



Commission Staff Report – *DRAFT*

August 24, 2017

COMMISSION MEETING DATE: September 29, 2017

SUBJECT: Ethos Energy Power Plant Services, LLC – Five Year Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Material and Supplies; Applicable to the following projects: All NCPA Facility Locations, Members, SCPPA, and SCPPA Members

AGENDA CATEGORY: Consent

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

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

RECOMMENDATION:

Approval of Resolution XX-XX authorizing the General Manager or his designee to enter into a Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Material and Supplies with Ethos Energy Power Plant Services, LLC, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years and to issue purchase orders associated with the contract. 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

It is recommended to place this item on the Commission Consent Calendar.

BACKGROUND:

The NCPA facilities periodically require various inspections, maintenance and parts refurbishment services and materials and supplies for the gas, steam and hydro turbines. Ethos Energy Power Plant Services is a provider of these services and materials.

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 budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place (other enabling agreements) 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.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

Committee review pending.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments:

- Resolution
- Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Material and Supplies with Ethos Energy Power Plant Services, LLC

RESOLUTION 17-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK GENERAL SERVICES AGREEMENT AND AGREEMENT FOR
PURCHASE OF EQUIPMENT, MATERIAL AND SUPPLIES WITH ETHOS ENERGY POWER
PLANT SERVICES, LLC**

(reference Staff Report #xxx:17)

WHEREAS, Northern California Power Agency (NCPA) facilities require periodic inspection, maintenance and parts refurbishment services and materials and supplies for the gas, steam and hydro turbines at its various locations; and

WHEREAS, Ethos Energy Power Plant Services, LLC is a provider of these inspection, maintenance and parts refurbishment services and materials and supplies for the gas, steam and hydro turbines; and

WHEREAS, NCPA seeks to enter into a Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Ethos Energy Power Plant Services, LLC to provide such services as needed at its Lodi Energy Center, CT1, CT2, Hydroelectric and Geothermal facilities in an amount not-to-exceed \$1,500,000 over five years; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Material and Supplies with Ethos Energy Power Plant Services, LLC, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years and to issue purchase orders associated with the contract.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2017 by the following vote on roll call:

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

BOB LINGL
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
GENERAL SERVICES AGREEMENT AND
AGREEMENT FOR PURCHASE OF
EQUIPMENT, MATERIALS AND SUPPLIES
BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
ETHOS ENERGY POWER PLANT SERVICES, LLC**

This agreement for general services and purchase of equipment, materials and supplies ("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 EthosEnergy Power Plant Services, LLC, a limited liability company, with its office located at 12600 Deerfield Parkway, Suite 315, Alpharetta, GA 30004 ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2017 ("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 (both services and goods collectively referred to as "Work" herein). Contractor shall be responsible at its sole expense for delivering the goods ("Goods"), as further specified herein, to Agency's Project Site, DDP, and title shall not pass until the Agency accepts delivery at this Site.

- 1.1 **Term of Agreement.** Unless terminated by either of the Parties, the term of this Agreement shall begin on the Effective Date and shall end five (5) years later.
- 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 [Intentionally left blank.]
- 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 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

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.

2.3.1 Contractor agrees to pay any tax or assessment upon its charges covered by this Agreement based on or measured by net income or profit, imposed or levied by any government having jurisdiction over its place of business. Contractor shall also be solely responsible for the payment of all employment taxes incurred in the performance of this Agreement.

2.3.2 All prices are exclusive of any excise, sales, use or withholding taxes; customs or duties; or costs of a similar nature. Such costs, if to be collected by Contractor by applicable law, shall be added to the purchase order, contract price, or invoice to be paid by Agency, subject to Agency's right to verify that the costs are in fact duly paid. In lieu thereof, the Agency may provide Contractor with an exemption or direct-pay certificate acceptable to the taxing authorities.

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

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

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

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

4.1 Workers' Compensation. If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of one million dollars (\$1,000,000.00) per accident.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial General Insurance. Contractor shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Contractor. The policy shall provide a limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on

"an occurrence" basis covering comprehensive General Liability. No endorsement shall be attached limiting the coverage.

4.2.2 **Automobile Liability.** Contractor shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Contractor, on or off Agency premises. The policy shall provide a limit of \$1,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

4.3 [Intentionally omitted.]

4.4 [Intentionally omitted.]

4.5 **All Policies Requirements.**

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

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

4.5.3 [Intentionally left blank.]

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 **Indemnification.** Contractor shall indemnify, defend (with counsel reasonably acceptable to Agency) and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from claims, demands, and causes of action asserted by any person (including, without limitation, Agency employees, officers, commissioners, managers, employees, agents, and representatives) for personal injury or death, or for loss of or damage to property that results from Contractor's negligence or willful misconduct hereunder. Where personal injury, death, or loss of or damage to property is the result of the joint negligence or misconduct of Contractor and Agency, Contractor's duty of indemnification shall be in proportion to its allocable share of such joint negligence or misconduct. This indemnification obligation shall terminate one year after the end of any warranty period specified in this Agreement, plus any extension thereof. Contractor will reimburse Agency for all liabilities, costs, attorney's fees, expenses and losses incurred by Agency in consequence of any claims, demands, and causes of action which may be brought against Agency arising out of the performance or non-performance by Contractor of this Agreement. Notwithstanding anything to the contrary contained herein, Contractor's obligation with respect to indemnification for Agency's property shall not exceed One Million Dollars (\$1,000,000). However, nothing in this section or this Agreement generally shall be construed to require Contractor to indemnify Agency for the sole negligence, willful misconduct, or for defects in design furnished by, the Agency or its employees, officers, commissioners, managers, employees, agents and representatives. The indemnification provided under this Section 5.1 shall be in addition to any other indemnification provisions contained in this Agreement.
- 5.2 **Limitations on Liability.** Contractor's liability with respect to claims of any kind (excluding death or personal injury), whether as a result of breach of contract, breach of warranty, tort (including negligence) strict liability or otherwise, for all loss or damage arising out of or in connection with goods sold or services furnished under this Agreement, or any amendment thereto, including remedial warranty work, shall in no case exceed the total compensation set forth in a Purchase Order and paid to Contractor or the amount of applicable insurance limited to the amounts set forth in Section 4, whichever is greater. All such liability shall terminate twenty-four (24) months after completion of the Work on each Purchase Order. In no event shall Contractor or its suppliers, or Agency, be liable, whether as a result of breach of contract or warranty, tort (including negligence), strict liability or otherwise, for special, indirect, incidental, exemplary or consequential damages whatsoever; loss of profits or revenue; or loss of use of equipment or associated equipment, facilities or services; downtime costs (including but not limited to capital cost, fuel cost, and the cost of purchased or replacement power); loss of data; or (solely as to Contractor or its suppliers) claims of members of Agency for such damages and Agency will indemnify Contractor, its employees and suppliers against any such claims for damages by Agency members.

5.3 **Transfer of Title.** Contractor shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until delivery. For purposes of this Agreement, delivery occurs when Contractor or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks, or other apparatus identified by Agency. In the event a spill, leak, discharge or release of Hazardous Materials brought to site or negligently caused by Contractor requires notification to a federal, state or local regulatory agency, Contractor shall be responsible for all such notifications.

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

Section 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, which shall not be unreasonably withheld or delayed. 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. In the

event of a material change in applicable laws after the date of a Purchase Order, Contractor may request an equitable change to such Purchase Order, subject to the mutual written agreement of the Parties.

- 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.
- 7.4 **Prevailing Wage Rates.** If applicable, 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 for Convenience. Agency may, for its convenience, cancel and terminate this Agreement in whole, or from time to time in part, at any time by written notice thereof to Contractor. Upon any such cancellation and termination Contractor agrees to waive any claims for damages, including loss or anticipated profits, on account thereof. But as the sole right and remedy of Contractor, Agency shall pay Contractor in accordance with Subparagraph B below; provided, however, that the provisions of this Agreement, which by their very nature survive acceptance of the work under this Agreement, shall remain in full force and effect after such cancellation and termination to the extent provided in such provisions.

A. Upon receipt of any such notice, Contractor shall, unless the notice directs otherwise;

1. Immediately discontinue the work on the date and to the extent specified in the notice;
2. Place no further orders or subcontract for materials, services, or facilities, other than as may be necessary for completion of such portion of the work under this Agreement as is not terminated.
3. Promptly make every reasonable effort to procure cancellation upon terms satisfactory to Agency of all orders and subcontracts to the extent they relate to the performance of work terminated; and
4. Assist Agency as specifically requested, in writing, with the maintenance, protection and disposition of property acquired by Agency under this Agreement.

B. Upon any such termination, Agency will pay an amount to Contractor determined in accordance with the following (without duplication of any item):

1. All amounts due and not previously paid to Contractor for work satisfactorily completed or in progress in accordance with this Agreement prior to such notice;
2. The contract price for work thereafter satisfactorily completed as specified in such notice;

3. The cost of settling and paying fair and reasonable claims arising out of the termination of work under subcontracts or orders as provided in Subparagraph A.(3) above; provided, however that this cost shall not exceed the amount specified in the applicable Purchase Order;
 4. The reasonable costs incurred pursuant to Subparagraph A.(4) above.
- C. If Contractor is not satisfied with the payment made hereunder, it may file a claim with Agency for a decision pursuant to this Agreement. Acceptance by Contractor of such payment shall have the same effect as acceptance of the final payment made pursuant to this Agreement.
- 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 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, and, after written notice of breach from Agency, fails to cure such breach within a reasonable time period not to exceed ten (10) days (or such other period as agreed upon by the Parties), 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.
- 8.5 **Options upon Breach by Agency.** If Agency materially breaches any of the terms of this Agreement and, after written notice of breach from Contractor, fails to cure such breach within a reasonable time period not to exceed ten (10) days (or such other period as agreed upon by the Parties), Contractor's remedies shall include, but not be limited to, the following:
- 8.5.1 Immediately suspend its performance;
 - 8.5.2 Immediately terminate this Agreement.

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 from Agency pursuant to this Agreement and that are intended as a deliverable 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 on a time and material basis for a period 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 reasonably required to verify such time and material charges 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 this 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 Project Site Locations. The Project site at which Contractor may perform Work under this Agreement shall include any facilities owned and/or operated by the Agency.

10.2 Operations at the Project Site. Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; and other contractors at the Project site and to participate in the protection of 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. Contractor shall place any such waste, materials, or rubbish in receptacles provided by Agency; provided, however, that Contractor shall provide Agency with safety data sheets applicable to any Hazardous Materials before placement in Agency receptacles.

- 10.3 **Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Agency will not be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by Contractor. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall not 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 provided by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new, unless otherwise agreed in writing by the Parties, and in good condition.
- 10.4 **Use of Agency Equipment.** Contractor shall assume the risk of damage to and is solely responsible for its use of any equipment owned and property provided by Agency for the performance of Work.

Section 11. WARRANTY.

- 11.1 The Work will be performed in accordance with this Agreement and will fulfill the requirements of this warranty, and any other warranty therefor, included in this Agreement. Contractor shall and does hereby warrant that the Work provided hereunder will conform to this Agreement. Contractor shall and does hereby further warrant that the Work will be free of defects in workmanship and materials.
- 11.2 If during the Warranty Period (as defined below), any of the Work is found to be defective or not in accordance with this Agreement, Agency shall so notify Contractor in writing.

11.2.1 For Work on combustion turbines, "Warranty Period" shall mean:

For parts supply or repair: (a) 12,000 Factored Fired Hours, (b) 600 Factored Fired Starts, (c) 24 months from date of original installation or repair, or (d) 30 months from date of shipment, whichever occurs first.

For field service: (a) 12,000 Factored Fired Hours, (b) 600 Factored Fired Starts, or (c) 24 months from date of original service, whichever occurs first.

For purposes of this Section 11.2.1:

"Factored Fired Hours" shall mean the weighted number of hours that each unit is operated consisting of the actual number of fired hours of operation adjusted on account of conditions applicable during those hours of operation in accordance with applicable OEM (original equipment manufacturer) reference documents.

"Factored Fired Starts" shall mean the weighted number of starts that each unit experienced during operation consisting of the actual number of starts or trips adjusted on account of conditions applicable during those starts or trips in accordance with applicable OEM (original equipment manufacturer) reference documents.

11.2.2 For all other Work, "Warranty Period" shall mean:

For parts supply or repair: (a) 24 months from date of original installation or repair, or (b) 30 months from date of shipment, whichever occurs first.

For field services: 24 months from date of original service.

- 11.3 Promptly upon receipt of such notification, Contractor shall, without cost to Agency, proceed with such replacement or corrections of the Work as are necessary in order to make it comply with this Agreement. Contractor shall also bear the cost of making good work of separate contractors destroyed or damaged in such replacement or correction.
- 11.4 In the event of a defect, Agency shall provide clear access to the defective work at the site. For purposes of this section, "access" shall mean an opportunity or ability to enter, approach, or pass to and from defective work. "Access" shall not include any uncovering, disassembly or reassembly of parts or hardware required for Contractor to perform Contractor's warranty obligations to the extent that such uncovering, disassembly or reassembly of parts or hardware was within Contractor's original scope of work. If any uncovering, disassembly or reassembly of parts or hardware is necessary for Contractor to perform its warranty obligations, Contractor shall reimburse Agency for any costs or expenses related to such uncovering, disassembly or reassembly of parts or hardware if such uncovering, disassembly or reassembly of parts or hardware was within Contractor's original scope of work.
- 11.5 **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AND IN PARTICULAR CONSEQUENTIAL DAMAGES ARE EXPRESSLY EXCLUDED.**

Section 12. HEALTH AND SAFETY PROGRAMS. The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency.

- 12.1 Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2 Contractor is responsible for providing all Contractor 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 (1) at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12, until such noncompliance is corrected, or (2) for any Work performed after Agency has provided notice to Contractor that Contractor is not in full compliance with this Section 12 but before Contractor has corrected the noncompliance.
- 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.
- 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. Such monitoring and/or sampling shall be at additional cost to Agency, unless the hazardous or toxic substances or environmental conditions were caused by Contractor, in which case Contractor shall bear such costs. Copies of any sampling results will be forwarded to the Agency site safety representative upon request. Prior to work being performed at the Project site, Agency shall identify any known hazardous materials.
- 12.6 Contractor shall develop a plan to properly handle any hazardous wastes Contractor generates in performing the Work, and shall dispose of such hazardous wastes in accordance with Section 13.16 of this Agreement.
- 12.7 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.

12.8 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 to include diesel fuel used for trucks owned or leased by the Contractor.

12.9 [Intentionally left blank.]

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. Notwithstanding, both Parties waive their right to trial by jury.

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:

Frank G. Avery, President

EthosEnergy Power Plant Services, LLC
12600 Deerfield Parkway, Suite 315
Alpharetta, Georgia 30004
(678) 242-0226

With a copy to:

Abby Yates, General Counsel
Abby.yates@ethosenergygroup.com

Any written notice to Agency shall be sent to:

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

With a copy to:

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, and Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's Proposal, the Exhibits 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.

13.16 Asbestos and Hazardous Materials. Agency represents that all areas of the Agency's facility where any Work is to be performed, or where Contractor or its supplier's personnel are to be present, are free of materials containing or presumed to contain asbestos. In no case will Contractor or its supplier's personnel be required to work in such areas unless and until asbestos and/or presumed asbestos-containing material is removed by Agency at its sole expense, and Contractor is granted an Amended Purchase Order equitably adjusting its payment and schedule for the impact arising out of or resulting from the foregoing (including demobilization and remobilization or personnel). Contractor shall likewise be entitled to an Amended Purchase Order to the extent resulting from the presence of any hazardous waste, toxic or similar materials regulated under applicable law ("Hazardous Materials") that may be present at Agency's facility where any Work is to be performed. Hazardous Materials handled or utilized by Contractor at Agency's facility, if any, will be deposited by Contractor in Agency-supplied containers at such facility. Agency shall have responsibility for storing, transporting, and disposing of such materials in accordance with applicable law. Agency shall indemnify, save harmless and defend Contractor against all damages arising out of or relating to Hazardous Materials which are (i) present in or about Agency's equipment or the site prior to the commencement of Contractor's work; or (ii) improperly handled or disposed of by Agency or Agency's employees, agents, contractors or subcontractors.

13.17 Force Majeure.

13.17.1 If a Force Majeure Event prevents either Party from performing any obligation under this Agreement, that inability to perform will not constitute breach, and the schedule for performance will be extended, if the Party asserting the Force Majeure Event ("Asserting Party") uses reasonable efforts to perform its obligations, and (2) complies with its obligations under Section 13.17.3..

13.17.2 Under the terms of this Agreement, "Force Majeure Event" means an event which is not within the reasonable control of the Asserting Party and is not a result of the Asserting Party's failure to act or its negligence. To the extent such event satisfies the foregoing criteria, Force Majeure Event may include without limitation: acts of God, strikes, lockouts, other industrial disturbances, acts of the public enemy, laws and regulations, wars or war-like action (whether actual, impending or expected and whether de jure or de facto), arrests or other restraints of governments (civil or military), blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, explosions, breakage or accident to equipment or machinery, confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination, or any other material causes, whether of the kind herein enumerated or otherwise. Notwithstanding the foregoing, and for the avoidance of doubt, the following shall not be considered Force Majeure Events: economic hardship; lack of money or credit; failure to pay amounts when due; loss of profit or loss of return on

investment; loss of use; changes in commodity prices and/or the price of materials, fuel, or supplies; changes in labor costs, wages, and benefits; changes in exchange rates; or inability to perform and complete the Work for the applicable price under Exhibit B.

13.17.3 Except as specifically provided otherwise in this Agreement, if a Force Majeure Event occurs, the Asserting Party shall promptly, after it becomes aware of the occurrence of the event, and in any event no more than five (5) days after the Asserting Party becomes aware of such occurrence, notify the other Party of the occurrence of that Force Majeure Event, its effect on performance, and how long the Asserting Party expects it to last. Thereafter the Asserting Party shall update that information as reasonably necessary. During a Force Majeure Event, the Asserting Party shall use reasonable efforts to resume its performance under this Agreement.

13.17.4 If the Force Majeure Event continues for more than three (3) months, either Party may give written notice to the other to terminate the Agreement. The notice to terminate must specify the termination date, which must be not less than seven (7) days after the date on which the notice is given.

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

NORTHERN CALIFORNIA POWER AGENCY

ETHOS ENERGY POWER PLANT SERVICES,
LLC

Date _____

Date _____

RANDY S. HOWARD, General Manager

CHRIS WILKINSON, Vice President of
Major Maintenance (Americas)

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

EXHIBIT A

SCOPE OF WORK

Ethos Energy Power Plant Services, LLC ("Contractor") shall provide the following services for the Northern California Power Agency ("Agency") at its facilities:

- Inspections
- Maintenance
- Parts Refurbishment

Contractor may also supply goods at a mutually agreed price.

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, Compensation, above. The hourly rates and/or compensation break down and an estimated amount of expenses is as follows:

A. NCPA Area 1 Geysers and Alameda – Jan. 1, 2017 thru Dec. 31, 2017

Hourly Rates	Straight Time	Overtime	Double Time
Shift	Days/Nights	Days/Nights	Days/Nights
Project Manager	\$124.00	\$163.00	\$203.00
General Foreman	\$121.00	\$159.00	\$196.00
Working Foreman	\$118.00	\$155.00	\$192.00
Journeyman Millwright	\$114.00	\$148.00	\$182.00
8 th Period Apprentice	\$110.00	\$143.00	\$175.00
7 th Period Apprentice	\$107.00	\$137.00	\$168.00
6 th Period Apprentice	\$103.00	\$132.00	\$161.00
5 th Period Apprentice	\$99.00	\$127.00	\$154.00
4 th Period Apprentice	\$83.00	\$108.00	\$134.00
3 rd Period Apprentice	\$79.00	\$103.00	\$127.00
2 nd Period Apprentice	\$70.00	\$93.00	\$115.00
1 st Period Apprentice	\$63.00	\$84.00	\$104.00
Shop Field Support	\$114.00	\$148.00	\$182.00
Machine/Fabrication Shop	\$118.00	\$155.00	\$192.00

B. NCPA Area 3 NF Stanislaus, Upper Utica Project, Lodi Plants – Jan. 1, 2017 thru Dec. 31, 2017

Hourly Rates	Straight Time	Overtime	Double Time
Shift	Days/Nights	Days/Nights	Days/Nights
Project Manager	\$124.00	\$163.00	\$203.00
General Foreman	\$121.00	\$159.00	\$196.00
Working Foreman	\$118.00	\$155.00	\$192.00
Journeyman Millwright	\$108.00	\$140.00	\$171.00
8 th Period Apprentice	\$105.00	\$135.00	\$165.00
7 th Period Apprentice	\$102.00	\$130.00	\$158.00
6 th Period Apprentice	\$98.00	\$125.00	\$152.00
5 th Period Apprentice	\$95.00	\$120.00	\$146.00
4 th Period Apprentice	\$79.00	\$102.00	\$126.00
3 rd Period Apprentice	\$75.00	\$97.00	\$120.00
2 nd Period Apprentice	\$67.00	\$87.00	\$108.00
1 st Period Apprentice	\$60.00	\$79.00	\$98.00
Shop Field Support	\$108.00	\$140.00	\$171.00
Machine/Fabrication Shop	\$118.00	\$155.00	\$192.00

NOTES:

- These rates include wages, benefits, payroll taxes, workers' compensation, overhead, all tools except special tools and equipment, product liability, general automotive liability and all other required insurances, permits and taxes. This does not include state sales or use taxes.
- Apprentices may be used on any crew consisting of at least three workers subject to their qualifications and availability.
- All service trucks will be billed at sixteen dollars (\$16.00) per hour to cover the cost of the truck, maintenance and fuel.
- Consumables, such as gloves, cleaning solvents, penetrating oil, PPE (hard hats, safety glasses, ear plugs), rags, tape, parts buckets, etc. Will be billed at twenty dollars (\$20.00) per day per worker on the time sheet.
- Overtime shall be charged for all work over eight (8) hours a day and for all work performed on Saturdays.
- Double time shall be charged for all work performed on Sundays or the following holidays: New Years Day, Martin Luther King's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.
- Travel time for transferred employees will be charged on a straight time basis for actual hours traveled if applicable. Subsistence for non-local labor will be charged at the rate of \$125.00 (includes hotel cost) per day, per worker. Subsistence will be paid to employees living 75 miles or more from the job site.
- There shall be a minimum four-hour charge per worker at the applicable rate for show-up time whether work is performed or not. There shall be a minimum eight-hour charge per worker at the applicable rate if he or she works more than four hours.
- All additional materials, rentals, freight, 3rd-party subcontracts, transportation, and travel expenses shall have a fifteen percent (15%) handling charge.
- Area 1: Counties of: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma.
- Area 2 and Area 3: Counties of: Monterey, San Benito, Santa Cruz, Sacramento, Yolo, San Joaquin, Western Placer* And Western El Dorado." (Western Placer County includes territory west of and including Highway 49; Western El Dorado County includes territory west of and including Highway 49 and territory inside the city limits of Placerville.)
- After Dec. 31, 2017, prices listed above are subject to one annual change based on market rate, with a minimum of thirty (30) days' prior written notice to the Agency.
- Contractor shall provide pricing for any services or goods not specified above upon the issuance of individual Purchase Orders. The Parties shall mutually confirm the pricing for any such services or goods in writing prior to commencement of the Work.
- 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

ETHOS ENERGY POWER PLANT SERVICES, LLC

(Company name)

for contract work at

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

EXHIBIT D – NOT APPLICABLE

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

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

ETHOS ENERGY POWER PLANT SERVICES, LLC

(Company name)

for hazardous materials delivery to:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 __.

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

EXHIBIT E

ATTACHMENT A [from MLA]
AGREEMENT TO BE BOUND

MAINTENANCE LABOR AGREEMENT ATTACHMENT
LODI ENERGY CENTER PROJECT

The undersigned hereby certifies and agrees that:

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

DATED: _____ Name of Employer _____

(Authorized Officer & Title)

(Address)