



City of Palo Alto

City Council Staff Report

(ID # 5837)

Report Type: Consent Calendar

Meeting Date: 6/22/2015

Summary Title: NCPA Professional Services Agreement

Title: Adoption of a Resolution Approving a Professional Services Agreement Between the Northern California Power Agency and the Cities of Alameda, Palo Alto, Santa Clara and Oakland, Acting by and Through its Board of Port Commissioners, for Electric Transmission, Generation and Regulatory Consulting Services for a One Year Contract Term

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that Council adopt a resolution authorizing the City Manager, or his designee, to execute the Professional Services Agreement between the Northern California Power Agency and the Cities of Alameda, Palo Alto, Santa Clara and Oakland, acting by and through its Board of Port Commissioners (the Port of Oakland) for Electric Transmission, Generation and Regulatory Consulting Services for a one year contract term. The City's share of the cost of the contract is capped at \$162,548 over the contract term.

Executive Summary

Since 2003, the Northern California Power Agency (NCPA) has provided contract management services to the Cities of Palo Alto, Alameda and Santa Clara related to electric transmission issues affecting the three cities. The three cities (collectively the Bay Area Municipal Transmission Group, or BAMx) require consulting services unique from other NCPA members, because of the BAMx members' location in the Bay Area, an area that has electric transmission constraints. This year the Port of Oakland expressed interest in joining BAMx and participating in the consulting services. NCPA has a contract with Flynn Resource Consultants, Inc. (Flynn RCI) to provide these professional consulting services to BAMx.

The current contract between NCPA and Flynn RCI expires on June 30, 2015. NCPA issued an RFP for consulting services in April 2015 and selected Flynn RCI. NCPA has prepared a new agreement for consulting services for Fiscal Year (FY) 2016. 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. The renewal of this Professional Services Agreement with NCPA (Attachment B) is the

subject of this report. Palo Alto's share of the one year Flynn RCI contract will cost up to a maximum of \$162,548. One of the benefits from this contract is positioning the BAMx members to critically review transmission projects that will result in increases in high voltage transmission charges, which are estimated to increase over the next six years from \$9.7 million to \$12.9 million annually for Palo Alto.

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 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 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 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:

- Critical review of the transmission planning process that resulted in reductions in the

BAMx members' local capacity resource (LCR) requirements.

- Participation in a California Public Utilities Commission (CPUC) regulatory proceeding questioning the need for a major \$750 million - \$1 billion transmission project in southern California. Had the transmission project been approved, the City's share of its cost, via transmission charges imposed for the City's use of the electric grid, would have been around \$0.5 million annually. The CPUC recently dismissed the project.
- 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 expires on June 30, 2015, NCPA staff issued a request for proposals for consulting services. There were two responses, with similar hourly rates, but only Flynn RCI offered ongoing advocacy services. With the selection of Flynn RCI, in consultation with the BAMx members, NCPA has prepared a new agreement to continue the consulting services from Flynn RCI for FY 2016, and this agreement is provided for information in Attachment C. NCPA also requires that the BAMx members execute a new Professional Services Agreement for FY 2016, 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, 2015 through June 30, 2016), the City's share is 21.18% based on energy deliveries in calendar year 2014. While the total contract amount will increase by \$10,000 compared to last year, Palo Alto's share will go down slightly due to changes in energy deliveries in 2014 relative to the other BAMx members and the addition of the Port of Oakland. 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
Alameda	7.87%	\$ 59,830	\$ 590	\$ 60,420
Palo Alto	21.18%	\$ 160,959	\$ 1,588	\$ 162,548
Port of Oakland	1.76%	\$ 13,391	\$ 132	\$ 13,524
Santa Clara	69.19%	\$ 525,819	\$ 5,189	\$ 531,008
Total	100.00%	\$ 760,000	\$ 7,500	\$ 767,500

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. By the CAISO's own estimations this new transmission could increase the charge to electric utilities for high voltage transmission access by 35-40% over the next six years. 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 0.6% of the City's current 2015 estimated high voltage transmission access cost of \$9.7 million). In the CAISO's most recent transmission project status report there is approximately \$4 billion in proposed transmission projects, which could translate to a \$2.6 million increase in Palo Alto's annual costs.

Resource Impact

The City's share of the Flynn RCI contract is incorporated into the Electric Fund's proposed budget for FY 2016. The Consulting Agreement between NCPA and Flynn RCI (Attachment C) specifies a not-to-exceed contract amount of \$760,000 for FY 2016. NCPA will also charge an annual fee of \$7,500 for monthly billing and contract preparation and review. The City's share is 21.18% of the total cost, up to a maximum of \$162,548 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: Draft Reso (PDF)
- Attachment B: Professional Services Agreement with NCPA and BAMx (PDF)
- Attachment C: FY16 Flynn RCI-NCPA Consulting Services Agreement (PDF)

Resolution No. _____

Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Execute the Professional Services Agreement Between the Northern California Power Agency and the Cities of Alameda, Palo Alto and Santa Clara and the City of Oakland, acting by and through its Board of Port Commissioners For Electric Transmission, Generation and Regulatory Consulting Services

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, 2015 and, following a Request for Proposal, NCPA selected Flynn RCI to continue to provide these consulting services for Fiscal Year (FY) 2016.

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 (hereinafter, references to "BAMx" include the Port of Oakland).

F. 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.

G. 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.

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

SECTION 1. The Council authorizes the City Manager, or his designee, to execute the Professional Services Agreement between the Northern California Power Agency and the Cities of Alameda, Palo Alto and Santa Clara and the Port of Oakland for Electric Transmission, Generation, and Regulatory Consulting services, in an amount not to exceed \$162,548 for Palo Alto’s share for the one year contract term.

SECTION 2. The Council finds that funds to cover the City’s share of the Flynn RCI contract shall be allocated in the Electric Fund’s proposed budget for FY 2016.

SECTION 3. 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”.

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 ALAMEDA, PALO ALTO AND SANTA CLARA
AND THE PORT OF OAKLAND
(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, the Cities of Alameda, Palo Alto and Santa Clara, and the City of Oakland, acting by and through its Board of Port Commissioners ("Port of Oakland") (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 _____, 2015 (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 other than the Port of Oakland, have previously entered into a professional services agreement for this same purpose dated as of July 1, 2014 ("the Prior Agreement") the term of which ends on June 30, 2015.

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

ALAMEDA:

Lindsay Battenberg, Battenberg@alamedamp.com
Energy Resource Analyst
Alameda Municipal Power
2000 Grand Street
P.O. Box H
Alameda, CA 94501-0263
510-814-6412
Fax 510-814-5618

SANTA CLARA:

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

Port of Oakland:

Nicolas Procos, nprocos@portoakland.com
Manager of Utilities Administration

530 Water Street
Oakland, CA 94607
510-627-1167
Fax 510-763-8287

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, 2016.

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) Sixty Three Thousand Three Hundred Thirty Three Dollars (\$63,333) 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 _____, 2015.

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

Barry Leska
Assistant General Manager
Alameda Municipal Power
Energy Resource Planning
2000 Grand Street
P.O. Box H
Alameda, CA 94501-0263
510-814-5622
FAX 510-814-5618

Nicolas Procos, nprocos@portoakland.com
Manager of Utilities Administration
Port of Oakland
530 Water Street
Oakland, CA 94607
510-627-1167
Fax 510-763-8287

Bob Kazlauskas
City of Santa Clara
Attn: Electric Department
1500 Warburton Ave
Santa Clara, CA 95050
Bkazlauskas@svpower.com
408-615-6688
Fax: 408-261-2717

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:
Valerie Fong, Utilities Director
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

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

ALAMEDA:
Glenn O. Steiger, General Manager
Alameda Municipal Power
2000 Grand Street
P.O. Box H
Alameda, CA 94501-0263

With a copy to:
Andrico Penick
Alameda Office of the City Attorney
City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501

PORT OF OAKLAND:
Nicolas Procos, nprocos@portoakland.com
Manager of Utilities Administration
Port of Oakland
530 Water Street
Oakland, CA 94607
510-627-1167
Fax 510-763-8287

With a copy to:
Donnel Choy
Deputy Port Attorney
Port of Oakland
530 Water Street, 4th Floor
Oakland, CA 94607

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 ALAMEDA

Approved as to Form:

By: _____
Its: _____

By: _____
City Attorney

CITY OF PALO ALTO

Approved as to Form:

By: _____
Its: _____

By: _____
City Attorney

CITY OF SANTA CLARA

Approved as to Form

By: _____
Its: _____

By: _____
City Attorney

PORT OF OAKLAND

Approved as to Form

By: _____
Its: _____

By: _____
Port Attorney

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/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 allocation
 - Impacts due to potential generation retirements
 - Transmission for renewables
 - CTPG planning process
 - Tracy to Bay development activities
 - Integration requirements for renewables
2. CPUC and CEC transmission matters
 - Integrated Energy Policy Report
 - Resource adequacy issues
 - Renewable Portfolio Standard issues
 - Long Term Procurement issues
 - Approval of CPCNs for new transmission lines
3. California Market Design Activities
 - CAISO markets proceedings and implementation matters
 - Resource Adequacy / Local Capacity/ Flexible Capacity/ Deliverability
 - LMP congestion and losses incidence and impacts
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 \$760,000. 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 CY2014 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 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 _____, 2015 shall be allocated to each BAMx Participant in proportion to each BAMx Participant's proportionate share of energy delivered in CY2014 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 Seven-Hundred and Fifty Thousand Dollars (\$760,000). 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	\$280-300 per hour
Managing Consultant	\$260-280 per hour
Senior Consultant	\$220-260 per hour
Consultant	\$180-220 per hour
Associate Consultant	\$140-180 per hour
Analyst	\$100-140 per hour
Support Services	\$65 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 - \$260/month
Short circuit modeling – \$775/month
OASIS Data - \$1,000/month

Market modeling - \$3,850/month

TABLE 1 Proportionate Share of Energy Delivered

	<u>MWH</u>	<u>% Share</u>
Alameda Municipal Power	363,734	7.872%
Palo Alto	978,546	21.179%
Port of Oakland	81,413	1.762%
<u>Silicon Valley Power</u>	3,196,694	69.187%
	4,620,387	100.000%

EXHIBIT C
Insurance Maintained by NCPA

WORKERS' COMPENSATION INSURANCE	\$1,000,000
EXCESS LIABILITY INSURANCE	\$35,000,000
AUTOMOBILE INSURANCE	\$1,000,000

EXHIBIT D

Bay Area Municipal Transmission Services Agreement (BAMX)
Participants Transmittal
Payment Voucher
For the Period: _____

To: Northern California Power Agency **VIA PDF EMAIL**
651 Commerce Drive
Roseville, California 95678
Attention: Accounts Payable (*AcctsPayable@ncpa.com)

From: Contracting Members – The Cities of Alameda, Palo Alto and Santa Clara, and Port of Oakland (each referred to as a "Contracting Member" and jointly referred to as "Contracting Members" or "BAMx Participants")

I the undersigned hereby certify that I am authorized to approve payment of the **ATTACHED** billing statement and or invoice(s) and do hereby approve payment thereof by the Billing Agent (Northern California Power Agency) as indicated below:

For City of Alameda: _____
Name Date

- No exceptions.
- With the deduction of the following exceptions:

For City of Palo Alto: _____
Name Date

- No exceptions.
- With the deduction of the following exceptions:

For Port of Oakland: _____
Name Date

- No exceptions.
- With the deduction of the following exceptions:

For City of Santa Clara: _____
(Silicon Valley Power) Name Date

- No exceptions:
- With the deduction of the following exceptions:

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

This agreement for consulting services ("Agreement") is entered into on _____, 2015 (the "Effective Date") between the NORTHERN CALIFORNIA POWER AGENCY, a public joint powers agency, with offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 ("Agency") and Flynn Resource Consultants Inc., ("Consultant") (together sometimes referred to as the "Parties").

Section 1. SERVICES. In accordance with the terms and conditions set forth in this Agreement, Consultant agrees to perform all services described in the Scope of Work attached as Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 **BAMx Members.** NCPA is entering into this agreement with Consultant at the request of certain of its members, the cities of Alameda, Palo Alto, Santa Clara and Oakland, acting by and through its Board of Port Commissioners ("Port of Oakland") ("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 Alameda, Palo Alto, Santa Clara and Port of Oakland (the "Bay Area Municipal Transmission Services Agreement" or "BAMx Agreement").
- 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, 2016, whichever occurs first, unless the term of the Agreement is otherwise terminated or modified, as provided for herein.
- 1.3 **Standard of Performance.** Consultant shall diligently perform all services required in connection with this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services in connection with this Agreement.
- 1.5 **Termination.** Agency may cancel this Agreement, after consultation with the BAMx Representatives as defined by Exhibit A, at any time and without cause upon written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services satisfactorily completed as of the date of written notice of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency documents and records identified in Section 8.1 of this Agreement.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** Seven-Hundred and Sixty Thousand Dollars (\$760,000) 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.

- 2.1 Invoices.** Consultant shall submit invoices 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 to:
- Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable
- 2.2 Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred.
- 2.3 Hourly Fees / Reimbursable Expenses.** If applicable, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the fee schedule attached to this Agreement as Exhibit B. Reimbursable expenses are specified in Exhibit B.
- 2.4 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

Section 3. 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 for the period covered by the Agreement.

- 3.1 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.
- 3.2 Commercial General and Automobile Liability Insurance.**
- 3.2.1 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 property damage which may arise out of the operations of the consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate.
- 3.2.2 Automobile Liability.** If Consultant owns any automobiles, Consultant shall maintain automobile liability insurance for the term of this Agreement covering any loss of liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle owned by the Consultant, on or off Agency premises. Consultant shall maintain automobile liability insurance for the term of this Agreement covering any loss of liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle not

owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

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

3.3 Professional Liability Insurance. If Consultant performs design work pursuant to this Agreement, Consultant shall maintain professional liability insurance for licensed professionals performing design work in connection with this Agreement in an amount not less than One Million Dollars (\$1,000,000.00) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed Two Hundred Fifty-Thousand Dollars (\$250,000.00) per claim.

3.4 All Policies Requirements.

3.4.1 Verification of Coverage. Prior to beginning any work under this Agreement, Consultant shall, at the sole option of the Agency, provide Agency with (1) Certification of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; (2) policy endorsements to the general liability policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement; or (3) upon request by the Agency, complete copies of all policies and/or complete copies of all endorsements that demonstrate compliance with this Section 3.

3.4.2 Notice of Reduction in or Cancellation of Coverage. A certified endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency. Consultant shall also provide thirty (30) days' prior notice to the Agency by certified mail of any impending reduction in the limits or coverage of any insurance policies that form a part of this agreement.

3.5 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. 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.

Section 4. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

4.1 Consultant shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the Agency and

BAMx Members, and their respective officials, commissioners, officers, employees, agents and volunteers, from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant. Consultant will bear all 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 (“Liabilities”). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency.

Section 5. STATUS OF CONSULTANT.

- 5.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Agency or any of the BAMx Members. Consultant shall have no authority, express or implied, to act on behalf of Agency or the BAMx Members in any capacity whatsoever as an agent.

Section 6. LEGAL REQUIREMENTS.

- 6.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work in connection with this Agreement.
- 6.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 6.4 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, Consultant 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 Consultant under this Agreement.

Section 7. MODIFICATION.

- 7.1 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties, and after consultation with BAMx Representatives.
- 7.2 **Assignment and Subcontracting.** 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 noted in the proposal, without prior written approval of the Agency.

- 7.3 **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.
- 7.4 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, Agency's remedies shall include, but not be limited to, the following:
- 7.4.1 Immediately terminate the Agreement;
- 7.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant in accordance with this Agreement;

Section 8. KEEPING AND STATUS OF RECORDS.

- 8.1 **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 in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the Agency.
- 8.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or 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.
- 8.3 **Confidential Information and Disclosure.** During the term of this Agreement, either Party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other Party (the "Receiving Party"). The Receiving Party shall hold the 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. Consultant understands that the Agency is a public agency and is subject to the laws that may compel it to disclose information about Consultant's business.

Section 9. MISCELLANEOUS PROVISIONS.

- 9.1 **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.
- 9.2 **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.

- 9.3 **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.
- 9.4 **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.
- 9.5 **Contract Administration.** This Agreement shall be administered on behalf of the Agency by Tony Zimmer, Supervisor of Industry Restructuring and Interconnection Affairs – Power Management, who shall act as the Agency’s representative. All correspondence other than required legal notices shall be directed to or through the representative.
- 9.6 **Notices.** Any written notice to Consultant shall be sent to:

Flynn Resource Consultants Inc.
5440 Edgeview Drive
Discovery Bay, CA 94505-9278
Attn: Doug Boccignone

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:

Tony Zimmer
Supervisor of Industry Restructuring and Interconnection Affairs – Power Management
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

And with a copy to:

Michael F. Dean
General Counsel
Northern California Power Agency
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

- 9.7 **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.

9.8 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.

9.9 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:

Each Party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy 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.*

9.10 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.

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

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**

**BAY AREA MUNICIPAL UTILITIES (BAMx)
SCOPE OF SERVICES FOR FY2016**

NCPA is entering into this agreement with Flynn Resource Consultants, Inc. ("Consultant") at the request of the cities of Alameda, Palo Alto and Santa Clara, and the Port of Oakland (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 Alameda, Palo Alto, Santa Clara, and Port of Oakland* (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
Lindsay Battenberg, Alameda Municipal Power
Nicolas Procos, Port of Oakland

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/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 allocation
- Impacts due to potential generation retirements
- Transmission for renewables

- CTPG planning process
 - Tracy to Bay development activities
 - Integration requirements for renewables
2. CPUC and CEC transmission matters
 - Integrated Energy Policy Report
 - Resource adequacy issues
 - Renewable Portfolio Standard issues
 - Long Term Procurement issues
 - Approval of CPCNs for new transmission lines
 3. California Market Design Activities
 - CAISO markets proceedings and implementation matters
 - Resource Adequacy / Local Capacity/ Flexible Capacity/ Deliverability
 - LMP congestion and losses incidence and impacts
 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 Seven-Hundred and Sixty Thousand Dollars (\$760,000). 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.

<u>Labor Category</u>	<u>Hourly Rate</u>
Principal	\$280-\$300 per hour
Managing Consultant	\$260-\$280 per hour
Senior Consultant	\$220-\$260 per hour
Consultant	\$180-\$220 per hour
Associate Consultant	\$140-\$180 per hour
Analyst	\$100-\$140 per hour
Support Services	\$65 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 - \$ 260/month
Short circuit modeling – \$775/month
OASIS Data - \$1,000/month
Market modeling - \$3,850/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.
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