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Meeting Minutes

To: Legislative and Regulatory Affairs Committee
From: Robyn Jackson, Legislative and Regulatory Affairs Assistant
Subject: October 4, 2023 Meeting Minutes, NCPA Legislative and Regulatory Affairs Committee

Item #1 – Opening Remarks & Introductions

NCPA Legislative and Regulatory Affairs Committee Chair Jenelle Osborne, City of Lompoc, called the meeting to order at 3:02 pm. A quorum was present. Introductions were made. Those in attendance are shown on the attached attendance list.

PUBLIC FORUM

No members of the public were present.

REPORTS/ACTION ITEMS

Item #2 Approval of Minutes

Motion: A motion was made by Jerry Serventi, City of Alameda, and seconded by Pauline Roccucci, City of Roseville, to approve the minutes from the August 23, 2023, regular Legislative & Regulatory Affairs Committee Meeting. *A majority carried the motion on a voice vote. Palo Alto, Plumas-Sierra, Port of Oakland, and San Francisco BART were absent.*

Item #3. Wildfire Policy

Michael Wara, Lawyer and Senior Research Scholar from the Stanford Woods Institute for the Environment at Stanford University, joined the committee to offer insights on the progress that has been made with regard to wildfire policy development, and the ongoing gaps and needs that remain in this area.

Item #4. The Practical Realities Surrounding California's Path to Decarbonization

Michael Colvin, California Energy Program Director for the Environmental Defense Fund and former California Public Utilities Commission Advisor and Senior Analyst, outlined what it will require of both the electricity industry and state policymakers to achieve California's goals for a decarbonized economy, and how a regionalized grid would play into this picture.

Item #5. The State Legislative Take on Energy Policy

Sarah Smith, Consultant for the California State Senate Energy, Utilities and Communications Committee, and Chase Hopkins, Policy Consultant for the Office of the Speaker of the Assembly Robert Rivas, provided a play-by-play on the leading energy initiatives that were before the State Legislature this year, and a peek into what we can expect as we hit the ground running in 2024.


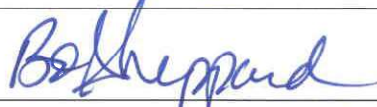



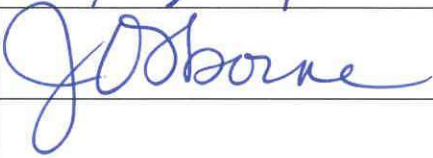
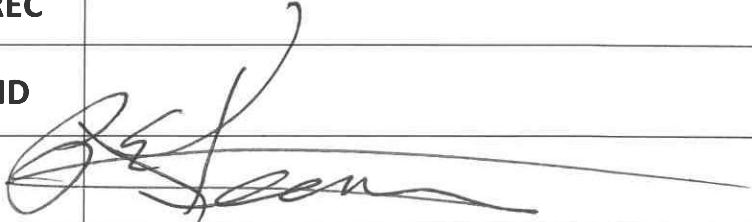

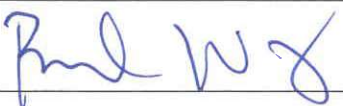
ADJOURNMENT

The Legislative and Regulatory Affairs Committee meeting was moved to adjournment by Legislative and Regulatory Affairs Committee Chair Jenelle Osborne, City of Lompoc, at 5:04 p.m.

DRAFT

**Northern California Power Agency
 Legislative & Regulatory Affairs Committee Meeting and Teleconference
 October 4, 2023
 COMMITTEE MEMBER
 Attendance List**

NCPA Committee Members are requested to sign, but signature by members of the public is voluntary.

MEMBER	VOTING MEMBER & ALTERNATES
1 - ALAMEDA	
2 - BIGGS	
3 - GRIDLEY	
4 - HEALDSBURG	
5 - LODI	
6 - LOMPOC	
7 - PALO ALTO	
8 - PLUMAS-SIERRA REC	
9 - PORT OF OAKLAND	
10 - REDDING	
11 - ROSEVILLE	
12 - SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT	
13 - SANTA CLARA	

14 - SHASTA LAKE	<i>Sworn Takekawa</i>
15 - TRUCKEE DONNER	<i>AAU</i>
16 - UKIAH	<i>Cindy Swors</i>

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**Northern California Power Agency
Legislative & Regulatory Affairs Committee Meeting and Teleconference
October 4, 2023
Attendance List**

NCPA Committee Members, Alternates, and staff are requested to sign, but signature by members of the public is voluntary.

SIGNATURE	AFFILIATION
Emily Lemei	NCPA
Rebyn Jackson	NCPA
Justin Wynne	Brain Blaising & Wynne
Samantha McDonald	KTA
MARTY KANUER	KTA
Mico Proas	Alameda
Michael Wern	Stanford Univ
Michael DeBortoli	NCPA
J. Chris Nevil	Healdsburg Council
PUSHKAR WAGLE	FLYNN RCI
Scott Sexton	Scott Sexton
Elisabeth de Jong	SCPPA
Derek Hombree	SMUD
Michael Whitney	NCPA
Chelsea Moriz	MID
Amanda Drennen	Spiegel + McDonald
LATIF NURANI	SPIEGEL + MCDONALD
LISA DOWDEN	SPIEGEL + MCDONALD
Catherine Field	Aspen Env Group
BOB ORBERTA	ALAMEDA
Cameron Bregman	
Jim Br	Lodi

Scott Jacobs	NCPA
of Ken	Roseville
Amber Blixt	Roseville
Gregg Cook	Govt Affairs Consultg.
Michelle Sheidenberger	Roseville
Ken Goebel	NCPA
David Osburn	OMPA
Lera Perkins	Palo Alto
GREGG WENDT	Siemens Energy
KEVIN HOWARD	NCPA
Todd White	ACES
Michael Colvin	EDF
Micah Babbitt	Palo Alto
Mario DeBernardo	SCPPA
MARTIN HOPPER	M-S-R PUBLIC POWER AGENCY
Elden Cotton	Consultant
Patrick Weleh	CMCA
Rachel Radell-Harris	SVP
Basil Wong	SVP
Kathleen Hughes	SVP
Don Bellin	SVP
Randy S. Howard	NCPA
Jane Cimmino	NCPA
Sarah Smith	CA Sen. Energy, Utilities, & Comm. Cmte
Chase Hopkins	CA State Assembly
Natalia K. Ebersole	City of Redding
Rafael SANTANA	NCPA
Dean Albro	Lompoc



Commission Staff Report

COMMISSION MEETING DATE: November 30, 2023

SUBJECT: Compass Global, Inc. DBA Optiwatt – Five Year Multi-Task Consulting Services Agreement for Electric Vehicle Charging Management Services; Applicable to the following: Northern California Power Agency (NCPA), NCPA Members, 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"/>	
Alameda Municipal Power	<input type="checkbox"/>	
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	
City of Biggs	<input type="checkbox"/>	
City of Gridley	<input type="checkbox"/>	
City of Healdsburg	<input type="checkbox"/>	
City of Lodi	<input type="checkbox"/>	
City of Lompoc	<input type="checkbox"/>	
City of Palo Alto	<input type="checkbox"/>	
City of Redding	<input type="checkbox"/>	
City of Roseville	<input type="checkbox"/>	
City of Santa Clara	<input type="checkbox"/>	
City of Shasta Lake	<input type="checkbox"/>	
City of Ukiah	<input type="checkbox"/>	
Plumas-Sierra REC	<input type="checkbox"/>	
Port of Oakland	<input type="checkbox"/>	
Truckee Donner PUD	<input type="checkbox"/>	
Other	<input type="checkbox"/>	
<i>If other, please specify</i>		

RECOMMENDATION:

Approve Resolution 23-105 authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Compass Global, Inc. DBA Optiwatt for Electric Vehicle Charging Management Services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use by NCPA, NCPA Members, SCPPA, and SCPPA Members.

BACKGROUND:

Participants in NCPA's Transportation Electrification Working Group requested assistance in contracting for telematics-based Electric Vehicle (EV) charging management solutions for residential, commuter, and commercial fleet EV charging in their individual electric distribution utility service territories. Such a program will support member efforts to shift EV charging to high renewable production, low-cost periods and away from on-peak, high carbon intensive periods of the day, based on utility needs and/or customer preferences. The program will also be able to message customers to refrain from charging during grid emergencies and, with customer permission, to discontinue or lower charging during such periods at the request of the Member.

NCPA issued a Request for Proposal (RFP) LR 2301 on May 3, 2023, seeking proposals from qualified firms to provide EV charging management platform. NCPA created a review group for the RFP consisting of staff from NCPA and NCPA Member entities, and this review group evaluated and scored timely proposals submitted to the RFP. Ten vendors responded to the RFP by the deadline of June 21, 2023. Based on the scoring review group's evaluation, two vendors were selected to provide EV charging management services.

The review group selected Compass Global, Inc. DBA Optiwatt based on its experience, work plan, and costs. NCPA is also entering into an agreement Weave Grid, Inc. for similar services.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$2,000,000 over five years. This enabling agreement does not commit NCPA to any expenditure of funds. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

Two vendors were selected as a result of an RFP process in accordance with NCPA's procurement policies and procedures. An RFP was posted on NCPA's website from May 3, 2023 to June 21, 2023. Ten responses were received and evaluated based upon the following criteria: 1) Quality and completeness of proposal; 2) Knowledge, experience and skills to provide the requested services; 3) Experience of staff to be assigned to the project, based on prior engagements of similar scope and complexity; 4) Competitive rates for the requested services; 5) Demonstrated strong project management; and 6) Customer references. The selection process was completed by NCPA along with representatives for the City of Healdsburg, the City of Palo Alto Utilities, Roseville Electric Utility, and Silicon Valley Power.

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 November 29, 2023.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 23-105
- Multi-Task Consulting Services Agreement with Compass Global, Inc. DBA Optiwatt

RESOLUTION 23-105

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH
COMPASS GLOBAL, INC. DBA OPTIWATT**

(reference Staff Report #243:23)

WHEREAS, certain Northern California Power Agency (NCPA) Members participating in the Customer Programs Working Groups have expressed an interest in contracts for electric vehicle charging management services through the NCPA Support Services Program; and

WHEREAS, two vendors were selected to provide electric vehicle charging management services as a result of a Request for Proposal process in accordance with NCPA's procurement policies and procedures; and

WHEREAS, Compass Global, Inc. DBA Optiwatt is an experienced and highly-qualified provider of these 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 Multi-Task Consulting Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use by NCPA, NCPA Members, SCPPA, and SCPPA Members.

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

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
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



MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND COMPASS GLOBAL, INC DBA OPTIWATT

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 Compass Global, Inc DBA Optiwatt, a Delaware corporation with its office located at 1540 Market Street, San Francisco, CA 94102 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2023 ("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 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.
- 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** Two Million dollars (\$2,000,000) 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, 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. Intentionally omitted.

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

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

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

Section 6. STATUS OF CONSULTANT.

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

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

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages,

expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

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

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant will provide Agency with written notification of any assignment of this Agreement or any interest therein within 10 business days of an assignment. If Agency agrees to the Consultant's assignment of this Agreement, Agency, Consultant, and Consultant's assignee will execute an amendment to this Agreement consistent with Section 8.2. If Agency does not like the assignment, Agency will have the right to terminate the agreement in alignment with section 8.1 Termination. . 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; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

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

Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

Section 9. KEEPING AND STATUS OF RECORDS.

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

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

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. 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.

9.5 Consumer Privacy Protection.

9.5.1 Compliance with California Consumer Privacy Act, the California Privacy Rights Act and Implementing Regulations. The Consultant shall comply with the California Consumer Privacy Act, the California Privacy Rights Act and all guidance and implementing regulations issued by the California Office of Attorney General and the California Privacy Protection Agency as those acts, guidance and regulations are amended and modified from time to time (“Consumer Rights Law”). The Consultant must provide its Consumer Rights Law compliance program to Agency prior to initiation of Services and at any time requested by Agency.

9.6 Transfer of Information and Specifically Designed Programs at the End of the Term.

9.6.1 Transfer of Information and Specially Designed Programs. The Consultant shall transfer to Agency all data, information, software and programs of all types (“NCPA’s EV Managed Charging Information”) designed specifically to execute the Services and where such design and programming time is paid through this Agreement. Consultant shall transfer NCPA’s EV Managed Charging Information within 60 days of the end of the term or termination of this Agreement. This provision shall survive termination of 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:

Casey Donahue
CEO
casey@getoptiwatt.com
1540 Market Street
San Francisco, CA. 94102

With a copy to:

Stephen Mannhard
Head of Utility Partnerships
steve@getoptiwatt.com
1540 Market Street
San Francisco, CA. 94102

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 SPPA 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

OPTIWATT

Date _____

Date _____

RANDY S. HOWARD, GENERAL MANAGER

CASEY DONAHUE, CEO

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

Optiwatt (“Consultant”) shall provide the following services, as requested by the Northern California Power Agency (“Agency”), for any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (“SCPPA”), or SCPPA Members. All services will be provided remotely, and Consultant will not come on site at any facilities. Services include:

1. **Telematics-Based EV Managed Charging** to optimize connected EV managed charging load to Member utilities’ peak events, wholesale prices and markets, EV or TOU rates, and emergency events, as needed, to achieve member utility transmission, distribution, supply, and broader grid management objectives.
2. **EV Charging and Driving Data**, including but not limited to:
 - a. EV Charging Data
 - b. EV Trip Data
 - c. User participation statistics
 - d. Baseline comparisons
 - e. Load prediction analytics
 - f. User survey responses
 - g. Experimental statistical data
 - h. Marketing performance data
3. **Pay-for-Performance Turnkey Marketing Services**, such as:
 - a. Coordinated marketing plan development and ongoing collaboration with NCPA Members’ program and marketing team
 - b. Designing member utility-branded, program specific marketing, templates, copy, and content;
 - c. Working with member utilities on ongoing marketing plans, management, approvals, and timing
 - d. Auditing existing member utility channels for cross-promotion opportunities and deploying them
 - e. Digital marketing including SEO, social, digital ads, search, etc. and all associated digital marketing costs, ads, etc
 - f. Email marketing including i) member utility email list coordination management, ii) targeting the right customers, and iii) designing and deploying turnkey email marketing.
4. **Real-Time EV Charging & Program Data Dashboard** – configurable data dashboard that provides real-time insights, data, and information on enrollments, EV charging data, load shape, driving behavior, etc.
5. **AMI-based EV Detection** – AMI data can be used to detect customers that have a high likelihood of an EV to use for program marketing and Members’ broader customer and

system intelligence. AMI data will be provided by Member to Optiwatt via a secure file transfer process.

6. Integrated Load management for additional devices (e.g. smart thermostats)

7. Commercial Vehicles & Fleets Solution - including

- a. Fleet Dashboards with aggregated driving, charging, & cost data
- b. Commercial / fleet driver tools to manage their charging, driving, carbon, and costs via Optiwatt similar to the residential EV driver solution

DRAFT

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

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

Telematics Based EV-Managed Charging and EV Charging & Driving Data

\$36 for the 1st 0 - 100 EVs
\$34 for the next 101 - 250 EVs
\$32 for the next 251 - 500 EVs
\$30 for the next 501 - 1,000 EVs
\$27 for the next 1,001 - 5,000 EVs
\$24 for the next 5,001 - 10k EVs
\$20 for the next 10,000+ EVs
OR Performance-based on a \$/kW basis

Notes:

- Ongoing Fixed Fee per EV per Year
- These ranges are additive
- Includes historical charging data already on platform
- Billed quarterly for the EVs that have enrolled during the previous quarter
- -\$/kW pricing is possible upon mutual agreement and upon Consultant being able to fully understand and control the load shift.

EV Charging & Driving Data ONLY

\$32 for the 1st 0 - 100 EVs
\$30 for the next 101 - 250 EVs
\$28 for the next 251 - 500 EVs
\$27 for the next 501 - 1,000 EVs
\$24 for the next 1,001 - 5,000 EVs
\$21 for the next 5,001 - 10k EVs
\$18 for the next 10,000+ EVs

Notes:

- Ongoing Fixed Fee per EV per Year
- These ranges are additive
- Includes historical charging data already on platform
- Billed quarterly for the EVs that have enrolled during the previous quarter

Program Management Fees

Program Activation: \$10,000 One-Time Fixed Fee per Program
Ongoing Program Management Fee: \$20,000 Fixed Annual recurring Fee

Notes:

- There are no additional program activation or management fees for additional NCPA Members to join existing programs as long as the scope is exactly the same (i.e. incentives, load management parameters and objectives, etc.)

Turnkey Marketing Services to Drive Enrollments – Without End-User Incentives or Incentives Less Than or Equal to \$75/EV Enrolled

\$0 - EVs already using Optiwatt
\$75 per net new EV enrolled guaranteed
OR Fixed fee marketing services to be determined with further scope

Notes:

- Pay-for- Performance Fee per Net New EV Enrolled
- Invoiced quarterly for the net new enrollments driven in the previous quarter.

Turnkey Marketing Services to Drive Enrollments – With Enrollment Incentives Greater than \$75/EV Enrolled

\$0 - EVs already using Optiwatt
\$50 per net new EV enrolled guaranteed
OR Fixed fee marketing services to be determined with further scope

Notes:

- Fixed One-Time Fee per EV Enrolled
- Invoiced quarterly for the net new enrollments driven in the previous quarter.

Real-Time EV Charging and Program Data Dashboard

\$15,000 Fixed Annual Recurring Fee

Notes:

- This fee is on a per-program basis meaning a different program with different program parameters requires an additional \$15,000 fee.

Bi-Weekly CSV Files with EV Charging and Program Data

\$10,000 Fixed Annual Recurring Fee for one program
\$8,000 Fixed Annual Recurring Fee for additional programs with different parameters

AMI-Based EV Detection

\$40,000 Fixed Annual Recurring Fee

Notes:

- Pricing based on 4 EV detection analyses per year for a single territory (which can combine NCPA Member territories) if it only one, consistent usage data feed

Integrated Smart Thermostat Load Management

- \$18 for the 1st 0 - 249 T-stats
- \$16.5 for the next 250 - 999 T-stats
- \$15 for the next 1,000 - 4,999 T-stats
- \$13.5 for the next 5,000 - 9,999 T-stats
- \$11 for the next 10k - 20k T-stats
- \$10 for the next 20,000+ T-stats

Notes:

- Seamlessly integrated with the EV managed charging solution
- EV not required to enroll in the thermostat program
- Billed quarterly for the thermostats that have enrolled during the previous quarter

Existing Member Utility DRMS Integration

- \$10,000 - \$55,000 – One Time Fee
- \$10,000 - \$25,000 – Fixed Annual Recurring Fee

Notes:

- Optional integration with existing utility DRMs so it can dispatch DR events through the Optiwatt platform. The fees depend on the complexity of the integration

Fleet Solution Fees

- Fleet Platform Activation - \$8,000 One-Time Fixed Fee per Fleet
- Ongoing Fleet Software/Management Fee - \$12,000 Fixed Annual Recurring Fee per Fleet. Includes fleet dashboard and customer support.
- Telematics-Based EV-Managed Charging and EV Charging & Driving Data – costs same as above
- EV Charging & Driving Data Only – costs same as above

Pricing for additional or custom services for NCPA, NCPA Members, or SCPPA Members 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.



Commission Staff Report

COMMISSION MEETING DATE: November 30, 2023

SUBJECT: ADM Associates, Inc. – Five Year Multi-Task Consulting Services Agreement for Evaluation, Measurement, and Verification Services, and Technical Advisory Services; Applicable to the following: Northern California Power Agency (NCPA), NCPA Members, 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"/>

If other, please specify

RECOMMENDATION:

Approve Resolution 23-107 authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with ADM Associates, Inc. for Evaluation, Measurement, and Verification Services, and Technical Advisory Services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$800,000 over five years, for use by NCPA, NCPA Members, SCPPA, and SCPPA Members.

BACKGROUND:

California publicly-owned utilities are required by Section 9505 (d) of the California Public Utilities Code to “make available to its customer and to the Energy Commission the results of an independent evaluation that measures and verifies the energy efficiency savings and the reduction in energy demand achieved by its energy efficiency and demand reduction programs.” The California Municipal Utility Association’s website serves as the central repository for all public power evaluation, measurement, and verification (EM&V) reports in the state.

In support of this requirement, NCPA issued a Request for Proposal (RFP) LR 2302 on September 18, 2023, seeking proposals from qualified firms to provide the following categories of demand-side management (DSM) services:

- Evaluation, Measurement & Verification (EM&V) – provided on an as-needed basis to evaluate the actual amount of energy saved by a particular energy efficiency project, and;
- Technical Advisory Services – provided on an as-needed basis related to utility demand-side management programs. Such services include but are not limited to: measurement and verification of measures, program impact and process evaluation, site inspections to verify installed energy efficiency measures, rebate application review, energy saving estimate review, research and development of measures and energy savings, and free-ridership analysis.

NCPA created a review group for the RFP consisting of staff from NCPA and NCPA Member entities, and this review group evaluated and scored timely proposals submitted to the RFP. Three vendors responded to the RFP by the deadline of October 13, 2023. Based on the scoring review group’s evaluation, two vendors were selected to provide evaluation, measurement, and verification services as well as technical advisory services, and the third vendor was selected to provide only technical advisory services.

The review group selected ADM Associates, Inc. based on its experience, work plan, and costs. NCPA has utilized this vendor in the past, and has a good working relationship with this firm. NCPA is also entering into agreements with GDS Associates, Inc. and Richard Heath & Associates, Inc. for similar services.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$800,000 over five years. This enabling agreement does not commit NCPA to any expenditure of funds. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

Three vendors were selected as a result of an RFP process in accordance with NCPA's procurement policies and procedures. An RFP was posted on NCPA's website from September 18, 2023 to October 13, 2023. Three responses were received and evaluated based upon the following criteria: 1) Quality and completeness of proposal; 2) Knowledge, experience and skills to provide the requested services; 3) Experience of staff to be assigned to the project, based on prior engagements of similar scope and complexity; 4) Competitive rates for the requested services; 5) Demonstrated strong project management; and 6) Customer references. The selection process was completed by NCPA along with representatives for the City of Palo Alto Utilities, Roseville Electric Utility, and Silicon Valley Power.

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 November 29, 2023.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 23-107
- Multi-Task Consulting Services Agreement with ADM Associates, Inc.

RESOLUTION 23-107

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH
ADM ASSOCIATES, INC.**

(reference Staff Report #245:23)

WHEREAS, pursuant to California Public Utilities Code Section 9505(d), California publicly-owned utilities are required to “make available to its customers and to the Energy Commission the results of any independent evaluation that measures and verifies the energy efficiency savings and the reduction in energy demand achieved by its energy efficiency savings and the reduction in energy demand achieved by its energy efficiency and demand reduction programs”; and

WHEREAS, three vendors were selected to provide evaluation, measurement & verification (EM&V) and technical advisory services as a result of a Request for Proposal process in accordance with NCPA’s procurement policies and procedures; and

WHEREAS, ADM Associates, Inc. is an experienced and highly-qualified provider of these 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 Multi-Task Consulting Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$800,000 over five years, for use by NCPA, NCPA Members, SCPPA, and SCPPA Members.

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

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
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



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
ADM ASSOCIATES, 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 ADM Associates, a corporation, with its office located at 3239 Ramos Circle, Sacramento, California 95827 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2023 ("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 five (5) year 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** Eight hundred thousand dollars (\$800,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

2.3 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

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

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

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

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

4.1 Workers' Compensation. If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly 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 effect 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 ensures they are and remain covered by the policies referenced in Section 4 during this

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONSULTANT.

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

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

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

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

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

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

Section 7. LEGAL 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.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.
- 9.4 **Confidential Information and Disclosure.**
 - 9.4.1 **Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall

not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

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

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. 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:

Adam Thomas, Principal
ADM Associates, Inc.
3239 Ramos Circle
Sacramento, CA 95827

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 SPCPA 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.

Signatures on Next Page

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

NORTHERN CALIFORNIA POWER AGENCY

ADM ASSOCIATES, INC.

Date _____

Date _____

RANDY S. HOWARD
GENERAL MANAGER

ADAM THOMAS
PRINCIPAL

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

DRAFT

EXHIBIT A
SCOPE OF SERVICES

As requested by Agency, Consultant will perform the following tasks under the Terms and Conditions of this Agreement:

- 1) **Evaluation, Measurement & Verification (“EM&V”)**: EM&V of the cost-effectiveness and energy savings attributed to DSM programs, based on a wide array of DSM programs and measures based on accepted engineering standards and protocols.
- 2) **Technical Advisory Services**: Technical advisory services, provided on an as needed basis, related to DSM programs. Technical advisory services include, but are not limited to:
 - a. Measurement and verification (“M&V”) of measures
 - b. Program impact and process evaluation
 - c. Site inspections to verify installed measures
 - d. Rebate application review
 - e. Energy saving estimate review
 - f. Research and development of measures and energy savings
 - g. Free-ridership analysis
 - h. Energy code cost-effectiveness analysis

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$800,000. The hourly rates and or compensation break down and an estimated amount of expenses is as follows.

Pricing for specific services to be performed for NCPA, NCPA Members, SCPPA, or SCPPA Members will be quoted at the time services are requested, however, the rates on which the proposals are based and rates for time and materials projects shall not exceed the hourly rates below.

2023-2027 Billing Rates by Title

Title	2023 -2024 Hourly Rate	2025 Hourly Rate	2026 Hourly Rate	2027 Hourly Rate
Principal	\$240	\$245	\$250	\$255
Director	\$200	\$205	\$210	\$215
Senior Engineer	\$170	\$175	\$180	\$185
Senior Analyst	\$170	\$175	\$180	\$185
Senior Manager	\$170	\$175	\$180	\$185
Project Manager	\$150	\$155	\$160	\$165
Engineer II	\$135	\$140	\$145	\$150
Analyst II	\$125	\$130	\$135	\$140
Engineer I	\$120	\$125	\$130	\$135
Analyst I	\$110	\$115	\$120	\$125
Call Center Supervisor	\$100	\$105	\$110	\$115
Technician	\$100	\$105	\$110	\$115
Administrative	\$70	\$70	\$75	\$80

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.



Commission Staff Report

COMMISSION MEETING DATE: November 30, 2023

SUBJECT: GDS Associates, Inc. – Five Year Multi-Task Consulting Services Agreement for Evaluation, Measurement, and Verification Services, and Technical Advisory Services; Applicable to the following: Northern California Power Agency (NCPA), NCPA Members, 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"/>
Alameda Municipal Power	<input type="checkbox"/>	City of Lompoc	<input type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Palo Alto	<input type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Redding	<input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Roseville	<input type="checkbox"/>
City of Healdsburg	<input type="checkbox"/>	City of Santa Clara	<input type="checkbox"/>
		City of Shasta Lake	<input type="checkbox"/>
		City of Ukiah	<input type="checkbox"/>
		Plumas-Sierra REC	<input type="checkbox"/>
		Port of Oakland	<input type="checkbox"/>
		Truckee Donner PUD	<input type="checkbox"/>
		Other	<input type="checkbox"/>
<i>If other, please specify</i>			

RECOMMENDATION:

Approve Resolution 23-108 authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with GDS Associates, Inc. for Evaluation, Measurement, and Verification Services, and Technical Advisory Services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$800,000 over five years, for use by NCPA, NCPA Members, SCPPA, and SCPPA Members.

BACKGROUND:

California publicly-owned utilities are required by Section 9505 (d) of the California Public Utilities Code to “make available to its customer and to the Energy Commission the results of an independent evaluation that measures and verifies the energy efficiency savings and the reduction in energy demand achieved by its energy efficiency and demand reduction programs.” The California Municipal Utility Association’s website serves as the central repository for all public power evaluation, measurement, and verification (EM&V) reports in the state.

In support of this requirement, NCPA issued a Request for Proposal (RFP) LR 2302 on September 18, 2023, seeking proposals from qualified firms to provide the following categories of demand-side management (DSM) services:

- Evaluation, Measurement & Verification (EM&V) – provided on an as-needed basis to evaluate the actual amount of energy saved by a particular energy efficiency project, and;
- Technical Advisory Services – provided on an as-needed basis related to utility demand-side management programs. Such services include but are not limited to: measurement and verification of measures, program impact and process evaluation, site inspections to verify installed energy efficiency measures, rebate application review, energy saving estimate review, research and development of measures and energy savings, and free-ridership analysis.

NCPA created a review group for the RFP consisting of staff from NCPA and NCPA Member entities, and this review group evaluated and scored timely proposals submitted to the RFP. Three vendors responded to the RFP by the deadline of October 13, 2023. Based on the scoring review group’s evaluation, two vendors were selected to provide evaluation, measurement, and verification services as well as technical advisory services, and the third vendor was selected to provide only technical advisory services.

The review group selected GDS Associates, Inc. based on its experience, work plan, and costs. NCPA has utilized this vendor in the past, and has a good working relationship with this firm. NCPA is also entering into agreements with ADM Associates, Inc. and Richard Heath & Associates, Inc. for similar services.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$800,000 over five years. This enabling agreement does not commit NCPA to any expenditure of funds. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

Three vendors were selected as a result of an RFP process in accordance with NCPA's procurement policies and procedures. An RFP was posted on NCPA's website from September 18, 2023 to October 13, 2023. Three responses were received and evaluated based upon the following criteria: 1) Quality and completeness of proposal; 2) Knowledge, experience and skills to provide the requested services; 3) Experience of staff to be assigned to the project, based on prior engagements of similar scope and complexity; 4) Competitive rates for the requested services; 5) Demonstrated strong project management; and 6) Customer references. The selection process was completed by NCPA along with representatives for the City of Palo Alto Utilities, Roseville Electric Utility, and Silicon Valley Power.

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 November 29, 2023.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 23-108
- Multi-Task Consulting Services Agreement with GDS Associates, Inc.

RESOLUTION 23-108

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH
GDS ASSOCIATES, INC.**

(reference Staff Report #246:23)

WHEREAS, pursuant to California Public Utilities Code Section 9505(d), California publicly-owned utilities are required to “make available to its customers and to the Energy Commission the results of any independent evaluation that measures and verifies the energy efficiency savings and the reduction in energy demand achieved by its energy efficiency savings and the reduction in energy demand achieved by its energy efficiency and demand reduction programs”; and

WHEREAS, three vendors were selected to provide evaluation, measurement & verification (EM&V) and technical advisory services as a result of a Request for Proposal process in accordance with NCPA’s procurement policies and procedures; and

WHEREAS, GDS Associates, Inc. is an experienced and highly-qualified provider of these 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 Multi-Task Consulting Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$800,000 over five years, for use by NCPA, NCPA Members, SCPPA, and SCPPA Members.

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

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
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



MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND GDS ASSOCIATES, 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 GDS Associates, Inc., a corporation, with its office located at 1850 Parkway Place, Suite 800, Marietta, GA 30067 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2023 ("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 five (5) year 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** Eight hundred thousand dollars (\$800,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

2.3 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

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

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

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

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

4.1 Workers' Compensation. If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly 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 effect 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 ensures they are and remain covered by the policies referenced in Section 4 during this

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONSULTANT.

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

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

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

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

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

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

Section 7. LEGAL 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.

9.2 Consultant's Books and Records. Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

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

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall

not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

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

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. 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:

Jeffrey Huber, Principal
GDS Associates, Inc.
1850 Parkway Place, Suite 800
Marietta, GA 30067

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.

Signatures on Following Page

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

NORTHERN CALIFORNIA POWER AGENCY

GDS ASSOCIATES, INC.

Date _____

Date _____

RANDY S. HOWARD
GENERAL MANAGER

JEFFREY HUBER
PRINCIPAL

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

DRAFT

EXHIBIT A
SCOPE OF SERVICES

As requested by Agency, Consultant will perform the following tasks under the Terms and Conditions of this Agreement:

- 1) **Evaluation, Measurement & Verification (“EM&V”)**: EM&V of the cost-effectiveness and energy savings attributed to DSM programs, based on a wide array of DSM programs and measures based on accepted engineering standards and protocols.
- 2) **Technical Advisory Services**: Technical advisory services, provided on an as needed basis, related to DSM programs. Technical advisory services include, but are not limited to:
 - a. Measurement and verification (“M&V”) of measures
 - b. Program impact and process evaluation
 - c. Site inspections to verify installed measures
 - d. Rebate application review
 - e. Energy saving estimate review
 - f. Research and development of measures and energy savings
 - g. Free-ridership analysis
 - h. Energy code cost-effectiveness analysis

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$800,000. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Pricing for specific services to be performed for NCPA, NCPA Members, SCPPA, or SCPPA Members will be quoted at the time services are requested, however, the rates on which the proposals are based and rates for time and materials projects shall not exceed the hourly rates below.

Billing Rates

Name	Title	2023 Hourly Rate	2024 Hourly Rate
Jeffrey Huber	Principal	\$325	\$338
Jacob Thomas	Principal	\$315	\$328
Dick Spellman	Executive Consultant	\$360	\$375
Amber Gschwend	Managing Director	\$320	\$333
Rich Hasselman	Managing Director	\$325	\$338
Joshua Duckwall	Senior Project Manager	\$325	\$338
Warren Hirons	Project Manager	\$265	\$276
Kaytie Zapatos	Project Consultant	\$215	\$224
Melissa Young	Project Engineer	\$215	\$224
Tina Williams	Analyst	\$185	\$192
Rachel Myers	Associate Engineer	\$155	\$161

The listed GDS hourly rates apply for each of the potential services and assignments that will be assigned to GDS in 2023 and 2024. These hourly rates do not include expenses for travel, postage, office supplies, rental of special EM&V equipment, or other non-labor costs relating to EM&V tasks. These hourly rates will be escalated by 4% on January 1st of each calendar year following 2024.

GDS invoices costs for non-labor expenses (lodging, meals, transportation, postage, office supplies, equipment rental, etc.) separate from labor costs. *

*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.



Commission Staff Report

COMMISSION MEETING DATE: November 30, 2023

SUBJECT: Richard Heath and Associates, Inc. – Five Year Multi-Task Consulting Services Agreement for Demand-Side Management Technical Advisory Services; Applicable to the following: Northern California Power Agency (NCPA), NCPA Members, 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 Resolution 23-109 authorizing the General Manager or his designee to enter into a Multi-Task Consulting Services Agreement with Richard Heath and Associates, Inc. for Demand-Side Management Technical Advisory Services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$800,000 over five years, for use by NCPA, NCPA Members, SCPPA, and SCPPA Members.

BACKGROUND:

California publicly-owned utilities are required by Section 9505 (d) of the California Public Utilities Code to “make available to its customer and to the Energy Commission the results of an independent evaluation that measures and verifies the energy efficiency savings and the reduction in energy demand achieved by its energy efficiency and demand reduction programs.” The California Municipal Utility Association’s website serves as the central repository for all public power evaluation, measurement, and verification (EM&V) reports in the state.

In support of this requirement, NCPA issued a Request for Proposal (RFP) LR 2302 on September 18, 2023, seeking proposals from qualified firms to provide the following categories of demand-side management (DSM) services:

- Evaluation, Measurement & Verification (EM&V) – provided on an as-needed basis to evaluate the actual amount of energy saved by a particular energy efficiency project, and;
- Technical Advisory Services – provided on an as-needed basis related to utility demand-side management programs. Such services include but are not limited to: measurement and verification of measures, program impact and process evaluation, site inspections to verify installed energy efficiency measures, rebate application review, energy saving estimate review, research and development of measures and energy savings, and free-ridership analysis.

NCPA created a review group for the RFP consisting of staff from NCPA and NCPA Member entities, and this review group evaluated and scored timely proposals submitted to the RFP. Three vendors responded to the RFP by the deadline of October 13, 2023. Based on the scoring review group’s evaluation, two vendors were selected to provide evaluation, measurement, and verification services as well as technical advisory services, and the third vendor was selected to provide only technical advisory services.

The review group selected Richard Heath and Associates, Inc. based on its experience, work plan, and costs. NCPA is also entering into agreements with ADM Associates, Inc. and GDS Associates, Inc. for similar services.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$800,000 over five years. This enabling agreement does not commit NCPA to any expenditure of funds. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

Three vendors were selected as a result of an RFP process in accordance with NCPA's procurement policies and procedures. An RFP was posted on NCPA's website from September 18, 2023 to October 13, 2023. Three responses were received and evaluated based upon the following criteria: 1) Quality and completeness of proposal; 2) Knowledge, experience and skills to provide the requested services; 3) Experience of staff to be assigned to the project, based on prior engagements of similar scope and complexity; 4) Competitive rates for the requested services; 5) Demonstrated strong project management; and 6) Customer references. The selection process was completed by NCPA along with representatives for the City of Palo Alto Utilities, Roseville Electric Utility, and Silicon Valley Power.

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 November 29, 2023.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution 23-109
- Multi-Task Consulting Services Agreement with Richard Heath and Associates, Inc.

RESOLUTION 23-109

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK CONSULTING SERVICES AGREEMENT WITH
RICHARD HEATH AND ASSOCIATES, INC.

(reference Staff Report #247:23)

WHEREAS, pursuant to California Public Utilities Code Section 9505(d), California publicly-owned utilities are required to "make available to its customers and to the Energy Commission the results of any independent evaluation that measures and verifies the energy efficiency savings and the reduction in energy demand achieved by its energy efficiency savings and the reduction in energy demand achieved by its energy efficiency and demand reduction programs"; and

WHEREAS, three vendors were selected to provide evaluation, measurement & verification (EM&V) and technical advisory services as a result of a Request for Proposal process in accordance with NCPA's procurement policies and procedures; and

WHEREAS, Richard Heath and Associates, Inc. is an experienced and highly-qualified provider of these 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 Multi-Task Consulting Services Agreement, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$800,000 over five years, for use by NCPA, NCPA Members, 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



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
RICHARD HEATH & ASSOCIATES, 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 Richard Heath & Associates, Inc., a corporation, with its office located at 590 W. Locust Avenue, Suite 103, Fresno, CA 93650 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2023 ("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 five (5) year 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** Eight hundred thousand dollars (\$800,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

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

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

2.3 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

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

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

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

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

4.1 Workers' Compensation. If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly 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 effect 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 ensures they are and remain covered by the policies referenced in Section 4 during this

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

Section 6. STATUS OF CONSULTANT.

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

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the

payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

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

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

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

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

Section 7. LEGAL 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.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.
- 9.4 **Confidential Information and Disclosure.**
 - 9.4.1 **Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall

not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

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

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. 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:

Cynthia Bruno Rafferty
Chief Executive Officer
Richard Heath & Associates, Inc.
590 W. Locust Avenue, Suite 103
Fresno, CA 93650

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 SPCPA 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.

Signatures on Following Page

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

NORTHERN CALIFORNIA POWER AGENCY

RICHARD HEATH & ASSOCIATES, INC

Date _____

Date _____

RANDY S. HOWARD
GENERAL MANAGER

CYNTHIA BRUNO RAFFERTY
CHIEF EXECUTIVE OFFICER

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

EXHIBIT A

SCOPE OF SERVICES

As requested by Agency, Consultant will perform the following tasks under the Terms and Conditions of this Agreement:

Technical Advisory Services: Technical advisory services, provided on an as needed basis, related to DSM programs. Technical advisory services include, but are not limited to:

- a. Measurement and verification ("M&V") of measures
- b. Program impact and process evaluation
- c. Site inspections to verify installed measures
- d. Rebate application review
- e. Energy saving estimate review
- f. Research and development of measures and energy savings
- g. Free-ridership analysis
- h. Energy code cost-effectiveness analysis

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$800,000. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

RHA will quote pricing for specific DSM services to be performed for NCPA, NCPA Members, SCPPA, or SCPPA Members at the time services are requested based on the hourly rates listed in the table below. RHA's rates are inclusive of wages, payroll taxes, benefits, travel within a 50-mile radius, insurance and other overhead costs. Specialized equipment, software and other hard costs unique to an individual project will be billed at cost, upon approval by the NCPA Member client.

Title	2024 Rate/Hr	2025 Rate/Hr	2026 Rate/Hr	2027 Rate/Hr	2028 Rate/Hr
Energy Engineer Assistant	\$75	\$78	\$81	\$84	\$88
Energy Engineer I	\$116	\$121	\$125	\$130	\$136
Energy Engineer II	\$135	\$140	\$146	\$152	\$158
Technical Writer/Senior Research Analyst	\$142	\$148	\$154	\$160	\$166
Energy Engineer III	\$145	\$151	\$157	\$163	\$170
Energy Engineer Manager II	\$151	\$157	\$163	\$170	\$177
Director of Engineering	\$232	\$241	\$251	\$261	\$271
Professional Engineer	\$253	\$263	\$274	\$285	\$296
Principal	\$267	\$278	\$289	\$300	\$312

*For travel outside of a 50-mile radius, mileage will be billed at the IRS mileage rate. Any required overnight lodging will be billed at the actual rate and our average accommodation will be \$200/night or less.

*RHA's per diem rates:

Meal/Expense Reimbursement Rate	
Breakfast	\$17
Lunch	\$18
Dinner	\$34
Incidentals	\$5

*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.



Commission Staff Report

COMMISSION MEETING DATE: November 30, 2023

SUBJECT: Acterra: Action for a Healthy Planet – 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"/>
Alameda Municipal Power	<input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Lompoc <input type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Healdsburg	<input type="checkbox"/>	City of Roseville <input type="checkbox"/>
		City of Santa Clara <input type="checkbox"/>
		City of Ukiah <input type="checkbox"/>
		Plumas-Sierra REC <input type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Approve Resolution 23-110 authorizing the General Manager or his designee to enter into a First Amendment to the Multi-Task Consulting Services Agreement (MTCSA) with Acterra: Action for a Healthy Planet (Acterra) for Electrification Education and Outreach Services, with any non-substantial changes recommended and approved by the NCPA General Counsel, to extend the term of the Agreement for an additional two-year period and to update the Compensation Schedule, for continued use by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

BACKGROUND:

Participants in NCPA's Transportation Electrification Working Group and Demand Management Working Groups requested assistance in contracting for electrification education and outreach services, with a focus on finding virtual and online outreach programs due to the COVID-19 situation. NCPA issued a Request for Proposal (RFP) LR2001 on August 12, 2020, to solicit proposals from qualified consultants providing various electrification education and outreach programs and services. Specifically, the RFP requested services in the areas of: youth education, building electrification, transportation electrification, and additional related-services.

Ten vendors responded to the RFP. Based on the scoring committee's evaluation, eight of the vendors were interviewed and selected to provide electrification education and outreach services. Acterra was one of the consultants selected based upon its experience and response to the RFP.

NCPA entered into a three-year MTCSA with Acterra effective February 10, 2021, for an amount not to exceed \$500,000. This agreement has been used by NCPA Members through NCPA's Support Services program, and an NCPA Member has requested that the agreement be extended. This amendment will extend the term of the Agreement for an additional two-year period from the original expiration date of February 9, 2024 to a new date of February 9, 2026. Additionally, the amendment will update the Compensation Schedule to reflect current hourly rates and services.

NCPA has agreements in place for similar services with Cool the Earth, Plug In America, and Electric Car Insider.

FISCAL IMPACT:

The total cost of the agreement is unchanged by the amendment and will not exceed \$500,000 for the amended term of the contract. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

Eight vendors were selected as a result of a Request for Proposal (RFP) process in accordance with NCPA's procurement policies and procedures. An RFP was posted on NCPA's website from August 12, 2020, through September 10, 2020. A total of ten responses were received and evaluated based on: 1) the quality and thoroughness of proposal; 2) possession of the knowledge, experience, and skills required to provide the requested services; 3) experience of staff to be assigned to the project, based on prior engagements of similar scope and complexity; 4) competitive rates for the requested services; 5) respondent's financial stability; 6) ability to

perform the work within the time specified and demonstrated strong project management abilities; and 7) customer references. The responses were evaluated by a review team consisting of staff from the City of Palo Alto Utilities, Silicon Valley Power, and NCPA.

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 November 29, 2023.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution 23-110
- Multi-Task Consulting Services Agreement with Acterra
- First Amendment to Multi-Task Consulting Services Agreement with Acterra

RESOLUTION 23-110

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A FIRST AMENDMENT TO THE MULTI-TASK CONSULTING SERVICES
AGREEMENT WITH ACTERRA: ACTION FOR A HEALTHY PLANET**

(reference Staff Report #248:23)

WHEREAS, Northern California Power Agency (NCPA) and Acterra: Action for a Healthy Planet (Acterra) entered into a Multi-Task Consulting Services Agreement effective February 10, 2021, for Acterra 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, NCPA Members have requested that the Agreement with Acterra be extended beyond the original three-year term to accommodate anticipated projects; and

WHEREAS, NCPA desires to extend the term of the Agreement for an additional two-year period; and

WHEREAS, NCPA desires to update the Compensation Schedule to reflect current hourly rates and 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 Multi-Task Consulting Services Agreement, 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:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
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



**FIRST AMENDMENT TO MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
ACTERRA: ACTION FOR A HEALTHY PLANET**

This First Amendment (“Amendment”) to the Multi-Task Consulting Services Agreement is entered into by and between the Northern California Power Agency (“Agency”) and Acterra: Action for a Healthy Planet (“Consultant”) (collectively referred to as “the Parties”) as of _____, 2023.

WHEREAS, the Parties entered into a Multi-Task Consulting Services Agreement dated effective February 10, 2021, (the “Agreement”) for Consultant to provide electrification education services including electrification and electric vehicle (EV) workshops, ride and drives, electrification and energy efficiency audits, and youth education programs; 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 February 9, 2024, to a new date of February 9, 2026; and

WHEREAS, the Parties now desire to amend the Compensation Schedule and Hourly fees set forth in Exhibit B to the Agreement; 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 five (5) years from the date this Agreement was signed by Agency, whichever is shorter.

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

SIGNATURES ON FOLLOWING PAGE

Date: _____

Date: _____

NORTHERN CALIFORNIA POWER AGENCY

ACTERRA: ACTION FOR A HEALTHY
PLANET

RANDY S. HOWARD, General Manager

LAUREN WESTON, Executive Director

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

DRAFT

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$500,000.00. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Activity	2021-2023	2024-2026
EV Education Workshops	\$5,000 each	\$5,500 each
Bilingual EV Financial Incentives Clinics <ul style="list-style-type: none"> • Optional individual follow-up consultations that include preparation and scheduling, consultation, individualized action plan and follow up in English or Spanish, with the option to add more languages at an additional cost 	\$5,800 each, plus \$300 per consultation	\$6,380 each, plus \$300 per customer consultation/ \$400 - \$500 per additional language other than English and Spanish, if requested
EV Expos – up to 3 hours and up to 8 EVs	\$2,000 each	\$2,200 each
Electrification Education Demos	\$10,000	\$11,000
Youth education – up to three classrooms and 12 hours of curriculum	\$15,000	\$16,500
EV Expos – up to 3 hours and up to 8 EVs	\$2,000 each	\$2,200 each
Special Event Expos – over 3 hours, 9 or more EVs, and/or additional activities	\$4,000 each	\$4,400 each

The not-to-exceed amounts cover outreach, advertising, staff time, materials, transit, design, printing, and overhead. A comprehensive hourly rate is an average of \$110.00 per hour per person.

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.