



## **Request for Proposal (RFP) LR1802**

Title: RFP for Demand Side Management (DSM) Program Services

RFP Issue Date: **Thursday, August 30, 2018**

RFP submittal Deadline: **Thursday, September 20, 2018 12:00 p.m. PDT**

Solicitation Administrator: **Jonathan Changus**  
Address: Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678  
Phone: (916) 781-4293  
Email: [jonathan.changus@ncpa.com](mailto:jonathan.changus@ncpa.com)

**REQUEST FOR PROPOSALS (RFP) LR1802**

**TITLE: RFP for Demand Side Management (DSM) Program Services**

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## 1. INTRODUCTION

The Northern California Power Agency (“NCPA”) is a joint powers agency, a public entity established under California Government Code sections 6500 *et seq.*. NCPA Members are: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Shasta Lake, and Ukiah, the Plumas-Sierra Rural Electric Cooperative, the Port of Oakland, the San Francisco Bay Area Rapid Transit Agency, and the Truckee Donner Public Utility District. NCPA is referred to hereinafter as “Agency”.

NCPA Members are small and medium-sized publicly-owned utilities. City of Biggs is the smallest NCPA Member with annual sales of approximately 17.6 GWh; in comparison, City of Santa Clara is the largest NCPA Member with 3,425 GWh. NCPA Members are dispersed across Northern and Central California, ranging from the City of Lompoc in Santa Barbara County to the City of Shasta Lake 500 miles to the north to Plumas-Sierra REC in the northeast quadrant of the state. NCPA Members serve diverse communities from rural, agricultural customers to heart of the Silicon Valley technology sector. As such NCPA Members offer a variety demand management incentive programs to their respective residential and non-residential customers tailored to meet the needs of their individual communities.

NCPA Members are required by § 9505(d) of the California Public Utilities Code to “make available to its customers and to the Energy Commission the results of any independent evaluation that measures and verifies the energy efficiency savings and the reduction in energy demand achieved by its energy efficiency and demand reduction programs.” NCPA Members include URL links to their completed EM&V reports in their annual regulatory filing to the California Energy Commission.

Through this RFP, Agency wishes to leverage the capabilities, knowledge, and experience of Consultants to assess and provide recommendations to improve the effectiveness of NCPA Members’ demand-side management (“DSM”) customer programs, which include energy efficiency (“EE”), energy conservation, demand reduction, building electrification, and demand response (“DR”) programs.

## 2. SCOPE OF SERVICES

NCPA seeks proposals from qualified firms to provide the following categories of DSM program services:

- (1) ***Evaluation, Measurement & Verification (“EM&V”)***: EM&V of the cost-effectiveness and energy savings attributed to DSM programs. Respondent must have the capability to perform EM&V for a wide array of DSM programs and measures based on accepted engineering standards and protocols. These protocols include the 2006 California Energy Efficiency Evaluation Protocols developed by the California Public Utilities Commission and

the 2016 International Performance Measurement and Verification Protocol (“IPMVP”) Core Concepts.

- (2) **Technical Advisory Services:** Technical advisory services, provided on an as needed basis, related to DSM programs. Respondent must be familiar with both federal and state building and appliance energy standards, with working knowledge of California’s Title 24 Building Energy Efficiency Standards compliance software programs. Technical advisory services include, but are not limited to:
- a. Measurement and verification (“M&V”) of measures
  - b. Program impact and process evaluation
  - c. Site inspections to verify installed energy efficiency measures
  - d. Rebate application review
  - e. Energy saving estimate review
  - f. Research and development of measures and energy savings
  - g. Free-ridership analysis

Respondents may submit proposals for one or both categories of DSM program services; the proposal should explicitly define which service(s) it is responding to. Agency reserves the right to select separate consultant(s) for each category of services, or consultant(s) providing both services. A Respondent who administers a third party program for a NCPA Member is ineligible to provide DSM program services to the NCPA Member for that program, but may provide DSM program services for the NCPA Member’s programs not administered by the Respondent.

Agency seeks proposals for a term of thirty-six (36) months, with an estimating start date of November 1, 2018. Agency reserves the right, in its sole discretion, to consider proposals or execute contracts with successful Respondents for an agreement term that is greater than or less than that potential 36 months, which may or may not be structured to include options to extend the terms of the Agreement.

Agency intends to execute enabling agreement(s) with successful Respondent(s). Agency does not directly administer DSM programs and, as such, the primary purpose of this RFP is to select successful Respondent(s) to provide DSM program services to NCPA Members through enabling agreements between Agency and successful Respondent(s). A sample agreement is included as Attachment B. The enabling agreement states that DSM program services provided under the agreement may include services directly to the Agency or, as requested by the Agency, to NCPA Members, Southern California Public Power Authority (“SCPPA”) or SCPPA members. Respondents should thoroughly review the sample agreement in its entirety.

### **3. INSTRUCTIONS TO RESPONDENT**

Those Respondents who submit responses agree to do so without legal recourse against Agency, its Commission, managers, agents, contractors or Member agencies for rejection of

any response(s) or for failure to execute an agreement for any reason. Agency shall not be liable to any Respondent or party at law or in equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP.

By submitting its response, each Respondent waives any right to challenge any valuation by Agency of any responses of any Respondent or any determination of Agency to select or reject any response of any Respondent or take any action contemplated by this RFP, including any right of a Respondent to intervene in any governing body proceeding for the purpose of protesting the selection or rejection of any Respondent, any other decision of Agency contemplated by this RFP or any resulting agreement related to a selected Respondent.

### **3.1. Public Nature of Proposal**

Responses to this RFP become the exclusive property of Agency. All proposals received in response to this RFP become a matter of public record and shall be regarded as public records, except as noted herein. If the Respondent so specifies and clearly identifies portions of its response as “PROPRIETARY AND CONFIDENTIAL”, Agency will make reasonable efforts to treat the marked portions as confidential information. Such information may, however, be made available under applicable state or federal law. Agency also reserve the right to release such information to its agents, contractors, or Member utilities for the purpose of evaluating a response. Such agents, contractors and Member utilities will be required to observe the same care with respect to disclosure as Agency. Under no circumstances will Agency, their Commissions or Boards, managers, agents, contractors or Member utilities, be liable for any damages resulting from any disclosure of Respondent’s claimed confidential information during or after this RFP process.

Any proposal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary” may be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, Agency may not accept or approve that the information that a Respondent submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” Agency shall provide the Respondent who submitted the information with reasonable notice to allow the Respondent to seek protection from disclosure by a court of competent jurisdiction.

### **3.2. Rights of the Agency**

This RFP does not commit Agency or Agency’ Members to enter into a contract.

Evaluation of a response does not constitute a commitment by Agency to acquire such services from any source. Agency and Agency Members are not obligated in any way to proceed

with this RFP or consider or enter into any agreement or undertake any liability to any Respondent in connection with this RFP and any and all responses, whether qualified or not, may be rejected without any liability whatsoever to any Respondent on the part of Agency or any Agency' Member. Agency shall not be responsible for any costs incurred by Respondent to prepare, submit, negotiate, contract, or participate in this RFP process.

### **3.3. Examination of Proposal Documents**

This RFP includes a description of the scope of services, proposal requirements, and instructions for submitting a proposal. The submission of a proposal shall be deemed a representation and certification by the Respondent that the Respondent:

- Has carefully read and fully understand the information provided by Agency to serve as the basis for submission of the proposal;
- Has the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted;
- Represents that all information contained in the proposal is true and correct;
- Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Respondent in regard to the amount, terms or conditions of this proposal; and
- Acknowledges that Agency has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Respondent, and Respondent hereby grants Agency permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Respondent was not fully informed about any fact or condition.

### **3.4. Addenda/Clarifications**

There will not be a pre-bidder's conference in relation to this RFP. Questions or comments regarding this RFP must be put in writing and received Agency no later than 1:00 p.m., Wednesday, October 3, 2018. Direct all inquiries regarding this RFP by electronic mail to Jonathan Changus at [jonathan.changus@ncpa.com](mailto:jonathan.changus@ncpa.com).

Information provided by anyone other than the above contact may be invalid and proposals which are submitted in accordance with such information may be declared non-responsive. Responses to all inquiries from Agency will be communicated via email to all recipients of this RFP. Inquiries received after the date and time stated will not be accepted and will be returned to senders without response. No oral representations or interpretations will be made to any proposer as to the meaning of this RFP.

In the event that it becomes necessary to revise any part of this RFP, written addenda will be issued. Any amendment to this RFP is valid only if it is in writing and issued by Agency. No oral interpretations or answers shall bind Agency unless confirmed by Agency in writing. All addenda shall become a part of this RFP and shall be acknowledged on the Respondent's Information Form (Attachment A).

### **3.5. Submission of Proposals**

Responses to this RFP are due to Agency with the appropriate attachments by electronic mail no later than 12:00 p.m. (PDT) on Thursday, September 20, 2018. All proposals shall be submitted to Agency at:

jonathan.changus@ncpa.com

A hard copy of the response is not required; however, Respondents may also send a hard copy of the response and/or other supporting documents to NCPA no later than 12:00 p.m. (PDT) on Thursday, September 20, 2018 at:

Northern California Power Agency  
ATTN: Jonathan Changus  
651 Commerce Drive  
Roseville, CA 95678

Agency, in their sole discretion, may reject any late or incomplete response.

All materials submitted by the Respondent in response to this RFP will become the property of Agency and may be used by Agency for the purpose of evaluating qualifications, soliciting proposals, executing any agreements, regulatory hearings, and administering any resulting definitive agreements.

### **3.6. Withdrawal of Proposals**

A Respondent may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering an electronic or a written request for withdrawal signed by, or on behalf of, the Respondent.

### **3.7. Collusion**

By submitting a proposal, each Respondent represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Respondent has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that

the Respondent has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

#### 4. TENTATIVE TIMELINE

The proposed timeline is as follows:

RFP Issued	August 30, 2018
Deadline for questions, clarifications	Sept. 12, 2018
Proposals Due	Sept. 20, 2018
Finalists notified	Oct. 3, 2018
Finalists interviews	Oct. 15-16, 2018
Selected Respondent(s) Notified	Oct. 19, 2018
Contract preparation	Nov. 9, 2018
Agency approval of contracts	Nov. 29, 2018
Work commences	Dec. 1, 2018

Solicitation timeline is subject to change. Any updates to the timeline will be posted as an addendum.

#### 5. PROPOSAL FORMAT REQUIREMENTS

These instructions outline the guidelines governing the format and content of the proposal and the approach to be used in its development and presentation. The intent of the RFP is to encourage responses that clearly communicate the Respondent's understanding of the Agency' requirements and its approach to successfully provide the products and/or services on time and within budget. Only that information which is essential to an understanding and evaluation of the proposal should be submitted. Items not specifically and explicitly related to the RFP and proposal, e.g. brochures, marketing material, etc. will not be considered in the evaluation.

Proposals should be limited to 40 pages in length.

All proposals shall address the following items in the order listed below and shall be numbered 1 through 9 in the proposal document.

##### 5.1. Respondent Information Form

Include a completed Respondent Information Form, which is provided as Attachment A to this solicitation.

The Respondent Information Form shall be signed by an official legally authorized to bind the Respondent:

- Proposals submitted on behalf of a Partnership shall be signed in the firm name by a partner or the Attorney-in-Fact. If signed by the Attorney-in-Fact, there shall be attached to the proposal a Power-of-Attorney evidencing authority to sign proposals, dated the same date as the proposal and executed by all partners of the firm.
- Proposals which are submitted on behalf of a Corporation shall have the correct corporate name thereon and the actual signature of the authorized officer of the corporation written (not typed) below the corporate name. The title of the office held by the person signing for the corporation shall appear below the signature of the officer.
- Proposals which are submitted on behalf of a Limited Liability Company (“LLC”) shall be signed by the person or persons authorized to bind the LLC under the LLC’s articles of organization.
- Proposals which are submitted by an Individual Doing Business under a firm name (“dba”) shall be signed in the name of the individual doing business under the proper firm name and style.

## **5.2. Proposal Summary**

Discuss the highlights, key features and distinguishing points of the Proposal. A separate sheet shall include a list of individuals and contacts for this Proposal and how to communicate with them. This section should be limited to three (3) pages including the separate sheet.

## **5.3. Profile of the Respondent(s)**

Include a brief description of the Respondent’s firm size, as well as the proposed local organization structure. Include a discussion of the Respondent firm’s financial stability, capacity and resources. Include all other firms participating in the Proposal, including similar information about the firms.

Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Respondent or by its subcontractors where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the Respondent or its insurers within the last five years.

## **5.4. Qualifications of the Respondent**

Include a brief description of the Respondent’s and any subcontractor’s qualifications and previous experience on similar or related projects. Provide in table format descriptions of

pertinent project experience with other public municipalities and private sector that includes a summary of the work performed, the total project cost, the period over which the work was completed, and the name, title, and phone number of client's to be contacted for references. Give a brief statement of the firm's adherence to the schedule and budget for the project. Agency may, at their discretion, contact any or all of the references provided.

### **5.5. Approach & Work Plan**

Present a well-conceived service plan. Include a full description of major tasks and subtasks. This section of the proposal shall establish that the Respondent understands the Agency's objectives and work requirements and Respondent's ability to satisfy those objectives and requirements. Succinctly describe the proposed approach for addressing the required services and the firm's ability to meet the Agency's schedule, outlining the approach that would be undertaken in providing the requested services.

### **5.6. Project Staffing**

Discuss proposed staffing for this project. Key project team members shall be identified by name, title and specific responsibilities on the project. An organizational chart for the project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review committee. Changes in key personnel may be cause for rejection of the proposal.

Attach résumés of key personnel who will perform proposed work and who are assigned to this project. The resumes must include a summary of the person's experience (especially that which is specific to this RFP), a chronological, detailed account of their experience, education information, and identification of any certifications. Please also provide an explanation as to why these personnel are best suited to meeting the requirements of this RFP.

### **5.7. Proposal Exceptions**

Identify any exceptions or requested changes to the Agency' RFP conditions, requirements and sample agreement. If there are no exceptions noted, it is assumed the Respondent will accept all conditions and requirements identified in Attachment B–Sample Agreement. Items not excepted will not be open to later negotiation.

### **5.8. Cost Sheet and Rates**

Provide cost sheet and rates information, which is relevant to a determination of whether the cost is fair and reasonable in light of the services to be provided. Provision of this information assists the Agency in determining the firm's understanding of the project, and provides staff with tools to negotiate the cost.

Include the hourly rates and proposed total hours of availability per month to provide the services desired. Include any other cost and price information, plus a not-to-exceed amount, that would be contained in a potential agreement with the Agency. The hourly rates may be used for pricing the cost of additional services outlined in the Scope of Work.

## **6. EVALUATION PROCESS**

Agency will, in its sole discretion, evaluate RFP responses to determine which Respondent(s) provides the greatest overall value to NCPA Members. Evaluations will be based on evaluation criteria described below, information provided in each RFP, possible oral interviews with the Respondent, mail or email requests, information already known by Agency, and other publicly available information such as public credit ratings.

Agency may, at their sole discretion, request that Respondents complete supplemental questionnaires and/or meet for oral interviews at any stage of the RFP process. Respondents failing to provide information deemed necessary by Agency to adequately review a response may be eliminated from further consideration at any stage or time during the RFP process.

All determinations made by Agency with respect to any Respondent or its response, including the determinations described in this RFP, shall be made by Agency at their sole discretion and without liability. No de-briefings will be provided as these determinations will be final and are not subject to review.

The selection committee, which consists of representatives from Agency and NCPA Members, will evaluate the proposals provided based on the following criteria:

1. Quality and completeness of proposal;
2. Knowledge, experience and skills to provide the requested services;
3. Experience of staff to be assigned to the project, based on prior engagements of similar scope and complexity;
4. Competitive rates for the requested services;
5. Demonstrated strong project management;
6. Customer references.

The selection committee will make a recommendation to Agency. The acceptance of the proposal(s) will be evidenced by an electronic or written Notice of Award from Agency to the successful Respondent(s).

**ATTACHMENT A**

**RESPONDENT INFORMATION FORM**

**RESPONDENT**

---

Name of Business

---

Contact Name & Title

---

Street Address

---

City

---

State Zip

---

Phone

---

Email

Type of Organization: \_\_\_\_ Sole Proprietorship    \_\_\_\_ Partnership    \_\_\_\_ Corporation

**ADDENDA**

To assure that all Respondents have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received:  1;  2;  3;  4;  5;  6;

Or, \_\_\_\_ \_\_\_\_ No Addendum/Addenda Were Received (check and initial).

**SIGNATURE**

By signing below, the submission of a proposal shall be deemed a representation and certification by the Respondent that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, they have read and understand the RFP, and agree that their proposal will remain firm for a period of up to 90 days in order to allow Agency adequate time to evaluate the qualifications submitted. The information contained in this proposal is true and correct to the best of the signatory's knowledge and is signed under penalty of perjury under the laws of the State of California. No request for modification of the proposal shall be considered after its submission on the grounds that the Respondent was not fully informed as to any fact or condition.

**ATTACHMENT A**

1. If Respondent is **SOLE PROPRIETORSHIP**, sign here

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

\_\_\_\_\_  
Proposer's Signature

\_\_\_\_\_  
Proposer's typed name and title

2. If Respondent is **PARTNERSHIP**, at least two (2) Partners shall sign here:

\_\_\_\_\_  
Partnership Name (type or print)

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

\_\_\_\_\_  
Member of the Partnership signature

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

\_\_\_\_\_  
Member of the Partnership signature

3. If Respondent is a **CORPORATION**, the duly authorized officer shall sign as follows:

The undersigned certify that he/she is respectively:

\_\_\_\_\_ and \_\_\_\_\_  
Signature Title

Of the corporation named below; that they are designated to sign the Respondent Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

\_\_\_\_\_  
Corporation Name (type or print)

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

Title: \_\_\_\_\_

## ATTACHMENT B – SAMPLE AGREEMENT

### MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and [REDACTED], a [REDACTED] [sole proprietorship, partnership, corporation] with its office located at [REDACTED] ("Consultant") (together sometimes referred to as the "Parties") as of [REDACTED], 20\_\_ ("Effective Date") in Roseville, California.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified therein.

- 1.1 **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) year from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 **Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 **Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 **Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to

## ATTACHMENT B – SAMPLE AGREEMENT

perform the Requested Services, or does not respond within the seven day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** [REDACTED] dollars (\$ [REDACTED]) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

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

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

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable  
[AcctsPayable@ncpa.com](mailto:AcctsPayable@ncpa.com)

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

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

## ATTACHMENT B – SAMPLE AGREEMENT

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

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

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

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

**4.1 Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

**4.2.2 Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and

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mobile equipment to the extent coverage may be excluded from general liability insurance.

**4.2.3 General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

**4.3** Not Applicable

**4.4 All Policies Requirements.**

**4.4.1 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

**4.4.2 Notice of Reduction in or Cancellation of Coverage.** Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

**4.4.3 Higher Limits.** If Consultant maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Consultant.

**4.4.4 Additional Certificates and Endorsements.** If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or SCPPA member.

**4.4.5 Waiver of Subrogation.** Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

**4.6 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the

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provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

### **Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

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

### **Section 6. STATUS OF CONSULTANT.**

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

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge

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and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

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

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

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

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### **Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

### **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant.

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

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

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**8.4.4** Charge Consultant the difference between the costs to complete the Services that is unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

### **Section 9. KEEPING AND STATUS OF RECORDS.**

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

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reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

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

**9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

**9.4.3.1** Disclosure to employees, agents, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

**9.4.3.2** Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

**9.4.3.3** Disclosure by Agency in response to a request pursuant to the California Public Records Act.

**9.4.4 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

## **Section 10. MISCELLANEOUS PROVISIONS.**

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- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 10.7 Contract Administrator.** This Agreement shall be administered by \_\_\_\_\_, **Assistant General Manager**, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 10.8 Notices.** Any written notice to Consultant shall be sent to:  
**[CONSULTANT'S NAME, ADDRESS]**

Any written notice to Agency shall be sent to:

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

With a copy to:

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

- 10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

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**10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

**10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**10.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**10.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**10.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide Services to an Agency member, SCCPA and/or a SPPA member (collectively for the purposes of this section only "Member") pursuant to section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

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

NORTHERN CALIFORNIA POWER AGENCY

**CONSULTANT**

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
[NAME, TITLE]

\_\_\_\_\_  
[NAME, TITLE]

Attest:

\_\_\_\_\_

**ATTACHMENT B – SAMPLE AGREEMENT**

Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**ATTACHMENT B – SAMPLE AGREEMENT**

**EXHIBIT A**

**SCOPE OF SERVICES**

**[ATTACH OR INSERT SCOPE OF SERVICES HERE]**

**ATTACHMENT B – SAMPLE AGREEMENT**

**EXHIBIT B**

**COMPENSATION SCHEDULE AND HOURLY FEES**

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

[Insert breakdown here]

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested.

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