City of Biggs

Agenda Item Staff Report
For the Regular City Council Meeting:
August 9, 2016

TO: Honorable Mayor and Members of the City Council

FROM: City Administrator

SUBJECT: NCPA Support Services Program Agreement (SSPA)

Background: The City of Biggs is a member of NCPA, a joint action agency providing members with opportunities for joint generation, transmission, and other projects as well as supporting programs such as scheduling and dispatch services and legislative advocacy services to publicly owned utilities throughout Northern California. Under the attached SSPA, NCPA is improving the service offerings by NCPA to its members and providing additional economies of scale and savings through joint contracting among its members.

Approval of the SSPA with NCPA will allow Biggs to become a signatory to the SSPA and thereby have the benefit of utilizing various support services offered by NCPA. Examples of such support services include, but are not limited to: joint purchasing of utility equipment or services, various consulting services, employee training classes, and other assistance and services relating to the operation of a publicly owned electric utility as outlined in the SSPA. Services under the SSPA are voluntary and each member is able to select and pay for such support services as needed for its particular organization. Under the SSPA, designated representatives are responsible for committing to individual service offerings on behalf of the member organization and such designated representatives are delegated authority by their governing board or City Council.

The agreement has no expiration date and two years advance written notice of termination is required.

Fiscal Impact: There is no fiscal impact from approving the SSPA. Should Biggs decide in the future to access supplemental services, the fiscal impact would be determined. Any future participation or purchase of services would require budget authority from the City Council.

Recommendation: Approve the Support Services Program Agreement (SSPA) between the Northern California Power Agency (NCPA) and the City of Biggs and authorize the Mayor and City Administrator to sign. Further, appoint the City Administrator and City Attorney as the designated representatives under the SSPA and delegate authority to such designated representatives to execute confirmations as described in the SSPA for selected services desired by the City of Biggs for amounts not to exceed $125,000 per confirmation.

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Mark Sorensen, City Administrator

NORTHERN CALIFORNIA POWER AGENCY

SUPPORT SERVICES PROGRAM AGREEMENT

SUPPORT SERVICES PROGRAM AGREEMENT

PREAMBLE

This Support Services Program Agreement is entered into as of the ___ day of _____, 2016 ("the Effective Date") by and between the Northern California Power Agency, a joint powers agency of the State of California ("NCPA") and those members of NCPA who execute this Agreement (each a "Signatory Member" and together the "Signatory Members"). NCPA and each Signatory Member are referred to individually as a "Party" and together as the "Parties."

RECITALS

A. NCPA and its Members desire to establish a support services program by which NCPA may offer to provide certain support services to the Members from time to time. These support services may include, but are not limited to, joint purchasing, engineering services, transmission and distribution planning, power marketing and analysis, employee training, employment and human relations assistance, customer services and billing, metering and data management, power plant operations and other forms of assistance and professional services relating to the operation of a publicly owned electric utility, as related to either the generation, transmission or distribution of electricity or the wholesale or retail operation of such a utility, all within the scope of the NCPA Joint Powers Agreement ("Support Services").

B. Particular Support Services will from time to time be offered by NCPA to those Signatory Members who choose to accept and pay for such particular Support Services. Such offers will be without any liability on the part of Members of NCPA who are not Signatory Members nor any liability on the part of Signatory Members who do not choose to become a Participating Member with respect to the particular Support Services. A Signatory Member choosing to accept and pay for a particular Support Service will become a "Participating Member" with respect to that Support Service. A Signatory Member is not required to accept any particular Support Services by reason of being a Signatory Member.

C. Support Services shall be broadly construed. Provided, however:

(1) Support Services does not include the procurement of either energy (or the attributes of energy, such as renewable energy credits) which is provided through the Market Purchase Program Agreement, Single Member Services Agreements and the Pooling Agreement.

(2) Support Services does not include procurement of natural gas which is provided through the Natural Gas Program Agreement.

(3) Support Services does not include services provided by NCPA pursuant to third phase agreements relating to generation projects or other project agreements previously or subsequently entered into by NCPA and certain of its Members.

(4) Support Services does not include any on-going services which are to be provided by NCPA to its Members through program agreements. For example, Support Services does not include any legislative and regulatory services provided through the Legislative and Regulatory Affairs Program Agreement.

D. The Signatory Members desire that NCPA negotiate and enter into agreements with third parties to provide the Support Services for the benefit of Participating Members. This Agreement does not authorize NCPA to directly provide Support Services utilizing NCPA's own staff, except in limited circumstances. Such direct provision of Support Services may be provided to one or more Members through either a Single Member Service Agreement or a Professional Services/Operating Agreement as deemed appropriate by NCPA.

E. Each Support Service will be offered by NCPA to all the Signatory Members. Those Signatory Members wishing to accept the offer with respect to a particular Support Service will execute a written confirmation for that Support Service (a "Confirmation") and thereby become a Participating Member with respect to such Support Service. The Participating Members executing a particular Confirmation will pay NCPA the cost of providing the Support Services offered by such Confirmation as detailed in the Confirmation including the cost of developing the Confirmation; Signatory Members not executing a particular Confirmation will have no obligation with respect to the Support Services provided pursuant to that Confirmation.

F. Each Signatory Member, in executing this Agreement, will provide the identity of the Designated Representatives authorized to execute Confirmations on its behalf, and agrees that, subject to such not to exceed dollar limitations as are set forth in its signature page to this Agreement (as such limitations may be amended), any Confirmations executed by such Designated Representatives are binding upon the Signatory Member without further approval by the Signatory Member's Governing Board.

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

NOW, THEREFORE, the Parties agree as follows:

Section 1. Definitions and Interpretation.

1.1 Definitions. Whenever used in this Agreement (including in the preamble and recitals hereto), the following terms shall have the means ascribed to them in this section:

"Agreement" means this NCPA Support Services Program Agreement, including all exhibits or schedules attached hereto, as the same may be amended from time to time in accordance with the terms and conditions hereof.

"All Resources Bill" means the single, combined monthly invoice from NCPA to a Participating Member with respect to all NCPA programs and projects.

"Annual Budget" means the budget for the Fiscal Year adopted by the Commission, as it may be amended from time to time.

"Associate Member" means the Plumas-Sierra Rural Electric Cooperative, an associate member of NCPA.

"Business Day" means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m., Pacific Time.

"Commission" means the NCPA Commission.

"Confirmation" has the meaning set forth in the recitals hereto.

"Costs" means both (i) the cost billed to NCPA by a third party provider of Support Services, plus (ii) the direct or indirect costs incurred by NCPA in obtaining such Support Services from the third party provider, including development of the Confirmation, administration of any agreements with the third party provider and any over-head costs incurred. Overhead costs shall be determined by NCPA on a Confirmation –by- Confirmation basis. "Costs" shall also include any NCPA direct or indirect costs, including salary, incurred in those limited instances where NCPA directly provides the Support Services under a Confirmation.

"Constitutive Documents" means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder, and with respect to each Signatory Member, the California Government Code and other statutory provisions applicable to such Signatory Member and any applicable agreements, charters, contracts, or other documents concerning the formation, operation or decision making of such Signatory Member, including, if applicable, its City Charter, and any codes, ordinances, bylaws, and resolutions adopted by such Signatory Member's Governing Body.

"Defaulting Party" has the meaning set forth in Section 12.1.

"Designated Representatives" means, with respect to NCPA, both its General Manager, and its General Counsel, acting jointly, and with respect to each Signatory Member means both its Utility Director (or an employee or official other than the Utility Director designated by resolution of the Signatory Member's Governing Board) and its City Attorney or General Counsel, acting jointly.

"Effective Date" has the meaning set forth in the preamble hereof.

"Electric System" means, with respect to each Signatory Member except the San Francisco Bay Area Rapid Transit District ("BART"), all properties and assets, real and personal, tangible and intangible, of the Signatory Member now or hereafter existing, used or pertaining to the generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Signatory Member is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Signatory Member's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System. "Electric System" means, with respect to BART, all properties and assets, real and personal, tangible and intangible, of BART now or hereafter existing, used or pertaining to the operation or maintenance of its transportation system, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent BART is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only BART's ownership interest in such asset or property or only the part of the asset or property used for transportation system purposes shall be considered to be part of its Electric System.

"Event of Default" shall have the meaning provided in Section 12.1.

"Fiscal Year" means the NCPA fiscal year; currently the twelve month period beginning July 1 and ending on the next-following June 30.

"General Manager" means the General Manager of NCPA.

"Good Utility Practice" means 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.

"Governing Board" means with respect to NCPA its Commission, and with respect to each Signatory Member means its city council, board of directors, board of port commissioners, or other duly constituted legislative body having approval authority for contracting and purchasing under the terms of the Constitutive Documents of the Signatory Member.

"Joint Powers Agreement" or "JPA" means that certain Amended and Restated Northern California Power Agency Joint Power Agreement dated as of January 1, 2008, as the same may be amended from time to time.

"Member" means any member of NCPA or any Associate Member of NCPA.

"NCPA" has the meaning set forth in the preamble of this Agreement.

"NCPA Procurement Policies" means those policies for the procurement of goods and services adopted by the Commission, as the same may be amended from time to time.

"NERC" means the North American Electric Reliability Corporation, or its successor in interest as the national electric reliability organization designated by the Federal Energy Regulatory Commission.

"Participating Member" has the meaning set forth in the recitals of this Agreement.

"Party" or "Parties" has the meaning set forth in the preamble of this Agreement.

"Revenues" means, with respect to each Signatory Member with the exception of the San Francisco Bay Area Rapid Transit District ("BART"), all income, rents, rates, fees, charges, and other moneys derived by the Signatory Member from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System; and (c) the proceeds derived by the Signatory Member directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System, but the term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Signatory Member, or (ii) contributions from customers for the payment of costs of construction of facilities to serve them. In regard to BART, "Revenues" means all income, rents, rates, fees, charges, grants, fares or tariffs, subventions and other moneys derived by the BART from its operation including, without limiting the generality of the foregoing, (i) the earnings on and income derived from the investment of such income, rents, rates, fees, charges grants, fares or tariffs, subventions or other moneys, and (ii) the proceeds derived by the BART directly or indirectly from the sale,

lease or other disposition of all or a part of its assets, but the term Revenues shall not include any moneys derived from sources the use of which is limited by law to expenditures other than BART operating expenses.

"Security Account" means an account established by NCPA and funded by Participating Members in accordance with Section 7.2, the funds of which are available for use by NCPA with respect to a particular Confirmation in accordance with the terms and conditions herein and those of the particular Confirmation.

"Signatory Member" has the meaning set forth in the preamble hereto.

"Support Services" has the meaning set forth in the recitals of this Agreement .

"Uncontrollable Force" means 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.

"Utility Director" means, with respect to each Signatory Member with the exception of the San Francisco Bay Area Rapid Transit District ("BART"), the person having administrative charge of and responsibility for the operation and maintenance of the Electric System of a Signatory Member. In regards to BART, "Utility Director" means the person having administrative charge of and responsibility for the procurement of electrical energy for the operation of the BART transportation system.

1.2 Interpretation of Agreement. As used in this Agreement (including the preamble and recitals hereto), unless in any such case the context requires otherwise:

1.2.1 The terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," or "Exhibit" shall mean a Section, subsection, clause or Exhibit of this Agreement, as the case may be.

1.2.2 All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof.

1.2.3 A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, government, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns.

1.2.4 The singular shall include the plural and the masculine shall include the feminine, and vice versa.

1.2.5 All references to a "day" shall refer to a calendar day, unless specified as a Business Day.

Section 2. Effectiveness of Agreement; Signature Authority

2.1 Effective Date as to Signatory Member. Following the approval of this Agreement by the Commission, any Member may become a Signatory Member by providing an executed counterpart of this Agreement to NCPA. This Agreement shall become effective as to a given Signatory Member upon the later of the Effective Date and the date on which an executed copy of this Agreement is provided to NCPA. NCPA shall provide a copy of each executed signature page of a Signatory Member to all other Signatory Members.

2.2 Form of Signature Page; Amendment of Designated Representatives and Not to Exceed Dollar Authority. Each Signatory Member signature page shall be in the form attached hereto as Exhibit "A." Each signature page shall identify the initial Designated Representatives of the Signatory Member and the monetary not to exceed authority for any individual Confirmations for that Signatory Member.

2.2.1 Any Signatory Member may amend its not to exceed authority at any time (either increasing or decreasing such authorities), by providing thirty (30) days written notice of such change to NCPA accompanied by a resolution of the Governing Board of the Signatory Member approving such change in the not to exceed authorities.

2..2.2 Signatory Members shall provide written notice to NCPA upon a change in the identity of either of its Designated Representatives.

Section 3. Support Services Procurement.

3.1 Offers to Procure Support Services. NCPA may, from time to time in its sole discretion, offer to procure one or more Support Services for the Signatory Members. Signatory Members desiring to accept such offer with respect to a particular Support Service shall execute a Confirmation prepared by NCPA for that Support Service and thereby become a Participating Member with respect to such Confirmation and Support Service. Confirmations shall be in substantially the form attached hereto as Exhibit "B," and as provided in Section 5. Each such Confirmation shall indicate that the particular Support Service will be accomplished by NCPA contracting with a named third party to provide the Support Service, which contract shall thereafter be entered into by NCPA in accordance with the NCPA Procurement Policies. NCPA's Designated Representatives shall have the authority to execute Confirmations without the further approval of the Commission where the underlying contract with a third party is within the contracting authority of the General Manager as established by the NCPA Procurement Policies. Provided, however, that NCPA may in its sole discretion choose to self-

provide the Support Services, rather than contracting with a third party, where it is providing training, human resources assistance, assistance with NERC or other regulatory compliance, or assistance in the form of student interns to the Signatory Members.

3.2 NCPA Procurement of Support Services. NCPA agrees, upon receipt of a Confirmation executed by the Designated Representatives of one (1) or more Participating Members, to procure the Support Service specified in such Confirmation on behalf of the Participating Member(s). Provided, however, that NCPA may in its discretion decline to provide Support Services unless the number of Participating Members and the extent of participation is acceptable to NCPA.

3.3 NCPA Payment of Costs. NCPA shall pay all Costs incurred in providing Support Services under a particular Confirmation using funds: (a) received from Participating Members during the normal course of monthly billing of Members, with the Costs of each Confirmation itemized on the NCPA All Resources Bill; or (b) as necessary from Security Account funds for that Confirmation, if any, paid to NCPA in accordance with Section 7.2; or (c) such other sources and methods as may be agreed upon in writing by the Parties from time to time or as specified in a particular Confirmation.

Section 4. No Purchase of Energy or Natural Gas; Other Exclusions. Support Services do not include the purchase of natural gas, energy, or any attributes of energy including capacity, reliability or environmental attributes (such as credits, benefits, emissions reductions, offsets, and allowances, however titled). This Agreement and associated Confirmations shall not be utilized for the procurement of natural gas, energy, or any attributes of energy. NCPA shall continue to buy and sell natural gas and energy, or its attributes, on behalf of its Members through other existing agreements, including the Gas Purchase Program Agreement, the Market Purchase Program Agreement, Single Member Service Agreements and the Pooling Agreement. Support Services do not include those items referred to in Recital C.

Section 5. Format of Confirmations; Dollar Not to Exceed Limitations; Amendments.

5.1 Format of Confirmations. Confirmations shall generally be in substantially the form provided by Exhibit "B. Confirmations shall define the scope of the particular Support Service to be provided, the means by which NCPA will procure such Support Service, and any other terms on which such Support Services shall be provided, to the extent such terms are not defined by this Agreement.

5.1. The Confirmation shall identify the third party who will provide the Support Services and incorporate by reference the agreement between the third party and NCPA.

5.1.2 Confirmations shall not amend the terms of this Agreement. In the event NCPA and the Participating Members desire to include a provision in a Confirmation inconsistent with this Agreement, such Confirmation shall be effective only if approved by the Governing Boards of all Participating Members and the Commission.

5.2 Dollar Not to Exceed Limitations of Confirmations. Each Confirmation shall include a "not to exceed" amount or dollar limitation, broken down by Participating Member, indicating the maximum amount that each Participating Member shall be required to pay for the Support Services provided under the Confirmation. The "not to exceed" shall not relieve a Participating Member of its obligations under this Agreement, including Sections 7 and 11 hereof.

5.2.1 Except as provided in sections 7.4 (relating to use of Security Accounts) and 7.5 (relating to emergency additions to Security Accounts), no Participating Member shall be required to pay for Costs incurred in excess of its stated limitation on a given Confirmation, unless agreed to by the Participating Members.

5.2.2 Any Participating Member may amend its "not to exceed" amount or dollar limitation for a given Confirmation by providing written notice of the change to NCPA executed by its Designated Representatives.

5.3 Amendment of Confirmations. A Confirmation may be amended with respect to all Participating Members only in writing executed by the signatures of the Designated Representatives of NCPA and the Participating Members. Amendments relating to the "not to exceed" amount or dollar limitation of one or more Participating Members shall be accomplished as provided in subsection 5.2.2.

Section 6. Participating Member Authority to Execute Confirmations. Each Participating Member acknowledges and agrees to be bound by their respective Designated Representatives' execution of Confirmations without further approval by the Governing Board of the Participating Member or other approvals, and agrees that such execution is in accordance with its Constitutive Documents.

Section 7. Payment Obligations; Confirmation Security Account; Invoicing.

7.1 Payment Obligations. Each Signatory Member agrees to pay NCPA each month its share of Costs specific to each Confirmation for which the Signatory Member is a Participating Member.

Such amounts shall be included by NCPA on the monthly All Resources Bill for each Signatory Member, except to the extent that a given Confirmation provides for a different invoicing mechanism and NCPA agrees thereto.

7.2 Confirmation Security Accounts.

7.2.1 Upon issuance of any Confirmation, NCPA shall determine whether or not a Participating Member deposit to a Security Account for that Confirmation will be required in order to provide the Support Service in question. If so, the amount of the required Security Account deposit shall be

noted on the Confirmation and the Participating Member or Members shall make the required deposits prior to provision of any Support Services pursuant to that Confirmation. Within ten days of NCPA's notice of the amount of the Security Account deposit, the affected Participating Member shall have the option of withdrawing its Confirmation and not receiving the Support Service requested therein.

7.2.2 Periodically, and at least quarterly, NCPA shall review and revise its determination of the security necessary for a particular Confirmation and whether each Participating Member has a sufficient balance in the Security Account for that Confirmation.

To the extent that any Participating Member's balance in the Security Account for the Confirmation is greater than one hundred and ten percent (110%) of the amount required, NCPA shall credit the difference between the balance and the amount required as soon as practicable to the Participating Member's next following All Resource Bill. To the extent that any Participating Member's balance in the Security Account for the Confirmation is less than ninety percent (90%) of the amount required, NCPA shall add the difference between the balance and the ninety percent (90%) as soon as practicable to the Participating Member's next following All Resource Bill, or as necessary, to a special invoice to the Participating Member.

7.3 Security Account in Addition to Other Security Accounts. Any required deposits into a Security Account for a Confirmation pursuant to this Agreement shall be separate from, and in addition to, any security accounts maintained pursuant to other agreements between NCPA and its Members, including but not limited to the Market Purchase Program Agreement, Single Member Services Agreement and the Gas Purchase Program Agreement. Each Security Account for a Confirmation shall be separate from, and in addition to, any Security Account for a different Confirmation.

7.4 Use of Security Account Funds. Security Account funds shall be segregated by Confirmation. NCPA may use any and all funds deposited into the Security Account for a particular Confirmation to pay any Costs it incurs in providing Support Services pursuant to that Confirmation, including making payments to counterparties under any agreement, or for termination payments, requests for assurances by third parties, credit support, payment of claims and related expenses under a Confirmation. Such use shall be without regard to any individual Participating Member's balance in the Security Account or its proportionate share of Confirmation Costs and irrespective of whether NCPA has issued an All Resources Bill or invoice for such Costs to the Participating Members or whether a Participating Member has made timely payments of All Resources Bills or invoices.

If funds deposited into the Security Account are used by NCPA to pay any Costs it incurs with respect to a particular Confirmation, NCPA will maintain a detailed accounting of each Participating Member's shares of funds withdrawn from the Security Account or letter of credit, and upon the collection of all or a part of such withdrawn funds from the applicable Participating Member or Members, NCPA will credit back to each Participating Member the

funds collected in proportion to such non-defaulting Participating Member's share of funds withdrawn from the Security Account.

Funds deposited into a Security Account for a particular Confirmation shall not be used to pay the Costs incurred pursuant to a different Confirmation, nor shall any funds in other security accounts maintained by NCPA and not established pursuant to this Agreement be used.

7.5. Emergency Additions. In the event that the funds are withdrawn pursuant to Section 7.4 of this Agreement, or if the Security Account for a particular Confirmation is insufficient to allow payment of an invoice, demand, request for further assurances or claims by third parties with respect to a particular Confirmation, NCPA shall notify all Participating Members for that Confirmation and then prepare and send a special or emergency assessment to the Participating Members. Each Participating Member shall pay to NCPA such assessment when and if assessed by NCPA within ten (10) days of the invoice date of the assessment. NCPA shall maintain a detailed accounting of each Participating Member's deposits into and shares of withdrawals from the Security Account for the particular Confirmation.

7.6 Interest on Security Accounts. Monies on deposit in the Security Accounts created pursuant to this Agreement shall be invested by NCPA in accordance with the investment policy adopted by the NCPA Commission. Interest earned (or losses sustained) on the Security Accounts shall be proportionately credited to the Participating Members in accordance with each Participating Member's Security Account obligations.

7.7 Return of Funds in Security Accounts. Upon the completion of the provision of Support Services under a particular Confirmation, or upon a permitted withdrawal of a Participating Member from a Confirmation, NCPA shall return the share of affected Security Account funds within ninety (90) days. Provided, however, that NCPA shall, in its sole discretion, as determined by the General Manager, estimate the then outstanding liabilities of the Participating Members including any estimated contingent liabilities and shall retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full.

Section 8. Invoicing.

8.1 Invoices. As part of the All Resources Bill or by separate special invoice, as required in the circumstances, NCPA will issue an invoice to each Signatory Member for the fixed Support Services Program Agreement Costs as provided in Section 7.1 and its proportionate share of the Costs of any Confirmation as to which it is a Participating Member.

8.2 Payment of Invoices. All non-emergency invoices delivered by NCPA in the normal course of billing hereunder (including the All Resources Bill) are due and payable on the date indicated on such invoice, but in any event no later than thirty (30) days following receipt thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day. NCPA may apply a Participating Member's share of an applicable Security Account to the payment of all or any portion of an invoice issued to such Participating Member , provided that application of such funds from a Security Account relating

to a particular Confirmation shall not relieve the Participating Member from any late payment charges pursuant to Section 8.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by the relevant Participating Member, NCPA shall deposit the relevant portion of the payment into the Security Account and credit such deposit to such Participating Member. Emergency invoices shall be due as indicated in Section 7.5.

8.3 Late Payments. Any amount due and not timely paid by a Signatory Member shall bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%), or (ii) the maximum rate permitted by law.

Section 9. Settlement Data and Examination of Books and Records; Signatory Member Covenants.

9.1 Settlement Data. NCPA will make settlement data available to the Participating Members. Procedures and formats for the provision of such data will be as established by the NCPA Commission from time to time.

9.2 Records.

9.2.1 NCPA Books and Records. NCPA shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks and other records or documents evidencing or relating to charges for the Support Services or expenditures or disbursements to the Signatory Members for a minimum of three (3) years, or for any longer period required by law, from the date of their payment.

9.2.2 Examination of Books and Records. Any Signatory Member shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement, including but not limited to (a) those required to be kept by Section 9.2.1 and (b) those required by NCPA to be kept by any third party provider of Support Services, at any reasonable, mutually agreed upon time.

9.2.3 Ownership of Records. Except as otherwise provided in a particular Confirmation, all reports, 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 for a Participating Member pursuant to a Confirmation and that relate to the matters covered hereunder shall be the property of the Participating Member. NCPA hereby agrees to deliver those documents to the Participating Member upon termination of the Confirmation to which they refer. 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 Participating Member and are not necessarily suitable for any future or other use. Participating Member and NCPA agree that, until final approval by Participating Member, all data, plans, specifications, reports and other documents are confidential and will not be released to third

parties without prior written consent of the parties to a Confirmation, except as may otherwise be required by applicable law.

9.3 Signatory Member Covenants. Each Signatory Member covenants and agrees: (i) to continue to pay or advance to NCPA, from its Revenues all payments required under this Agreement; (ii) to make payments to NCPA under this Agreement where NCPA has incurred Costs or is obligated to pay a third party with respect to a Confirmation whether or not there is an interruption in, interference with, or reduction or suspension of Support Services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists provided such interruption, interference or reduction in Support Services is caused by forces constituting an Act of God and not reasonably contemplated by the Parties; and (iii) to operate its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and to maintain its Electric System in good repair, working order, and condition.

Section 10. Administration of Agreement.

10.1 General. The NCPA Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents.

10.2 Withdrawal of Signatory Member. A Signatory Member may voluntarily withdraw from this Agreement at any time by providing two (2) year's advance written notice to NCPA and the other Signatory Members. A withdrawing Signatory Member shall reimburse NCPA for any and all Costs resulting from the withdrawal including the legal, accounting and administrative costs of winding up and assuring the complete satisfaction and discharge of the withdrawing Signatory Member's obligations. A withdrawing Signatory Member will continue to be liable for any Costs or on-going obligations relating to a Confirmation as to which that withdrawing Signatory Member is a Participating Member, and withdrawal from any given Confirmation shall be permitted only in accordance with the terms of the particular Confirmation. A withdrawing Signatory Member shall not be liable for Costs under a Confirmation, subsequent to the effective date of the Signatory Member's withdrawal and if unrelated to Support Services provided under the Confirmation to that withdrawing Signatory Member.

10.3 Termination of Agreement by NCPA. NCPA may terminate this Agreement at any time upon six (6) month's written notice to the Signatory Members. Any such termination shall not affect any on-going obligations of NCPA relating to Confirmations then in effect, provided that no additional Confirmations shall be offered to the Signatory Members by NCPA after the six month notice of termination has been provided to them by NCPA.

10.4 Termination by Signatory Members. Upon the occurrence of an Event of Default where NCPA is the Defaulting Party, and following the applicable cure periods, one or more Signatory Members may, without limiting their other rights or remedies available under this

Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action the Signatory Members may have against NCPA, terminate this Agreement in whole, subject to the provisions of Section 12.6.4. Termination by one Signatory Member shall not affect the validity of the Agreement as to other Signatory Members.

Section 11. Insurance, Defense and Indemnity Obligations

11.1 Limitation of NCPA Liability. Except as otherwise provided in this Section 11, NCPA shall not at any time be liable for any injury or damage occurring to a Participating Member or any other person or property from any cause whatsoever arising out of this Agreement or any Confirmation entered into pursuant to this Agreement.

11.2 Limited Right of Recourse. The provisions of Section 11.1 shall not apply where the injury or damage is to a Participating Member and is caused by the active negligence of NCPA or of any employee, agent or contractor of NCPA, provided, however, that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the insurance policies described in this Section 11.

11.2.1 Reimbursement of NCPA Deductibles. Notwithstanding Section 11.2 above, the applicable Participating Member agrees to reimburse NCPA, in a timely manner, for all deductibles or and/or self-insured retentions payable by NCPA for any claim, liability, or damage arising out of this Agreement or any Confirmation entered into pursuant to this Agreement.

11.3 Indemnity Obligation of Participating Members. Except as provided in Section 11.2 above, each Participating Member as to the particular Confirmation involved shall, at its sole cost and expense, indemnify and hold harmless NCPA, and its Members, and their respective officers, agents and employees ("Indemnitees") from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including reasonable attorneys' fees), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement or any Confirmation entered into pursuant to this Agreement.

11.4 Defense Obligation of Participating Members. 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, the Participating Members as to the Confirmation involved shall, upon reasonable prior written notice from any of the Indemnitees, at Participating Member's sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Participating Member or Members, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor Participating Member 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 Participating

Member's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

11.5. Notice of Claims Required. The Parties shall give each other prompt written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 11.

11.6 NCPA Obligation to Maintain Insurance. During the term of the Agreement and prior to providing Support Services under any Confirmation issued pursuant to 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 insurance as are annually approved by the governing Commission of NCPA.

11.7 Participating Member Insurance. The Signatory Members acknowledge that there are significant limits on NCPA's liability under the this section 11 and that upon becoming a Participating Member as to one or more Confirmations, the Participating Member may wish to purchase additional insurance of its own to cover the additional risks and the potential additional liabilities it is assuming under this Agreement and Confirmations entered into pursuant to this Agreement. Each Participating Member will, with respect to any additional insurance it obtains or which is otherwise available to it, cause its insurers to issue an endorsement providing a waiver of subrogation rights as to the Indemnitees.

11.8 Survival of Obligations. The defense and indemnity obligations of this Section 11 shall survive the termination of this Agreement.

Section 12. Default and Remedies.

12.1 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Party in default of its obligations hereunder ("Defaulting Party"):

(i) if any Signatory Member or Participating Member fails to make any payment due hereunder or to provide assurances as required of NCPA under a Confirmation when due hereunder within two (2) Business Days after receipt of notice given by NCPA of such non-payment; or

(ii) the failure of a Signatory Member to perform any other covenant or obligation under this Agreement where such failure is not cured within ten (10) calendar days following receipt of a notice from NCPA demanding cure (provided that this shall not apply to any failure to make payments (which is covered by Section 12.1 (i)); or

(iii) if any representation or warranty of a Signatory Member material to the transactions contemplated hereby shall prove to have been incorrect in any material respect when made and the Signatory Member does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and

correct within ten (10) calendar days of the date of receipt of notice from any other Party demanding cure; or

(iv) if a Signatory Member is in default or in breach of any of its covenants under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement; or

(v) the failure of NCPA to perform any covenant or obligation under this Agreement following a ten (10) calendar day notice to cure by any non-defaulting Signatory Member.

12.2 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied within the time period specified in Section 12.1 above, as may be applicable, after written notice has been sent to the Defaulting Party from NCPA or a non-defaulting Signatory Member specifying the default and demanding that the same be remedied; provided, however, that the failure of a Party to provide such notice shall not be deemed a waiver of such default.

12.3 Participation Rights Of Defaulting Signatory Member. Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default and until such Event of Default is cured, the Signatory Member that is the Defaulting Party shall not have the right to participate under any additional Confirmations.

12.4 Remedies in the Event of Default.

12.4.1 Remedies of NCPA. Upon the occurrence of an Event of Default where a Signatory Member is the Defaulting Party, without limiting its other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Party Participant, NCPA may: (i) suspend the provision of Support Services under this Agreement or any Confirmation issued pursuant to this Agreement to such Defaulting Party until the Event of Default is cured; (ii) demand that the Defaulting Party provide further assurances to compel the correction of the default, including the collection of a surcharge, or such other actions as may be necessary to produce Revenues to secure the cure of the Event of Default; and (iii) terminate this Agreement or any Confirmation as to the Defaulting Party, following the expiration of any applicable cure period pursuant to section 12.1, on ten (10) calendar days' prior written notice to the Defaulting Party.

12.4.2 Remedies of Signatory Members. Upon the occurrence of an Event of Default where NCPA is the Defaulting Party, and following the applicable cure periods pursuant to section 12.1, one or more Signatory Members may, without limiting their other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action they may have against NCPA, terminate this Agreement as to themselves and without affecting the validity of the Agreement as to other Signatory Members, subject to the provisions of Section 12.6.4.

12.5 Special Covenants Regarding Security Accounts. In the event that a Participating Member's balance in a required Security Account is insufficient to cover all invoices for Costs incurred under this Agreement sent to such Participating Member, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, such Participating Member shall cooperate in good faith with NCPA and shall cure the deficit as rapidly as possible, on an emergency basis, taking all such action as is necessary, including, but not limited to, raising rates and charges to its customers to increase its Revenues to replenish its share of the Security Accounts as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default with all due haste.

12.6 Effect of Termination or Suspension.

12.6.1 Generally. The suspension or termination of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged contingent liabilities or obligations arising from this Agreement until such obligations are satisfied in full, and all of the Costs incurred by NCPA in connection with such suspension or termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other costs and expenses that NCPA is entitled to recover under this Agreement, and other reasonable and necessary costs associated with any and all of the remedies, are paid in full.

12.6.2 Suspension by NCPA. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Signatory Member in accordance with Section 12.4.1(i) such Signatory Member shall pay any and all Costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such suspension and any portion of the Costs that were not recovered from such Signatory Member as a result of such suspension.

12.6.3 Termination by NCPA. If this Agreement is terminated by NCPA with respect to a Signatory Member in accordance with Section 12.4.1(iii) such Signatory Member shall pay any and all Costs incurred by NCPA as a result of such termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of the Costs that were not, or will not be, recovered from such Signatory as a result of such termination; provided, however, if NCPA terminates this Agreement with respect to the last remaining Signatory Member, then this Agreement shall terminate.

12.6.4 Termination by Signatory Members. If this Agreement is terminated by all Signatory Members in accordance with Section 10.4 , or by unanimous consent of all of the Parties hereto, then the Signatory Members shall pay to NCPA all previously unpaid Costs incurred as of the date of such termination. The Signatory Members shall indemnify NCPA for any costs incurred in connection with such termination, including reasonable attorney fees, fees

and expenses of other experts, including auditors and accountants and other reasonable and necessary costs. If the Parties are unable to reach agreement as to the foregoing, then the Parties agree to submit the matter to mediation with a mutually agreed upon mediator. If the Parties are still unable to reach agreement following mediation, then the matter shall be submitted to binding arbitration subject to the rules of the American Arbitration Association, the costs of such arbitration being borne equally among the Signatory Members.

Section 13. Uncontrollable Forces.

13.1 Uncontrollable Force In General. 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 a 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 or any Confirmations issued pursuant to this Agreement which contains terms and conditions which a Party determines in its good faith judgment are unduly burdensome or otherwise unacceptable.

13.2 Each Party shall notify the others promptly, by telephone to the other Parties' operating personnel as applicable and to the parties' Designated Representatives upon becoming aware of any Uncontrollable Force which may adversely affect the performance under this Agreement or any Confirmation entered into pursuant to this Agreement. A Party shall additionally provide written notice to any affected Parties within 24 hours after providing. Each Party shall notify the others promptly, when an Uncontrollable Force has been remedied or no longer exists.

Section 14. Dispute Resolution.

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

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

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

14.1.3 If the issue remains unresolved after thirty (30) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue arbitration pursuant to Section 14.2.

14.2 Arbitration. In the event that a dispute is unresolved following the informal dispute resolution process established in Section 14.1, either Party may, within sixty (60) days of the termination of such informal dispute resolution process, initiate binding arbitration to resolve such dispute. Disputes shall be arbitrated pursuant to the Commercial Arbitration and Mediation Rules of the American Arbitration Association. The costs of arbitration shall be equally shared by the Parties, and the Parties shall bear their own attorneys' fees. The arbitrator shall have no authority to amend this Agreement or any Confirmation.

14.3 Claims. This informal resolution process is not intended to nor shall it be construed to, change the time periods for filing a claim or action specified by Government Code § 900, *et seq.*

Section 15. Miscellaneous

15.1 Compliance with Applicable Laws. NCPA and any subcontractors shall comply with all laws applicable to the performance or provision of the Support Services hereunder.

15.2 Other Governmental Regulations. To the extent that this Agreement or any Confirmation entered into pursuant to this Agreement may be funded by fiscal assistance from another governmental entity, NCPA and any subcontractors shall comply with all applicable rules and regulations to which Participating Members are bound by the terms of such fiscal assistance program.

15.3 Licenses and Permits. NCPA represents and warrants to Participating 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 Participating Members that NCPA and its employees, agents, any 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.

15.4 Independent Contractor. At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of any Participating Member. A Participating Member shall not have the right to control the means by which NCPA accomplishes Support Services rendered pursuant to this Agreement and the Confirmations entered into 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 Support Services under this Agreement and the Confirmations entered into pursuant to 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 any Participating Member, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of a Participating Member and entitlement to any contribution to be paid by a Participating Member for employer contributions and/or employee contributions for PERS benefits.

15.5 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement (including all Confirmations entered into pursuant to this Agreement), to the extent possible, consistent with applicable laws, including the California Public Records Act. It shall be the responsibility of the holder of the claim of confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.

15.6 Liabilities of Signatory Members.

15.6.1 No Signatory Member shall be liable under this Agreement for the obligations of any Confirmation as to which it is not a Participating Member. Notwithstanding the foregoing, the Parties acknowledge that any debts or obligations entered into by NCPA pursuant to this Agreement not connected with any Confirmation shall be jointly and severally borne by them as Signatory Members , and not by non-Signatory Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

15.6.2 Each Participating Member shall be solely responsible and liable for performance of its own obligations under this Agreement as to those Confirmations under which it has chosen to receive Member Services. The obligation of each Participating Member under a given Confirmation is a several obligation and not a joint obligation with those other Participating Members with respect to a given Confirmation, subject to the authority of NCPA pursuant to section 7 to utilize Security Account funds if necessary for a given Confirmation regardless of the Participating Member which provided such Security Account funds.

15.7 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPATING OR SIGNATORY OR OTHER MEMBER OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS ARISING FROM THIS AGREEMENT OR ANY CONFIRMATION ENTERED INTO PURSUANT TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH SIGNATORY MEMBER EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF NCPA AND ITS MEMBERS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this section of this Agreement shall be fully enforceable despite its reference to future or unknown claims and its application to future and unknown Confirmations.

15.8 Amendments. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

15.9 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, including application to any particular Confirmation, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

15.10 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

15.11 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

15.12 Notices. Any notice, demand or request required or authorized by this Agreement or any Confirmation entered into pursuant to this Agreement, to be given to any Party shall be in writing. They shall either be personally delivered to a Signatory Member's Designated Representatives and to the Secretary of the Commission or transmitted to the Signatory Member's Designated Representatives and to the Secretary of the Commission at the addresses shown on the signature pages hereof by U.S. mail, first class postage prepaid. The designation of such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Participant. Notices shall be deemed received upon delivery or three (3) days after mailing.

15.13 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms as to that Party.

15.14 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without

impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

15.15 No Assignment. Except as otherwise provided in a particular Confirmation, no Signatory Member may assign or otherwise transfer any other rights and obligations under this Agreement without the express written consent of NCPA.

15.16 Venue. In the event that a Party brings any action under this Agreement or any Confirmation issued pursuant to 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.

15.17 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 or any Confirmation issued pursuant to this Agreement, the Parties shall bear their own attorneys' fees.

15.18 Interpretation. Each Party to this Agreement is sophisticated in the operation of electric utilities, and operates a publicly owned Electric System. Each Party to this Agreement was represented by counsel during the negotiation of this Agreement. Hence, this Agreement and all Confirmations issued pursuant to this Agreement shall be interpreted as being equally drafted by all Parties and without reference to Civil Code Section 1654 requiring interpretation against Parties causing an ambiguity.

15.19 No Third Party Beneficiaries. Except as otherwise provided in a particular Confirmation to the contrary, nothing contained in this Agreement or any Confirmation issued pursuant to this Agreement is intended by the Parties, nor shall any provision of this Agreement or any Confirmation issued pursuant to this Agreement be deemed or construed by the Parties or by any third person, to be for the benefit of any third party, nor shall any third party have any right to enforce any provision of this Agreement or any Confirmation issued pursuant to this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement or any Confirmation issued pursuant to this Agreement.

15.20 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement or any Confirmation does not constitute a waiver of any other breach of that term or any other term of this Agreement or Confirmation.

15.21 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.

15.22 Conflict of Interest. NCPA shall not employ any Participating Member official or employee to perform Support Services for that Participating Member. No officer or employee of Participating Member shall have any financial interest in this Agreement or any Confirmation entered into pursuant to this Agreement that would violate California Government Code Sections 1090 *et seq.*

15.23 List of Exhibits. The Exhibits referenced herein are incorporated by this reference. They shall be denoted as follows:
Exhibit "A": Form of Signatory Member execution page including designation of Designated Representatives and purchasing amount limitations.
Exhibit "B": Form of Confirmation.

IN WITNESS WHEREOF, each Signatory Member has executed this Agreement with the approval of its Governing Body, and NCPA has authorized execution of this Agreement by its General Manager in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA POWER AGENCY

By:_____
Randy S. Howard, General Manager

Attest:

_____
Cary Padgett, Assistant Secretary to the Commission

Approved as to Form:

By: _____
Michael F. Dean, General Counsel

EXHIBIT "A"

NORTHERN CALIFORNIA POWER AGENCY
SUPPORT SERVICES PROGRAM AGREEMENT
Signatory Member Execution Page

The Support Services Program Agreement is hereby approved, executed and joined by the following NCPA Member as a Signatory Member:

_____ [Name of NCPA Member Agency]

1. The initial Designated Representatives of the Signatory Member who are jointly authorized to execute Confirmations on behalf of the Signatory Member are:

_____	_____
Utility Director	General Counsel or City Attorney

2. The Designated Representatives are authorized to jointly execute any given individual Confirmation for Support Services on behalf of the Signatory Member which does not exceed $_____ .

The NCPA Support Services Program Agreement was approved on _____ __, 20__ by resolution no. _____ of the _____ _____[Name of Governing Body of Signatory Member, e.g., "city council" or "board of directors"].

By:_____ [Signature of person executing]
Its:_____ [Title of person executing]

Attest:

_____ [Signature of Person Attesting to Approval]
Its: _____ [Title of Person Attesting]

Approved as to Form:

By: _____
Title: _____

EXHIBIT "B"

NCPA Services Program Agreement Form of Confirmation:

CONFIRMATION UNDER THE NCPA SUPPORT SERVICES PROGRAM AGREEMENT

1. This is a Confirmation pursuant to the Support Services Program Agreement and subject to the terms and conditions of that agreement, except as expressly provided in this Confirmation. All capitalized terms have the meaning given to them in the Support Services Program Agreement.

2. The Participating Members for this Confirmation are:

3. NCPA agrees to provide the following Support Services to the Participating Members:

The Support Services will be contracted for by NCPA with _____ using an agreement in substantially the form attached to this Confirmation.

4. The Participating Members executing this Confirmation agree to pay for the Support Services in the not to exceed amounts specified in this Confirmation and in accordance with the provisions of the Support Services Program Agreement:

5. A Security Account deposit [is not required for this Confirmation/is required for this Confirmation in the amount of $ _____]

Participating Member _____

By its Designated Representatives:

_____

and

_____

NORTHERN CALIFORNIA POWER AGENCY

By:_____

Randy S. Howard, General Manager

Attest:

_____

Cary Padgett,
Assistant Secretary to the Commission

Approved as to Form:

By: _____

General Counsel

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