




Commission Staff Report

COMMISSION MEETING DATE: April 27, 2023

SUBJECT: CLEAResult Consulting Inc.—First Amendment to Resolution 23-20 Approving Revised First Amendment to Three Year Multi-Task Consulting Services Agreement for Electrification Education and Outreach Services; Applicable to the following: Northern California Power Agency (NCPA), NCPA Members, the Southern California Public Power Authority (SCPPA), and SCPPA Members.

AGENDA CATEGORY: Consent

FROM:	Jane Cirrincione 	METHOD OF SELECTION:
	Assistant General Manager	<i>Competitive Pricing Process</i>
Division:	Legislative & Regulatory Affairs	<i>If other, please describe:</i>
Department:	Legislative & Regulatory	

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

RECOMMENDATION:

Approve First Amendment to Resolution 23-20 approving the revised First Amendment to the Multi-Task Consulting Services Agreement (MTCSA) with CLEARResult Consulting Inc. for Electrification Education and Outreach Services necessary due to substantive changes to the Scope of Services listed in Exhibit "A" from that approved on February 23, 2023, regarding the ChooseEV tool. In all other respects Resolution 23-20 extends the term of the Agreement for an additional two-year period and increases the total not-to-exceed amount from \$1,000,000 to \$2,000,000 for continued use by NCPA, NCPA Members, by SCPPA, and SCPPA Members remains unchanged.

BACKGROUND:

As a supplement to the information provided in Staff Report 129:23 dated February 23, 2023, subsequent to Commission approval, legal counsel for CLEARResult Consulting Inc. (CLEARResult) has requested changes to the Scope of Services included in Exhibit "A" regarding its Choose EV Online Customer Engagement Tools. The ChooseEV tools were acquired by CLEARResult through its acquisition of The Yenter Group, a subcontractor of D&R International. The Choose EV tools were previously included in the services provided by D&R International.

The changes requested by CLEARResult's counsel were deemed substantive in nature in that the ChooseEV tools were formulated differently for customer use under D&R International. CLEARResult requires that customers execute a Subscription Agreement. The Subscription Agreement requirement by CLEARResult was not part of the RFP or the evaluation process conducted by NCPA which resulted in both the CLEARResult and D&R International agreements for the services. The revised language included in Exhibit "A" to the First Amendment provides:

4. Choose EV Online Customer Engagement Tools. Should any Member desire these services, Consultant requires execution of a Subscription Agreement between CLEARResult Consulting Inc. and the Member. NCPA will not be a party to the Subscription Agreement, will not be responsible for compliance with nor enforce its terms. The terms of the Subscription Agreement are subject to section 10.12, Controlling Provisions, of the Agreement. In the case of any conflict between the Subscription Agreement and the Agreement, the Agreement shall control.

FISCAL IMPACT:

Upon execution, the total not to exceed amount of the agreement will increase from \$1,000,000 to \$2,000,000 over the remainder of the amended contract term. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

The Agreement with CLEARResult is a result of a Request for Proposal (RFP) process in accordance with NCPA's procurement policies and procedures.

This enabling agreement as amended does not commit NCPA to any expenditure of funds. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

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

COMMITTEE REVIEW:

The recommendation will be reviewed and discussed by the Legislative and Regulatory Affairs Committee on April 24, 2023.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- First Amendment to Resolution 23-20
- Revised First Amendment to Multi-Task Consulting Services Agreement with CLEARResult Consulting Inc.
- Staff Report 129:23

FIRST AMENDMENT TO RESOLUTION 23-20

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A FIRST AMENDMENT TO RESOLUTION 23-20 FOR THE FIRST AMENDMENT
TO MULTI-TASK CONSULTING SERVICES AGREEMENT WITH CLEARRESULT CONSULTING,
INC.

(reference Staff Report #151:23)

WHEREAS, Northern California Power Agency (NCPA) and CLEAResult Consulting, Inc. entered into a Multi-Task Consulting Services Agreement effective December 18, 2020, for CLEAResult Consulting, Inc. to provide electrification education and outreach services, for use by NCPA, NCPA Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, on February 23, 2023, the NCPA Commission approved a First Amendment to the Multi-Task Consulting Services Agreement with CLEAResult Consulting, Inc. extending the term of the Agreement for an additional two-year period, increasing the total not-to-exceed amount from \$1,000,000 to \$2,000,000, and amending Exhibits "A" and "B", for continued use by NCPA, NCPA Members, SCPPA, and SCPPA Members; and

WHEREAS, since the February 23, 2023 approval, substantive changes were requested by CLEAResult to Exhibit "A" Scope of Services; and

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

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a First Amendment to Multi-Task Consulting Services Agreement with CLEAResult Consulting, Inc., extending the term of the Agreement for an additional two-year period, increasing the total not-to-exceed amount from \$1,000,000 to \$2,000,000, updating Exhibit "A" Scope of Services to add the ChooseEV Online Customer Engagement Tools, and updating Exhibit "B" to include pricing for the ChooseEV platform and reflect current hourly rates, with any non-substantial changes as approved by the NCPA General Counsel, for continued use by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2023 by the following vote on roll call:

Table with 4 columns: Agency Name, Vote, Abstained, Absent. Rows include Alameda, San Francisco BART, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Port of Oakland, Redding, Roseville, Santa Clara, Shasta Lake, Truckee Donner, Ukiah, Plumas-Sierra.

JERRY SERVENTI
CHAIR

ATTEST:
ASSISTANT SECRETARY

DRAFT



FIRST AMENDMENT TO MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND CLEARRESULT CONSULTING INC.

This First Amendment (“Amendment”) to the Multi-Task Consulting Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and CLEARResult Consulting Inc. (“Consultant”) (collectively referred to as “the Parties”) as of _____, 2023.

WHEREAS, the Parties entered into a Multi-Task Consulting Services Agreement dated effective December 18, 2020, (the “Agreement”) for Consultant to provide energy efficiency services including electric vehicle (EV) education, electrification education, and additional services related to electrification program design and implementation, EV charging infrastructure technical assistance, and energy advisor services; and

WHEREAS, the Agency now desires to amend the Agreement to extend the term of the Agreement for an additional two (2) years from the original expiration date of December 17, 2023, to a new date of December 17, 2025; and

WHEREAS, the Agency now desires to amend the Agreement to increase the total compensation authorized by the Agreement from a “NOT TO EXCEED” amount of \$1,000,000 to a ‘NOT TO EXCEED amount of \$2,000,000; and

WHEREAS, the Parties now desire to amend the Scope of Services set forth in Exhibit A to the Agreement; and

WHEREAS, the Parties now desire to amend the Compensation Schedule and Hourly Rates set forth in Exhibit B to coincide with the Scope of Services; and

WHEREAS, the Parties have agreed to modify the Agreement as set forth above; and

WHEREAS, in accordance with Section 8.2 all changes to the Agreement must be in writing and signed by all the Parties; and

NOW, THEREFORE, the Parties agree as follows:

1. **Section 1.1—Term of Agreement** is amended and restated to read in full as follows:

The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) years from the date this Agreement was signed by the Agency, whichever is shorter.

2. **Section 2—Compensation** of the Agreement is amended and restated to read as follows:

Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** Two Million dollars (\$2,000,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor’s fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full

amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

The remainder of Section 2 of the Agreement is unchanged.

3. **Exhibit A – SCOPE OF SERVICES** is amended and restated to read in full as set forth in the attached Exhibit A.
4. **Exhibit B – COMPENSATION SCHEDULE** is amended and restated to read in full as set forth in the Attached Exhibit B.
5. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

Date: _____

Date: _____

NORTHERN CALIFORNIA POWER AGENCY

CLEARRESULT CONSULTING INC.

RANDY S. HOWARD, General Manager

Authorized signatory

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

CLEAResult Consulting Inc. ("Consultant") shall provide energy efficiency services as requested by the Northern California Power Agency ("Agency") on behalf of the Agency, NCPA Members, Southern California Public Power Authority ("SCPPA"), or SCPPA Members, including:

A. EV Education

Consultant will provide workshops and online education on the adoption of electric vehicles ("EVs") by Agency customers. Workshop length and content to be adjusted to the audience. Workshops to include information on EV supply equipment ("SE"), used EVs, leasing vs. purchasing, available incentives, different models, and lifetime price analysis of an EV vs. a fossil-fuel vehicle.

B. Electrification Education

Consultant will provide workshops and online education on the switch from gas to electric equipment in the home and at businesses, emphasizing financial and environmental motivations. Workshop length and content to be adjusted to the audience. Workshops to include information on heat pump water heaters, air source heat pumps, electric dryers, induction cooktops, different models, and lifetime price analyses.

Consultant will provide virtual electrification and energy efficiency audits for customer interested in a virtual assessment of electrification and energy efficiency potential and opportunities. Consultant will utilize its proprietary virtual audit tool and qualified staff to perform these audits which includes outreach to potential participants, guided audit at the home or facility, and a report of findings and opportunities.

C. Additional Services

Agency members may also engage Consultant for additional EV, energy efficiency, and electrification support services listed below. The scope of these services will be defined in the Purchase Order and will be billed on a Time & Materials ("T&M") basis using the hourly rates listed in Exhibit B.

1. Electrification Program Design and Implementation Services.
2. EV Charging Infrastructure Technical Assistance.
3. Energy Advisor Services.
4. Choose EV Online Customer Engagement Tools.

Should any Member desire these services, Consultant requires execution of a Subscription Agreement between CLEAResult Consulting Inc. and the Member. NCPA will not be a party to the Subscription Agreement, will not be responsible for compliance with nor enforce its terms. The terms of the Subscription Agreement are subject to section 10.12, Controlling Provisions, of the Agreement. In the case of any conflict between the Subscription Agreement and the Agreement, the Agreement shall control.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$2,000,000.00. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Hourly Rates

This Agreement is based upon time and materials charges and Consultant will bill for authorized labor and expenses on a monthly basis. Hourly billing increments will be by the quarter hour. For example only, Services of 15 minutes of time or fewer will be billed as 15 minutes, 16 to 30 minutes will be billed as 30 minutes, etc.

Any modification or additional roles must be approved by NCPA in writing via email prior to invoicing.

Rates Effective 1-1-2023:

Role	Rate
Director	\$213
Sr. Manager	\$175
Manager	\$139
Program Analyst	\$106
Account Manager	\$126
Sr. Energy Advisor	\$102
Energy Advisor	\$81
Sr. Engineer	\$188
Engineer	\$144
Sr. Designer	\$123
Incentive Processor	\$60
Contact Center Representative	\$48

Annually on each anniversary of the Effective Date, the rates will increase at the lesser of 3% or the 12-month employment cost index as reported by the Bureau of Labor Statistics, but in no event shall rates increase at less than 1%.

Pricing for ChooseEV

ChooseEV annual fees are calculated based utility size and the number of tools a utility chooses to use. We suggest at minimum 4 tool package. This is annual pricing, billed each year on the Effective Date of the signed Agreement. The annual pricing below shall remain in effect throughout the term of the Agreement.

	Meters	3 tool pkg	4 tool pkg	5 tool pkg
City of Biggs	1800	\$ 1,650	\$ 1,800	\$ 2,250
City of Shasta Lake	4000	\$ 1,650	\$ 1,800	\$ 2,250
City of Healdsburg	5793	\$ 3,000	\$ 3,600	\$ 4,500
Plumas Sierra	6500	\$ 3,000	\$ 3,600	\$ 4,500
Gridley California	7000	\$ 3,000	\$ 3,600	\$ 4,500
Trukee Donner PUD	13000	\$ 3,000	\$ 3,600	\$ 4,500
City of Lompoc	15000	\$ 3,000	\$ 3,600	\$ 4,500
City if Ukia	15000	\$ 3,000	\$ 3,600	\$ 4,500
Lodi	28000	\$ 4,200	\$ 5,200	\$ 6,500
Alameda Power	34000	\$ 4,200	\$ 5,200	\$ 6,500
City of Redding Electric Utility	42000	\$ 4,200	\$ 5,200	\$ 6,500
City of Roseville Electric utility	50000	\$ 4,200	\$ 5,200	\$ 6,500
Silicon Vally Power	51000	\$ 5,700	\$ 7,200	\$ 9,000
City of Palo Alto	62000	\$ 5,700	\$ 7,200	\$ 9,000
		\$ 49,500	\$ 60,400	\$ 75,500

Pricing for services not otherwise listed above will be quoted at the time services are requested.

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



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
CLEARRESULT CONSULTING INC.**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and CLEARresult Consulting Inc., a Texas corporation with its office located at 4301 Westbank Drive, Building A, Suite 300, Austin, TX 78746 ("Consultant") (together sometimes referred to as the "Parties") as of Dec. 18, 2020 ("Effective Date") in Roseville, California.

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

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

period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

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

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

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

Invoices shall be sent to:

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

2.2 Monthly Payment. Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, that may be legally imposed on Consultant by a tax authority and incurred under this Agreement.

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

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

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

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

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

4.2 Commercial General and Automobile Liability Insurance.

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

4.2.2 Automobile Liability. Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use 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 \$2,000,000 per each accident, with

a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

4.3 Professional Liability Insurance. Not Applicable.

4.4 All Policies Requirements.

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

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

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

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

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

4.5 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 ensues they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Consultant, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.

Section 6. STATUS OF CONSULTANT.

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

Each party shall be responsible for the payment of all employee compensation, benefits and employment and other taxes pertaining to its employees and business including, but not limited to, the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, and all state and local taxes related to employee compensation, benefits and employment.

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.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

- 8.4.1 Immediately terminate the Agreement;
- 8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or
- 8.4.4 Charge Consultant the difference between the costs to complete the Services that is unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents. Notwithstanding the foregoing, Consultant retains ownership of all pre-existing intellectual property and any generally applicable development, modification or improvement of such pre-existing intellectual property under this Agreement (collectively, "Consultant IP"). To the extent any deliverable incorporates Consultant IP, Consultant grants to the Agency a nonexclusive, worldwide, royalty-free, irrevocable license (with rights to sublicense to others) in Consultant IP to translate, reproduce, distribute and prepare derivative works, to publicly perform, and to publicly display all deliverables and to authorize others to do so.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code

Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

9.4 Confidential Information and Disclosure.

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

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

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

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

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

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

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

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Conflict of Interest.** Consultant may serve other clients; but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined

in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

Legal Department
CLEAResult
100 SW Main Street, Suite 1500
Portland, OR 97204

Any written notice to Agency shall be sent to:

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

With a copy to:

Jane E. Luckhardt
General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

10.9 Professional Seal. Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.10 Integration; Incorporation. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

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

10.15 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide Services to an Agency member, SCCPA and/or a SCPA member (collectively for the purposes of this section only "Member") pursuant to section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

CLEARRESULT CONSULTING INC.

Date 12/18/20

Date 12/15/2020



**RANDY S. HOWARD
GENERAL MANAGER**

**ANDREA WHITE
VICE PRESIDENT**

Attest:



Assistant Secretary of the Commission

Approved as to Form:


Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

A. EV Education

Consultant will provide workshops and online education on the adoption of electric vehicles ("EVs") by Agency customers. Workshop length and content to be adjusted to the audience. Workshops to include information on EV supply equipment ("SE"), used EVs, leasing vs. purchasing, available incentives, different models, and lifetime price analysis of an EV vs. a fossil-fuel vehicle.

B. Electrification Education

Consultant will provide workshops and online education on the switch from gas to electric equipment in the home and at businesses, emphasizing financial and environmental motivations. Workshop length and content to be adjusted to the audience. Workshops to include information on heat pump water heaters, air source heat pumps, electric dryers, induction cooktops, different models, and lifetime price analyses.

Consultant will provide virtual electrification and energy efficiency audits for customer interested in a virtual assessment of electrification and energy efficiency potential and opportunities. Consultant will utilize its proprietary virtual audit tool and qualified staff to perform these audits which includes outreach to potential participants, guided audit at the home or facility, and a report of findings and opportunities.

C. Additional Services

Agency members may also engage Consultant for additional EV, energy efficiency, and electrification support services listed below. The scope of these services will be defined in the Purchase Order and will be billed on a Time & Materials ("T&M") basis using the hourly rates listed in Exhibit B.

1. Electrification Program Design and Implementation Services.
2. EV Charging Infrastructure Technical Assistance.
3. Energy Advisor Services.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$1,000,000.00. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Hourly Rates

This Agreement is based upon time and materials charges and Consultant will bill for authorized labor and expenses on a monthly basis. Hourly billing increments will be by the quarter hour. For example only, Services of 15 minutes of time or fewer will be billed as 15 minutes, 16 to 30 minutes will be billed as 30 minutes, etc.

Any modification or additional roles must be approved by NCPA in writing via email prior to invoicing.

Role	Rate
Director	\$195
Sr. Manager	\$160
Manager	\$127
Program Analyst	\$97
Account Manager	\$115
Sr. Energy Advisor	\$93
Energy Advisor	\$74
Sr. Engineer	\$172
Engineer	\$132
Sr. Designer	\$113
Incentive Processor	\$55
Contact Center Representative	\$44

Annually on each anniversary of the Effective Date, the rates will increase at the lesser of 3% or the 12-month employment cost index as reported by the Bureau of Labor Statistics, but in no event shall rates increase at less than 1%.

Pricing for services not otherwise listed above will be quoted at the time services are requested.

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