

Attachment A
Agreement for Professional Services

This Agreement for Professional Services ("Agreement"), dated as of [REDACTED] ("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 733-741 4th Street Roof Design 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, expertly, 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 by an expert practicing 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 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 the City of Santa Rosa, and each of their respective 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 (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 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 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 authorized 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
- 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 Director of Capital Projects & Engineering, 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

EXHIBIT B
FEE SCHEDULE