

Attachment A
Agreement for Professional Services

This Agreement for Professional Services ("Agreement"), dated as of _____ ("Effective Date"), is made by and between the Sonoma Clean Power Authority ("SCP"), a California joint powers authority, and [COUNTERPARTY LEGAL NAME]] ("Consultant"). SCP and Consultant may be individually referred to as a "Party" or collectively as "Parties." The "Effective Date" shall be the date that this Agreement is executed by the last Party to do so.

Agreement

The Parties agree as follows:

1. **Scope of Services:** Consultant shall provide to SCP the services described in Exhibit A ("Services") for SCP's [INSERT NAME OF PROJECT] ("Project").
2. **Additional Work:** If changes in the work seem merited by the Consultant or SCP, and informal consultations with the other party indicated that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to SCP by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by SCP and executed by both Parties before performance of such services. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.
3. **Delays in Performance:**
 - a. Neither SCP nor Consultant shall be considered in default of this Agreement for delays in performance caused by force majeure events beyond the reasonable control of the non-performing party. For purposes of this Agreement, such events include extraordinary and unforeseeable act of God, strike, lockout or other industrial disturbance, act of the public enemy, war, blockage, riots, lightning, fire, flood, or explosion. Force majeure shall not include a labor disturbance of Consultant or its subconsultants.
 - b. Should such circumstances occur, the non-performing party shall promptly give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
4. **Performance Standard:** Consultant warrants and represents that it possesses the necessary training, experience, expertise, and skill to competently and professionally provide the Services. Consultant's Services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.
 - a. Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and

that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from SCP, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

- b. If SCP determines that any of Consultant's work performed as Services is not in accordance with the level of competency and standard of care normally observed in Consultant's profession, SCP, in its sole discretion, shall have the right to do any or all of the following:
 - i. require Consultant to meet with SCP to review the quality of Consultant's work performed as Services and resolve matters of concern;
 - ii. require Consultant to repeat the Services at no additional charge until the work meets the level of competency and standard of care normally observed by an expert in Consultant's profession;
 - iii. terminate this Agreement pursuant to Section 6; or
 - iv. pursue any and all other remedies at law or in equity.

- 5. **Payment:** Consultant shall submit one monthly invoice each calendar month in which Services are performed. Invoices shall be signed by key staff, include copies of receipts for pre-approved reimbursable expenses, and contain the following detail for each billable entry:

- a. Date;
- b. Detailed description of work performed and person(s) involved;
- c. Time spent in 1/2 hour [fraction can be adjusted based on the type of work and scale of the agreement] increments; and
- d. Running summary on each invoice including total contracted amount of the agreement, funds already paid to date, and remaining funds available.

- i. Example:

Not to exceed	\$60,000
<u>Payments to date</u>	<u>\$35,000</u>
Remaining funds	\$25,000

When such an invoice is furnished in accordance with this Agreement, SCP shall pay all undisputed amounts owing for Services adequately rendered set forth in such invoice within thirty (30) calendar days of receipt such invoice, applying the following rates:

- i. Fees based on the fee schedule, as set forth in Exhibit B ("Fee Schedule"); and
- ii. Reimbursable expenses pre-approved by SCP.

Without limiting the foregoing, Consultant (1) acknowledges that its failure to submit an invoice within sixty (60) days of the occurrence of the event to which a charge contained therein relates is an express condition precedent to any right it may have to payment in connection therewith, and (2) hereby stipulates that Consultant's failure to strictly comply with such condition precedent is a waiver and release of any right Consultant might otherwise have to payment in connection therewith.

6. **NOT TO EXCEED AMOUNT.** IN NO EVENT SHALL THE TOTAL AMOUNT PAYABLE FOR SERVICES PERFORMED DURING THE TERM OF THIS AGREEMENT EXCEED [write out amount] dollars (\$___). This dollar amount is not a guarantee that SCP will pay that full amount to Consultant but is merely a limit of potential SCP expenditures under the Agreement. In the event that this total payable amount is reached, Consultant shall continue to furnish and complete the Services at no additional charge.
7. **Term of the Agreement:** The term of this Agreement shall be from the Effective Date to _____[end date], unless otherwise terminated pursuant to this Agreement or amended by a written, executed amendment to the Agreement. Consultant understands and agrees that funding for costs under this Agreement after [Date] is subject to approval by SCP's Board of Directors of a budget including such funding, and that SCP may terminate this Agreement immediately, if such funding is not approved. Consultant, shall promptly deliver to SCP all materials and work product subject to Section 16 upon the conclusion of the term of this Agreement.
8. **Termination:**
 - a. Notwithstanding any other provision of this Agreement, at any time and without cause, SCP shall have the right to terminate this Agreement by giving thirty (30) calendar days written notice to Consultant.
 - b. Notwithstanding any other provision of this Agreement, should Consultant fail to satisfactorily perform any of its obligations under this Agreement or otherwise breach any of the terms of this Agreement, SCP may, upon providing Consultant written notice stating the reason for termination, immediately terminate this Agreement.
 - c. In the event of termination, Consultant shall promptly and in any event no later than within fourteen (14) calendar days following the date of termination, deliver to SCP all materials and work product subject to Section 16 and shall submit to SCP a final invoice for any outstanding payments.
9. **Indemnification:**
 - a. To the furthest extent permitted by law, Consultant shall indemnify, defend (with counsel appointed by SCP to defend at Consultant's expense), and hold harmless SCP, and each of its officials, officers, employees, volunteers, and agents, and any public agency which is a party to the joint powers agreement pursuant to which SCP is organized under section 6500 et seq. of the Government Code and their officials, officers, employees, volunteers, and agents (collectively, the "Indemnified Parties") from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to (1) the negligence, recklessness, willful misconduct, or other errors or omissions of Consultant or Consultant's officials,

officers, employees, volunteers, or agents, or (2) Consultant's performance of or obligations or omissions under this Agreement. Consultant agrees to provide a complete defense for any such claim or action brought against the Indemnified Parties. Consultant's obligations under this Section apply whether or not there is comparative negligence of the Indemnified Parties, but to the extent required by law, excluding liability to the extent due to conduct of the Indemnified Parties.

- b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.
10. **Insurance:** Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by SCP.
- a. Workers' Compensation. If Consultant has employees at any time during the term of this Agreement, Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California, and Employers Liability with minimum limits of \$1,000,000 per accident; \$1,000,000 disease per employee; \$1,000,000 disease per policy.

Commercial General Liability. Commercial General Liability Insurance with Minimum Limits: \$1,000,000 per occurrence; \$2,000,000 general aggregate; \$2,000,000 products/completed operations aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial. Coverage shall be at least as broad as the latest version of the following: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
 - b. Automobile Liability. Automobile Liability Insurance with Minimum Limit of \$5,000,000 combined single limit per accident. Automobile Insurance shall apply to shall be written on an "any auto" form. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement. Automobile Insurance shall apply to hired and non-owned autos. Coverage shall be at least as broad as the latest version of the following: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto).
 - c. Professional Liability. Professional Liability/Errors and Omissions Insurance with Minimum Limit of \$1,000,000 per claim or per occurrence. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by SCP. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional

Services” as designated in the policy must specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer's duty to defend.

d. All Policies Requirements.

- i. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A-: VII, and admitted to transact in the business of insurance in the State of California.
- ii. The Certificate of Insurance must include the following reference: Sonoma Clean Power Authority.
- iii. All required Evidence of Insurance shall be submitted to SCP within 3 business days of the Effective Date. Consultant agrees to maintain current Evidence of Insurance on file with SCP for the entire term of this Agreement.
- iv. The address for Additional Insured endorsements and Certificates of Insurance is: Sonoma Clean Power Authority, Attn: Contract Administration, 431 E Street, Santa Rosa, CA, 95404.
- v. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) business days before expiration or other termination of the existing policy.
- vi. Consultant shall provide SCP immediate written notice if: (A) any of the required insurance policies are terminated; (B) the limits of any of the required policies are reduced; and/or (C) the deductible or self-insured retention is increased.
- vii. Upon written request, certified copies of required insurance policies must be provided within thirty (30) calendar days.
- viii. Consultant's indemnity and other obligations shall not be limited by these insurance requirements.
- ix. If Consultant maintains higher limits than the specified minimum limits, SCP requires and shall be entitled to, coverage for the higher limits maintained by Consultant.
- x. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. Deductibles or self-insured retention that exceeds \$25,000 must be approved in advance by SCP. Consultant is responsible for any deductible or self-insured retention and shall fund it upon SCP's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving SCP.
- xi. Additional Insureds:

1. SCP, its officials, officers, employees, volunteers, and agents, and any public agency which is a party to the joint powers agreement pursuant to which SCP is organized under section 6500 et seq. of the Government Code and its officials, officers, employees, volunteers, and agents, shall be an additional insured for liability arising out of operations by, or on behalf of, the Consultant in the performance of this Agreement.
 2. The City of Santa Rosa, its officials, officers, employees, volunteers, and agents, shall be an additional insured for liability arising out of operations by, or on behalf of, the Consultant in the performance of this Agreement.
- xii. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
 - xiii. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
 - xiv. Policies shall not contain exclusions contrary to this Agreement.
11. **Status of Consultant:** Consultant, in performing the services under this Agreement, shall act as an independent contractor and shall control the work and the manner in which it is performed. At no time shall Consultant work as an agent or employee of SCP or City of Santa Rosa, and at no time shall Consultant be entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SCP or City of Santa Rosa provide to their employees. In the event SCP exercises its right to terminate this Agreement pursuant to Section 6, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
 12. **No Suspension or Debarment:** Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any state or federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
 13. **Taxes:** Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement. Consultant shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold SCP harmless from any liability which it may incur to the United States or to any US State as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In the event SCP is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to, in a timely fashion, furnish SCP with proof of payment of taxes on these earnings.
 14. **Records Maintenance:** Consultant shall keep and maintain full and complete documentation and accounting records concerning all Services performed that are

compensable under this Agreement and shall make such documents and records available to SCP for inspection and copying at any reasonable time and at Consultant's sole expense. Consultant shall maintain such records for a period of five (5) years following the expiration or termination of this Agreement.

15. **Conflict of Interest:** Consultant warrants that it presently has no interest, and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under applicable law or that would otherwise conflict in any manner or degree with Consultant's performance under this Agreement. Consultant further warrants that in the performance of this Agreement no person having any such interests shall be assigned by Consultant to perform work under this agreement nor be given access to the information described in Section 16. Consultant shall comply with any and all applicable laws relating to conflicts of interest, including by way of illustration and not by limitation California Fair Political Practices Act requirements.
16. **Statutory Compliance:** Consultant shall comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the Services provided under this Agreement.
17. **Nondiscrimination:** Without limiting any other provision of this Agreement, Consultant shall comply with applicable law, rules, and regulations in regard to nondiscrimination in employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by reference. [If the project will receive federal funding, have legal team review this clause in order to meet best federal practice.]
18. **Confidentiality, Ownership and Disclosure of Work Product:** All information obtained by Consultant under this Agreement shall be deemed confidential ("Confidential Information"). Unless SCP provides written permission, Consultant is compelled by a court of law or regulatory agency, or Consultant obtained Confidential Information from a source or sources other than SCP, Consultant shall not share Confidential Information with any other person or entity outside of SCP staff and SCP authorized representatives, and upon receipt of a court order, subpoena, or other process compelling disclosure of Confidential Information Consultant shall immediately notify SCP so that SCP has an opportunity to obtain a protective order or other relief. Consultant further agrees to execute non-disclosure agreements related to protecting Confidential Information as requested by SCP. Provisions related to Confidential Information shall survive expiration or termination of the Agreement for a period of five (5) years. All reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, produced by Consultant or Consultant's subcontractors, consultants, and other agents within the term and scope of this Agreement ("Documents") shall be the property of SCP, and to the extent Consultant possesses such Documents, Consultant shall hold such Documents in trust for SCP's benefit. SCP shall be entitled to immediate possession of such Documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SCP all such Documents, which have not already been provided to SCP in such form or format, as SCP deems appropriate, and shall not thereafter retain Documents. Such Documents shall be and will remain the property of SCP without restriction or limitation.

Consultant acknowledges that the Project involves facilities that are considered critical and sensitive public infrastructure. Certain information and materials relating to the Project and the facilities is sensitive, restricted, confidential and/or protected by law, regulation, or other public mandates, including under Department of Homeland Security requirements. Accordingly, Contractor agrees to develop, maintain, and preserve such information, materials, and records relating to the Project and the facilities in accordance with this Agreement. Except as otherwise compelled by law, Consultant shall keep such information in strict confidence and not disclose such information to any third party or any other persons, except the responsible employees, agents, contractors, or subcontractors of Consultant with a bona fide need to know or possess the information in the rendering of performance under this Agreement ("Representatives"), and provided that such Representatives have been bound by a materially similar obligation of confidentiality with respect to such information as to this Agreement. Consultant shall use any information only for purposes of rendering services to SCP and as part of delivering the Project. Any other use shall be only with the prior written consent of SCP.

19. **Assignment and Delegation:** Consultant shall not assign, delegate, sublet, or transfer any interest in, or duty under, this Agreement without the prior written consent of the SCP. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates and subcontractors as Consultant may deem appropriate to assist in the performance of the Services herein.
20. **Written Communications:** All written communications, including notices, bills and payments, may be made via electronic mail or to the following addresses:

TO SCP:

Sonoma Clean Power Authority
Attn: [Project Manager Name]
431 E Street
Santa Rosa, CA 95404
[PROJECT MANAGER EMAIL]

With Copies to:

Sonoma Clean Power Authority
ATTN: Contract Administration
431 E Street
Santa Rosa, CA 95404
invoices@sonomacleanpower.org

TO CONSULTANT:

[CONSULTANT NAME]
ATTN: [CONSULTANT]
[CONSULTANTS STREET ADDRESS]
[CONSULTANTS CITY & ZIP]
[CONSULTANTS EMAIL]

21. **No Waiver of Breach:** The waiver by SCP of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

22. **Construction:** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The Parties agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. The Parties acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one Party in favor of the other. Parties acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
23. **No Third-Party Beneficiaries:** Nothing contained in this Agreement shall be construed to create, and the Parties do not intend to create any rights in third parties.
24. **Choice of Law and Forum:** This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement, or for the breach of this Agreement, shall be brought and tried in the Superior Court of California for the County of Sonoma, except that when the action is subject to the exclusive jurisdiction of the United States such action shall be brought and tried in the federal district court for the judicial district in which the County of Sonoma is located.
25. **Exhibits; Order of Precedence:**
- a. **Exhibits.** This Agreement includes the following Exhibits:
 - i. Exhibit A – Scope of Services
 - ii. Exhibit B – Fee Schedule
 - iii. **Optional Exhibits.** Consultant agrees to be bound by the terms and conditions set forth in any of the exhibits selected below as if the terms and conditions were fully set forth in this Agreement. Exhibits not selected below do not apply to this Agreement.
 - ✓ Exhibit C – Non-Disclosure Agreement
 - ✓ Exhibit D – Prevailing Wage Requirements
 - ☐ Exhibit [X] – [Name of Exhibit]
 - b. **Order of Precedence.** In the event of a conflict between the body of this Agreement and any Exhibits or attachments, the language in the body of this Agreement shall prevail. In the event of a conflict between the Exhibits, the order of precedence set forth in section 23(a) applies.
26. **Captions:** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
27. **Merger:** This writing is intended both as the final expression of the Agreement between the Parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure Section 1856.

28. **Amendment:** No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.
29. **Survival of Terms:** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
30. **Time of Essence:** Time is and shall be of the essence of this Agreement and every provision within this Agreement.
31. **Attorney Fees:** The prevailing party in any litigation to interpret or enforce this Agreement shall be entitled to recover its reasonable attorneys' fees and costs.
32. **Joint Powers Authority.** Consultant hereby acknowledges that SCP is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Cal. Govt. Code section 6500 *et seq.*, as the same may be amended from time to time) pursuant to a Third Amended and Restated Joint Powers Agreement dated October 13, 2016 (the "Joint Powers Agreement"), that SCP is a public entity separate from its members, and that under the Joint Powers Agreement the members have no liability for any obligations or liabilities of SCP. Consultant agrees that SCP shall solely be responsible for all debts, obligations and liabilities accruing and arising out of the Agreement and Consultant agrees that it shall have no rights against, and shall not make any claim, take any actions or assert any remedies against, any of SCP's members, any cities or counties participating in SCP's community choice aggregation program, or any of SCP's retail customers in connection with this Agreement.
33. **Representatives.**
- a. SCP's Representative. The SCP hereby designates [***INSERT TITLE***], or his or her designee, to act as its representative for the performance of this Agreement ("SCP's Representative"). SCP's Representative shall have the power to act on behalf of the SCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the SCP's Representative or his or her designee.
 - b. Consultant's Representative. Before starting the Services, Consultant shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the SCP ("Consultant's Representative"). Following approval by the SCP, Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

[SIGNATURES TO APPEAR ON FOLLOWING PAGE]

By signing below, the signatories warrant that each has authority to execute this Agreement on behalf of their respective Parties, and that this Agreement is effective as of the Effective Date.

SONOMA CLEAN POWER AUTHORITY

CONSULTANT

BY: _____

NAME: _____

TITLE: _____

DATE: _____

BY: _____

NAME
: _____

TITLE: _____

DATE: _____

APPROVED AS TO FORM

BY: _____
General Counsel

DATE: _____

EXHIBIT A
SCOPE OF SERVICES

[TBD]

EXHIBIT B
FEE SCHEDULE
[TBD]

EXHIBIT C

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) the Agreement and SCP Customer Service Policy A.1 (Customer Confidentiality) govern the disclosure of confidential information provide to or acquired by Consultant (“Disclosure Provisions”). The Parties hereby mutually agree that:

1. Representations & Warranties. Subject to the terms and conditions of this NDA, Confidential Information (as defined below), including, without limitation information regarding customers of SCP (“SCP Customers”) and project site materials and information, may be disclosed to Consultant by SCP (or SCP’s data management consultant, at SCP’s direction) from time to time as provided by the Disclosure Provisions and solely for the purposes set forth on EXHIBIT A (Scope of Services). Such disclosure is subject to the following legal continuing representations and warranties by Consultant:
 - (a) Consultant represents and warrants that it has all necessary authority to enter into this NDA, and that it is a binding enforceable NDA according to its terms;
 - (b) Consultant represents and warrants that the authorized representative(s) executing this NDA is (are) authorized to execute this NDA on behalf of the Consultant; and
 - (c) Consultant confirms its understanding that the Confidential Information, including information regarding SCP Customers, is of a highly sensitive confidential and proprietary nature, and that such information will be held in trust by Consultant for the benefit of SCP and solely used as contemplated under the Disclosure Provisions for the purposes set forth on EXHIBIT A, and that any other use of the information is prohibited.
 - (d) Consultant represents and warrants that it will implement and maintain expert, industry standard best practice, and no less than reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on EXHIBIT A.
2. Confidential Information Defined. “Confidential Information”, as used in this NDA, refers to all information SCP discloses to Consultant which SCP might reasonably expect Consultant not to disclose to other persons or use for unauthorized purposes, and any derivative thereof, and includes, without limitation, the following:
 - (a) Information about SCP Customers, including, without limitation: (i) names; (ii) addresses; (iii) telephone numbers; (iv) service agreement numbers; (v) meter and other identification numbers; (vi) SCP-designated account numbers; (vii) meter numbers; (viii) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, load, and other data detailing electricity or gas needs and patterns of usage); (ix) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and

other plans); (x) payment / deposit status; (xi) number of units; and (xii) other similar information specific to SCP Customers individually or in the aggregate;

(b) Certain data constituting “Covered Information” as that term is defined in California Public Utilities Commission (“CPUC”) Decision 12-08-045, and any successor CPUC Decision; and

(c) Any SCP market, resource or procurement information considered by SCP to be proprietary and/or confidential.

(d) Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by SCP, regardless of the form of media in which it is prepared, recorded or retained.

3. Exclusions. Except for electric and gas usage information provided to Consultant pursuant to this NDA, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
4. Disclosure Prohibited. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth on EXHIBIT A.
5. Protection of Confidential Information. Consultant shall, at all times and in perpetuity, hold the Confidential Information in trust for SCP’s benefit, keep in the strictest confidence the Confidential Information, and take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain expert, industry standard best practice, and no less than reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on EXHIBIT A. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection with the Confidential Information, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of their duties with respect to the Consultant program and who agree in writing to be bound by the nondisclosure and confidentiality obligations of this NDA. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this NDA and to agree to be bound by the terms of this NDA in writing.
6. Liability for Employees/Representatives, Notification of Disclosure. Consultant shall be strictly liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this NDA; however, such liability shall not limit or prevent any actions by SCP directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify SCP

in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this NDA shall obligate the SCP to monitor or enforce the Consultant's compliance with the terms of this NDA.

7. Compliance with CPUC Decisions and SCP Policies. Consultant shall comply with:
 - (a) CPUC Decision No. 12-08-045. The consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Decision No. 12-08-045, and any modifications or successors to that decision.
 - (b) SCP Information Technology (IT) Security Policy A.4. Consultant acknowledges that it is in receipt of and will comply with SCP's A.4 Information Technology (IT) Security Policy. Consultant will inform SCP immediately of any breach of that policy (EXHIBIT C.1)
8. Equitable Relief. Consultant acknowledges that disclosure or misappropriation of any Confidential Information will cause irreparable harm to SCP and/or SCP Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that SCP shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the SCP, in law or equity.
9. Indemnification. In addition to all other remedies, to the furthest extent permitted by law Consultant shall indemnify, defend (with counsel appointed by SCP to defend at Consultant's expense) and hold harmless SCP, its officials, officers, employees, volunteers, and agents, and any public agency which is a party to the joint powers agreement pursuant to which SCP is organized under section 6500 of the Government Code and their officials, officers, employees, volunteers, and agents (collectively, the "Indemnified Parties") from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to (1) the negligence (active or passive, ordinary or gross), recklessness, willful misconduct, or other errors or omissions of Consultant or Consultant's officials, officers, employees, volunteers, and agents, or (2) Consultant's performance of or obligations or omissions under this NDA. Consultant agrees to provide a complete defense for any such claim or action brought against the Indemnified Parties. Consultant's obligations under this Section apply whether or not there is comparative negligence of the Indemnified Parties, but to the extent required by law, excluding liability due to conduct of the Indemnified Parties.
10. Return or Destruction of Confidential Information. When Consultant fully performs the purposes set forth on EXHIBIT A, or if at any time Consultant ceases performance or SCP requires Consultant cease performance of the purposes set forth on EXHIBIT A, Consultant shall immediately return or destroy (with reasonable prior written notice to SCP itemizing the materials destroyed) all Confidential Information then in its possession at the request of SCP. Notwithstanding the foregoing, the nondisclosure obligations of this NDA shall survive any termination of this NDA.

11. Termination. Either Party may terminate this NDA for any reason or no reason, with or without cause, by providing thirty (30) days prior written notice to the other party of its intention to terminate; *provided, however*, that the terms of this NDA remain applicable to any Confidential Information already created or received under the NDA as set forth elsewhere in this NDA.
12. Notice. All notice to be provided under this NDA, may be made via electronic mail or to the addresses outlined in the Notice provision of the Agreement.
13. Assignment. This NDA shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties. This NDA shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.
14. Entire NDA. This NDA sets forth the entire understanding of the Parties with respect to the subject matter contained herein, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written.
15. Amendment. This NDA shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade.
16. Waiver. Any waiver of a right under this NDA shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
17. Choice of Law, Venue. This NDA shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws. Any action to enforce the terms of this NDA or for the breach of this NDA, shall be brought and tried in the Superior Court of California for the County of Sonoma, except that when the action is subject to the exclusive jurisdiction of the United States such action shall be brought and tried in the federal district court for the judicial district in which the County of Sonoma is located.
18. Captions. The captions in this NDA are solely for convenience of reference. They are not a part of this NDA and shall have no effect on its construction or interpretation.
19. Survival of Terms. All express representations, waivers, indemnifications, obligations to maintain confidentiality and limitations of liability included in this NDA shall survive its completion or termination.
20. Severability. If any provision of this NDA, or portion thereof, is deemed unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability of any other provision of this NDA.
21. Construction. This NDA shall be construed as if each Party was its author and the language of the NDA shall not be construed against one party against the other on the basis of one party drafting the NDA.

22. Counterparts. This NDA may be executed in one or more counterparts, each of which will be deemed to be an original of this NDA and all of which, when taken together, will be deemed to constitute one and the same agreement.

EXHIBIT C.1

Information Technology (IT) Security Policy A.4

Adopted February 7, 2019

Information Technology (IT) is a critical Sonoma Clean Power Authority (SCP) asset and will be managed to ensure that it remains accurate, confidential, and available for authorized business activities only. Proper management of information technology is required to support regulatory compliance, minimize legal liability, reduce the risk of criminal activity, and to sustain stakeholder and customer satisfaction.

SCP is dependent on information technology to conduct business operations. The Chief Executive Officer, Director of Internal Operations, and Director of Customer Service, in collaboration with the IT Consultant have been designated as the IT Security Team (IST) and are responsible for communicating IT policies and standards, helping all personnel achieve compliance with policies and standards, and reporting to management on any non-compliance or areas of risk.

SCP will make information technology accessible only to authorized employees or designated vendors as needed and such information shall only be used for authorized agency purposes. To ensure protection of information technology, operational guidelines will be in place for employees and designated vendors to follow which adhere to the principles below:

- Access to specific information technology is to be assigned to SCP employees or designated vendors with the minimum level of access necessary to perform respective responsibilities.
- Access to information technology will be made available only to the extent necessary to support authorized business functions.
- Security systems are to be structured with multiple layers of security, including physical, network, host, and personnel security measures.
- The degree of information security protection is to be commensurate with the impact of inadvertent or intentional misuse, improper disclosure, damage or loss.
- Adequate controls will divide sensitive duties among more than one individual to provide checks and balances that help ensure operational guidelines are followed.
- Security is not an optional component of operations. All SCP staff and designated vendors are required to protect information. All staff and designated vendors that use or have access to SCP information technology are personally responsible for exercising the proper control over information according to the operational guidelines provided to them.

Operational guidelines for treatment of information technology are subject to change as needed to protect SCP based on any changes in systems, threats, and practices. All substantive changes will be brought back before SCP's Board of Directors for formal approval.

[End of Exhibit C.1.]

EXHIBIT C.2

Advance Metering Infrastructure (AMI) Data Security and Privacy Policy A.5

Adopted February 7, 2019

Sonoma Clean Power Authority (SCP) developed the following policy for ensuring the privacy and security of AMI data and customer usage information pursuant to Attachment B of the California Public Utilities Commission Decision 12-08-045.

1) GENERAL

- a) SCP shall implement reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification, or disclosure.
- b) SCP and all third parties shall provide reasonable training to all employees and contractors who use, store or process covered information as needed.
- c) SCP shall collect, store, use, and disclose only as much covered information as is reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose.

2) TRANSPARENCY AND NOTIFICATION

- a) SCP shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding; the accessing, collection, storage, use, and disclosure of AMI data. Provided, however, that SCP is using AMI data solely for a primary purpose, it is not required to provide separate notice.
- b) SCP shall provide written notice when; confirming a new customer account and at least once a year. The notice shall inform customers how they may obtain a copy of SCP's notice regarding the accessing, collection, storage, use, and disclosure of AMI data (aka "covered information") and shall provide a conspicuous link to the notice on the home page of their website and include a link to their notice in all electronic correspondence to customers.
 - The notice shall be labeled Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information and shall—be written in easily understandable language and be no longer than is necessary to convey the requisite information.
 - The notice and the posted privacy policy shall state clearly— the identity of SCP, the effective date of the notice or posted privacy policy, SCP's process for altering the notice or posted privacy policy, including how the customer will be informed of any alterations, and where prior versions will be made available to customers, and the title and contact information, including email address, postal address, and telephone number, of an official at SCP who can assist the customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.
 - The notice shall provide an explicit description of— each category of covered information collected, used, stored or disclosed, and for each category of covered

information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed.

- Each category of covered information that is disclosed to third parties, and, for each such category, (i) the purposes for which it is disclosed, and (ii) the categories of third parties to which it is disclosed, and the identities of those third parties to whom data is disclosed for secondary purposes, and the secondary purposes for which the information is disclosed; the approximate period of time that covered information will be retained by the covered entity a description of the means by which customers may view, inquire about, or dispute their covered information, and the means, if any, by which customers may limit the collection, use, storage or disclosure of covered information and the consequences to customers if they exercise such limits.
- c) SCP shall provide to customers upon request convenient and secure access to their covered information— in an easily readable format that is at a level no less detailed than that at which the covered entity discloses the data to third parties.

3) USE, DISCLOSURE, AND CUSTOMER AUTHORIZATION

- a) SCP may disclose covered information without customer consent to a third party acting under contract with the Commission for the purpose of providing services authorized pursuant to an order or resolution of the Commission or to a governmental entity for the purpose of providing energy efficiency or energy efficiency evaluation services pursuant to an order or resolution of the Commission.
- b) SCP may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission; or for a primary purpose being carried out under contract with and on behalf of SCP provided that the covered entity disclosing the data shall, by contract, require the third party to agree to access, collect, store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity itself operates.
- c) Any entity that receives covered information derived initially from SCP may disclose such covered information to another entity with SCP's consent, but without customer consent for a primary purpose, provided that the entity disclosing the covered information shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity from which the covered information was initially derived operates.
- d) When SCP discloses covered information to a third party under this subsection (reference is to subsection 6(c) of Attachment B to CPUC Decision 12-08-045) it shall specify by contract, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, storing, using or disclosing the covered information in violation of the third party's contractual obligations to handle the covered information under policies no less protective than those under which the covered entity from which the covered information was initially derived.
- e) If SCP finds that a third party contractor to which it disclosed covered information is engaged in a pattern or practice of accessing, storing, using or disclosing covered information in violation of the third party's contractual obligations related to handling

covered information, SCP shall promptly cease disclosing covered information to such third party.

- f) If SCP receives a customer complaint about a covered entity disclosing covered information to a Commission-authorized or customer-authorized third party and the third party's misuse of data or other violation of the privacy rules, SCP shall upon customer request or at the Commission's direction, promptly cease disclosing that customer's information to such third party. SCP shall notify the Commission of any such complaints or suspected violations.
- g) No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer's prior, express, written authorization for each type of secondary purpose. This authorization is not required when information is – (i) provided pursuant to a legal process; (ii) provided in situations of imminent threat to life or property; or (iii) authorized by the Commission pursuant to its jurisdiction and control.
- h) Separate authorization by each customer must be obtained for all disclosures of covered information except as otherwise provided for herein.
- i) SCP shall permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.
- j) The consent of a residential customer shall continue without expiration, but an entity receiving information pursuant to a residential customer's authorization shall contact the customer, at least annually, to inform the customer of the authorization granted and to provide an opportunity for revocation. The consent of a non-residential customer shall continue in the same way, but an entity receiving information pursuant to a nonresidential customer's authorization shall contact the customer, to inform the customer of the authorization granted and to provide an opportunity for revocation either upon the termination of the contract, or annually if there is no contract.
- k) SCP shall permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.

[End of Exhibit C.2.]

[End of Exhibit C]