



# City of Palo Alto

## City Council Staff Report

(ID # 7172)

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**Report Type: Consent Calendar**

**Meeting Date: 8/15/2016**

**Summary Title: Correction to NCPA Professional Services Agreement**

**Title: Adoption of a Resolution Approving an Updated FY2017 Professional Services Agreement Between the Northern California Power Agency and the Cities of Palo Alto and Santa Clara for Electric Transmission, Generation and Regulatory Consulting Services, Repealing Resolution No. 9604 and Finding That Such Approval is not a Project Subject to California Environmental Quality Act (CEQA) Review**

**From: City Manager**

**Lead Department: Utilities**

### **Recommendation**

Staff recommends:

- 1) Council adopt a resolution authorizing the City Manager, or his designee, to execute the Fiscal Year 2017 Professional Services Agreement between the Northern California Power Agency and the Cities of Palo Alto and Santa Clara for Electric Transmission, Generation and Regulatory Consulting Services with a corrected amount for Palo Alto's share of the cost of the consulting services of 23.4%, and repealing Resolution No. 9604, which approved the prior version of the Fiscal Year 2017 Professional Services Agreement.
- 2) Council find that approval of the Fiscal Year 2017 Professional Services Agreement between the Northern California Power Agency and the Cities of Palo Alto and Santa Clara for Electric Transmission, Generation and Regulatory Consulting Services does not require review under the California Environmental Quality Act because it does not meet the definition of a "project" under Public Resources Code Section 21065.

### **Executive Summary**

The Northern California Power Agency (NCPA) provides contract management services to the Cities of Palo Alto and Santa Clara for consulting services related to electric transmission issues affecting them both. For consulting agreements executed by NCPA on behalf of one, or a subset of, NCPA members, and to which the members are not a party, NCPA requires that those members enter into a Professional Services Agreement with NCPA. NCPA has a separate contract with Flynn Resource Consultants, Inc. (Flynn RCI) to provide electric transmission

consulting services to Palo Alto and Santa Clara (Attachment C). The approval of the Fiscal Year 2017 Professional Services Agreement with NCPA (Attachment B) is the subject of this report. Council approved the FY 2017 Professional Services Agreement at its June 20, 2016 meeting. However, on receiving the final copy for of the agreement from NCPA for signature, staff realized that Palo Alto's percentage share had not been updated in the version approved by Council. Palo Alto's share of the one year Flynn RCI contract and NCPA's contract management fees should be 23.4%, not 22.3%, capping the City's share at \$153,855 for FY 2017 instead of \$146,662.

## **Background**

NCPA is a joint powers agency whose members are publicly owned electric utilities, including Palo Alto (City). NCPA arranges for delivery of the City's electric power on the electric transmission system to the point of interconnection with the City's distribution system, and manages electric resources that the City jointly owns with other NCPA members.

Following the 2000/2001 California electricity market crisis, the California Independent System Operator (CAISO) initiated a major redesign of the state's electricity markets, in which the City participated with the consulting assistance of Flynn RCI. The Cities of Palo Alto, Alameda, and Santa Clara identified common interests in advocating for certain market design proposals, and formed the group referred to as the Bay Area Municipal Transmission Group, or BAMx. Recognizing their need for technical and regulatory consulting services, the BAMx members considered ways to reduce costs by sharing a consultant. The options considered included forming a new joint powers agency that would then retain a consultant; entering into three separate consulting agreements with one consulting company; or working through NCPA. At the time the members decided that the best alternative was to ask NCPA to provide the consulting services, thereby reducing administrative costs and facilitating coordination with other NCPA members with common interests. Subsequently, in 2003, the BAMx members requested that NCPA provide professional consulting services related to electric transmission, power generation, regulatory issues, and electric market design issues affecting the three cities. The wider NCPA membership was not engaged in the issues of interest to BAMx, so on March 1, 2003 NCPA entered into a consulting agreement with Flynn RCI to provide these services to the BAMx members.

Since March 2003, Flynn RCI has been representing BAMx in Bay Area electric transmission expansion planning processes, at CAISO proceedings related to electric market design in California, in filings at the Federal Energy Regulatory Commission, and in other regional electric transmission planning venues. BAMx, through Flynn RCI, its consultant, has also advocated for improved reliability of electricity transmission service in and to the Bay Area, has influenced the CAISO's electric transmission planning process to provide for more effective stakeholder participation, and has persuaded the CAISO to take on the responsibility of forecasting the rapidly increasing transmission access charges. BAMx has also had some success in influencing the transmission interconnection process, thereby lowering the anticipated transmission access

charge increases. Specific examples of recent activities that have resulted from the ongoing partnership between BAMx, NCPA and Flynn are listed below:

- Active participation in the CAISO's regionalization efforts. The CAISO is currently looking at options to expand its footprint to include PacifiCorp (an electric power company operating throughout the Northwestern United States). While expansion of the CAISO could bring benefits to California, the CAISO's original proposal would have exposed California ratepayers to billions of dollars in increased transmission charges, which could increase Palo Alto's electric transmission costs by \$2-\$4 million per year. BAMx has leveraged its relationship with NCPA and the California Municipal Utilities Association to intervene in the CAISO's regionalization proceedings and advocate for the City's electric ratepayers. BAMx members have also received encouragement from California legislative staff to continue our ratepayer advocacy activities at the CAISO.
- Participation in California Public Utilities Commission (CPUC) regulatory proceedings to question the need for a major transmission projects in Southern California, the cost of which is spread to Northern California ratepayers.
- Development of a transmission cost forecasting model that became the basis for a CAISO forecasting model. The model provides information on the impacts of future transmission projects to electric ratepayers.

### **Discussion**

As the current contract between NCPA and Flynn RCI expired on June 30, 2016, NCPA staff is preparing to extend the agreement to continue the consulting services from Flynn RCI for FY 2017, and this agreement is provided for information in Attachment C. Also this year, Alameda has left the BAMx group and so the total budget for the consulting services has been reduced by \$110,000 to \$650,000. NCPA requires the remaining two BAMx members to execute a new Professional Services Agreement for FY 2017, which is the subject of this report and the attached Resolution.

The Professional Services Agreement between NCPA and the BAMx members (Attachment B) states that NCPA is performing or providing these services at the request of the BAMx members, and formalizes NCPA's role in processing invoices from Flynn RCI and allocating the monthly charges to each BAMx member. The allocation of charges between the BAMx members is in proportion to each member's share of energy delivered in the calendar year prior to the contract term. For the contract period (July 1, 2016 through June 30, 2017), the City's share is 23.4% based on energy deliveries in calendar year 2015. With the total contract amount decrease of \$110,000 from last year and changes in energy deliveries in 2015 relative to Santa Clara, Palo Alto's share for FY2017 is capped at \$153,855. The detailed cost allocation to the BAMx members is provided in Table 1.

**Table 1: Contract Cost Allocation**

	% Share	Flynn Contract	NCPA Admin Fee	Total
Palo Alto	23.4%	\$ 152,100	\$ 1,755	\$ 153,855
Santa Clara	76.6%	\$ 497,900	\$ 5,745	\$ 503,645
<b>Total</b>	<b>100.000%</b>	<b>\$ 650,000</b>	<b>\$ 7,500</b>	<b>\$ 657,500</b>

The agreement also contains provisions that limit NCPA’s liability and that of non-participating NCPA members, which NCPA requires in all of its agreements.

The value to the City of participating in BAMx is the continued advocacy for fair and equitable electric market rules, beneficial electric transmission solutions, and effective stakeholder participation in electric transmission planning processes. BAMx takes a lead role in advocating for rigorous economic and needs analyses in the CAISO’s transmission planning proceedings to build new transmission to potential renewable electric resource sites in remote locations. To put this in context for Palo Alto, every \$100 million in transmission investments in the CAISO increases the high voltage transmission charge by six to seven cents, resulting in an increase in annual costs for the City’s electric portfolio of \$60-70,000 (about 0.7% of the City’s 2015 high voltage transmission access cost of \$9.5 million).

**Resource Impact**

The City’s share of the Flynn RCI contract is incorporated into the Electric Fund’s proposed budget for FY 2017. The Consulting Agreement between NCPA and Flynn RCI (Attachment C) specifies a not-to-exceed contract amount of \$650,000 for FY 2017. NCPA will also charge an annual fee of \$7,500 for monthly billing and contract preparation and review. The City’s share is 23.4% of the total cost or \$153,855 for the one-year contract term.

**Policy Implications**

Entering into this agreement does not create new policy, is consistent with existing policy, and is consistent with the Utilities Strategic Plan’s focus on system reliability and cost control.

**Environmental Review**

The Council’s adoption of a resolution authorizing the City Manager to execute the attached professional services agreement does not require review under the California Environmental Quality Act, because it does not meet Public Resources Code Section 21065’s definition of a “project”.

**Attachments:**

- Attachment A: RESO NCPA Professional Services Agreement BAMx and Flynn RCI Draft (PDF)
- Attachment B: FY17 BAMx Professional Services Agreement - Final (PDF)
- Attachment C: FY17 Amendment No. 1 to the Consulting Services Agreement (PDF)

NOT YET APPROVED

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Execute the Fiscal Year 2017 Professional Services Agreement Between the Northern California Power Agency and the Cities of Palo Alto and Santa Clara For Electric Transmission, Generation and Regulatory Consulting Services, and Repealing Resolution No. 9604

## R E C I T A L S

- A. The City of Palo Alto (“City”), a municipal utility and a chartered city, is a member of the Northern California Power Agency (“NCPA”).
- B. In 2003, Palo Alto, along with two other NCPA members, the Cities of Alameda and Santa Clara, formed the Bay Area Municipal Transmission Group (“BAMx”) and requested that NCPA provide professional consulting services related to electric transmission, power generation, regulatory issues, and electric market design issues affecting the BAMx members.
- C. Since 2003, NCPA has contracted with Flynn Resource Consultants, Inc. (“Flynn RCI”) to provide these consulting services to the BAMx members.
- D. The current contract between NCPA and Flynn RCI expires on June 30, 2016 and NCPA is amending the contract with Flynn RCI to continue to provide these consulting services for Fiscal Year (FY) 2017.
- E. In 2015, the City of Oakland, acting by and through its Board of Port Commissioners (the “Port of Oakland”) expressed a desire to join BAMx, and the BAMx members desired to add the Port of Oakland to their membership.
- F. In 2016, the Port of Oakland and City of Alameda both withdrew from BAMx membership (hereinafter, references to “BAMx” include the Cities of Palo Alto and Santa Clara).
- G. For consulting agreements executed by NCPA on behalf of one, or a subset of, NCPA members, NCPA requires that those members enter into a Professional Services Agreement with NCPA.
- H. The Professional Services Agreement between the BAMx members and NCPA specifies the terms and conditions under which NCPA will procure the requested professional consulting services from Flynn RCI and allocate charges between the BAMx members.
- I. The Council approved a version of the FY 2017 Professional Services Agreement at its June 20, 2016 meeting, but the final version of the Agreement incorrectly increased the City’s percentage share of the contract by 1.1%, resulting in a higher not-to-exceed amount than was authorized by the Council in Resolution No 9604. The Council now wishes to approve the attached version of the FY 2017 Agreement and repeal Resolution No. 9604 which included the prior version with the incorrect value for Palo Alto’s share of the total cost.

The Council of the City of Palo Alto RESOLVES as follows:

NOT YET APPROVED

SECTION 1. The Council authorizes the City Manager, or his designee, to execute the Fiscal Year 2017 Professional Services Agreement between the Northern California Power Agency and the Cities of Palo Alto and Santa Clara for Electric Transmission, Generation, and Regulatory Consulting services (Attachment B), in an amount not to exceed \$153,855 for Palo Alto’s share for the one year contract term.

SECTION 2. Resolution No. 9604, which approved a prior version of the Fiscal Year 2017 Professional Services Agreement that included an incorrect value for Palo Alto’s share of the total cost, is repealed.

SECTION 3. The Council finds that funds to cover the City’s share of the Flynn RCI contract are allocated in the Electric Fund’s proposed budget for FY 2017.

SECTION 4. The Council finds that the adoption of this resolution does not require review under the California Environmental Quality Act, because it does not meet Public Resources Code Section 21065’s definition of a “project”. Section 15378(b)(3) of the CEQA Guidelines provides that “[o]rganizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment” are not projects under CEQA.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Deputy City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Utilities

\_\_\_\_\_  
Director of Administrative Services



**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND THE CITIES OF PALO ALTO AND SANTA CLARA  
(THE "BAY AREA MUNICIPAL TRANSMISSION SERVICES AGREEMENT" OR "BAMx  
AGREEMENT")**

This Professional Services Agreement ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY ("NCPA"), a joint powers agency, and the Cities of Palo Alto and Santa Clara (each referred to as a "Contracting Member" and jointly referred to as "Contracting Members" or "BAMx Participants"). NCPA and the Contracting Members are together sometimes referred to herein individually as a "Party" and collectively as "the Parties."

This Agreement is made as of \_\_\_\_\_, 2016 (the "Effective Date") in Roseville, California.

**Section 1. RECITALS**

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

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

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

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

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

1.5 The Parties have previously entered into a professional services agreement for this same purpose dated as of July 1, 2015 ("the Prior Agreement") the term of which ends on June 30, 2016.

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

## **Section 2. DEFINITIONS**

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

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

2.2 "NCPA Members" shall mean the signatories to the JPA or those agencies which have executed an Associate Member Agreement with NCPA.

2.3 "Stranded Costs" shall mean all costs incurred by NCPA in providing Services to Contracting Members under this Agreement that could not reasonably be avoided by NCPA from the date it receives a written Notice of Termination. Such costs may include, but not be limited to, salary and employment costs, rent, utilities, or contracts incurred to provide Services under this Agreement. In this regard, Contracting Members acknowledge that NCPA will be entering into professional services agreements with third persons under the terms of this Agreement, and that sums owing to such third persons may become Stranded Costs upon termination of this Agreement.

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

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

3.1 This Agreement is entered into by the Parties in order for NCPA to provide services to Contracting Members for the services described in Exhibit A hereto ("Services"). The Services



do not include supervision of the performance of any of the third persons with whom contracts are entered into; such supervision shall be provided by the Contracting Members.

3.2 The following are the authorized representatives of the Parties (“Authorized Representatives”) for contract administration purposes under this Agreement:

NCPA:

David Dockham, [Dave.Dockham@ncpa.com](mailto:Dave.Dockham@ncpa.com)  
Assistant General Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678  
916-781-4207  
Fax 916-781-4255

PALO ALTO:

Debra Lloyd, [Debra.LLoyd@cityofpaloalto.org](mailto:Debra.LLoyd@cityofpaloalto.org)  
Utilities Compliance Manager  
City of Palo Alto  
P.O. Box 10250  
Palo Alto, CA 94303  
650-329-2369  
Fax: 650-326-1507

SANTA CLARA:

Joyce Kinnear, [JKinnear@SantaClaraCA.gov](mailto:JKinnear@SantaClaraCA.gov)  
Division Manager  
1601 Civic Center Dr. # 201  
Santa Clara, CA 95050  
408-615-6656  
Fax 408-261-2717

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

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

3.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that Contracting Members, in their sole discretion, at any time during the term of this Agreement, jointly desire the reassignment of any such persons, NCPA shall, immediately upon receiving notice from each Contracting Member of such desire of the Contracting Members, reassign such person or persons.

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

## **Section 4. TERM AND TERMINATION**

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

4.2 Term. The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2017.

4.3 Early Termination and Stranded Costs. This Agreement may be terminated by either NCPA or by the Contracting Members, upon 30 days written notice to all other Parties ("Notice of Termination"). Provided, however, that a Notice of Termination on behalf of the Contracting Members shall be executed by each Contracting Member to be effective.

In the event of an early termination, Contracting Members shall pay NCPA for all fees and costs required under this Agreement through the effective date of their Notice of Termination plus all Stranded Costs. Upon payment of the above amounts, no Parties shall have any further obligations under this Agreement except as otherwise set forth in Section 5.7 regarding the survival of defense and indemnity obligations.

## **Section 5. INDEMNITY AND INSURANCE**

### 5.1 Limitation of NCPA's Liability.

5.1.1 Except as provided in this section 5.1, NCPA shall not at any time be liable for any injury or damage occurring to Contracting Members or any other person or property from any cause whatsoever arising out of this Agreement.

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

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

5.2 Indemnification of NCPA. Except as specified in Section 5.1.2 above, Contracting Members shall, at their sole cost and expense, indemnify and hold harmless NCPA and all associated, affiliated, allied, member and subsidiary entities of NCPA, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including,

without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement.

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

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

5.5 Insurance. During the term of the Agreement and prior to beginning any work under this Agreement, NCPA shall maintain, or cause to be maintained, in full force and effect, and at its sole cost and expense, the types and limits of insurance as are annually approved by the governing Commission of NCPA. The types and limits of insurance that are applicable to this Agreement are evidenced by list of insurance coverages which is attached hereto as Exhibit C. NCPA warrants and represents that the types of insurance and coverage limits shown in Exhibit C are in full force and effect and shall remain so during the term of this Agreement unless NCPA gives prior written notification (of not less than 15 days) of modification, cancellation or rescission of such coverage.

5.6 Contracting Members' Acknowledgment of Option to Secure Additional Insurance. The Contracting Members acknowledge that there are limitations on NCPA's liability to the Contracting Members under this Section 5 and that the Contracting Members may need to purchase additional insurance of their own to cover the additional risks and the potential additional liabilities they are assuming under this Agreement. Contracting Members agree that they will, with respect to any additional insurance they obtain or which is otherwise available to Contracting Members, cause their insurers to issue an endorsement providing a waiver of subrogation rights as to Indemnitees.

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

## **Section 6. COMPENSATION**

6.1 Charges and Reserves.

6.1.1. Monthly Charges. Charges for the Services provided hereunder shall be the sum of (a) and (b) below, and shall be billed separately to each BAMx Participant in accordance with Exhibit B:

- (a) Six Hundred Twenty Five Dollars (\$625) per month for services provided by NCPA to the BAMx Participants under this Agreement; and
- (b) Fifty Four Thousand One Hundred Sixty Seven Dollars (\$54,167) per month for services provided to the BAMx Participants directly by Flynn Resource Consultants Inc., under the CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND FLYNN RESOURCE CONSULTANTS INC., dated \_\_\_\_\_, 2016.

6.1.2 Security Deposit. Contracting Members shall each maintain on deposit in its General Operating Reserve Account held at NCPA the sum of Zero Dollars (\$0) as security to NCPA for liabilities NCPA could incur under this Agreement. Contracting Members hereby authorize NCPA to reserve and commit this sum in its General Operating Reserve Account for the payment of the aforementioned liabilities should same become necessary. Interest on monies held by NCPA pursuant to this section shall be credited in accordance with the then standard practices of NCPA relating to the General Operating Reserve Account.

## **Section 7. BILLING AND PAYMENT**

7.1 Invoices. NCPA shall submit invoices to Contracting Members, not more often than once a month during the term of this Agreement, for Services performed and reimbursable costs incurred prior to the invoice date.

7.2 Monthly Payment. Contracting Members shall make monthly payments, based on invoices received, for Services performed, and for authorized reimbursable costs incurred. Contracting Members shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay NCPA. Any amount due on a day other than a business day, i.e., any day except a Saturday, Sunday, or a Federal Reserve Bank holiday, may be paid on the following business day.

If all or any portion of a bill is disputed by Contracting Members, the entire amount of the bill shall be paid when due, and NCPA's Authorized Representative shall be concurrently provided written notice of the disputed amount and the basis for the dispute. NCPA shall reimburse any amount determined to have been incorrectly billed, within ten (10) days after such determination.

Amounts which are not paid when due shall bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT & SA, or its successor, then in effect, plus two per cent (2%) or (ii) the maximum rate permitted by law. The provisions of this Section 7 shall survive expiration of this Agreement until satisfied.

7.3 Contracting Members shall pay for the Services pursuant to this Agreement. Contracting Members shall not pay any additional sum for any expense or cost whatsoever

incurred by NCPA in rendering Services pursuant to this Agreement. Contracting Members shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall NCPA submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment in accordance with this Agreement.

7.4 Hourly Fees. Fees for work performed by NCPA on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.

7.5 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to Contracting Members. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

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

7.7 Payment upon Termination. In the event that Contracting Members or NCPA terminates this Agreement pursuant to Section 4, Contracting Members shall compensate the NCPA for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written Notice of Termination. NCPA shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

7.8 Authorization to Perform Services. NCPA is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from each of the Contracting Members' Authorized Representative following receipt of the required approvals under the terms of this Agreement.

7.9 The addresses of Contracting Members to which invoices shall be sent is:

Debra Lloyd  
Utilities Compliance Manager  
City of Palo Alto  
P.O. Box 10250  
Palo Alto, CA 94303  
650-329-2369  
Fax: 650-326-1507

Bob Kazlauskas  
City of Santa Clara  
Attn: Electric Department  
1500 Warburton Ave  
Santa Clara, CA 95050  
Bkazlauskas@svpower.com  
408-615-6688

## **Section 8. STATUS OF NCPA; FACILITIES AND EQUIPMENT**

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

8.2 Facilities and Equipment. The facilities and equipment that may be necessary to perform the Services required by this Agreement shall be provided as follows: **None.**

## **Section 9. UNCONTROLLABLE FORCES**

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

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

## **Section 10. LEGAL REQUIREMENTS**

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

10.2 Compliance with Applicable Laws. NCPA and any subcontractors shall comply with

all laws applicable to the performance of the Services hereunder.

10.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, NCPA and any subcontractors shall comply with all applicable rules and regulations to which Contracting Member is bound by the terms of such fiscal assistance program.

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

10.5 Nondiscrimination and Equal Opportunity. NCPA shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by NCPA under this Agreement. NCPA shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of NCPA thereby.

NCPA shall include the provisions of this Subsection in any subcontract approved by Contracting Members' Authorized Representatives or permitted by this Agreement.

## **Section 11. KEEPING AND STATUS OF RECORDS.**

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

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

11.3 Inspection and Audit of Records. Any records or documents that Section 11.2 of this Agreement requires NCPA to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Contracting Member. 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 any Contracting Member or as part of any audit of any of the Contracting Members, for a period of three (3) years after final payment under the Agreement.

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

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

- (a) Has become a matter of public knowledge other than through an act or omission of Receiving Party;
- (b) Has been made known to Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of Receiving Party prior to the disclosure of such Information by Disclosing Party and was not acquired directly or indirectly from the other Party or any person or entity in a relationship of trust and confidence with the other Party with respect to such Information;
- (d) Receiving Party is required by law to disclose; or
- (e) Has been independently developed by Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

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



## Section 12. MISCELLANEOUS PROVISIONS

12.1 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

12.2 Venue. In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

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

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

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

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

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

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

NCPA:  
David Dockham  
Assistant General Manager – Power Management  
Northern California Power Agency

651 Commerce Drive  
Roseville, CA 95678

With a copy to:  
Michael F. Dean  
General Counsel, Northern California Power Agency  
c/o Meyers Nave  
555 Capitol Mall, Suite 1200  
Sacramento, CA 95814

PALO ALTO:  
Ed Shikada  
Assistant City Manager & Interim Utilities Director  
City of Palo Alto  
P.O. Box 10250  
Palo Alto, CA 94303

With a copy to:  
Amy Bartell, Senior Deputy City Attorney  
City of Palo Alto  
c/o City Attorney's office  
P.O. Box 10250  
Palo Alto, CA 94303

SANTA CLARA:  
Joyce Kinnear, Division Manager  
City of Santa Clara  
1500 Warburton Ave  
Santa Clara, CA 95050

With a copy to:  
Richard Nosky, City Attorney  
City of Santa Clara  
1500 Warburton Ave  
Santa Clara, CA 95050

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

12.9 Integration; Incorporation. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Contracting Members and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations,

representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

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

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

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

12.10.3 If the issue remains unresolved after sixty (60) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

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

12.11 Other Agreements. This Agreement is not intended to modify or change any other agreement between any of the Parties, individually or collectively. Without limiting the generality of the foregoing, this Agreement does not amend or extend the Prior Agreement.

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

12.13 Obligations of Contracting Members Joint and Several; No Joint Venture. The duties, obligations and liabilities of the Contracting Members, including the obligations to make payments to NCPA, are intended to be joint and several. Provided that nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to the Contracting Members.

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

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

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

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

**Northern California Power Agency**

\_\_\_\_\_  
RANDY S. HOWARD, General Manager

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
General Counsel

**CONTRACTING MEMBERS:**

**CITY OF PALO ALTO**

Approved as to Form:

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

By: \_\_\_\_\_  
City Attorney

Its: \_\_\_\_\_

**CITY OF SANTA CLARA**

Approved as to Form

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

By: \_\_\_\_\_  
City Attorney

Its: \_\_\_\_\_

## **EXHIBIT A**

### **Scope of Services**

NCPA shall perform the following Services on behalf Contracting Members:

NCPA will enter into a contract with Flynn Resource Consulting Inc. ("Consultant") on behalf of Contracting Members. In general Consultant will provide services including monitoring, meeting participation, coordinating with affected or other participating parties, and, as necessary, preparing and submitting formal position submittals for the following activities:

1. Grid Planning Activities
  - CAISO Regionalization Process, Transmission Access Charge, Governance and Resource Adequacy
    - Coordination with the California Municipal Utilities Association and Northern California Power Agency on these activities
  - CAISO/PG&E annual transmission expansion planning process
  - Support or oppose specific transmission additions
  - Greater Bay Area long term studies
  - CAISO local capacity technical study process
  - Other regional and sub-regional transmission planning activities
  - CAISO Tariff and BPM Change Management Process
  - Generator Interconnection Procedure
  - Transmission cost minimization
  - Impacts due to potential generation retirements
  - Transmission for renewables deliverability issues
  - CTPG planning process
  - Tracy to Bay development activities
2. CPUC and CEC transmission matters
  - Integrated Energy Policy Report
  - Resource adequacy issues
  - Renewable Portfolio Standard issues
  - Long Term Procurement issues
  - Approval of CPCNs and PTCs for new transmission lines
  - Renewable Energy Transmission Initiative (RETI 2.0)
3. CAISO Market Issues
  - CAISO markets proceedings and implementation matters
  - Resource Adequacy / Local Capacity/ Flexible Capacity/ Deliverability
  - LMP congestion and losses incidence and impacts
  - Regionalization and New Participating Transmission Owner Issues
4. Communicate Regularly with BAMx Members
  - Client meetings, telephone conferences and written summaries of activities on key issues.

NCPA will accept invoices from Consultant and transmit them to Contracting Members for their review, and if acceptable, the Contracting Members will direct payment by NCPA. Such payment direction shall be provided by each Contracting Member as designated in Section 12.8 of this Agreement, in writing, utilizing appropriate approval forms as shall be developed and/or revised by NCPA from time to time. An example of such form is included in Exhibit D of this agreement. NCPA will prepare invoices indicating the share of Consultant's costs to be paid by each Contracting Member along with the appropriate charges by NCPA for its services; however, as provided in the Agreement, each Contracting Member is jointly and severally liable for the entirety of any amounts billed under this Agreement. NCPA will then pay Consultant utilizing Contracting Members' funds.

Contracting Members will be solely responsible for payment of the Consultant's invoices, as well as determining whether or not the professional services have been satisfactorily performed. The "Services" under this Agreement by NCPA to Contracting Members are limited to the contracting for services with Consultant and billing/payment function.

**EXHIBIT B  
COMPENSATION SCHEDULE AND HOURLY FEES**

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$650,000. The hourly and monthly rates and or compensation break down and an estimated amount of expenses is as follows:

B-1 Monthly Charges for Services provided by NCPA for billing and contract preparation under this Agreement shall be allocated to each BAMx Participant in proportion to each BAMx Participant's proportionate share of energy delivered in prior Calendar Year as derived from the 2015-2016 NCPA Annual Budget, as reflected in Table 1 below. The total charge for these services shall be Six Hundred Twenty Five Dollars (\$625.00) per month.

B-2 Monthly Charges invoiced by Flynn Resource Consultants Inc to NCPA for services provided to the BAMx Participants under the CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND FLYNN RESOURCE CONSULTANTS INC., dated \_\_\_\_\_, 2016 shall be allocated to each BAMx Participant in proportion to each BAMx Participant's proportionate share of energy delivered in prior Calendar Year as derived from the 2015-2016 NCPA Annual Budget, as reflected in Table 1 below.

Compensation to Flynn Resource Consultants Inc. for all tasks, including hourly fees and expenses, shall not exceed Six-Hundred and Fifty Thousand Dollars (\$650,000). The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Flynn Resource Consultants Inc. hourly rates for services are listed below

<u>Labor Category</u>	<u>Hourly Rate</u>
Principal	\$290-310 per hour
Managing Consultant	\$270-290 per hour
Senior Consultant	\$230-270 per hour
Consultant	\$190-230 per hour
Associate Consultant	\$150-190 per hour
Analyst	\$110-150 per hour
Support Services	\$85 per hour

Travel, food, and miscellaneous expenses, except automobile mileage, associated with the provision of services hereunder shall be billed at cost. Automobile mileage will be billed at the rate approved by the Internal Revenue Service.

For any month in which specialized modeling software is used to perform services under this agreement, the following charges shall apply:

Power flow modeling - \$275/month  
Short circuit modeling – \$800/month



OASIS Data - \$1,200/month  
Market modeling - \$4,000/month

**TABLE 1 Proportionate Share of Energy Delivered**

	<u>MWH</u>	<u>% Share</u>
<b>Palo Alto</b>	978,546	23.4%
<b>Silicon Valley Power</b>	3,196,694	76.6%
	<hr/> 4,175,240	<hr/> 100.00%

**EXHIBIT C**  
**Insurance Maintained by NCPA**

<b>WORKERS' COMPENSATION INSURANCE</b>	<b>\$1,000,000</b>
<b>EXCESS LIABILITY INSURANCE</b>	<b>\$35,000,000</b>
<b>AUTOMOBILE INSURANCE</b>	<b>\$1,000,000</b>



**CONSULTING SERVICES AGREEMENT  
BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND  
FLYNN RESOURCE CONSULTANTS INC.**

**AMENDMENT NO. 1**

This Amendment No. 1 ("Amendment No. 1") to the Consulting Services Agreement Between the Northern California Power Agency ("NCPA") and Flynn Resource Consultants Inc. ("Consultant") dated as of July 1, 2015 (the "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_ with reference to the following facts, among others:

- A. The Agreement is set to expire on June 30, 2016.
- B. The Parties desire to extend the term of the Agreement to enable Consultant's continued provision of Services to NCPA and the BAMx Members as contemplated under the Agreement.

Therefore, the Parties agree as follows:

1. Section 1.1 of the Agreement is replaced in its entirety with the following:

"1.1 **BAMx Members.** NCPA is entering into this agreement with Consultant at the request of certain of its members, the cities of Palo Alto and Santa Clara ("the BAMx Members"), so that NCPA may provide professional consulting services related to electric transmission, power generation, regulatory issues, and electric market design issues affecting the BAMx Members. NCPA's provision of these services is further addressed in the Professional Services Agreement Between Northern California Power Agency and the Cities of Palo Alto and Santa Clara (the "Bay Area Municipal Transmission Services Agreement" or "BAMx Agreement")."

2. Section 1.2 of the Agreement is replaced in its entirety with the following:

"1.2 **Term of Services.** This Agreement shall begin on the Effective Date and shall terminate when Consultant completes the work described in Exhibit A, or on June 30, 2017, whichever occurs first, unless the term of the Agreement is otherwise terminated or modified, as provided for herein."

3. Section 2.0 of the Agreement is replaced in its entirety with the following:

"**COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** the following: (i) Seven Hundred and Sixty Thousand Dollars (\$760,000) during the period of July 1, 2015 through June 30, 2016, and (ii) Six Hundred and Fifty Thousand Dollars (\$650,000)

during the period of July 1, 2016 through June 30, 2017, for all work set forth in Exhibit A, in accordance with the Consultant's fee schedule and reimbursable expenses which is attached as Exhibit B, and made a part of this Agreement. In the event of a conflict between this Agreement and Consultant's proposal regarding the amount of compensation, this Agreement shall prevail."

4. Exhibit A of the Agreement is replaced in its entirety by Exhibit A as attached to this Amendment No. 1 and incorporated herein by this reference.
5. Exhibit B of the Agreement is replaced in its entirety by Exhibit B as attached to this Amendment No. 1 and incorporated herein by this reference.
6. **Effect on Agreement.** Except as specifically modified herein, no other provision in the Agreement is intended to be modified, and the Agreement, as amended, shall remain in full force and effect in its entirety. This Amendment shall not impact, prejudice, or waive either Party's rights or obligations under the Agreement for the period either prior to the effective date of this Amendment or following the termination thereof, and no precedent for further amendments to the Agreement is hereby intended.

The Parties have caused this Amendment No. 1 to be executed on the date as set forth above.

**NORTHERN CALIFORNIA POWER AGENCY**

**CONSULTANT**

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

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

\_\_\_\_\_  
**RANDY S. HOWARD**  
General Manager

\_\_\_\_\_  
**DOUG BOCCIGNONE**  
Chief Financial Officer

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
General Counsel

**EXHIBIT A**  
**SCOPE OF SERVICES**

NCPA is entering into this agreement with Flynn Resource Consultants, Inc. (“Consultant”) at the request of the cities of Palo Alto and Santa Clara (the “BAMx Members”), so that NCPA may assist the BAMx Members in securing professional consulting services related to electric transmission, power generation, regulatory issues, and electric market design issues affecting the BAMx Members. NCPA's provision of related billing services is further addressed in the *Professional Services Agreement Between Northern California Power Agency and the Cities of Palo Alto and Santa Clara* (the "Bay Area Municipal Transmission Services Agreement" or "BAMx Agreement”).

Each BAMx Member shall be represented by a designated BAMx Representative, listed below. During the term of this Agreement, the BAMx Representatives shall complete the Payment Voucher attached as Exhibit D to the BAMx Agreement to approve invoices from Consultant prior to NCPA remitting payment for services rendered by Consultant. The BAMx Representatives will also coordinate, as necessary, work related communications, task orders and invoice matters between and among the BAMx Members and Consultant.

The designated BAMx Representatives of the BAMx Members are:

Joyce Kinnear, City of Santa Clara  
Debbie Lloyd, City of Palo Alto

Any BAMx Member may at any time designate another person as its BAMx Representative by providing written notice of such designation to the other BAMx Members, NCPA and Consultant.

The BAMx Members and Consultant intend to pursue the activities listed below during the term of this Agreement. Such activities will include monitoring, meeting participation, coordinating with affected or other participating parties, and, as necessary, preparing and submitting formal position submittals.

1. Grid Planning Activities

- CAISO Regionalization Process, Transmission Access Charge, Governance and Resource Adequacy
  - Coordination with the California Municipal Utilities Association and Northern California Power Agency on these activities
- CAISO/PG&E annual transmission expansion planning process
- Support or oppose specific transmission additions
- Greater Bay Area long term studies
- CAISO local capacity technical study process
- Other regional and sub-regional transmission planning activities

- CAISO Tariff and BPM Change Management Process
  - Generator Interconnection Procedure
  - Transmission cost minimization
  - Impacts due to potential generation retirements
  - Transmission for renewables deliverability issues
  - CTPG planning process
  - Tracy to Bay development activities
2. CPUC and CEC transmission matters
- Integrated Energy Policy Report
  - Resource adequacy issues
  - Renewable Portfolio Standard issues
  - Long Term Procurement issues
  - Approval of CPCNs and PTCs for new transmission lines
  - Renewable Energy Transmission Initiative (RETI 2.0)
3. CAISO Market Issues
- CAISO markets proceedings and implementation matters
  - Resource Adequacy / Local Capacity/ Flexible Capacity/ Deliverability
  - LMP congestion and losses incidence and impacts
  - Regionalization and New Participating Transmission Owner Issues
4. Communicate Regularly with BAMx Members
- Client meetings, telephone conferences and written summaries of activities on key issues.



**EXHIBIT B**  
**COMPENSATION SCHEDULE AND HOURLY FEES**

Compensation for all tasks under this Agreement, including all hourly fees and expenses, shall not exceed: (i) Seven Hundred and Sixty Thousand Dollars (\$760,000) during the period of July 1, 2015 through June 30, 2016, and (ii) Six-Hundred and Fifty Thousand Dollars (\$650,000) during the period of July 1, 2016 through June 30, 2017. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Consultant hourly rates for the professional services are listed below.

<b><u>Labor Category</u></b>	<b><u>Hourly Rate</u></b>
Principal	\$290-\$310 per hour
Managing Consultant	\$270-\$290 per hour
Senior Consultant	\$230-\$270 per hour
Consultant	\$190-\$230 per hour
Associate Consultant	\$150-\$190 per hour
Analyst	\$110-\$150 per hour
Support Services	\$65-\$85 per hour

Travel (at coach rates), food, and miscellaneous expenses, except automobile mileage, associated with the provision of services hereunder shall be billed at cost. Automobile mileage will be billed at the rate approved by the Internal Revenue Service.

For any month in which specialized modeling software is used to perform services under this agreement, the following charges shall apply:

Power flow modeling - \$ 275/month  
Short circuit modeling - \$800/month  
OASIS Data - \$1,200/month  
Market modeling - \$4,000/month

Specialized software costs that exceed the above amounts may be billed with the prior approval of the Agency and the affected BAMx Member.

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