



# Commission Staff Report

**DATE:** May 26, 2016

**COMMISSION MEETING DATE:** June 23, 2016

**SUBJECT:** Expro Americas, LLC Multi-Task Consulting Services Agreement

**AGENDA CATEGORY:** Consent

<b>FROM:</b>	Ken Speer	<b>METHOD OF SELECTION:</b>
	Assistant General Manager	N/A
<b>Division:</b>	Generation Services	
<b>Department:</b>	Geothermal	

<b>IMPACTED MEMBERS:</b>		
All Members	<input type="checkbox"/>	
Alameda Municipal Power	<input checked="" type="checkbox"/>	
Bay Area Rapid Transit	<input type="checkbox"/>	
City of Biggs	<input checked="" type="checkbox"/>	
City of Gridley	<input checked="" type="checkbox"/>	
City of Healdsburg	<input checked="" type="checkbox"/>	
City of Lodi	<input checked="" type="checkbox"/>	
City of Lompoc	<input checked="" type="checkbox"/>	
City of Palo Alto	<input type="checkbox"/>	
City of Redding	<input type="checkbox"/>	
City of Roseville	<input checked="" type="checkbox"/>	
City of Santa Clara	<input checked="" type="checkbox"/>	
City of Ukiah	<input checked="" type="checkbox"/>	
Plumas-Sierra REC	<input checked="" type="checkbox"/>	
Port of Oakland	<input type="checkbox"/>	
Truckee Donner PUD	<input type="checkbox"/>	
Other	<input checked="" type="checkbox"/>	
	<input type="checkbox"/>	
<i>Turlock Irrigation District</i>		
<hr/> <hr/>		
<i>Place an X in the box next to the applicable Member(s) above.</i>		

## **RECOMMENDATION:**

Approval of Resolution 16-XX Authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Expro Americas, LLC for wireline tools and operator and related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for use at all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA members.

## **BACKGROUND:**

Inspecting the condition of the geothermal production and injection wells at the GEO is necessary for the continued safe operation of the facility. In addition to the EPA mandated testing of the injection wells, there is additional well logging that allows for the monitoring of casing condition of the geothermal wells. Expro has provided wireline tools and the data interpretation of the tools in the geothermal wells for all of the Geysers operators for over 25 years. In addition to the high temperature tools, Expro also has numerous other wireline tools available for use in the wells.

## **FISCAL IMPACT:**

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

## **SELECTION PROCESS:**

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures and seeks bids from as many qualified providers as possible. 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:**

The recommendation was reviewed by the Facility Committee on June 1, 2016 (*and was recommended for Commission approval.*) *For Facilities Committee meetings where a quorum was not present: No formal action was taken due to the lack of a quorum, however, the Project participants present at the meeting voiced their support for the recommendation below and no other meeting attendees had any objections.*

Expro Americas, LLC – 5 year MTCSA  
May 26, 2016  
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The recommendation above was reviewed by the Lodi Energy Center Participant Committee on June 13, 2016 (*and was approved*).

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments: (2)

- Resolution
- Multi-Task Consulting Services Agreement with Expro Americas, LLC

**RESOLUTION 16-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH EXPRO AMERICAS, LLC (reference Staff Report #xxx:16)**

WHEREAS, the geothermal facility consists of two power plants and a steam field consisting of over 70 production and injection wells; and

WHEREAS, the injection wells require EPA mandated testing that uses specialty wireline tools and data interpretation; and

WHEREAS, many of the other production wells require routine inspections in order to run the geothermal facility in a safe, environmentally sound, and efficient manner; and

WHEREAS, Expro Americas, LLC is a provider of these services; 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 Consulting Services Agreement with Expro Americas, LLC, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over five years for wireline related tools and operator services 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.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2016 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	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

\_\_\_\_\_  
CAROL GARCIA  
CHAIRPERSON

ATTEST:

\_\_\_\_\_  
CARY A. PADGETT  
ASSISTANT SECRETARY



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
EXPRO AMERICAS, LLC**

This agreement for consulting services ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Expro Americas, LLC, a limited liability company, with its office located at 738 Highway 6, South, Suite 1000, Houston, TX 77096 ("Consultant") (individually sometimes referred to as the "Party" and together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2016 ("Effective Date") in Roseville, California.

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

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED ONE MILLION AND 00/100 dollars (\$1,000,000.00)** for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable

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 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 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.

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 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 [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, to the extent of Consultant's indemnity and release obligations assumed in this Agreement and, to the extent of Consultant's indemnity and release obligations assumed in this Agreement, 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 [Intentionally omitted.]

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

4.5 **Waiver of Subrogation.** To the extent of the indemnity and release obligations assumed by Consultant under this Agreement, 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. To the extent of the indemnity and release obligations assumed by Consultant under this Agreement, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.



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

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

- 5.1 **Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from its indemnification and hold harmless obligations in this Agreement. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or to 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, release 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 reasonable costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any negligent acts or omissions by Consultant, its officers, officials, agents, and employees, except to the extent of the sole, active or gross negligence of Agency. The term "gross negligence" means any act or failure to act committed by managerial or senior supervisory personnel which, in addition to constituting negligence, was in reckless disregard of or wanton indifference to the consequences as affecting the property, rights, safety or welfare of any person or entity.
- 5.3 **Agency Indemnification.** Notwithstanding anything contained in Section 5.1 of this Agreement, Agency shall release, defend, indemnify and hold Consultant harmless from and against any claims, demands, causes of action, liabilities, damages, judgments, losses, costs, fines, penalties and expenses (including reasonable attorneys' fees and costs of litigation) of any kind or character, that arise out of the performance of the work, including, without limitation, damage to or destruction of property or bodily injury, illness or death ("Claims") asserted by Agency or any third party, resulting from: (1) loss of or damage to any well or hole (including, without limitation, the costs of re-drill), (2) blowout, fire, explosion, cratering or any uncontrolled well condition (including, without limitation, the costs to control a wild well and the removal of debris), (3) damage to any reservoir, geological formation or underground strata or the loss of oil, water or gas therefrom, (4) pollution or contamination of any kind (other than surface spillage of fuels, lubricants, rig

sewage or garbage, to the extent attributable to the negligence of Consultant) including, without limitation, the cost of control, removal and clean-up, or (5) damage to, or escape of any substance from, any pipeline, vessel or storage facility, regardless of cause, including the sole, joint, or concurrent negligence, strict liability, breach of warranty, breach of duty (statutory or otherwise), breach of contract, or any other legal fault or responsibility of Agency, Consultant or any third party.

- 5.4 **Damages.** Notwithstanding anything contained in this Agreement to the contrary, neither Party shall be liable to the other Party for, and each Party hereby releases the other Party from and against, any indirect, incidental, special, punitive, exemplary or consequential damages or losses (whether foreseeable or not at the date of this Agreement), including, without limitation, damages or losses for lost production, lost revenue, lost product, lost profit, lost business or business interruptions, of the Consultant, Agency or any third party.
- 5.5 **Consultant's Equipment.** Notwithstanding any other provision of this Agreement to the contrary, any loss of or damage to Consultant's equipment while such equipment is in the hole or below the rotary table shall be replaced or repaired as appropriate by Consultant and the cost shall be reimbursed by Agency, and all costs associated with fishing shall be borne directly by 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 both 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 (excluding Consultant's equipment) 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 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 Consultant's regular business hours, upon five (5) business days prior written request of the Agency; provided, however, Consultant shall have the right to exclude any trade secrets, formulas or processes, monetary portions of Consultant's payroll records and any records pertaining to the formulation or compilation of lump-sum pricing, from such inspection and audit. 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"). Up to two (2) years after the termination of this Agreement, 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 Mr. Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 10.8 **Notices.** Any written notice to Consultant shall be sent to:

Eric Nelson  
Vice President – Legal  
Expro Americas, LLC  
738 Highway 6, South, Suite 1000  
Houston, TX 77079

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 10.9 **Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.11 **Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.11.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.



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

## **Section 11. WARRANTY.**

- 11.1 Consultant warrants that the equipment portion of the Services (including equipment and materials supplied in connection therewith) and all rental equipment shall be free from defects in design and workmanship and will remain so for a period of one (1) year after Consultant's completion thereof, provided that Consultant's equipment is properly installed and maintained (if such installation and maintenance is not by Consultant) and is not altered (other than by Consultant) after delivery. Consultant shall repair or, at its option, replace the equipment found to be defective and notified to Consultant in accordance with the preceding sentence. Consultant shall re-perform the defective labor portion of the Services prior to demobilization at no additional cost to Agency. After Consultant has demobilized from the work site, any subsequent re-performance required in respect of defective services shall be re-performed by Consultant at Agency's expense, unless the aspect of the services found to be defective could not reasonably have been discovered prior to Consultant's demobilization from the worksite. Consultant shall perform such Services in accordance with all applicable oil and gas codes and standards, and in accordance with the terms of this Agreement and the Purchase Order applicable to such Services, all with the degree of high professional skill normally exercised by or expected from recognized firms engaged in the practice of supplying services of a nature similar to the Services in question. Consultant further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of work, Consultant shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Agreement and the Purchase Orders. Except as otherwise stated in this Section 11, CONSULTANT MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding any provision of this Agreement to the contrary, Agency's sole remedy and Consultant's sole obligation arising out of or in connection with defects in the services and/or equipment which are based on warranty, contract negligence, strict liability, tort or otherwise, shall be as stated in the foregoing paragraph of this Section 11. Unless otherwise expressly permitted by the applicable Purchase Order, all materials and supplies to be used by Consultant in the performance of the Services shall be new or re-furnished to a "like new" condition and best of kind.
- 11.2 Consultant hereby assigns to Agency all additional warranties or extended warranties, provided that such warranties are assignable, or are reasonably obtainable, from supplier of equipment and materials used in the Services.

## **Section 12. PROJECT SITE.**

- 12.1 **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. Consultant 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 Consultant 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, Consultant shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Consultant's Work.

**12.2 Consultant's Equipment, Tools, Supplies and Materials.** Consultant 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 Consultant 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 Consultant'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 Consultant. Any transportation furnished by Agency or, if applicable, the entity for which Consultant 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 Consultant is performing the Work, as referenced in Section 1.4, shall have liability therefor. Consultant 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 Consultant on the Project site. All materials and supplies used by Consultant in the Work shall be new and in good condition.

**12.3 Use of Agency Equipment.** Consultant 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 Consultant is performing the Work, as referenced in Section 1.4, for the performance of Work.

**Section 13. HEALTH AND SAFETY PROGRAMS.** The Consultant 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 Consultant is performing the Work, as referenced in Section 1.4.

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

- 13.2 Consultant 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. Consultant shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 13.3 Consultant is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 13.4 Agency, or its representatives, may periodically monitor the safety performance of the Consultant performing the Work. Consultants 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 Consultant under this Agreement at any time when, or for any Work performed when, Consultant is not in full compliance with this Section 13.
- 13.5 Consultant shall immediately report any injuries to the Agency site safety representative. Additionally, the Consultant shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 13.6 Consultant shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Consultant shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 13.7 Consultant shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Consultant generates in performing the Work.
- 13.8 Consultant shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 13.9 Consultant 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 Consultant.

**13.10** If Consultant is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 13.1, 13.2, 13.4, 13.5, and 13.6 hereof.

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

NORTHERN CALIFORNIA POWER AGENCY

EXPRO AMERICAS, LLC

Date \_\_\_\_\_

Date \_\_\_\_\_

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

\_\_\_\_\_  
Mark Enget, Vice President

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Assistant General Counsel

## EXHIBIT A

### SCOPE OF SERVICES

As requested by Agency, Expro Americas, LLC shall provide Wireline Tools and Operator for Pressure and Temperature Surveys, Gauge Surveys, and Casing Caliper, and any additional associated required wireline work at all facilities owned and/or operated by NCPA ("Agency"), Agency Members, SCPPA, and/or SCPPA Members.

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

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

#### Standard Prices

Living expenses	\$250.00 / day
Miliage	\$2.50 / mile
Expro Specialist Hourly	\$85.00 / hour
Expro Specialist Day Rate	\$1,870.00 / day

#### Caliper Prices (2,500 ft minimum charge)

MIC caliper tool (tubing)	\$0.55 / ft
KBC caliper tool (15 feeler casing)	\$0.80 / ft
Mega Data caliper tool (30 Feeler casing)	\$1.20 / ft
15 feeler Rush Analysis (24 hrs)	\$0.12 / ft
30 feeler Rush Analysis (24 hrs)	\$0.17 / ft

#### Camera Prices

Up to 5000 ft depth	\$3,500.00
Over 5000 ft depth	\$0.50 / foot

#### Gauge Work

Standard gauges	\$3,000.00 / Well
HPHT Gauges	\$4,000.00 / Well

- All other services will be on a as per quote basis.

Pricing for services to be performed at NCPA Member of 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

---

(Company name)

for contract work at

---

(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.

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