



Commission Staff Report - *DRAFT*

September 20, 2017

COMMISSION MEETING DATE: September 29, 2017

SUBJECT: NCPA Financial Advisory Services – Three year Multi-Task Consulting Services Agreement with PFM Financial Advisors LLC for Ongoing Financial Structure and Debt Management Tasks; and Three year Multi-Task Consulting Services Agreement with PFM Swap Advisors LLC for Swap Advisory Services

AGENDA CATEGORY: Consent

FROM:	Monty Hanks Assistant General Manager/CFO	METHOD OF SELECTION: <i>Competitive Pricing Process</i>
Division:	Administrative Services	<i>If other, please describe:</i>
Department:	Accounting & Finance	

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>		
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RECOMMENDATION:

Staff recommends that the NCPA Commission approve Resolution 17-XX authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with PFM Financial Advisors LLC (PFM) for financial advisory services including ongoing financial structure and debt management tasks for not to exceed \$500,000 over three years; and to enter into a separate Multi-Task Consulting Services Agreement with PFM Swap Advisors LLC for additional financial advisory services in connection with the issuance or proposed issuance of swaps or derivatives for not to exceed \$150,000 over three years; both agreements with any non-substantive changes recommended and approved by the NCPA General Counsel, and including the option of two, two-year renewals for a maximum term of seven years.

It is recommended that this item be included on the Commission Consent Calendar.

BACKGROUND:

Traditionally, NCPA has retained the services of a financial advisor on an on-going basis to assist staff, the Finance Committee and the Commission with the management of NCPA's debt portfolio (including the interest-rate swaps), communication with the investment community and rating agencies, and the evaluation and monitoring of market conditions to reduce the debt service costs of the projects. In addition, services are necessary in connection with specific transactions involving the issuance of debt for new projects or refund outstanding bonds for debt service savings. Since a portion of the services will include discussions and monitoring of the Agency's outstanding interest-rate swaps, a separate contractual arrangement is needed per regulatory requirements.

NCPA has worked with the PFM Group of companies for over 15 years. The current contract for financial advisory services with Public Financial Management, Inc. expired on September 1, 2017. PFM Financial Advisors LLC (PFM) and PFM Swap Advisors LLC have the experience and expertise to provide the financial advisory services required by the Agency.

Each of the proposed agreements are for a three-year term, with the possibility of two, two-year extensions, for a maximum period of seven years. The agreements are subject to termination with 10 days' notice by either party. Prior to the expiration of the three-year agreements, staff will request direction from the Finance Committee (and subsequent Commission approval) with regard to either renewing the contracts for additional term(s) or issuing a Request for Proposal. In addition, the scope of work of the agreements includes the ability for NCPA Members to utilize the vendors' services.

FISCAL IMPACT:

PFM agreed to maintain the existing annual cost at the 2006 pricing level of a not-to-exceed amount of \$55,000 for financial structure and debt management tasks. That annual cost is to be apportioned \$50,000 to PFM Financial Advisors LLC for the financial structure and debt management tasks and \$5,000 to PFM Swap Advisors LLC. In addition, unlimited use of the SwapViewer valuation tool software will be provided by PFM Swap Advisors LLC at an annual cost of \$7,500. Both agreements also include a not to exceed amount for annual travel expense costs.

The resulting cost for the agreement with PFM Financial Advisors LLC for the ongoing financial structure and specific debt management tasks is not to exceed \$168,000 for the initial three-year term. The first year services in the amount of not to exceed \$56,000 is included in the approved budget for fiscal year 2017-18. Should the Agency exercise the option to extend the agreement, both renewal periods would be at the same annual cost as the initial three year term. In addition, the agreement's not to exceed amount of \$500,000 allows for utilization of the vendor's services by NCPA Members as needed. This dollar amount is not a guarantee that Agency will pay that full amount to PFM, but is merely a limit of potential expenditures under the enabling agreement.

The resulting cost for the agreement with PFM Swap Advisors LLC for the continuing review of and recommendations concerning the Agency's overall financial structure as related to swaps and derivatives, as well as identifying areas which can be improved upon or enhanced and unlimited use of the Swap Viewer valuation tool software, is not to exceed \$37,500 for the initial three year term. The first year services in the amount of not to exceed \$12,500 is included in the approved budget for fiscal year 2017-18. Should the Agency exercise the option to extend the agreement, both renewal periods would be at the same annual cost as the initial three year term. Further, the agreement's not to exceed amount of \$150,000 also allows for utilization of the vendor's services by NCPA Members as needed. This dollar amount is not a guarantee that Agency will pay that full amount to PFM Swap Advisors, but is merely a limit of potential expenditures under the enabling agreement.

Transaction specific services including bond issuance transaction costs will be determined as such services are needed and are typically paid from bond proceeds.

SELECTION PROCESS:

On July 11, 2017, staff issued a formal Request for Proposal for financial advisory services and distributed it to seven firms. Three firms responded and all were interviewed by members of the Finance Committee and NCPA staff on August 3rd. After due consideration of each firm's qualifications, price quotes, and based on the written proposals and oral interviews, the selection committee recommended that PFM and PFM Swap Advisors be selected to provide the necessary financial advisory services to NCPA. PFM is recommended because it provides the best value and most responsive bid to the Agency.

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:

Pending Finance Committee review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

Resolution

Multi-Task Consulting Services Agreement with PFM Financial Advisors LLC

Multi-Task Consulting Services Agreement with PFM Swap Advisors LLC

RESOLUTION 17-XX

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY AUTHORIZING THE GENERAL MANAGER OR HIS DESIGNEE TO ENTER INTO AGREEMENTS FOR FINANCIAL ADVISORY SERVICES WITH PFM FINANCIAL ADVISORS LLC AND PFM SWAP ADVISORS LLC

(reference Staff Report #xxx:17)

WHEREAS, the Northern California Power Agency retains the services of a financial advisor to provide assistance in the management of NCPA's debt portfolio;

WHEREAS, PFM Financial Advisors LLC (PFM) and PFM Swap Advisors LLC are a well-qualified financial advisory firms; and

WHEREAS, a formal Request for Proposal bidding process for financial advisory services was conducted in accordance with NCPA's procurement policies and procedures; and

WHEREAS, after due consideration of each firm's qualifications, price quotes, and based on the written proposals and oral interviews, the selection committee recommended that PFM and PFM Swap Advisors be selected to provide the necessary financial advisory services to NCPA; and

WHEREAS, PFM agreed to maintain the existing annual cost at the 2006 pricing level of a not-to-exceed amount of \$55,000 for financial structure and debt management tasks apportioned between the two firms, plus a not to exceed amount for annual travel expense costs, for the three-year term, and the two optional, two-year extensions, for a maximum period of seven years; and

WHEREAS, due to regulatory requirements with derivative related products, a separate contract pertaining to discussions and monitoring of the Agency's outstanding interest-rate swaps is required with PFM Swap Advisors LLC;

WHEREAS, the enabling agreements allow for utilization of the vendors' services by NCPA Members as needed; however the dollar amount is not a guarantee that Agency will pay that full amount to PFM or PFM SWAP Advisors LLC, but is merely a limit of potential expenditures under the enabling agreements; and

WHEREAS, the approval of the agreements 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:

1. Authorizes the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with PFM Financial Advisors LLC (PFM) for financial advisory services including ongoing financial structure and debt management tasks for not to exceed \$500,000 over three years, including an option of two, two-year renewals for a maximum term of seven years, with any non-substantive changes recommended and approved by the NCPA General Counsel; and
2. Authorizes the General Manager or his designee to enter into a separate Multi-Task Consulting Services Agreement with PFM Swap Advisors LLC for additional financial advisory services in connection with the issuance or proposed issuance of swaps or derivatives for not to exceed \$150,000 over three years, including an option of two, two-year renewals for a maximum term of seven years, with any non-substantive changes recommended and approved by the NCPA General Counsel.

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 CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND PFM FINANCIAL ADVISORS LLC

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and PFM FINANCIAL ADVISORS LLC, a limited liability company with its office located at 601 S. Figueroa Street, Suite 4500, Los Angeles, CA 90017 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 20__ ("Effective Date") in Roseville, California.

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

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than three (3) years from the date this Agreement was signed by Agency, whichever is shorter. At the sole option of the Agency, it is subject to two renewals for a period of two (2) years each for a maximum of seven (7) years, as more particularly set forth in EXHIBIT A.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to

perform the Requested Services, or does not respond within the seven day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** one hundred sixty eight thousand dollars (\$168,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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 by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident. Consultant will not use independent contractors or subcontractors to provide the Services described in this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

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

4.2.2 Automobile Liability. Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use by the Consultant of hired and non-owned autos (symbols 8 & 9 on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general

liability insurance. Consultant does not own automobiles. If and when Consultant acquires automobiles, Consultant cannot use those automobiles for the Services included in this Agreement without providing (symbol 1) liability insurance.

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

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

4.4 All Policies Requirements.

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

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

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

4.4.4 Additional Certificates and Endorsements. If Consultant provides services to Agency members, SCPA, and/or SCPA 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 member, SCPPA or SCPPA member.

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

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

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule,

regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

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

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

Consultant agrees that it is responsible for the provision of group healthcare benefits to its full-time 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 AND REGULATORY REQUIREMENTS AND DISCLOSURES.

- 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.
- 7.4** Consultant is a registered municipal advisor with the Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board (the "MSRB"), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. If Agency has designated Consultant as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption"), then services provided pursuant to such designation shall be the services described in Exhibit A hereto, subject to any limitations described thereon. Consultant shall not be responsible for, or have any liability in connection with, verifying that Consultant is independent from any other party seeking to rely on the IRMA exemption (as such independent status is required pursuant to the IRMA exemption, as interpreted from time to time by the SEC). Agency acknowledges and agrees that any reference to Consultant, its personnel and its role as IRMA, including in the written representation of Agency required under SEC Rule 15Ba1-1(d)(3)(vi)(B) shall be subject to prior approval by Consultant. Agency further agrees not to represent that Consultant is Agency's IRMA with respect to any aspect of a municipal securities issuance or municipal financial product, outside of the scope of services without Consultant's prior written consent.

MSRB Rule G-42 requires that municipal advisors make written disclosures to their clients of all material conflicts of interest and certain legal or disciplinary

Events. Such disclosures are provided in Consultant's Disclosure Statement delivered to Agency together with this Agreement.

All information, data, reports, and records ("Data") in the possession of Agency or any third party necessary for carrying out any services to be performed under this Agreement shall be furnished to Consultant and Agency shall, and shall cause its agent(s) to, cooperate with Consultant in its conduct of reasonable due diligence in performing the services. To the extent Agency requests that Consultant provide advice with regard to any recommendation made by a third party, Agency will provide to Consultant written direction to do so as well as any Data it has received from such third party relating to its recommendation. Agency acknowledges and agrees that while Consultant is relying on the Data in connection with its provision of the services under this Agreement, Consultant makes no representation with respect to and shall not be responsible for the accuracy or completeness of such Data.

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. Consultant may cancel this Agreement at any time and without cause upon thirty (30) days prior written notice to Agency.

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in 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; to the extent notice is practicable and not prohibited by law or judicial or regulatory process. 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, and provided that Receiving Party shall not be liable for disclosure in the absence of receipt of any such protective order. Neither party shall have any liability for such permitted disclosures:

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

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

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

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

Section 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this

Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

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

Mike Berwanger
Managing Director
601 S. Figueroa Street, Suite 4500
Los Angeles, CA 90017

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

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 counsels prior to either Party initiating legal action.

- 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-signatory third parties. However, should Consultant provide Services to an Agency member, SCCPA and/or a SCPA member (collectively for the purposes of this section only "Member") pursuant to section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

PFM FINANCIAL ADVISORS LLC

Date_____

Date_____

RANDY S. HOWARD, General Manager

MIKE BERWANGER, Managing Director

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

EXHIBIT A

SCOPE OF SERVICES

During the term of the services, the Financial Advisor, using its own staff and facilities, shall perform all services and duties specified herein or necessary to accomplish the objectives of this Agreement, including, without limiting the generality of the foregoing, all services and duties customarily and usually performed by Financial Advisors retained by comparable public power entities. The Agency intends to award a contract for a three-year term. At the sole option of the Agency, it is subject to two renewals for a period of two (2) years each for a maximum of seven (7) years. Each renewal will be processed as an amendment and will require subsequent Commission action.

The specifically enumerated services and duties shall include services of an on-going nature in the management of NCPA's outstanding bonds, and, if issued, additional bonds, and in maintaining and improving NCPA's financial position as set forth in subsection "1.1" below and services and duties relating to the issuance of additional bonds as set forth in subsection "1.2" below. In performing its obligations hereunder, the Financial Advisor will: (i) consult with the NCPA Staff, its consulting engineers and legal counsel (collectively, the "Commission Advisors"), and other appropriate parties, including rating agencies, banks providing or which may provide credit enhancement for the bonds or additional bonds, all to the extent authorized by NCPA's General Manager or his designee (each an "NCPA Representative"); (ii) at the request of an NCPA Representative attend any meetings relating to the subject matter of services being provided pursuant to this Agreement; and (iii) perform all of its services and duties hereunder through such officers and employees as may be approved by NCPA and qualified in terms of education and experience to perform the services to be provided and sufficiently familiar with NCPA, its organization, members, contractual arrangements, the projects, the bonds and any additional bonds to perform such services. All services hereunder shall be provided by the Financial Advisor in a diligent and timely manner and shall be of a professional quality consistent with the Financial Advisor's firm-wide capabilities, experience and standing in the financial community.

1.1 Ongoing Services

NCPA's objective in retaining the Financial Advisor for ongoing services is to provide NCPA with a continuing review of, and recommendations concerning, its overall financial structure as well as identifying areas in NCPA's fiscal structure and resource base which can be improved upon or used to enhance the financial position of NCPA. The Financial Advisor will make recommendations as to policy decisions and provide NCPA with a source of advice with respect to specific items in implementing its overall financial strategy.

The services to be provided by the Financial Advisor hereunder on an ongoing basis shall include both: (i) services as to which the Financial Advisor shall take the initiative, such as review and recommendations on NCPA's financial structure, advice in identified transactions such as repricing and remarketing variable rate, put option bonds and additional bonds, or other debt related activities; and (ii) services as to which the Financial Advisor shall respond to specific requests by NCPA Representatives. However, it is understood and agreed by the parties hereto that nothing herein, including any provision relating to the Financial Advisor's responding to requests of an NCPA Representative, shall be construed as limiting

the Financial Advisor's duties to initiate recommendations as to any aspect of NCPA's financial structure or operations or to identify and develop opportunities to optimize the return on its resource base.

A. Financial Structure

The following services shall be provided by the Financial Advisor on its own initiative and the Financial Advisor shall provide the NCPA Finance Committee periodic written reports, not less frequently than once each Contract Year and as otherwise requested by the NCPA Finance Committee, containing its recommendations for action with respect to the following:

- Annual review of Debt and Interest Rate Management Policy and assistance with the implementation of the policy. Review of the swap information in the Debt and Interest Rate Management Policy will be conducted by PFM SWAP Advisors LLC.
- General rating agency liaison, including reviewing agency reports on NCPA's credit position and helping NCPA formulate responses.
- Assist and advise NCPA in negotiations with investors regarding fees, pricing of the bonds and final terms of any security offering, and make recommendations regarding a proposed offering to obtain the most favorable financial terms based on existing market conditions.
- Economic reporting.
- Advice on best terms for repricing and remarketing bonds and additional bonds, which are variable rate demand obligation bonds.
- Advice on opportunities to reduce the interest costs of, or otherwise manage to NCPA's benefit, its bonds and additional bonds and Projects, including prepayment of gas or renewable contracts.

The Agency Finance Committee meets on a quarterly basis at a minimum, and schedules special meetings on an as needed basis. The Financial Advisor is required to attend all meetings unless otherwise notified; physical attendance is required for regularly scheduled quarterly meetings, to the extent that NCPA has provided advance notification to the advisor.

B. Specific Debt Management Tasks

The Financial Advisor shall perform the following services, and any additional services related to debt management or the financial operations of NCPA requested by an NCPA Representative or the NCPA Finance Committee.

- Assist in responding to specific request for information or action from a rating agency, bank or other provider, or potential provider, of credit-enhancement, or an investor.
- Make recommendations with respect to proposed state or federal legislation.
- Review Trustee Agreements.
- Preparation of analyses on NCPA debt portfolio and that of its members
- Preparation of analyses on asset/liability balancing for NCPA and its members.

1.2 Transaction Specific Services

NCPA's objective in requesting the Financial Advisor to perform services hereunder during any Contract Year in connection with the issuance or proposed issuance of additional bonds is to assist NCPA in all aspects of a financial transaction by providing all of the services which Financial Advisors have traditionally provided issuers of debt of the nature of such additional bonds and any other services reasonably related to the issuance of such additional bonds as may be requested by an NCPA Representative.

1.3 Individual Member Services

Individual NCPA members may also need Financial Advisor services. This agreement provides a vehicle for such services to be provided.

Required Financial Services

1. Assist the Agency in updating and implementing strategies, plans and policies. This includes analyzing short-term, intermediate, long-term financing options, and ongoing surveys of the financial activities of public and private electric utilities.
2. Evaluating the Agency's outstanding indebtedness identifying and analyzing financing alternatives.
3. Developing a financing plan for the Agency's capital programs which takes into consideration the Agency's current indebtedness structure, the impact on the Agency's charges to member, the timing and cash flow requirements of capital projects, the Agency's operating revenues available for capital purposes, and conditions in the capital markets, among other things.
4. Advise the Agency on the timing, method, and structure of its security sales and provide, when requested, consultation in negotiating the components of the underwriters' spread and the pricing and other terms of the proceeds.
5. Assist the Agency in preparing and reviewing documents necessary for the sale of its securities.
6. Assisting with the selection of underwriters, credit providers, liquidity providers, bond insurers and other parties in connection with each financing.
7. Assist the Agency in preparing for meetings with rating agencies, investors and bond insurers
8. Assist the Agency in evaluating the performance of Syndicate members, distribution of indebtedness, settlement and post settlement analysis.

- 9.** Assist the Agency in restructuring its debt, in the analysis and implementation of a variable rate indebtedness program, and its integration into the Agency's overall capital financing strategy.
- 10.** Assist the Agency in the analysis and implementation of one or more commercial paper or other short-term borrowing programs, and their integration into the Agency's overall capital financing strategy.
- 11.** Assisting the Agency in the development of financial policies regarding the Agency's credit ratings strategies, and the use of variable rate indebtedness.
- 12.** Upon request, prepare special studies of a financial nature and review new financial products or techniques which may be proposed to the Agency from time to time.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed one hundred sixty eight thousand dollars (\$168,000) for the initial three year term. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Compensation for ongoing tasks outlined in Exhibit A, Section 1.1, including expenses, shall be paid via an annual retainer of \$50,000, payable quarterly.

In addition, reimbursable expenses for travel shall be reimbursed, up to a maximum quarterly amount of \$1,500. Consultant shall be mindful that it is expending public monies. Consultant shall employ the most cost effective means of travel, and shall avoid "first class" air-fare, premium lodging, limousine service and expenses which exceed the per diem amount established by the Internal Revenue Service. As a public agency, NCPA shall not reimburse Consultant for costs in excess of those permitted by the Internal Revenue Service.

Hourly rates to be used for non-transaction projects or special projects not covered under the scope of services outlined in "Ongoing Services," such as the development of a specific financial model, are as follows:

PFM Hourly Rates	
Employee Title	Rate
Managing Director	\$ 375
Director	\$ 350
Senior Managing Consultant	\$ 325
Senior Analyst / Analyst	\$ 300

Transaction related fees outlined in Exhibit A, Section 1.2 will be negotiated at the time of each debt transaction, but shall not exceed the following:

Debt related to existing project debt or new money issuance for existing projects will be negotiated at the time of each transaction and will range from \$40,000 - \$75,000 per financing (as defined by a separate offering document) based on the complexity, risk and size of a financing as reflected below:

PFM Transaction Fees (Existing Projects)	
Par Amount	Fixed Fee
< \$25 million	\$40,000
\$25 million - \$50 million	\$60,000
> \$50 million	\$75,000

Credit Facility Replacement will be a \$25,000 fixed fee assuming a Request for Proposals process and documentation of a new credit agreement.

For complex transactions, such as new NCPA projects (like LEC), gas prepayments or energy prepayments with the use of tax credit structures, NCPA and PFM would negotiate

a mutually agreed upon fee, which may exceed the range listed below based on the amount and complexity of work involved.

The table below outlines a range of fees for potential complex transactions, not currently planned, that NCPA might undertake over the contract term. The wide range is reflective of a multitude of factors, the two main drivers being: 1) time spent on the transaction, which may range from 6 to 24 months; and 2) “first of their kind” nature of the transactions compared to the second or third iteration of a similar structure. Should a more complex transaction occur that would result in a work effort that greatly exceeds prices included in the range, NCPA and PFM would negotiate to arrive at fair and mutually agreeable terms in advance of performance of such work.

Sample Range for PFM Transaction Fees for Complex Transactions	
Transaction	Fee Range
New NCPA Projects	\$75,000 to \$125,000
Gas Prepayment	\$150,000 to \$400,000
Renewable Prepayment	\$150,000 to \$250,000

Structured Products - PFM Asset Management LLC or PFM Swap Advisors LLC professionals would oversee all elements of any derivative or investment related transaction (swap, escrow bid, defeasance, etc.), and NCPA would have a separate engagement for those services. Such fee arrangements would be negotiated with NCPA and be fully transparent to all parties. Fees are usually set as 2/3 of one basis point per annum times the notional amount or invested balance outstanding over time, plus \$10,000 per transaction.

Services provided to member agencies as outlined in Exhibit A, Section 1.3, shall be no higher than the hourly rates shown above times the expected hours of service, and shall be negotiated at the time of service request through not to exceed fee quotes which will be provided in writing to both NCPA and the member requesting the service.

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I, _____
(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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



MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND PFM SWAP ADVISORS LLC

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and PFM SWAP ADVISORS LLC, a limited liability company, with its office located at 1735 Market Street, 43rd Floor Philadelphia, PA 19103 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 20__ ("Effective Date") in Roseville, California.

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

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than three (3) years from the date this Agreement was signed by Agency, whichever is shorter. At the sole option of the Agency, it is subject to two renewals for a period of two (2) years each for a maximum of seven (7) years, as more particularly set forth in EXHIBIT A.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested

Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services, or does not respond within the seven day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** thirty seven thousand five hundred dollars (\$37,500) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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 by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident. Consultant will not use independent contractors or subcontractors to provide the Services described in this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

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

4.2.2 Automobile Liability. Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use the Consultant of hired and non-owned vehicles (symbols 8 & 9), on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This

insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance. Consultant does not own automobiles. If and when Consultant acquires automobiles, Consultant cannot use those automobiles for the Services included in this Agreement without providing (symbol 1) liability insurance.

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

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

4.4 All Policies Requirements.

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

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

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

4.4.4 Additional Certificates and Endorsements. If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, 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 member, SCPPA or SCPPA member.

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

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

Section 6. STATUS OF CONSULTANT.

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

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

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

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

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

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

Section 7. LEGAL AND REGULATORY REQUIREMENTS AND DISCLOSURES.

- 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.
- 7.4 Swap Advisor Requirements.** Consultant agrees that it will not deal with itself or with any other affiliated company or individual in making purchases or sales of the Swaps or any securities pursuant to this engagement, nor will we take a long or short position in securities subject to purchase or sale in connection with the Swaps. We confirm that we have no interest in the purchase or sale of the Swaps other than as described in this Agreement and except for any financial or investment advisory agreement between Agency and our affiliates, Public Financial Management, Inc., PFM Financial Advisors LLC, or PFM Asset Management LLC.

MSRB Rule G-42 requires that municipal advisors make written disclosures to its clients of all material conflicts of interest and certain legal or disciplinary events. Such disclosures are provided in Consultant's Disclosure Statement delivered to Agency together with this Agreement.

Consultant may rely upon the advice of counsel, who may be counsel to Agency, and upon information supplied by accountants, swap dealers, inter-dealer brokers and other persons believed by it in good faith to be experts in the matters upon which they are consulted including market information services which are used generally by market-makers for pricing instruments similar to the Transactions. Agency agrees that Consultant will be subject to no liability based on its performance under this Agreement except for Consultant's own negligence or misconduct.

Consultant is a registered municipal advisor with the SEC and the Municipal Securities Rulemaking Board (the "MSRB"), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. As of the date of this Agreement, Agency has **not** designated Consultant as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption."). Agency agrees not to represent that Consultant is Agency's IRMA with respect to any aspect of a municipal securities issuance or municipal financial product, without Consultant's prior written consent.

All information, data, reports, and records ("Data") in the possession of Agency or any third party necessary for carrying out any services to be performed under this Agreement shall be furnished to Consultant and Agency shall, and shall cause its agent(s) to, cooperate with Consultant in its conduct of reasonable due diligence in performing the services. To the extent Agency requests that Consultant provide advice with regard to any recommendation made by a third party, Agency will provide to Consultant written direction to do so as well as any Data it has received from such third party relating to its recommendation. Agency acknowledges and agrees that while Consultant is relying on the Data in connection with its provision of the services under this Agreement, Consultant makes no representation with respect to and shall not be responsible for the accuracy or completeness of such Data.

You may terminate this agreement in the event of any material breach immediately upon written notice to Consultant.

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. Consultant may cancel this Agreement at any time and without cause upon thirty (30) days prior written notice to Agency.

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

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

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

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

8.4.1 Immediately terminate the Agreement;

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

8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

9.2 Consultant's Books and Records. Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement

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

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

9.4 Confidential Information and Disclosure.

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

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in 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; to the extent notice is practicable and not prohibited by law or judicial or regulatory process. 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, and provided that Receiving Party shall not be liable for disclosure in the absence of receipt

of any such protective order. Neither party shall have any liability for such permitted disclosures:

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

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

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

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

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1** **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2** **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 10.3** **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.6 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

10.7 Contract Administrator. This Agreement shall be administered by Monty Hanks, Assistant General Manager or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Jeffrey M. Pearsall
Managing Director
PFM Swap Advisors LLC
1735 Market Street, 43rd Floor
Philadelphia, PA 19103

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

- 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 counsels prior to initiating legal action.
- 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-signatory third parties. However, should Consultant provide Services to an Agency member, SCCPA and/or a SCPPA member (collectively for the purposes of this section only "Member") pursuant to section 1.4, the parties recognize that such Member may

be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

PFM SWAP ADVISORS LLC

Date_____

Date_____

RANDY S. HOWARD, General Manager

JEFFREY PEARSALL, Managing Director

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

EXHIBIT A

SCOPE OF SERVICES

During the term of the services, the Swap Advisor, using its own staff and facilities, shall perform all services and duties specified herein or necessary to accomplish the objectives of this Agreement, including, without limiting the generality of the foregoing, all services and duties customarily and usually performed by Swap Advisors retained by comparable public power entities. The Agency intends to award a contract for a three-year term. At the sole option of the Agency, it is subject to two renewals for a period of two (2) years each for a maximum of seven (7) years. Each renewal will be processed as an amendment and will require subsequent Commission action.

PFM Swap Advisors LLC ("Consultant") will serve North California Power Agency ("Agency") as Municipal Advisor and designated Qualified Independent Representative ("QIR") in the provision of general swap advisory services related to any swap-related communication, interaction or other discussion ("Swap Communication") between Agency and Swap Dealers (as such term is defined by the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC")). This Agreement obligates Consultant to comply with the applicable requirements of CFTC Regulation 17 CFR 23.450(b)(1) in providing QIR services to Agency.

1.1 Ongoing Services: QIR and Valuations

As QIR to Agency, Consultant will make available qualified professionals to participate in discussions and other interactions with Swap Dealers as Agency finds necessary or desirable. Additionally, Consultant will assist Agency with analysis of any proposals from Swap Dealers. Consultant may assist Agency with other swap related tasks such as helping write a swap policy or other related analysis upon Agency's request. Consultant will also assist Agency, as needed, in completing the ISDA Dodd-Frank Protocols and other matters to comply with the regulatory requirements imposed under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The ongoing services include annual unlimited use of the PFM Swap Advisors LLC SwapViewer valuation tool software. Consultant will perform calculations relating to the valuation of certain interest rate exchange agreements, which may include swaps, swaptions, caps, floors, or other similar contracts. The calculations are to be performed with respect to all swap transactions in which Agency is a party (each, a "Transaction").

Whereas each such month-end being a "Calculation Date", Consultant will calculate on a monthly basis the mark-to-market value of certain Transactions as of the close of business of each month (each calculation, a "Monthly Calculation"), based on market levels at such time as obtained from generally recognized pricing sources and Consultant's valuation models. The results shall be made available for viewing by Agency through Consultant's online service known as SwapViewer®. The results will also contain the publicly available credit ratings of the Transaction counterparties as of the Calculation Date. In addition, Consultant will make available online, selected Transaction documents to Agency.

To facilitate the preparation of the calculations and documents, Agency will provide or cause to be provided to Consultant all relevant data requested by Consultant from time to time, with respect to each Transaction and Calculation Date, and Agency agrees to cooperate with all reasonable requests in connection herewith. Consultant will rely on this information in preparing the calculations of the mark-to-market value for each Transaction. Consultant may rely on market information services which are used generally by market-makers for pricing instruments similar to the Transactions, including information furnished by one or more brokers who engage in such transactions. The calculated mark-to-market values will be based upon available mid-market levels. The mark-to-market values are not an indication of a level where Agency could enter into an actual Transaction, nor is it indicative of the level where Agency could liquidate a Transaction. Consultant shall not have any obligation to update any valuation calculated hereunder because of events occurring or data or information received subsequent to the Calculation Date.

Annual review of the swap information in the Debt and Interest Rate Management Policy will be conducted by PFM SWAP Advisors LLC.

1.2 Transaction Specific Services

Consultant will serve as Municipal Advisor and QIR in conjunction with any potential novation or termination of an existing interest rate swap and/or in conjunction with any potential procurement of a new interest rate swap.

As Municipal Advisor and QIR with respect to the potential novation or termination of the Existing Swap, Consultant will review and comment on any documentation associated with the Existing Swap, provide indicative termination values, and negotiate the pricing of the Existing Swap with the Current Counterparty. Additionally, Consultant will provide Agency with a memorandum that summarizes the results of our engagement and which includes our opinion whether the pricing of the Existing Swap as agreed to represents fair value.

As Municipal Advisor and QIR with respect to the potential procurement of the New Swap, Consultant will analyze and model alternative hedge structures and provide price indications; review and comment on all hedge documentation and business terms; negotiate the pricing of the New Swap with the new counterparty and coordinate the closing of the transaction. Additionally, Consultant will provide Agency with a memorandum that summarizes the results of our engagement and which includes our opinion whether the pricing of the New Swap as agreed to represents fair value (in the event that we are unable to certify that the pricing of the Swap represents fair value, we will provide Agency with verification of the Consultant-observed mid-market value for the Swap at the time of trade execution).

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks outlined Exhibit A, Section 1.1, including hourly fees and expenses, shall not exceed thirty seven thousand five hundred dollars (\$37,500) for the initial three year term. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Compensation for oversight and advisory services for derivative related transactions shall be paid via an annual retainer of \$5,000, payable quarterly.

Annual unlimited use of the SwapViewer valuation tool software shall be provided for a \$7,500 annual fee to be paid quarterly to PFM Swap Advisors LLC.

Hourly rates to be used for non-transaction projects or special projects not covered under the scope of services outlined in "Ongoing Services," are as follows:

PFM Hourly Rates	
Employee Title	Rate
Managing Director	\$ 375
Director	\$ 350
Senior Managing Consultant	\$ 325
Senior Analyst / Analyst	\$ 300

Transaction related fees outlined in Exhibit A, Section 1.2 will be negotiated at the time of each debt transaction, but shall not exceed the following:

NCPA and PFM will negotiate terms for pricing of elements of any derivative related transaction, and such fee arrangements will be presented to the Commission for approval. Fees for such services are generally set as 2/3 of one basis point per annum times the notional amount or invested balance outstanding over time, plus \$10,000 per transaction.

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

EXHIBIT C
CERTIFICATION

Affidavit of Compliance for Contractors

I, _____
(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at:

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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