

# NORTHERN CALIFORNIA POWER AGENCY SHARED USE AND OCCUPANCY AGREEMENT

## PREAMBLE

This Shared Use and Occupancy Agreement (“Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (“the Effective Date”) by and between the Northern California Power Agency, a joint powers agency of the State of California (“NCPA” or “Agency”), and those members of NCPA who execute this Agreement (each a “Signatory Member” and together the “Signatory Members”). NCPA and each Signatory Member are referred to individually as a “Party” and together as “Parties”.

## RECITALS

WHEREAS, NCPA and NCPA’s members (“Members”) desire to establish a shared use and occupancy agreement by which Signatory Members may occupy and use available office space of property owned by NCPA from time to time on a first come, first served basis as further detailed herein; and

WHEREAS, the shared use and occupancy includes available workspaces and other amenities located at NCPA’s Disaster Recovery Center located at the Property (defined below); and

WHEREAS, each Signatory Member shall maintain a primary place of business separate and apart from the Property and has accepted the shared use and occupancy of the Property for the Signatory Member’s convenience and staffing needs, as more fully set forth herein; and

WHEREAS, the primary purpose of this Agreement is to protect NCPA and its Members from any exposure to liability of any kind that might result from any act or omission in the performance of this Agreement; and

NOW, THEREFORE, the Parties agree as follows:

**1. Property.** The property subject to this Agreement is known as NCPA’s Disaster Recovery Center, temporarily located at 7664 Old Auburn Rd., Building A, Citrus Heights, CA 95610-3831 (the “Property”). At some point in 2025, NCPA’s Disaster Recovery Center will move to its permanent location at 5034 Sunrise Blvd, Fair Oaks, CA 95628. NCPA will provide Signatory Members written notice of the change of the Property location no less than 30 days before the change. Upon the effective date of NCPA’s issuance of that written notice, the term “Property” will become 5034 Sunrise Blvd, Fair Oaks, CA 95628.

Agency shall have priority on all office space within the Property. Office space within the Property not being used or planned to be used by Agency will be available for use by NCPA Members on a first come first served basis.

**2. Effective Date as to Signatory Member.** Following the approval of this Agreement by the NCPA Commission, any Member may become a Signatory Member by providing an executed counterpart of this Agreement to NCPA in the form set forth on **Exhibit A**. Each signature page shall identify the initial Designated Representatives of the Signatory Member who are authorized to request occupancy and use

of available office space at the Property and assign personnel to occupy the space. Signatory Members shall provide written notice to Agency upon a change in the identity of either of its Designated Representatives.

**3. Signatory Member Request for Use and Occupancy of the Property.** Signatory Members desiring to access, use, and occupy available office space within the Property shall submit a request to Agency in the form set forth on **Exhibit B and B-1**. Exhibit B-1 may be modified from time to time upon mutual agreement of the authorized representatives of Agency and the Signatory Members. If Agency has available space and at Agency's sole discretion, Agency will grant the request by executing Exhibit B. Agency will return the counter-signed Request to Use and Occupy Available Office Space to Signatory Member.

**4. Occupancy Charge.** An occupancy charge is an amount that represents the increased monthly cost incurred by NCPA for utility-related expenses and increased frequency of janitorial services for the use of the Property by a Signatory Member. The occupancy charge will be split evenly amongst the Signatory Members on a pro-rata basis based on the total number of Signatory Member assigned personnel using the Property and billed monthly to each Signatory Member's All Resources Bill.

#### **5. Termination.**

a. Signatory Member. A Signatory Member may voluntarily withdraw from this Agreement and/or request cancellation of an approved Request to Use and Occupy Available Office Space with 30 days' advance written notice to Agency. Occupancy charges will be prorated based on the departure date if the proper notice period is given (minimum of 30 days before departure).

b. Agency. Agency may terminate an approved Request to Use and Occupy Available Office Space with one (1) year advance written notice to Signatory Member's Designated Representatives.

**6. No Assignment or Sublease.** NCPA provides this service to its Members on an as available basis. Signatory Member(s) shall not assign this Agreement, or sublet or grant any license to use the Property or any part thereof.

**7. Use.** The Property shall be used and occupied by the assigned employee(s) of a Signatory Member for the sole purpose of conducting a Signatory Member's business. The Signatory Member and/or their assigned personnel shall not allow any other person to use, be a guest of, or occupy the Property without first obtaining NCPA's written consent to such use.

**8. Entry by the Agency.** The Agency shall have the right, at any time, to enter and use the Property making all efforts to avoid the workspaces occupied by a Signatory Member's assigned personnel.

**9. Security Access Badges.** The Agency will create and provide a Signatory Member's assigned personnel security access badges allowing entry to the premises. When occupancy is no longer needed, security access badges must be returned to the Agency prior to or on the day of vacating the Property.

**10. Condition of Property.** The Agency stipulates the Property is in good order, repair, and in a safe and clean condition. A Signatory Member stipulates, represents, and warrants that assigned personnel will examine the Property upon arrival and will notify the Agency of any issues within ten (10) days of arrival.

**11. Care of the Property.** A Signatory Member's assigned personnel agree to maintain the Property in as good condition as it is at the start of the occupancy term, except for ordinary wear and tear and damage from casualty or condemnation. A Signatory Member must pay for all repairs, replacements, and damages caused by the act or neglect of their assigned personnel. NCPA shall coordinate periodic maintenance, repair, cleaning, and janitorial service.

**12. Alterations.** A Signatory Member's assigned personnel shall make no alterations to or improvements on the Property. To the extent that the Signatory Member's Designated Representatives request to fund alterations to the Property (e.g. alteration of cubicles), the request shall be made in writing to the Agency. The Agency at its sole discretion may agree to perform the requested alterations as funded by the Signatory Member or reject the request. All alterations to the Property funded by the Signatory Member will become the property of the Agency.

**13. Repairs by the Agency.** If the Property is damaged or in need of repair, the Signatory Member must promptly notify the Agency, and thereafter the Agency will cause the approved repairs to be made within a reasonable time. Failure to promptly notify the Agency of a needed repair, which in turn results in additional damage, could result in additional charges to the Signatory Member.

**14. Damage to Property.** In the event the Property is destroyed or rendered wholly uninhabitable by fire, storm, or other casualty not caused by the negligence of either Party, this Agreement and any approved use and occupancy thereunder shall terminate. In that event, the monthly occupancy charge will be prorated as necessary. Should a portion of the Property thereby be rendered uninhabitable, the Agency shall have the option of either repairing such injured or damaged portion(s) or terminating this Agreement and the approved use and occupancy thereunder.

**15. Required Condition.** Upon termination of an approved use and occupancy arrangement, the Signatory Member will remove all of their personal property (computers, laptops, monitors, printers, documents, etc.) and will leave the Property clean.

**16. Utilities.** The Agency shall throughout the term promptly pay, and be responsible, for all of its share of gas, electricity, water, wastewater, refuse, network services, and internet access. Assigned personnel are requested to use these services wisely and conserve where possible. The Agency is not responsible for any inconvenience or interruption of services due to repairs, improvements, or any reason beyond the Agency's control.

**17. Compliance with Laws.** A Signatory Member's assigned personnel must comply with all laws, orders, rules, and requirements of governmental authorities and insurance companies that have issued or are about to issue policies covering the Property and/or its contents.

**18. Administration of Agreement.** The NCPA Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents.

**19. Limitation of NCPA Liability.** Except as otherwise provided, NCPA shall not at any time be liable for any injury or damage occurring to a Signatory Member or any other person or property from any cause whatsoever arising out of this Agreement.

**20. Limited Right of Recourse.** The provisions of Section 19 shall not apply where the injury or damage is to a Signatory Member and is caused by the active negligence of NCPA or of any employee, agent or contractor of NCPA, provided, however, that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the insurance policies described within.

**21. Indemnity Obligation of Signatory Members.** Except as provided in Section 20 above, each Signatory Member shall, at its sole cost and expense, indemnify and hold harmless NCPA, and its Members, and their respective officers, agents and employees (“Indemnitees”) from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including reasonable attorneys’ fees), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement.

**22. Defense Obligation of Signatory Members.** 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, the Signatory Members shall, upon reasonable prior written notice from any of the Indemnitees, at a Signatory Member’s sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Signatory Member or Members, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor Signatory Member 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 Signatory Member’s duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

**23. Notice of Claims Required.** The Parties shall give each other prompt written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Agreement.

**24. NCPA Obligation to Maintain Insurance.** During the term of the 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.

**25. Signatory Member Insurance.** Signatory Members acknowledge that there are significant limits on NCPA’s liability under this Agreement. A Signatory Member may wish to purchase additional insurance of its own to cover the additional risks and the potential additional liabilities it is assuming. Each Signatory Member will, with respect to any additional insurance it obtains or which is otherwise available to it, cause its insurers to issue an endorsement providing a waiver of subrogation rights as to the Indemnitees.

**26. Survival of Obligations.** The defense and indemnity obligations shall survive the termination of this Agreement.

**27. Dispute Resolution.** If any dispute arises between the Parties that cannot be settled engaging in good faith negotiations, each Party shall designate a senior management or executive level representative to negotiate and resolve the dispute by any means within their authority. In the event that a dispute remains unresolved, either Party may pursue arbitration pursuant to the Commercial Arbitration and Mediation Rules of the American Arbitration Association. The costs of arbitration shall be equally shared by the Parties, and the Parties shall bear their own attorneys’ fees. The arbitrator shall have no authority to amend this Agreement.



**28. No Consequential Damages.** FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPATING OR SIGNATORY OR OTHER MEMBER OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS ARISING FROM THIS AGREEMENT OR ANY CONFIRMATION ENTERED INTO PURSUANT TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH SIGNATORY MEMBER EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF NCPA AND ITS MEMBERS FROM ANY SUCH LIABILITY.

**29. Severability.** In the event that any of the terms, covenants, or conditions of this Agreement or the application of any such term, covenant, or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

**30. Governing Law.** This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

**31. Nature of Occupancy.** No legal title or leasehold interest in the Property shall be deemed or construed to be created or vested by a Signatory Member. A Signatory Member shall occupy the Property, merely as a licensee. It is expressly understood and agreed that a Signatory Member is not a tenant or lessee, the Agency is not a landlord, and a Signatory Member does not have such rights as exist at law regarding landlord/tenant rights.

**32. Entire Agreement.** All promises regarding the Property made by the Agency, and a Signatory Member's right to use and occupy, are contained in this Agreement. This Agreement can only be changed by an agreement in writing signed by both the Agency and the Signatory Member.

**33. Notices.** Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing. Notices shall either be personally delivered to a Signatory Member's Designated Representative(s) and to the Agency as set forth below or transmitted to the Signatory Member's Designated Representative(s) and to the Agency by U.S. mail, first class postage prepaid. The designation of such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Signatory Member. Notices shall be deemed received upon delivery or three (3) days after mailing.

Randy S. Howard, General Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville CA 95678

With Copy to:

Mr. Monty Hanks, Assistant General Manager  
Administrative Services  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

And

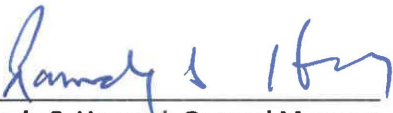
Mr. Jonathan Ashcraft, Facilities Manager  
Northern California Power Agency  
661 Commerce Drive  
Roseville, CA 95678

**34. Exhibits.** The Exhibits referenced herein are incorporated by this reference. They shall be denoted as follows:

- Exhibit A: Form of Signatory Member Execution Page including designation of Designated Representatives
- Exhibit B: Signatory Member Request to Use and Occupy Available Office Space
- Exhibit B-1: Depiction of office space within the Property to be used by Signatory Member

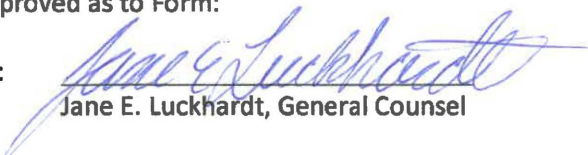
IN WITNESS WHEREOF, each Signatory Member has executed this Agreement with the approval of its Governing Body, and NCPA has authorized the execution of this Agreement by its General Manager in accordance with the authorization of its Commission.

**NORTHERN CALIFORNIA POWER AGENCY**

By:   
Randy S. Howard, General Manager

Attest:   
Carrie Pollo, Assistant Secretary to the Commission

Approved as to Form:

By:   
Jane E. Luckhardt, General Counsel

**EXHIBIT A**

**NORTHERN CALIFORNIA POWER AGENCY SHARED USE AND OCCUPANCY AGREEMENT  
Signatory Member Execution Page**

The Shared Use and Occupancy Agreement is hereby approved, executed, and joined by the following NCPA Member as a Signatory Member:

\_\_\_\_\_  
[Name of NCPA Member Agency]

1. The initial Designated Representatives of the Signatory Member who are jointly authorized to request occupancy and use of available office space at the Property and assign personnel to occupy the requested space are:

\_\_\_\_\_  
Utility Director/City Manager/  
or General Manager

\_\_\_\_\_  
General Counsel or City Attorney

Notice Address: \_\_\_\_\_  
\_\_\_\_\_

The NCPA Shared Use and Occupancy Agreement was approved on \_\_\_\_\_, 20\_\_ by Resolution no. \_\_\_\_\_ of the \_\_\_\_\_ [Name of Governing Body of Signatory Member, e.g., "city council" or "board of directors"].

By: \_\_\_\_\_ [Signature of person executing]

Its: \_\_\_\_\_ [Title of person executing]

Attest:

\_\_\_\_\_ [Signature of Person Attesting to Approval]

Its: \_\_\_\_\_ [Title of Person Attesting]

Approved as to Form:

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

Title: \_\_\_\_\_

**EXHIBIT B**

**NORTHERN CALIFORNIA POWER AGENCY SHARED USE AND OCCUPANCY AGREEMENT  
SIGNATORY MEMBER REQUEST TO USE AND OCCUPY AVAILABLE OFFICE SPACE**

Pursuant to the Northern California Power Agency Shared Use and Occupancy Agreement and subject to the terms and conditions of that Agreement, Signatory Member, [insert name]

\_\_\_\_\_, hereby requests occupancy and use of available office space of the Property, commonly referred to as NCPA's Disaster Recovery Center, located at \_\_\_\_\_ for use by \_\_\_\_\_ (name of personnel), and as depicted on the floorplan of the Property attached hereto as Exhibit B-1, for a term of \_\_\_\_\_, commencing on \_\_\_\_\_ and ending on \_\_\_\_\_.

\_\_\_\_\_  
Utility Director/City Manager/  
or General Manager

\_\_\_\_\_  
General Counsel or City Attorney

Notice \_\_\_\_\_  
Address: \_\_\_\_\_

Acknowledgment and Approval

NCPA has reviewed the foregoing request, confirmed that the requested space is available, and hereby approves the requested access, use, and occupancy.

NORTHERN CALIFORNIA POWER AGENCY

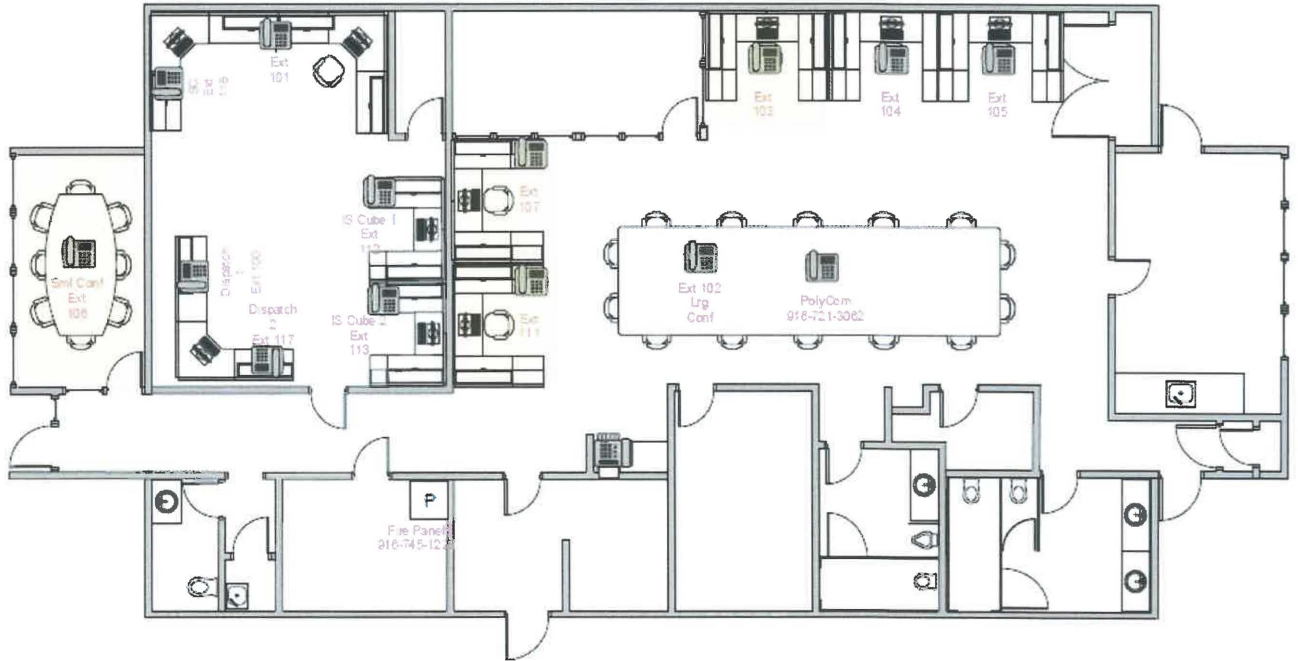
By: \_\_\_\_\_  
Randy S. Howard, General Manager



**EXHIBIT B-1**

Location of office space within the Property at 7664 Old Auburn Rd., Building A, Citrus Heights, CA 95610-3831 to be used by Signatory Member, as depicted on the floorplan below.

TEMPORARY LOCATION:



Pursuant to paragraph 1 of the Agreement, NCPA’s Disaster Recovery Center will move to its permanent location in 2025. Upon the effective date of NCPA’s issuance of a Notice of the change of the Property location, the Property location will be 5034 Sunrise Boulevard, Fair Oaks, CA 95628 to be used by Signatory Member as depicted on the floorplan below. The office space within the Property available for use by Signatory Members, is depicted on the floorplan below.

EXHIBIT B-1 continued

PERMANENT LOCATION:

