



Request for Proposals (RFP) for Consultant Services

Title: LCFS Fuel Pathway Application and Verification Services
Bid No. LR 2105

RFP Issue Date: **December 17, 2021**

RFP submittal Deadline: **January 18, 2022 5:00 p.m. PST**

Contract Administrator: **Emily Lemei**
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**REQUEST FOR PROPOSALS (RFP) LR2105
FOR CONSULTANT SERVICES**

**TITLE: LCFS Fuel Pathway Application and Verification Services
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1. INTRODUCTION

The Northern California Power Agency (“NCPA” or “Agency”) is a joint powers agency, a public entity established under California Government Code sections 6500 et seq. NCPA was established in 1968 by a consortium of locally owned electric utilities to make joint investments in energy resources that would ensure an affordable, reliable, and clean supply of electricity for customers in its member communities. NCPA members include municipalities, a rural electric cooperative, and other publicly owned entities for which the not-for-profit agency provides such services as the generation, purchase, aggregation, scheduling, and management of electrical energy. 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 District, and the Truckee Donner Public Utility District (individually referred to as “Member” or collectively as “Members” hereafter).

Agency and certain NCPA Members participate in the California Air Resources Board’s (CARB) Low Carbon Fuel Standard (LCFS) program as opt-in reporting entities. Through this RFP, NCPA is seeking qualified entities with subject matter expertise to provide one or both of the following services:

- 1) LCFS Tier 2 fuel pathway consultation, analysis, and application submittal;
- 2) Independent validation and verification of NCPA and/or Members’ fuel pathway applications and annual fuel pathway reports, as required by the LCFS Regulation section 95500-95501.

2. SCOPE OF SERVICES

Through this RFP, NCPA is seeking proposals from qualified firms or individuals for Low Carbon Fuel Standard (LCFS) fuel pathway consultation, analysis, application submittal, and independent verification services. The Consultant should offer one or both of the following services:

I. LCFS Tier 2 Fuel Pathway Consultation, Analysis, and/or Application Submittal

- Task 1: Fuel and/or Generating Facility Information and Data Collection. Consultant will identify and compile information and data for the 24-month duration necessary to complete a calculation of carbon intensity (CI) and life cycle analysis (LCA).
- Task 2: Lifecycle Analysis Modeling. Consultant will utilize data supplied by Agency/Member and calculate the CI using CARB’s latest CA GREET model inputs, modifying the CA GREET model as necessary. Consultant will take detailed notes of what cells and formulas are modified within CA GREET for each pathway. Consultant will modify the CA GREET model to present the results in an easy to review format to simplify and expedite the approval from CARB. Consultant will breakdown the greenhouse gas (GHG) emissions from each step of the process,

consistent with the CA GREET model. Consultant may need to collaborate with Agency, Member(s), and/or CARB on the modeling approach.

- **Task 3: Life Cycle Analysis (LCA) Technical Report.** For Tier 2 pathways, Consultant will prepare a technical LCA report for submission to and approval by CARB. The technical report will detail the information and data previously gathered and analyzed, and the CI results for each stage of the process. The Consultant will prepare the system boundary diagram. The report will detail the data collected, resulting CA GREET model inputs, modified cell locations within the model, and results for each of the following processes described above. The results for each process will be in gCO₂e/MJ. The summary fuel pathway results will aggregate the results of each of the processes into a full fuel CO₂e/MJ.

Consultant will participate in conference calls with CARB and Agency/Member to discuss the technical report and modified CA GREET model. Consultant will make the necessary changes to the CA GREET model and/or technical report based on CARB's comments, and will produce a final LCA report. The technical LCA report, with the final modified CA GREET model and supporting documents, will be attached to any Tier 2 applications submitted.

II. Independent Validation and Verification of LCFS Fuel Pathways

- Consultants will provide independent verification of fuel pathways applications and annual fuel pathway data reports, as requested by Agency and/or Members.
- Verification services must be performed by qualified and trained verifiers that are CARB-accredited.
- Consultant must not have a conflict of interest for verifying the reported data due to current or previous relationships with the Agency or Member requesting services.
- Consultant must follow the requirements of LCFS Regulation section 95501, which may include the following steps:
 - Submit a notice of validation or verification services to the Executive Officer.
 - Develop a validation or verification plan based on information from the fuel pathway applicant, pathway holder, or reporting entity, and the timing of verification services.
 - Meetings with Agency/Member to discuss the scope of the verification services, and to request any information and documents needed for the verification services.
 - Conduct required site visits for the fuel pathway.
 - Develop a sampling plan.
 - Conduct data checks, focused on the most uncertain data and on data with the largest contributions to GHG emissions and GHG emissions reductions (if applicable).
 - Identify and communicate correctable errors, as defined in section 95481(a), and document the source of any difference identified.

- Verify data calculations to determine whether there is reasonable assurance that the application or report does not contain a material misstatement. The verification team must review the methods and factors used to develop the application or report for adherence to the requirements of section 95500-95501.
- Log issues identified in the course of verification services that may affect determinations of material misstatement and nonconformance.
- Assessments of material misstatements.
- Validation or Verification statements, upon completion of verification services, and independent review.
- A detailed validation or verification report.

Respondents may submit proposals for one or both categories of services. Proposals should explicitly define which service(s) it is responding to on the Respondent Information Form (Attachment A). Agency reserves the right to select separate and/or multiple consultant(s) for each category of services, or consultant(s) providing both services. To ensure that work completed under Task II remains independent, a Respondent who provides services to Agency/Member under Task I is ineligible to provide Task II services for the same fuel pathway. However, a selected Respondent's provision of Task I or Task II services to Agency or a Member does not preclude the Respondent from providing those same or different services for a different fuel pathway.

Agency intends to execute enabling agreement(s) with successful Respondent(s). The primary purpose of this RFP is to select successful Respondent(s) to provide LCFS fuel pathway analysis and verification services to NCPA and its Members on an as-needed basis through enabling agreements between Agency and successful Respondent(s).

Agency seeks proposals for a term of five years, with an estimated start date in March 2022. 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 five years, which may or may not be structured to include options to extend the terms of the Agreement.

The Consulting Services Agreement is included as Attachment B. 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 agreement in its entirety.

3. INSTRUCTIONS TO RESPONDENT

Any Respondent who submits a Proposal agrees to do so without legal recourse against Agency, their Commissions, managers, agents, Consultants or Members for rejection of any response(s), for failure to execute an agreement for any reason, or for any costs relating to

the Proposal including the costs of preparation. 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 Proposal, 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 to 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. Each Respondent, in submitting its response, irrevocably agrees and acknowledges that it is submitting its Proposal subject to and in agreement with the terms of this RFP and agrees that Agency shall be entitled to specific performance of their rights hereunder and injunctive relief.

3.1 Public Nature of Proposal

All Proposals submitted in response 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 (“Confidential Information”). Agency reserves the right to release such Confidential Information to its agents, Consultants, or Participating Members for the purpose of evaluating a Proposal. Such agents, Consultants and Participating Members will be required to observe the same care with respect to disclosure as Agency. Under no circumstances will Agency, their Commission, managers, agents, Consultants or Participating Members, be liable for any damages resulting from any disclosure of Respondent’s Confidential Information during or after this RFP process.

Although the California Public Records Act recognizes that certain confidential trade secret, proprietary and similar information may be protected from disclosure, Agency may not agree that Confidential Information that a Respondent submits is indeed confidential under California law. If a request is made for Confidential Information and Agency do not agree that it is confidential under California law, Agency shall provide the Respondent who submitted the Confidential Information with reasonable notice to allow the Respondent to seek protection from disclosure by a court of competent jurisdiction.

3.2 Rights of Agency

This RFP does not commit Agency, or any Participating Member, to enter into a contract.

Agency reserve the right to:

- Make the selection based on its sole discretion;
- Enter into relationships with more than one Respondent;
- Reject any and all Proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening for Agency's own convenience;
- Remedy technical errors in the Request for Proposals process;
- Approve or disapprove the use of particular sub-consultants;
- Negotiate with any, all, or none of the Respondents;
- Accept other than the lowest offer;
- Waive informalities and irregularities in one or more Proposals;
- Enter into an agreement with another Respondent in the event the originally selected Respondent defaults or fails to execute an agreement with Agency;
- Utilize others to perform or supply work of the type contemplated by this RFP; and/or
- Request proposals from others with or without requesting proposals from contractors for work of the type contemplated by this RFP.

Evaluation of a Proposal does not constitute a commitment by Agency to acquire such services from any source. Agency and Participating 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 Proposals, whether qualified or not, may be rejected without any liability whatsoever to any Respondent on the part of Agency or any Participating 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

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 understands the information provided by Agency to serve as the basis for submission of the proposal;
- Has the capability and qualifications 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 have the right to make any inquiry they deem 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

Questions or comments regarding this RFP must be put in writing and received by Agency no later than 5:00 p.m., January 6, 2022. Direct all inquiries regarding this RFP by electronic mail to Emily Lemei at emily.lemei@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 from Agency will be communicated via email to all recipients of this RFP. No oral representations or interpretations will be made to any Respondent 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 5:00 p.m. (PDT) on January 18, 2022. All proposals shall be submitted to Agency at:

Email: emily.lemei@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 Agency no later than 5:00 p.m. (PDT) on January 18, 2022, at:

Northern California Power Agency
ATTN: Emily Lemei
651 Commerce Drive
Roseville, CA 95678

Agency, in its 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 a written request for withdrawal signed by, or on behalf of, the Respondent.

4. TENTATIVE TIMELINE

The proposed timeline is as follows:

RFP Issued	December 17, 2021
Deadline for questions, clarifications	January 6, 2022
Proposals Due	January 18, 2022
Review of Responses	January 19-28, 2022
Selection of Respondent(s)	January 31, 2022
Contract preparation	February 1-7, 2022
Agency approval of contracts	February 24, 2022
Work commences	March, 2022

Solicitation timeline is subject to change. Any updates to the timeline prior to the submittal deadline for Proposals 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 NCPA’s 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.

All proposals shall address the following items in the order listed below and shall be numbered 1 through 8 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 Proposing 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 subcontractor where litigation is still pending or has occurred within the last five (5) years or (b) any type of project where claims or settlements were paid by the Respondent or its insurers within the last five (5) 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 a table format descriptions of pertinent project experience with other publicly-owned electric utilities, investor-owned electric utilities, or other entities that includes a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, 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. NCPA may, at its discretion, contact any or all of the references provided.

5.5 Approach & Work Plan

Present a well-conceived work 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 how the Respondent would propose to staff 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 Respondent personnel shall be included.

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 Agencies' RFP conditions, requirements and form contract. If there are no exceptions noted, it is assumed Respondent will accept all conditions and requirements identified in the Consulting Services Agreement (Attachment B). Items not covered by any exceptions will not be open to later negotiation.

Only minor exceptions will be reviewed. Proposals that take any exceptions to the proposed Agreement may be determined by NCPA, at its sole discretion, to be unacceptable and no longer considered for award.

5.8 Proposal 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 Agencies in determining the Respondent's understanding of the project, and provides staff with tools to evaluate and negotiate the cost.

This section shall include the proposed costs to provide the specific services offered and the applicable timeframe. Include any other cost and price information that would be contained in a potential agreement with the Agencies.

Hourly rates may be used for pricing the cost of additional services outlined in the Scope of Work.

PLEASE NOTE: Agencies do not pay for services before it receives them. Therefore, do not propose contract terms that call for upfront payments or deposits.

6. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement(s) resulting from this solicitation, if awarded, will establish the terms and conditions for services and include a not-to-exceed amount for the services over the term of the agreement. The dollar amount in the agreement is not a guarantee that Agency will pay that full amount to Consultant, but is merely a limit of potential Agency expenditures under the agreement. Any Consulting Services Agreement(s) subsequently entered into by NCPA pursuant to this RFP may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of the Agreement, to NCPA Members, Southern California Public Power Authority (SCPPA), or SCPPA Members.

At such time that Consultant's services are requested under such an agreement, Agency shall issue a Purchase Order which shall identify the specific services to be performed, include a not-to-exceed monetary cap for the requested services and expenditures authorized by that Purchase Order, and a time by which the services shall be completed. Consultant shall submit invoices to Agency and Agency shall make payment to Consultant in accordance with the terms of the executed agreement.

Agency seeks proposals for a term of five years; 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 five years, which may or may not be structured to include options to extend the terms of the Agreement.

The Consulting Services Agreement is provided as Attachment B. The method of payment to the successful Respondent shall be on a time and material basis with a maximum “not to exceed” amount per task as set by the Respondent in the proposal or as negotiated between the Respondent and NCPA as being the maximum cost to perform all work. This figure shall include direct costs and overhead, such as, but limited to, transportation, communications, subsistence and materials and any subcontracted items of work. Progress payments will be based on a percentage of work completed. Respondents shall be prepared to accept the terms and conditions of the Agreement.

Selected Respondent(s), at Respondent’s sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in the Form Consulting Services Agreement (Attachment B). Only minor exception requests will be reviewed. Proposals that take any exceptions to the proposed Agreement may be determined by NCPA, at its sole discretion, to be unacceptable and no longer considered for award.

7. EVALUATION PROCESS

NCPA will, in its sole discretion, evaluate RFP responses to determine which Respondents are likely to provide the greatest overall value to NCPA Participating 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 NCPA, and other publicly available information such as public credit ratings.

NCPA may 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 NCPA to adequately review a response, may be eliminated from further consideration at any stage or time during the RFP process.

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

NCPA and the selection committee will evaluate the proposals provided based on the following criteria:

1. Quality and completeness of Proposal.
2. Knowledge, experience and skills of Respondent 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. Respondent's ability to perform the work within the time specified and demonstrated strong project management.
6. Customer references.

The selection committee will make a recommendation to NCPA. The acceptance of the proposal will be evidenced by written Notice of Award from NCPA 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).

SERVICES ADDRESSED IN RESPONSE

To clarify which services the Respondent seeks to provide, check the appropriate box(es) below:

Task I: LCFS Tier 2 Fuel Pathway Consultation, Analysis, and/or Application Submittal

Task II: Independent Validation and Verification of LCFS Fuel Pathways

**ATTACHMENT A
RESPONDENT INFORMATION FORM**

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 Agencies adequate time to evaluate the qualifications submitted.

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.

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

**ATTACHMENT A
RESPONDENT INFORMATION FORM**

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
FORM CONSULTING SERVICES 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 _____, a _____ [sole proprietorship, partnership, corporation] with its office located at _____ ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2021 ("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 (five) years 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 perform the Requested Services, or does not respond within the seven day period specified, then Consultant will have agreed to perform the Requested

ATTACHMENT B
FORM CONSULTING SERVICES AGREEMENT

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** _____ dollars (\$_____) 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

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.

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

ATTACHMENT B
FORM CONSULTING SERVICES AGREEMENT

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 \$2,000,000 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 \$2,000,000 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 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 Professional Liability Insurance. Not applicable.

4.4 All Policies Requirements.

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- 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.
- 4.5 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 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.

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- 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 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.

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- 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.

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

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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
 - 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. Furthermore, any Agency Confidential Information as defined in Section 9.4.1 and any Consultant derivative work based upon Agency's Confidential Information shall be maintained by Consultant in confidence, secured physically and electronically from disclosure and destroyed upon completion of any task under this Agreement pursuant to Section 9.4.4.
- 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.

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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, or physical security or critical energy/electric infrastructure information (CEII) 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, trade secret information, physical security and/or CEII. 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, or (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof.

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 confidence; 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

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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 in files of Receiving Party's representatives only 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.

- 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.*

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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:

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,

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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.

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 SCPPA 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 _____

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[NAME, TITLE]

[NAME, TITLE]

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Jane E. Luckhardt, General Counsel

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EXHIBIT A

SCOPE OF SERVICES

[ATTACH OR INSERT SCOPE OF SERVICES HERE]

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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.