



# Commission Staff Report

June 1, 2016

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

**SUBJECT:** Insurance Brokerage Services Request for Proposal Results and Recommendation for Broker Selection

**AGENDA CATEGORY:** Consent

<b>FROM:</b>	Rui Dai	<b>METHOD OF SELECTION:</b>	
	Energy Risk Manager		Competitive Pricing Process
<b>Division:</b>	Administrative Services		<i>If other, please describe:</i>
<b>Department:</b>	Risk Management		

<b>IMPACTED MEMBERS:</b>			
All Members	<input checked="" type="checkbox"/>	City of Lodi	<input type="checkbox"/>
Alameda Municipal Power	<input type="checkbox"/>	City of Lompoc	<input type="checkbox"/>
Bay Area Rapid Transit	<input type="checkbox"/>	City of Palo Alto	<input type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Redding	<input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Roseville	<input type="checkbox"/>
City of Healdsburg	<input type="checkbox"/>	City of Santa Clara	<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"/>
			<input type="checkbox"/>
<i>If other, please specify.</i>			
_____			
_____			
<i>Place an X in the box next to the applicable Member(s) above.</i>			

## **RECOMMENDATION:**

Recommend that the Commission adopt Resolution XX-16, which approves the recommendation of broker selection and the attached brokerage service agreement with Aon Risk Insurance Services West Inc., and authorizes the Agency's General Manager to execute the brokerage service agreement on behalf of the Agency.

## **BACKGROUND:**

NCPA engages professional services associated with insurance risk management, risk financing, insurance brokerage, and loss claim advocacy matters. The Agency retains these services in connection with its insurance program which includes property, liability, workers compensation, and directors and officers insurance programs, etc. The Agency has engaged Marsh USA, Inc. for many years to provide this service.

The current insurance brokerage Client Service Agreement (CSA) with Marsh expires on June 30<sup>th</sup>, 2016. Staff issued a Request for Proposals (RFP) to solicit insurance brokerage firms to provide the above mentioned services. Staff received 5 responses to the RFP as follows:

- Marsh
- Aon Risk Insurance Services West Inc.
- Wells Fargo Insurance
- Tyler/Wortham
- Willis Towers Watson

A team of NCPA staff evaluated the responses and interviewed the top 3 responding firms. All firms had experience in the power sector and excellent qualifications to provide NCPA the desired services for insurance broking and support. After a thorough evaluation of the top 3 firms, Aon Risk Insurance Services West Inc. stands out as the best selection for NCPA with its full service capability, industry experience, team profile, and competitive service fee. Staff recommends the selection of Aon Risk Insurance Services West Inc. to perform NCPA insurance brokerage services.

Attached is a draft consulting services agreement with Aon Risk Insurance Services West Inc. which provides for a 3-year term with an option to extend annually up to 5 years. Service fees are \$125,000 for the first year from July 1, 2016 to June 30, 2017, and then with an annual COLA escalation of 3% as the following:

July 1, 2017-June 30, 2018	\$128,750
July 1, 2018-June 30, 2019	\$132,613
July 1, 2019-June 30, 2020 (optional)	\$136,591
July 1, 2020-June 30, 2021 (optional)	\$140,689

Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant. Staff recommends that the Commission approve execution of this agreement and authorizes the Agency's General Manager to execute the brokerage service agreement on behalf of the Agency.

**FISCAL IMPACT:**

NCPA insurance program premiums and brokerage fee are budgeted as part of the aggregate Property, Liability, and Workers Compensation Insurance cost estimates, which are charged off proportionately at approximately 80% for Property Insurance and 20% for Liability Insurance based on total premiums paid. The fees and premiums in total are then allocated to projects based on insured values at each plant site, with the liability insurance charged to Administrative & General costs. The proposed annual fee is \$125,000 per year with a 3% escalator, significantly less than the current cost of \$281,000.

The aforementioned annual fee is significantly (more than 50%) below the Commission approved FY 2016-17 annual budget for this item.

**ENVIRONMENTAL ANALYSIS:**

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

**COMMITTEE REVIEW:**

The recommendation was reviewed by the Facilities Committee on June 1, 2016 and was recommended for Commission approval.

*For Facilities Committee meetings where a quorum was not present:* No formal action was taken due to the lack of a quorum, however, the Project participants present at the meeting voiced their support for the recommendation below and no other meeting attendees had any objections.

The recommendation was reviewed by the Utility Directors on June 9, 2016 and was recommended for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments:

Consulting Services Agreement with Aon Risk Insurance Services West Inc.



**CONSULTING SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
\_\_\_AON RISK INSURANCE SERVICES WEST, INC.\_\_\_\_\_**  
(Single Task)

This agreement for consulting services ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Aon Risk Insurance Services West, Inc., a [redacted] corporation with its office located at 425 Market Street, Suite 2800, San Francisco, CA 94105 [redacted] ("Consultant") (together sometimes referred to as the "Parties") as of [redacted] July 1<sup>st</sup> [redacted], 2016 ("Effective Date") in Roseville, California.

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

1.1 **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end June 30<sup>th</sup> \_\_\_\_\_, 2019, with an option to extend annually up to June 30<sup>th</sup>, 2021.

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.

Consultant will deliver the Services based upon the information that the Agency and its representatives provide. The Agency is responsible for the accuracy and completeness of the information and Consultant accepts no responsibility arising from the Agency's failure to provide such information to Consultant. Consultant must receive promptly the information to deliver the Services as well as the Agency's prompt updates to any information where there has been a material change which may affect the scope or delivery of the Services, such as a change in the nature of the risk, insured entities, property values and persons or entities to be covered.

To the extent that any portion of Consultant's compensation, by operation of law, agreement or otherwise, becomes adjusted or credited to the Agency, it is the Agency's responsibility to disclose the actual net cost of the brokerage and insurance costs Agency have incurred to third party(ies) having an interest in such amounts.

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.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED**;

JULY 1, 2016-JUNE 30, 2017 \$125,000, with an annual COLA escalation of 3% as the following,

July 1, 2017-June 30, 2018 \$128,750

July 1, 2018-June 30, 2019 \$132,613

July 1, 2019-June 30, 2020 \$136,591

July 1, 2020-June 30, 2021 \$140,689

Of the above service fees, \$25,000 is paid at the end of each service year as a performance bonus payment upon satisfaction of NCPA on the service rendered.

For the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule. 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. All fees due under the terms of this Agreement shall be paid within 60 days of the Effective Date and within 60 days following each anniversary.

**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.

Insurance may not be available in the admitted marketplace for the terms and conditions specified by the Agency. In such event, Consultant's insurance proposal may include one or more insurers not licensed to transact insurance in the states of exposure and such coverage may be placed as surplus lines coverage pursuant to applicable insurance laws governing the placement of insurance with non-admitted insurers. Persons and entities insured by surplus lines insurers cannot avail themselves of the protection and recovery afforded by the state insurance guaranty funds in the event the surplus lines insurer should become insolvent. The states do not audit the finances or review the solvency of surplus lines insurers. In some instances, these insurance placements made by Consultant or its affiliates on the Agency's behalf may require the payment of state surplus lines, excise or other taxes and/or fees in addition to the premium itself. Consultant will endeavor to identify any such tax and/or fee in advance, but in all instances the payment of these taxes and/or fees will remain the responsibility of the Agency. Consultant will invoice the Agency for the payment of such taxes and fees where it is Consultant's responsibility to do so.

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

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

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

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

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

4.2 **Commercial General and Business 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 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 04 13 on "an occurrence" basis covering Commercial General Liability. No endorsement shall be attached limiting the coverage.

4.2.2 **Business Automobile Liability.** Consultant shall maintain Business Automobile liability insurance form CA 0001 10 13 for the term of this Agreement covering loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

4.3 **Professional Liability Insurance.** (Required for all Consultants providing engineering, architectural, design, and similar services requiring special licensing from the State of California.) 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

4.4 **All Policies Requirements.**

4.4.1 **Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, 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.

4.5 **Waiver of Subrogation.** With the exception of Professional Liability, 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, and agents.

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 third-party losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Consultant, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

Neither party to this Engagement Letter shall be liable to the other for any indirect, incidental, special, consequential, exemplary, punitive or reliance damages (including, without limitation, lost or anticipated revenues, lost business opportunities or lost sales or profits, whether or not either party has been advised of the likelihood of such damages) or for any attorney's fees (whether incurred in a dispute or an action against the other, or as alleged damages that any party incurred in any insurance coverage dispute, or otherwise) arising out of services provided by Consultant or its affiliates.

Consultant's liability to the Client, in total, for the duration of our business relationship for any and all damages, costs, and expenses (including but not limited to attorneys' fees), whether based on contract, tort (including negligence), or otherwise, in connection with or related to Our services (including a failure to provide a service) or any other service that We provide shall be limited to a total aggregate amount of US \$2.5 million ("Liability Limitation"), to the fullest extent permitted by law.

This Liability Limitation shall apply to the Client and extend to the Client's parent(s), affiliates, subsidiaries, and their respective directors, officers, employees and agents (hereinafter, each a "Client Group Member" and together, "Client Group") wherever located that seek to assert claims against Consultant, and its parent(s), affiliates, subsidiaries and their respective directors, officers, employees and agents (each an "Aon Group Member" and together, "Aon Group"). Nothing in this Liability Limitation section implies that any Aon Group Member owes or accepts any duty or responsibility to any Client Group Member.



If the Client or any Client Group Member asserts any claims or makes any demands against Consultant or any Aon Group Member for a total amount in excess of this Liability Limitation, then the Client agrees to indemnify Consultant for any and all liabilities, costs, damages and expenses, including attorneys' fees, incurred by Consultant or any Aon Group Member that exceeds this Liability Limitation.

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

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

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

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

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

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

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

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement without regard to its conflicts of law rules.
- 7.2 **Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

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

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

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

8.2 **Amendments and Change Orders.**

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

8.2.2 The Parties may agree to a change order, modifying the duration of the Agreement or the not-to-exceed compensation referenced in Section 2 hereof by a writing signed by the Consultant and the Contract Administrator.

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 and previously provided to Agency pursuant to this Agreement;

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

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

9.4 **Confidential Information and Disclosure.**

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

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

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

9.4.3.1 Disclosure to employees, agents, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement and to insurance/reinsurance/benefits vendor(s), on a need to know basis and as necessary in order to implement the services provided by Consultant to Agency .

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) upon termination of this Agreement, 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. Each party agrees to waive its right to a trial by jury in any lawsuit or other legal proceeding against the other party and/or its parent(s), affiliates, or subsidiaries, in connection with, arising out of or relating to this Agreement or any services provided to the Agency by Consultant or its affiliates. In any such action or legal proceeding, neither party shall name, as a defendant any individual employee, officer or director of the other party or its parent(s), affiliates or subsidiaries.
- 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 [REDACTED], [TITLE], 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:

Derick Hembd

Account Executive  
Aon Risk Insurance Services West, Inc.  
2277 Fair Oaks Blvd., Suite 250  
Sacramento, CA 95825

Derek Whipple  
Managing Director  
Aon Risk Insurance Services West, Inc.  
425 Market Street, Suite 2800  
San Francisco, CA 94105

Any written notice to Agency shall be sent to:

Rui Dai  
Risk Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:

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

- 10.9 **Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

- 10.11 **Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;
  - 10.11.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
  - 10.11.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
  - 10.11.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
  - 10.11.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
  - 10.11.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 10.12 **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Consultant's Proposal, the Exhibits shall control.
- 10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 10.14 **Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.



10.15 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties.

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

NORTHERN CALIFORNIA POWER AGENCY  
WEST, INC. \_\_\_\_\_

AON RISK INSURANCE SERVICES

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
[NAME, TITLE]  
DIRECTOR, TITLE]

\_\_\_\_\_  
[DEREK WHIPPLE, Managing

Attest:

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

Approved as to Form:

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

## EXHIBIT A

### SCOPE OF SERVICES

Broker will act as the Client's risk management advisor and consultant and insurance broker, as applicable, with respect to the following lines of insurance:

- (a) All Risks Property
- (b) Electronic Data Processing (Misc. Property)
- (c) Excess Liability
- (d) Automobile Liability/Physical Damage
- (e) Workers Compensation/Employers Liability
- (f) Property (Lodi Energy Center)
- (g) Casualty (Lodi Energy Center)
- (h) Crime/Fidelity
- (i) Directors & Officers Liability
- (j) Surety
- (k) Other lines of insurance as needed i. e. professional liability etc..

The primary responsibilities and requirements of the successful Respondent to this RFP are outlined below.

#### 1. Assigned Personnel

The Broker shall designate a Principal to be assigned to this account to act as the primary contact for the NCPA. If for any reason NCPA finds, in its sole discretion, that the service provided by any assigned personnel is unsatisfactory, the Broker will agree to assign replacement personnel that must also be approved by NCPA.

#### 2. Current Policy Review

The consultant shall review all NCPA policies and other documents in detail within 14 days of receipt of the documents. Check the wording and accuracy of each policy, binder, certificate, endorsement or other document received from insurers. Ensure that the intended coverage is provided, all coverage, terms, conditions and other wording is complete and accurate.

#### 3. Program Administration

Program administration shall include, but not be limited to the following:

- A. Act as an independent insurance advisor to the Agency and proactively provide ongoing and unbiased professional advice and recommendations that benefit the Agency.
- B. Proactively provide ongoing review and analysis of the Agency's insurance programs and identification of cost and benefit options.
- C. Be familiar with the insurance needs of the Agency.
- D. Be familiar with the coverage provided by all relevant insurance policies and documents issued to the Agency.
- E. Assure that insurance policies are placed in a timely manner, with reputable and financially responsible insurers.
- F. Provide service for the insurance policies placed for the Agency including processing all changes and endorsements.
- G. Provide early warning of rate and coverage changes or renewal problems.
- H. At least once a year, provide a comprehensive report that reviews all of the Agency's insurance programs.
- I. Be available to answer questions or obtain answers from underwriters for policy coverage questions.
- J. Meet with Agency staff as may be reasonably requested.
- K. Provide consultation service and written reports as normally expected of a professional broker.

#### 4. Claim Assistance

Assist NCPA with claim filing, evaluation, negotiation and settlement. Within the compensation structure of this Agreement, Consultant agrees to provide up to 30 hours of claims assistance annually. Any request in excess of this amount will be negotiated. Unused claim assistance hours shall be carried over.

#### 5. Periodic Review

Brokerage and consulting services must be provided for annual policy renewals and on an as needed basis, including:

- A. The selected broker must provide a thorough renewal presentation each year at least sixty (60) days before current policy expiration date with policy recommendations to include an analysis of available alternatives.
- B. Brokerage services must also include market research.
- C. The Broker will also advise on a continuing basis, and in a timely manner, of any and all significant matters and developments regarding carrier service issues.

Draft

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

\_\_\_\_\_

(Name of person signing affidavit)(Title)

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

\_\_\_\_\_

(Company name)

for contract work at

\_\_\_\_\_

(Project name and location)

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

\_\_\_\_\_

(Signature of officer or agent)

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

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

## EXHIBIT D

### Consultant Business Terms

#### **Claim Notification to Insurers**

Unless Consultant has a specific signed agreement with the Agency to the contrary, it is the Agency's responsibility to take such steps as are necessary to notify directly those insurers whose policies may apply to any circumstances, occurrences, claims, suits, demands and losses in accordance with the terms and conditions of Agency's policies. Consultant assumes no duty or responsibility with respect to such notifications or monitoring the Agency's obligation to place insurers on notice unless undertaken in a separate written agreement. The Agency may send copies of such notices to members of Consultant staff for informational purposes only, but the receipt of such notice by Consultant shall not create additional duties or obligations owed by Consultant to the Agency nor constitute notice to Agency's insurers.

#### **Contract and Lease Review; General Advice**

In instances where Consultant provides summaries of contractual requirements or provisions, or any suggested additional or alternative wordings to any contract or lease at the Agency's request, such language must be reviewed by the Agency's legal advisor before Agency take action based upon Consultant's statements. Consultant does not and cannot provide legal advice as to whether the Agency's insurance program covers legal obligations contained in the Agency's contracts or leases. All descriptions of the insurance coverages are subject to the terms, conditions, exclusions and other provisions of the policies or any applicable regulations, rating rules or plans. Furthermore, it is understood that none of the services provided by Consultant are of a legal nature and Consultant shall not give legal opinions or provide legal advice or representations.

#### **Intermediaries**

Consultant encourages its retail brokers to approach markets directly (without an intermediary) wherever possible. However, where Consultant believes it is in the Agency's best interest, Consultant may recommend the use of intermediaries, including but not limited to co-brokers, sub-brokers, managing general agents/managing general underwriters, wholesale brokers, or reinsurance brokers (collectively, "Intermediary") to assist in the procurement and servicing of the Agency's insurance. Consultant prefers, wherever possible, to use the services of an Consultant-affiliated Intermediary and Consultant shall not be responsible for a non-Consultant affiliated Intermediary's actual or alleged acts, errors, or omissions or those of its officers, directors or employees. Any and all compensation earned by an Intermediary in connection with the Programs shall be in addition to the compensation paid to Consultant and shall not be credited against the Fee.

#### **Use of Logos**

Unless otherwise instructed by the Agency, Consultant will use the Agency's logo, pictures, and other publicly available information to effectively market the Agency's Programs or for use in Consultant's business records.

### **Premium Remittance**

Premiums paid by the Agency to Consultant for remittance to insurers and Agency premium refunds paid to Consultant by insurance companies for remittance to the Agency are deposited into fiduciary accounts in accordance with applicable insurance laws until they are due to be paid to the insurance company or the Agency. Subject to such laws and the applicable insurance company's consent, where required, Consultant will retain the interest or investment income earned while such funds are on deposit in such accounts.

### **Insurance Proposals and Summaries**

Consultant's insurance documents containing proposals to bind coverage, summaries of coverages, and certificates of insurance placed are furnished as a matter of information for the Agency's convenience. These documents summarize proposed and placed policies and are not intended to reflect all the terms, conditions and exclusions of such policies. Moreover, the information contained in these documents reflects proposed or placed coverage as of the effective dates of the proposed policies or the date of the summaries and does not include subsequent changes. These documents are not themselves insurance policies and do not amend, alter or extend the coverages afforded by the proposed or placed policies. The insurance afforded by the proposed or placed policies is subject to all the terms, conditions and exclusions contained in such policies as they are issued by the insurers.

### **Insurer Solvency**

While Consultant only engages insurers who meet certain requirements as established by Us from time to time, Consultant make no representation, guarantee or warranty as to the solvency or ability of any insurer to pay any amounts for insurance claims or otherwise.

### **Foreign Account Tax Compliance Act (FATCA)**

Agency acknowledges that Consultant is required to act as a withholding agent on any FATCA eligible premium payments when Consultant US or its US licensed affiliates are responsible for the remittance of premium payments to insurers, and in such instances, Consultant will be responsible for gathering and validating appropriate FATCA form(s) from carriers and intermediaries involved in FATCA eligible premium payments. Consultant will not act as withholding agent on premium remitted by Agency to any other party, including premiums paid directly to insurers, to non-US intermediaries, or to non-US Aon entities which are not classified as qualified intermediaries for FATCA.

If Agency directs use of a carrier or intermediary that is unable or unwilling to provide FATCA forms to Consultant in instances where Consultant is to remit premium to that carrier or intermediary, Agency will be responsible for paying any additional sums so that the mandated

FATCA withholdings can be made while concurrently fulfilling Agency's obligation to remit the full premium amounts necessary to effect coverage.

Agency will be responsible for all aspects of FATCA compliance for premium payments made to entities other than Consultant-including payments made directly to (re)insurance carriers or intermediaries.

Consultant provides Consultant's US W-9 form(s) to Agency via [Aon.com](http://Aon.com) as directed to Agency on invoices. Agency agrees with and accepts delivery of such form(s) via [Aon.com](http://Aon.com). Consultant will not be responsible for issues arising from Consultant withholding 30% of premium payments in connection with its FATCA obligations. Agency agrees to work with Consultant to provide information required to meet FATCA obligations.

### **Pricing**

Consultant does not and cannot guarantee the availability or price of insurance for the Agency's risks and is not responsible for fluctuation in the premiums charged by insurers. Consultant will rely on the Agency to review and approve any calculation or estimation of premium and Consultant is not responsible for any loss occasioned as a result of Consultant's calculation or estimation of premium and statutory charges that may apply to the Agency's insurance.