



Commission Staff Report - *DRAFT*

Date: March 29, 2017

COMMISSION MEETING DATE: April 20, 2017

SUBJECT: Ford Construction, Inc. Public Works Agreement - Adit 4 Spoils Facility Repair Project; Applicable to the following project: Hydroelectric Generation Services Facility.

AGENDA CATEGORY: Discussion/Action

FROM:	Ken Speer	METHOD OF SELECTION:
	Assistant General Manager	Public Works Bid
Division:	Generation Services	
Department:	Hydroelectric	

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

RECOMMENDATION:

Authorize the General Manager to execute a public works agreement with Ford Construction, Inc. and to issue purchase orders and change orders for not to exceed \$2,897,507 for construction of the Adit 4 Spoils Facility Repairs at the NCPA Hydroelectric Project.

BACKGROUND:

The Adit 4 Tunnel Spoils (Spoils) are located approximately 1 ½ miles up canyon from the Collierville Powerhouse in Calaveras County. The Spoils incurred water-related damage in December 2015 and require remediation to stabilize the facility and prevent further erosion to Clark Creek.

NCPA operates the North Fork Stanislaus Hydroelectric Project (FERC Project No. 2409), which was constructed from 1986 to 1989. One of the project features is an 8.5 mile long pressurized water conveyance tunnel between the McKays Point Diversion Dam and the Collierville Power House. The tunnel has two (2) access adits. At one of these adits (Adit No. 4), tunnel rock cuttings Spoils were permanently stockpiled immediately below in a natural drainage in compliance with the Revised Spoils Disposal Plan dated April 1987 under a Right-of-Way Grant (CA 8281) from the United States Department of the Interior, Bureau of Land Management.

The Spoils facility includes approximately ¼ mile of the water conveyance culverts and gunite lined channels atop the Spoils. To mitigate erosion, an interim system of elevated surface culverts was installed to convey the water safely away from the toe of the failure to the erosion-resistant native drainage channel. This interim system will remain in-place until the design, permitting, and construction of the permanent erosion work is completed.

ENVIRONMENTAL ANALYSIS:

The repair Project was determined to be categorically exempt from CEQA under Class 1, §15301(b) and (d). A class 1 exemption, "*consists of the operation, repair, maintenance... of existing public or private structures... involving negligible or no expansion of use beyond that existing, including but not limited to: b) Existing facilities of both investor and publicly owned utilities used to provide electric power... and (d) Restoration or rehabilitation of deteriorated or damaged structures...*" A Notice of Exemption was filed with Calaveras County and posted January 27 through February 24, 2017 for the repair Project. No comments were received.

Staff consulted with the California Department of Fish and Wildlife (CDFW) regarding the Project and CDFW determined that no permits would be required. Staff consulted with and notified the United States Army Corps of Engineers that the Project is categorically exempt from the 404 process. Staff consulted with the Regional Water Resources Control Board (RWQCB) and determined that a low-threat discharge permit would be appropriate for the construction dewatering. The RWQCB has reviewed the permit application and is awaiting a signature from the United States Bureau of Land Management (BLM) as a condition of issuance. New RWQCB permits now require that the landowner also sign onto the permit, which constitutes an unusual situation for BLM. Staff continues to keep BLM apprised of the Project progress and necessity to repair the deteriorating site as soon as possible in the interest of resolving this

matter with BLM and the RWQCB. Staff has also filed a Storm Water Pollution Prevention Plan (SWPPP) with the SWRCB and will follow all established procedures.

FISCAL IMPACT:

The total cost of the Adit 4 Spoils Facility Repair Project is now estimated to be \$3.46M which includes \$285,477 spent to date for design and interim repairs. Previous budget estimates to complete the repair were \$4.15M. Based upon the construction bid, expenditures in 2017 (FY 2018) are now anticipated to be \$3.1M which includes construction, outside construction engineering services, and an 18% contingency. \$500,000 was included in the current fiscal year budget. The proposed FY2018 Hydroelectric budget proposes collecting another \$1,185,000 in FY2018 and using previously collected funds available in the Hydroelectric Capital Development Reserve to fund the Adit 4 Spoils Facility Repair Project until the Capital Development Reserve can be refunded by Insurance Claim payments or collections in the FY2019 Hydroelectric Budget. On February 9, 2017, the Hydroelectric Project Insurance Underwriters determined that the Adit 4 Spoils Facility was a covered named asset and that the Adit 4 Spoils Facility Repair Project would be covered by insurance, minus the \$500,000 deductible and items considered as a betterment. The betterments portion of the Project are yet to be determined.

The Commission, on August 17, 2016, authorized the General Manager or his designee to issue Purchase Orders for not to exceed amount of \$500,000 against previously approved Multi-Task Services Agreements for engineering and permitting support associated with the Adit 4 landslide. The current request is for authorization for the General Manager or his designee to issue Purchase Orders for not to exceed \$2,897,507 for actual construction.

SELECTION PROCESS:

The Project was publicly advertised for pre-qualification February 9 -16, 2017. Five (5) firms expressed an interest in the project, received plans and specifications, and attended the mandatory pre-bid meeting. Five contactors submitted pre-qualification documents. Staff conducted interviews of the references and scored the respective firms' experience/qualifications. Three (3) contractors: KW Emerson, Syblon Reid, and McMillen Jacobs were eminently and clearly qualified for the work, and two (2) contractors: Ford and Drill Tech met the minimum qualifications when project experience was clarified to include projects in work in-progress phase but not yet complete. All contractors were ultimately approved by NCPA to bid on the project.

A bid package for this public works project was issued on February 9, 2017. Bids were opened on March 23, 2017. Three (3) addendums were issued for the Project which included answers to bidders' questions, the project re-design documents (necessitated from progressive site damage which occurred during the January/February storm events), and the SWPPP document.

Contractor	Bid Amount
Syblon Reid	\$3,472,290
K.W. Emerson	\$3,729,028
McMillen Jacobs	\$4,026,691
Ford	\$2,447,507

Ford Construction was determined to be the low, responsible, responsive bidder. The engineer's estimate for the Project was \$3.5M. The low bid came in significantly (\$1M) under the second lowest bid as well as the engineer's estimate. To address potential concerns that the large bid spread could be indicative of an underbid and could lead to contractor pressure to make up their shortfall with requests for contract change orders or claims in conjunction with the challenging work activities, staff discussed the bid specifics with Ford and specifically requested additional information regarding bid items that could be potentially utilized by the contractor to make up the gap. Ford confirmed that they did not see any vulnerabilities in the design documents and do not intend to make any illegitimate claims or change orders. Ford has had a master services agreement with NCPA for many years and has delivered multiple satisfactory projects to the Hydro facility.

It is the practice of staff to closely manage and monitor the construction progress and enforce the contract, however, in this scenario, additional care will be warranted. With this low-bid scenario, and in consideration of the continuing deterioration of the site due to stormwater erosion, staff recommends an 18% construction contingency, which is 3-8% higher than normal. The contingency is reserved solely for NCPA to utilize in the cases that legitimate site conditions or design changes warrant the need for additional funds. The contract will not contain any reference or connection to the contingency.

COMMITTEE REVIEW:

Pending Committee review.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments: (2)

- Resolution
- Public Works Agreement with Ford Construction, Inc.

RESOLUTION 17-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING THE PUBLIC WORKS AGREEMENT WITH FORD CONSTRUCTION, INC.**

(reference Staff Report #xxx:17)

WHEREAS, the Northern California Power Agency (NCPA) operates and maintains on behalf of the project owners the Hydroelectric Facilities; and

WHEREAS, the Hydroelectric Facilities Adit 4 Spoils Facility has incurred substantial damage, is currently deteriorating, and requires immediate repair to prevent further damage and ensure the safe and environmentally compliant operation; and

WHEREAS, the design, and public construction bidding is complete; and

WHEREAS, Ford Construction, Inc. was the lowest responsive, responsible bidder to the Request for Proposal issued for the public works Adit 4 Spoils Facility Repair Construction Project with a bid of \$2,447,507; and

WHEREAS, an additional 18% (\$450,000) construction contingency is requested to cover possible change orders and contingencies for a total project cost of not to exceed \$2,897,507; and

WHEREAS, a California Environmental Quality Act Notice of Exemption Class1, §15301(b) and (d) was filed January 27 through February 24, 2017 for the repair Project; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorize the General Manager to execute a public works agreement with Ford Construction, Inc. and to issue purchase orders and change orders for an amount not to exceed \$2,897,507 for construction of the Adit 4 Spoils Facility Repairs at the NCPA Hydroelectric Project.

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	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

BOB LINGL
CHAIR

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY

IX. AGREEMENT

This contract ("Contract" or "Agreement") is entered into this _____ day of _____, 20__, by and between the Northern California Power Agency, a joint powers public agency organized and existing under the laws of the State of California (hereinafter referred to as "NCPA") and _____, a **[California Corporation / Limited Liability Company / General Partnership / Limited Partnership / Individual]** with offices located at _____, (hereinafter referred to as "Contractor"), collectively referred to as the "Parties"),

WHEREAS, NCPA intends to have constructed the Collierville Power Tunnel Adit 4 Spoils Facility Repair Project ("Project") located at **NCPA's Facilities near Murphys, CA** (hereinafter referred to as the "Project"), and the work required by this Contract is an integral part of this Project, and

WHEREAS, on _____, at its regularly scheduled meeting, the NCPA Commission has approved and authorized this Project by Resolution No. _____ (if estimated at over \$250,000); and

WHEREAS, both Parties have a desire to perform the work described herein;

NOW THEREFORE, IT IS AGREED THAT:

SECTION 1. SCOPE OF WORK

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, materials, transportation and utility services and incidentals necessary to fully perform and complete, in a good workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers, and in strict accordance with the Contract Documents (as defined below), including without limitation the drawings and technical specifications and plans included therein, the Work of:

**Northern California Power Agency
Project Description: Collierville Power Tunnel Adit 4 Spoils Facility Repair Project
NCPA Bid No.: HYD0102**

It is understood and agreed that such tools, equipment, apparatus, facilities, labor, materials, transportation and utility services and incidentals shall be furnished, and the Work performed and completed, in accordance with the Contract Documents and subject to the approval of NCPA and NCPA's duly authorized representatives.

SECTION 2. TIME OF COMPLETION; LIQUIDATED DAMAGES

Contractor hereby agrees to commence the Work within 10 calendar days from the date of NCPA's "Notice to Proceed," and to diligently prosecute the same to completion within 183 consecutive calendar days commencing after the date of NCPA's Notice to Proceed. Contractor shall complete the work no later than November 30, 2017, except as adjusted by any subsequent change order. Time is of the essence in this Agreement.

This Contract is being awarded in reliance upon the completion date set forth in the Contract Documents and the dates established by schedules set forth and released by NCPA. NCPA will hold the Contractor responsible and accountable for all damages suffered by NCPA as a consequence of the Contractor's

NCPA
Collierville Power Tunnel Adit 4 Spoils Facility Repair Project
Public Works Contract
1/23/17

failure to meet the schedule dates, or to complete the work at the time specified, except for such excusable delays as listed in the Contract Documents.

It is agreed by the parties to this Agreement that in the case in which portion of the work called for under Contract Documents are not completed within the times specified, damages will be sustained by NCPA, and it is and will be impractical and extremely difficult to ascertain the actual damages which NCPA will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor shall pay to NCPA the sums stipulated for delays in finishing the work beyond the times of completion specified; and the Contractor agrees to pay these liquidated damages, and further agrees that NCPA may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract Documents. If such moneys are insufficient, the Contractor or its surety or sureties shall pay to NCPA any deficiency within thirty (30) days of invoice submittal by NCPA.

Liquidated damages in the amount of \$2,000 per day for each day of delay shall be imposed on Contractor.

SECTION 3. CONTRACT PRICE

NCPA will pay Contractor in current funds as full consideration for the full and complete performance of this Agreement the sum of:

_____ (\$ _____), being Contractor's bid amount, subject to subsequent contract change order(s), for furnishing all materials and for doing all the Work contemplated under this Agreement; for all loss or damages arising out of the nature of the Work, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work, until the Work is accepted by the NCPA; for all expenses incurred by or in consequences of the suspension or discontinuance of the Work; and for well and faithfully completing the Work, the whole thereof, in the manner and in accordance with the Contract Documents therefore and the requirements of NCPA under them.

SECTION 4. BONDS

Prior to execution of this Agreement, Contractor shall obtain a one hundred percent (100%) Performance Bond, a one hundred percent (100%) Payment (Labor and Materials) Bond, and a ten percent (10%) Maintenance Bond each in the form included in the Contract Documents.

SECTION 5. INSURANCE

Before beginning any work under this Contract, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below against claims that may arise from or in connection with the performance of the work hereunder by Contractor and its agents, representatives, employees, and subcontractors. Contractor shall maintain the insurance policies required by this section throughout the term of this Contract. The cost of such insurance shall be included in the Contractor's price. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to NCPA. Verification of the Contractor's required insurance shall be submitted and made part of this Contract prior to execution. The existence of insurance shall not relieve or decrease the liability of Contractor under the Contract Documents.

- 5.1. Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits

of not less than One Million Dollars (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of NCPA. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against NCPA and its officers, officials, employees, and volunteers for loss arising from work performed under this Contract.

5.2. Commercial General Insurance.

5.2.1. General requirements. Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Contract in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000.00), per occurrence, combined single limit coverage for risks associated with the work contemplated by this Contract. If a Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily injury, personal injury, including death resulting therefrom, completed operations and products liability; broad form property damage liability; coverage for the XCU hazards of explosion, collapse, and underground, and contractual liability as to the obligations assumed by the Contractor under the Contract Documents.

5.2.2. Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (current edition) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement shall be attached limiting the coverage.

5.3 Automobile Liability Insurance.

5.3.1. General requirements. Contractor, at its own cost and expense, shall maintain automobile liability insurance for the term of this Contract in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000.00), per occurrence, combined single limit coverage for risks associated with the work contemplated by this Contract. If an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit.

5.3.2. Minimum scope of coverage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (current edition) symbol 1. No endorsement shall be attached limiting the coverage.

5.4 All Policies Requirements.

5.4.1. Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Best's rating of no less than A:VII.

5.4.2. Verification of Coverage. Prior to beginning any work under this Contract, Contractor shall furnish NCPA with endorsements (as to insurance referenced in agreement Sections 5.2, 5.3 and 5.5) and certificates, with complete certified copies of all policies (if requested by NCPA), evidencing to NCPA's reasonable satisfaction, compliance with Section 5 herein. All endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

5.4.3. Notice of Reduction in or Cancellation of Coverage. Contractor shall provide at least thirty (30) days prior written notice of any material changes to the insurance specified herein, including suspension, cancellation, termination, limitation, reduction in scope or amount. NCPA's receipt of such notice shall not constitute NCPA's acceptance of such material change.

5.4.4. Additional Insured; Primary Insurance. An endorsement at least as broad as Insurance Services Office form number CG 20 10 (current edition) shall be attached to policies referenced in agreement Sections 5.2, 5.3 and 5.5, stating that NCPA and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to such policies. The coverage shall contain no special limitations on the scope of protection afforded to NCPA or its officers, employees, agents, or volunteers.

Each endorsement shall state that coverage is primary insurance with respect to NCPA and its officers, officials, employees, agents and volunteers, and that no insurance or self-insurance maintained by NCPA shall be called upon to contribute to a loss under the coverage.

5.4.5. Deductibles and Self-Insured Retentions. Contractor shall disclose to and obtain the written approval of NCPA for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Contract.

During the period covered by this Contract, only upon the prior express written authorization of NCPA, Contractor may increase such deductibles or self-insured retentions with respect to NCPA, its officers, employees, agents, and volunteers. NCPA may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

5.4.6. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

5.4.7. Variation. NCPA may approve a variation in writing in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that NCPA's interests are otherwise fully protected.

5.4.8. Reporting. The endorsements shall also specify that any failure or delay to comply with reporting or other provisions of the policies shall not affect coverage provided to NCPA, its officers, officials, employees, agents or volunteers.

5.4.9 Occurrence-basis for Coverage. The endorsements shall also specify that coverage is on an occurrence or an accident basis, and not on a claims-made basis.

5.5 Builder's Risk. Not used

5.6 Remedies. In addition to any other remedies NCPA may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, NCPA may, at its sole option exercise any of the following remedies, which are alternatives to other remedies NCPA may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract;
- Order Contractor to stop work under this Contract or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Contract.

SECTION 6. INDEPENDENT CONTRACTOR

6.1. Independent Contractor. At all times during the term of this Contract, Contractor shall be an independent contractor and shall not be an employee of NCPA. NCPA shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Contract. Notwithstanding any other NCPA, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Contract 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 NCPA, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of NCPA and entitlement to any contribution to be paid by NCPA for employer contributions and/or employee contributions for PERS benefits.

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

SECTION 7. REGISTRATION

During the term of this Agreement, Contractor warrants that it is currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5. Contractor further warrants that any subcontractors, who are subject to Public Contract Code section 4104, are registered and qualified to perform public work consistent with Labor Code section 1725.5

SECTION 8. LAW, VENUE, AND CONFLICTS OF INTEREST

8.1. This Agreement has been executed and delivered in the State of California, and the validity, enforceability and interpretation of any of the provisions of the Contract Documents, including this Agreement, shall be determined and governed by the laws of the State of California, without regard to the choice of law doctrine.

8.2. The duties and obligations of the parties created hereunder are performable in Placer County and in that County where the NCPA Project is located. Either Placer County or the County where the Project Facility is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

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

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

8.5. Contractor hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of NCPA. If Contractor was an employee, agent, appointee, or official of NCPA in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Contract. Contractor understands that, if this Contract is made in violation of Government Code Sections 1090 *et seq.*, the entire Contract is void and Contractor will not be entitled to any compensation for services performed pursuant to this Contract, including reimbursement of expenses, and Contractor will be required to reimburse NCPA for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code Section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

SECTION 9. CHANGE ORDERS

It is agreed that the Project Manager is the sole person authorized to execute change orders necessary to the prosecution of the Work, unless NCPA otherwise notifies Contractor in writing.

SECTION 10. EXTRA WORK

Contractor hereby agrees that it will not proceed with any extra work unless it has been authorized in writing to do so by the Project Manager prior to the commencement of such extra work.

SECTION 11. PROGRESS PAYMENTS

11.01 The Contractor shall submit to NCPA's designated representative at least 10 days before the first and/or third Monday of the month, for NCPA's approval, a request for payment. Each progress payment to the Contractor by NCPA shall be in payment for only that work performed by the Contractor during the period immediately preceding the Contractor's current request for payment.

11.02 If requested by NCPA, the Contractor shall submit time sheets to NCPA daily for approval and signature. The daily time sheets shall clearly delineate the number of worker-hours and equipment hours worked in each given area of work. If NCPA makes this request, then only those time sheets signed by NCPA will be honored for payment.

11.03 Each request for payment submitted by the Contractor shall include backup documentation in support of all quantities and costs for which payment is requested, including but not limited to all material invoices, subcontractor/vendor statements of quantities and/or services provided, equipment rental invoices and signed daily time sheets.

11.04 Work performed at the request of NCPA, which is outside the scope of work and unit prices as defined in these Contract Documents, shall be itemized separately, with back-up documentation attached, and the total cost figures for the work shall be entered on the billing form under "Other Work". Work itemization with back-up shall be submitted with the Contractor's request for payment.

11.05 Subject to Article 12.00 of the General Conditions Section below, after approval by NCPA, progress payments will be made to the Contractor in the amount of ninety five percent (95%) of the approved billing. Progress payments will be made within 30 days after NCPA receives the Contractor's Request for Payment. NCPA's Progress Payment shall not constitute approval or acceptance of the Work performed.

SECTION 12. FINAL PAYMENT

12.01 Final payment will not be made to the Contractor until it has furnished evidence satisfactory to NCPA, of the Contractor's payment or provision for payment of all bills for material, labor, services, etc., incurred in connection with the performance of the Work; and at NCPA's option the written consent of the Contractor's surety to release final payment.

12.02 Final payment will further be contingent on approval of, and acknowledgment by, NCPA that the Contractor has completed all tasks and complied with all conditions of the Contract Documents. Upon approval by NCPA, the final payment will be made to the Contractor. NCPA may withhold from final payment, to the extent allowed by applicable law, amounts which in NCPA's opinion are determined to be reasonable and necessary to provide security against any losses, damages, expense, and liability covered by the Indemnification provision in the Contract Documents, and claims filed or reasonable evidence indicating probably filing of claims, damages to NCPA or third parties, liquidated damages, or other lawful bases for withholding final payment.

12.03 Final payment by NCPA, and acceptance of it by the Contractor, shall not constitute a waiver by NCPA, to any rights with respect to the Contractor's continuing obligations under the Contract Documents.

SECTION 13. DISPUTES

13.1. All questions of fact, and any and all disputes with references thereto, arising out of the performance of this Contract, or changes therein, or extra work in connection therewith, shall be submitted in writing to NCPA. NCPA will then make the final decision, which when made in writing shall be final and conclusive on the parties hereto.

13.2. Prior to initiating litigation in a court of competent jurisdiction, both Contractor and NCPA shall undergo alternative dispute procedures as outlined in Public Contract Code Sections 20104 *et seq.* The parties also expressly agree that the Alternative Dispute Resolution procedures outlined in Public Contract Code Sections 20104 *et seq.* shall apply to all claims, including those that exceed \$375,000, and that such procedures are incorporated as though fully set forth in this Contract.

13.3 Notwithstanding items 13.1 and 13.2 above, procedures for the Contractor to make claims for: (1) an extension of time, including relief from damages or penalties for delay; (2) payment by NCPA of money or damages arising from work done by, or on behalf of, the Contractor, where the underlying contract does not expressly provide for payment or payment to which the Contractor is not otherwise entitled, or (3) the payment of an amount disputed by NCPA are set forth in Article 10.03 of the General Conditions below.

SECTION 14. PREVAILING WAGES

In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, NCPA has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold NCPA harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

SECTION 15. GUARANTEE OF WORK

Contractor hereby agrees that it will post a Maintenance Bond in the form included in the Contract Documents after final inspection by NCPA and completion of required corrections and/or repairs. Such Maintenance Bond shall guarantee Contractor's work for the period of one year after the date of recording of NCPA's Notice of Completion of the Work.

SECTION 16. RELEASE

Upon payment of undisputed amounts under this Agreement and if requested by NCPA, Contractor shall execute a Release in the form provided by NCPA. Such Release shall not apply to disputed contract claims in amounts specifically excluded by Contractor from the operation of the Release.

SECTION 17. BINDING AGREEMENT; ASSIGNMENT

Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract Documents shall inure to the benefit of and shall be binding upon the Contractor and NCPA and their respective successors and permitted assigns.

The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of all sureties on all bonds required by this agreement, including but not limited to the Payment (Labor and Materials) Bond, and NCPA.

SECTION 18. CONTRACT DOCUMENTS

The full, complete and exclusive contract between the parties hereto shall consist of the following identified documents (the "**Contract Documents**"): (1) The "**Bid Documents**," consisting of the Notice Inviting Bids, Instructions to Bidders, Bidder's Check List, Bid Form, Bid Bond, Designation of Subcontractors, Non-Collusion Declaration, Agreement, Workers' Compensation Insurance Certification, Performance Bond, Payment (Labor and Materials) Bond, Maintenance Bond, Escrow Agreement for Security Deposits in Lieu of Retention, General Conditions, Supplementary Conditions, and Technical

NCPA
Collierville Power Tunnel Adit 4 Spoils Facility Repair Project
Public Works Contract
1/23/17

Specifications and Plans, if any, and any Addenda, and (2) any Change Orders, Field Orders, or NCPA's directives issued pursuant to and in accordance with this Agreement.

SECTION 19. INDEMNIFICATION AND ATTORNEY'S FEES

Contractor shall at its own cost, defend, hold harmless, and indemnify NCPA, its governing board, officials, commission members, officers, directors, employees, agents, and successors in interest ("Indemnitees") from and against any and all liability, damages, losses, claims, demands, actions, costs including attorney's fees and expenses ("Liabilities"), on account of injury to or death of persons or damage to any property (including property of NCPA) or delay or damage to another contractor resulting from or arising out of or in any way connected with the performance by the Contractor of this Agreement, and Contractor will reimburse Indemnitees for all Liabilities incurred by Indemnitees in consequence of any claims, demands, and causes of action which may be brought against Indemnitees arising out of the performance by the Contractor of this Agreement. However, notwithstanding, nothing in this section or the Contract Documents generally shall be construed to require the Contractor to indemnify the Indemnitees for their sole negligence, willful misconduct, or for defects in design furnished by Indemnitees. This section and the Contract Documents shall be construed consistent with Civil Code section 2782 so as to provide the maximum indemnification permitted by applicable law to Indemnitees.

This indemnification shall be in addition to any other indemnification provisions contained in the Contract Documents.

SECTION 20. NO IMPLIED WAIVER OF BREACH

The waiver of any breach of a specific provision of this Contract does not constitute a waiver of any other breach of that term or any other term of this Contract.

SECTION 21. SUCCESSORS AND ASSIGNS

The provisions of this Contract shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

SECTION 22. USE OF RECYCLED PRODUCTS

Contractor shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

SECTION 23. NONDISCRIMINATION AND EQUAL OPPORTUNITY

Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Contract. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Contract, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the immediately foregoing paragraph, verbatim, of this subsection in any subcontract approved by the Contract Administrator or this Contract.

Contractor shall indemnify, defend, and hold harmless NCPA with respect to any alleged violation of this section.

NCPA
Collierville Power Tunnel Adit 4 Spoils Facility Repair Project
Public Works Contract
1/23/17

SECTION 24. ENTIRE AGREEMENT

The Contract Documents constitute the entire Agreement between the parties, and supersede any prior agreement between the parties, oral or written, including NCPA's award of the contract to Contractor, unless such agreement is expressly incorporated herein. NCPA makes no representations or warranties, express or implied, not specified in the Contract Documents.

SECTION 25. EXECUTION OF OTHER DOCUMENTS

The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract Documents.

SECTION 26. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

SECTION 27. SEVERABILITY

If any provision of the Contract Documents shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 28. AMENDMENTS

The terms of the Contract Documents shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

SECTION 29. WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm, to an officer or director of the corporation, or to a manager of the LLC for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party who gives the notice.

Any written notice to Contractor shall be sent to:

[INSERT CONTRACTOR ADDRESS AND CONTACT INFORMATION]

Any written notice to NCPA shall be sent to:

Northern California Power Agency
Attn: Project Manager
Jake Eymann
477 Bret Harte Drive
Murphys CA, 95247

and

Northern California Power Agency
Attn: General Manager

NCPA
Collierville Power Tunnel Adit 4 Spoils Facility Repair Project
Public Works Contract
1/23/17

651 Commerce Drive
Roseville, CA 95678

With a copy to:

General Counsel
651 Commerce Drive
Roseville, CA 95678

SECTION 29. TERMINATION OF AGREEMENT

NCPA may terminate the Agreement as provided in the Contract Documents. The Contractor shall receive payment for all work performed to the date of termination in accordance with the provisions of the Contract Document.

SECTION 30. MONITORING BY DEPARTMENT OF INDUSTRIAL RELATIONS

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

IN WITNESS WHEREOF, the Northern California Power Agency has authorized the execution of this Agreement by its General Manager has caused this Agreement to be duly executed.

NORTHERN CALIFORNIA POWER AGENCY

ATTEST

By _____
RANDY S. HOWARD, General Manager

By _____
Assistant Secretary of the Commission

Date: _____

APPROVED AS TO FORM

By _____
General Counsel

CONTRACTOR:

(Name - Type or Print)

By _____
Signature (if a partnership, all partners must sign)

Official Title

Business Address

License No./Classification/Expiration Date

X. CORPORATE CERTIFICATE

I, _____, hereby certify that I am the Secretary of the Corporation named as Contractor in the foregoing Agreement; that _____ who signed the Agreement on behalf of the Contractor, was then _____ of such Corporation; that the Agreement was duly signed for and in behalf of such Corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal)

(Secretary)