

**RESOLUTION NO. 1999-16**

**RESOLUTION OF THE SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN  
AGREEMENT FOR RISK MANAGEMENT CONSULTING SERVICES WITH  
HENWOOD ENERGY SERVICES, INC.**

WHEREAS, the Southern California Public Power Authority (the Authority) owns interests in various generation and transmission projects, the output of which has been sold to members of the Authority; and

WHEREAS, the electric utility industry is being restructured so that the providers of electricity will be in competition with each other; and

WHEREAS, such restructuring has resulted in many changes in the electric utility industry which may affect the Authority generation and transmission projects, and which require Authority members to change the way they manage their resources; and

WHEREAS, certain of the Authority members have a need to retain consultants to develop and support risk management programs.

WHEREAS, the Authority is willing and able to retain Henwood Energy Services, Inc. and to bill all expenses and costs of retaining such consultant to the member receiving service.


NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Authority as follows:

1. The Executive Director is authorized and directed to retain Henwood Energy Services, Inc., at the request of a member of the Authority, provided that such member agrees, in writing, to bear all costs and expenses of such consultant.

2. The Executive Director is authorized and directed to bill the costs of Henwood Energy Services, Inc. to the member in project billings as the Executive Director and the member may agree.

3. This Resolution shall become effective immediately.

THE FOREGOING RESOLUTION is approved and adopted by the Authority this 20<sup>th</sup> day of May, 1999.

  
\_\_\_\_\_  
PRESIDENT  
Southern California Public  
Power Authority

ATTEST:

  
\_\_\_\_\_  
ASSISTANT SECRETARY  
Southern California Public  
Power Authority

**AGREEMENT BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**and**  
**HENWOOD ENERGY SERVICES, INC.**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is dated May 21, 1999 by and between Henwood Energy Services, Inc., ("Consultant"), with offices at 2710-N Gateway Oaks Dr., Suite 300, Sacramento, CA 92504 and Southern California Public Power Authority ("SCPPA"), with offices at 225 South Lake Avenue, Suite 1410, Pasadena, California 91101. SCPPA and Consultant are also referred to as parties.

WHEREAS, SCPPA owns interests in certain generation and transmission projects on behalf of its Members; and

WHEREAS, restructuring of the electric industry in California has resulted in Members of SCPPA needing Consulting services related directly or indirectly to SCPPA generation and transmission projects; and

WHEREAS, Consultant has many years of experience in the electric industry and is capable of providing Consulting services; and

WHEREAS, City of Riverside ("Member") has requested SCPPA to retain Consultant to provide the services described in Exhibit A.

NOW, THEREFORE, in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

- 1. Services to be Provided:** SCPPA engages the Consultant to perform consulting and related services (the "Services") as described in Exhibit A (the "Scope of Services" or "Scope") for the Consultant. Detailed procedures and practices to be followed while performing the Services, including acceptance of the Services, shall be as set forth in the Scope of Services or a work order issued thereunder. Consultant will perform the services at the direction of and on behalf of the Member.

## **2. Independent Contractors:**

- (a) Consultant is an independent contractor and is not an employee of the SCPPA. Services performed by the Consultant under this agreement are solely for the benefit of the SCPPA and its Members unless specified otherwise.
- (b) Consultant is not required to perform the services during a fixed hourly or daily time and if the services are performed at the Member's premises, then Consultant's time spent at the premises is to be at the discretion of Consultant; subject to Member's normal business hours and security requirements. Except as provided in the Scope, SCPPA will not be required to furnish or provide any training to the Consultant to enable the Consultant to perform the Services. The order or sequence in which the Services are to be performed shall be agreed upon by the Consultant and the Member. Except to the extent that Consultant's work must be performed on or with Member's computers or Member's existing software, all materials used in providing the Services shall be provided by the Consultant.

**3. Standard of Care:** The Consultant will perform Services under this Agreement with the degree of skill and diligence normally practiced by a consultant performing the same or similar service.

**4. Changes/Amendments:** This Agreement may not be changed except by written amendment signed by both parties. Services not expressly set forth in this Agreement are excluded. Consultant shall promptly notify SCPPA if changes to the Scope of Services affect the schedule, level of effort or payment to Consultant. If Consultant determines that changes, including Exhibit A or Exhibit B should be made, the Consultant will notify SCPPA of such proposed changes, including the affects on the schedule, level of effort and payment for such changes. Thereafter, Consultant and SCPPA shall agree in writing on which changes, if any, shall be included in an amendment to either Exhibit A or Exhibit B. If Consultant is delayed in performing the Services by any act of war, force majeure or other circumstance beyond its control, then Consultant shall not be considered to be in default of the performance of its obligations under this Agreement.

**5. Payment:** SCPPA agrees to pay Consultant for services in accordance with the terms and schedule contained in Exhibit A and Exhibit B. SCPPA shall pay invoiced amounts not more than thirty (30) days after delivery of an invoice.

**6. Taxes:** Any and all taxes imposed on Consultant's income, imposed or assessed by reason of this agreement or its performance, including but not limited to sales or use taxes, shall be paid by Consultant. Consultant shall be responsible for any taxes or penalties assessed by reason of any claims that Consultant is an employees of SCPPA, and SCPPA and Consultant specifically agree that Consultant is not an employee or agent of SCPPA.

- 7. Indemnity:** To the extent permitted by law, Consultant agrees to indemnify, defend and hold harmless SCPPA and its Members directors, officers and employees from and against any and all loss, damage, claim or liability, including reasonable attorneys' fees incurred by SCPPA in connection with the provision of the Services to the extent arising out of Consultant's negligence, willful misconduct or bad faith. To the extent permitted by law, SCPPA agrees to indemnify, defend and hold harmless Consultant from and against any and all loss, damage, claim or liability (including, without limitation, reasonable attorney's fees) incurred by Consultant in connection with the provision of the Services or to the extent arising out of SCPPA negligence, willful misconduct or bad faith.
- 8. Limitation of Liability:** No employee or member of the Consultant shall have individual liability to SCPPA. To the extent permitted by law, the total liability of the Consultant to SCPPA for any and all claims arising out of this Agreement, whether caused by negligence errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed one hundred fifty thousand dollars (\$150,000) or the fee amount received by the Consultant hereunder, whichever is lower, provided, however this limitation shall not apply in the event of gross negligence, willful misconduct or bad faith of the Consultant.

In no event and under no circumstances shall consultant be liable to SCPPA for any interest, loss or anticipated revenues, earnings, profits, increased expenses of operations, loss by reason of shutdown or non-operations due to late completion or for any consequential, punitive, indirect or special damages.

- 9. Insurance:** Consultant shall procure and maintain during the term of this agreement automobile liability insurance with coverage, in the amount not less than One Million Dollars (\$1,000,000.00) per assurance, combined single limit (not annual aggregate). The insurance policy shall contain the following claims:

“This insurance shall not be cancelled, limited in scope or coverage or non-renew until after thirty (30) days written notice has been given to the Executive Director, SCPPA, 225 S. Lake Avenue, Suite 1410, Pasadena, CA 91101”

“It is agreed that any insurance maintained by SCPPA shall apply in excess of and not contribute with insurance provided by this policy.”

“SCPPA, its officers and employees are added as additional insureds with respect to the activities done pursuant to this agreement on behalf of the named insured on behalf of the named insured.”

**10. Terms and Termination:** The term of this Agreement shall be one year from the date hereof, at which time, it shall either terminate or be extended by written agreement between SCPPA and the Consultant, unless sooner terminated in accordance with this section. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. SCPPA shall pay Consultant for all services rendered to the date of termination plus reasonable expenses for winding down the services.

**11. Use and Ownership of Work Products:**

- (a) **Work Product.** As used in this agreement, the term “Work Product” means any and all materials fixed in a tangible medium of expressions, including software code, written or procedures, written documents, abstracts and summaries thereof, or any portions or components of the foregoing created, written, developed, conceived, perfected or designed in connections with the Services provided under this Agreement.
- (b) The Member shall remain all right, title and interest in and to the Work Product, including all intellectual property rights therein and any and all enhancements, improvements and derivative works thereof, and Consultant obtains no rights therein.

**12. Information Provided by Others:** Members shall provide to the Consultant in a timely manner any information indicated is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by Members and its representatives.

**13. Dispute Resolution:** Consultant and SCPPA shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator. If mediation does not settle any dispute or action which arises under this Agreement or which relates in any way to this Agreement or the subject matter of this Agreement, it shall be subject to arbitration under the rules governing commercial arbitration as promulgated by the American Arbitration Association, arbitrability shall be subject to the Federal Arbitration Act and the locale of the arbitration shall be southern California.

**14. Miscellaneous:**

- (a) This Agreement is binding upon and will inure to the benefit of the SCPPA and Consultant and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party; provided, however, that either party may assign this Agreement to a successor of the party’s entire business relating to this Agreement.
- (b) If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue in full force shall continue as to other circumstances in accordance with, the laws of the State of California.