



Lodi Energy Center Project Participant Committee

Staff Report

AGENDA ITEM NO.: 13

Date: June 26, 2017

Meeting Date: July 10, 2017

To: Lodi Energy Center Project Participant Committee

Subject: Kinectrics North America, Inc. – Five Year Multi-Task Professional Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

Proposal

Approve the Multi Task Professional Services Agreement with Kinectrics North America for generator testing and assessment and other miscellaneous technical services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,000,000 over 5 years for use at all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority (“SCPAA”), or by SCPAA members.

Background

Generator testing and assessment services are required from time to time related to project support at facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority (“SCPAA”), or by SCPAA members.

Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently does has in place other agreements with similar service providers including Andritz Hydro, HDR Engineering, Quality Generator Services, and Siemens Energy. NCPA seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed (\$1,000,000) over (five) years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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.

Submitted by:

KEN SPEER
Assistant General Manager
Generation Services

Attachments: (2)

- Resolution
- Multi-Task Professional Services Agreement with Kinectrics North America Inc.

**MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
KINETRICS NORTH AMERICA, INC.**

This agreement for professional 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 Kinectrics North America, Inc., a corporation with its office located at 800 Kipling Avenue, Unit 2, Toronto, Ontario, M8Z 5G5 Canada ("Consultant") (together sometimes referred to as the "Parties") as of _____, 201_ ("Effective Date") in Roseville, California.

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

- 1.1 **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) 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.

Consultant warrants that the Services, excluding any as may be performed under the direction or supervision of the Agency, performed pursuant to this Agreement will be performed in a professional manner consistent with the standards of quality and care typical within the industry at the time of performance for similar work. Such warranty will be effective for a period of one (1) year from the date of completion of the Service. Any such Services performed by Consultant which do not conform with Consultant's above-stated warranty obligation will be re-performed by Consultant at Consultant's expense upon any reasonable written notice from Agency; or if in Consultant's reasonable judgment re-performance is impracticable or impossible, Consultant will refund to Agency the price paid to Consultant for the non-conforming Services. The warranties and remedies set forth herein are exclusive, and no other warranty or remedy of any kind, whether statutory, written, oral, express, or implied, including without limitation warranties of performance, merchantability and fitness for a particular purpose, shall apply.

- 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 where work is performed on a time & materials basis only; 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, for work performed on a time & materials basis only.

Invoices shall be sent to:

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

- 2.2 **Monthly Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 **Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.
- 2.4 **Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.
- 2.5 **Timing for Submittal of Final Invoice.** Consultant shall have ninety (90) days after completion of its Services to submit its final invoice. 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. Consultant shall ensure that any Statutory Workers' Compensation Insurance and Employer's Liability Insurance (or similar, non-U.S. coverage) maintained by Consultant covers any and all persons employed directly or indirectly to perform Services under this Agreement, no matter where such persons perform the Services.

4.2 Commercial General and Automobile Liability Insurance.

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

4.2.2 **Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use 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, 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.** 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. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

4.4 All Policies Requirements.

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

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

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

4.4.4 Additional Certificates and Endorsements. If Consultant provides services to Agency members, SCPPA and/or SCPPA members, Agency shall have the right to require the Consultant to provide certificates of insurance and/or policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPPA or Agency member for which the Services are to be performed.

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 Effect of Insurance. Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this

indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 5.2 **Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant in its performance of Services under this Agreement. Consultant shall bear all 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 ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency.

Notwithstanding the above, Consultant's total aggregate liability for damages arising from any cause or action whatsoever shall be limited to the applicable policy limit amounts detailed in Section 4 above (as long as Consultant maintains in effect and applicability the required insurance, including but not limited to the amounts, deductibles, and scope referenced herein) or, for claims not covered by insurance, one million dollars (\$1 million). In no event shall Consultant at any time be liable to the Agency for any indirect, incidental or consequential damages which may be sustained by them, including but not limited to loss of revenue, profit, business reputation or opportunity whether such liability arises out of contract, tort, strict liability, warranty or other legal theory whether at law, in equity or otherwise.

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

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

- 6.4 **Certification as to California Energy Commission.** If requested by the Agency, Consultant shall, at the same time it executes this Agreement, execute Exhibit C.

Section 7. LEGAL REQUIREMENTS.

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

Section 8. TERMINATION AND MODIFICATION.

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

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination, as well as Consultant's actual, direct, unavoidable direct costs resulting from such termination. "Actual, direct, unavoidable costs" means the cost of any preapproved uncancellable commitments incurred prior to the date of termination and similar costs, but shall not include profit or overhead expenses of Consultant. Consultant shall make every reasonable effort to minimize such costs upon termination. In no event shall the compensation of Consultant provided for in this Section exceed the cost of the applicable Purchase Order(s); 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 any provisions in this Agreement to the contrary, Consultant will own the entire right, title and interest to its own background intellectual property and nothing in this Agreement is intended to diminish that ownership interest and/or transfer, grant or bestow any right, title or interest in the Agency or any other party, including any ownership or license interest therein.

- 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. Notwithstanding the above, Agency shall not audit

the cost or pricing components of any fixed price work. Note: Agency makes no guarantees or representations concerning the scope of an audit by the State Auditor pursuant to California law.

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.

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 Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

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

Kinectrics Inc.
Attn: Jeff Lewis, Legal Counsel
800 Kipling Avenue, Unit 2
Toronto, Ontario M8Z 5G5
Canada

Any written notice to Agency shall be sent to:

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

With a copy to:

General Counsel
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

10.9 **Professional Seal.** Where applicable in the determination of the Agency, for engineering work, 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, SCPPA or SCPPA member (collectively for the purpose 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

KINECTRICS NORTH AMERICA, INC.

Date_____

Date_____

RANDY HOWARD, General Manager

SHAHROKH ZANGENEH, VP of Sales

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Assistant General Counsel

EXHIBIT A

SCOPE OF SERVICES

Kinectrics North America, Inc. ("Contractor") as requested by Northern California Power Agency ("Agency"), Agency Members, SCPA, or SCPA Members, shall perform the following services including, without limitation:

I. **Standard Generator Testing and Assessment;**

Perform limited visual inspection and off-line diagnostic testing of one generator stator winding, includes the following:

II. **Stator Winding Insulation Resistance and Polarization Index:**

Both single phase (A, B, C) and three phase testing (ABC) are required for assessment of the condition of the insulation system at 5 kV.

Testing is a requirement to ensure a minimum insulation condition prior to proceeding with diagnostic testing in accordance with the requirements of IEEE 43. Table 4 of this standard indicates the minimum recommended insulation resistance, in $M\Omega$ at 40°C, of the entire machine winding (ABC) of 100 $M\Omega$ as a prerequisite for further testing.

III. **Stator Winding Capacitance and Dissipation Factor ($\tan \delta$) Test:**

Typically single phase testing (A, B, C) is required for assessment of the condition of the insulation system.

Note: An advance Capacitance & Dissipation Factor measurements between phase to phase can also be performed to obtain additional information of the insulation condition. However, in order to perform this test a higher capacity power supply may be required to energize the winding with additional cost.

Tan δ testing evaluates various factors that influence the performance of the overall electrical insulation. Bridge techniques will be employed to properly measure and assess the extent of pulseless and pseudo glow discharge activity. Testing is performed in accordance with the requirements of IEEE 286 on each phase at up to rated line to neutral voltage.

IV. **Stator Winding Off-Line Partial Discharge Testing:**

Measurement of the partial discharge quantities Q_{IEC} and Q_M , as well as PDEV and PDIV are required, in the single phase (A, B, C) configuration with coupling capacitors installed at both the line end and neutral end of the winding for simultaneous measurements.

Note: An advance PD measurements for additional cost can also be performed by connecting all three phases together so as to distinguish between the slot and endwinding discharges; however in this case a higher capacity power supply is normally required due to high capacitance of the complete machine.

Two different methods of measuring PD will be performed with instrumentation using different frequency ranges and sensitivities to different types of PD activity. Measurements of Q_{IEC} will be performed first, followed by measurements of Q_M .

Off-line partial discharge testing evaluates various factors that influence the performance of electrical insulation associated with electrical discharges near the Line End of the stator winding. Testing is normally performed in accordance with the requirements of IEEE 1434 and/or IEC 60034-27-1.

V. **Stator Winding Electromagnetic (Corona or TVA) Test**

Single phase (A, B, C) testing is required. During testing of each phase, all slots containing a stator coil in either the top or bottom of the slot are scanned. The slots are divided into at least two sections, to allow differentiation of PD originating from each end of the core.

It is recommended that an AC overvoltage voltage test in accordance with IEEE 62.2 7.1.5 of at least 1.10 to 1.25 times the rated line-to-neutral voltage of the machine is performed prior to performing a TVA probe test (for safety). This overvoltage test provides some assurance of the integrity of the winding being tested.

VI. **Stator Winding Ultrasonic Inspection and/or Corona Camera/Corona Scope Inspection of Winding Connection End**

Testing is used to identify locations of PD within the end arm region of a stator winding. A scan of the end arm region of the connection end of the stator is performed using the ultrasonic detector to identify locations of partial discharge. An audio scans can localize areas of partial discharge which are not within line of sight

A corona scope and/or daylight corona camera, can be used to perform limited localization of PD in end winding region and requires direct line of sight.

VII. **Stator Winding Resistance**

Winding resistance testing can detect the presence of any high resistance joints, corrosion, or fractures of the conductors. The DC winding resistance of each phase (A1, A2, B1, B2, C1, C2) is measured using a Kelvin bridge in accordance with the requirements of IEEE 62.2.

VIII. Stator AC Overvoltage Withstand Test

AC testing results in the highest stress levels on the insulation system within the slot section of the stator core. Acceptance test levels for new machines are $2E+1$, while typical maintenance levels are 1.25 to 1.50E (E = Rated line to line voltage). Withstand testing provides some assurance that the winding insulation has a minimum level of electrical strength required to successfully operate for the expected design life or certain period of time. Testing is performed on each phase in accordance with the requirements of IEEE 62.2 on each phase for one minute, with the remaining phases grounded. Partial discharge measurements are performed at the withstand voltage level during the test.

IX. Stator Winding DC Ramped Overvoltage Test

DC testing results in the highest stress levels on the insulation system in the end arm region. Typical maintenance levels are 1.25 to 1.50E (E = Rated line to line voltage, $AC \times 1.7 = DC$). Ramp testing provides some assurance that the winding insulation has a minimum level of electrical strength required for continued operation. Testing is performed in accordance with the requirements of IEEE 95 on each phase using a 2 KV/min ramping rate, with the remaining phases grounded.

X. Stator Winding Limited Stator Winding Inspection

Visual Inspection of the stator winding assembly in accordance with the requirements of IEEE 62.2

XI. Additional Generator Tests;

1. Stator Slot Wedge Tightness

The stator Slot Wedge Tightness of the machine will be checked, and areas of concern would be noted. Testing is performed in accordance with the requirements of IEEE 62.2

2. Stator Core Low Energy (EICID) Test

The condition of the interlaminar resistance between stator punchings of the machine core is evaluated. Testing is performed in accordance with the requirements of IEEE 62.2 using a digital EICID test set and findings are recorded.

3. Isolated Phase Bus Test

Perform an AC Hipot of 27 kV for 1 minute (15 kV Class Iso-Phase Bus), followed by measurement of Partial discharge activity at 10.5 kV. Testing is amenable to detecting cracked insulators, moisture, loose connections and mounting hardware, and foreign materials.

II. Failure Analysis and Other Miscellaneous Technical Assistance

Perform document review for NCPA on an as requested basis.

III. Qualification Testing of 13.8kV stator bars and coils in accordance with IEEE 1310, IEEE 1043 and IEEE 1553.

The following qualification testing consisting of Thermal Cycling Test (TCT) in accordance with IEEE 1310 followed by Voltage Endurance Test (VET) in accordance with IEEE 1043 and 1553 is performed on newly manufactured stator bars and coils.:

Note: In case of bars normally five bars are required to perform the qualification test and in case of coils normally three coils are required.

THERMAL CYCLING TEST:

The thermal cycling work to be performed on stator bars/coils consists of:

1. Uncrating and performance of an incoming inspection of the stator bars/coils to ensure that no transit damage has occurred.
2. Perform an initial diagnostic sub-cycle on each stator bar/coil consisting of
 - A) Tap tests on the coils.
 - B) Slot corona protection surface resistance measurement.
 - C) Capacitance, dissipation factor at 0.2, 0.4, 0.6, 0.8, 1.0 Un of rated line to line voltage.
 - D) Partial discharge measurements up to 8 kV or 13.8kV ac rms.
 - E) Dimensional measurements in accordance with IEEE 1310
 - E) Surge testing (coils only): The initial surge testing of the turn insulation will be performed at 40 kV (3.5 p.u.), 100ns as per IEEE 522. The final surge testing will be performed on completion of 500 cycles on thermal cycling. The final turn insulation will be performed at 75% i.e. 30kV on each coil.
3. Performance of thermal cycling test on stator bars/coils as per the requirements of IEEE 1310-1996. Control bar/coil will be used to provide copper temperature measurements and hence to control the thermal cycling process. The thermal cycle profile will be 40°C-155°C-40°C with an average rate of increase/decrease as permitted by IEEE 1310-1996. The number of thermal cycles shall be 500.
4. Perform a diagnostic sub-cycle after 100, 250 and 500 thermal cycles on each bar/coil that has been subjected to thermal cycling. The measurements to be performed as per clause 2 above.

VOLTAGE ENDURANCE TEST:

The voltage endurance test will be performed on bars/coils on successful completion of Thermal Cycling and surge testing in case of coils in accordance to IEEE 1043 and 1553.

The test conditions shall be as follows:

- Bars/coils at 30kV (Schedule 'A') for 400 hours or (Schedule 'B') for 250 hours as per IEEE 1553. Temperature between 90 °C and 130°C (TBD).

Pass/Fail Criteria:

Surge Test (Coils Only):

This is a pass or fail test with no failures permitted.

The waveform from this test is to be compare with the original test to ensure no shorts have developed between turns. A waveshape resulting from any applied surge voltage on any coil that does not match the waveshape on the master coil is considered a fail.

If a failure occurs, the entire lot of bars/coils will be rejected.

The additional expense for dissection and failure analysis will be mutually discussed and agreed upon between Kinectrics and Agency.

Thermal Cycling Test:

During the thermal cycling process, the diagnostic testing of the bars/coils at the 100, 250 and 500 cycle mark will assist in determining how any one bar/coil is performing as the test is progressing and how any one bar/coil performed when the test is completed. Based on experience with these diagnostic tests, it will determine if the testing of any said bar/coil should continue through to the voltage endurance test or not. Utility and Vendor shall discuss, in detail, precisely what constitutes a failed thermal cycled bar/coil before testing begins.

Voltage Endurance Testing:

The bars/coils shall be subject to the acceptance criteria as outline in IEEE 1553, Section 5.

Note 1: Failure of the insulation system anywhere on the bar/coil, including the semi-con / grading interface is not permitted, this will be considered a fail.

Note 2: The area of the bar/coil that encompasses the semiconducting to grading tape interface shall not show any signs of physical erosion of the grading or semiconducting tape of any kind such as but not limited to, cracking, abrading, flaking, burn through, etc. The interface area shall be defined as the area where the grading tape overlaps the semi-conducting tape, plus up to 3.0 linear inches towards the end winding as followed along the grading tape surface.

Physical erosion of this interface area shall be considered a failure for this bar/coil. Discoloration of this interface area is permitted. There are no exceptions to this qualifying point.

Dissections: Upon completion of the thermal cycling and post-TC testing, a minimum of one bar/coil per lab test shall be dissected and microscopically examined to determine the failure mechanism or to confirm the winding quality. Any delamination within the ground-wall insulation or de-bonding between the conductor strands and the ground-wall insulation and/or turn insulation as well as discoloration in the insulation structure shall result in rejection of the bars/coils.

- a. Delamination is defined as the separation of the ground-wall tape layers due to loss of bonding strength and/or impregnating compound.
- b. De-bonding is defined as the lack of adhesion between the layers in an insulation system due to improperly cured resins or lack of resin or a fracturing of the crystalline resin in the insulation matrix.
- c. Discoloration is defined as a change in the colour of the insulation structure from the normal translucent brown colour (securely bonded regions) to an opaque white colour (poorly bonded or delaminated regions).

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$1,000,000 subject to Section 2 of the Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

I. Standard Generator Testing and Assessment: \$39,000

II. Advance Generator Testing and Assessment: TBD

III. Additional Generator Tests

1. Wedge Test: \$9,500

2. ELCID Test: \$11,500

3. Iso-Phase Bus Test: \$4,500

Additional Day (Mon-Fri): \$6,000

Additional Day (Sat-Sun): \$8,000

IV. Technical Assistance and Document Review:

1. Hourly Rate: \$200/Hour

2. Expenses: Expenses + 15% Handling Fee

V. Qualification Testing of 13.8kV stator bars/coils: \$55,000 (Does not include any failure analysis and/or repeat testing in case of any failure of the samples)

NOTES:

- Pricing is valid to December 31, 2018 and is subject to a 3% per year escalation for following years.
- Reimbursable expenses will be billed as separate line items.
- As a public agency, NCPA shall not reimburse Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

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

(Company name)

for contract work at

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

(Project name and location)

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

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

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

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