



Request for Proposals (RFP) for Consultant Services

Title: State Legislative Consulting Services
Bid No. LR 2106

RFP Issue Date:	Monday, December 20, 2021
RFP submittal Deadline:	Friday, January 14, 2022 5:00 p.m. PST
Contract Administrator:	Emily Lemei
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**REQUEST FOR PROPOSALS (RFP) LR2106
FOR CONSULTANT SERVICES**

TITLE: State Legislative Consulting Services

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1. INTRODUCTION

NCPA is a nonprofit California joint powers agency established in 1968 to construct and operate renewable and low-emitting generating facilities and assist in meeting the wholesale energy needs of its 16 Members: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Shasta Lake, and Ukiah, Plumas-Sierra Rural Electric Cooperative, Port of Oakland, San Francisco Bay Area Rapid Transit (BART), and Truckee Donner Public Utility District—collectively serving nearly 700,000 electric consumers in Central and Northern California.

2. SCOPE OF SERVICES

The Northern California Power Agency (NCPA) is soliciting proposals from an individual or a firm (“Consultant”) to provide representation for the Agency in the State Legislature as well as the Administration, and to advocate on behalf of policies that promote the interests of the electricity consumers served by our member utility systems.

To be considered in this process, NCPA invites proposals from qualified and experienced Consultants with:

- A minimum of ten (10) years of direct experience lobbying the California State Legislature;
- A deep understanding of current trends and issues in energy policy (preferably public power utility issues) and;
- A proactive approach to legislative and regulatory advocacy.

In this role, the Consultant will:

- Represent NCPA before the State Legislature and the Administration.
- Work closely with, and under the direction of, NCPA management.
- Identify and track legislative and regulatory policy proposals that impact NCPA and its member systems.
- Initiate and execute strategies to advance policies of importance to NCPA and its member systems.
- Educate policymakers and staff regarding the implications of legislation for NCPA and its member systems. Maintain strong relationships with NCPA’s state legislative delegation, members of committees with jurisdiction over energy and environmental issues, the governor’s office, and agency representatives. Testify in committee proceedings as needed.
- Coordinate and facilitate meetings with state policymakers and staff for NCPA staff and members
- Prepare issue papers and other briefing documents related to NCPA’s priority issues. Develop testimony and legislative correspondence.

- Provide regular reports to NCPA and its members regarding legislative actions and other proceedings that may impact NCPA and/or its member utility systems. This includes the preparation of articles for weekly member publication.
- Provide support for two Sacramento-based grassroots advocacy events each year where NCPA members meet with state policymakers and key staff regarding legislative issues. Includes preparation of meeting materials, member briefings, scheduling and organization of meetings, and attending meetings to represent NCPA. Also requires some planning and support of event logistics.
- Attend NCPA's annual state legislative staff tour and support event logistics where needed.
- Provide support for other NCPA conferences, events, and Legislative and Regulatory Affairs Committee meetings. Includes securing speakers on key policy topics, participating as a panelist or moderator, and providing legislative updates and briefings to committee members during public meetings. This will require in-state travel.
- Work in close partnership with trade and advocacy organizations, including California Municipal Utilities Association, the Southern California Public Power Authority, and other consumer, energy and environmental policy stakeholders. Develop coalition partnerships as issues warrant.
- Take primary responsibility for performing the Consultant services, and refrain from delegating its duties to another person without the consent of NCPA. If Consultant is a firm, ensure that a principal from the firm is primarily responsible for executing the Consultant services, and refrain from delegating its duties to an associate or other person without the consent of NCPA.
- Refrain from any private or business relationships or activities that could result in a conflict of interest or could reasonably be perceived as a conflict of interest.

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 reserves 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 14, 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 14, 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 20, 2021
Deadline for questions, clarifications	January 6, 2022
Proposals Due	January 14, 2022
Review of Responses	January 15-19, 2022
Finalist Interviews	January 20-24, 2022
Selection of Respondent(s)	January 26, 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

Provide a detailed description of Consultant’s ability to address Scope of Work. Propose and describe programs, activities, and strategies that advance Client’s legislative priorities.

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.

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 qualifications and previous experience on similar or related contracts. Provide, in a table format, descriptions of pertinent experience with other public municipalities and private sector that includes a summary of the work performed, the period over which the work was completed, and

the name, title, and phone number of client's to be contacted for references. NCPA may, at its discretion, contact any or all of the references provided.

5.5 Knowledge of Public Power

Describe knowledge and familiarity with the basic business model of public power. Identify previously enacted electricity legislation that has impacted or could have impacted Agency's business model and describe its affect, potential or realized, on Agency's business model. Offer a broad example of a NCPA legislative strategy to deal with the potential legislation.

5.6 List of Current Clients

To assist NCPA in determining whether or not a Respondent has potential conflicts of interest, Respondent should provide a list of current clients and the scope of representation.

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

The fee information is relevant to a determination of whether the fee is fair and reasonable in light of the services to be provided. Provision of this information assists the NCPA in determining the firm's understanding of the requested services, and provides staff with tools to negotiate the cost.

This section shall include the hourly rates and proposed total hours of availability per month needed 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 NCPA. The hourly rates may be used for pricing the cost of additional services outlined in the Scope of Work.

6. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement resulting from this solicitation, if awarded, will be a not-to-exceed retainer form of contract between NCPA and the successful Respondent.

A sample Consulting Services Agreement is provided as Attachment C. The method of payment to the successful Respondent shall be on a monthly retainer basis with a maximum “not to exceed” amount per year as set by the Respondent in the proposal or as negotiated between the Respondent and NCPA. This figure shall include direct costs and overhead, such as, but limited to, transportation, communications, subsistence and materials and any subcontracted items of work. Respondents shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements in Attachment C.

The above factors will be taken into account in evaluating proposals. Proposals that take substantial 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 on the part of NCPA or its Members. No de-briefings will be provided as these determinations will be final and are not subject to review.

NCPA 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. Competitive rates for the requested services.

4. Respondent's ability to perform the work within the time specified and demonstrated strong project management.
5. Customer references.

The acceptance of the proposal will be evidenced by written Notice of Award from NCPA to the successful Respondent.

**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 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.

**ATTACHMENT A
RESPONDENT INFORMATION FORM**

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
CONFLICT OF INTEREST CERTIFICATION

- A. This certification shall be completed and submitted with the Cover Letter and other attachments required in the proposal.
- B. The Northern California Power Agency (NCPA) intends to avoid conflicts of interest or the appearance of conflicts of interest on the part of the Respondent. Thus, NCPA reserves the right to determine, at its sole discretion, whether any information received from any source indicates the existence of a conflict of interest. For purposes of this certification and disclosing conflicts of interest, "Respondent" includes partners or other employees of the Respondent's firm or partnership. Because of the complexities involved in defining potential conflicts of interest with the mission of NCPA, NCPA reserves the right to request further information if needed.
- C. Respondent shall include a list of all their current clients to assist NCPA in identifying potential conflicts of interest. If NCPA is aware of a known or suspected conflict of interest, the Respondent will be given an opportunity to submit additional information or to resolve the conflict. A Respondent with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by NCPA to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by NCPA and cannot be resolved to the satisfaction of NCPA, before or after the award of the contract, the conflict will be grounds for rejection of the proposal and/or termination of the contract.
- D. The Respondent shall submit this Certificate in their proposal. This Certificate shall bear the original signature of an official or employee of the proposer who is authorized to bind the Respondent.
- E. This Certificate will be incorporated into the contract, if any, awarded from this Request for Proposals.
- F. During the entire term of the contract the Respondent shall notify NCPA within ten (10) working days of any change to the information provided on this Certificate.
- G. NCPA's determination of a suspected or potential conflict of interest will be based on all of the Respondent's business affiliations and contractual relationships.
- H. If the Respondent has a suspected or potential conflict of interest, the proposer shall attach to this form a description of the relationship, a plan for ensuring that such a relationship will not adversely affect NCPA, and procedures to guard against the existence of an actual conflict of interest.

**ATTACHMENT B
CONFLICT OF INTEREST CERTIFICATION**

The undersigned hereby affirms that (check one):

- The statements above have been read, and the undersigned agency has determined that no conflict of interest exists.

- A suspected or potential conflict of interest does exist, and additional information (as described in H. above) is attached along with a plan to address the possible conflict of interest.

I am an authorized representative of _____ and agree to the terms and conditions for participating in this Proposal.

Signed: _____ Date: _____

Print: _____ Title: _____

**ATTACHMENT C
SAMPLE 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 _____, 2022 ("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 will include Services directly to the Agency.
- 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 Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

ATTACHMENT C
SAMPLE CONSULTING SERVICES AGREEMENT

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 Services. In the event Consultant fails to submit an invoice to Agency for any

ATTACHMENT C
SAMPLE CONSULTING SERVICES AGREEMENT

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.

ATTACHMENT C
SAMPLE CONSULTING SERVICES AGREEMENT

- 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.** Not applicable.
- 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.
- 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

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(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.

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

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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 delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

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- 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.
- 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

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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, trade secret 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 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,

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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.*
- 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:

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[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, 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.

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:

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]

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.