



City of Biggs

Agenda Item Staff Report For the Regular City Council Meeting: January 13, 2015

TO: Honorable Mayor and Members of the City Council
FROM: City Administrator
SUBJECT: Meter Maintenance Program Agreement with NCPA.

The City's electrical distribution subsystem is required to be metered at the point at which it receives electricity from the PG&E distribution system. Council is asked to consider authorizing maintenance of the metering system through an agreement with NCPA (Northern California Power Association).

Background:

Please find attached for consideration the Meter Maintenance Program Agreement that was approved by the NCPA Commission on October 23, 2014. Once fully executed, the attached Meter Maintenance Program Agreement will be used to provide meter maintenance services to each of the Pool members (which includes Biggs) beginning mid-January 2015.

Once NCPA has received executed agreements from each of the ten (10) Pool Members, NCPA will then enter into the General Services Agreement with Trimark Associates, under which the meter maintenance services will be provided.

The attached NCPA Commission Staff Report provides additional detail.

Recommendation:

Approve the Meter Maintenance Program Agreement and authorize the Mayor to sign.

Mark Sorensen, City Administrator



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Commission Staff Report

AGENDA ITEM NO.: 17

Date: October 23, 2014
To: NCPA Commission
Subject: Approval of the Meter Maintenance Program Agreement and General Services Agreement with Trimark Associates, Inc.

Background

Each of the Northern California Power Agency ("NCPA") Pool Members¹ operate as Metered Subsystems located within the California Independent System Operator ("CAISO") Balancing Authority Area, and are parties to the Third Amended and Restated NCPA MSS Aggregator Agreement ("MSSA Agreement"), as such may be amended from time to time. As part of the requirements associated with the MSSA Agreement and CAISO Tariff, the Pool Members have certain obligations to comply with provisions of the CAISO Tariff applicable to metering equipment, including but not limited to, maintenance, outages, testing and certification. An MSS entity is required to maintain CAISO certified settlement quality meters at each point-of-interconnection with the CAISO Balancing Authority Area, and at each CAISO registered generating facility. Meter maintenance, including the ability to respond to meter failures, therefore, is a critical requirement that must be met in order to remain compliant with the rules of the CAISO Tariff and MSSA Agreement.

Meter Maintenance Program

The Pool Members have requested for NCPA to enter into an agreement, on their behalf, under which NCPA shall secure the services of a qualified supplier to perform meter maintenance activities, including, but not limited to, monitoring, maintaining and repairing Supervisory Control Data Acquisition systems ("SCADA"), metering equipment (including CAISO revenue quality metering equipment), and any communications or interface devices for equipment owned and operated by the Pool Members. In response to this request, NCPA has developed a General Services Agreement between NCPA and Trimark Associates, Inc. ("Trimark"), under which Trimark shall supply meter maintenance services for those Pool Members' equipment that is included within the scope of the agreement. NCPA will act as contract administrator for the General Services Agreement, and shall coordinate services and activities performed pursuant to the agreement.

In addition to the General Services Agreement, NCPA, working with member staff, has also developed the Meter Maintenance Program Agreement between NCPA and the members who are signatory to the agreement, which contains the terms and conditions under which the services shall be provided, clarifies the signatory members' obligations to pay for all costs

¹ The NCPA Pool members are City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, Port of Oakland, Plumas Sierra Rural Electric Cooperative and City of Ukiah

incurred by NCPA for services provided under the General Services Agreement, and sets forth all other provisions for administration of the meter maintenance program.

The term of the General Services Agreement and Meter Maintenance Program Agreement is five (5) years. A list of all meters and metering equipment covered under the General Services Agreement is documented in the General Services Agreement.

Procurement Process

Pursuant to Section 14.1 of the NCPA Purchasing Manual, NCPA's acquisition of meter maintenance services from Trimark, pursuant to the terms and conditions of the General Services Agreement, is considered a Sole Source Purchase. A description of the factors and conditions evaluated in NCPA's determination that acquisition of services from Trimark is a Sole Source Purchase is described in the summary paper that is attached to this staff report for your reference.

Fiscal Impact

Work associated with the development of the Meter Maintenance Program Agreement and the General Services Agreement has been undertaken pursuant to approved Power Management budget categories, and costs associated with this effort are allocated in accordance with approved cost allocation methodologies as described in the NCPA annual budget.

Compensation for services provided by Trimark under the General Services Agreement shall be based on the annual compensation schedules and hourly fees as set forth in Exhibit B of the General Services Agreement, and total compensation provided under the General Services Agreement shall not exceed three hundred thousand dollars (\$300,000) during the term of the General Services Agreement. All cost incurred will be tracked using separate purchase orders, and will be allocated to the applicable member on whose behalf services are provided.

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.

Recommendation

NCPA staff recommends that the NCPA Commission:

1. Adopt and approve the Meter Maintenance Program Agreement, under which NCPA will supply meter maintenance services to the Pool Members; and
2. Provide authority to the General Manager of NCPA to execute the Meter Maintenance Program Agreement, on behalf of NCPA, including any non-substantive modifications to the Meter Maintenance Program Agreement approved by NCPA's General Counsel; and
3. Adopt and approve the General Services Agreement between Northern California Power Agency and Trimark Associates, Inc., under which NCPA shall acquire meter maintenance services from Trimark, on behalf of the Pool Members; and
4. Provide authority to the General Manager of NCPA to execute the General Services Agreement between Northern California Power Agency and Trimark Associates, Inc., on behalf of NCPA, including any non-substantive modifications to the General Services

Agreement between Northern California Power Agency and Trimark Associates, Inc.
approved by NCPA's General Counsel, upon receipt of a fully executed Meter
Maintenance Program Agreement.

Respectfully submitted,



JAMES H. POPE
General Manager

Prepared by:



TONY ZIMMER
Supervisor, Industry Restructuring
and Interconnection Affairs

Attachments (4)



**METER MAINTENANCE PROGRAM AGREEMENT BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND CONTRACTING MEMBERS**

This Meter Maintenance Program Agreement ("Agreement") is made by and between the Northern California Power Agency ("NCPA"), a joint public powers agency with offices located at 651 Commerce Drive, Roseville, California and City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, Plumas Sierra Rural Electric Cooperative, City of Oakland (acting through its Board of Port Commissioners) and City of Ukiah, who each are NCPA Members (each being a "Contracting Member" and jointly referred to as "Contracting Members"). NCPA and the Contracting Members are together sometimes referred to herein individually as a "Party" and collectively as the "Parties". This Agreement is made as of _____, 20__ (the "Effective Date") in Roseville, California.

Section 1. RECITALS

This Agreement is entered into based on the following facts, among others:

1.1 NCPA is a public agency created by a joint powers agreement established under California law for the purpose of assisting its members in the efficient use of their common powers.

1.2 Contracting Members are engaged in, among other things, transmitting and distributing electric power within their respective corporate limits. Contracting Members are also members of NCPA. Contracting Members desire that NCPA provide Contracting Members with the Services ("Services") described in this Agreement.

1.3 Article III, Section 3 of the "Amended and Restated Northern California Power Agency Joint Powers Agreement" (as amended and effective January 1, 2008) (hereinafter "JPA") entitled "Powers and Functions" provides that none of the debts, liabilities or obligations of NCPA shall be the debts, liabilities or obligations of any of the members of NCPA unless assumed in a particular case by resolution of the governing body of the member to be charged." Notwithstanding the foregoing, Article V, Section 1 of the JPA entitled "General Provisions" provides that "[t]he governing Commission of NCPA is authorized to procure public liability and other insurance as it deems advisable to protect NCPA and each of the parties hereto, charging the cost thereof to the operating costs of NCPA."

1.4 Contracting Members desire to secure Services under this Agreement in a manner that balances their interests and the interests of other NCPA Members with the ongoing financial viability and professional responsibilities of NCPA. Accordingly, Contracting Members desire to secure Services under this Agreement by accepting a limited insurance based recourse against NCPA, with the option of procuring additional insurance at Contracting Members' sole expense, thereby insuring that NCPA will substantially limit its risk for the provision of such Services which, in turn, allocates risks back to the Contracting Members in the event NCPA is not adequately insured.

1.5 Contracting Members operate as Metered Subsystems located within the CAISO Balancing Authority Area, and are parties to the Third Amended and Restated NCPA MSS Aggregator Agreement, as it may be amended from time to time; therefore Contracting Members have obligations to comply with certain provisions of the CAISO tariff applicable to metering equipment, including but not limited to, maintenance, outages, testing, and certification.

1.6 NCPA will provide Services to Contracting Members under this Agreement by acquiring services from Trimark Associates, Inc. ("Contractor") pursuant to the General Services Agreement Between the Northern California Power Agency and Trimark Associates, Inc. dated as of _____, 20__ ("Service Agreement").

1.7 Contracting Members desire to secure NCPA's Services under this Agreement to manage the maintenance, repair, testing, certification, installation, replacement, and removal of the metering equipment listed in Exhibit C of the Service Agreement, which is owned or operated by Contracting Members.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth, NCPA and Contracting Members agree as follows:

Section 2. DEFINITIONS

Whenever used in this Agreement with initial capitalization, these terms shall have the following meanings as applicable, whether in the singular or plural:

2.1 "All Resources Bill" shall mean the single, combined monthly bill from NCPA to a NCPA member, with respect to all NCPA programs and projects.

2.2 "Annual Budget" shall mean the budget for the ensuing Fiscal Year adopted by the Commission, as may be amended from time to time.

2.3 "Balancing Authority" shall mean the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

2.4 "Balancing Authority Area" shall mean the geographic territory over which a Balancing Authority exercises jurisdiction.

2.5 "CAISO" shall mean California Independent System Operator, a non-profit benefit corporation acting as a Balancing Authority and responsible for the provision of fair and open transmission access, and maintaining reliable and efficient operation of the grid, within portions of the State of California, or its successor Balancing Authority.

2.6 "Commission" shall mean the NCPA Commission.

2.7 "Contractor" shall mean Trimark Associates, Inc., the counterparty to NCPA on the Service Agreement.

2.8 "Fiscal Year" shall mean the NCPA fiscal year, a twelve month period beginning July 1 and ending on the next following June 30.

2.9 "Good Utility Practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the electric utility industry.

2.10 "Metered Subsystem" or "MSS" shall mean a geographically contiguous electrical system, recognized by CAISO as a MSS, which operates as a publicly owned utility, state agency or federal power marketing authority within the Balancing Authority Area in which all electrical flows into or out of the MSS are measured by CAISO certified revenue quality meters at each interface point with the CAISO controlled grid, and all generating units or resources, including proxy demand resources internal to the MSS, measured by CAISO certified revenue quality meters, and which is operated in accordance with a CAISO approved MSS agreement.

2.11 "NCPA Member" or "Member" shall mean a signatory to the JPA or those agencies which have executed an Associate Member Agreement with NCPA.

2.12 "Scheduling Coordinator" shall mean an entity certified by the CAISO to transact in the CAISO market.

2.13 "Service Agreement" shall mean the General Services Agreement Between Northern California Power Agency and Trimark Associates, Inc., dated _____, 20__, for the provision of metering equipment maintenance.

2.14 "Uncontrollable Force" shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities or any other cause beyond the reasonable control of the Party claiming Uncontrollable Force which could not be avoided through the exercise of Good Utility Practice.

Section 3. SERVICES TO BE PROVIDED; AUTHORIZED REPRESENTATIVES; STANDARD OF PERFORMANCE

3.1 Services. This Agreement is entered into by the Parties in order for NCPA to provide services to Contracting Members as described in the Scope of Services, Exhibit A attached hereto and incorporated herein. ("Services").

3.2 Authorized Representatives. The Authorized Representatives of the Parties for contract administration purposes under this Agreement are listed in Section 12.8.

No Authorized Representative is authorized to amend any provision of this Agreement except in accordance with Section 12.16.

3.3 Standard of Performance. NCPA will perform and or oversee, as applicable, the Services using that level of skill and attention reasonably required to complete the Services in a competent and timely manner.

3.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement.

3.5 Time. NCPA shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 3.3 above, and to satisfy NCPA's obligations hereunder.

3.6 Service Agreement. Contracting Members acknowledge that NCPA will provide all Services through the Service Agreement, rather than using NCPA employees, and that NCPA's direct Services are limited to the administration of the Service Agreement on behalf of the Contracting Members.

3.7 Operational Contact. Each Party shall identify a representative to act as its Operational Contact. Each Operational Contact will be the first point of contact for the Parties regarding coordination of Services provided under this Agreement and the Service Agreement. Each Operational Contact is listed in Exhibit B of this Agreement.

Section 4. TERM AND TERMINATION

4.1 Authorization to Perform Services. NCPA is not authorized to perform any initial Services or incur any costs whatsoever under the terms of this Agreement until its receipt of a written resolution and/or other appropriate/applicable authorization from each Contracting Member's governing body confirming Contracting Member's authority to enter into this Agreement and confirming that the Contracting Member has allocated funds for and approved contract payments to NCPA under this Agreement.

4.2 Term. The term of this Agreement is intended to be consistent with that of the Service Agreement. The term of this Agreement shall begin on the Effective Date and shall end upon the termination date of the Service Agreement, as such Service Agreement termination date may be extended or shortened pursuant to that Agreement.

Section 5. INDEMNITY AND INSURANCE

5.1 Limitation of NCPA's Liability.

5.1.1 Except as provided in this Section 5.1, NCPA shall not at any time be liable for any injury or damage occurring to a Contracting Member or any other person or property from any cause whatsoever arising out of this Agreement, including the actions or inaction of Contractor.

5.1.2 The provisions of Section 5.1.1 shall not apply where the injury or damage occurring to a Contracting Member is caused by the negligence of NCPA or of any employee, agent or contractor of NCPA, other than Contractor, and provided that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the NCPA insurance policies described in this Section 5.

5.1.3 Notwithstanding Section 5.1.2 above, the Contracting Members agrees to reimburse NCPA, in a timely manner, for all deductibles and/or self-insured retentions payable for any claim, liability or damage arising out of this Agreement.

5.2 Indemnification of NCPA. Except as specified in Section 5.1.2 above, Contracting Members shall, at their sole cost and expense, indemnify and hold harmless NCPA and all associated, affiliated, allied, member and subsidiary entities of NCPA, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement.

5.3 Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Contracting Members shall, upon reasonable prior written notice from any of the Indemnitees, at Contracting Members' sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Contracting Members, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor Contracting Members shall admit liability in any such matter or on behalf of the other without express written consent, which consent shall not be unreasonably withheld or delayed, nor enter into any compromise or settlement of any claim for which Indemnitees are indemnified hereunder without prior express written consent. The Contracting Members' duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

5.4 Notice. The Parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 5.

5.5 Insurance. During the term of the Agreement and prior to beginning any work under this Agreement, NCPA shall maintain, or cause to be maintained, in full force and effect, and at its sole cost and expense, the types and limits of liability insurance as are annually approved by the Commission. The types and limits of liability insurance that are applicable to this Agreement are evidenced in policy summaries, which are attached hereto as Exhibit C and incorporated herein. NCPA warrants and represents that the types of liability insurance and coverage limits shown in Exhibit C are in full force and effect and shall remain so during the term of this Agreement unless NCPA gives prior written notification (of not less than 30 days) of modification, cancellation or rescission of such coverage.

5.6 Contracting Member's Acknowledgment of Option to Secure Additional Insurance. Each Contracting Member acknowledges that there are limitations on NCPA's liability to Contracting Member under this Section 5 and that each Contracting Member may need to purchase additional insurance of its own to cover the additional risks and the potential additional liabilities it is assuming under this Agreement. Each Contracting Member agrees that it will cause, with respect to any additional insurance it obtains or which is otherwise available to Contracting Member, its insurer(s) to issue an endorsement providing a waiver of subrogation rights as to Indemnitees.

5.7 Survival of Obligations. The defense and indemnity obligations of Section 5 shall survive the termination of this Agreement.

5.8 Contractor Insurance and Liability. The Service Agreement obligates the Contractor to maintain certain insurance. Nothing in this Section 5 shall limit the right of a Contracting Member to recover damages from the Contractor, whether or not covered by such insurance; provided, however, the Contracting Member shall defend, indemnify and hold NCPA harmless against any subrogation or other claims by Contractor against NCPA pursuant to Sections 5.2 and 5.3.

Section 6. COMPENSATION AND CHARGES

6.1 Compensation and Charges. Each Contracting Member hereby agrees to reimburse NCPA for all costs NCPA incurs for providing Services to Contracting Member. Charges for the Services provided hereunder shall be the sum of (a), (b) and (c) below:

- (a) Annual Service Fees. Charges for Services provided hereunder include a fixed annual fee listed in Exhibit B of the Service Agreement. Each Contracting Member's allocated share of the annual fee for Services provided hereunder is equal to the sum of the annual cost per site listed in Exhibit C of the Service Agreement, as adjusted for each annual period, for the Equipment owned by the Contracting Member.
- (b) Hourly Service Fees. Certain Services provided hereunder are performed on a time and materials basis, and charges for such Services are based on the hourly rate schedule listed in Exhibit B of the Service Agreement. Service fees for activities that are performed on a time and materials basis will be charged to each Contracting Member based on actual Services provided.
- (c) Management Costs. NCPA management costs set forth in NCPA's then current Annual Budget (including amounts necessary to reimburse NCPA for the time expended by its employees and agents in administering this Agreement, including all attorneys fees), and other reimbursable expenses incurred in performing the Services. The Annual Budget will be updated and approved by the Commission, as it deems necessary, but not less than each year in connection with NCPA's Annual Budget process. Such approved updates will reflect NCPA's then current estimated annual cost for performing such continued Services.

Contracting Member shall pay NCPA for Services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified herein shall be the only payments from Contracting Member to NCPA for Services rendered pursuant to this Agreement. NCPA shall submit all invoices to Contracting Member in the manner specified herein.

The Parties acknowledge and agree that compensation paid by Contracting Members to NCPA under this Agreement is based upon NCPA's estimated costs of providing the Services required hereunder, including salaries and benefits of employees and the costs of Contractor under the Service Agreement, and that the compensation to be paid shall be adjusted by NCPA so as to fully recover its costs of the Services.

6.2 The Parties agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which NCPA and its employees, agents, and subcontractors may be eligible. Contracting Members therefore have no responsibility for such contributions beyond compensation required under this Agreement.

Section 7. BILLING AND PAYMENT

7.1 Invoices. NCPA shall submit invoices to each Contracting Member in the form of the All Resources Bill, based on the cost for Services performed and reimbursable costs incurred prior to the invoice date. Invoices shall be accompanied with adequate and proper supporting information and documentation for the Services performed, if and as applicable.

7.2 Monthly Payment. Contracting Members shall make payments, based on invoices received, for Services performed, and for authorized reimbursable costs incurred as specified herein.

Payments shall be remitted directly to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Receivable

Except for an "Uncontrollable Force" as described in Section 9 hereof, any amount due and payable but not paid by a Contracting Member by no later than the invoice due date set forth on the invoice shall bear interest at the per annum prime rate (or reference rate) of the Bank of America NT & SA, then in effect, plus two percent per annum computed on a daily basis until paid. NCPA will mail all invoices within 24 hours of the invoice date thereon.

The postmark date on the envelope containing payment by check shall be used to determine timeliness of payment, except that payments received later than seven (7) days after the due date shall be declared late without regard to postmark date. An invoice coming due on a Friday, holiday, or weekend shall be due on the next following nationally recognized working day.

7.3 Billing Dispute. If all or any portion of a bill is disputed by a Contracting Member, the entire amount of the bill shall be paid when due, and NCPA's Authorized Representative shall

be concurrently provided written notice of the disputed amount and the basis for the dispute. NCPA shall reimburse any amount determined to have been incorrectly billed, within ten (10) days after such determination.

7.4 Total Payment. Each Contracting Member shall pay for the Services to be rendered by NCPA pursuant to this Agreement. Contracting Member shall not pay any additional sum for any expense or cost whatsoever incurred by NCPA in rendering Services pursuant to this Agreement other than the payments provided for herein unless the Agreement has been modified by a properly executed amendment in accordance with Section 12.16 this Agreement.

7.5 Reimbursable Expenses. Reimbursable expenses not contained in the Agreement or the Exhibits of the Agreement are not chargeable to Contracting Members.

7.6 Payment of Taxes. NCPA is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

7.7 Payment upon Termination. Upon termination, Contracting Members shall compensate NCPA for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of termination. NCPA shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

Section 8. STATUS OF NCPA

8.1 Independent Contractor. At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of Contracting Members. Contracting Members shall have the right to control NCPA only insofar as the results of NCPA's Services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 3.4; however, otherwise Contracting Members shall not have the right to control the means by which NCPA accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other agency, state, local or federal policy, rule, regulation, law, or ordinance to the contrary, NCPA and any of its employees, agents, and subcontractors providing Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Contracting Members, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Contracting Members and entitlement to any contribution to be paid by Contracting Members for employer contributions and/or employee contributions for PERS benefits.

Section 9. UNCONTROLLABLE FORCES

9.1 Obligations of the Parties, other than those to pay money when due, shall be excused for so long as and to the extent that failure to perform such obligations is due to an Uncontrollable Force; provided, however, that if either Party is unable to perform due to an Uncontrollable Force, such Party shall exercise due diligence to remove such inability with reasonable dispatch. Nothing contained in this Agreement shall be construed as requiring a Party to settle any strike, lockout, or labor dispute in which it may be involved, or to accept any permit, certificate, contract, or any other service agreement or authorization necessary for the performance

of this Agreement which contains terms and conditions which a Party determines in its good faith judgment are unduly burdensome or otherwise unacceptable.

9.2 Each Party shall notify the other promptly, by telephone to the other Party's Operational Contact identified in Exhibit B, attached hereto and incorporated herein and Authorized Representative identified in Section 3.2, upon becoming aware of any Uncontrollable Force which may adversely affect the performance under this Agreement. A Party shall additionally provide written notice in accordance with Section 12.8 to the other Party within 24 hours after providing notice by telephone. Each Party shall notify the other promptly, when an Uncontrollable Force has been remedied or no longer exists.

Section 10. LEGAL REQUIREMENTS

10.1 Governing Law. The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine.

10.2 Compliance with Applicable Laws. NCPA and Contractor shall comply with all laws applicable to the performance of the Services hereunder.

10.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, NCPA and Contractor shall comply with all applicable rules and regulations to which Contracting Members are bound by the terms of such fiscal assistance program, provided that the affected Contracting Members shall have provided notice of such rules and regulations to NCPA prior to the approval of this Agreement.

10.4 Licenses and Permits. NCPA represents and warrants to Contracting Members that NCPA and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. NCPA represents and warrants to Contracting Members that NCPA and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

10.5 Nondiscrimination and Equal Opportunity. NCPA 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 NCPA under this Agreement. NCPA shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of NCPA thereby.

Section 11. KEEPING AND STATUS OF RECORDS

11.1 Records Created as Part of NCPA's Performance. All reports, data, maps, models,

charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that NCPA prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the affected Contracting Members. NCPA hereby agrees to deliver those documents to Contracting Members upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Contracting Members and are not necessarily suitable for any future or other use. The Parties agree that, until final approval by Contracting Members, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both affected Parties, except as may otherwise be required by applicable law.

11.2 NCPA's Books and Records. NCPA shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services or expenditures and disbursements charged to a Contracting Member 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 NCPA pursuant to this Agreement.

11.3 Inspection and Audit of Records. Any records or documents that Section 11.1 of this Agreement requires NCPA to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Contracting Members. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Contracting Members or as part of any audit of the Contracting Members, for a period of three (3) years after final payment under the Agreement.

11.4 Confidential Information and Disclosure. During the term of this Agreement, either Party ("Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other Party ("Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of Disclosing Party at the time of disclosure to Receiving Party. Receiving Party shall hold 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. Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by Disclosing Party. Receiving Party shall not disclose Disclosing Party's Information to any person other than Receiving Party's employees, agents, contractors and subcontractors who have a need to know in connection with this Agreement.

Receiving Party's confidentiality obligations hereunder shall not apply to any portion of Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of Receiving Party;
- (b) Has been made known to Receiving Party by a third party in accordance with such

third party's legal rights without any restriction on disclosure;

(c) Was in the possession of Receiving Party prior to the disclosure of such Information by Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;

(d) Receiving Party is required by law to disclose; or

(e) Has been independently developed by Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

Receiving Party shall return or destroy Disclosing Party's Information (including all copies thereof) to Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. The parties understand that each party is a public entity and is subject to the laws that may compel either to disclose information about the other's business.

Section 12. MISCELLANEOUS PROVISIONS

12.1 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions 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.

12.2 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.

12.3 Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable by federal or state statute or regulation, but the remaining portions of the Agreement can be enforced without failure of material consideration to any Party, then the remaining provisions shall continue in full force and effect. To that end, this Agreement is declared to be severable. Provided, however, that in the event any provision is declared to be invalid, void or unenforceable, either Party may terminate this Agreement upon ten (10) days written notice given within five (5) days of receipt of notice of final entry of judgment.

12.4 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.

12.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

12.6 Use of Recycled Products. NCPA shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

12.7 Conflict of Interest. NCPA shall not employ any Contracting Member official or employee in the work performed pursuant to this Agreement. No officer or employee of Contracting Members shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

12.8 Notices. Unless this Agreement requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered in person, or sent by registered or certified first class mail, to the persons specified below:

Northern California Power Agency

Donna Stevener
Assistant General Manager; Administrative Services
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Michael F. Dean
General Counsel
Northern California Power Agency
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

Alameda Municipal Power

Glenn Steiger
General Manager
Alameda Municipal Power
2000 Grand Street
PO Box H
Alameda, CA 94501

City of Biggs

Mark Sorensen
Utility Director
City of Biggs
465 "C" Street
PO Box 307
Biggs, CA 95917

City of Gridley

Rob Hickey
Utility Director
City of Gridley
685 Kentucky Street
Gridley, CA 95948

City of Healdsburg

Terry Crowley
Utility Director
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

City of Lodi

Elizabeth Kirkley
Utility Director
City of Lodi
1331 Ham Lane
Lodi, CA 95242

City of Lompoc

Larry Bean
Utility Director
City of Lompoc
100 Civic Center Plaza
PO Box 8001
Lompoc, CA 93436

City of Palo Alto

Valerie Fong
Utility Director
City of Palo Alto
250 Hamilton Avenue
PO Box 10250
Palo Alto, CA 94301

Plumas Sierra Rural Electric Cooperative

Bob Marshall
Utility Director
Plumas Sierra Rural Electric Cooperative
732233 Highway 70
Portola, CA 96122

Port of Oakland

Jill Bornor-Brown
Utility Director
Port of Oakland
530 Water Street
PO Box 2064
Oakland, CA 94604

City of Ukiah

Mel Grandi
Utility Director
City of Ukiah
300 Seminary Avenue
Ukiah, CA 95482

Whenever it is required, permitted, or desired in this Agreement that written notice or demand be given by any Party to any other Party, such notice or demand may be either personally served or sent by United States Mail, or facsimile. Notice shall be deemed to have been given when personally served, when deposited in the United States Mail, certified or registered with postage prepaid and properly addressed, or when transmitted by facsimile provided however, notices delivered by facsimile shall only be effective if delivered during regular business hours on a day that is considered a regular business day for NCPA by the involved Parties.

12.9 Integration; Incorporation. This Agreement, including all the Exhibits attached hereto, represents the entire and integrated agreement between Contracting Members and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral.

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

12.10.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute;

12.10.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

12.10.3 If the issue remains unresolved after ONE HUNDRED AND TWENTY (120) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

12.10.4 This informal 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.*

12.11 Other Agreements. This Agreement is not intended to modify or change any other agreement between any of the Parties, individually or collectively.

12.12 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.

12.13 Obligations Several. The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

12.14 Effect of Section Headings. Section headings and subheadings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretation of text.

12.15 Authority of Signatories. The signatories hereby represent that they have been appropriately authorized to execute this Agreement on behalf of the Party for whom they sign.

12.16 Amendments.

12.16.1 Deemed Approved Amendments. It is understood and agreed by the Parties that any NCPA Commission approved update to the then current NCPA Annual Budget rates and charges related to Services to be performed under this Agreement is deemed an approved amendment to this Agreement.

12.16.2 Addition or Removal of Equipment. The Parties may, only by a writing signed by the Authorized Representative of NCPA, the Authorized Representative of affected Contracting Member and Contractor, add or remove metering equipment listed in Exhibit C of the Service Agreement that is owned or operated by a Contracting Member, and such changes to Exhibit C of the Service Agreement shall not constitute an amendment to this Agreement.

12.16.3 Authorized Representatives, Addresses for Notice and Operational Contacts. Any Party may, by providing written notice to the other Parties, modify either the identity or address for its Authorized Representative as identified in Section 3.2, may amend its address for notice as provided in Section 12.8, or modify the identity or contact information for its Operational Contact as identified in Exhibit B.

12.16.4 Amendments in General. Except as otherwise provided in this Section 12.16, the Parties may amend this Agreement only by a writing signed by all the Parties following each Party's receipt of written resolution/authorization from their governing bodies, which resolutions/authorizations shall be condition precedents to any amendments of this Agreement and shall be attached as Exhibits to this Agreement.

The Parties have executed this Agreement as of the Effective Date.

Northern California Power Agency

City of Alameda

JAMES H. POPE, General Manager

Attest:

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Approved as to Form:

General Counsel

City of Biggs

City of Gridley

Attest:

Attest:

Approved as to Form:

Approved as to Form:

City of Healdsburg

Attest:

Approved as to Form:

City of Lodi

Attest:

Approved as to Form:

City of Lompoc

Attest:

Approved as to Form:

City of Palo Alto

Attest:

Approved as to Form:

Plumas Sierra Rural Electric Cooperative

City of Oakland (Acting through its Board of Commissioners)

Attest:

Attest:

Approved as to Form:

Approved as to Form:

City of Ukiah

Attest:

Approved as to Form:

EXHIBIT A

SCOPE OF SERVICES

In accordance with the terms of this Agreement NCPA will manage, on behalf of Contracting Members, the acquisition of Services (or "Work" as referred to in the Service Agreement) from Contractor as provided below. Pursuant to the Service Agreement, Contractor will provide the Services listed in Exhibit A herein, in coordination with NCPA. It is intended that this Scope of Services be consistent with, and not more broad than, the Scope of Work set forth in the Service Agreement.

The Scope of Work provided in accordance with this Agreement and the Service Agreement are described below, and have been made for the purpose of monitoring, maintaining and repairing Supervisory Control and Data Acquisition systems ("SCADA"), metering equipment (including CAISO revenue quality metering equipment), and any communications or interface devices provided by Contractor (all of which are referred to herein as "Equipment") located at or installed on the premises of the Contracting Members' sites ("Project Sites") listed in Exhibit C of the Service Agreement.

Pursuant to this Agreement and the Service Agreement, Contractor agrees to perform the following Services:

1. Support for failures of Equipment:
 - a. Provide remote network or dial-in support service to troubleshoot and make repairs of the Equipment located at each Project Site for any reported failures within: (i) four (4) hours from the time support is requested during business hours, or (ii) within 24 hours from the time support is requested during any hours that are not business hours;
 - b. Provide support service at each Project Site (if necessary) within one (1) business day following a reported failure related to the Equipment; and
 - c. Provide one (1) annual emergency visit for each Project Site (if necessary) to repair or replace failed Equipment, including travel and other expenses as incurred by Contractor.

For the purpose of this Exhibit A, "business hours" are defined as 8:00 a.m. through 5:00 p.m. (PT), Monday through Friday, not including Federal Reserve Bank holidays.

2. Equipment monitoring and maintenance:
 - a. Conduct one (1) annual maintenance inspection and assessment of the Equipment at each Project Site; such includes:
 - i. Clean the computer equipment, perform backups and updates;
 - ii. Replace the meter battery (on a two (2) year cycle) and conduct a meter registration test (annually);
 - iii. Inspect Equipment for any corrosion, deterioration or other pending circumstances that may lead to or make failure eminent; and

- iv. Maintain current configuration files and documentation on the Equipment, including databases and configuration detail for SCADA
- 3. Miscellaneous Work performed on a time and materials basis:
 - a. Upon request made by Agency to Contractor, Contractor may perform Work consistent with the general scope of work performed in accordance with the Service Agreement; the general descriptions of tasks and hourly fees for such Work are further described in Table B of Exhibit B of the Service Agreement.

EXHIBIT B

CONTRACTING MEMBERS' AND NCPA OPERATIONAL CONTACTS

The following is a list of each Party's Operational Contacts:

Northern California Power Agency

Steve Rawson
Computer Technology Analyst-SCADA
651 Commerce Drive
Roseville, CA 95678
Office Phone: 916-781-4285
Fax: 916-781-4226
Email: steve.rawson@ncpa.com

Alameda Municipal Power

Robert Mackey
Electric Equipment Superintendent
Office Phone: 510-748-3958
Email: MACKEY@alamedamp.com

City of Biggs

Gary Davidson
Electric Superintendent
Office Phone: 530-846-5954
Fax: 530-846-8310
Email: [gdavidson@gridley.ca.us](mailto:g davidson@gridley.ca.us)

City of Gridley

Rob Hickey
City Administrator
Office Phone: 530-846-5695
Fax: 530-846-3229
Email: rhipkey@gridley.ca.us

City of Healdsburg

Primary Contact
Todd Woolman
Electric Superintendent
Office Phone: 707-431-3341

Cell Phone: 707-480-6485
Email: twoolman@ci.healdsburg.ca.us

Secondary Contact
Terry Crowley
Electric Utility Director
Office Phone: 707-431-3340
Cell Phone: 707-490-8808
Email: tcrowley@ci.healdsburg.ca.us

After-Hours Contact
Healdsburg Police Department
707-431-3377

City of Lodi

Charles Berry
Electric Utility Superintendent
Office Phone: 209-333-6764
Email: cberry@lodi.gov

City of Lompoc

Marty Hostler, P.E.
Electric Utility Division Manger
Office Phone: 805-875-8296
Cell Phone: 805-315-7055
Fax: 805-875-8296
Email: m_hostler@ci.lompoc.ca.us

City of Palo Alto

Rick Baptist
Electrical Systems Supervisor, Substations / SCADA
Office Phone: 650-496-6902
Cell Phone: 650-444-5055
Email: Richard.Baptist@CityofPaloAlto.org

Plumas Sierra Rural Electric Cooperative

Primary Contact
Greg Lohn
Office Phone: 530-832-6026
Cell Phone: 530-251-7449
Email: glohn@psrec.coop

Secondary Contact

Jason Harston
Office Phone: 530-832-6035
Cell Phone: 530-249-4605
Email: jharston@psrec.coop

Port of Oakland

Valerie Zabb-Parmley
Office Phone: 510-563-3941
Cell Phone: 510-715-9905
Email: vzabbparmley@portoakland.com

City of Ukiah

Mel Grandi, P.E.
Electric Utility Director
Office Phone: 707-463-6295
Cell Phone: 209-747-0546
Fax: 707-463-6204
Email: mgrandi@cityofukiah.com

EXHIBIT C

NCPA SUMMARIES OF LIABILITY INSURANCE

See the attached Summaries of the following insurance coverage:

1. Workers' Compensation & Employer's Liability
2. Automobile Liability & Physical Damage
3. Excess Liability
4. Professional Liability

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