



651 Commerce Drive
Roseville, CA 95678

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Agenda – Legal Committee Meeting

Meeting Date: April 7, 2022 Legal Committee Meeting
Location: Meeting held at NCPA Headquarters and via Teleconference Posted Locations
Time: 8:30 a.m. PDT

In compliance with the Brown Act, you may participate in person at the meeting location or via teleconference at one of the locations listed below. In either case, please (1) post the Agenda at a publicly accessible location at the participation location at least 72-hours before the meeting begins, and (2) have a speaker phone available for any member of the public who may wish to attend at your location.

| | | |
|---|--|--|
| Northern California Power Agency 651 Commerce Drive Roseville, CA 95678 | City of Alameda Alameda City Attorney's Office 2263 Santa Clara Avenue, No. 280 Alameda, CA 94501 | Bay Area Rapid Transit [No teleconference location] |
| City of Biggs Law Office of Gregory P. Einhorn 854 Manzanita Court, No. 110 Chico, CA 95926 | City of Gridley Rich, Fuidge, Bordsen & Galyean 1129 D Street Marysville, CA 95901 | City of Healdsburg Burke Williams & Sorenson One California Street, Suite 3050 San Francisco, CA 94111 |
| City of Lodi 221 West Pine Street Lodi, CA 95240 | City of Lompoc Aleshire & Wynder, LLP 6001 Boeing Place Los Angeles, CA 90045 | Plumas-Sierra Rural Electric Coop Somach, Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 |
| City of Palo Alto Palo Alto City Attorney's Office 250 Hamilton Avenue Palo Alto, CA 94301 | City of Palo Alto Assistant City Attorney Office 54 Bosworth Field Mendon, NY 14506 | Port of Oakland Office of General Counsel 530 Water Street Oakland, CA 94607 |
| City of Redding Office of the City Attorney 777 Cypress Avenue Redding, CA 96001 | City of Roseville Civic Center-City Attorney's Office 311 Vernon Street Roseville, CA 95678 | City of Santa Clara Santa Clara City Attorney's Office 1500 Warburton Ave. Santa Clara, CA 95050 |
| Truckee Donner PUD [No teleconference location] | City of Ukiah Rapport and Marston 405 West Perkins Street Ukiah, CA 95482 | City of Shasta Lake [No teleconference location] |

To participate by phone from posted meeting location: Dial: 1-669-900-6833
Meeting ID: 875 5661 3488

To participate via Zoom from posted meeting location: <https://us06web.zoom.us/j/87556613488>

Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916-781-3636 in advance of the meeting to arrange for such accommodations.

The Committee may act on any of the items listed on this Agenda regardless of whether an item is described as an Action item, a Report, or an Informational or Discussion item. This Agenda may be supplemented by Staff Reports which are available to the public upon request. Pursuant to California Government Code Section 54957.5, the following is the location at which the public can view Agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or www.ncpa.com.

- **Review Safety Procedures – NCPA Headquarters Facility**

1. CALL MEETING TO ORDER AND ROLL CALL

2. PUBLIC COMMENT

Any member of the public who desires to address the NCPA Legal Committee on any item considered by the Legal Committee at this meeting, before or during the Committee's consideration of that item, shall so advise the Chair and shall thereupon be given an opportunity to do so. Any member of the public who desires to address the NCPA Legal Committee on any item within the jurisdiction of the Legal Committee and not listed on the Agenda may do so at this time.

3. MEETING MINUTES – Seeking approval of the minutes of the Legal Committee held on March 3, 2022. *(Action Item)*

CLOSED SESSION

4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1) - Existing Litigation, three (3) cases:

- A. Case Name: *Northern California Power Agency, City of Redding, City of Roseville, and City of Santa Clara v. the United States, United States Court of Federal Claims No. 14-817-C.*
- B. Case Name: *Voluntary Petitions for Filing of Chapter 11 Bankruptcy, PG&E Corporation, Debtor, and Pacific Gas and Electric Company, Debtor, United States Bankruptcy Court, Northern District of California, San Francisco Division, jointly administered under No. 19-30088*
- C. Case Name: *City of Santa Clara dba Silicon Valley Power and Northern California Power Agency, Claimants, v. California Department of Water Resources, Respondent, American Arbitration Association, Case No. 01-22-0001-3527.*

OPEN SESSION

5. REPORT FROM CLOSED SESSION

- 6. LEGAL SERVICES AGREEMENT BETWEEN NCPA AND LAW OFFICES OF SUSIE BERLIN** – Seeking a recommendation for Commission approval of a three-year Legal Services Agreement with the Law Offices of Susie Berlin for State Regulatory services, with an annual not to exceed amount of \$380,000 and total not to exceed amount of \$1,140,000 for the three-year term. The annual and total dollar amounts are not a guarantee that NCPA will pay those full amounts, but are merely a limit of potential expenditures under the agreement. The agreement includes the possibility for amendment to extend the term for up to two additional years. The agreement is the result of a formal Request for Qualifications and Proposals process conducted by NCPA.
- 7. LEGAL SERVICES AGREEMENT BETWEEN NCPA AND COLANTUNO HIGHSMITH WHATLEY, PC** - Seeking a recommendation for Commission approval of a three-year Legal Services Agreement with Colantuno Highsmith & Whatley, PC for outside Assistant General Counsel services to be provided by David J. Ruderman, with a not to exceed amount of \$500,000. The dollar amount is not a guarantee that NCPA will pay the full amount, but is merely a limit of potential expenditures under the agreement. The agreement includes the possibility for amendment to extend the term for up to two additional years. The agreement is the result of a formal Request for Qualifications and Proposals process conducted by NCPA.
- 8. TO18 RATE CASE DECISION** – Update regarding the favorable Decision issued in the TO18 Rate Case which found significant overcharges were applied to NCPA Members which will result in future refunds/credits.
- 9. GENERAL COUNSEL UPDATES** - NCPA's General Counsel will update the Committee on miscellaneous business matters of interest.
- 10. ADJOURNMENT**



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Minutes – Legal Committee Meeting

To: NCPA Legal Committee
From: Linda Stone
Subject: March 3, 2022, NCPA Legal Committee Meeting Minutes

1. Call Meeting to Order and Roll Call

The meeting was called to order at 8:34 a.m. by Chair Barry DeWalt. At the time of roll call, the following members were present by telephone:

Biggs-Gregory Einhorn, Healdsburg-Samantha Zutler, Lodi-Janice Magdich, Lompoc-Joe Pannone, Palo Alto-Amy Bartell, Port of Oakland-Leah Goldberg, Redding-Barry DeWalt, Roseville-Joe Mandell, and Santa Clara-Sajata Reuter. A quorum was present.

Also participating in the meeting were NCPA General Counsel Jane Luckhardt and NCPA administrative support Linda Stone.

2. Public Comment

The Chair read the notification regarding Public Comment and asked if any member of the public would like to address the Committee. There was no public comment.

3. Meeting Minutes

NCPA staff reported that the Legal Committee did not establish a quorum for its noticed meeting on January 6, 2022.

Closed Session

The Committee went into Closed Session at 8:38 a.m.

4. Conference with Legal Counsel – existing litigation pursuant to Government Code Section 54956.9(d)(1) – two (2) cases
 - a. Case Name: *Northern California Power Agency, City of Redding, City of Roseville, and City of Santa Clara v. the United States, United States Court of Federal Claims No. 14-817-C.*

- b. Case Name: *Voluntary Petitions for Filing of Chapter 11 Bankruptcy, PG&E Corporation, Debtor, and Pacific Gas and Electric Company, Debtor*, United States Bankruptcy Court, Northern District of California, San Francisco Division, jointly administered under No. 19-30088.

The meeting reconvened to Open Session at 8:58 a.m.

5. Report from Closed Session

Chair Barry DeWalt advised that no reportable action was taken during Closed Session.

6. 2025 Western Base Resource Contract – Assignment Administration Agreement (AAA)

Jane Luckhardt provided an update advising that the finalized AAA for administration of the 2025 Base Resource Contract was dispatched to NCPA Members and is coming to the attorneys for approval.

7. NCPA Update of Vendor Agreement Templates

Jane advised the Committee about an upcoming project she is undertaking as part of NCPA's Strategic Plan to update and refresh NCPA's contract and agreement templates. The first phase of the project will focus on consulting and professional services agreements and address additions or changes regarding supply chain cyber security, proprietary rights, conflict of interest and standard of care, force majeure, identify information protection, confidential information, and self-insured retention or deductible limitations, among other things. Jane said she is moving toward a formal procurement for engineering services to ensure a level playing field among the various engineering firms. She also mentioned challenging issues when dealing with hotel contracts, which while small in dollar amount, often carry draconian provisions. Further phases of the project will include the Public Works Agreement and solicitation package of documents and update of the Power Purchase Agreement with a focus on solar and batteries. Committee members were very willing to share samples from their entities with NCPA and each other.

8. General Counsel Updates

Jane reported that the Glover Solar Project is officially dead. She also reported she anticipates this March meeting will be the last month the Agency will meet under the emergency provisions of the Brown Act and SB 361. The NCPA Commission will consider the issue at its March 24th meeting. She also noted that the Lodi Energy Center Project Participant Committee is its own governing body and has continued to meet remotely due to specific pandemic conditions in the valley. She continues to monitor that situation.

9. Adjournment

The meeting was adjourned at 9:12 a.m.



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: April 28, 2022

SUBJECT: Law Offices of Susie Berlin – Three Year Legal Services Agreement for State Regulatory Specialized Services with Option to Extend for Up To Two Additional Years

AGENDA CATEGORY: Consent

| | | |
|--------------------|--------------------|--|
| FROM: | Jane E. Luckhardt | METHOD OF SELECTION: |
| | General Counsel | <i>Competitive RFQ for State Regulatory Legal Services</i> |
| Division: | Executive Services | <i>If other, please describe:</i> |
| Department: | Legal | |

| | | |
|--------------------------------------|-------------------------------------|--|
| 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 22-XX authorizing the General Manager or his designee to enter into a three-year Legal Services Agreement with the Law Offices of Susie Berlin for specialized State Regulatory Counsel services, with a not to exceed amount of \$380,000 per year and not to exceed \$1,140,000 over the three year term. The agreement includes the possibility for amendment to extend the term for up to two additional years for a maximum contract length of five years.

BACKGROUND:

Specialized legal expertise and State regulatory services are essential to the success of NCPA and its Members to represent the Agency before the California Air Resources Board, the California Energy Commission, and California Public Utilities Commission, to provide counsel regarding regulatory compliance obligations, and to protect and advance the interests of NCPA and its members relative to state regulatory matters under the direction of NCPA General Counsel, Jane Luckhardt, and NCPA Legislative and Regulatory Affairs staff. Qualifications for this position include extensive regulatory policy expertise as well as substantial experience in providing representation before state energy agencies such as the California Energy Commission, the California Air Resources Board, and the California Public Utilities Commission. The Law Offices of Susie Berlin has provided these service to NCPA for approximately ten years.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$380,000 per year and not to exceed \$1,140,000 over the three year term of the agreement. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures. The dollar amount is not a guarantee that NCPA will pay the full amount, but is merely a limit of potential expenditures under the Agreement.

NCPA's approved FY22 legal budget includes \$225,000 for legislative and regulatory services, plus funds in other subject matter line items should services be required. The approved FY23 budget increased the legislative and regulatory services amount to \$260,000.

SELECTION PROCESS:

On February 4, 2022, NCPA issued a Request for Qualifications and Proposals for State Regulatory Legal Services (RFQ). The RFQ was dispatched to five law firms identified as having the ability to provide the services. Responses to the RFQ were due March 4, 2022. The Law Offices of Susie Berlin was the only firm to submit a response to the RFQ. As demonstrated by the proposal and prior years of service to NCPA, the Law Offices of Susie Berlin is qualified to meet the agency's needs and fulfill the responsibilities of this position. The firm has direct knowledge of and involvement in ongoing proceedings of importance to NCPA. Further, because the Law Offices of Susie Berlin represents other public power clients with shared interests in the regulatory area, the firm splits the cost of its representation on issues among its clients with common interests, which results in a reduction of overall costs for NCPA on most proceedings.

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:

Pending Committee Review.

On April 7, 2022 the NCPA Legal Committee will review the recommendation above for Commission approval.

Respectfully submitted,

JANE E. LUCKHARDT
General Counsel

Attachments (2):

- Resolution 22-XX
- Legal Services Agreement with Law Offices of Susie Berlin



LEGAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND LAW OFFICES OF SUSIE BERLIN

This agreement for legal services ("Agreement") is entered into on _____ (the "Effective Date") between the NORTHERN CALIFORNIA POWER AGENCY, a public joint powers agency, with offices located at 651 Commerce Drive, Roseville, CA, ("Agency") and The Law Offices of Susie Berlin, 1346 The Alameda, Suite 7, #141, San Jose, California 95126, ("Attorneys") (together sometimes referred to as the "Parties").

Section 1. SERVICES. In accordance with the terms and conditions set forth in this Agreement, Attorneys agree to perform all services described in the Scope of Work attached as Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 Term of Services.** This Agreement shall begin upon signature by all parties and shall end when Attorneys complete the work described in Exhibit A, or no later than three (3) years from the date this Agreement was signed by Agency, whichever is longer, unless the term of the Agreement is otherwise terminated or modified, as provided for herein. The Parties may elect to amend the Agreement to extend the three-year term for up to two (2) additional years, as mutually agreed.
- 1.2 Standard of Performance.** Attorneys shall diligently perform all services required in connection with this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Attorneys are engaged in the geographical area in which Attorneys practice their profession.
- 1.3 Assignment of Personnel.** Attorneys shall assign only competent personnel to perform services in connection with this Agreement.
- 1.4 Termination.** Agency may cancel this Agreement at any time and without cause upon written notification to Attorneys. In the event of termination, Attorneys shall be entitled to compensation for services satisfactorily completed as of the date of written notice of termination; Agency, however, may condition payment of such compensation upon Attorneys delivering to Agency appropriate documents and records identified in Section 8.1 of this Agreement.

Section 2. COMPENSATION. Agency hereby agrees to pay Attorneys an amount **NOT TO EXCEED** Three Hundred Eighty Thousand Dollars (\$380,000) per year and One Million One Hundred Forty Thousand Dollars (\$1,140,000) over the three (3) year term of the Agreement for all work set forth in Exhibit A, in accordance with the Attorneys' fee schedule and reimbursable expenses which are attached as Exhibit B, and made a part of this Agreement. In the event of a conflict between this Agreement and Attorneys' proposal regarding the amount of compensation, this Agreement shall prevail. This annual and total dollar amounts are not a guarantee that Agency will pay that full amount to Attorneys, but are merely a limit of potential Agency expenditures under this Agreement.

- 2.1 Invoices.** Attorneys shall submit invoices 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;
 - Description of 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 Attorneys and each employee, agent, or subcontractor; and
 - At Agency's option, when Attorney'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.
- 2.2 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 to confirm the invoice complies with all of the requirements above to pay Attorneys.
- 2.3 Hourly Fees / Reimbursable Expenses.** If applicable, fees for work performed by Attorneys on an hourly basis shall not exceed the amounts shown on the fee schedule attached to this Agreement as Exhibit B. Reimbursable expense are specified in Exhibit B.
- 2.4 Payment of Taxes.** Attorneys are solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

Section 3. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Attorneys, at their own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the agreement.

- 3.1 Workers' Compensation.** If Attorneys employ any person, Attorneys shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Attorneys with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per accident.
- 3.2 Commercial General and Automobile Liability Insurance.** Attorneys shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. At the sole option of the Agency, the Agency shall be named as an additional insured and insurance shall provide primary coverage with respect to the Agency.

3.3 Professional Liability Insurance. Attorneys shall maintain professional liability insurance for licensed professionals performing work in connection with this Agreement in an amount not less than THREE MILLION DOLLARS (\$3,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed Five Hundred Thousand Dollars (500,000) per claim.

3.4 All Policies Requirements.

3.4.1 Verification of coverage. Prior to beginning any work under this Agreement, Attorneys shall, at the sole option of the Agency, provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; (2) policy endorsements to the general liability policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement; or (3) upon request by the Agency, complete copies of all policies and/or complete copies of all endorsements that demonstrate compliance with this Section 3

3.4.2 Notice of Reduction in or Cancellation of Coverage. An endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

Section 4. INDEMNIFICATION AND ATTORNEYS' RESPONSIBILITIES.

4.1 Attorneys shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the Agency and its officials, commissioners, officers, employees, agents and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the attorneys. Attorneys will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations, to defend, hold harmless, and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency.

Section 5. STATUS OF ATTORNEYS.

5.1 Independent Contractor. At all times during the term of this Agreement, Attorneys shall be an independent contractor and shall not be an employee of Agency. Attorneys shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent.

Section 6. LEGAL REQUIREMENTS.

- 6.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Attorneys and any subcontractors shall comply with all laws applicable to the performance of the work in connection with this Agreement.
- 6.3 **Licenses and Permits.** Attorneys represents and warrants to Agency that Attorneys and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 6.4 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, Attorneys shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Attorneys under this Agreement.

Section 7. MODIFICATION.

- 7.1 **Amendments.** The parties may amend this Agreement only by a writing signed by both of the parties.
- 7.2 **Assignment and Subcontracting.** Attorneys may not assign this Agreement or any interest therein without the prior written approval of the Agency. Attorneys shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Agency.
- 7.3 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Attorneys shall survive the termination of this Agreement.
- 7.4 **Options upon Breach by Attorneys.** If Attorneys materially breach any of the terms of this Agreement, Agency's remedies shall include, but not be limited to, the following:
- 7.4.1 Immediately terminate the Agreement;
 - 7.4.2 Retain the reports, documents, and any other work products prepared for the Agency by Attorneys in accordance with this Agreement;
 - 7.4.3 Retain different Attorneys to complete the work described in **Exhibit A** not finished by Attorneys; or

- 7.4.4 Charge Attorneys the difference between the costs to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that Agency would have paid Attorneys in accordance with Section 2 if Attorneys had completed the work.

Section 8. KEEPING AND STATUS OF RECORDS.

- 8.1 **Records Created as Part of Attorneys' Performance.** All reports, documents, and any other work products prepared for the Agency by Attorneys in accordance with this Agreement, in electronic or any other form, or obtained in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the Agency.
- 8.2 **Attorneys' Records.** Attorneys shall maintain any and all records or 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 Attorneys to this Agreement.
- 8.3 **Confidential Information and Disclosure.** During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Attorneys understand that NCPA is a public agency and is subject to the laws that may compel it to disclose information about Attorneys' business.

Section 9 MISCELLANEOUS PROVISIONS.

- 9.1 **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.
- 9.2 **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.
- 9.3 **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.
- 9.4 **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.



9.5 Contract Administration. This Agreement shall be administered by Randy S. Howard, General Manager, or his designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

9.6 Notices. Any written notice to Attorneys shall be sent to:

C. Susie Berlin
Law Offices of Susie Berlin
1346 The Alameda, Suite 7, #141
San Jose, CA 95126

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 copy to:

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

9.7 Professional Seal. Where applicable, the first page of a technical report shall be signed by the licensed professional responsible for the report.

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

9.9 Alternative Dispute Resolution. If any dispute arises between the parties that cannot be settled after engaging in good faith negotiations, Agency and Attorneys agree to resolve the dispute in accordance with the following:

Each party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after 15 days of good faith negotiations, the parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both parties. Mediation will begin within 30 days of the selection of this disinterested third party, and will end 15 days after



commencement. The parties shall equally bear the costs of any third party in any alternative dispute resolution process.

The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy 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.*

- 9.10 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.

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

NORTHERN CALIFORNIA POWER AGENCY

THE LAW OFFICES OF SUSIE BERLIN

RANDY S. HOWARD, General Manager

C. SUSIE BERLIN, Owner

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel



EXHIBIT A SCOPE OF SERVICES

Advise NCPA concerning legal rights, obligations and privileges by performing the following duties and responsibilities. The State Regulatory Legal Services include, but are not limited to, the following services:

- Represent NCPA before the state regulatory bodies – including, but not limited to, the California Energy Commission, the California Public Utilities Commission, and the California Air Resources Board.
- Work closely with and under the direction of NCPA General Counsel, NCPA staff or the NCPA Legislative and Regulatory Affairs Committee.
- Identify, analyze, track, and report on regulatory proceedings that may affect NCPA.
- Develop regulatory strategies that affect proposed regulations important to NCPA by leading, involving, and coordinating NCPA activities.
- Advocate for NCPA's regulatory goals by developing and delivering supporting informational documents, messages, advocacy before regulatory agencies, and regulatory correspondence.
- Educate regulators, regulatory staff, and governor's staff on the impact of regulations on NCPA's and NCPA's Members' ability to serve and provide affordable rates to its customers.
- Provide regular reports on state regulations, governor's initiatives, and regulatory events that may affect NCPA.
- Participate in, provide regulatory updates, and provide strategic direction during NCPA conference calls and meetings.
- Work in partnership with trade/advocacy organizations, including California Municipal Utilities Association, and others, as necessary as well as develop new coalitions with other trade associations and coalitions.
- Attend meetings, as necessary and appropriate, to influence outcomes of regulatory proceedings.
- Report on regulatory progress at NCPA Legislative and Regulatory Affairs Committee meetings, as needed.



EXHIBIT B

ATTORNEY'S FEE SCHEDULE AND REIMBURSABLE EXPENSES

Compensation for all tasks, including hourly fees and expenses, shall not exceed the amount set forth in Section 2, Compensation, of the Agreement. This dollar amount is not a guarantee that Agency will pay that full amount to Attorneys, but is merely a limit of potential Agency expenditures under this Agreement.

Attorney time billed at \$390 per hour from the Effective Date through July 1, 2022

Attorney time billed at \$425 per hour as of July 1, 2022

Attorneys will be available, on average, 100 hours per month to provide the services requested by Agency. Due to the nature of the regulatory advocacy and legal services included in the Scope of Services, the total hours of work per month will vary. Because of the potential for sharing fees with other clients, the actual amount billed to Agency for some of the services may reflect a pro-rated share.

Attorneys may from time to time propose billing rates for personnel that may be added to the Firm, including additional associates, but such personnel shall not be assigned to perform work for Agency without prior written notice and approval. Fees and expenses for services performed by retained consultants, subcontractors, experts, or other personnel or firms shall not be billed by Attorneys without the prior written approval of the NCPA General Counsel.

NOTE: As a public agency, NCPA shall not reimburse Attorneys for costs in excess of those permitted by the Internal Revenue Service.



Commission Staff Report – *DRAFT*

COMMISSION MEETING DATE: April 28, 2022

SUBJECT: Conantuono, Highsmith & Whatley, PC – Three Year Legal Services Agreement for Assistant General Counsel Services with Option to Extend for Up To Two Additional Years

AGENDA CATEGORY: Consent

| | | |
|--------------------|--------------------|---|
| FROM: | Jane E. Luckhardt | METHOD OF SELECTION: |
| | General Counsel | <i>Competitive RFQ for Legal Services</i> |
| Division: | Executive Services | <i>If other, please describe:</i> |
| Department: | Legal | |

| | | |
|---|--|--|
| 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 22-XX authorizing the General Manager or his designee to enter into a three-year Legal Services Agreement with Colantuno Highsmith & Whatley, PC (CHW) for outside Assistant General Counsel services to be provided primarily by David J. Ruderman, with a not to exceed amount of \$500,000. The agreement includes the possibility for amendment to extend the term for up to two additional years for a maximum contract length of five years.

BACKGROUND:

Legal expertise and services are essential to the success of NCPA. Designation and hiring of an Assistant General Counsel are in furtherance of Strategic Plan goals and ensure long-term continuity and legal coverage for the Agency. The Assistant General Counsel would provide services under the direction of Jane E. Luckhardt, in-house NCPA General Counsel as requested, to handle special projects in furtherance of Agency strategic goals and needs, legal transactional work resulting from the expansion of services provided by the Agency to its Members and third parties, and other specialized legal services as needed.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not to exceed \$500,000 over three years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures. The dollar amount is not a guarantee that NCPA will pay the full amount, but is merely a limit of potential expenditures under the Agreement.

SELECTION PROCESS:

The agreement is the result of a formal Request for Qualifications and Proposals process conducted by NCPA. A Request for Qualifications and Proposals was dispatched to potentially qualified firms and individual attorneys on June 1, 2021. The Request included Assistant General Counsel services and various specialized legal services. It was sent to 15 identified firms. Proposals were due June 28, 2021. 13 firms submitted proposals to NCPA for various services or combinations of services. Based on the responses submitted to the Request for Qualifications and Proposals, NCPA staff reviewed the proposals and based thereon, interviews with prospective firms in different categories were held. Based on the results of the Evaluation Committee for Assistant General Counsel services, NCPA's General Counsel recommends awarding the Assistant General Counsel services agreement to Colantuno Highsmith & Whatley, PC, with David J. Ruderman designated as the primary attorney to perform the Assistant General Counsel services.

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:

Pending Committee Review.

On April 7, 2022 the NCPA Legal Committee will review the recommendation above for Commission approval.

Respectfully submitted,

JANE E. LUCKHARDT
General Counsel

Attachments (2):

- Resolution 22-XX
- Legal Services Agreement with Colantuono Highsmith Whatley, PC



**LEGAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
LAW OFFICES OF COLANTUONO HIGHSMITH WHATLEY, PC**

This agreement for legal services ("Agreement") is entered into on _____ (the "Effective Date") between the NORTHERN CALIFORNIA POWER AGENCY, a public joint powers agency, with offices located at 651 Commerce Drive, Roseville, CA, ("Agency") and COLANTUONO HIGHSMITH WHATLEY, PC, with offices located at 420 Sierra College Drive, Suite 140, Grass Valley, California 95945, ("Attorneys") (together sometimes referred to as the "Parties").

Section 1. SERVICES. In accordance with the terms and conditions set forth in this Agreement, Attorneys agree to perform all services described in the Scope of Work attached as Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 Term of Services.** This Agreement shall begin upon signature by all parties and shall end when Attorneys complete the work described in Exhibit A, or no later than three (3) years from the date this Agreement was signed by Agency, whichever is longer, unless the term of the Agreement is otherwise terminated or modified, as provided for herein. The Parties may elect to amend the Agreement to extend the three-year term for up to two (2) additional years, as mutually agreed.
- 1.2 Standard of Performance.** Attorneys shall diligently perform all services required in connection with this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Attorneys are engaged in the geographical area in which Attorneys practice their profession.
- 1.3 Assignment of Personnel.** Attorneys have assigned David J. Ruderman as the primary attorney to perform the Assistant General Counsel services in connection with this Agreement.
- 1.4 Termination.** Either party may cancel this Agreement at any time and without cause upon written notification to Attorneys. In the event of termination, Attorneys shall be entitled to compensation for services satisfactorily completed as of the date of written notice of termination; Agency, however, may condition payment of such compensation upon Attorneys delivering to Agency appropriate documents and records identified in Section 8.1 of this Agreement.

Section 2. COMPENSATION. Agency hereby agrees to pay Attorneys an amount **NOT TO EXCEED** Five Hundred Thousand and No/100 Dollars (\$500,000.00) for all work set forth in Exhibit A, in accordance with the Attorneys' fee schedule and reimbursable expenses which are attached as Exhibit B, and made a part of this Agreement. In the event of a conflict between this Agreement and Attorneys' proposal regarding the amount of compensation, this Agreement shall prevail. This dollar amount is not a guarantee that Agency will pay that full amount to Attorneys, but is merely a limit of potential Agency expenditures under this Agreement.

- 2.1 Invoices.** Attorneys shall submit invoices 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;
 - Description of 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 Attorneys and each employee, agent, or subcontractor; and
 - At Agency's option, when Attorney'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.
- 2.2 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 Attorneys.
- 2.3 Hourly Fees / Reimbursable Expenses.** If applicable, fees for work performed by Attorneys on an hourly basis shall not exceed the amounts shown on the fee schedule attached to this Agreement as Exhibit B. Reimbursable expense are specified in Exhibit B.
- 2.4 Payment of Taxes.** Attorneys are solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

Section 3. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Attorneys, at their own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the agreement.

- 3.1 Workers' Compensation.** If Attorneys employ any person, Attorneys shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Attorneys with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per accident.
- 3.2 Commercial General and Automobile Liability Insurance.** Attorneys shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. At the sole option of the Agency, the Agency shall



be named as an additional insured and insurance shall provide primary coverage with respect to the Agency.

- 3.3 Professional Liability Insurance.** Attorneys shall maintain professional liability insurance for licensed professionals performing work in connection with this Agreement in an amount not less than FOUR MILLION DOLLARS (\$4,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed Five Hundred Thousand Dollars (500,000) per claim.

3.4 All Policies Requirements.

- 3.4.1 Verification of coverage.** Prior to beginning any work under this Agreement, Attorneys shall, at the sole option of the Agency, provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; (2) policy endorsements to the general liability policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement; or (3) upon request by the Agency, complete copies of all policies and/or complete copies of all endorsements that demonstrate compliance with this Section 3

- 3.4.2 Notice of Reduction in or Cancellation of Coverage.** An endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

Section 4. INDEMNIFICATION AND ATTORNEYS' RESPONSIBILITIES.

- 4.1** Attorneys shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the Agency and its officials, commissioners, officers, employees, agents and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the attorneys. Attorneys will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations, to defend, hold harmless, and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency.

Section 5. STATUS OF ATTORNEYS.

- 5.1 Independent Contractor.** At all times during the term of this Agreement, Attorneys shall be an independent contractor and shall not be an employee of



Agency. Attorneys shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent.

Section 6. LEGAL REQUIREMENTS.

- 6.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Attorneys and any subcontractors shall comply with all laws applicable to the performance of the work in connection with this Agreement.
- 6.3 **Licenses and Permits.** Attorneys represents and warrants to Agency that Attorneys and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 6.4 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, Attorneys shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Attorneys under this Agreement.

Section 7. MODIFICATION.

- 7.1 **Amendments.** The parties may amend this Agreement only by a writing signed by both of the parties.
- 7.2 **Assignment and Subcontracting.** Attorneys may not assign this Agreement or any interest therein without the prior written approval of the Agency. Attorneys shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Agency.
- 7.3 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Attorneys shall survive the termination of this Agreement.
- 7.4 **Options upon Breach by Attorneys.** If Attorneys materially breach any of the terms of this Agreement, Agency's remedies shall include, but not be limited to, the following:
 - 7.4.1 Immediately terminate the Agreement;
 - 7.4.2 Retain the reports, documents, and any other work products prepared for the Agency by Attorneys in accordance with this Agreement;

7.4.3 Retain different Attorneys to complete the work described in **Exhibit A** not finished by Attorneys; or

7.4.4 Charge Attorneys the difference between the costs to complete the work described in **Exhibit A** that is unfinished at the time of breach and the amount that Agency would have paid Attorneys in accordance with Section 2 if Attorneys had completed the work.

Section 8. KEEPING AND STATUS OF RECORDS.

8.1 **Records Created as Part of Attorneys' Performance.** All reports, documents, and any other work products prepared for the Agency by Attorneys in accordance with this Agreement, in electronic or any other form, or obtain in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the Agency.

8.2 **Attorneys' Records.** Attorneys shall maintain any and all records or 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 Attorneys to this Agreement.

8.3 **Confidential Information and Disclosure.** During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Attorneys understand that NCPA is a public agency and is subject to the laws that may compel it to disclose information about Attorneys' business.

Section 9 MISCELLANEOUS PROVISIONS.

9.1 **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.

9.2 **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.

9.3 **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.



9.4 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.

9.5 Contract Administration. This Agreement shall be administered by Randy S. Howard, General Manager, or his designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

9.6 Notices. Any written notice to Attorneys shall be sent to:

David J. Ruderman
Colantuono Highsmith Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945

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 copy to:

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

9.7 Professional Seal. Where applicable, the first page of a technical report shall be signed by the licensed professional responsible for the report.

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

9.9 Alternative Dispute Resolution. If any dispute arises between the parties that cannot be settled after engaging in good faith negotiations, Agency and Attorneys agree to resolve the dispute in accordance with the following:

Each party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after 15 days of good faith negotiations, the parties shall



attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both parties. Mediation will begin within 30 days of the selection of this disinterested third party, and will end 15 days after commencement. The parties shall equally bear the costs of any third party in any alternative dispute resolution process.

The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy 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.*

9.10 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.

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

NORTHERN CALIFORNIA POWER AGENCY

COLANTUONO HIGHSMITH WHATLEY,
PC

RANDY S. HOWARD, General Manager

DAVID J. RUDERMAN, Senior Counsel

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel



EXHIBIT A SCOPE OF SERVICES

As requested by Agency, Attorneys shall advise NCPA concerning legal rights, obligations and privileges by performing the following duties and responsibilities:

Assistant General Counsel Services

- In the absence of NCPA's General Counsel, providing legal advice, consultation, and representation, to NCPA's Executive Committee, Commission and General Manager as necessary and appropriate to protect the interests of the agency and/or its members.
- Providing advice on legal procedural issues including Ralph M. Brown Act and the California Public Records Act requirements.
- Providing legal research, interpretation, and advice regarding provisions of California and Federal constitutions, statutes, decisions, ordinances, and regulations for joint powers agencies.
- Examining facts, data, and relevant law to make recommendations on legal strategy for defending, prosecuting, or settling lawsuits and

Advising on the following as needed:

- Compliance with the California Public Records Act.
- Lobbying disclosures or other state laws and regulations.
- California electric industry matters.
- Matters related to nonprofit public benefit corporations.
- Negotiating and drafting complex project agreements, particularly involving multiple parties/owners.
- Procurement codes, prevailing wage, public works, public bidding and other applicable public contracting legal requirements.
- California conflict of interest statutes and regulations, particularly as they may apply to members of the board of directors of a joint powers agency.
- Matters involving internal affairs, directors, officers and relations with the general public.
- Prepare resolutions (as requested) and approve resolutions prepared by NCPA staff and others for NCPA Commission approval, and attend regular and special Commission meetings as needed
- Other Assistant General Counsel related legal matters as requested.



Specialized Legal Services Including Litigation

- Representing NCPA in litigation, as requested
- Other specialized legal services, as requested.



EXHIBIT B

ATTORNEY'S FEE SCHEDULE AND REIMBURSABLE EXPENSES

Compensation for all tasks, including hourly fees and expenses, shall not exceed the amount set forth in Section 2, Compensation, of the Agreement. This dollar amount is not a guarantee that Agency will pay that full amount to Attorneys, but is merely a limit of potential Agency expenditures under this Agreement.

Attorney Hourly Rates:

| | |
|--|---|
| Assistant General Counsel Services | Capped at \$305 per hour |
| Specialized Legal Services, including litigation | Standard Rates capped at \$345 per hour |

Standard rates range from \$235 to \$550 per hour depending on the experience and reputation of the attorneys. See Appendix A for hourly rates.

| | |
|---|------------------------|
| Clerks | \$205 per hour |
| Paralegal and Legal Assistants' Rates: | \$125 - \$180 per hour |

All services are billed on an as-needed basis as determined by NCPA General Counsel in increments of one-tenth of an hour. Requests for adjustment of rates are by mutual agreement, and are generally made at the beginning of a calendar year.

Reimbursable Costs

We will not charge NCPA for mileage or travel for Assistant General Counsel services but propose to do so for Specialized Legal Services including traveling to and from court appearances in litigation. We charge 20 cents per page for in-house photocopies for projects that use over 25 pages, one dollar per outgoing page for facsimile transmissions, and mileage at the IRS rate. We also charge for postage in excess of \$5.00. As to other costs, we simply pass on to you, without mark-up, the costs of any expenses incurred, such as outside copying, Federal Express charges, etc. We do not charge for word processing or secretarial overtime. Moreover, the firm does not charge additional fees for basic computer-assisted research or investigation. In the event a separate fee is charged to the firm for unusual research, we would pass that expense on to NCPA without mark-up and only with the prior approval of the General Counsel. We will also agree not to charge NCPA for office support services and similar operational costs.

NOTE: As a public agency, NCPA shall not reimburse Attorneys for costs in excess of those permitted by the Internal Revenue Service.



APPENDIX A

ATTORNEY HOURLY BILLING RATES 2022

COLANTUONO HIGHSMITH WHATLEY, PC

| | Regular Rate | Assistant General Counsel Discounted Rate | Specialized Legal Services Discounted Rate |
|--|---------------|---|--|
| Shareholders and Senior Contract Attorneys | \$550 | \$305 | \$345 |
| 14 th Year and more Senior Associates | \$400 | | |
| 10 th -13 th Year Associates | \$395 | | |
| 9 th Year Associates | \$385 | | |
| 8 th Year Associates | \$370 | | |
| 7 th Year Associates | \$355 | | |
| 6 th Year Associates | \$315 | | |
| 5 th Year Associates | \$300 | | |
| 4 th Year Associates | \$270 | | |
| 3 rd Year Associates | \$255 | | |
| 2 nd Year Associates | \$245 | | |
| 1 st Year Associates | \$235 | | |
| Clerks | \$205 | | |
| Paralegals | \$180 | | |
| Legal Assistants | \$125 - \$150 | | |