942,821    | (1,491,184)               | -31%                  | Less operations                                     |
| VOM                | 2,624,722   | 4,046,091    | 6,584,214    | (1,421,368)               | -35%                  |   |
| Fixed              | 909,568     | 768,768      | 792,972      | 140,800                   | 18%                   | Minor additional work,<br>PLC, UF Filter, Aux Power |
| Projects           | 124,681     | 124,681      | 707,853      | (0)                       | 0%                    |   |
| A&G                | 172,362     | 203,798      | 203,798      | (31,436)                  | -15%                  |   |
| Debt               | 2,171,202   | 2,171,202    | 2,171,202    | (0)                       | 0.00%                 |   |
| Net Cost           | (2,656,417) | (2,477,237)  | (517,218)    | (179,180)                 | 7%                    |   |
|                    |             |              |              |                           |                       |   |
| Net Annual<br>Cost |             | (37,890,000) | (29,095,641) | (\$8,794,359)             |                       | Revised forecast improve<br>overall result          |
|                    |             |              |              | Above budget<br>by 30.23% |                       |   |

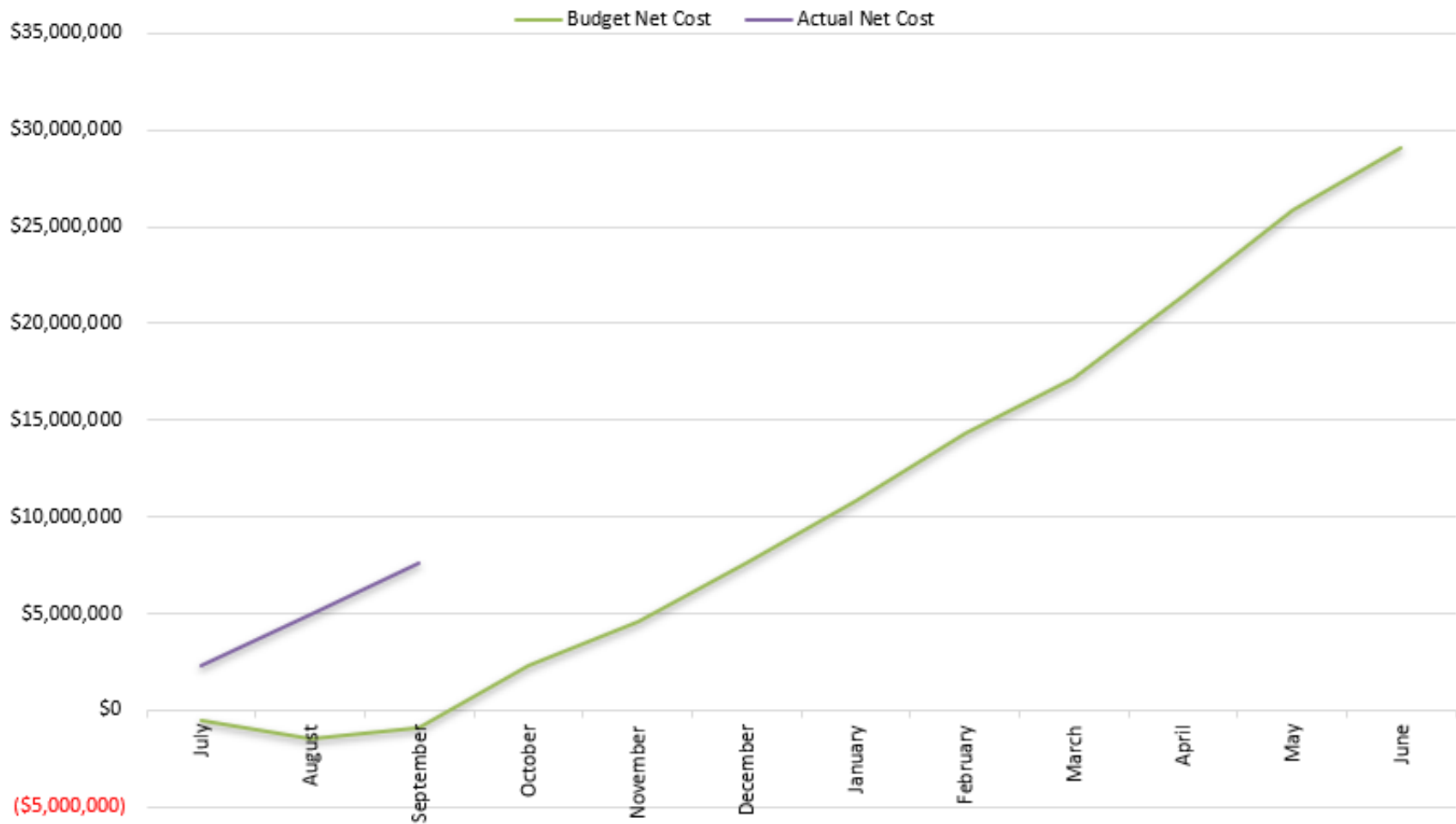
# Historical Margins



### Historical Monthly Comparison



### Cummulative Net Cost



Lodi Energy Center  
Monthly Budget Analysis  
Expenditures  
Report Date: 10/24/2019

|                                      | July          | August        | September     | October       | November      | December      | January       | February      | March         | April         | May           | June          | Year           | FY2020<br>Budget | Percent Used           | Comments  |
|--------------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|----------------|------------------|------------------------|---|
| VOM                                  | 2,772,444     | 3,225,558     | 2,624,722     | 3,913,314     | 4,565,279     | 6,671,709     | 7,953,783     | 5,542,213     | 2,583,621     | 1,263,366     | 1,989,925     | 4,256,824     | 47,362,758     | 58,722,261       | 80.7%                  |   |
| Capacity Factor                      | 44%           | 44%           | 35%           | 33%           | 63%           | 89%           | 92%           | 79%           | 30%           | 7%            | 15%           | 66%           | 50%            | 65%              | 76.3%                  |   |
| Fuel Consumed (mmBTU, estimated)     | 714,247       | 730,946       | 553,405       | 512,955       | 933,648       | 1,366,808     | 1,422,889     | 1,138,292     | 466,793       | 97,092        | 229,180       | 979,872       | 9,146,127      | 10,956,328       | 83.5%                  |   |
| Avg Fuel Cost (\$/mmBTU)             | 3.13          | 3.03          | 3.45          | 3.49          | 3.26          | 3.37          | 3.33          | 3.32          | 3.93          | 4.05          | 3.74          | 2.84          | 3.30           | 3.60             | 91.6%                  |   |
| Power Produced (MWhr, estimated)     | 98,359        | 99,594        | 76,532        | 74,884        | 136,299       | 199,534       | 207,721       | 166,174       | 68,145        | 14,174        | 33,457        | 143,047       | 1,317,920      | 1,599,464        | 82.4%                  |   |
| Avg Power Price (\$/MWhr)            | 39.94         | 40.07         | 43.72         | 42.01         | 36.47         | 41.63         | 41.45         | 40.93         | 42.50         | 42.28         | 40.86         | 37.91         | 40.51          | 45.39            | 89.2%                  |   |
| Operations / Variable / LTSA         | -121,438      | 147,423       | 108,211       | 1,148,011     | 192,031       | 273,156       | 1,327,463     | 234,565       | 118,838       | 762,680       | 900,749       | 557,643       | 5,649,330      | 5,381,630        | 105.0%                 |   |
| Fuel (estimated)                     | 2,236,397     | 2,215,007     | 1,909,046     | 1,789,301     | 3,045,831     | 4,601,561     | 4,734,378     | 3,776,024     | 1,833,396     | 393,275       | 856,043       | 2,787,083     | 30,177,343     | 39,476,805       | 76.4%                  |   |
| AB32 GHG Offset (estimated)          | 672,330       | 691,213       | 517,581       | 470,421       | 856,230       | 1,253,473     | 1,346,032     | 1,076,808     | 441,580       | 91,848        | 216,801       | 926,945       | 8,561,261      | 9,153,594        | 93.5%                  |   |
| CA ISO Charges (estimated)           | -14,846       | 171,915       | 89,884        | 505,580       | 471,187       | 543,519       | 545,910       | 454,816       | 189,806       | 15,564        | 16,332        | -14,846       | 2,974,823      | 4,710,232        | 63.2%                  |   |
| Routine O&M (Fixed)                  | 996,862       | 1,042,833     | 909,568       | 768,768       | 812,049       | 1,106,092     | 1,094,373     | 813,293       | 737,049       | 768,768       | 1,064,965     | 1,072,049     | 11,186,666     | 10,961,591       | 102.1%                 |   |
| Maintenance / Fixed                  | 391,756       | 237,917       | 310,680       | 208,424       | 208,424       | 208,424       | 208,424       | 208,424       | 208,424       | 208,424       | 208,424       | 208,424       | 2,816,171      | 2,646,090        | 106.4%                 | Aux Power, PLC Integration, I/O Cards, UF Filte |
| Administration                       | 4,543         | 18,198        | 17,869        | 17,487        | 17,487        | 17,487        | 17,487        | 17,487        | 17,487        | 17,487        | 17,487        | 17,487        | 197,994        | 209,845          | 94.4%                  |   |
| Mandatory Costs                      | 32,062        | 89,598        | 45,292        | 15,475        | 15,475        | 15,475        | 15,475        | 60,000        | 15,475        | 15,475        | 15,475        | 15,475        | 350,752        | 304,750          | 115.1%                 |   |
| Inventory Stock                      | 0             | 0             | 0             | 0             | 0             | 0             | 0             | 0             | 0             | 0             | 0             | 0             | 0              | -                | 0.0%                   |   |
| Labor                                | 448,571       | 552,843       | 415,797       | 396,719       | 440,000       | 396,719       | 385,000       | 396,719       | 365,000       | 396,719       | 692,916       | 700,000       | 5,587,004      | 5,558,310        | 100.5%                 | Slightly more work at LEC than CT1/2            |
| Insurance                            | 0             | 0             | 0             | 0             | 0             | 337,324       | 337,324       | 0             | 0             | 0             | 0             | 0             | 674,648        | 674,648          | 100.0%                 |   |
| Power Management & Settlements       | 119,930       | 119,930       | 119,930       | 119,930       | 119,930       | 119,930       | 119,930       | 119,930       | 119,930       | 119,930       | 119,930       | 119,930       | 1,439,157      | 1,439,156        | 100.0%                 |   |
| Other Costs                          | 0             | 24,347        | 0             | 10,733        | 10,733        | 10,733        | 10,733        | 10,733        | 10,733        | 10,733        | 10,733        | 10,733        | 120,941        | 128,792          | 93.9%                  |   |
| Projects                             | 124,681       | 124,681       | 124,681       | 124,681       | 324,681       | 999,439       | 124,681       | 1,291,024     | 124,681       | 124,681       | 1,136,950     | 124,681       | 4,749,543      | 5,332,715        | 89.1%                  |   |
| Maintenance Reserve                  | 124,681       | 124,681       | 124,681       | 124,681       | 124,681       | 124,681       | 124,681       | 124,681       | 124,681       | 124,681       | 124,681       | 124,681       | 1,496,174      | 1,496,174        | 100.0%                 |   |
| Operations & Maintenance Projects    | 0             | 0             | 0             | 0             | 200,000       | 0             | 0             | 0             | 0             | 0             | 720,683       | 0             | 920,683        | 920,683          | 100.0%                 |   |
| Capital Projects                     | 0             | 0             | 0             | 0             | 0             | 874,757       | 0             | 1,166,343     | 0             | 0             | 291,586       | 0             | 2,332,686      | 2,915,858        | 80.0%                  |   |
| A&G                                  | 202,865       | 223,945       | 172,362       | 203,798       | 203,798       | 203,798       | 203,798       | 203,798       | 203,798       | 203,798       | 203,798       | 203,798       | 2,433,353      | 2,445,575        | 99.5%                  |   |
| Administrative & General (Allocated) | 174,966       | 186,176       | 135,492       | 175,483       | 175,483       | 175,483       | 175,483       | 175,483       | 175,483       | 175,483       | 175,483       | 175,483       | 2,075,978      | 2,105,792        | 98.6%                  |   |
| Generation Services Shared           | 27,899        | 37,769        | 36,870        | 28,315        | 28,315        | 28,315        | 28,315        | 28,315        | 28,315        | 28,315        | 28,315        | 28,315        | 357,375        | 339,783          | 105.2%                 |   |
| Total O&M Cost                       | 4,096,852     | 4,617,017     | 3,831,333     | 5,010,561     | 5,905,807     | 8,981,037     | 9,376,635     | 7,850,328     | 3,649,148     | 2,360,612     | 4,395,638     | 5,657,352     | 65,732,320     | 77,462,142       | 84.9%                  |   |
| Debt Service                         | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 2,171,202     | 26,054,427     | 26,054,428       | 100.0%                 |   |
| Revenues                             | 3,928,611     | 3,990,879     | 3,514,451     | 3,336,970     | 5,111,510     | 8,497,197     | 8,809,917     | 6,920,431     | 2,912,166     | 603,645       | 1,392,638     | 5,461,503     | 54,479,919     | 74,420,929       | 73.2%                  |   |
| ISO Energy Sales (estimated)         | 3,928,611     | 3,990,879     | 3,346,118     | 3,145,749     | 4,970,294     | 8,305,670     | 8,609,887     | 6,802,066     | 2,896,255     | 599,314       | 1,367,017     | 5,423,183     | 53,385,044     | 72,602,551       | 73.5%                  |   |
| Other Income                         | 0             | 0             | 168,333       | 191,221       | 141,215       | 191,528       | 200,030       | 118,366       | 15,911        | 4,331         | 25,621        | 38,320        | 1,094,874      | 1,818,378        |                        |   |
| Net                                  | (\$2,339,443) | (\$2,797,339) | (\$2,488,084) | (\$3,844,793) | (\$2,965,500) | (\$2,655,042) | (\$2,737,920) | (\$3,101,099) | (\$2,908,184) | (\$3,928,170) | (\$5,174,202) | (\$2,367,052) | (\$37,306,828) | (\$29,095,641)   | Above budget by 28.22% |   |



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# LEC Treasurer's Report

AGENDA ITEM NO.: 8

**Date:** November 4, 2019

**To:** LEC Project Participant Committee

**Subject:** Treasurer's Report for the Month Ended September 30, 2019

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

Cash - At month end cash totaled \$43,318.

Investments - The carrying value of the LEC's investment portfolio totaled \$32,811,895 at month end. The current market value of the portfolio totaled \$32,784,198.

The overall portfolio had a combined weighted average interest rate of 1.785% with a bond equivalent yield (yield to maturity) of 1.630%. Investments with a maturity greater than one year totaled \$9,205,000. During the month \$4,706,859 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 decreased 11 basis points (from 1.99% to 1.88%) and rates on one year T-Bills increased 4 basis points (from 1.75% to 1.79%).

To the best of my knowledge and belief, all securities held by LEC as of September 30, 2019 are in compliance with the Agency's investment policy. There are adequate cash flow and investment maturities to meet next month's cash requirements.

## Environmental Analysis

The Treasurer's report will not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 of the California Environmental Quality Act. No environmental review is necessary.

Respectfully submitted,

MONTY HANKS  
Assistant General Manager/CFO  
Administrative Services/Finance

Prepared by:

SONDRA AINSWORTH  
Treasurer-Controller

Attachments

# **LODI ENERGY CENTER**

## **TREASURER'S REPORT**

**SEPTEMBER 30, 2019**

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Northern California Power Agency/Lodi Energy Center  
Treasurer's Report  
Cash & Investment Balance  
September 30, 2019

|  | CASH      | INVESTMENTS   | TOTAL         | PERCENT | INVESTMENTS<br>at MARKET |
|--|-----------|---------------|---------------|---------|--------------------------|
| <b>MANDATORY FUNDS</b>                   |           |               |               |         |                          |
| Debt Service Account                     | \$ 879    | \$ 8,896,024  | \$ 8,896,903  | 27.07%  | \$ 8,896,451             |
| Debt Service Reserve                     | -         | 12,423,098    | 12,423,098    | 37.81%  | 12,409,816               |
| O & M Reserve                            | -         | 11,418,130    | 11,418,130    | 34.75%  | 11,403,288               |
|  | 879       | 32,737,252    | 32,738,131    | 99.63%  | 32,709,555               |
| <b>ADDITIONAL PROJECT FUNDS</b>          |           |               |               |         |                          |
| GHG Cash Account                         | -         | 74,643        | 74,643        | 0.23%   | 74,643                   |
| Transmission Upgrade Escrow <sup>1</sup> | 42,439    | -             | 42,439        | 0.13%   | -                        |
| Participant Deposit Account              | -         | -             | -             | 0.00%   | -                        |
|  | \$ 43,318 | \$ 32,811,895 | \$ 32,855,213 | 99.99%  | \$ 32,784,198            |

NOTE A -Investment amounts shown at book carrying value.

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

**Northern California Power Agency/Lodi Energy Center**  
**Treasurer's Report**  
**Cash Activity Summary**  
**September 30, 2019**

|  | RECEIPTS    |                      |                         | EXPENDITURES |                         |                                  | CASH                     |
|--|-------------|----------------------|-------------------------|--------------|-------------------------|----------------------------------|--------------------------|
|  | OPS/CONSTR  | INTEREST<br>(NOTE B) | INVESTMENTS<br>(NOTE A) | OPS/CONSTR   | INVESTMENTS<br>(NOTE B) | INTER-COMPANY/<br>FUND TRANSFERS | INCREASE /<br>(DECREASE) |
| <b>MANDATORY FUNDS</b>                   |             |                      |                         |              |                         |                                  |                          |
| Debt Service Account                     | \$ -        | \$ 503               | \$ 560                  | \$ -         | \$ (2,171,799)          | \$ 2,171,202                     | \$ 466                   |
| Debt Service Reserve                     | -           | 3                    | -                       | -            | (3)                     | -                                | -                        |
| O & M Reserve                            | -           | 35,057               | 2,500,000               | -            | (2,535,057)             | -                                | -                        |
|  | -           | 35,563               | 2,500,560               | -            | (4,706,859)             | 2,171,202                        | 466                      |
| <b>ADDITIONAL PROJECT FUNDS</b>          |             |                      |                         |              |                         |                                  |                          |
| GHG Cash Account                         | -           | -                    | -                       | -            | -                       | -                                | -                        |
| Transmission Upgrade Escrow <sup>1</sup> | -           | 7                    | -                       | -            | -                       | -                                | 7                        |
| Participant Deposit Account              | -           | -                    | -                       | -            | -                       | -                                | -                        |
| <b>TOTAL</b>                             | <b>\$ -</b> | <b>\$ 35,570</b>     | <b>\$ 2,500,560</b>     | <b>\$ -</b>  | <b>\$ (4,706,859)</b>   | <b>\$ 2,171,202</b>              | <b>\$ 473</b>            |

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

**NOTE B -Net of accrued interest purchased on investments.**

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

Northern California Power Agency/Lodi Energy Center  
Treasurer's Report  
Investment Activity Summary  
September 30, 2019

|                                 | PURCHASED           | SOLD OR<br>MATURED    | (NON-CASH)<br>DISC/(PREM)<br>AMORT | (NON-CASH)<br>GAIN/(LOSS)<br>ON SALE | INVESTMENTS |                          |
|---------------------------------|---------------------|-----------------------|------------------------------------|--------------------------------------|-------------|--------------------------|
|                                 |                     |                       |                                    |                                      | TRANSFERS   | INCREASE /<br>(DECREASE) |
| <b>MANDATORY FUNDS</b>          |                     |                       |                                    |                                      |             |                          |
| Debt Service Account            | \$ 2,171,799        | (560)                 | \$ 10,655                          | \$ -                                 | \$ -        | \$ 2,181,894             |
| Debt Service Reserve            | 3                   | -                     | (1,640)                            | -                                    | -           | (1,637)                  |
| O & M Reserve                   | 2,535,057           | (2,500,000)           | (62)                               | -                                    | -           | 34,995                   |
|                                 | <u>4,706,859</u>    | <u>(2,500,560)</u>    | <u>8,953</u>                       | <u>-</u>                             | <u>-</u>    | <u>2,215,252</u>         |
| <b>ADDITIONAL PROJECT FUNDS</b> |                     |                       |                                    |                                      |             |                          |
| GHG Cash Account                | -                   | -                     | -                                  | -                                    | -           | -                        |
| Participant Deposit Acct.       | -                   | -                     | -                                  | -                                    | -           | -                        |
| <b>TOTAL</b>                    | <u>\$ 4,706,859</u> | <u>\$ (2,500,560)</u> | <u>\$ 8,953</u>                    | <u>\$ -</u>                          | <u>\$ -</u> | <u>\$ 2,215,252</u>      |

Less Non- Cash Activity

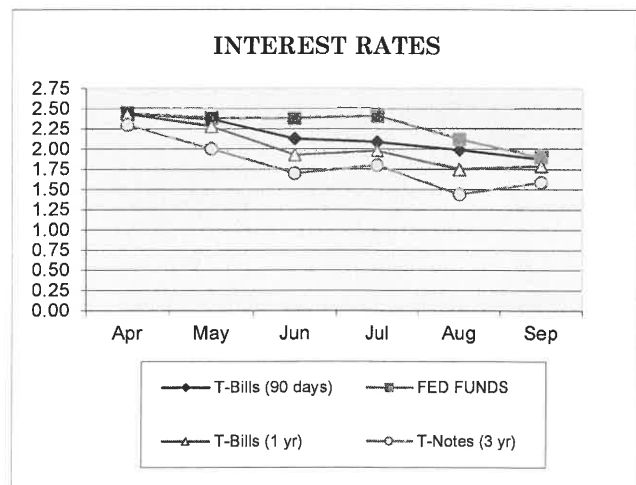
|   |                     |
|---|---------------------|
| Disc/(Prem) Amortization & Gain/(Loss) on Sale      | (8,953)             |
| Net Change in Investment --Before Non-Cash Activity | <u>\$ 2,206,299</u> |

NOTE A -Investment amounts shown at book carrying value.

**Northern California Power Agency  
Lodi Energy Center  
Interest Rate/Yield Analysis  
September 30, 2019**

|                         | <b>WEIGHTED<br/>AVERAGE<br/>INTEREST<br/>RATE</b> | <b>BOND<br/>EQUIVALENT<br/>YIELD</b> |
|-------------------------|---|--------------------------------------|
| <b>OVERALL COMBINED</b> | <b><u>1.785%</u></b>                              | <b><u>1.630%</u></b>                 |
| Debt Service Account    | <b>1.835%</b>                                     | <b>1.870%</b>                        |
| Debt Service Reserve    | <b>2.151%</b>                                     | <b>1.722%</b>                        |
| O & M Reserve           | <b>1.344%</b>                                     | <b>1.337%</b>                        |
| GHG Cash Account        | <b>2.566%</b>                                     | <b>2.566%</b>                        |

| <b>KEY INTEREST RATES</b> |                |                       |
|---------------------------|----------------|-----------------------|
|                           | <b>CURRENT</b> | <b>PRIOR<br/>YEAR</b> |
| Fed Funds (Overnight)     | <b>1.90%</b>   | <b>1.92%</b>          |
| T-Bills (90da.)           | <b>1.88%</b>   | <b>2.20%</b>          |
| Agency Disc (90da.)       | <b>1.68%</b>   | <b>2.16%</b>          |
| T-Bills (1yr.)            | <b>1.79%</b>   | <b>2.59%</b>          |
| Agency Disc (1yr.)        | <b>1.59%</b>   | <b>2.59%</b>          |
| T-Notes (3yr.)            | <b>1.59%</b>   | <b>2.89%</b>          |



**Northern California Power Agency  
Total Portfolio  
Investment Maturities Analysis  
September 30, 2019**

| Type                       | 0-7<br>Days | 8-90<br>Days | 91-180<br>Days | 181-270<br>Days | 271-365<br>Days | 1-5<br>Years | 6-10<br>Years | Total     | Percent |
|----------------------------|-------------|--------------|----------------|-----------------|-----------------|--------------|---------------|-----------|---------|
| US Government Agencies     | \$ -        | \$ 8,487     | \$ -           | \$ 5,760        | \$ 3,150        | \$ 8,610     | \$ -          | \$ 26,007 | 79.33%  |
| Corporate Bonds (MTN)      | -           | -            | -              | -               | -               | 595          | -             | 595       | 1.81%   |
| US Bank Trust Money Market | 441         | -            | -              | -               | -               | -            | -             | 441       | 1.34%   |
| Commercial Paper           | -           | -            | -              | -               | -               | -            | -             | -         | 0.01%   |
| Investment Trusts (LAIF)   | 1,745       | -            | -              | -               | -               | -            | -             | 1,745     | 5.32%   |
| Investment Trusts (CAMP)   | -           | -            | -              | -               | -               | -            | -             | -         | 0.01%   |
| U.S.Treasury Market Acct.  | 2,535       | -            | -              | -               | -               | -            | -             | 2,535     | 7.73%   |
| U.S.Treasury Bill/Note     | -           | -            | 1,462          | -               | -               | -            | -             | 1,462     | 4.46%   |
| Certificates of Deposit    | -           | -            | -              | -               | -               | -            | -             | -         | 0.00%   |
| Total Dollars              | \$ 4,721    | \$8,487      | \$1,462        | \$5,760         | \$3,150         | \$9,205      | \$0           | \$ 32,785 | 100.00% |
| Total Percents             | 14.39%      | 25.89%       | 4.46%          | 17.57%          | 9.61%           | 28.08%       | 0.00%         | 100.00%   |         |

Investments are shown at Face Value, in thousands.

# **NORTHERN CALIFORNIA POWER AGENCY**

## **Detail Report Of Investments**

### **APPENDIX**

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



Northern California Power Agency  
Treasurer's Report  
09/30/2019

LEC Issue#1 2010A DS Fund

| Issuer               | Trustee / Custodian | Stated Value | Interest Rate | Purchase Date | Purchased Price | Maturity Date | Days to Maturity | Bond* Equiv Yield | Market Value | CUSIP      | Investment # | Carrying Value |
|----------------------|---------------------|--------------|---------------|---------------|-----------------|---------------|------------------|-------------------|--------------|------------|--------------|----------------|
| US Bank Trust        | USB                 | 569          | 0.600         | 07/01/2013    | 569             |               | 1                | 0.600             | 569          | SYS79003   | 79003        | 569            |
| Federal Home Loan Ba | USBT                | 1,120,000    | 1.940         | 07/25/2019    | 1,112,154       | 12/02/2019    | 62               | 1.980             | 1,116,394    | 313384PZ6A | 26837        | 1,116,258      |
| Federal Home Loan Ba | USBT                | 501,000      | 1.810         | 08/26/2019    | 498,531         | 12/02/2019    | 62               | 1.844             | 499,387      | 313384PZ6A | 26863        | 499,438        |
| Federal Home Loan Ba | USBT                | 500,000      | 1.910         | 09/25/2019    | 498,196         | 12/02/2019    | 62               | 1.943             | 498,390      | 313384PZ6A | 26882        | 498,355        |

|                               |  |                     |              |  |                     |  |           |              |                     |  |  |                     |
|-------------------------------|--|---------------------|--------------|--|---------------------|--|-----------|--------------|---------------------|--|--|---------------------|
| <b>Fund Total and Average</b> |  | <b>\$ 2,121,569</b> | <b>1.902</b> |  | <b>\$ 2,109,450</b> |  | <b>62</b> | <b>1.939</b> | <b>\$ 2,114,740</b> |  |  | <b>\$ 2,114,620</b> |
|-------------------------------|--|---------------------|--------------|--|---------------------|--|-----------|--------------|---------------------|--|--|---------------------|

LEC Issue #1 2010B DS Fund

|                      |      |           |       |            |           |            |    |       |           |            |       |           |
|----------------------|------|-----------|-------|------------|-----------|------------|----|-------|-----------|------------|-------|-----------|
| US Bank Trust        | USB  | 220       | 0.600 | 07/01/2013 | 220       |            | 1  | 0.600 | 220       | SYS79004   | 79004 | 220       |
| Federal Home Loan Ba | USBT | 1,520,000 | 1.939 | 07/25/2019 | 1,509,352 | 12/02/2019 | 62 | 1.980 | 1,515,106 | 313384PZ6A | 26838 | 1,514,922 |
| Federal Home Loan Ba | USBT | 727,000   | 1.810 | 08/26/2019 | 723,418   | 12/02/2019 | 62 | 1.844 | 724,659   | 313384PZ6A | 26864 | 724,734   |
| Federal Home Loan Ba | USBT | 726,000   | 1.910 | 09/25/2019 | 723,381   | 12/02/2019 | 62 | 1.943 | 723,662   | 313384PZ6A | 26883 | 723,612   |

|                               |  |                     |              |  |                     |  |           |              |                     |  |  |                     |
|-------------------------------|--|---------------------|--------------|--|---------------------|--|-----------|--------------|---------------------|--|--|---------------------|
| <b>Fund Total and Average</b> |  | <b>\$ 2,973,220</b> | <b>1.901</b> |  | <b>\$ 2,956,371</b> |  | <b>62</b> | <b>1.938</b> | <b>\$ 2,963,647</b> |  |  | <b>\$ 2,963,488</b> |
|-------------------------------|--|---------------------|--------------|--|---------------------|--|-----------|--------------|---------------------|--|--|---------------------|

LEC Issue #2 2010A DS Fund

|               |     |         |       |            |         |  |   |       |         |          |       |         |
|---------------|-----|---------|-------|------------|---------|--|---|-------|---------|----------|-------|---------|
| US Bank Trust | USB | 435,340 | 0.600 | 07/01/2013 | 435,340 |  | 1 | 0.600 | 435,340 | SYS79011 | 79011 | 435,340 |
|---------------|-----|---------|-------|------------|---------|--|---|-------|---------|----------|-------|---------|

|                               |  |                   |              |  |                   |  |          |              |                   |  |  |                   |
|-------------------------------|--|-------------------|--------------|--|-------------------|--|----------|--------------|-------------------|--|--|-------------------|
| <b>Fund Total and Average</b> |  | <b>\$ 435,340</b> | <b>0.600</b> |  | <b>\$ 435,340</b> |  | <b>1</b> | <b>0.600</b> | <b>\$ 435,340</b> |  |  | <b>\$ 435,340</b> |
|-------------------------------|--|-------------------|--------------|--|-------------------|--|----------|--------------|-------------------|--|--|-------------------|

LEC Issue #2 2010B DS Fund

|                      |      |           |       |            |           |            |    |       |           |            |       |           |
|----------------------|------|-----------|-------|------------|-----------|------------|----|-------|-----------|------------|-------|-----------|
| US Bank Trust        | USB  | 649       | 0.600 | 07/01/2013 | 649       |            | 1  | 0.600 | 649       | SYS79012   | 79012 | 649       |
| Federal Home Loan Ba | USBT | 1,181,000 | 1.940 | 07/25/2019 | 1,172,726 | 12/02/2019 | 62 | 1.980 | 1,177,197 | 313384PZ6A | 26839 | 1,177,054 |
| Federal Home Loan Ba | USBT | 786,000   | 1.810 | 08/26/2019 | 782,127   | 12/02/2019 | 62 | 1.844 | 783,469   | 313384PZ6A | 26865 | 783,550   |
| Federal Home Loan Ba | USBT | 784,000   | 1.910 | 09/25/2019 | 781,172   | 12/02/2019 | 62 | 1.943 | 781,476   | 313384PZ6A | 26884 | 781,421   |

|                               |  |                     |              |  |                     |  |           |              |                     |  |  |                     |
|-------------------------------|--|---------------------|--------------|--|---------------------|--|-----------|--------------|---------------------|--|--|---------------------|
| <b>Fund Total and Average</b> |  | <b>\$ 2,751,649</b> | <b>1.894</b> |  | <b>\$ 2,736,674</b> |  | <b>62</b> | <b>1.931</b> | <b>\$ 2,742,791</b> |  |  | <b>\$ 2,742,674</b> |
|-------------------------------|--|---------------------|--------------|--|---------------------|--|-----------|--------------|---------------------|--|--|---------------------|

LEC Issue#1 2017A DS Fund

|                      |      |         |       |            |         |            |    |       |         |            |       |         |
|----------------------|------|---------|-------|------------|---------|------------|----|-------|---------|------------|-------|---------|
| Federal Home Loan Ba | USBT | 303,000 | 1.939 | 07/25/2019 | 300,877 | 12/02/2019 | 62 | 1.980 | 302,024 | 313384PZ6A | 26840 | 301,988 |
| Federal Home Loan Ba | USBT | 170,000 | 1.810 | 08/26/2019 | 169,162 | 12/02/2019 | 62 | 1.844 | 169,453 | 313384PZ6A | 26866 | 169,470 |
| Federal Home Loan Ba | USBT | 169,000 | 1.909 | 09/25/2019 | 168,390 | 12/02/2019 | 62 | 1.943 | 168,456 | 313384PZ6A | 26885 | 168,444 |

|                               |  |                   |              |  |                   |  |           |              |                   |  |  |                   |
|-------------------------------|--|-------------------|--------------|--|-------------------|--|-----------|--------------|-------------------|--|--|-------------------|
| <b>Fund Total and Average</b> |  | <b>\$ 642,000</b> | <b>1.898</b> |  | <b>\$ 638,429</b> |  | <b>62</b> | <b>1.935</b> | <b>\$ 639,933</b> |  |  | <b>\$ 639,902</b> |
|-------------------------------|--|-------------------|--------------|--|-------------------|--|-----------|--------------|-------------------|--|--|-------------------|

GRAND TOTALS: \$ 8,923,778 1.835 \$ 8,876,264 59 1.870 \$ 8,896,451. \$ 8,896,024

\*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.  
Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 09/30/2019  
Investment #26337 FFCB Callable anytime



Northern California Power Agency  
Treasurer's Report

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LEC Issue #1 2010 DSR Fund

| Issuer                 | Trustee / Custodian | Stated Value | Interest Rate | Purchase Date | Purchased Price | Maturity Date | Days to Maturity | Bond* Equiv Yield | Market Value | CUSIP      | Investment # | Carrying Value |
|------------------------|---------------------|--------------|---------------|---------------|-----------------|---------------|------------------|-------------------|--------------|------------|--------------|----------------|
| US Bank Trust          | USB                 | 1,520        | 0.600         | 07/01/2013    | 1,520           |               | 1                | 0.600             | 1,520        | SYS79005   | 79005        | 1,520          |
| U.S. Treasury          | USB                 | 333,000      | 2.000         | 07/25/2019    | 329,633         | 01/23/2020    | 114              | 2.048             | 331,109      | 912796TC3  | 26844        | 330,891        |
| Federal Farm Credit    | USB                 | 4,360,000    | 1.660         | 06/08/2016    | 4,360,000       | 05/25/2021    | 602              | 1.659             | 4,336,543    | 3133EGEBZ7 | 26337        | 4,360,000      |
| Federal Home Loan Mt   | USB                 | 150,000      | 1.125         | 07/28/2017    | 146,648         | 08/12/2021    | 681              | 1.699             | 148,449      | 3137EAE9   | 26454        | 148,453        |
| Federal Home Loan Ba   | USB                 | 4,100,000    | 2.125         | 08/28/2017    | 4,168,306       | 06/10/2022    | 983              | 1.760             | 4,151,947    | 313379Q69  | 26463        | 4,138,437      |
| Fund Total and Average |                     | \$ 8,944,520 | 1.878         |               | \$ 9,006,107    |               | 761              | 1.721             | \$ 8,969,568 |            |              | \$ 8,979,301   |

LEC Iss#1 2010B BABS Subs Resv

|                        |      |              |       |            |              |            |     |       |              |           |       |              |
|------------------------|------|--------------|-------|------------|--------------|------------|-----|-------|--------------|-----------|-------|--------------|
| US Bank Trust          | USB  | 991          | 0.600 | 07/01/2013 | 991          |            | 1   | 0.600 | 991          | SYS79006  | 79006 | 991          |
| Federal Home Loan Ba   | USB  | 2,145,000    | 3.375 | 07/28/2017 | 2,255,146    | 06/12/2020 | 255 | 1.540 | 2,167,265    | 313370E38 | 26455 | 2,171,738    |
| Federal Home Loan Ba   | UBOC | 150,000      | 1.920 | 07/25/2019 | 147,080      | 07/24/2020 | 297 | 1.980 | 147,810      | 313384ZU6 | 26945 | 147,624      |
| Fund Total and Average |      | \$ 2,295,991 | 3.261 |            | \$ 2,403,217 |            | 258 | 1.568 | \$ 2,316,066 |           |       | \$ 2,320,353 |

LEC Issue #2 2010B DSR BABS

|                        |     |               |       |            |               |            |     |       |               |           |       |               |
|------------------------|-----|---------------|-------|------------|---------------|------------|-----|-------|---------------|-----------|-------|---------------|
| US Bank Trust          | USB | 1,595         | 0.600 | 07/01/2013 | 1,595         |            | 1   | 0.600 | 1,595         | SYS79013  | 79013 | 1,595         |
| U.S. Treasury          | USB | 1,129,000     | 1.999 | 07/25/2019 | 1,117,585     | 01/23/2020 | 114 | 2.048 | 1,122,587     | 912796TC3 | 26846 | 1,121,850     |
| Fund Total and Average |     | \$ 1,130,595  | 1.998 |            | \$ 1,119,180  |            | 114 | 2.046 | \$ 1,124,182  |           |       | \$ 1,123,445  |
| GRAND TOTALS:          |     | \$ 12,371,106 | 2.151 |            | \$ 12,528,504 |            | 608 | 1.722 | \$ 12,409,816 |           |       | \$ 12,423,099 |

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

Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 09/30/2019



Northern California Power Agency  
Treasurer's Report

09/30/2019

LEC O & M Reserve

| Issuer                 | Trustee / Custodian | Stated Value  | Interest Rate | Purchase Date | Purchased Price | Maturity Date | Days to Maturity | Bond* Equiv Yield | Market Value   | CUSIP     | Investment # | Carrying Value |
|------------------------|---------------------|---------------|---------------|---------------|-----------------|---------------|------------------|-------------------|----------------|-----------|--------------|----------------|
| Local Agency Investm   |                     | 1,670,393     | 2.565         | 07/01/2013    | 1,670,393       |               | 1                | 2.565             | 1,670,393      | SYS70047  | 70047        | 1,670,393      |
| Union Bank of Califo   | UBOC                | 2,535,057     | 0.002         | 07/18/2013    | 2,535,057       |               | 1                | 0.002             | 2,535,057      | SYS70041  | 70041        | 2,535,057      |
| Federal Home Loan Ba   | UBOC                | 3,615,000     | 1.540         | 06/30/2017    | 3,613,952       | 06/05/2020    | 248              | 1.550             | 3,607,806      | 3130ABJQ0 | 26440        | 3,614,758      |
| Federal National Mtg   | UBOC                | 3,000,000     | 1.300         | 06/30/2016    | 3,000,000       | 06/30/2020    | 273              | 1.300             | 2,985,030      | 3136G3UJ2 | 26341        | 3,000,000      |
| US Bank, N.A.          | UBOC                | 595,000       | 2.650         | 05/31/2019    | 598,290         | 05/23/2022    | 965              | 2.456             | 605,002        | 90331HPC1 | 26822        | 597,922        |
| Fund Total and Average |                     | \$ 11,415,450 | 1.344         |               | \$ 11,417,692   |               | 201              | 1.337             | \$ 11,403,288  |           |              | \$ 11,418,130  |
| GRAND TOTALS:          |                     | \$ 11,415,450 | 1.344         |               | \$ 11,417,692   |               | 201              | 1.337             | \$ 11,403,288. |           |              | \$ 11,418,130  |

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

Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 09/30/2019  
Investment #26822 USB Callable on and anytime after 4/22/2022



Northern California Power Agency  
Treasurer's Report

09/30/2019

LEC GHG Auction Acct

| Issuer                 | Trustee / Custodian | Stated Value | Interest Rate | Purchase Date | Purchased Price | Maturity Date | Days to Maturity | Bond* Equiv Yield | Market Value | CUSIP    | Investment # | Carrying Value |
|------------------------|---------------------|--------------|---------------|---------------|-----------------|---------------|------------------|-------------------|--------------|----------|--------------|----------------|
| Local Agency Investm   |                     | 74,643       | 2.565         | 07/01/2013    | 74,643          |               | 1                | 2.565             | 74,643       | SYS70046 | 70046        | 74,643         |
| Fund Total and Average |                     | \$ 74,643    | 2.566         |               | \$ 74,643       |               | 1                | 2.566             | \$ 74,643    |          |              | \$ 74,643      |
| GRAND TOTALS:          |                     | \$ 74,643    | 2.566         |               | \$ 74,643       |               | 1                | 2.566             | \$ 74,643.   |          |              | \$ 74,643      |

\*Bond Equivalent Yield to Maturity is shown based on a 365 day year to provide a basis for comparison between all types. Investments with less than 6 months to maturity use an approximate method, all others use an exact method.  
Current Market Value is based on prices from Trustee/ Custodian Statements or bid prices from the Wall Street Journal as of 09/30/2019



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

### **LEC Financial Reports**

AGENDA ITEM NO.: 9

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**Date:** November 4, 2019

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

**Subject:** September 30, 2019 Financial Reports (Unaudited)

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

|  | September             |                       |
|--|-----------------------|-----------------------|
|  | 2019                  | 2018                  |
| <b>ASSETS</b>  |                       |                       |
| <b>CURRENT ASSETS</b>  |                       |                       |
| Cash and cash equivalents                                    | \$ 74,643             | \$ 72,868             |
| Interest receivable  | 482                   | 349                   |
| Inventory and supplies - at average cost                     | 2,202,633             | 2,110,854             |
| Prepaid insurance  | 118,948               | 106,887               |
| Due from (to) Agency, net                                    | 23,479,189            | 23,972,216            |
| <b>TOTAL CURRENT ASSETS</b>                                  | <b>25,875,895</b>     | <b>26,263,174</b>     |
| <b>RESTRICTED ASSETS</b>                                     |                       |                       |
| Cash and cash equivalents                                    | 6,867,937             | 5,999,579             |
| Investments  | 25,919,083            | 26,820,001            |
| Interest receivable  | 112,709               | 127,517               |
| <b>TOTAL RESTRICTED ASSETS</b>                               | <b>32,899,729</b>     | <b>32,947,097</b>     |
| <b>ELECTRIC PLANT</b>  |                       |                       |
| Electric plant in service                                    | 423,853,037           | 423,810,113           |
| Less: accumulated depreciation                               | (99,825,037)          | (85,207,125)          |
|  | 324,028,000           | 338,602,988           |
| Construction work-in-progress                                | 182,398               | 182,398               |
| <b>TOTAL ELECTRIC PLANT</b>                                  | <b>324,210,398</b>    | <b>338,785,386</b>    |
| <b>OTHER ASSETS</b>  |                       |                       |
| Unamortized excess cost on advance<br>refunding of debt, net | 1,743,625             | 2,053,378             |
| Regulatory assets  | 24,987,543            | 24,202,517            |
| <b>TOTAL OTHER ASSETS</b>                                    | <b>26,731,168</b>     | <b>26,255,895</b>     |
| <b>TOTAL ASSETS</b>  | <b>\$ 409,717,190</b> | <b>\$ 424,251,552</b> |

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

|   | September             |                       |
|---|-----------------------|-----------------------|
|   | 2019                  | 2018                  |
| <b>LIABILITIES &amp; NET POSITION</b>           |                       |                       |
| <b>CURRENT LIABILITIES</b>                      |                       |                       |
| Accounts and retentions payable                 | \$ 1,910,339          | \$ 2,064,419          |
| Operating reserves                              | 14,973,810            | 14,014,746            |
| Current portion of long-term debt               | 12,040,000            | 11,480,000            |
| Accrued interest payable                        | 4,661,661             | 4,854,934             |
| <b>TOTAL CURRENT LIABILITIES</b>                | <b>33,585,810</b>     | <b>32,414,099</b>     |
| <b>NON-CURRENT LIABILITIES</b>                  |                       |                       |
| Operating reserves and other deposits           | 1,158,824             | 1,717,099             |
| Long-term debt, net                             | 319,050,000           | 331,167,365           |
| <b>TOTAL NON-CURRENT LIABILITIES</b>            | <b>320,208,824</b>    | <b>332,884,464</b>    |
| <b>TOTAL LIABILITIES</b>                        | <b>353,794,634</b>    | <b>365,298,563</b>    |
| <b>DEFERRED INFLOWS OF RESOURCES</b>            |                       |                       |
| Regulatory credits                              | 38,269,042            | 40,520,211            |
| <b>NET POSITION</b>                             |                       |                       |
| Invested in capital assets, net of related debt | (18,417,476)          | (15,575,541)          |
| Restricted                                      | 15,833,402            | 16,775,213            |
| Unrestricted                                    | 20,237,588            | 17,233,106            |
| <b>TOTAL NET POSITION</b>                       | <b>17,653,514</b>     | <b>18,432,778</b>     |
| <b>TOTAL LIABILITIES AND NET POSITION</b>       | <b>\$ 409,717,190</b> | <b>\$ 424,251,552</b> |

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

|  | <b>Three Months Ended September</b> |                    |
|--|-------------------------------------|--------------------|
|  | <b>2019</b>                         | <b>2018</b>        |
| <b>SALES FOR RESALE</b>                |                                     |                    |
| Participants                           | \$ 15,603,014                       | \$ 12,880,491      |
| Other                                  | 11,263,800                          | 24,055,002         |
| <b>TOTAL SALES FOR RESALE</b>          | <b>26,866,814</b>                   | <b>36,935,493</b>  |
| <b>OPERATING EXPENSES</b>              |                                     |                    |
| Operations                             | 8,150,257                           | 12,572,498         |
| Depreciation                           | 3,654,576                           | 3,653,608          |
| Purchased power                        | 184,274                             | 1,237,075          |
| Maintenance                            | 1,058,430                           | 964,343            |
| Administrative and general             | 1,241,391                           | 1,254,889          |
| Transmission                           | 186,511                             | 216,921            |
| Intercompany (sales) purchases         | 102,538                             | 77,501             |
| <b>TOTAL OPERATING EXPENSES</b>        | <b>14,577,977</b>                   | <b>19,976,835</b>  |
| <b>NET OPERATING REVENUES</b>          | <b>12,288,837</b>                   | <b>16,958,658</b>  |
| <b>OTHER REVENUES (EXPENSES)</b>       |                                     |                    |
| Interest expense                       | (3,572,461)                         | (3,689,503)        |
| Interest income                        | 295,275                             | 713,462            |
| Other                                  | 836,863                             | 792,653            |
| <b>TOTAL OTHER REVENUES (EXPENSES)</b> | <b>(2,440,323)</b>                  | <b>(2,183,388)</b> |
| <b>FUTURE RECOVERABLE AMOUNTS</b>      | <b>303,318</b>                      | <b>414,003</b>     |
| <b>REFUNDS TO PARTICIPANTS</b>         | <b>(27)</b>                         | <b>(28)</b>        |
| <b>INCREASE IN NET POSITION</b>        | <b>10,151,805</b>                   | <b>15,189,245</b>  |
| <b>NET POSITION</b>                    |                                     |                    |
| Beginning of year                      | 7,501,709                           | 3,243,533          |
| End of period                          | \$ 17,653,514                       | \$ 18,432,778      |

**Lodi Energy Center  
FY 2020 Operating Costs  
As of September 30, 2019**

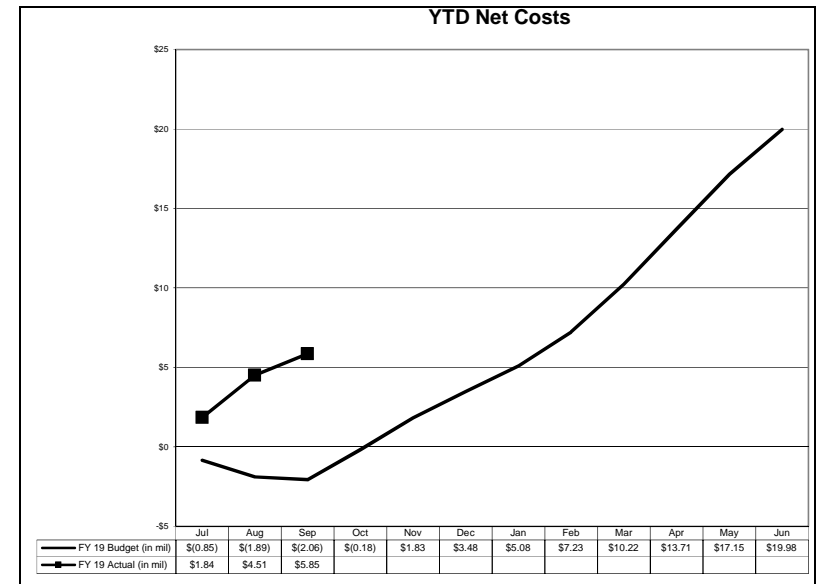
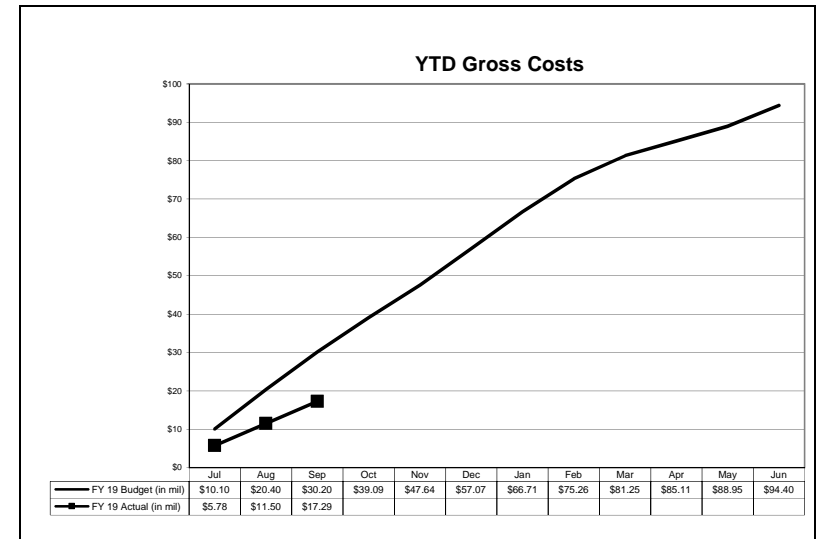
|  | Annual Budget        | Actual               | Remaining            | YTD %<br>Remaining | Notes |
|--|----------------------|----------------------|----------------------|--------------------|-------|
| <b>Routine O&amp;M Costs</b>               |                      |                      |                      |                    |       |
| Variable                                   | \$ 5,381,629         | \$ 134,196           | \$ 5,247,433         | 98%                | A     |
| Fixed                                      | 2,646,090            | 940,353              | 1,705,737            | 64%                |       |
| Administration                             | 209,845              | 40,610               | 169,235              | 81%                |       |
| Mandatory Costs                            | 304,750              | 166,952              | 137,798              | 45%                | B     |
| <b>Routine O&amp;M Costs without Labor</b> | 8,542,314            | 1,282,111            | 7,260,203            | 85%                |       |
| <b>Labor</b>                               | 5,558,310            | 1,417,211            | 4,141,099            | 75%                |       |
| <b>Total Routine O&amp;M Cost</b>          | 14,100,624           | 2,699,322            | 11,401,302           | 81%                |       |
| <b>Other Costs</b>                         |                      |                      |                      |                    |       |
| Fuel                                       | 39,513,147           | 6,176,354            | 33,336,793           | 84%                |       |
| CA ISO Charges                             | 883,969              | 186,511              | 697,458              | 79%                |       |
| CA ISO Purchased Energy                    | 3,826,263            | 184,274              | 3,641,989            | 95%                |       |
| Debt Service                               | 26,054,428           | 6,513,607            | 19,540,821           | 75%                |       |
| Insurance                                  | 674,648              | 168,662              | 505,986              | 75%                |       |
| Other Costs                                | 128,792              | 24,347               | 104,445              | 81%                |       |
| Generation Services Shared                 | 339,783              | 102,538              | 237,245              | 70%                |       |
| Administrative & General (Allocated)       | 2,105,792            | 496,634              | 1,609,158            | 76%                |       |
| Power Management Allocated Costs           | 1,439,156            | 359,789              | 1,079,367            | 75%                |       |
| <b>Total O&amp;M Cost</b>                  | 89,066,602           | 16,912,038           | 72,154,564           | 81%                |       |
| <b>Projects</b>                            |                      |                      |                      |                    |       |
| Operations & Maintenance                   | 920,683              | -                    | 920,683              | 100%               |       |
| Capital                                    | 2,915,858            | -                    | 2,915,858            | 100%               |       |
| Maintenance Reserve                        | 1,496,174            | 374,044              | 1,122,130            | 75%                |       |
| <b>Total Projects</b>                      | 5,332,715            | 374,044              | 4,958,671            | 93%                |       |
| <b>Annual Cost</b>                         | 94,399,317           | 17,286,082           | 77,113,235           | 82%                |       |
| <b>Less: Third Party Revenue</b>           |                      |                      |                      |                    |       |
| Interest Income                            | 385,845              | 170,340              | 215,505              | 56%                |       |
| ISO Energy Sales                           | 72,602,551           | 11,043,352           | 61,559,199           | 85%                |       |
| Ancillary Services Sales                   | 1,432,533            | 220,448              | 1,212,085            | 85%                |       |
|  | 74,420,929           | 11,434,140           | 62,986,789           | 85%                |       |
| <b>Net Annual Cost to Participants</b>     | \$ 19,978,388        | \$ 5,851,942         | \$ 14,126,446        | 71%                |       |
| <b>Total Variable Costs</b>                | 49,605,008           | 6,681,335            | 42,923,673           |                    |       |
| <b>Total Fixed Costs</b>                   | 44,794,309           | 10,604,747           | 34,189,562           |                    |       |
|  | <u>\$ 94,399,317</u> | <u>\$ 17,286,082</u> | <u>\$ 77,113,235</u> |                    |       |
| <b>Net Cumulative Generation (MWh)</b>     | 1,599,464            | 274,485              |                      |                    |       |
| <b>Total O&amp;M Cost Per MWh</b>          | \$ 55.69             | \$ 61.61             |                      |                    |       |
| <b>Net Annual Cost Per MWh</b>             | \$ 12.49             | \$ 21.32             |                      |                    |       |

**Footnotes:**

**General** - The plant ran 18 days during the month.

**A** - Higher costs resulting from additional maintenance costs during annual outage.

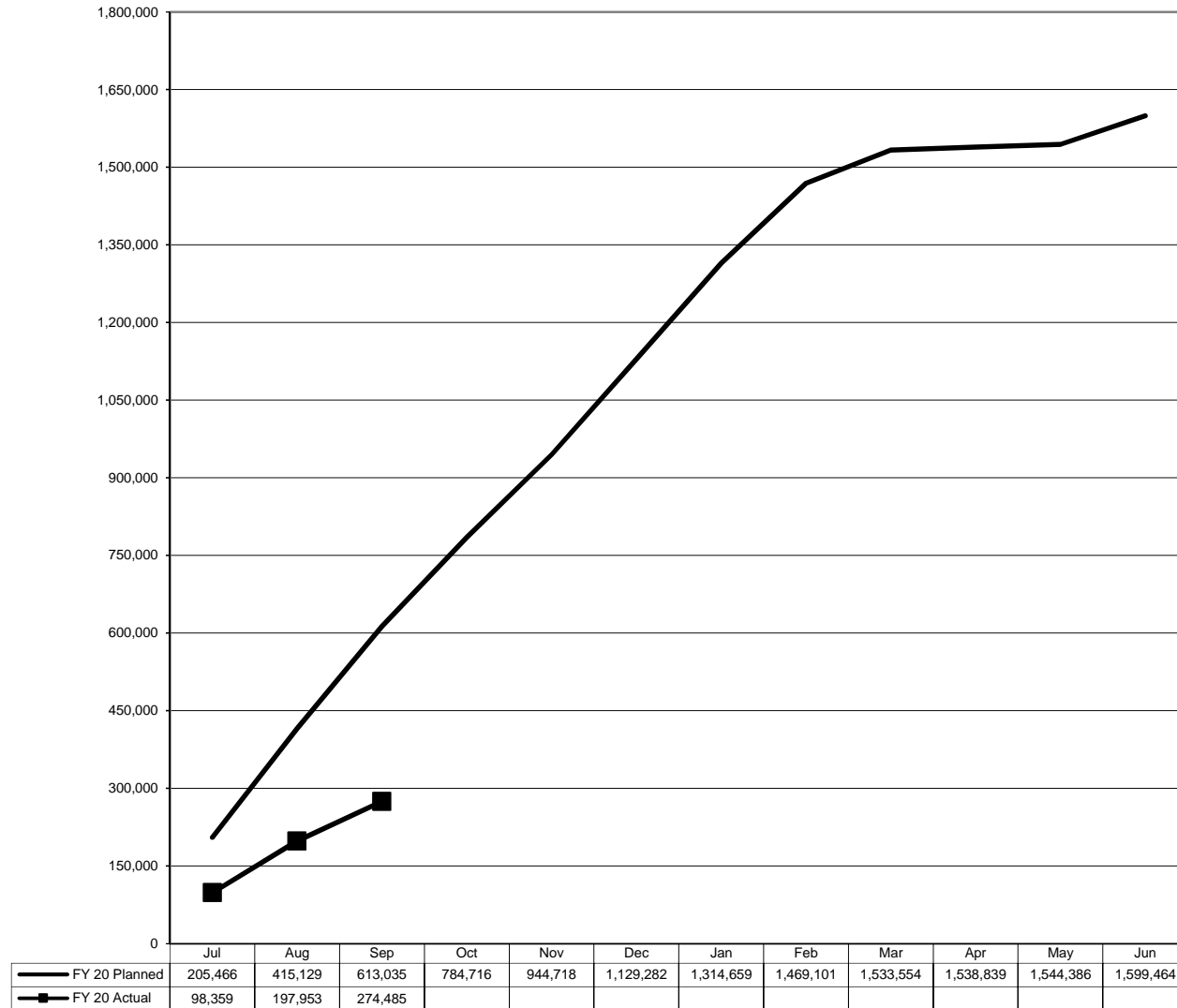
**B** - Higher costs due to annual permit fees payment in July, costs expected to level out for remainder of the year.



**Annual Budget  
LEC Generation Analysis  
Planned vs. Actual  
FY 2020**

In MWh

## Lodi Energy Center





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

### **LEC GHG Reports**

AGENDA ITEM NO.: 10

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**Date:** November 4, 2019

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

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

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| NCPA All Resources Bill Imports GHG Obligation Report (Cumulative) |         |        |       |           |         |            |        |        |          |         |         |         |        |           |
|--|---------|--------|-------|-----------|---------|------------|--------|--------|----------|---------|---------|---------|--------|-----------|
| November 2019  |         |        |       |           |         |            |        |        |          |         |         |         |        |           |
| 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)                | 24,841  | 58,866 | 2,391 | 315,662   | 17,516  | 14,655     | 84,728 | 18,126 | 95,551   | 7,006   | 23,793  | 229,653 | 15,923 | 908,711   |
| Current MT Compliance Instrument Account (MTA) Balance (MT)        | 25,997  | 58,743 | 2,764 | 426,170   | 17,503  | 14,661     | 84,583 | 18,290 | 107,587  | 8,279   | 24,946  | 238,563 | 16,048 | 1,044,134 |
| MTA Shortfall (MT)   | (1,156) | 123    | (373) | (110,508) | 13      | (6)        | 145    | (164)  | (12,036) | (1,273) | (1,153) | (8,910) | (125)  | (135,423) |
| Monthly GHG Price \$/MT  | 17.24   | 17.24  | 17.24 | 17.24     | 17.24   | 17.24      | 17.24  | 17.24  | 17.24    | 17.24   | 17.24   | 17.24   | 17.24  | 17.24     |
| GHG Minimum Cash Compliance Obligation (\$)                        |         | 2,121  | 0     | 0         | 224     | 0          | 2,500  | 0      | 0        | 0       | 0       | 0       | 0      | 4,844     |
| Current Month CCA Balance (\$)*                                    | 60,991  | 0      | 143   | 0         | 1,103   | 4,780      | 775    | 0      | 0        | 0       | 0       | 0       | 2,652  | 70,444    |
| Net GHG Obligation (\$)  | 0       | 2,121  | 0     | 0         | 0       | 0          | 1,725  | 0      | 0        | 0       | 0       | 0       | 0      | 3,845     |

\* 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 2019 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for Lodi Energy Center |           |           |           |               |           |           |           |           |           |                       |           |                  |                     |
|--|--|-----------|-----------|-----------|---------------|-----------|-----------|-----------|-----------|-----------|-----------------------|-----------|------------------|---------------------|
| IDENTIFIER   | January  | February  | March     | April     | Actual<br>May | June      | July      | August    | September | October   | Estimated<br>November | December  | CY 2019<br>Total | Cumulative<br>Total |
| Energy (MWh)   | 146,027  | 133,884   | 117,768   | 1,241     | 5,501         | 20,678    | 98,354    | 99,589    | 76,531    | 74,884    | 116,849               | 181,315   | 1,072,621        | 7,952,879           |
| Gas Schedule (MMBtu)   | 1,038,014  | 946,354   | 840,962   | 10,778    | 46,907        | 149,686   | 706,073   | 722,379   | 548,076   | 581,098   | 906,750               | 1,407,003 | 7,904,080        | 56,902,825          |
| 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     |                  |                     |
| HVAC/Water Heater (MT)                                       | 0  | 0         | 0         | 0         | 0             | 0         | 0         | 0         | 0         | 0         | 0                     | 0         | 0                | 259                 |
| Monthly MT Obligation (MTO)                                  | 56,016   | 51,070    | 45,382    | 582       | 2,531         | 8,078     | 38,103    | 38,983    | 29,577    | 31,359    | 48,933                | 75,929    | 426,543          | 3,071,868           |
| Annual Cal e-GGRT/MT Obligation True Up (MTO)                | 0  | 0         | 0         | 0         | 0             | 0         | 0         | 0         | 0         | 0         | 0                     | 0         | 0                | 0                   |
| Cumulative MT Obligation (MTO)                               | 596,123  | 647,193   | 692,575   | 693,157   | 695,688       | 703,766   | 741,869   | 780,852   | 810,429   | 841,788   | 890,721               | 966,650   | 966,650          | 966,650             |
| Compliance Instrument Participant Transfers                  |  |           |           |           |               |           |           |           |           |           |                       |           |                  |                     |
| Carryover Allowances   | 0  | 0         | 0         | 0         | 0             | 0         | 0         | 0         | 0         | 0         | 0                     | 0         | 0                | 0                   |
| Auction Allowances   | 88,838   | 0         | 0         | 300       | 183,648       | 20,570    | 21,597    | 1,400     | 0         | 0         | 0                     | 0         | 316,353          | 3,090,029           |
| Secondary Market Allowances                                  | 0  | 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                | 0                   |
| Offsets  | 0  | 0         | 0         | 0         | 0             | 0         | 0         | 0         | 0         | 0         | 0                     | 0         | 0                | 0                   |
| Total Compliance Instrument Participant Transfers (MT)       | 88,838   | 0         | 0         | 300       | 183,648       | 20,570    | 21,597    | 1,400     | 0         | 0         | 0                     | 0         | 316,353          | 3,090,029           |
| NCPA Compliance Instrument Purchases                         |  |           |           |           |               |           |           |           |           |           |                       |           |                  |                     |
| Auction Purchases  | 0  | 0         | 0         | 0         | 0             | 0         | 0         | 0         | 0         | 0         | 0                     | 0         | 0                | 47,000              |
| Secondary Market Purchases                                   | 0  | 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                | 0                   |
| Offsets Purchases  | 0  | 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                | 47,000              |
| Compliance Instruments Internal Transfers (LEC from/to STIG) | 0  | 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                | 2,105,218           |
| Total Monthly Activity (MT)                                  | 88,838   | 0         | 0         | 300       | 183,648       | 20,570    | 21,597    | 1,400     | 0         | 0         | 0                     | 0         | 316,353          | 3,137,029           |
| Cumulative MT Account Balance (MTA)                          | 804,296  | 804,296   | 804,296   | 804,596   | 988,244       | 1,008,814 | 1,030,411 | 1,031,811 | 1,031,811 | 1,031,811 | 1,031,811             | 1,031,811 | 1,031,811        | 1,031,811           |
| MTA Shortfall (MT)   | (208,173)  | (157,103) | (111,721) | (111,439) | (292,556)     | (305,048) | (288,542) | (250,959) | (221,382) | (190,023) | (141,090)             | (65,161)  | (65,161)         | (65,161)            |
| Current Month CCA Balance (\$)                               | 0.00   | 0.00      | 0.00      | 0.00      | 0.00          | 0.00      | 0.00      | 0.00      | 0.00      | 0.00      | 0.00                  | 0.00      | 0.00             | 70,444.00           |
| Monthly GHG Price  | 15.78  | 15.83     | 16.09     | 17.14     | 17.79         | 17.31     | 17.39     | 17.29     | 17.04     | 17.16     | 17.24                 | 17.29     |                  |                     |



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

AGENDA ITEM NO.: 11

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** Brown & Kysar, Inc. – Five Year Multi-Task Professional 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.

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### Proposal

Approve the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Brown & Kysar, Inc. for engineering 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

Engineering services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA has not yet utilized this vendor, however they would be able to provide engineering services to the NCPA members. NCPA desires to put this new agreement in place so the members can use them going forward.

### 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 Gannett Fleming, Inc., HDR Engineering, Inc. and Power Engineers 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 annual operating 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 Professional Services Agreement with Brown & Kysar, Inc.



## **MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND BROWN & KYSAR, INC.**

This Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Brown & Kysar, Inc., an engineering, planning and permitting services corporation with its office located at 1315 SE Grace Ave., Ste 201, Battle Ground, WA 98604 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2.** **COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED ONE MILLION** dollars (\$1,000,000.00) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

**2.2** **Monthly Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. Interest at the rate of one and one-half percent (1.5%) per month shall be payable on any amounts that are due but unpaid 30 days from receipt of invoice. The Agency agrees to pay all costs of collection on unpaid balances.

- 2.3 **Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.
- 2.4 **Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.
- 2.5 **Timing for Submittal of Final Invoice.** Consultant shall have ninety (90) days after completion of its Services to submit its final invoice. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

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

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

- 4.1 **Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident.
- 4.2 **Commercial General and Automobile Liability Insurance.**
- 4.2.1 **Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.
- 4.2.2 **Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The

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

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

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

**4.4 All Policies Requirements.**

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

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

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

**4.4.4 Additional Certificates and Endorsements.** If Consultant provides services to Agency members, SCPPA and/or SCPPA members, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or Agency member for which the Services are to be performed.

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

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

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

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

**5.2 Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant in its performance of Services under this Agreement. Consultant shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency.

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

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

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

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

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

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's

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

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

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

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

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

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

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

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

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

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

part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

#### **9.4 Confidential Information and Disclosure.**

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

**9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in 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, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

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

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

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

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

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

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

**10.7 Contract Administrator.** This Agreement shall be administered by 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.

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

Brown & Kysar, Inc.  
Attention: Scott M. Lindsay, CEO  
1315 SE Grace Ave., Ste 201  
Battle Ground, WA 98604

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

BROWN & KYSAR, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**SCOTT M. LINDSAY,**  
Chief Executive Officer

Attest:

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

Approved as to Form:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Brown & Kysar, Inc. ("Consultant") shall provide engineering services related to plant operation and maintenance as requested by the Northern California Power Agency ("Agency") at any facilities owned and/or operated by the Agency, NCPA Members, the Southern California Public Power Authority (SCPPA), and/or SCPPA Members.

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

#### RATE SCHEDULE

(Effective January 1, 2019)

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##### HOURLY RATES

|                              |       |
|------------------------------|-------|
| Administrative               | \$87  |
| Technician                   | \$87  |
| Designer/CAD Drafter         | \$108 |
| Consultant I (Analyst)       | \$130 |
| Consultant II (Professional) | \$147 |
| Consultant III (Associate)   | \$164 |
| Consultant IV (Senior)       | \$174 |
| Principal                    | \$192 |

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##### EQUIPMENT, SUPPLIES AND OTHER SERVICES

In an effort to keep hourly rates as low as possible, the following costs are broken out separately and billed on an as-used basis:

Direct expenses, including but not limited to the following, will be billed at rates allowed by the Internal Revenue Service:

- Subconsultants
- Meals and lodging
- Travel
- Shipping charges
- Printing and printing supplies
- Special fees, permits, etc.

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 Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

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

(Name of person signing affidavit)(Title)

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

Brown & Kysar, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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



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

AGENDA ITEM NO.: 12

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** Hatton Crane and Rigging, Inc. – 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.

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### Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with Hatton Crane and Rigging, Inc. for crane and rigging support services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

### Background

Crane and rigging support services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA would like to enter into an agreement with this new vendor in order to have multiple options when 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 American Crane Rental, Maxim Crane Works, OST Trucks & Cranes, Summit Crane and Titan Crane for similar services and seeks bids from as many qualified providers as possible. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the Agreement is not-to-exceed \$500,000 over five years to be used out of NCPA approved annual operating 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 Hatton Crane and Rigging, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
HATTON CRANE & RIGGING, 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 Hatton Crane & Rigging, Inc., a corporation with its office located at 3643 Depot Road, Hayward, CA 94545 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.4 Pollution Insurance.** 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:

Hatton Crane & Rigging, Inc.  
Attention: Jessica Hebert  
3643 Depot Road  
Hayward, CA 94545

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.

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

NORTHERN CALIFORNIA POWER AGENCY

HATTON CRANE & RIGGING, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**GARY HATTON,**  
President

Attest:

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

Approved as to Form:

---

Jane E. Luckhardt, General Counsel

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

Hatton Crane & Rigging, Inc. ("Contractor") shall provide crane and rigging services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Cranes
- Crane Operators
- Rigging
- Signalmen

## 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:

| OPERATED AND MAINTAINED HYDRAULIC TRUCK CRANES |              |      |                |                        |
|--|--------------|------|----------------|------------------------|
| Crane Size                                     | Minimum Hour | Crew | Rate Per Hour  | Counterweight Trucking |
| 18 Ton   | 4            | 1    | \$190          | N/A                    |
| 30 Ton   | 4            | 1    | \$200          | N/A                    |
| 40 Ton   | 4            | 1    | \$225          | N/A                    |
| 60 Ton   | 4            | 1    | \$235          | N/A                    |
| 75 Ton   | 4            | 1    | \$245          | N/A                    |
| 80 Ton   | 4            | 1    | \$250          | N/A                    |
| 100 Ton  | 4            | 1    | \$260          | N/A                    |
| 100 Ton  | 8            | 2    | \$360          | \$600 <i>minimum</i>   |
| 110 Ton  | 4            | 1    | \$270          | N/A                    |
| 110 Ton  | 8            | 2    | \$370          | \$600 <i>minimum</i>   |
| 150 Ton  | 8            | 2    | \$450          | \$600 <i>minimum</i>   |
| 175 Ton  | 8            | 2    | \$475          | \$1200 <i>minimum</i>  |
| 200 Ton  | 8            | 2    | \$500          | \$1800 <i>minimum</i>  |
| 265 Ton  | 8            | 2    | \$550          | \$2400 <i>minimum</i>  |
| 450 Ton  | 8            | N/A  | Call for quote | Call for quote         |

| OPERATED AND MAINTAINED ROUGH TERRAIN CRANES |                |               |                  |
|--|----------------|---------------|------------------|
| Crane Size                                   | Crew           | Rate Per Hour | Mob In & Out     |
| 90 Ton                                       | 1              | \$245         | \$2,000 each way |
| 110 Ton                                      | 1              | \$255         | \$2,000 each way |
| 160 Ton                                      | Call for quote |               |                  |

*\$50.00 local transportation permit charge per mobilization*

**All Cranes are billed Portal to Portal from Manteca**

*\$150 per lift plan (minimum)*

**Work performed over (8) hours and before 5 AM or on Saturday (Over Time)**

|                  |                |
|------------------|----------------|
| 1 man crane crew | \$ 50.00 / HR  |
| 2 man crane crew | \$ 100.00 / HR |

**Work performed over (10) hours and before 5 AM or on Sunday (Double Time)**

|                  |                |
|------------------|----------------|
| 1 man crane crew | \$ 100.00 / HR |
| 2 man crane crew | \$ 200.00 / HR |

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

Hatton Crane & Rigging, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

---

(Signature of officer or agent)

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

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

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

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

\_\_\_\_\_

(Signature of officer or agent)

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

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

**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

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** Contra Costa Electric, Inc. – 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.

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#### Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with Contra Costa Electric, Inc. for electrical maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

#### Background

Electrical maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with Contra Costa Electric, Inc., which is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor, and NCPA desires to put this new agreement in place so we can continue to use them going forward.

#### 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 Eaton Electrical Services & Systems, Electrical Maintenance Consultants, GE Energy Connections and Schneider Electric USA, Inc. for similar services and seeks bids from as many qualified providers as possible. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

#### Fiscal Impact

Upon execution, the total cost of the Agreement is not-to-exceed \$500,000 over five years to be used out of NCPA approved annual operating 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 Contra Costa Electric, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
CONTRA COSTA ELECTRIC, 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 Contra Costa Electric, Inc., a corporation with its office located at 825 Howe Road, Martinez, CA 94553 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

**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 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. Contra Costa Electric is responsible for the \$500,000 deductible. 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, 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 with a cap limited to \$10,000,000.00.

**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 willful misconduct, 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:

Contra Costa Electric, Inc.  
Attention: Joey Ramirez  
825 Howe Road  
Martinez, CA 94553

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 NEXT PAGE**

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

NORTHERN CALIFORNIA POWER AGENCY

CONTRA COSTA ELECTRIC, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**JOEY RAMIREZ,**  
Vice President

Attest:

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

Approved as to Form:

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

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

Contra Costa Electric, Inc. ("Contractor") shall provide electrical maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

- Electrical Maintenance
- Instrumentation
- High Voltage

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

## **EXHIBIT B**

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

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

## NCPA Inside Wireman

### Rates Effective June 1st, 2019 Through May 31st, 2020

| Normal Day Shift - Rates |       | St        | Ot        | Dt        |
|--------------------------|-------|-----------|-----------|-----------|
| Craft Classification     | Abrv. | Hrly Rate | Hrly Rate | Hrly Rate |
| Elec General Foreman     | EGF   | \$ 154.59 | \$ 204.73 | \$ 254.86 |
| Elec Cable Splicer       | ECS   | \$ 141.76 | \$ 186.10 | \$ 230.44 |
| Elec Certified Welder    | EJCW  | \$ 141.76 | \$ 186.10 | \$ 230.44 |
| Elec Foreman             | EF    | \$ 141.76 | \$ 186.10 | \$ 230.44 |
| Elec Journeyman          | EJ    | \$ 128.86 | \$ 167.45 | \$ 206.03 |
| Elec Apprentice - 85%    | EA85  | \$ 113.01 | \$ 145.80 | \$ 178.57 |
| Elec Apprentice - 80%    | EA80  | \$ 107.73 | \$ 138.56 | \$ 169.41 |
| Elec Apprentice - 75%    | EA75  | \$ 102.42 | \$ 131.36 | \$ 160.29 |
| Elec Apprentice - 70%    | EA70  | \$ 97.10  | \$ 124.11 | \$ 151.10 |
| Elec Apprentice - 65%    | EA65  | \$ 91.85  | \$ 116.93 | \$ 142.00 |
| Elec Apprentice - 60%    | EA60  | \$ 86.55  | \$ 109.69 | \$ 132.82 |
| Elec Apprentice - 55%    | EA55  | \$ 81.27  | \$ 102.49 | \$ 123.70 |
| Elec Apprentice - 50%    | EA50  | \$ 75.97  | \$ 95.25  | \$ 107.73 |
| Elec Apprentice - 45%    | EA45  | \$ 61.64  | \$ 79.02  | \$ 96.38  |
| Elec Apprentice - 40%    | EA40  | \$ 57.37  | \$ 72.80  | \$ 88.24  |

| Swing Shift - Rates      |         | St        | Ot        | Dt        |
|--------------------------|---------|-----------|-----------|-----------|
| Craft Classifications    | Abrv.   | Hrly Rate | Hrly Rate | Hrly Rate |
| Elec General Foreman_ss  | EGF_ss  | \$ 176.79 | \$ 235.62 | \$ 256.97 |
| Elec Cable Splicer_ss    | ECS_ss  | \$ 161.69 | \$ 213.75 | \$ 232.32 |
| Elec Certified Welder_ss | EJCW_ss | \$ 161.69 | \$ 213.75 | \$ 232.32 |
| Elec Foreman_ss          | EF_ss   | \$ 161.69 | \$ 213.75 | \$ 232.32 |
| Elec Journeyman_ss       | EJ_ss   | \$ 146.61 | \$ 191.87 | \$ 207.68 |
| Elec Apprentice - 85%_ss | EA85_ss | \$ 128.29 | \$ 166.78 | \$ 181.04 |
| Elec Apprentice - 80%_ss | EA80_ss | \$ 122.15 | \$ 158.37 | \$ 171.72 |
| Elec Apprentice - 75%_ss | EA75_ss | \$ 116.11 | \$ 150.07 | \$ 162.49 |
| Elec Apprentice - 70%_ss | EA70_ss | \$ 110.00 | \$ 141.67 | \$ 153.18 |
| Elec Apprentice - 65%_ss | EA65_ss | \$ 103.89 | \$ 133.34 | \$ 143.90 |
| Elec Apprentice - 60%_ss | EA60_ss | \$ 97.79  | \$ 124.95 | \$ 134.59 |
| Elec Apprentice - 55%_ss | EA55_ss | \$ 91.70  | \$ 116.57 | \$ 125.31 |
| Elec Apprentice - 50%_ss | EA50_ss | \$ 85.59  | \$ 108.23 | \$ 122.15 |
| Elec Apprentice - 45%_ss | EA45_ss | \$ 69.89  | \$ 90.25  | \$ 97.14  |
| Elec Apprentice - 40%_ss | EA40_ss | \$ 64.86  | \$ 82.94  | \$ 88.91  |

| Grave Shift - Rates      |         | St        | Ot        | Dt        |
|--------------------------|---------|-----------|-----------|-----------|
| Craft Classifications    | Abrv.   | Hrly Rate | Hrly Rate | Hrly Rate |
| Elec General Foreman_gs  | EGF_gs  | \$ 195.81 | \$ 261.69 | \$ 258.71 |
| Elec Cable Splicer_gs    | ECS_gs  | \$ 178.93 | \$ 237.23 | \$ 233.88 |
| Elec Certified Welder_gs | EJCW_gs | \$ 178.93 | \$ 237.23 | \$ 233.88 |
| Elec Foreman_gs          | EF_gs   | \$ 178.93 | \$ 237.23 | \$ 233.88 |
| Elec Journeyman_gs       | EJ_gs   | \$ 161.98 | \$ 212.68 | \$ 209.04 |
| Elec Apprentice - 85%_gs | EA85_gs | \$ 141.64 | \$ 184.74 | \$ 183.45 |
| Elec Apprentice - 80%_gs | EA80_gs | \$ 134.86 | \$ 175.41 | \$ 174.01 |
| Elec Apprentice - 75%_gs | EA75_gs | \$ 128.08 | \$ 166.12 | \$ 164.62 |
| Elec Apprentice - 70%_gs | EA70_gs | \$ 121.29 | \$ 156.77 | \$ 155.17 |
| Elec Apprentice - 65%_gs | EA65_gs | \$ 114.53 | \$ 147.48 | \$ 145.77 |
| Elec Apprentice - 60%_gs | EA60_gs | \$ 107.73 | \$ 138.16 | \$ 136.31 |
| Elec Apprentice - 55%_gs | EA55_gs | \$ 100.95 | \$ 128.82 | \$ 126.89 |
| Elec Apprentice - 50%_gs | EA50_gs | \$ 94.19  | \$ 119.52 | \$ 134.86 |
| Elec Apprentice - 45%_gs | EA45_gs | \$ 77.09  | \$ 99.92  | \$ 97.76  |

## NCPA Linemen

### Local 47 & 1245 - Western Line Construction

Rates Effective June 1st, 2019 Through December 31st, 2019

| Day Shift Rates                           |        | St        | Ot        | Dt        |
|---|--------|-----------|-----------|-----------|
| Craft Classification                      | Abrv.  | Hrly Rate | Hrly Rate | Hrly Rate |
| Line Superintendent                       | LSGF   | \$ 153.78 | N/A       | \$ 248.59 |
| Line General Foreman                      | LGF    | \$ 152.11 | N/A       | \$ 245.41 |
| Line Cable Splicer Foreman                | LFCS   | \$ 141.55 | N/A       | \$ 226.31 |
| Line Foreman                              | LF     | \$ 141.55 | N/A       | \$ 226.31 |
| Lineman Welder                            | LW     | \$ 136.26 | N/A       | \$ 216.77 |
| Line Jym Cable Splicer - Technician       | LCS    | \$ 131.08 | N/A       | \$ 207.39 |
| Line Journeyman                           | LJ     | \$ 131.08 | N/A       | \$ 207.39 |
| Line Powderman                            | LPDM   | \$ 119.55 | N/A       | \$ 186.73 |
| Line Equipment Man                        | LES    | \$ 110.18 | N/A       | \$ 169.35 |
| Line Groundman-Truck Driver               | LGMN   | \$ 91.59  | N/A       | \$ 134.73 |
| Underground Foreman ( Civil Work PG&E )   | ULFrm  | \$ 118.08 | N/A       | \$ 184.04 |
| Line Substation Technician Foreman        | LSTF   | \$ 141.55 | N/A       | \$ 226.31 |
| Line Substation Technician                | LST    | \$ 131.08 | N/A       | \$ 207.39 |
| Line Substation Technician Trainee 1st/Yr | LSTT1  | \$ 86.17  | N/A       | \$ 128.42 |
| Line Substation Technician Trainee 2nd/Yr | LSTT2  | \$ 103.04 | N/A       | \$ 158.07 |
| Line Substation Technician Trainee 3rd/Yr | LSTT3  | \$ 119.86 | N/A       | \$ 187.65 |
| Line Fabricator Tech                      | LFT    | \$ 100.97 | N/A       | \$ 156.78 |
| Line Fabricator Tech Trainee              | LFTT   | \$ 95.34  | N/A       | \$ 146.34 |
| Line Apprentice - 90%                     | LApr90 | \$ 120.19 | N/A       | \$ 187.98 |
| Line Apprentice - 85%                     | LApr85 | \$ 115.27 | N/A       | \$ 178.77 |
| Line Apprentice - 80%                     | LApr80 | \$ 110.28 | N/A       | \$ 169.56 |
| Line Apprentice - 75%                     | LApr75 | \$ 105.38 | N/A       | \$ 160.41 |
| Line Apprentice - 70%                     | LApr70 | \$ 100.40 | N/A       | \$ 151.18 |
| Line Apprentice - 65%                     | LApr65 | \$ 95.47  | N/A       | \$ 141.99 |
| Line Apprentice - 60%                     | LApr60 | \$ 90.52  | N/A       | \$ 132.77 |

**NOTE:** CCE RESERVES THE RIGHT TO ISSUE CHANGES WITHIN THE RATE STRUCTURE AS NEGOTIATED WITH THE LOCAL AND OR CHANGES RELATED TO ALL VARIABLES WITHIN THE RATE COMPUTATION

## NCPA Plumbers and Steamfitters

**Rates Effective July 1st, 2019 Through June 30th, 2020**

| Day Shift Rates                 |       |  | St        | Ot        | Dt        |
|---------------------------------|-------|--|-----------|-----------|-----------|
| Craft Classification            | Abrv. |  | Hrly Rate | Hrly Rate | Hrly Rate |
| Steamfitter Sr. Gen Foreman     | SFSGF |  | \$ 170.15 | \$ 230.18 | \$ 290.23 |
| Steamfitter Gen Foreman         | SFGF  |  | \$ 161.06 | \$ 216.83 | \$ 272.60 |
| Steamfitter Foreman             | SFF   |  | \$ 153.87 | \$ 205.58 | \$ 257.28 |
| Steamfitter Alloy Welder / Crew | SFW   |  | \$ 149.80 | \$ 199.56 | \$ 249.34 |
| Steamfitter Journeyman          | SFJ   |  | \$ 142.55 | \$ 188.89 | \$ 235.24 |
| Steamfitter Apprentice 10th     | SFA85 |  | \$ 128.92 | \$ 168.85 | \$ 208.77 |
| Steamfitter Apprentice 9th      | SFA80 |  | \$ 124.39 | \$ 162.15 | \$ 199.96 |
| Steamfitter Apprentice 8th      | SFA75 |  | \$ 119.84 | \$ 155.48 | \$ 191.14 |
| Steamfitter Apprentice 7th      | SFA70 |  | \$ 115.30 | \$ 148.83 | \$ 182.35 |
| Steamfitter Apprentice 6th      | SFA65 |  | \$ 110.75 | \$ 142.16 | \$ 173.52 |
| Steamfitter Apprentice 5th      | SFA60 |  | \$ 106.23 | \$ 135.48 | \$ 164.68 |
| Steamfitter Apprentice 4th      | SFA55 |  | \$ 101.68 | \$ 128.80 | \$ 155.89 |
| Steamfitter Apprentice 3rd      | SFA50 |  | \$ 97.14  | \$ 122.12 | \$ 147.08 |
| Steamfitter Apprentice 2nd      | SFA45 |  | \$ 71.56  | \$ 91.43  | \$ 111.27 |
| Steamfitter Apprentice 1st      | SFA40 |  | \$ 67.03  | \$ 84.75  | \$ 102.48 |

| Swing & Grave Shift Rates       |         |  | St        | Ot        | Dt        |
|---------------------------------|---------|--|-----------|-----------|-----------|
| Craft Classifications           | Abrv.   |  | Hrly Rate | Hrly Rate | Hrly Rate |
| Steamfitter Sr. Gen Foreman     | SFSGFsg |  | \$ 188.11 | \$ 256.62 | \$ 325.14 |
| Steamfitter Gen Foreman         | SFGFsg  |  | \$ 177.69 | \$ 241.28 | \$ 304.87 |
| Steamfitter Foreman             | SFFsg   |  | \$ 169.20 | \$ 228.12 | \$ 287.02 |
| Steamfitter Alloy Welder / Crew | SFWsg   |  | \$ 164.51 | \$ 221.22 | \$ 277.92 |
| Steamfitter Journeyman          | SFJsg   |  | \$ 156.15 | \$ 208.93 | \$ 261.68 |
| Steamfitter Apprentice 10th     | SFA85sg |  | \$ 140.49 | \$ 185.89 | \$ 231.26 |
| Steamfitter Apprentice 9th      | SFA80sg |  | \$ 135.26 | \$ 178.18 | \$ 221.12 |
| Steamfitter Apprentice 8th      | SFA75sg |  | \$ 130.07 | \$ 170.54 | \$ 211.02 |
| Steamfitter Apprentice 7th      | SFA70sg |  | \$ 124.85 | \$ 162.87 | \$ 200.86 |
| Steamfitter Apprentice 6th      | SFA65sg |  | \$ 119.60 | \$ 155.15 | \$ 190.69 |
| Steamfitter Apprentice 5th      | SFA60sg |  | \$ 114.38 | \$ 147.49 | \$ 180.58 |
| Steamfitter Apprentice 4th      | SFA55sg |  | \$ 109.17 | \$ 139.81 | \$ 170.44 |
| Steamfitter Apprentice 3rd      | SFA50sg |  | \$ 103.95 | \$ 132.13 | \$ 160.29 |
| Steamfitter Apprentice 2nd      | SFA45sg |  | \$ 77.80  | \$ 100.60 | \$ 123.37 |
| Steamfitter Apprentice 1st      | SFA40sg |  | \$ 72.61  | \$ 92.94  | \$ 113.26 |

NOTE: CCE RESERVES THE RIGHT TO ISSUE CHANGES WITHIN THE RATE  
STRUCTURE AS NEGOTIATED WITH THE LOCAL AND OR CHANGES RELATED  
TO ALL VARIABLES WITHIN THE RATE COMPUTATION

| <b>Rolling Stock Description</b>             | <b>Hourly Rate</b> | <b>Daily Rate</b> | <b>Weekly Rate</b> | <b>Monthly Rate</b> |
|--|--------------------|-------------------|--------------------|---------------------|
| Pickup Truck                                 | \$ 13.23           | \$ 99.00          | \$ 330.00          | \$ 1,320.00         |
| Service Truck/Van                            | \$ 14.33           | \$ 105.00         | \$ 386.00          | \$ 1,598.00         |
| Bucket Truck @ ( 25 Ft )                     | \$ 44.10           | \$ 291.00         | \$ 1,251.00        | \$ 4,141.00         |
| Bucket Truck @ ( 50 Ft )                     | \$ 62.84           | \$ 415.00         | \$ 1,668.00        | \$ 5,955.00         |
| Bucket Truck @ ( 60 Ft )                     | \$ 65.05           | \$ 436.00         | \$ 1,818.00        | \$ 6,254.00         |
| Bucket Truck @ ( 65 Ft )                     | \$ 73.87           | \$ 473.00         | \$ 2,062.00        | \$ 7,093.00         |
| 42 Passenger Bus                             | \$ 19.85           | \$ 165.00         | \$ 495.00          | \$ 2,010.00         |
| 17 Passenger Bus                             | \$ 16.54           | \$ 127.00         | \$ 442.00          | \$ 1,494.00         |
| 12 Passenger Bus                             | \$ 14.33           | \$ 105.00         | \$ 498.00          | \$ 1,384.00         |
| Line Truck                                   | \$ 63.95           | \$ 422.00         | \$ 1,671.00        | \$ 5,965.00         |
| Boom Truck @ ( 7 Ton )                       | \$ 37.49           | \$ 291.00         | \$ 1,164.00        | \$ 4,365.00         |
| Boom Truck @ ( 18 Ton )                      | \$ 60.64           | \$ 424.00         | \$ 1,696.00        | \$ 6,173.00         |
| Golf Cart                                    | \$ 9.27            | \$ 75.00          | \$ 250.00          | \$ 625.00           |
| Highway Digger                               | \$ 37.49           | \$ 291.00         | \$ 1,164.00        | \$ 4,365.00         |
| Pole Dolly                                   | \$ 4.12            | \$ 27.00          | \$ 110.00          | \$ 411.00           |
| Reel Truck @ ( 1 ton )                       | \$ 30.87           | \$ 233.00         | \$ 932.00          | \$ 3,495.00         |
| 5th Wheel - Reel Trailer                     | \$ 15.45           | \$ 131.00         | \$ 523.00          | \$ 1,961.00         |
| Single Drum U/G Cable Puller ( 6,000 lb )    | \$ 45.32           | \$ 283.00         | \$ 1,189.00        | \$ 3,508.00         |
| Single Drum O/H Cable Puller ( 6,000 lb )    | \$ 45.32           | \$ 283.00         | \$ 1,189.00        | \$ 3,508.00         |
| Four Drum Distrubtion Puller ( 1,500 lb )    | \$ 45.32           | \$ 283.00         | \$ 1,189.00        | \$ 3,508.00         |
| Wash Trailer                                 | \$ 75.19           | \$ 544.00         | \$ 2,176.00        | \$ 8,160.00         |
| Winch Truck @ ( 5 ton )                      | \$ 44.10           | \$ 326.00         | \$ 1,304.00        | \$ 4,890.00         |
| Tractor Truck                                | \$ 44.10           | \$ 350.00         | \$ 1,400.00        | \$ 5,250.00         |
| 5th Wheel Trailer                            | \$ 6.18            | \$ 38.00          | \$ 151.00          | \$ 569.00           |
| Highway Van                                  | \$ 2.06            | \$ 20.00          | \$ 78.00           | \$ 292.00           |
| Connex                                       | \$ 2.06            | \$ 8.00           | \$ 33.00           | \$ 99.00            |
| Stakebed Truck @ ( 1 ton )                   | \$ 16.54           | \$ 140.00         | \$ 559.00          | \$ 2,096.00         |
| Office Trailer @ ( 30 ft )                   | \$ 4.12            | \$ 27.00          | \$ 110.00          | \$ 411.00           |
| Office Trailer @ ( 50 ft )                   | \$ 6.18            | \$ 38.00          | \$ 151.00          | \$ 814.00           |
| Instrument Calibration Trailer @ 32 ft )     | \$ 38.11           | \$ 229.00         | \$ 916.00          | \$ 3,435.00         |
| Instrument Calibration Trailer @ 20 ft )     | \$ 32.96           | \$ 196.00         | \$ 784.00          | \$ 2,940.00         |
| Bending/Threading Trailer @ ( 1/2" thru 2" ) | \$ 13.39           | \$ 76.00          | \$ 304.00          | \$ 1,231.00         |
| Hydraulic Bending Trailer @ ( 5" - 6" )      | \$ 14.42           | \$ 88.00          | \$ 350.00          | \$ 1,313.00         |
| Hand Trencher                                | \$ 14.33           | \$ 82.00          | \$ 328.00          | \$ 1,230.00         |
| Ride On Trencher                             | \$ 50.72           | \$ 349.00         | \$ 1,396.00        | \$ 5,235.00         |
| Bobcat Trencher ( small )                    | \$ 37.49           | \$ 240.00         | \$ 946.00          | \$ 2,914.00         |
| Bobcat Trencher ( large )                    | \$ 48.51           | \$ 306.00         | \$ 1,239.00        | \$ 4,374.00         |
| Welding Machine - Electric @ ( 200 amp )     | \$ 8.24            | \$ 57.00          | \$ 175.00          | \$ 656.00           |
| Welding Machine - Gas @ ( 200 amp )          | \$ 19.85           | \$ 140.00         | \$ 559.00          | \$ 2,096.00         |
| 50 amp Plasma Cutter w/Compressor            | \$ 12.13           | \$ 87.00          | \$ 349.00          | \$ 1,309.00         |
| Welding Truck w/ 200 amp Welder              | \$ 26.46           | \$ 204.00         | \$ 814.00          | \$ 3,053.00         |
| Air Compressor - Gas @ ( 160 cfm )           | \$ 20.95           | \$ 152.00         | \$ 605.00          | \$ 2,269.00         |
| Forklift                                     | \$ 36.38           | \$ 200.00         | \$ 400.00          | \$ 900.00           |

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

CONTRA COSTA ELECTRIC, INC.

(Company name)

for contract work at:

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

(Project name and location)

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

---

(Signature of officer or agent)

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

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

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

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

\_\_\_\_\_

(Signature of officer or agent)

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

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

**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

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** CTi Controltech, Inc. – 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.

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### Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with CTi Controltech, Inc. for boiler and burner maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

### Background

Boiler and burner maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with CTi Controltech, Inc., which has since expired. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor, and NCPA desires to put this new agreement in place so we can continue to use them going forward.

### 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 one additional agreement pending with Babcock & Wilcox for similar services and seeks bids from as many qualified providers as possible. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the Agreement is not-to-exceed \$500,000 over five years to be used out of NCPA approved annual operating 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 CTi Controltech, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
CTI CONTROLTECH, 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 CTi Controltech, Inc., a Delaware corporation with its office located at 22 Beta Court, San Ramon, CA 94583 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

- 4.3 Professional Liability Insurance.** Contractor shall maintain professional liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000) aggregate covering the Contractor's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000.00) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.
- 4.4 Pollution Insurance.** Not Applicable.
- 4.5 All Policies Requirements.**
- 4.5.1 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.
- 4.5.2 Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.
- 4.5.3 Higher Limits.** If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.
- 4.5.4 Additional Certificates and Endorsements.** If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Contractor shall provide the certificates of insurance and policy endorsements, as referenced in Section 4.5.1, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.
- 4.5.5 Waiver of Subrogation.** Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that

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

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

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

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope for Professional Services.** For services including those provided by licensed architects, licensed engineers, licensed landscape architects, and/or licenses land surveyors, Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Contractor in its performance of Work under this Agreement. Contractor shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency.
- 5.3 Scope for General Services.** 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), judgements 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.

**5.4 Transfer of Title.** Not Applicable.

**Section 6. STATUS OF CONTRACTOR.**

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

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

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

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

**6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any

capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

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

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

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

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

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

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

Contractor shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Contractor shall forfeit as a penalty to Agency \$50.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Contractor or by any subcontractor under Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each

worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

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

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

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

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

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

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

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

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

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

parties to this Agreement any data, plans, specifications, reports and other documents.

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

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

**9.4 Confidential Information and Disclosure.**

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

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

**9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted

disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

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

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

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

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

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

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

**10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment,

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

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

## **Section 11. WARRANTY.**

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

**Section 12. HEALTH AND SAFETY PROGRAMS.** The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall

include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4.

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

regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.

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

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

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

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

- 13.7 Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's

representative. All correspondence shall be directed to or through the representative.

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

Cti Controltech, Inc.  
Attention: George Conostas  
22 Beta Court  
San Ramon, CA 94583

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, SCSPPA or SCSPPA 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

CTI CONTROLTECH, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**GEORGE CONSTAS,**  
President

Attest:

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

Approved as to Form:

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

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

CTi Controltech, Inc. ("Contractor") shall provide boiler and burner maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Design/Engineering/Configuration/Documentation/Field Engineering/Surveying
- Boiler/Burner Support including:
  - System and Component Set-Up
  - Testing
  - Training
  - Supervision
  - Consultation
  - Calibration
  - Boiler Load Tests
  - Start-Up
  - Maintenance

## 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:

| <u>Discipline</u>            | <u>Base Rate</u> |
|------------------------------|------------------|
| Combustion/Controls Engineer | \$275/hr         |
| Project Engineer             | \$190/hr         |
| Field Service Technician     | \$190/hr         |
| Systems Engineer             | \$190/hr         |
| CAD Technician               | \$125/hr         |

*The above rates are straight time, normal working hours of 8:00am to 5:00pm, Monday through Friday excluding CTi Controltech recognized holidays. Outside of normal working hours overtime multiplier shall apply as follows:*

|  |       |
|--|-------|
| Outside of normal working hours,<br>hours in excess 8 hours/day and<br>Saturdays | x 1.5 |
| Sunday and holidays  | x 2.0 |

#### **Minimum Billing**

The minimum billing will be four (4) hours. All billing will be made in one-half (½) hour increments. Off site standby billing is a minimum of four (4) hours at that day's rate.

#### **Travel Time and Living Expenses**

The maximum billing for travel time, at the applicable rate, will be eight (8) hours per man for any one calendar day. Travel time and expenses for each man are portal to portal. Travel, meals and lodging will be billed at actual cost plus 10%. Mileage to and from the job site in company vehicle will be invoiced at \$.65 per mile.

#### **Cancellation or Change Notification**

Three (3) day notification of cancellation and/or schedule change is required. Otherwise the job will be billed in its entirety.

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

CTi Controltech, Inc.

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

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

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

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

\_\_\_\_\_

(Signature of officer or agent)

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

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

**NOT APPLICABLE**

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

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

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

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



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

AGENDA ITEM NO.: 15

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** American Cooling Tower, Inc. – 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.

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### Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with American Cooling Tower, Inc. for cooling tower maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

### Background

Cooling tower maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with American Cooling Tower, Inc., which has since expired. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor, and NCPA desires to put this new agreement in place so we can continue to use them going forward.

### 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 agreements in place with Creative Cooling Technologies and Energy Options, Inc. for similar services and seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the Agreement is not-to-exceed \$500,000 over five years to be used out of NCPA approved annual operating 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 American Cooling Tower, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
AMERICAN COOLING TOWER, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and American Cooling Tower, Inc., a corporation with its office located at 3130 West Harvard Street, Santa Ana, CA 92704 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

- 4.2.3 General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.
- 4.3 Professional Liability Insurance.** Not Applicable.
- 4.4 Pollution Insurance.** 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, SPPA or SPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

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

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

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

American Cooling Tower, Inc.  
Attention: Desi Bostard  
3130 West Harvard Street  
Santa Ana, CA 92704

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.

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

NORTHERN CALIFORNIA POWER AGENCY

AMERICAN COOLING TOWER, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**DESI BOSTARD,**  
Office Manager

Attest:

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

Approved as to Form:

---

Jane E. Luckhardt, General Counsel

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

American Cooling Tower, Inc. ("Contractor") shall perform cooling tower maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Cooling Tower Maintenance
- Cooling Tower Inspections
- Cooling Tower Evaluations

## 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:

#### TIME AND MATERIAL OR EXTRA WORK RATES

STATE: California AREA: Northern California VALID THROUGH: 1/1/20  
CUSTOMER:

Rates include wages, burdens, payroll taxes, subsistence, small tools, overhead, and profit.

| <u>Classification</u> | <u>Straight Time (\$)</u> | <u>Overtime (\$)</u> |
|-----------------------|---------------------------|----------------------|
| Superintendent        | 105.00                    | 157.50               |
| Safety Supervisor     | 105.00                    | 157.50               |
| Foreman               | 95.00                     | 142.50               |
| Leadman               | 85.00                     | 127.50               |
| Carpenter I           | 75.00                     | 112.50               |
| Carpenter II          | 70.00                     | 105.00               |
| Carpenter III         | 65.00                     | 97.50                |
| Helper/Holewatch      | 65.00                     | 97.50                |

Straight time applies to work 8 hours per day, M-F. Overtime applies for all other hours.

Subcontracts.....Cost plus 15%  
Local materials/consumables.....Cost plus 15%  
Rentals (inc. equipment).....Cost plus 15% or Blue Book  
Tools (with customer approval).....Cost plus 15%  
Non-hazardous disposal.....Cost plus 15%  
Inspection/engineering/consulting.....\$800/day  
Inspect/eng/consult expense.....Cost plus 10%  
Haz-mat handling/disposal.....Cost plus 30%

T & M (or extra work on firm contracts) requiring mobilization of crews (or additional staff) from outside 60 miles will require billing for travel time from point of departure to jobsite and return, one time per contract. Supervisor's (or Foreman's) truck will be charged at \$0.42/Mi & \$45.00 per day. If required subsistence will be billed at \$85/diem.

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

AMERICAN COOLING TOWER, INC.

(Company name)

for contract work at:

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

(Project name and location)

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

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(Signature of officer or agent)

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

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

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

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

\_\_\_\_\_

(Signature of officer or agent)

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

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

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

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

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

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

\_\_\_\_\_



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

AGENDA ITEM NO.: 17

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** Reliability Optimization, Inc. – Five Year Multi-Task Consulting 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.

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### Proposal

Approve the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Reliability Optimization, Inc. for predictive maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

### Background

Predictive maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with Reliability Optimization, Inc., which is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor.

### Selection Process

NCPA went out to bid for the predictive maintenance services for the Combustion Turbine (CT) facilities. A Request For Quote was sent to three vendors, GE Renewable Energy, PdM Specialists, LLC and Reliability Optimization, Inc. Reliability Optimization, Inc. was the only vendor to provide a quote.

The enabling portion of the 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 does not currently have additional agreements in place with other vendors for similar services. 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 \$2,000,000 over five years, to be used out of the NCPA approved annual operating budgets. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and

procedures. The CT facilities portion of the agreement totals \$672,915 for the five year term. The remainder of the agreement is enabling in order for other facilities to utilize if needed.

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 Consulting Services Agreement with Reliability Optimization, Inc.



## **MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND RELIABILITY OPTIMIZATION, INC.**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Reliability Optimization, Inc., a corporation with its office located at 325 Park Drive, Aptos, CA 95003 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** TWO MILLION dollars (\$2,000,000.00) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.4 All Policies Requirements.**

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

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

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

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

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

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

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

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

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

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

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

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the

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

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

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

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

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

**Section 7. LEGAL REQUIREMENTS.**

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

**Section 8. TERMINATION AND MODIFICATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 10. MISCELLANEOUS PROVISIONS.**

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

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

Reliability Optimization, Inc.  
Attention: Kevin Nordenstrom, President  
325 Park Drive  
Aptos, CA 95003

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails,

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

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

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

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

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

RELIABILITY OPTIMIZATION, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**KEVIN NORDENSTROM,**  
President

Attest:

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

Approved as to Form:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Reliability Optimization, Inc. ("Consultant") shall provide predictive maintenance testing services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Vibration Testing
- On-Line/Off-Line Motor Analysis
- Infrared Thermographic Imaging
- Airborne Ultrasonic Testing
- Corona Survey
- Lubrication Oil Analysis
- Transformer Oil Analysis
- SF6 Gas Analysis
- Generator & Generator Step Up Transformer Partial Discharge Analysis
- PdM Testing Reporting

## **EXHIBIT B**

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

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

Pricing for CT facilities:

- Lodi Energy Center – \$84,498 annually, billed at \$7,041.50 monthly
- CT1 Lodi – \$12,023 annually, billed at \$6,011.50 semi-annually
- CT1 Alameda – \$17,100 annually, billed at \$8,550.00 semi-annually
- STIG – \$20,962 annually, billed at \$10,481.00 semi-annually

If additional work is needed outside of the standard scope of predictive maintenance, the pricing will be agreed upon at the time a Purchase Order is issued.

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 Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

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

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

RELIABILITY OPTIMIZATION, INC.  
(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242  
(Project name and location)

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

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

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

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



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

### **Staff Report**

AGENDA ITEM NO.: 18

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** RAM Mechanical, Inc. – 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.

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#### Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with RAM Mechanical, Inc. for general time and material (T&M) mechanical maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

#### Background

General T&M mechanical maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with RAM Mechanical, Inc., which has since expired. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor, and NCPA desires to put this new agreement in place so we can continue to use them going forward.

#### 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 Black & Veatch (pending), Danick Mechanical, Performance Mechanical, Inc., TNT Industrial Contractors and Wagner Mechanical 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 annual operating 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 RAM Mechanical, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
RAM MECHANICAL, 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 RAM Mechanical, Inc., a corporation with its office located at 3506 Moore Road, Ceres, CA 95307 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

**Section 2. COMPENSATION.** Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** TWO MILLION dollars (\$2,000,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

**4.2.1 Commercial General Insurance.** Contractor shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$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, SCPA or SCPA 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:

RAM Mechanical, Inc.  
Attention: Scott Boyer, GM of Construction  
3506 Moore Road  
Ceres, CA 95307

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

RAM MECHANICAL, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**LUIS CASTANEDA,**  
Vice President

Attest:

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

Approved as to Form:

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

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

RAM Mechanical, Inc. ("Contractor") shall provide general T&M maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members.

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

- Piping
- Hydrotesting
- HRSG maintenance
- Catalyst maintenance
- Underground piping maintenance
- Rotating Equipment maintenance
- General maintenance
- Outage support
- Troubleshooting
- Miscellaneous steel work

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:

| Effective                 | July / 1 / 19  | to              | June / 30 / 20 |
|---------------------------|----------------|-----------------|----------------|
| <b>Millwrights</b>        | <b>Regular</b> | <b>Time+1/2</b> | <b>Double</b>  |
| Journeyman                | \$104.00 /hr   | \$139.00 /hr    | \$174.00 /hr   |
| Foreman                   | \$126.50 /hr   | \$170.50 /hr    | \$214.00 /hr   |
| General Foreman           | \$130.50 /hr   | \$176.00 /hr    | \$222.00 /hr   |
| <b>Sheetmetal Workers</b> | <b>Regular</b> | <b>Time+1/2</b> | <b>Double</b>  |
| Journeyman                | \$ 104.00 /hr  | \$ 133.00 /hr   | \$ 162.00 /hr  |
| Foreman                   | \$ 129.00 /hr  | \$ 166.50 /hr   | \$ 204.50 /hr  |
| General Foreman           | \$ 130.00 /hr  | \$ 168.50 /hr   | \$ 207.00 /hr  |
| <b>Pipefitters</b>        | <b>Regular</b> | <b>Time+1/1</b> | <b>Double</b>  |
| Journeyman                | \$ 101.00 /hr  | \$ 130.00 /hr   | \$ 158.00 /hr  |
| Foreman                   | \$ 126.50 /hr  | \$ 165.00 /hr   | \$ 202.00 /hr  |
| General Foreman           | \$ 130.50 /hr  | \$ 172.00 /hr   | \$ 211.50 /hr  |
| <b>Other Trades</b>       | <b>Regular</b> | <b>Time+1/2</b> | <b>Double</b>  |
| <b>Other Trades</b>       | <b>Regular</b> | <b>Time+1/2</b> | <b>Double</b>  |
| <b>Other Trades</b>       | <b>Regular</b> | <b>Time+1/1</b> | <b>Double</b>  |
| <b>Safety Coordinator</b> | <b>Regular</b> | <b>Time+1/2</b> | <b>Double</b>  |
| Cordinator                | \$ 75.00 /hr   | \$ 107.50 /hr   | \$ 139.00 /hr  |
| <b>Shop Support</b>       | <b>Regular</b> | <b>Time+1/2</b> | <b>Double</b>  |
| Laborer                   | \$ 55.00 /hr   | \$ 74.00 /hr    | \$ 91.00 /hr   |

Labor Rates Include small tools whose value is less than \$400.00. All other tools will be charged at daily, weekly or monthly rates, depending on time required. Any applicable union requirements, such as subsistence and travel pay, will be charged at cost plus 20% overhead-Travel and subsistence apply to areas over 50-miles away from RMI office. All other costs, such as materials, outside rentals and subcontractors will be charged at cost plus 20% overhead and 5% profit. Questions regarding the above fees should be directed to my attention at **Ram Mechanical, Inc.**, 3506 Moore Rd., Ceres, Ca. 95307; or call (209) 531-9155.

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

RAM MECHANICAL, INC.

(Company name)

for contract work at:

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

(Project name and location)

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

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

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

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

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

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

\_\_\_\_\_

(Signature of officer or agent)

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

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

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

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

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

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



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

AGENDA ITEM NO.: 19

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** Custom Valve Solutions, Inc. dba Custom Valve Solutions – 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.

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### Proposal

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

### Background

Machining services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA would like to enter into an agreement with this new vendor in order to have multiple options when 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 Bay Valve Service as well as Mechanical Analysis Repair dba MarTech 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 \$1,500,000 over five years to be used out of NCPA approved annual operating 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 Custom Valve Solutions, Inc. dba Custom Valve Solutions



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

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Custom Valve Solutions, Inc., dba Custom Valve Solutions, a corporation with its office located at 1101 Nimitz Avenue, Suite 100, Vallejo, CA 94592 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.4 Pollution Insurance.** Not Applicable.

**4.5 All Policies Requirements.**

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

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

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

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

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

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

provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

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

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency. In no event will damages exceed \$2,000,000.
- 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:

Custom Valve Solutions, Inc. dba Custom Valve Solutions  
Attention: Edward Kumisca  
1101 Nimitz Avenue, Suite 100  
Vallejo, CA 94592

Any written notice to Agency shall be sent to:

Randy S. Howard  
General Manager  
Northern California Power Agency  
651 Commerce Drive

Roseville, CA 95678

With a copy to:

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

- 13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:
- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
  - 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
  - 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
  - 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
  - 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative

remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

CUSTOM VALVE SOLUTIONS, INC. DBA  
CUSTOM VALVE SOLUTIONS

Date \_\_\_\_\_

Date \_\_\_\_\_

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

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

Attest:

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

Approved as to Form:

---

Jane E. Luckhardt, General Counsel

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

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

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

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

## **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:

Pricing for services to be performed will be quoted at the time services are requested.

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

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

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(Name of person signing affidavit)(Title)

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

Custom Valve Solutions, Inc. dba Custom Valve Solutions

(Company name)

for contract work at:

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

(Project name and location)

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

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(Signature of officer or agent)

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

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

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

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

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

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

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

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

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

**EXHIBIT E**

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

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

The undersigned hereby certifies and agrees that:

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

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

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

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



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

AGENDA ITEM NO.: 20

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** Farwest Insulation Contracting – 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.

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### Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with Farwest Insulation Contracting for insulation services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

### Background

Insulation services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with Farwest Insulation Contracting, which is expiring. NCPA has utilized this vendor in the past, and has a good working relationship with the vendor, and NCPA desires to put this new agreement in place so we can continue to use them going forward.

### 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 Bayside Insulation & Construction and BrandSafway Services (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 \$500,000 over five years to be used out of NCPA approved annual operating 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 Farwest Insulation Contracting



## **MULTI-TASK GENERAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND FARWEST INSULATION CONTRACTING**

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 Farwest Insulation Contracting, a corporation with its office located at 1220 S. Sherman Street, Anaheim, CA 92805 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.4     Pollution Insurance.** 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:

Farwest Insulation Contracting  
Attention: Rory McDonnell  
672 Enterprise Court  
Livermore, CA 94550

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

FARWEST INSULATION CONTRACTING

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**ERIC B. SARMENTO,**  
Vice President

Attest:

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

Approved as to Form:

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

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

Farwest Insulation Contracting ("Contractor") shall provide insulation related services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Insulation
- Electrical Tracing

## 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:

#### Labor Rates:

**Zone 1** includes the following California counties: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties.

| Classification  | Straight Time | Overtime | Double Time |
|-----------------|---------------|----------|-------------|
| General Foreman | \$155.66      | \$219.15 | \$282.64    |
| Foreman         | \$152.37      | \$214.21 | \$276.06    |
| Mechanic        | \$145.79      | \$204.34 | \$262.89    |
| Apprentice 5th  | \$132.16      | \$184.85 | \$237.54    |
| Apprentice 4th  | \$120.46      | \$167.30 | \$214.14    |
| Apprentice 3rd  | \$102.88      | \$140.94 | \$178.99    |
| Apprentice 2nd  | \$80.68       | \$111.36 | \$142.03    |
| Apprentice 1st  | \$57.92       | \$81.33  | \$104.75    |

**Zone 2** includes the following California counties: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Nevada, Placer, Plumas, Sacramento, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties.

| Classification  | Straight Time | Overtime | Double Time |
|-----------------|---------------|----------|-------------|
| General Foreman | \$127.85      | \$177.43 | \$227.02    |
| Foreman         | \$124.56      | \$172.50 | \$220.43    |
| Mechanic        | \$117.98      | \$162.62 | \$207.27    |
| Apprentice 5th  | \$107.13      | \$147.30 | \$187.48    |
| Apprentice 4th  | \$98.21       | \$133.93 | \$169.64    |

|                |         |          |          |
|----------------|---------|----------|----------|
| Apprentice 3rd | \$84.81 | \$113.83 | \$142.85 |
| Apprentice 2nd | \$66.09 | \$89.46  | \$112.84 |
| Apprentice 1st | \$46.79 | \$64.65  | \$82.50  |

Wages Valid through July 31, 2020

#### Travel Expenses

| County                 | Rate    | Zone | County                      | Rate    | Zone |
|------------------------|---------|------|-----------------------------|---------|------|
| Alameda                | \$11.00 | 1    | Placer (west of Highway 49) | \$11.00 | 2    |
| Alpine                 | \$85.00 | 2    | Placer (east of Highway 49) | \$31.00 | 2    |
| Amador                 | \$21.00 | 2    | Plumas                      | \$85.00 | 2    |
| Butte                  | \$85.00 | 2    | Sacramento                  | \$11.00 | 2    |
| Calaveras              | \$31.00 | 2    | San Benito                  | \$85.00 | 1    |
| Colusa                 | \$31.00 | 2    | San Francisco               | \$16.00 | 1    |
| Contra Costa           | \$11.00 | 1    | San Joaquin                 | \$21.00 | 2    |
| Del Norte              | \$85.00 | 2    | San Mateo                   | \$16.00 | 1    |
| El Dorado (west of 49) | \$11.00 | 2    | Santa Clara                 | \$21.00 | 1    |
| El Dorado (east of 49) | \$31.00 | 2    | Santa Cruz                  | \$36.00 | 2    |
| Fresno                 | \$11.00 | 2    | Shasta                      | \$85.00 | 2    |
| Glenn                  | \$85.00 | 2    | Sierra                      | \$85.00 | 2    |
| Humboldt               | \$85.00 | 2    | Siskiyou                    | \$85.00 | 2    |
| Kings                  | \$41.00 | 2    | Solano                      | \$11.00 | 1    |
| Lake                   | \$85.00 | 2    | Sonoma                      | \$21.00 | 1    |
| Lassen                 | \$85.00 | 2    | Stanislaus                  | \$16.00 | 2    |
| Madera                 | \$21.00 | 2    | Sutter                      | \$31.00 | 2    |
| Marin                  | \$11.00 | 1    | Tehama                      | \$85.00 | 2    |
| Mariposa               | \$31.00 | 2    | Trinity                     | \$85.00 | 2    |
| Mendocino              | \$85.00 | 2    | Tulare                      | \$41.00 | 2    |
| Merced                 | \$21.00 | 2    | Tuolumne                    | \$31.00 | 2    |
| Modoc                  | \$85.00 | 2    | Yolo                        | \$11.00 | 2    |
| Mono                   | \$85.00 | 2    | Yuba                        | \$31.00 | 2    |
| Monterey               | \$85.00 | 2    |                             |         |      |
| Napa                   | \$21.00 | 1    |                             |         |      |
| Nevada                 | \$21.00 | 2    |                             |         |      |

#### Material Rates:

Actual invoice cost plus 10%

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

Farwest Insulation Contracting

(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.: 21

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**Date:** November 6, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy – 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.

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#### Proposal

Approve the General Manager or his designee to enter into a Multi-Task General Services Agreement with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy for chiller and HVAC maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for use at all facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, or by SCPPA Members.

#### Background

Chiller and HVAC maintenance services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. NCPA had a previous agreement in place with Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy which was for a single work scope. NCPA was happy with the work performed and desires to put this new agreement in place so we can continue to use them going forward.

#### 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 ACCO Engineered Systems, Inc. and Johnson Controls, Inc. 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 annual operating 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 Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
MESA ENERGY SYSTEMS, INC. dba EMCOR SERVICES MESA ENERGY**

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 Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy, a corporation with its office located at 2 Cromwell, Irvine, CA 92618 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("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](mailto:AcctsPayable@ncpa.com)

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

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

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

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

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

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

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

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

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

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

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

provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

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

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

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

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

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Section 11. WARRANTY.**

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

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall

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

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

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

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

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

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy  
Attention: Mike Bruins  
3906 Kristi Court  
Sacramento, CA 95827

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

MESA ENERGY SYSTEMS, INC. dba  
EMCOR SERVICE MESA ENERGY

Date \_\_\_\_\_

Date \_\_\_\_\_

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

\_\_\_\_\_  
**LEON RUA,**  
Branch Manager

Attest:

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

Approved as to Form:

---

Jane E. Luckhardt, General Counsel

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

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy ("Contractor") shall provide chiller and HVAC maintenance services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

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

- Chiller Maintenance
- HVAC Maintenance

CT Facilities Specific Chiller Services to Include:

| Service                       | Frequency Per Year |
|-------------------------------|--------------------|
| Operational Inspections       | 3                  |
| Annual PM                     | 1                  |
| Megohm Ref. and Solution Pump | 1                  |
| Lithium Bromide Analysis      | 1                  |

#### **ABSORPTION CHILLER ANNUAL MAINTENANCE**

1. CHECK IN WITH PROPER SITE PERSONNEL
2. CHECK ABSORPTION CHILLER OPERATIONS
3. CHECK SYSTEM SAFETIES
4. CHECK SYSTEM OPERATING PRESSURES AND TEMPERATURES
5. CHECK REFRIGERANT CHARGE
6. CHECK REFRIGERANT AND SOLUTION PUMP OPERATIONS
7. CHECK REFRIGERANT AND SOLUTION PUMP AMPERAGE PER MOTOR NAMEPLATE
8. MEGOHM TEST REFRIGERANT AND SOLUTION PUMP WINDINGS
9. CALIBRATE THERMISTORS AND SENSORS AS NEEDED
10. CHECK PURGE SOLENOID VALVE
11. CHECK PURGE OPERATIONS
12. CHANGE PURGE PUMP OIL IF NEEDED
13. CHECK AND VERIFY COOLER AND CONDENSER APPROACH
14. CHECK TUBE CLEANLINESS (customer to remove end bells and reinstall)
15. LOG ENTERING AND LEAVING FLUID TEMPERATURES
16. CHECK STEAM TEMPERATURE AND PRESSURE
17. CHECK FOR UNUSUAL NOISE AND VIBRATION
18. CHECK OVERALL ABSORPTION CHILLER CONDITION
19. CLEAN AREA AROUND WORK SPACE
20. COMPLETE ANY REQUIRED MAINTENANCE CHECK LISTS ITEM IN MANUFACTURE IOM
21. REPORT FINDINGS TO CUSTOMER

#### **ABSORPTION CHILLER OPERATIONAL MAINTENANCE**

1. CHECK IN WITH PROPER SITE PERSONNEL
2. CHECK ABSORPTION CHILLER OPERATIONS
3. CHECK SYSTEM OPERATING PRESSURES AND TEMPERATURES
4. CHECK REFRIGERANT CHARGE
5. CHECK REFRIGERANT AND SOLUTION PUMP OPERATIONS
6. CHECK PURGE SOLENOID VALVE OPERATION
7. CHECK PURGE OPERATIONS
8. CHANGE PURGE PUMP OIL IF NEEDED
9. CHECK AND VERIFY COOLER AND CONDENSER APPROACH
10. LOG ENTERING AND LEAVING FLUID TEMPERATURES
11. CHECK STEAM TEMPERATURE AND PRESSURE
12. CHECK FOR UNUSUAL NOISE AND VIBRATION
13. CHECK OVERALL CONDITION
14. CLEAN AREA AROUND WORK SPACE
15. REPORT FINDINGS TO CUSTOMER

#### **ABSORPTION CHILLER LITHIUM BROMIDE ANALYSIS**

1. CHECK IN WITH CUSTOMER
2. REMOVE SAMPLE PER GUIDELINES
3. DROP OFF FOR ANALYSIS
4. LABEL AND COMPLETE PAPERWORK INDICATING PRESENT OPERATING CONDITIONS
5. PROVIDE LITHIUM BROMIDE SAMPLE RESULTS TO CUSTOMER

## 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 Fees:

Year 1 - \$5,417.00/Year (billed quarterly)  
Year 2 - \$5,633.00/Year (billed quarterly)  
Year 3 - \$5,859.00/Year (billed quarterly)  
Year 4 - \$6,093.00/Year (billed quarterly)  
Year 5 - \$6,337.00/Year (billed quarterly)

#### Standard Service Call Rates:

| Labor Classification   | Straight Rate | Overtime Rate | Weekend/Holiday Rate |
|------------------------|---------------|---------------|----------------------|
| Unitary (Regular HVAC) | \$130.00      | \$195.00      | \$260.00             |
| Applied (Chillers)     | \$145.00      | \$217.50      | \$290.00             |
| Controls (BMS)         | \$145.00      | \$217.50      | \$290.00             |
|                        |               |               |                      |
| Parts & Supplies       | Cost Plus 35% |               |                      |
| Truck Charge           | \$85.00       |               |                      |

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

Mesa Energy Systems, Inc. dba EMCOR Services Mesa Energy

(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.: 22

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**Date:** October 30, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** American Industrial Scaffolding, Inc. – 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.

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### Proposal

Approve the Multi-Task General Services Agreement with American Industrial Scaffolding, Inc. for scaffolding and insulation services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over 5 years for use at all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA members.

### Background

Scaffolding and insulation services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and by SCPPA Members. American Industrial Scaffolding, Inc. 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 PetroChem Insulation, Inc., Ernie & Sons Scaffolding – Unique Scaffold, and Sunshine Metal Clad, Inc. 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 American Industrial Scaffolding, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
AMERICAN INDUSTRIAL SCAFFOLDING, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and American Industrial Scaffolding, Inc., a corporation with its office located at 5056 Commercial Circle, Suite B, Concord, CA 94520-8574 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

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

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

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

**4.3 Professional Liability Insurance.** Not Applicable

**4.4 Pollution Insurance.** Not Applicable

**4.5 All Policies Requirements.**

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

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

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

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

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

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

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

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

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

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

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

Contractor shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages,

expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Contractor's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.4.1** Immediately terminate the Agreement;

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

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

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

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

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without

reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

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

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

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

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

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

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

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

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

## **Section 11. WARRANTY.**

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

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

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

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

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the

Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.

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

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

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

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

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

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

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

**13.7 Contract Administrator.** This Agreement shall be administered by 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:

Ken Norris  
V.P. Operations/Owner  
American Industrial Scaffolding, Inc.  
5056 Commercial Circle, Suite B  
Concord, CA 94520-8574

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

AMERICAN INDUSTRIAL SCAFFOLDING, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**BILL WRIGHT, President & CEO (Owner)**

Attest:

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

Approved as to Form:

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

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

American Industrial Scaffolding, Inc. ("Contractor") shall provide scaffolding and insulation services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by NCPA, its Members, Southern California Public Power Authority (SCPPA) and SCPPA members.

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

- Scaffolding
  - Scaffold Design and Project Planning
  - Erection and Dismantling
  - Maintenance
- Insulation
  - Hot and Cold Insulation
  - Removal Thermal Blankets – Manufacture and Installation
  - Heat Tracing
  - Fireproofing

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

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

#### For Prevailing Wage Projects:

##### Scaffolder

|    |          |
|----|----------|
| ST | \$107.07 |
| OT | \$136.15 |
| DT | \$165.23 |

##### Insulator

|    |          |
|----|----------|
| ST | \$111.08 |
| OT | \$147.56 |
| DT | \$184.01 |

Scaffolder and Insulator Rates include working Lead and working Foreman

|                        |  |
|------------------------|--|
| Subsistence / Per Diem | \$50/day (billed at actual payment requirements of prevailing wage w/o OH or Margin) |
| Travel                 | \$60/trip (based on actual payment requirements of prevailing wage w/o OH or Margin) |
| Vehicles               | \$75/day   |

Apprentice Rates will be billed at actual cost required by union assignment level and prevailing wage requirements + 25% for W/C & GL Insurance, Testing, Safety, Overhead, and Profit

Rates subject to change if Prevailing Rates change.

#### Non-Prevailing Wage Projects - 2019

##### Insulation

###### Skilled Helper

|    |          |
|----|----------|
| ST | \$ 59.14 |
| OT | \$ 75.86 |
| DT | \$ 92.58 |

###### Journeyman

|    |          |
|----|----------|
| ST | \$ 67.73 |
| OT | \$ 88.63 |
| DT | \$109.53 |

###### Lead

|    |          |
|----|----------|
| ST | \$ 75.05 |
| OT | \$ 98.74 |
| DT | \$122.42 |

###### Foreman

|    |          |
|----|----------|
| ST | \$ 84.23 |
| OT | \$112.10 |
| DT | \$139.96 |

|                        |          |
|------------------------|----------|
| Subsistence / Per Diem | \$85/day |
|------------------------|----------|

|          |           |
|----------|-----------|
| Travel   | \$80/trip |
| Vehicles | \$75/day  |

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

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(Company name)

for contract work at:

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

(Project name and location)

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

---

(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.: 23

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**Date:** October 30, 2019

**Meeting Date:** November 4, 2019

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

**Subject:** Di Drill Survey Services, Inc. – Five Year Multi-Task Consulting Services Agreement; Applicable to the following projects: All NCPA Northern California Power Agency (NCPA) Plant Facilities.

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### Proposal

Approve the Multi-Task Consulting Services Agreement with Di Drill Survey Services, Inc. for downhole wireline services, 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 NCPA plant facilities.

### Background

Downhole wireline services are required from time to time for the operation and maintenance of NCPA plant facilities. NCPA has a current agreement in place with Di Drill Survey Services, Inc., however, all the monies have since been paid out. NCPA utilized this vendor recently for the Geothermal P-Site and Q-Site Well Workover Project. NCPA continues to have a good working relationship with the vendor, and seeks to enter into a new multi-year agreement with this vendor so we can continue to use them going forward.

### Selection Process

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

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$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 Consulting Services Agreement with Di Drill Survey Services, Inc.



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
DI DRILL SURVEY SERVICES, INC.**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Di Drill Survey Services, Inc., a corporation with its office located at 11158 Taft Hwy, Bakersfield, CA 93311 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 20\_\_ ("Effective Date") in Roseville, California.

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

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

Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.3 Professional Liability Insurance.** Not Applicable

**4.4 All Policies Requirements.**

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

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

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

**4.4.4 Additional Certificates and Endorsements.** Not Applicable.

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

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

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

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

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

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

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

including salaries and benefits of employees, agents and subcontractors of Consultant.

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

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

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

**6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

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

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

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

**Section 8. TERMINATION AND MODIFICATION.**

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

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

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

Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

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

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

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

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

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

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

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

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

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

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

Daniel McCall  
President  
Di Drill Survey Services, Inc.  
11158 Taft Hwy.  
Bakersfield, CA 93311

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SIGNATURES ON FOLLOWING PAGE**

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

NORTHERN CALIFORNIA POWER AGENCY

DI DRILL SURVEY SERVICES, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
**DANIEL MCCALL, President**

Attest:

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

Approved as to Form:

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

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Di Drill Survey Services, Inc. ("Contractor") shall provide labor and equipment for downhole wireline services as requested by the Northern California Power Agency ("Agency") on wells located at any facilities owned and/or operated by the Agency.

Services to include, but not limited to the following:

- Pressure, temperature, and spinner surveys
- Casing caliper surveys
- Wireline wellbore plugs
- Downhole video services
- Miscellaneous wireline work in support of drilling operations.

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 tasks, 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.**

|  |            |             |
|--|------------|-------------|
| <b>NCPA Pricing 2019</b>                                     |            |             |
| <b>WIRELINE RATES</b>  | <b>UOM</b> | <b>Cost</b> |
| Wireline Unit (Includes mast unit, lubricator, and pack off) | Per Day    | \$2,300.00  |
| Wireline Unit Standby  | Per Day    | \$1,250.00  |
| Wireline Unit Mileage  | Per Mile   | \$2.50      |
| Wireline Operator  | Per Day    | \$675.00    |
| Wireline Operator Standby                                    | Per Day    | \$425.00    |
| Per Diem   | Per Day    | \$250.00    |
| High Pressure Equipment Charge (BOP) if required             | Per Day    | \$250.00    |
| Pump Down Equipment (Used on High Angle Wells)               | Per Day    | \$250.00    |
| <b>GYRO SURVEY RATES</b>                                     | <b>UOM</b> | <b>Cost</b> |
| Gyro Survey Equipment  | Per Well   | \$4,000.00  |
| Gyro Orientation (Includes UBHO sub)                         | Per Well   | \$4,250.00  |
| Gyro Orientation (Each additional day same well)             | Per Day    | \$3,900.00  |
| Gyro Equipment Standby                                       | Per Day    | \$3,150.00  |
| Service Truck  | Per Mile   | \$2.00      |
| Gyro Engineer  | Per Day    | \$675.00    |
| Gyro Engineer Standby  | Per Day    | \$425.00    |
| Per Diem   | Per Day    | \$250.00    |
| Drop Gyro (Includes drop assembly)                           | Per Well   | \$3,750.00  |
| Thread Inspection per connection                             | Per Well   | \$65.00     |
| <b>ADDITIONAL ITEMS</b>                                      | <b>UOM</b> | <b>Cost</b> |
| Memory Gyro Module   | Per Well   | \$500.00    |
| Thermal Shield (If temps exceed 158°F)                       | Per Well   | \$1,200.00  |
| <b>DOWNHOLE CAMERA SERVICES</b>                              | <b>UOM</b> | <b>Cost</b> |
| View Max Lite Side View < 5000'                              | Per Run    | \$3,500.00  |
| View Max Lite Side View > 5000'                              | Per ft.    | \$0.50      |
| View Max Lite Side View (Standby)                            | Per Day    | \$2,200.00  |
| High Temp Camera < 5000'                                     | Per Run    | \$4,750.00  |
| High Temp Camera > 5000'                                     | Per ft.    | \$1.00      |
| High Temp Camera (Standby)                                   | Per Day    | \$2,750.00  |
| Camera Specialist  | Per Day    | \$1,200.00  |
| Camera Specialist Standby                                    | Per Day    | \$850.00    |
| Per Diem (Subsistence)                                       | Per Day    | \$250.00    |
| Service Unit Mileage (If over 50 miles)                      | Per Mile   | \$2.50      |

| <b>PRODUCTION LOGGING SERVICES</b>  |  | <b>UOM</b> | <b>Cost</b>  |
|---|--|------------|--------------|
| Temperature/Pressure Survey (Flat Rate)   |  | Per Well   | \$3,500.00   |
| Temperature/Pressure Survey (Standby)   |  | Per Day    | \$675.00     |
| Casing Collar Locator (CCL)   |  | Per Day    | \$1,950.00   |
| Tool Technician   |  | Per Day    | \$875.00     |
| Tool Technician Standby   |  | Per Day    | \$550.00     |
| Per Diem  |  | Per Day    | \$250.00     |
| Fill Tag  |  | Per Run    | \$1,050.00   |
|   |  |            |              |
| <b>SLICKLINE SERVICES</b>   |  | <b>UOM</b> | <b>Cost</b>  |
| Includes Gauge Ring Runs, Fill Tags, Sample Bailing, and Sand Bailing. (Charges in addition to wireline unit) |  |            |              |
| Rig up Charge   |  | Per Job    | \$700.00     |
| Hourly Rate   |  | Per Hour   | \$195.00     |
| Slickline Unit Mileage (If over 50 miles)   |  | Per Mile   | \$2.50       |
|   |  |            |              |
| <b>LOST IN HOLE</b>   |  | <b>UOM</b> | <b>Cost</b>  |
| View Max Lite Complete Tool Assembly with Centralizers  |  | Per Tool   | \$195,000.00 |
| High Temp Camera Complete Tool Assembly with Centralizers   |  | Per Tool   | \$205,000.00 |
| Gyro Downhole Survey System with Running Gear   |  | Per Tool   | \$228,000.00 |
| Gyro Downhole Survey System with Running Gear (With Thermal Shield)   |  | Per Tool   | \$248,000.00 |
| Gyro Surface Equipment  |  |            | \$35,000.00  |
| Kinley KBC Complete Tool Assembly including Centralizers  |  | Per Tool   | \$95,000.00  |
| Kinley Megadata Complete Tool Assembly Including Centralizer  |  | Per Tool   | \$145,000.00 |
| Mechanical Temperature Probe  |  | Per Tool   | \$38,500.00  |
| Temperature/Pressure Probe  |  | Per Tool   | \$125,000.00 |
| Temperature/Pressure/Spinner Probe  |  | Per Tool   | \$152,500.00 |
| Weight Bar 3' (Feed Through) 30% Discount for dummy bars  |  | Per Tool   | \$900.00     |
| Weight Bar 5'   |  | Per Tool   | \$1,150.00   |
| Weight Bar 7'   |  | Per Tool   | \$1,350.00   |
| 1 3/8" CCL/Temp   |  | Per Tool   | \$42,500.00  |
| 3.5" UBHO Sub with Sleeve   |  | Per Tool   | \$3,500.00   |
| 4.75" UBHO Sub with Sleeve  |  | Per Tool   | \$3,750.00   |
| 6.75" UBHO Sub with Sleeve  |  | Per Tool   | \$3,950.00   |
| 3.5" Cross Over Sub   |  | Per Tool   | \$2,200.00   |
| 4.75" Cross Over Sub  |  | Per Tool   | \$2,550.00   |
| 6.75" Cross Over Sub  |  | Per Tool   | \$2,850.00   |

- Inspections, Re-facing, or Recuts will be charged back to the customer
- Any other services or items requested will be charged to customer (If abnormal wear and Tear)
- Damage to equipment- if equipment is ran outside of design parameters client will be charged repair cost plus 15%.

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

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

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

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

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

for contract work at:

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

(Project name and location)

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

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

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

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



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

### **Staff Report**

AGENDA ITEM NO.: 24

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**Date:** November 4, 2019  
**To:** Lodi Energy Center Project Participant Committee  
**Subject:** FY19 Annual Billing Settlement

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#### Proposal

The FY19 Annual Billing Settlement Summary for the period July 1, 2018 through June 30, 2019 is presented for approval and recommendation to the Agency Commission for its approval.

#### Background

Total Annual Costs to Participants were approximately \$97.6 million. The plant generated 1,382,308 MWh compared to planned generation of 1,304,122 MWh. The higher generation resulted from market demands from CAISO and plant availability.

Third Party Revenues for the year totaled \$79.3 million, which was \$0.3 million higher than credited during collections. The increase was related to higher than expected interest received on investments.

Fuel, CAISO charges and energy and ancillary services sales do not play a material role in the annual settlements process as those items are adjusted monthly in the Agency's All Resources Bill when the actual costs for these categories are invoiced by NCPA.

This year's Total Annual Net Costs were \$18.3 million. Adjusted net collections from participants totaled approximately \$19.2 million, which consists of participants collections of \$14.5 million and participants' transfer gas credits of \$4.7 million. The net refund amount to LEC participants at fiscal year-end is \$861,238 or 4.5% of total collections.

During FY19, LEC participants received budgeted Power Management Service Revenue of \$196,576. Final Power Management Service Revenue to LEC participants was \$237,156, resulting in a refund of \$40,580. This refund is due to additional customer who was not budgeted in FY19.

#### Fiscal Impact

Upon approval by this Committee and the Agency Commission, the refund of \$861,238 from the LEC project and \$40,580 from additional Power Management service revenue will be credited to the LEC Project Participants. NCPA member amounts will be included with their Agency's annual billing settlements and credited into their GOR accounts as one amount. LEC non-member participants will receive a payment in accordance with Agency payment terms unless otherwise directed in writing.

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 the Committee approve the Annual Billing Settlement Summary for fiscal year ended June 30, 2019 as well as recommend Commission approval.

Respectfully Submitted:



MONTY HANKS  
Assistant General Manager/CFO  
Administrative Services/Finance

Prepared by:



SONDRA AINSWORTH  
Treasurer-Controller

Attachments: (3)

- Billing Settlement Summary FY2019
- Allocation of Project Costs – Actual FY2019
- Settlement Analysis for the Year Ended June 30, 2019

LODI ENERGY CENTER  
Billing Settlement Summary  
FY 2019

|  | Total         | Azusa      | BART         | Biggs       | CDWR         | Gridley    | Healdsburg  | Lodi         | Lompoc       | MID            | Plumas-Sierra | PWRPA        | SVP          | Ukiah        |
|--|---------------|------------|--------------|-------------|--------------|------------|-------------|--------------|--------------|----------------|---------------|--------------|--------------|--------------|
| Collections per All Resources Bill (ARB)     | \$ 14,511,194 | \$ 577,838 | \$ 1,985,143 | \$ (21,995) | \$ 6,385,717 | \$ 240,782 | \$ (75,725) | \$ (707,199) | \$ (259,221) | \$ (931,654)   | \$ 21,640     | \$ 2,115,976 | \$ 5,347,254 | \$ (167,362) |
| Transfer Gas Credit In ARB                   | \$ 4,899,495  | \$ -       | \$ -         | \$ 77,635   | \$ -         | \$ 187,978 | \$ 417,161  | \$ 2,675,669 | \$ 680,954   | \$ -           | \$ 142,294    | \$ -         | \$ -         | \$ 537,804   |
| Total Adjusted ARB Collections               | \$ 19,210,689 | \$ 577,838 | \$ 1,985,143 | \$ 55,640   | \$ 6,385,717 | \$ 408,760 | \$ 341,436  | \$ 1,968,470 | \$ 421,733   | \$ (931,654)   | \$ 163,934    | \$ 2,115,976 | \$ 5,347,254 | \$ 370,442   |
| Net Project Costs                            | \$ 18,349,451 | \$ 553,198 | \$ 1,926,780 | \$ 53,283   | \$ 6,095,641 | \$ 391,387 | \$ 326,919  | \$ 1,884,463 | \$ 403,726   | \$ (1,009,528) | \$ 156,996    | \$ 2,092,396 | \$ 5,119,541 | \$ 354,649   |
| Total Adjusted Costs                         | \$ 18,349,451 | \$ 553,198 | \$ 1,926,780 | \$ 53,283   | \$ 6,095,641 | \$ 391,387 | \$ 326,919  | \$ 1,884,463 | \$ 403,726   | \$ (1,009,528) | \$ 156,996    | \$ 2,092,396 | \$ 5,119,541 | \$ 354,649   |
| Net Project Refund                           | \$ 861,238    | \$ 24,640  | \$ 58,363    | \$ 2,357    | \$ 290,076   | \$ 17,373  | \$ 14,517   | \$ 84,007    | \$ 18,007    | \$ 77,874      | \$ 6,938      | \$ 23,590    | \$ 227,713   | \$ 15,793    |
| Excess of Budgeted PM Service Revenue to LEC | \$ 40,580     | \$ 1,130   | \$ 2,678     | \$ 108      | \$ 13,595    | \$ 797     | \$ 667      | \$ 3,855     | \$ 826       | \$ 4,348       | \$ 319        | \$ 1,083     | \$ 10,449    | \$ 725       |
| Adjusted Net Refund                          | \$ 901,818    | \$ 25,770  | \$ 61,041    | \$ 2,465    | \$ 303,671   | \$ 18,170  | \$ 15,184   | \$ 87,862    | \$ 18,833    | \$ 82,222      | \$ 7,257      | \$ 24,663    | \$ 238,162   | \$ 16,518    |

**LODI ENERGY CENTER**  
**Allocation of Project Actual**  
**FY 2019**

| Allocated by                                 | Total          | Azusaa       | BART         | Biggs       | CDWR           | Gridley      | Healdsburg   | Lodi         | Lompoc       | MID            | Plumas-Sierra | PWRPA        | SVP            | Ukiah        |
|--|----------------|--------------|--------------|-------------|----------------|--------------|--------------|--------------|--------------|----------------|---------------|--------------|----------------|--------------|
| ALLOCATION PERCENTAGES:                      |                |              |              |             |                |              |              |              |              |                |               |              |                |              |
| Generation Entitlement Share <sup>(2)</sup>  |                |              |              |             |                |              |              |              |              |                |               |              |                |              |
| Indenture Cost Share A                       | 100.0000%      | 2.7857%      | 8.8000%      | 0.2879%     | 33.5000%       | 1.9843%      | 1.8428%      | 9.5000%      | 2.0357%      | 10.7143%       | 0.7857%       | 2.8879%      | 25.7500%       | 1.7857%      |
| Indenture Cost Share B                       | 100.0000%      | 4.9938%      | 11.8370%     | 0.4802%     | 0.0000%        | 3.6212%      | 2.8448%      | 17.0295%     | 3.6491%      | 0.0000%        | 1.4084%       | 4.7824%      | 48.1588%       | 3.2010%      |
|  | 100.0000%      | 0.000%       | 0.000%       | 0.000%      | 100.000%       | 0.000%       | 0.000%       | 0.000%       | 0.000%       | 0.000%         | 0.000%        | 0.000%       | 0.000%         | 0.000%       |
| PROJECTED MWH                                | 1,382,308      | 38,507       | 91,232       | 3,703       | 463,073        | 27,153       | 22,708       | 131,319      | 28,140       | 148,105        | 10,881        | 38,879       | 355,944        | 24,684       |
| PROJECT COSTS:                               |                |              |              |             |                |              |              |              |              |                |               |              |                |              |
| Fuel Cost                                    | \$ 45,844,088  | \$ 1,277,710 | \$ 3,027,198 | \$ 122,807  | \$ 15,385,344  | \$ 899,745   | \$ 752,073   | \$ 4,343,062 | \$ 930,581   | \$ 4,914,296   | \$ 360,332    | \$ 1,223,874 | \$ 11,810,877  | \$ 816,789   |
| Labor  | \$ 5,383,627   | \$ 148,415   | \$ 353,969   | \$ 14,389   | \$ 1,786,815   | \$ 105,558   | \$ 88,114    | \$ 509,545   | \$ 109,187   | \$ 574,875     | \$ 42,142     | \$ 143,096   | \$ 1,381,134   | \$ 95,778    |
| Variable O&M                                 | \$ 4,384,901   | \$ 122,141   | \$ 289,401   | \$ 11,759   | \$ 1,468,934   | \$ 86,128    | \$ 70,405    | \$ 416,965   | \$ 87,250    | \$ 469,814     | \$ 34,462     | \$ 116,999   | \$ 1,129,097   | \$ 76,289    |
| Fixed O&M                                    | \$ 4,310,567   | \$ 120,079   | \$ 284,497   | \$ 11,548   | \$ 1,444,040   | \$ 84,872    | \$ 70,814    | \$ 409,504   | \$ 87,750    | \$ 461,847     | \$ 33,868     | \$ 115,002   | \$ 1,106,971   | \$ 76,974    |
| O&M Administration                           | \$ 101,781     | \$ 2,836     | \$ 6,718     | \$ 273      | \$ 34,100      | \$ 1,999     | \$ 1,872     | \$ 9,670     | \$ 2,072     | \$ 10,906      | \$ 800        | \$ 2,716     | \$ 28,211      | \$ 1,818     |
| Mandatory Costs                              | \$ 394,688     | \$ 10,994    | \$ 28,048    | \$ 1,057    | \$ 132,214     | \$ 7,752     | \$ 6,484     | \$ 37,493    | \$ 8,034     | \$ 42,286      | \$ 3,101      | \$ 10,529    | \$ 101,627     | \$ 7,048     |
| Inventory Stock                              | \$ -           | \$ -         | \$ -         | \$ -        | \$ -           | \$ -         | \$ -         | \$ -         | \$ -         | \$ -           | \$ -          | \$ -         | \$ -           | \$ -         |
| O&M and Capital Projects Costs               | \$ 47,970      | \$ 1,336     | \$ 3,166     | \$ 129      | \$ 16,070      | \$ 942       | \$ 788       | \$ 4,557     | \$ 977       | \$ 5,140       | \$ 377        | \$ 1,280     | \$ 12,352      | \$ 857       |
| Maintenance Reserve                          | \$ 1,461,107   | \$ 40,702    | \$ 96,433    | \$ 3,914    | \$ 489,471     | \$ 28,701    | \$ 24,003    | \$ 138,605   | \$ 28,744    | \$ 156,547     | \$ 11,480     | \$ 36,981    | \$ 375,235     | \$ 28,091    |
| Insurance                                    | \$ 614,129     | \$ 17,108    | \$ 40,533    | \$ 1,645    | \$ 205,733     | \$ 12,063    | \$ 10,089    | \$ 58,342    | \$ 12,502    | \$ 65,800      | \$ 4,825      | \$ 16,384    | \$ 158,138     | \$ 10,987    |
| Other Costs                                  | \$ 139,880     | \$ 3,900     | \$ 9,239     | \$ 375      | \$ 46,897      | \$ 2,750     | \$ 2,300     | \$ 13,289    | \$ 2,850     | \$ 14,989      | \$ 1,100      | \$ 3,735     | \$ 38,047      | \$ 2,500     |
| Generation Services Shared                   | \$ 325,938     | \$ 9,080     | \$ 21,512    | \$ 873      | \$ 109,189     | \$ 6,402     | \$ 5,355     | \$ 30,964    | \$ 6,635     | \$ 34,922      | \$ 2,581      | \$ 8,696     | \$ 83,929      | \$ 5,820     |
| Transmission (CAISO)                         | \$ 739,708     | \$ 21,313    | \$ 55,374    | \$ 1,757    | \$ 274,558     | \$ 12,877    | \$ 10,771    | \$ 62,279    | \$ 13,346    | \$ 70,240      | \$ 5,151      | \$ 29,119    | \$ 171,214     | \$ 11,707    |
| Energy Purchases (CAISO)                     | \$ 4,392,275   | \$ 61,427    | \$ 761,866   | \$ 5,908    | \$ 738,705     | \$ 43,315    | \$ 38,225    | \$ 209,484   | \$ 44,889    | \$ 236,261     | \$ 17,325     | \$ 1,829,883 | \$ 567,811     | \$ 39,378    |
| Debt Service Cost:                           |                |              |              |             |                |              |              |              |              |                |               |              |                |              |
| Indenture Group A Cost                       | \$ 20,916,381  | \$ 1,044,479 | \$ 2,474,615 | \$ 100,440  | \$ -           | \$ 736,507   | \$ 615,945   | \$ 3,581,952 | \$ 763,259   | \$ -           | \$ 284,586    | \$ 1,000,304 | \$ 9,654,741   | \$ 689,533   |
| BAB's Subsidy (Group A)                      | \$ (4,240,882) | \$ (211,772) | \$ (501,736) | \$ (20,365) | \$ -           | \$ (149,329) | \$ (124,885) | \$ (722,198) | \$ (154,753) | \$ -           | \$ (59,728)   | \$ (202,815) | \$ (1,957,531) | \$ (135,750) |
| Debt and Trustee Fees (Group A)              | \$ 36,923      | \$ 1,944     | \$ 4,605     | \$ 187      | \$ -           | \$ 1,371     | \$ 1,146     | \$ 6,828     | \$ 1,420     | \$ -           | \$ 548        | \$ 1,861     | \$ 17,986      | \$ 1,248     |
| Indenture Group B Cost                       | \$ 11,413,191  | \$ -         | \$ -         | \$ -        | \$ 11,413,191  | \$ -         | \$ -         | \$ -         | \$ -         | \$ -           | \$ -          | \$ -         | \$ -           | \$ -         |
| BAB's Subsidy (Group B)                      | \$ (2,037,834) | \$ -         | \$ -         | \$ -        | \$ (2,037,834) | \$ -         | \$ -         | \$ -         | \$ -         | \$ -           | \$ -          | \$ -         | \$ -           | \$ -         |
| Debt and Trustee Fees (Group B)              | \$ 22,217      | \$ -         | \$ -         | \$ -        | \$ 22,217      | \$ -         | \$ -         | \$ -         | \$ -         | \$ -           | \$ -          | \$ -         | \$ -           | \$ -         |
| Administrative & General                     | \$ 2,075,401   | \$ 57,814    | \$ 136,978   | \$ 5,560    | \$ 695,259     | \$ 40,767    | \$ 34,095    | \$ 197,163   | \$ 42,248    | \$ 222,395     | \$ 16,308     | \$ 55,370    | \$ 534,416     | \$ 37,080    |
| Power Management Allocated Costs             | \$ 1,322,317   | \$ 36,836    | \$ 87,273    | \$ 3,542    | \$ 442,976     | \$ 25,974    | \$ 21,723    | \$ 125,620   | \$ 26,918    | \$ 141,677     | \$ 10,389     | \$ 35,278    | \$ 340,497     | \$ 23,613    |
| Total Project Costs                          | \$ 97,630,471  | \$ 2,767,342 | \$ 7,177,718 | \$ 285,580  | \$ 32,857,879  | \$ 1,947,995 | \$ 1,828,756 | \$ 9,412,735 | \$ 2,016,917 | \$ 7,421,775   | \$ 779,626    | \$ 4,229,891 | \$ 26,564,533  | \$ 1,789,724 |
| Estimated price per MWh                      | \$ 70.63       | \$ 71.87     | \$ 76.68     | \$ 71.72    | \$ 70.92       | \$ 71.74     | \$ 71.73     | \$ 71.68     | \$ 71.87     | \$ 50.11       | \$ 71.78      | \$ 114.70    | \$ 71.79       | \$ 71.70     |
| Third Party Revenue                          | \$ 76,972,681  | \$ 2,145,419 | \$ 5,088,116 | \$ 205,689  | \$ 25,835,225  | \$ 1,508,148 | \$ 1,281,308 | \$ 7,283,903 | \$ 1,562,970 | \$ 8,226,221   | \$ 603,246    | \$ 2,071,878 | \$ 19,799,738  | \$ 1,371,022 |
| ISO Energy Sales                             | \$ 1,831,418   | \$ 45,448    | \$ 107,673   | \$ 4,369    | \$ 546,524     | \$ 32,046    | \$ 26,802    | \$ 154,987   | \$ 33,211    | \$ 174,795     | \$ 12,818     | \$ 43,524    | \$ 420,089     | \$ 29,132    |
| Ancillary Services Sales                     | \$ 282,681     | \$ 7,875     | \$ 18,657    | \$ 757      | \$ 94,698      | \$ 5,553     | \$ 4,644     | \$ 28,855    | \$ 5,765     | \$ 30,287      | \$ 2,221      | \$ 7,542     | \$ 72,790      | \$ 5,048     |
| Interest & Other Income                      | \$ 308,449     | \$ 15,403    | \$ 36,493    | \$ 1,481    | \$ -           | \$ 10,981    | \$ 9,083     | \$ 52,527    | \$ 11,256    | \$ -           | \$ 4,344      | \$ 14,751    | \$ 142,376     | \$ 9,873     |
| Interest Income (Group A)                    | \$ 85,791      | \$ -         | \$ -         | \$ -        | \$ 85,791      | \$ -         | \$ -         | \$ -         | \$ -         | \$ -           | \$ -          | \$ -         | \$ -           | \$ -         |
| Interest Income (Group B)                    | \$ 79,281,020  | \$ 2,214,144 | \$ 5,250,939 | \$ 212,296  | \$ 25,562,238  | \$ 1,558,608 | \$ 1,301,837 | \$ 7,528,272 | \$ 1,613,181 | \$ 8,431,303   | \$ 622,629    | \$ 2,137,495 | \$ 20,434,992  | \$ 1,415,075 |
| Annual Project Costs, net                    | \$ 18,349,451  | \$ 553,198   | \$ 1,926,780 | \$ 53,283   | \$ 6,095,641   | \$ 391,387   | \$ 325,919   | \$ 1,884,463 | \$ 403,726   | \$ (1,099,528) | \$ 156,986    | \$ 2,082,396 | \$ 5,119,541   | \$ 354,649   |
| Estimated price per MWh, net                 | \$ 13.27       | \$ 14.37     | \$ 21.12     | \$ 14.39    | \$ 13.16       | \$ 14.41     | \$ 14.40     | \$ 14.35     | \$ 14.35     | \$ (6.32)      | \$ 14.46      | \$ 56.74     | \$ 14.38       | \$ 14.37     |
| Summary of Variable and Fixed Project Costs: |                |              |              |             |                |              |              |              |              |                |               |              |                |              |
| Variable Costs                               | \$ 55,360,970  | \$ 1,482,591 | \$ 4,133,839 | \$ 142,031  | \$ 17,947,541  | \$ 1,042,065 | \$ 871,114   | \$ 5,031,390 | \$ 1,079,072 | \$ 5,690,611   | \$ 417,270    | \$ 2,999,475 | \$ 13,678,799  | \$ 946,171   |
| Fixed Costs                                  | \$ 42,269,501  | \$ 1,284,751 | \$ 3,043,879 | \$ 123,549  | \$ 14,910,338  | \$ 905,930   | \$ 757,642   | \$ 4,381,345 | \$ 938,844   | \$ 1,731,164   | \$ 382,355    | \$ 1,230,417 | \$ 11,875,734  | \$ 823,553   |
| Total Project Costs                          | \$ 97,630,471  | \$ 2,767,342 | \$ 7,177,718 | \$ 265,580  | \$ 32,857,879  | \$ 1,947,995 | \$ 1,828,756 | \$ 9,412,735 | \$ 2,016,917 | \$ 7,421,775   | \$ 779,626    | \$ 4,229,891 | \$ 25,554,533  | \$ 1,789,724 |
| JPA Assessment (per PMOA)                    | \$ 54,127      | \$ 3,036     | \$ -         | \$ -        | \$ 36,508      | \$ -         | \$ -         | \$ -         | \$ -         | \$ 11,676      | \$ -          | \$ 2,907     | \$ -           | \$ -         |
| Unfunded/Excess                              | \$ (861,238)   | \$ (24,640)  | \$ (58,363)  | \$ (2,357)  | \$ (290,076)   | \$ (17,373)  | \$ (14,517)  | \$ (84,007)  | \$ (15,007)  | \$ (77,874)    | \$ (6,938)    | \$ (23,580)  | \$ (227,713)   | \$ (15,793)  |

Y PWRPA takes their share of energy from LEC via inter-SC trades settled through LEC. At the same time, PWRPA's SC receives a corresponding credit on their ISO invoice.  
Z Generation Entitlement Share (GES) is synonymous with commonly used terms of Project Entitlement Share, Project Percentage, Project Share, Third Party share.

NORTHERN CALIFORNIA POWER AGENCY  
LODI ENERGY CENTER  
SETTLEMENT ANALYSIS  
FOR THE YEAR ENDED JUNE 30, 2019

|  | Collections   | Actual Costs  | Refund/(Deficit) | Explanations and Comments  |
|--|---------------|---------------|------------------|--|
| <b>COLLECTIONS/COSTS ANALYSIS:</b>         |               |               |                  |  |
| Variable O&M                               | \$ 5,551,834  | \$ 4,384,901  | \$ 1,166,933     | <b>General:</b> Lodi Energy Center operates as a business plant designed to meet electric generation demand and reliability as determined by CAISO.  |
| Fixed O&M                                  | 3,443,662     | 4,310,567     | (866,905)        |  |
| Administration                             | 205,529       | 101,791       | 103,738          |  |
| Mandated Costs                             | 298,336       | 394,669       | (96,333)         |  |
| Inventory Stock                            | -             | -             | -                | <b>Routine O&amp;M:</b> Collections were more than routine O&M costs by \$0.2 million primarily due to increase of \$0.8 million in variable O&M collections offset by increase of \$0.6 million in operating costs. Variable and fixed O&M costs were higher than projected due to increased generation output driven by market forces.                     |
| Subtotal Routine O & M Costs without Labor | 9,499,361     | 9,191,928     | 307,433          |  |
| Labor                                      | 5,284,165     | 5,363,627     | (79,462)         |  |
| Total Routine O & M Costs                  | 14,783,526    | 14,555,555    | 227,971          |  |
| Other Costs                                | 45,844,088    | 45,844,088    | -                | <b>Other Costs:</b> Fuel costs were higher than budgeted due to increased generation driven by CAISO economic dispatch. CAISO energy costs were primarily driven by energy purchases by participants and to CAISO calls for regulation down resulting in additional market purchases. Fuel, CAISO costs and CAISO energy purchases are billed when incurred. |
| Fuel                                       | 739,706       | 739,706       | -                |  |
| CA ISO Charges                             | 4,392,275     | 4,392,275     | -                |  |
| CA ISO Energy Purchases                    | 26,079,852    | 26,050,857    | 28,995           |  |
| Debt Service                               | 625,976       | 614,129       | 11,847           | <b>Administrative and General (A&amp;G)</b> costs are allocated to generation plants based on person years and costs. A&G costs were higher than projected overall resulting in increased A&G allocation to the plant.   |
| Insurance                                  | 124,928       | 201,128       | (76,202)         |  |
| Other Costs                                | 2,182,080     | 2,075,401     | 106,679          |  |
| Administration & General                   | 368,963       | 325,938       | 43,025           |  |
| Generation Services Shared                 | 1,446,134     | 1,322,317     | 123,817          |  |
| Power Management Allocated Costs           | 81,804,000    | 81,565,639    | 238,361          |  |
| Total Other Costs                          | 96,587,526    | 96,121,394    | 466,132          |  |
| Total O & M Costs                          |               |               |                  |  |
| Projects                                   |               |               |                  |  |
| Operations & Maintenance                   | 52,000        | 41,020        | 10,980           |  |
| Capital Projects                           | 100,000       | 6,950         | 93,050           |  |
| Maintenance Reserve                        | 1,461,107     | 1,461,107     | -                |  |
| Total Projects                             | 1,613,107     | 1,509,077     | 104,030          |  |
| Annual Collections/Costs                   | 98,200,633    | 97,630,471    | 570,162          |  |
| <b>THIRD PARTY REVENUE ANALYSIS:</b>       |               |               |                  |  |
| ISO Energy Sales                           | 76,972,661    | 76,972,661    | -                | <b>Third Party Revenues:</b> Third party revenue was higher by \$0.3 million primarily due to higher interest income earned on investments due to increases in short term interest rates. Revenues from ISO Energy Sales and Ancillary Services are credited to participants in the ARB when received.   |
| Ancillary Services Sales                   | 1,631,418     | 1,631,418     | -                |  |
| Interest Income - Operations               | 94,945        | 276,884       | (181,939)        |  |
| Interest Income (NCPA)                     | 242,355       | 308,449       | (66,094)         |  |
| Interest Income (CDWR)                     | 48,545        | 85,791        | (37,246)         |  |
| Other Income                               | -             | 5,797         | (5,797)          |  |
| Total Third Party Revenue                  | 78,989,944    | 79,281,020    | (291,076)        |  |
| Net Plant Collections/Costs <sup>(A)</sup> | \$ 19,210,689 | \$ 18,349,451 | \$ 861,238       |  |
| OTHER ITEMS:                               |               |               |                  |  |
| Natural Gas Transfer Credit <sup>(A)</sup> | (4,699,495)   | (4,699,495)   | -                |  |
| Net Project Collections/Costs              | \$ 14,511,194 | \$ 13,649,956 | \$ 861,238       |  |

(A) Total of Net Plant Collections plus Natural Gas Transfer Credit equals Net Project Collections on All Resources Bills.



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

### **Staff Report**

AGENDA ITEM NO.: 25

**Date:** November 4, 2019

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

**Subject:** Approval of Major Insurance Renewals for the Policy Year of 2020

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#### Proposal

Northern California Power Agency (NCPA) staff recommends that the LEC PPC delegate authority to the General Manager to negotiate and bind property damage and liability coverages amounts as presented (or better) and a not-to-exceed proposed premiums of approximately \$810,000.

#### Background

NCPA utilizes the insurance brokerage services of Aon Risk Solutions, San Francisco, California to market and place NCPA's insurance programs. Each insurance policy and the related insurance market conditions are reviewed prior to the renewal date and remarketed as required to qualified insurers experienced in underwriting the applicable insurance risk. Current property and liability insurance coverage expires on December 15 and December 31, 2019, respectively.

This year NCPA, together with Aon, marketed NCPA's insurance programs to both existing and prospective underwriters, focused on presenting NCPA's proactive enterprise risk management approach and its rigorous loss prevention programs. The property insurance market had been soft for many years. It turned around in 2018, triggered by floods in Texas, hurricanes along the east coast, the devastation of Puerto Rico, and wildfires in California. NCPA management's commitment to loss prevention and the marketing effort successfully improved the insurance underwriters' confidence and knowledge of NCPA's business and risk profile.

#### Highlights of the Renewal Process

- The insurance market conditions hardened a year ago after many years of soft markets. The members have benefited with reduced (or flat) premiums since 2015.
- On-going exposure to flooding, hurricanes, and catastrophic California wildfires have changed the insurance landscape.
- NCPA had four claims in the past three years: 2015 Geothermal wildfire and Hydro Plant landslide, 2017 storm damage on Hydro Beaver Creek, and 2018 Alameda Unit 1 equipment failure.
- California wildfires have a significant impact on the liability insurance market due to the impacts of the Camp fire and current situation of the Kincadee fire and wildfires in Southern California.
- Some underwriters withdrew from California liability insurance market while others have reduced capacities and/or excluded wildfire coverage altogether.

### Insurance Programs Renewal Requests

Due to the current wildfires in California, underwriters are not ready to quote NCPA's program before assessing their potential exposures. While NCPA and Aon are still in the process of securing final quotes, staff requests the LEC PPC grant the authority to the General Manager to negotiate and bind coverages with not-to-exceed rates for the 2020 renewal premiums of \$675,000 for property damage coverage (26% increase) and \$135,000 for excess liability coverage (40% increase). While staff doesn't anticipate premiums coming in that high, this provides the General Manager the ability to bind coverages prior to the expiration of the policies. In addition, our brokers will continue pushing the markets for better rates and a final report will be made available after all the quotes and coverages are secured.

See attached table and commentary for detailed rate comparison:

### **Property Damage / Business Interruption**

|         |                           | <b>CY19</b>         | <b>CY20</b>         | <b>% chg</b> |
|---------|---------------------------|---------------------|---------------------|--------------|
|         | LEC Assessed Value (2019) | \$381,896,208       | \$401,875,050       | 5.23%        |
|         |                           |                     |                     |              |
|         |                           |                     |                     |              |
| PD Rate | 0.1400%                   | <b>\$534,654.69</b> | \$562,625.07        | 5.23%        |
|         |                           |                     |                     |              |
|         |                           |                     |                     |              |
|         | <b>20% inc</b>            |                     |                     |              |
| PD Rate | 0.1680%                   |                     | <b>\$675,150.08</b> | 26.28%       |
|         |                           |                     |                     |              |
|         |                           | <b>Goal----&gt;</b> | <b>\$615,000.00</b> | 15.03%       |

The Assessed Value and Business Interruption totals increased from the prior year. Using the same rates as CY2019, the premium would increase \$28,000 or 5.23%. Given the feedback of a hardening market, we made an assumption that the Property Damage (PD) Rate may increase as high as 20%. This would reflect a premium of over \$675,000 or a 26% increase. Aon will continue to push the markets with a goal of achieving a premium closer to \$615,000. For comparative purposes, CY2015 premium was \$553,000.

### **Excess Liability**

Quotes for Excess Liability are still pending. As mentioned above, Excess Liability coverage in California is challenging from both capacity and premium standpoints due to the devastating California wildfires in 2017, 2018, current ongoing wildfires across California, as well as adverse legal precedent of inverse condemnation and the corresponding strict liability standard. California wildfire liability is quickly reaching the brink of becoming an uninsurable, or not insurable at a price utilities deem reasonable. While NCPA and Aon continue to push the market, we are estimating this premium may increase as high as \$135,000 to achieve the same level of liability insurance coverage of \$35 million.

Fiscal Impact

The total cost of the policy year 2020 insurance programs is estimated not to exceed \$810,000. This is approximately 38% higher than current year premiums and approximately 26% higher than FY20 budget for the underlined programs. Depending on final premiums, a budget augmentation may be required for FY20. Staff will return in January with a final report of coverages and premiums.

Environmental Analysis

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

Respectfully Submitted:

A handwritten signature in blue ink that reads "Monty Hanks".

MONTY HANKS  
Assistant General Manager/CFO  
Administrative Services/Finance

Prepared by:

A handwritten signature in blue ink that reads "Rui Dai".

RUI DAI  
Risk Manager