



## Lodi Energy Center Project Participant Committee

### Staff Report

AGENDA ITEM NO.: 10

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**Date:** June 8, 2017

**Meeting Date:** June 12, 2017

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Univar USA, Inc. – First Amendment to Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies; Applicable to the following projects: All NCPA facilities

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#### Proposal

Approve a First Amendment to the existing Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Univar USA, Inc. increasing the not-to-exceed amount from \$250,000 to \$1,200,000 and amending the Purchase List to include additional chemicals available for purchase for use at all NCPA facility locations.

#### Background

On March 13, 2013, NCPA entered into a five year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Univar USA, Inc. for the Geothermal facility. The Geothermal facilities are required to abate hydrogen sulfide in the steam and condensate to meet air emission permit requirements. Geo staff has determined it beneficial to switch chemicals for use in the Stretford abatement system. Further a new method of cleaning heat exchanger tubes using a chemical can be done on line, thus avoiding a multiple day outage for this maintenance.

In May 2015, an amendment was approved by the Commission to increase the agreement to \$500,000. This amendment was never executed.

Staff seeks to amend the agreement to add additional chemicals to the purchase list. In addition, staff seeks to make this purchase agreement available for use at all facilities owned and/or operated by NCPA and to increase the not-to-exceed amount from \$250,000 to \$1,200,000.

#### Selection Process

When supplies are required, NCPA will bid the specific list of goods to be purchased consistent with NCPA's procurement policies and procedures. In addition to Univar USA Inc., NCPA has entered into enabling agreements with Dow Chemical, Nalco Company, Aries Tek, Brenntag Pacific, Sierra Chemical, and Thatcher Company of CA and will seek bids from those and as many other suppliers as possible. The bid is awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the goods needed at the time they are required.

Fiscal Impact

Total cost of the agreement is not-to-exceed \$1,200,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

Environmental Analysis

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

Prepared by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (2)

- Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Univar USA, Inc.
- First Amendment to Multi-Task Agreement for Purchase of Equipment, Materials and Supplies with Univar USA, Inc.



**MULTI-TASK  
AGREEMENT FOR PURCHASE OF  
EQUIPMENT, MATERIALS AND SUPPLIES  
BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
UNIVAR USA INC.**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY, ("Agency"), a public joint powers agency, with offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 and UNIVAR USA INC., ("Supplier"), whose principal office is located at 17425 NE Union Hill Road, Redmond, WA 98052 (together sometimes referred to as the "Parties") effective as of 3/13, 2013 (the "Effective Date").

**Section 1. SCOPE.** In accordance with the terms and conditions set forth in this Agreement, Supplier is willing to deliver the equipment, materials and supplies ("Goods") described in Exhibit A, attached hereto and incorporated herein to Agency's Project Site, DDP, located at 12000 Ridge Road, Middletown, CA 95461, when requested by the Agency. Supplier shall be responsible at its sole expense for delivering the Goods to Agency's Project Site and title shall not pass until the Agency accepts delivery at this Site. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

**Section 2. TERM OF AGREEMENT.** This Agreement shall begin upon Effective Date and shall end on the earlier of five (5) years after the Effective Date or when Supplier has provided to Agency the Goods described in Exhibit A.

**Section 3. REQUEST FOR GOODS.** At such time that Agency determines to have Supplier provide Goods under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Goods to be provided ("Requested Goods"), may include a not-to-exceed cap or monetary cap on the Requested Goods and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Goods shall be delivered.

**Section 4. COMPENSATION.** Agency hereby agrees to pay Supplier for the Goods an amount not to exceed two hundred fifty thousand dollars (\$250,000) as total compensation under this Agreement, which includes all shipping, insurance, delivery charges, and any other fees, costs or charges. Any taxes applicable to Agency for the purchase of the Goods shall be to the account of Agency and invoiced as a separate line item on the invoice.

- 4.1 Invoices.** Supplier shall have ninety (90) days after the delivery of Goods to invoice Agency for all amounts due and outstanding under this Agreement. Supplier shall include the number of the Purchase Order which authorized the Goods for which Supplier is seeking payment. In the event Supplier fails to invoice Agency for all amounts due within such ninety (90) day period, Supplier waives its right to collect payment from Agency for such amounts. All invoices shall be submitted to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678

Attn: Accounts Payable

- 4.2 **Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.
- 4.3 **Timing for Submittal of Final Invoice.** Supplier shall have ninety (90) days after delivery of the Requested Goods to submit its final invoice for the Requested Goods. In the event Supplier fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Supplier is deemed to have waived its right to collect its final payment for the Requested Goods from Agency.
- 4.4 **Price Changes.** Supplier's pricing is subject to change over the term of the Agreement. Any change in pricing will be based on the normal fluctuation of costs of the Goods, transportation or taxes in the market. Supplier shall provide Agency with thirty (30) days prior written notice of any pricing changes.

**Section 5. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Supplier, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement.

- 5.1 **Workers' Compensation.** If Supplier employs any person, Supplier shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Supplier with limits of not less than one million dollars (\$1,000,000.00) per accident.
- 5.2 **Automobile Liability.** Supplier shall maintain automobile liability insurance 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, whether or not owned by the Supplier, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with \$2,000,000 aggregate. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment utilized in the transport of the Goods to the Agency's Project Site.
- 5.3 **Commercial General Liability (CGL).** Supplier shall maintain commercial general liability coverage covering Goods, including product 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 negligence of Supplier in regard to this Agreement with not less than \$1,000,000/\$2,000,000 aggregate for bodily injury and property damage, on an occurrence basis. No endorsement shall be attached limiting the coverage.
- 5.4 **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.
- 5.5 **All Policies Requirements.**

**5.5.1 Verification of Coverage.** Prior to beginning any work under this Agreement, Supplier 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 and (2) policy endorsements to the automobile liability policy and the CGL 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 and that Agency's insurance is excess and non-contributing.

**5.5.2 Notice of Reduction in or Cancellation of Coverage.** Supplier agrees to provide at least thirty (30) days prior written notice of any cancellation or reduction in scope or amount of the insurance required under this Agreement.

**5.5.3 Self-Insured Retention.** Supplier shall declare the amount of the self-insured retention to the Agency; the amount shall be not more than \$100,000.

**Section 6. WARRANTY.** Supplier warrants that all Goods are free from defects in design and workmanship; comply with applicable federal, state and local laws and regulations; are new, of good quality and workmanship, and free from defects; are suitably safe and sufficient for the purpose for which they are normally used; and are not subject to any liens or encumbrances. Supplier shall provide all Goods in accordance with all applicable engineering, construction and other codes and standards, in accordance with prudent electrical utility standards, and in accordance with the terms of this Agreement applicable to such Goods, all with the degree of quality and workmanship expected from purveyors engaged in the practice of providing materials and supplies of a similar nature. Moreover, if, during the term of this Agreement (or during the ninety (90) day period following the term hereof, unless manufacturer's warranty is for greater than ninety (90) days, in which case manufacturer's warranty shall be applied), the Goods provided by Supplier under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Supplier shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction. SUPPLIER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED.

**Section 7. INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.**

**7.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Supplier 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, Supplier acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

**7.2 Scope.** Supplier 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 for bodily injury or real property damage arising out of or in connection with any negligent acts or omissions by

Supplier, its officers, officials, agents, and employees, except as caused by the 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.

**7.3 Transfer of Title.** Supplier shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Supplier or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release caused by Supplier's negligence requires notification to a federal, state or local regulatory agency, Supplier shall be responsible for all such notifications. Should Supplier be required to remedy or remove Goods as a result of a leak, spill, release or discharge of Goods due to Supplier's negligence into the environment at Agency's Site or elsewhere, Supplier agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

**7.4 Limitation of Liability.** Neither Supplier nor Agency is liable for special, incidental or consequential damages. Except to the extent that Supplier's negligence or willful misconduct results in a breach of its obligations under Section 7.3 of this Agreement, Supplier's liability is exclusively limited to the greater of the purchase price of the Goods that are the subject of Agency's claim or the limits of the insurance coverage carried by Supplier in accordance with Section 5 of this Agreement.

## **Section 8. MISCELLANEOUS PROVISIONS.**

- 8.1 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Supplier and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 8.2 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.
- 8.3 Compliance with Applicable Law.** Supplier shall comply with all applicable federal, state, and local laws, rules and regulations in regard to this Agreement and the Goods supplied hereunder.
- 8.4 Construction of Agreement.** The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.
- 8.5 Supplier's Status.** Supplier is an independent contractor and not an employee or agent of NCPA.

- 8.6 **Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.
- 8.7 **Governing Law.** This Agreement and all matters pertaining to it, shall be governed by the laws of the State of California and venue shall lie in Placer County or in the county to which the Goods are delivered.

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

NORTHERN CALIFORNIA POWER AGENCY

UNIVAR USA INC.

Date: 3-13-13

Date: Jan 28, 2013

  
JAMES H. POPE, General Manager

  
AUTHORIZED REPRESENTATIVE

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Ruthann G. Ziegler, Assistant General Counsel

8.6 **Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.

8.7 **Governing Law.** This Agreement and all matters pertaining to it, shall be governed by the laws of the State of California and venue shall lie in Placer County or in the county to which the Goods are delivered.

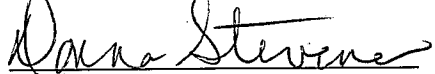
The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

UNIVAR USA INC.

Date: 3-13-13

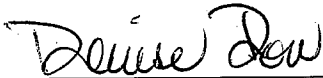
Date: \_\_\_\_\_



 JAMES H. POPE, General Manager

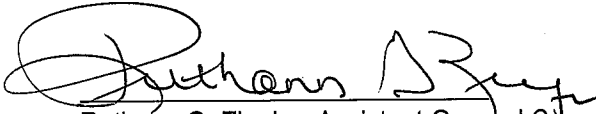
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

Attest:



Assistant Secretary of the Commission

Approved as to Form:



Ruthann G. Ziegler, Assistant General Counsel



**Linda Stone**

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**From:** Jim Pope  
**Sent:** Wednesday, March 13, 2013 11:19 AM  
**To:** \*All HQ Staff  
**Subject:** Signature Authority

Donna Stevener will have signature authority on my behalf through Friday, March 15, 2013.

Thank you,

Jim Pope

**James H. Pope**  
General Manager  
**Northern California Power Agency**  
651 Commerce Drive  
Roseville, CA 95678

**EXHIBIT A**

**PURCHASE LIST**

Supplier shall provide the following list of Goods, to Agency within 30 days of the Effective Date of this Agreement and within 30 days of receiving a written request from Agency:

Soda Ash Dense, in Bulk Truckloads of 88,000 lb. Shipments in 50 lb. Bags at \$0.23/lb.

Note: The Agency leaves the option open of purchasing the Soda Ash in a different container type should Agency find that Supplier can provide the Soda Ash in a different bulk form that will conform to Agency's Stretford System.

1083.7199 1977032.8



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
02/06/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Aon Risk Services Central, Inc. Philadelphia PA Office One Liberty Place 1650 Market Street Suite 1000 Philadelphia PA 19103 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): (866) 283-7122      FAX (A/C. No.): (847) 953-5390		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> UNIVAR USA INC 17425 NE Union Hill Road Redmond WA 98052-3375 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	INSURER A: National Union Fire Ins Co of Pittsburgh		19445
	INSURER B: ACE Property & Casualty Insurance Co.		20699
	INSURER C: Insurance Company of the State of PA		19429
	INSURER D: Illinois National Insurance Co		23817
	INSURER E:		
INSURER F:			

**COVERAGES**      **CERTIFICATE NUMBER: 570049016946**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			GL2802979	03/01/2012	03/01/2013	EACH OCCURRENCE	\$2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			SIR applies per policy terms & conditions			DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	\$3,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$3,000,000
							PRODUCTS - COMP/OP AGG	\$3,000,000
A	AUTOMOBILE LIABILITY			CA 4806893	03/01/2012	03/01/2013	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
A	<input checked="" type="checkbox"/> ANY AUTO			Commercial Auto (AOS)	03/01/2012	03/01/2013	BODILY INJURY (Per person)	
A	<input type="checkbox"/> ALL OWNED AUTOS		<input type="checkbox"/> SCHEDULED AUTOS	Commercial Auto (MA)	03/01/2012	03/01/2013	BODILY INJURY (Per accident)	
A	<input type="checkbox"/> HIRED AUTOS		<input type="checkbox"/> NON-OWNED AUTOS	Commercial Auto (VA)	03/01/2012	03/01/2013	PROPERTY DAMAGE (Per accident)	
B	<input checked="" type="checkbox"/> UMBRELLA LIAB		<input checked="" type="checkbox"/> OCCUR	X00G25914922	03/01/2012	03/01/2013	EACH OCCURRENCE	\$2,000,000
	<input type="checkbox"/> EXCESS LIAB		<input type="checkbox"/> CLAIMS-MADE	SIR applies per policy terms & conditions			AGGREGATE	\$2,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$500,000							
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC001591220	03/01/2012	03/01/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	
D	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		<input type="checkbox"/> Y/ <input checked="" type="checkbox"/> N	(AOS)	03/01/2012	03/01/2013	E.L. EACH ACCIDENT	\$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	(WT)			E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
Northern California Power Agency Attn: Pam Ramirez PO Box 663 Middletown CA 95461 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE
	<i>Aon Risk Services Central, Inc.</i>

Holder Identifier :

Certificate No : 570049016946





# ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED UNIVAR USA INC	
POLICY NUMBER See Certificate Number: 570049016946			
CARRIER See Certificate Number: 570049016946	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	AUTOMOBILE LIABILITY						
A				CA 4806890 Truckers Liability (AOS)	03/01/2012	03/01/2013	Combined Single Limi \$5,000,000
A				CA 4806891 Truckers Liability (MA)	03/01/2012	03/01/2013	
A				CA 4806892 Truckers Liability (VA)	03/01/2012	03/01/2013	
	WORKERS COMPENSATION						
A		N/A		WC1591222 (CA, OR, OH, WA) SIR applies per policy terms & conditions	03/01/2012	03/01/2013	
C		N/A		WC001591221 (FL)	03/01/2012	03/01/2013	



**FIRST AMENDMENT TO MULTI-TASK EQUIPMENT, MATERIALS, AND SUPPLIES AGREEMENT  
BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND UNIVAR USA, INC.**

This First Amendment ("Amendment") to Multi-Task Equipment, Materials and Supplies Agreement is entered into by and between the Northern California Power Agency ("Agency") and Univar USA, Inc. ("Supplier") (collectively referred to as "the Parties") as of \_\_\_\_\_, 2017.

WHEREAS, the Parties entered into a five year Multi-Task Agreement for the Purchase of Equipment, Materials, and Supplies dated effective March 13, 2013, (the "Agreement") for Supplier to provide Soda Ash to the NCPA Geothermal Facilities; and

WHEREAS, the Agency now desires to amend the Agreement to expand the Scope of the Agreement to include delivery of equipment, materials and supplies to all other NCPA locations in addition to the Geothermal facility location; and

WHEREAS, the Agency now desires to amend the Agreement to increase the total compensation authorized by the Agreement from a NOT TO EXCEED amount of \$250,000 to a NOT TO EXCEED amount of \$1,200,000; and

WHEREAS, the Agency now desires to amend the Agreement to add the requirement for Pollution Insurance as may be necessary; and

WHEREAS, the Agency now desires to amend the Agreement to add additional Miscellaneous provisions; and

WHEREAS, the Agency now desires to amend the Purchase List set forth in Exhibit A to the Agreement to add additional materials and supplies available for purchase; and

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

NOW, THEREFORE, the Parties agree as follows:

1. **Section 1. SCOPE** of the Agreement is hereby amended and restated to read as follows:

In accordance with the terms and conditions set forth in this Agreement, Supplier is willing to deliver the equipment, materials and supplies ("Goods") described in Exhibit A, attached hereto and incorporated herein to Agency's Project Sites DDP, when requested by the Agency. Supplier shall be responsible at its sole expense for delivering the Goods to Agency's Project Sites and title shall not pass until the Agency accepts delivery at the Site. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

2. **Section 4—Compensation** of the Agreement is amended and restated to read as follows:

Agency hereby agrees to pay Supplier for the Goods an amount not to exceed ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000) as total compensation under this Agreement, which includes all shipping, insurance, delivery charges, and any other fees, costs or charges. Any taxes applicable to Agency for the purchase of the Goods shall be to the account of Agency and invoiced as a separate line item on the invoice. This dollar amount is not a guarantee that Agency will pay that full amount to the Supplier, but is merely a limit of potential Agency expenditures under this Agreement.

The remainder of Section 4 of the Agreement is unchanged.

3. **Section 5-Insurance Requirements** of the Agreement is amended to add the following provision:

**5.6 Pollution Insurance.** If Supplier's Work involves its transporting hazardous materials, then Supplier shall obtain and maintain Contractors' Pollution Liability Insurance of not less than two million dollars (\$2,000,000) for any one occurrence and not less than four million dollars (\$4,000,000) aggregate. Any deductible or self-insured retention shall not exceed five hundred thousand dollars (\$500,000.00) per claim. Such insurance shall be on "an occurrence" basis. In addition, Supplier shall ensure that such insurance complies with any applicable requirements of the California Department of Toxic Substances Control and California regulations relating to the transport of hazardous materials (Health & Safety Code sections 25160 *et seq.*).

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed, or controlled pursuant to any national, state, or local law, statute, ordinance, directive, regulation, or other legal requirement of the United States.

The remainder of Section 5 of the Agreement is unchanged.

4. **Section 8-Miscellaneous Provisions** of the Agreement is amended to add the following provisions:

**8.8 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.

**8.9 Amendments.** The Parties may amend this Agreement only by a writing signed by all of the Parties.

**8.10 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.

8.11 **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.

8.12 **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.

8.13 **Conflict of Interest.** Supplier may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Supplier in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Supplier 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.*

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

8.15 **Notices.** Any written notice to Supplier shall be sent to:

Univar USA, Inc.  
17425 NE Union Hill Road  
Redmond, WA 98052

Any written notice to Agency shall be sent to:

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

With a copy to:

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

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

8.16.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;

- 8.16.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 8.16.3 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.
- 8.16.4 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.
- 8.16.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 8.16.6 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.*
- 8.17 **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Supplier's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Supplier's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Supplier's Proposal (if any), the Purchase Order shall control.
- 8.18 **Certification as to California Energy Commission.** As requested by the Agency, Supplier has previously executed Exhibit B, attached hereto and incorporated herein.
- 8.19 **Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** As requested by the Agency, Supplier has previously executed Exhibit C, attached hereto and incorporated herein

The remainder of Section 8 of the Agreement is unchanged.

5. **Exhibit A – PURCHASE LIST** is amended and restated to read in full as set forth in the attached EXHIBIT A.



6. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

NORTHERN CALIFORNIA POWER AGENCY

UNIVAR USA, INC.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
RANDY S. HOWARD, General Manager

\_\_\_\_\_  
SARA STEWART, General Manager

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Ruthann G. Ziegler, Assistant General Counsel

## EXHIBIT A

### PURCHASE LIST

As requested by the Agency, Supplier shall provide the following listed Goods to Agency at any one of its facility locations:

Chemical
Peroxide
Caustic Soda 15%
Soda Ash Dense
Lime 90%
Mag Ox 36%
Sulfuric Acid 93%
Sodium Hypochlorite 12.5% (Bleach)
Magnesium Sulfate 30%
Sodium Bisulfite 12% (Nalco PC7408)
Phosphoric Acid 70% (Nalco PC 185)
Aqua Ammonia
Sodium Hydroxide 15%
Additional products not listed above to be provided as requested in writing by NCPA facilities.

Supplier's deliveries shall be made by a vehicle suitably constructed to contain chemicals meeting Agency's product specifications. All delivery vehicles shall be labeled and constructed to meet all requirements of the California State Highway Patrol, the Interstate Commerce Commission and any jurisdictions having control over said delivery truck operations.

NCPA acknowledges that Supplier's chemical pricing may be subject to change every six to twelve months. Pricing for goods shall be quoted by Supplier at the time the product is requested. Total compensation for all tasks, including all chemicals delivered under this Agreement, shall not exceed the amount as set forth in Section 4 (Compensation) of this Agreement.