AGENDA
COMMUNITY ADVISORY COMMITTEE MEETING
THURSDAY, NOVEMBER 29, 2018
1:00 PM

50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, California

I. CALL TO ORDER

II. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA
   (Comments are restricted to matters within the Committee jurisdiction. The
   Committee will hear public comments at this time for up to thirty minutes.
   Please be brief and limit comments to three minutes.)

III. COMMUNITY ADVISORY COMMITTEE CONSENT CALENDAR
   1. Approve October 25, 2018, CAC Meeting Minutes (pg. 3)

IV. COMMUNITY ADVISORY COMMITTEE REGULAR CALENDAR
   2. Receive the Financial Auditor’s Report for FY 2017 and FY 2018 (pg. 10)
   3. Receive Operations Report and Provide Input as Appropriate (pg. 37)
   4. Receive Legislative and Regulatory Updates and Provide Input as
      Appropriate (pg. 51)
   5. Review, Comment, and Recommend Board Approval of Contract with TLCD
      Architecture for Design Services of SCP Storefront/Lead Locally Grant (pg. 55)
   6. Review, Comment, and Recommend Board Approval of Contract with Sixth
      Dimension for Construction Management Services at 431 E St. (pg. 141)
   7. Review, Comment, and Recommend Board Approval of Contact Between SCP
      and Olivine, Inc. for Implementation of the GridSavvy Community (pg. 173)
   8. Review, Comment, and Recommend Board Action Concerning Draft Budget
      Adjustment and/or Conditional Rate Adjustment (pg. 220)

V. COMMITTEE MEMBER ANNOUNCEMENTS

VI. ADJOURN

DISABLED ACCOMMODATION: If you have a disability which requires an
accommodation, an alternative format, or requires another person to assist you while
attending this meeting, please contact the Clerk of the Board at (707) 890-8491, as
soon as possible to ensure arrangements for accommodation.
# COMMONLY USED ACRONYMS/TERMS TO KNOW

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CAC</td>
<td>Community Advisory Committee</td>
</tr>
<tr>
<td>CAISO</td>
<td>California Independent Systems Operator</td>
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<tr>
<td>CAM</td>
<td>Cost Allocation Mechanism</td>
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<tr>
<td>CCA</td>
<td>Community Choice Aggregation</td>
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<tr>
<td>CEC</td>
<td>California Energy Commission</td>
</tr>
<tr>
<td>CleanStart</td>
<td>SCP's default electric service</td>
</tr>
<tr>
<td>CPUC</td>
<td>California Public Utility Commission</td>
</tr>
<tr>
<td>DER</td>
<td>Distributed Energy Resource</td>
</tr>
<tr>
<td>ERRA</td>
<td>Energy Resource Recovery Account</td>
</tr>
<tr>
<td>EverGreen</td>
<td>SCP's 100% renewable, 100% local energy service</td>
</tr>
<tr>
<td>Geothermal</td>
<td>A locally-available, low-carbon baseload renewable resource</td>
</tr>
<tr>
<td>GHG</td>
<td>Greenhouse gas</td>
</tr>
<tr>
<td>GRC</td>
<td>General Rate Case</td>
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<tr>
<td>IOU</td>
<td>Investor Owned Utility (e.g., PG&amp;E)</td>
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<tr>
<td>IRP</td>
<td>Integrated Resource Plan</td>
</tr>
<tr>
<td>JPA</td>
<td>Joint Powers Authority</td>
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<tr>
<td>MW</td>
<td>Megawatt (Power = how fast energy is being used at one moment)</td>
</tr>
<tr>
<td>MWh</td>
<td>Megawatt-hour (Energy = how much energy is used over time)</td>
</tr>
<tr>
<td>NEM</td>
<td>Net Energy Metering</td>
</tr>
<tr>
<td>NetGreen</td>
<td>SCP's net energy metering program which gives its customers financial credit for generating electricity.</td>
</tr>
<tr>
<td>PCIA</td>
<td>Power Charge Indifference Adjustment (This fee is intended to ensure that customers who switch to SCP pay for certain costs related to energy commitments made by PG&amp;E prior to their switch.)</td>
</tr>
<tr>
<td>ProFIT</td>
<td>SCP's &quot;Feed in Tariff&quot; program for larger local renewable energy producers</td>
</tr>
<tr>
<td>PV</td>
<td>Photovoltaics for making electric energy from sunlight</td>
</tr>
<tr>
<td>REC</td>
<td>Renewable Energy Credit - used to track all renewable energy for compliance in California</td>
</tr>
<tr>
<td>SCP</td>
<td>Sonoma Clean Power</td>
</tr>
<tr>
<td>TOU</td>
<td>Time of Use, used to refer to rates that differ by time of day and by season</td>
</tr>
</tbody>
</table>
I. CALL TO ORDER

Chair Dowd called the meeting to order at 1:00 P.M.

Committee Members Present: Baldwin, Chaban, Como, Dowd, Fenichel, Mattinson, Nicholls, Sizemore, Quinlan, and Wells

Staff Present: Geof Syphers, Chief Executive Officer; Stephanie Reynolds, Director of Internal Operations; and Jessica Mullan, General Counsel.

II. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA

None

III. COMMUNITY ADVISORY COMMITTEE CONSENT CALENDAR

1. Approve September 27, 2018, CAC Meeting Minutes

Motion to approve minutes as amended by CM Nicholls.

Second: CM Quinlan

Motion passed 7-0-3 (CMs Baldwin, Sizemore, and Wells abstained)

Public comment: None

IV. COMMUNITY ADVISORY COMMITTEE REGULAR CALENDAR

2. Receive Operations Report and Provide Input as Appropriate

Director of Internal Operations, Stephanie Reynolds, gave an update on SCP customer accounts affected by the 2017 wildfires. To date, SCP has provided almost $500,000 in refunds and credits to accounts, and this is in addition to the $1 million donated to wildfire causes over the last year. She then reminded the Committee that FPPC Form 700 filings are due in April and that staff will send
out notices in early February. Director Reynolds stated that 303 vehicles have been purchased through the DriveEV program and that brings the 3-year program total to over 1,000 vehicles. An update was provided on the Advanced Energy Rebuild (AER) program, including a recent homeowner workshop at SCP which had over 35 participants. To date, there are 129 applicants for the AER program and these numbers are likely to increase as rebuilding efforts ramp up.

CM Mattinson then asked for an update on GridSavvy, and Program Manager Rachel Kuykendall stated that the chargers are actively dispatching and additional technologies will roll out late 2018 or early 2019.

Program Manager Chad Asay then provided an update on the Lead Locally Grant, and that staff is preparing to solicit volunteers for 16 residential homeowners to participate in the energy retrofit research program. Phase 2 of the program will include commercial properties, and this is slated for the 1st quarter of 2019.

Director of Internal Operations Stephanie Reynolds then stated that over 200 DIY toolkits have been checked out from local libraries in Sonoma and Mendocino counties, and 72 induction cooktops from SCP.

Program Manager Rachel Kuykendall detailed a recent presentation she made to the Santa Rosa City Council for their climate action plan study session. She stated that the Council is considering an amendment to their electrical code to require pre-wiring for electrical appliances in new housing, and in the longer term, an all-electric reach code amendment, which would mandate that all appliances should be high efficiency electric appliances. In addition, the Council is reviewing the benefits and costs of switching the City’s electrical accounts to SCP’s 100% renewable EverGreen service.

Director of Marketing and Public Affairs Kate Kelly stated that the Davey Awards has chosen SonomaCleanPower.org as a recipient of a Gold award for the best Government Website Experience of 2018, and Silver for Best Energy Website Experience. The Davey’s are an international creative competition for independent agencies. Each year they collect over 4,000 creative entries, and each are judged by panelists from the Academy of Interactive and Visual Arts.

CEO Geof Syphers then provided additional details on the solar storage deal with NextEra that was recently finalized. This project includes 5 MW of battery storage, which meets and goes beyond all the required 2024 storage obligations for SCP’s service territory. He then stated that preliminary financials are completed for the last fiscal year and that the completed audit will be presented at the next meeting. There was a net increase in SCP’s position of $13 million with
expectation that about $10 million will be available in cash to contribute to reserves.

CM Mattinson asked why NextEra is the only solar project under consideration for the future, and CEO Syphers explained that SCP customers currently have over 100 MW of solar and that better bulk storage options need to be developed to align with customer usage patterns.

CM Como then asked about the difference between customers who received courtesy credits and checks due to the 2017 wildfires, and Director of Customer Service Erica Torgerson clarified that credits were issued to customers who reestablished service with SCP and refunds were sent to those that moved outside SCP’s service territory. CM Como then asked about PG&E’s recent practice of shutting off power during instances of high wind or other conditions. CEO Syphers stated PG&E communicated with SCP in advance of the recent shutoff, and that a very small number of SCP customers were affected, but more shutoffs are expected in the near future.

Chair Dowd then referenced a Press Democrat article which detailed a restaurant having to buy a generator due to the shutoff and also individuals with medical problems, e.g., assisted breathing machines, having troubles. He asked staff about the communication process with PG&E. Director Torgerson stated that PG&E admitted that the process wasn’t as smooth as they hoped and there were lessons to be learned. She added that she requested that PG&E notify SCP as early as possible in advance of any future shutoffs.

CM Baldwin asked why projected revenue is 2% below budget, and CEO Syphers said that type of error is nominal and can largely be attributed to weather. CM Baldwin asked why customer service is 40% below approved budget, and Director Torgerson stated this is due to less mailers going out to SCP customers than anticipated, as each mailer sent to all customers can cost around $200k.

CM Quinlan asked why year-to-date revenue is below forecast, and CEO Syphers replied that this can be attributed to optimistic EverGreen enrollment numbers. Even though SCP hasn’t reached revenue numbers, staff is in discussions with the City of Santa Rosa and the County of Sonoma to look at enrolling their municipal accounts to Evergreen.

Public Comment: None

3. Receive Legislative and Regulatory Updates and Provide Input as Appropriate
CEO Syphers gave an update on the recent California Public Utilities Commission (CPUC) Power Charge Indifference Adjustment (PCIA) decision which will significantly increase the PCIA fee beginning in January 2019. Because PG&E will not release the PCIA rate calculation and their generation charges until late December, a conditional rate adjustment proposal will be brought to the CAC and BOD at subsequent meetings. The PCIA decision will likely impact SCP in the following areas: reduced financial contributions to reserves, trimming the Programs budget, and reducing rate savings to customers. Although the decision isn’t ideal, SCP is well-positioned financially and it is unlikely SCP will need to spend reserves in the next year as a result of the PCIA decision. CEO Syphers stated that with the enrollment of larger entities such as L.A. County into CalCCA, most lawmakers in California now represent CCAs, and that opens the door to legislative remedies to the PCIA. CEO Syphers then highlighted that the CPUC Commissioners went against the assigned judge’s proposed decision and voted for Commissioner Peterman’s alternate decision.

Public comment:
Woody Hastings, Center for Climate Protection, spoke in favor of regulatory and administrative remedies for the PCIA fee.

Finally, CEO Syphers detailed how SCP (along with many electricity providers across the state), may have to file a request for a waiver for the agency’s year-ahead Resource Adequacy obligations. This can be attributed to a lack of Resource Adequacy offered in the market, including a decision by PG&E to not offer significant amounts of RA until after the compliance deadline.

4. Receive Update and Discussion on 431 E Street; Delegation of Authority to CEO to Execute Amended and Restated Agreement with EHDD

Director of Programs, Cordel Stillman, updated the Committee on the design features, site plan, and energy storage options for 431 E Street.

CEO Syphers discussed the possibility of operating the building so it does not require net metering by internalizing all of its energy use, and how the concept could serve as a template for micro-grid projects.

CM Mattinson asked about the proposed battery storage, and whether it will be fed by onsite solar; Director Stillman confirmed that there will be solar arrays.

CM Mattinson then asked about the estimated budget and any potential reductions to the scope of work due to the PCIA decision. CEO Syphers stated
that the goal is to make the building itself competitive with other buildings in the market, and items like battery storage or solar could be considered as educational elements and customer programs. CM Mattinson expressed his gratitude that the project can be modified as-needed should budget constraints arise.

Director of Programs Stillman then introduced the amended agreement for design services with EHDD for a not-to-exceed amount of $1.2 million. The amended agreement covers all of EHDD’s work to date, detailed design through the construction phase, assistance with construction documents, and during construction, and review of contractor submittals to verify specifications.

Motion by CM Baldwin to recommend that the Board authorize the Chief Executive Officer (“CEO”) to negotiate an Amended and Restated Professional Services Agreement with EHDD up to a maximum total not-to-exceed amount of one million, two-hundred and eighty-five thousand, five hundred and fifty-one dollars ($1,285,551) for full scope design services for 431 E. Street covering all design work including schematic design through construction, and;

Recommend that the Board delegate authority to the CEO to execute such an Amended and Restated Agreement in a legal form approved by the General Counsel, as well as other related documents necessary to administer the Agreement, including subsequent amendments that do not change the Agreement’s price or term, provided such documents are in a form approved by the General Counsel and are otherwise consistent with SCP’s Joint Powers Agreement and Board-adopted policies.

Second: CM Sizemore

Motion passed: 10-0-0

Public comment: None

5. Recommend Board Approval of an Amended and Restated Power Purchase Agreement with Cloverdale Solar Center, LLC under the ProFIT Program and Delegation of Authority to the CEO to Execute such PPA and Related Documents on Behalf of SCP

Power Services Manager Rebecca Simonson introduced the Amended and Restated Agreement, which includes an updated project operational date and clarification on the bonus payment structure. The PPA allows for an extension of the project operational date due to permitting or interconnection delays, and following SCP review, staff recommends accommodating the request.
Motion by CM Mattinson to recommend to Board to approve an amended and restated Power Purchase Agreement with Cloverdale Solar Center, LLC under the ProFIT Program and delegation of authority to the CEO to execute such PPA and related documents on behalf of SCP.

Second: CM Nicholls
Motion passed: 10-0-0
Public comment: None

6. Recommend Board Adoption of Resolution Supporting and Agreeing to Become a Signatory to the Bay Area Air Quality Management District Diesel-Free by ’33 Statement of Purpose

Director of Internal Operations, Stephanie Reynolds, provided background on the item, which was requested by Director Slayter at the August BOD meeting. General Counsel Mullan drafted the resolution.

Motion to support resolution by CM Quinlan.
Second: CM Baldwin
Motion passed: 10-0-0
Public comment: None

7. Discussion regarding the Power Charge Indifference Adjustment; Review, Comment and Recommend Board Action Concerning Rate Adjustments

CEO Syphers stated that this item is just for discussion and a more detailed proposal will be brought at the next CAC meeting. He stated that a conditional rate adjustment would be brought forward if SCP customers are found to be paying more with SCP than PG&E after January 1, 2019. Should a rate change need to take effect, staff is targeting February 1, 2019 for the effective date. Following CAC discussion, CEO Syphers stated that staff will bring one or more proposals to the CAC concerning rate adjustments at the next meeting.

Public comment: None
V. COMMITTEE MEMBER ANNOUNCEMENTS

None

VI. ADJOURN

Chair Dowd adjourned the meeting at 2:53 P.M.
To: Sonoma Clean Power Authority Community Advisory Committee

From: Geof Syphers, CEO
Stephanie Reynolds, Director of Internal Operations

Issue: Review and Recommend the Financial Auditor’s Report for Fiscal Years Ended June 30, 2017 and June 30, 2018

Date: November 29, 2018

Requested Committee Action:

Review the independent draft report for the Financial Statements from Fiscal Years ending June 30, 2017 and June 30, 2018, as presented and make a recommendation to the Board of Directors to accept the reports.

Background:

Pisenti & Brinker will be presenting their draft, independent report of SCPA’s financial statements for the Fiscal Years ending June 30, 2017 and 2018. The report was completed with financial statements prepared by Maher Accountancy. The auditor’s letter is not yet complete, but the auditor will be present to discuss the results of their review. The letter will be published in the upcoming board packet as well.
Financial Statements

Years Ended June 30, 2018 and June 30, 2017
With Report of Independent Auditors
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  Statements of Revenues, Expenses and Changes in Net Position .......... 11
  Statements of Cash Flows ................................................................. 12
  Notes to the Basic Financial Statements ............................................. 14
Pending
The Management’s Discussion and Analysis provides an overview of Sonoma Clean Power Authority’s (SCPA) financial activities as of and for the years ended June 30, 2018 and 2017. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

The formation of SCPA was made possible by the passage, in 2002, of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses and creating competition in power generation.

SCPA was created as a California Joint Powers Authority on December 4, 2012. SCPA was established to provide electric power and related benefits within Sonoma County, including developing a wide range of renewable energy sources and energy efficiency programs. Governed by an appointed board of directors (Board), SCPA has the rights and powers to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. SCPA is responsible for the acquisition of electric power for its service area.

SCPA’s financial activity commenced on April 23, 2013, when it succeeded the Sonoma County Water Agency (SCWA) in performing specified activities related to a community choice aggregation program. Pursuant to an agreement between SCPA and SCWA, SCPA accepted an obligation to reimburse SCWA for specified costs to initiate the entity and its programs which were incurred prior to the agreement.

In May 2014, SCPA began providing service to its first 22,000 customer accounts. Significant growth has occurred since that time, and as of June 30, 2018, SCPA serviced approximately 228,000 customer accounts. In June 2017, SCPA expanded outside of Sonoma County for the first time to serve the unincorporated areas of Mendocino County and the cities of Fort Bragg, Willits and Point Arena. Within Sonoma County, service areas include the cities and towns of Cloverdale, Cotati, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, Sonoma, Windsor, and all of Sonoma County’s unincorporated areas.

Providing its customers with affordable electricity with very low greenhouse gas emissions is a main focus of SCPA’s operations. SCPA has entered into agreements with electricity suppliers to ensure that a portion of the electricity provided to customers is from renewable sources and from hydropower, which has no emissions but is not classified as renewable in California. In an effort to increase demand for renewable electricity, SCPA offers its customers two electricity services to choose from: CleanStart and Evergreen. Evergreen customers have chosen to purchase electricity from 100% local renewable sources. Customers who do not choose to participate in Evergreen fall into the CleanStart service and receive electricity with 42% carbon free hydropower, 45% renewable energy (sources such as geothermal, wind, and solar), and 13% general power which is primarily natural gas. SCPA intends to raise awareness and participation of its Evergreen service to provide a greater demand for renewable electricity.
The following chart illustrates the energy mix of SCPA’s CleanStart and Evergreen services:

**Evergreen**
- Qualifying Renewable 100%

**CleanStart**
- Hydropower (carbon free) 42%
- Natural Gas 13%
- Qualifying Renewable 45%

**Financial Reporting**

SCPA presents its financial statements in accordance with Generally Accepted Accounting Principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

**Contents of this report**

This report is divided into the following sections:

- Management’s discussion and analysis, which provides an overview of operations.
- The Basic financial statements, which offer information on SCPA’s financial status:
  - The *Statements of Net Position* includes all of SCPA’s assets, liabilities, and net position using the accrual basis of accounting. The Statements of Net Position provide information about the nature and amount of resources and obligations at a specific point in time.
  - The *Statements of Revenues, Expenses, and Changes in Net Position* report all of SCPA’s revenue and expenses for the years shown.
  - The *Statements of Cash Flows* report the cash provided and used by operating activities, as well as other sources and uses, such as capital asset acquisitions.
  - Notes to the Basic Financial Statements, which provide additional details and information related to the basic financial statements.
FINANCIAL HIGHLIGHTS

The following table is a summary of SCPA’s assets, liabilities, and net position as of June 30:

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets</strong></td>
<td>$85,142,630</td>
<td>$71,857,772</td>
<td>$61,053,208</td>
</tr>
<tr>
<td><strong>Noncurrent assets</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets and land, net</td>
<td>3,332,156</td>
<td>182,197</td>
<td>201,155</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>4,114,666</td>
<td>3,737,559</td>
<td>354,666</td>
</tr>
<tr>
<td><strong>Total noncurrent assets</strong></td>
<td>7,446,822</td>
<td>3,919,756</td>
<td>555,821</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>92,589,452</td>
<td>75,777,528</td>
<td>61,609,029</td>
</tr>
<tr>
<td><strong>Current liabilities</strong></td>
<td>15,828,325</td>
<td>13,397,884</td>
<td>21,130,289</td>
</tr>
<tr>
<td><strong>Noncurrent liabilities</strong></td>
<td></td>
<td>2,475,000</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>15,828,325</td>
<td>15,872,884</td>
<td>21,130,289</td>
</tr>
<tr>
<td><strong>Net position</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment in capital assets</td>
<td>3,332,156</td>
<td>182,197</td>
<td>201,155</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>73,428,971</td>
<td>59,722,447</td>
<td>40,277,585</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td>$76,761,127</td>
<td>$59,904,644</td>
<td>$40,478,740</td>
</tr>
</tbody>
</table>

**Current Assets**

2018 compared to 2017  Current assets reached $85,142,000 by the end of 2018, an 18% increase from the prior year. Current assets are mostly comprised of the following: $41,334,000 in cash, $17,864,000 in accounts receivable, $9,573,000 in accrued revenue, and $15,114,000 in investments, each of which mark an increase from 2017. Accounts receivable and accrued revenue experienced moderate increases mostly attributable to territory expansions within Mendocino County. Fiscal year 2018 was the first full year with Mendocino County included in its customer base. Accrued revenue differs from accounts receivable in that it is the result of electricity use by SCPA customers before invoicing to those customers has occurred.
Capital Assets

2018 compared to 2017  Capital assets increased significantly in fiscal year 2018 as SCPA purchased a building that will be used as its future headquarters. From 2017 to 2018 total capital assets increased from $182,000 in 2017 to $3,332,000 in 2018, mostly attributable to the building and land purchase. Other assets held by SCPA are furniture, equipment, and tenant improvements. Capital assets are reported net of depreciation. SCPA does not own assets used for electric generation or distribution.

Other Noncurrent Assets

2018 compared to 2017  Other noncurrent assets increased from $3,738,000 in 2017 to $4,115,000 in 2018. This increase reflects additions to cash deposits made with energy providers held as collateral for energy purchases. These deposits will be returned to SCPA at the completion of the related contract or as other milestones are met. The remaining balance is comprised of various deposits for regulatory and other operating purposes.

Current Liabilities

2018 compared to 2017  Current liabilities consist mostly of the cost of electricity delivered to customers that is not yet due to be paid by SCPA. Current liabilities increased from $13,398,000 in 2017 to $15,828,000 in 2018. The increase is mostly due to the increased energy purchased to service the customer base from the Mendocino expansion. Other components include trade accounts payable, taxes and surcharges due to governments, and various other accrued liabilities.

Noncurrent Liabilities

2018 compared to 2017  At the end of fiscal year 2018 SCPA had no noncurrent liabilities. At June 30, 2017, SCPA held $2,475,000 in security deposits from energy suppliers. Similar to collateral, this was be held by SCPA in the event the energy supplier’s generation facility is not operational within a contractually defined timeframe. If the facility is in operation in time, then SCPA will return the collateral. During fiscal year 2018 the bulk of these deposits were returned to the supplier and replaced with a letter of credit with SCPA as the beneficiary. $150,000 of deposits were recognized as income by SCPA in fiscal year 2018 as a remedy for nonperformance. SCPA has no bank debt.
The following table is a summary of SCPA’s results of operations:

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating revenues</td>
<td>$172,548,747</td>
<td>$161,966,580</td>
<td>$163,680,820</td>
</tr>
<tr>
<td>Interest income</td>
<td>562,637</td>
<td>225,765</td>
<td>52,479</td>
</tr>
<tr>
<td>Total income</td>
<td>173,111,384</td>
<td>162,192,345</td>
<td>163,733,299</td>
</tr>
<tr>
<td>Operating expenses</td>
<td>155,257,701</td>
<td>142,766,441</td>
<td>136,875,570</td>
</tr>
<tr>
<td>Charitable contributions</td>
<td>997,200</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Interest expense</td>
<td>-</td>
<td>-</td>
<td>36,004</td>
</tr>
<tr>
<td>Total expenses</td>
<td>156,254,901</td>
<td>142,766,441</td>
<td>136,911,574</td>
</tr>
<tr>
<td>Increase in net position</td>
<td>$16,856,483</td>
<td>$19,425,904</td>
<td>$26,821,725</td>
</tr>
</tbody>
</table>

**Operating Revenues**

**2018 compared to 2017** SCPA’s customer base held fairly steady through fiscal year 2018, as the expansion into parts of Mendocino County occurred during the final month of the previous year. With this expansion in effect for a full year in 2018, overall operating revenues increased 7% in 2018 compared to 2017. Operating revenues from electricity sales increased 12% compared to 2017. Electricity sales for resale decreased from $8,418,000 in 2017 to $591,000 in 2018. The decrease is the result of unusually large sales of energy to other resellers in 2017 caused by an unexpectedly early operational commencement by a supplier’s facility, so SCPA sold electricity that was not needed for retail customer use.

**Operating Expenses**

**2018 compared to 2017** Expenses increased from fiscal year 2017 to 2018, largely as a result of energy purchases to provide for additional retail customer load for the Mendocino County expansion. For both years, the largest expense was the cost of electricity. Expenses for staff compensation, consulting, and other general and administrative expenses also increased in 2018, but at a lower dollar level than the cost of energy. Included in 2017 and 2018 were rebate incentives related to various programs managed by SCPA. See Note 1 to the financial statements for more details regarding these programs. As shown in the table to the right, operations are heavily weighted with the cost of power supply, as SCPA strives to provide affordable electricity while maintaining an efficient organizational scale.

**Charitable Contributions**

SCPA contributed $997,000 toward relief efforts of the 2017 wildfires affecting Sonoma and Mendocino Counties.
SONOMA CLEAN POWER AUTHORITY
MANAGEMENT’S DISCUSSION AND ANALYSIS

FINANCIAL SUMMARY (in millions)

<table>
<thead>
<tr>
<th>Assets</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash &amp; equivalents</td>
<td>$56.4</td>
<td>$40.0</td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>$17.9</td>
<td>$15.6</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>$9.6</td>
<td>$8.7</td>
</tr>
<tr>
<td>Other assets</td>
<td>$8.7</td>
<td>$11.5</td>
</tr>
<tr>
<td>Total Assets</td>
<td>$92.6</td>
<td>$75.8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities &amp; net position</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accrued cost of electricity</td>
<td>$13.4</td>
<td>$11.8</td>
</tr>
<tr>
<td>Security deposits</td>
<td>0.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>2.4</td>
<td>1.6</td>
</tr>
<tr>
<td>Net position</td>
<td>76.8</td>
<td>59.9</td>
</tr>
<tr>
<td>Total liabilities &amp; net position</td>
<td>$92.6</td>
<td>$75.8</td>
</tr>
</tbody>
</table>
ECONOMIC OUTLOOK

Sonoma Clean Power Authority serves 87% of all eligible customers in Sonoma and Mendocino Counties, and this is expected to remain relatively stable. Energy prices have allowed a general reduction in SCPA’s customer rates over time, but these have been more than offset by increases in PG&E’s exit fees.

SCPA has made some progress on creating more certainty over the exit fees, but also expect those fees to remain at high levels for several years. The CPUC has assigned higher exit fees beginning in 2019 but has not yet required PG&E to take any actions to minimize the costs that make up the exit fees. As a result, SCPA is working closely with CalCCA on regulatory solutions. SCPA is focused on building credit capacity through increasing cash reserves and entering into favorable energy purchase commitments. The next three to four years could see much lower contributions to reserves compared with previous years, as SCPA seeks to protect customers from increases in PG&E exit fees.

SCPA is also focused on promoting a rapid transition to electric vehicles that would have the effect of both reducing greenhouse gas emissions and increasing SCPA revenues as vehicle charging requires purchasing electricity.

REQUEST FOR INFORMATION

This financial report is designed to provide SCPA’s customers and creditors with a general overview of the Organization’s finances and to demonstrate SCPA’s accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to 50 Santa Rosa Avenue, 5th Floor, Santa Rosa, CA 95404.

Respectfully submitted,

Geof Syphers, Chief Executive Officer
## ASSETS

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$41,333,780</td>
<td>$40,035,454</td>
</tr>
<tr>
<td>Investment in Sonoma County Investment Pool</td>
<td>15,114,038</td>
<td>-</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance</td>
<td>17,864,147</td>
<td>15,615,980</td>
</tr>
<tr>
<td>Other receivables</td>
<td>182,746</td>
<td>184,177</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>9,573,023</td>
<td>8,693,481</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>530,531</td>
<td>46,791</td>
</tr>
<tr>
<td>Deposits with energy suppliers</td>
<td>544,365</td>
<td>253,461</td>
</tr>
<tr>
<td>Investments</td>
<td>-</td>
<td>7,028,428</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td><strong>85,142,630</strong></td>
<td><strong>71,857,772</strong></td>
</tr>
<tr>
<td>Nondepreciable capital assets</td>
<td>860,520</td>
<td>-</td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>2,471,636</td>
<td>182,197</td>
</tr>
<tr>
<td>Deposits with energy suppliers</td>
<td>4,114,666</td>
<td>3,737,559</td>
</tr>
<tr>
<td><strong>Total noncurrent assets</strong></td>
<td><strong>7,446,822</strong></td>
<td><strong>3,919,756</strong></td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>92,589,452</strong></td>
<td><strong>75,777,528</strong></td>
</tr>
</tbody>
</table>

## LIABILITIES

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts payable</td>
<td>1,072,947</td>
<td>735,242</td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>13,364,094</td>
<td>11,827,067</td>
</tr>
<tr>
<td>Advance from grantor</td>
<td>500,000</td>
<td>-</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>414,792</td>
<td>362,581</td>
</tr>
<tr>
<td>User taxes and energy surcharges due to other governments</td>
<td>476,492</td>
<td>472,994</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td><strong>15,828,325</strong></td>
<td><strong>13,397,884</strong></td>
</tr>
<tr>
<td>Supplier security deposits</td>
<td>-</td>
<td>2,475,000</td>
</tr>
<tr>
<td><strong>Total noncurrent liabilities</strong></td>
<td>-</td>
<td>2,475,000</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td><strong>15,828,325</strong></td>
<td><strong>15,872,884</strong></td>
</tr>
</tbody>
</table>

## NET POSITION

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment in capital assets</td>
<td>3,332,156</td>
<td>182,197</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>73,428,971</td>
<td>59,722,447</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td><strong>$76,761,127</strong></td>
<td><strong>$59,904,644</strong></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
SONOMA CLEAN POWER AUTHORITY

STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

FISCAL YEARS ENDED JUNE 30, 2018 AND 2017

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity sales, net</td>
<td>$ 171,105,819</td>
<td>$ 152,962,450</td>
</tr>
<tr>
<td>Evergreen electricity premium</td>
<td>429,525</td>
<td>250,165</td>
</tr>
<tr>
<td>Electricity sales for resale</td>
<td>590,963</td>
<td>8,417,669</td>
</tr>
<tr>
<td>Liquidated damages</td>
<td>422,440</td>
<td>336,296</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>172,548,747</td>
<td>161,966,580</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of electricity</td>
<td>141,874,571</td>
<td>132,419,973</td>
</tr>
<tr>
<td>Staff compensation</td>
<td>3,034,920</td>
<td>2,624,111</td>
</tr>
<tr>
<td>Data manager</td>
<td>3,138,228</td>
<td>2,858,418</td>
</tr>
<tr>
<td>Service fees - PG&amp;E</td>
<td>1,113,099</td>
<td>1,048,046</td>
</tr>
<tr>
<td>Consultants and other professional fees</td>
<td>1,848,708</td>
<td>1,195,081</td>
</tr>
<tr>
<td>Legal</td>
<td>298,244</td>
<td>299,252</td>
</tr>
<tr>
<td>Customer communications</td>
<td>1,361,757</td>
<td>870,061</td>
</tr>
<tr>
<td>General and administration</td>
<td>779,155</td>
<td>395,113</td>
</tr>
<tr>
<td>Program rebates and incentives</td>
<td>1,748,903</td>
<td>1,008,596</td>
</tr>
<tr>
<td>Depreciation</td>
<td>60,116</td>
<td>47,790</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>155,257,701</td>
<td>142,766,441</td>
</tr>
</tbody>
</table>

| Operating income                                        | 17,291,046         | 19,200,139        |

<table>
<thead>
<tr>
<th>NONOPERATING REVENUES (EXPENSES)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
<td>562,637</td>
<td>225,765</td>
</tr>
<tr>
<td>Charitable contributions</td>
<td>(997,200)</td>
<td>-</td>
</tr>
<tr>
<td>Total nonoperating revenues (expenses)</td>
<td>(434,563)</td>
<td>225,765</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHANGE IN NET POSITION</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net position at beginning of period</td>
<td>59,904,644</td>
<td>40,478,740</td>
</tr>
<tr>
<td>Net position at end of period</td>
<td>$ 76,761,127</td>
<td>$ 59,904,644</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements. 11
## SONOMA CLEAN POWER AUTHORITY

**STATEMENTS OF CASH FLOWS**

**FISCAL YEARS ENDED JUNE 30, 2018 AND 2017**

The accompanying notes are an integral part of these financial statements.  

### CASH FLOWS FROM OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts from electricity sales</td>
<td>$168,417,320</td>
<td>$153,855,888</td>
</tr>
<tr>
<td>Receipts from electricity sales for resale</td>
<td>653,627</td>
<td>9,275,053</td>
</tr>
<tr>
<td>Receipts from liquidated damages</td>
<td>250,000</td>
<td>368,441</td>
</tr>
<tr>
<td>Receipts from grantees</td>
<td>500,000</td>
<td>-</td>
</tr>
<tr>
<td>Receipts from supplier for security deposits</td>
<td>2,325,000</td>
<td>2,475,000</td>
</tr>
<tr>
<td>Tax and surcharge receipts from customers</td>
<td>2,286,495</td>
<td>2,328,361</td>
</tr>
<tr>
<td>Payments to purchase electricity (140,595,493)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payments for staff compensation (2,993,518)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payments for contract services (6,325,611)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payments for customer communications (1,325,860)</td>
<td></td>
<td>(869,998)</td>
</tr>
<tr>
<td>Payments for general and administration (828,202)</td>
<td></td>
<td>(365,031)</td>
</tr>
<tr>
<td>Payments for program rebates and incentives (2,018,403)</td>
<td>(1,103,596)</td>
<td></td>
</tr>
<tr>
<td>Return of security deposits to suppliers (4,650,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax and surcharge payments to other governments</td>
<td>2,292,682</td>
<td>2,318,419</td>
</tr>
<tr>
<td>Deposits and collateral paid</td>
<td>620,867</td>
<td>-</td>
</tr>
<tr>
<td>Payments for charitable contributions (689,200)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td><strong>12,092,606</strong></td>
<td><strong>15,351,142</strong></td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposits and collateral paid</td>
<td>-</td>
<td>(3,512,500)</td>
</tr>
<tr>
<td>Deposits and collateral returned</td>
<td>-</td>
<td>395,000</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by non-capital financing activities</strong></td>
<td>-</td>
<td>(3,117,500)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of capital assets</td>
<td>(2,349,554)</td>
<td>(34,418)</td>
</tr>
<tr>
<td>Acquisition of nondepreciable capital assets</td>
<td>(860,520)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by capital and related financing activities</strong></td>
<td>(3,210,074)</td>
<td>(34,418)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM INVESTING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceeds from certificate of deposit</td>
<td>7,028,428</td>
<td>-</td>
</tr>
<tr>
<td>Interest income received</td>
<td>501,404</td>
<td>205,063</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by investing activities</strong></td>
<td><strong>7,529,832</strong></td>
<td><strong>205,063</strong></td>
</tr>
</tbody>
</table>

Net change in cash and cash equivalents  
Cash and cash equivalents at beginning of year  
Cash and cash equivalents at end of year  

### Reconciliation to the Statement of Net Position

<table>
<thead>
<tr>
<th>Description</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$41,333,780</td>
<td>$40,035,454</td>
</tr>
<tr>
<td>Investment in Sonoma County Pooled Investment Pool</td>
<td>15,114,038</td>
<td>-</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents</strong></td>
<td><strong>$56,447,818</strong></td>
<td><strong>$40,035,454</strong></td>
</tr>
</tbody>
</table>

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SONOMA CLEAN POWER AUTHORITY

STATEMENTS OF CASH FLOWS (CONTINUED)

FISCAL YEARS ENDED JUNE 30, 2018 AND 2017

RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating income</td>
<td>$17,291,046</td>
<td>$19,200,139</td>
</tr>
<tr>
<td>Adjustments to reconcile operating income to net cash provided (used) by operating activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>60,115</td>
<td>47,790</td>
</tr>
<tr>
<td>Revenue reduced for uncollectible accounts</td>
<td>861,807</td>
<td>1,258,826</td>
</tr>
<tr>
<td>Charitable contributions considered an operating activity for cash flow purposes only</td>
<td>(689,200)</td>
<td>-</td>
</tr>
<tr>
<td>(Increase) decrease in net accounts receivable</td>
<td>(3,109,973)</td>
<td>(1,246,980)</td>
</tr>
<tr>
<td>(Increase) decrease in other receivables</td>
<td>62,664</td>
<td>857,257</td>
</tr>
<tr>
<td>(Increase) decrease in accrued revenue</td>
<td>(879,543)</td>
<td>631,426</td>
</tr>
<tr>
<td>(Increase) decrease in prepaid expenses</td>
<td>(483,740)</td>
<td>(26,643)</td>
</tr>
<tr>
<td>(Increase) decrease in current deposits</td>
<td>(668,011)</td>
<td>(118,854)</td>
</tr>
<tr>
<td>Increase (decrease) in accounts payable</td>
<td>29,705</td>
<td>83,489</td>
</tr>
<tr>
<td>Increase (decrease) in accrued cost of electricity</td>
<td>1,186,149</td>
<td>(8,150,207)</td>
</tr>
<tr>
<td>Increase (decrease) in advance from grantors</td>
<td>500,000</td>
<td>-</td>
</tr>
<tr>
<td>Increase (decrease) in accrued liabilities</td>
<td>403,089</td>
<td>329,957</td>
</tr>
<tr>
<td>Increase (decrease) in user taxes and energy surcharges due to other governments</td>
<td>3,498</td>
<td>9,942</td>
</tr>
<tr>
<td>Increase (decrease) in supplier security deposits</td>
<td>(2,475,000)</td>
<td>2,475,000</td>
</tr>
<tr>
<td>Net cash provided (used) by operating activities</td>
<td>$12,092,606</td>
<td>$15,351,142</td>
</tr>
</tbody>
</table>
REPORTING ENTITY

Sonoma Clean Power Authority (SCPA) is a joint powers authority created on December 4, 2012. As of June 30, 2018, partner communities consist of the following local governments:

- Cloverdale
- Cotati
- Fort Bragg
- Petaluma
- Point Arena
- Rohnert Park
- Santa Rosa
- Sebastopol
- Sonoma
- Unincorporated Mendocino County
- Unincorporated Sonoma County
- Willits
- Windsor

SCPA is separate from and derives no financial support from its members. SCPA is governed by a Board of Directors whose membership is composed of elected officials representing one or more of the partner communities.

SCPA was formed to study, promote, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing these objectives. A core function of SCPA is to provide electric service that includes the use of renewable sources under the Community Choice Aggregation Program under California Public Utilities Code Section 366.2.

SCPA began its energy delivery operations in May 2014. Electricity is acquired from commercial suppliers and delivered through existing physical infrastructure and equipment managed by Pacific Gas and Electric Company.

BASIS OF ACCOUNTING

SCPA’s financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

SCPA’s operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned and expenses are recognized at the time liabilities are incurred. Enterprise fund type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into two categories – investment in capital assets and unrestricted.
SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

CASH AND CASH EQUIVALENTS

For purposes of the statement of cash flows, SCPA defines cash and cash equivalents to include cash on hand, demand deposits, and short-term investments with an original maturity of three months or less, including investments held in the Sonoma County Investment Pool which are available on demand and are considered highly liquid.

DEPOSITS WITH ENERGY SUPPLIERS

Various energy contracts entered into by SCPA require SCPA to provide the supplier with a security deposit. The deposits are generally held for the term of the contract. Deposits with energy suppliers are classified as current or noncurrent assets depending on the length of the time the deposits will be held. While these energy contract related deposits make up the majority of this item, other components of deposits include those for regulatory and other operating purposes.

INVESTMENTS

As of June 30, 2017, SCPA owned an investment in a certificate of deposit with a six-month term that was not considered a cash equivalent. In accordance with GASB 31, the certificate was reported using a cost-based measure and was accounted for on the Statement of Net Position at cost. During 2017-18, the certificate of deposit matured and was transferred to the Sonoma County Investment Pool.

CAPITAL ASSETS AND DEPRECIATION

SCPA’s policy is to capitalize furniture and equipment valued over $1,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment and seven years for furniture and leasehold improvements. Real estate, excluding land, is depreciated over 30 years.

SUPPLIER SECURITY DEPOSITS

Certain energy contracts entered into by SCPA require the supplier to provide SCPA with security deposits. Similar to collateral, this will be held by SCPA in the event the energy supplier’s generation facility is not operational within a contractually defined timeframe. If the facility is operational in time, then SCPA will return the deposit.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

OPERATING AND NON-OPERATING REVENUE

Revenue from the sale of electricity to customers is considered operating revenue. The vast majority of operating revenue is derived from these sales. Also included as operating revenue are sales of electricity to other retailers for resale. SCPA engages in this activity in order to sell off excess energy that was procured, but not necessary to cover its retail customer’s demands. Interest income is considered non-operating revenue.

REVENUE RECOGNITION

SCPA recognizes revenue on the accrual basis. This includes invoices issued to customers during the period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded.

ELECTRICAL POWER PURCHASED

Electrical power sold to customers was purchased through several energy suppliers. The cost of power and related delivery costs have been recognized as “cost of electricity” in the Statement of Revenues, Expenses and Changes in Net Position.

SCPA purchases Renewable Energy Certificates (REC) to comply with external mandates and self-imposed benchmarks. The RECs purchased by SCPA are commonly called “bundled”, as they are purchased together with the associated renewable energy actually generated. SCPA procures RECs with the intent to retire them, and does not engage in the activity of building a surplus of RECs. An expense is recognized at the point that the cost of the REC is due and payable to the supplier.

STAFFING COSTS

SCPA pays employees semi-monthly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan each month. SCPA is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements. SCPA provides compensated time off, and the related liability is recorded in these financial statements.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

ADVANCE FROM GRANTOR

SCPA received grant funding during the year that will assist SCPA’s homeowner rebuild program. The amount in this category represents funds received by SCPA, but not yet expended to carry out the specific goals.

PROGRAM REBATES AND INCENTIVES

During 2017-2018 and 2016-17, SCPA provided incentive rebates for customers who purchased or leased electric vehicles through the Drive EverGreen program. This program was provided in partnership with several local auto dealerships to encourage the use of electric vehicles. In addition, SCPA provided incentive rebates for customers to purchases charging equipment for their electric vehicles. During 2017-18 and 2016-17 SCPA paid out approximately $1.7 million and $1 million in rebates for vehicles and charging equipment, respectively.

INCOME TAXES

SCPA is a joint powers authority under the provision of the California Government Code, and is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATIONS

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements.

2. CASH AND CASH EQUIVALENTS

SCPA maintains its cash in interest and non-interest-bearing accounts in several banks and in the Sonoma County Investment Pool (the County Pool). California Government Code Section 16521 requires that these banks collateralize amounts of public funds in excess of the FDIC limit of $250,000 by 110%. SCPA has no deposit or investment policy that addressed a specific type of risk that would impose additional restrictions beyond this code. Accordingly, the amount of risk is not disclosed. Risk is monitored on an ongoing basis.
2. CASH AND CASH EQUIVALENTS (continued)

The County Pool includes both voluntary and involuntary participation from external entities. SCPA is a voluntary participant. SCPA has approved by resolution, the investment policy of the County of Sonoma which complies with the California Government Code.

The County Pool is not registered with the Securities and Exchange Commission as an investment company. The objectives of the policy are in order of priority, safety, liquidity, yield, and public trust.

The County has established a treasury oversight committee to monitor and review the management of public funds maintained in the investment pool in accordance with Article 6 Section 27131 of the California Government Code. The oversight committee and the Board of Supervisors review and approve the investment policy annually. The County Treasurer prepares and submits a comprehensive investment report to the members of the oversight committee and the investment pool participants every month. The report covers the types of investments in the pool, maturity dates, par value, actual costs and fair value.

FAIR VALUE MEASUREMENT

GASB Statement No. 72, *Fair Value Measurement and Application*, sets forth the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Level 1 inputs are quoted prices in active markets for identical assets, Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs. As of June 30, 2018, SCPA held no individual investments. All investments are in the Sonoma County Investment Pool.

In instances where inputs used to measure fair value fall into different levels in the above fair value hierarchy, fair value measurements in their entirety are categorized based on the lowest level input that is significant to the valuation. SCPA’s assessment of the significance of particular inputs to these fair value measurements requires judgment and considers factors specific to each asset or liability. Deposits and withdrawals from the County Pool are made on the basis of $1 which is substantially equal to fair value. SCPA’s proportionate share of investments in the County Pool at June 30, 2018 and 2017 of $15,114,000 and $0, respectively, are not required to be categorized under the fair value hierarchy.
2. CASH AND CASH EQUIVALENTS (continued)

INTEREST RATE RISK

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. Duration is a measure of the price sensitivity of a fixed income portfolio to changes in interest rates. It is calculated as the weighted average time to receive a bond’s coupon and principal payments. The longer the duration of a portfolio, the greater its price sensitivity to changes in interest rates. SCPA has not adopted a policy to manage interest rate risk.

The County Pool manages its exposure to interest rate risk by purchasing a combination of shorter term and longer term investments and by timing cash flows from maturities so that a portion of the portfolio is maturing or coming close to maturing evenly over time as necessary to provide the cash flow and liquidity needed for operations. As of June 30, 2018, approximately 50% of the securities in the County Pool had maturities of one year or less. Of the remainder, only 1 percent had a maturity of more than five years.

CREDIT RISK

The investment policy of the County Pool contains no limitations on the amount that can be invested in any one issuer beyond that stipulated by the California Government Code. For a listing of investments in any one issuer (other than U.S. Treasury securities, mutual funds, or external investment pools) that represent 5% or more of total County investments, refer to the 2017-18 Sonoma County Comprehensive Annual Financial Report.

3. ACCOUNTS RECEIVABLE

Accounts receivable were as follows:

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts receivable from customers</td>
<td>$ 21,314,870</td>
<td>$ 18,204,897</td>
</tr>
<tr>
<td>Allowance for uncollectible accounts</td>
<td>(3,450,723)</td>
<td>(2,588,917)</td>
</tr>
<tr>
<td>Net accounts receivable</td>
<td>$ 17,864,147</td>
<td>$ 15,615,980</td>
</tr>
</tbody>
</table>

The majority of account collections occur within the first few months following customer invoicing. SCPA continues collection efforts on accounts in excess of de minimis balances regardless of the age of the account. Although collection success generally decreases with the age of the receivable, SCPA continues to have some success collecting older accounts. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years. SCPA records reserves for its estimated uncollectible accounts as a reduction to the related operating revenue in the Statements of Revenues, Expenses and Changes in Net Position. Charges to reserve for uncollectible accounts for 2017-18 and 2016-17 were $862,000 and $1,259,000, respectively.
## 4. CAPITAL ASSETS

Changes in capital assets were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Balance June 30, 2017</th>
<th>Additions</th>
<th>Balance June 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nondepreciable capital assets:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land</td>
<td>$860,520</td>
<td></td>
<td>$860,520</td>
</tr>
<tr>
<td></td>
<td>Balance June 30, 2016</td>
<td>Additions</td>
<td>Balance June 30, 2017</td>
</tr>
<tr>
<td><strong>Depreciable capital assets:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Furniture and equipment</td>
<td>$196,911</td>
<td>$23,025</td>
<td>$219,936</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>$68,833</td>
<td>$5,807</td>
<td>$74,640</td>
</tr>
<tr>
<td>Accumulated depreciation</td>
<td>$(64,589)</td>
<td>$(47,790)</td>
<td>$(112,379)</td>
</tr>
<tr>
<td>Totals at historical cost</td>
<td>$201,155</td>
<td>$(18,958)</td>
<td>$182,197</td>
</tr>
<tr>
<td></td>
<td>Balance June 30, 2017</td>
<td>Additions</td>
<td>Balance June 30, 2018</td>
</tr>
<tr>
<td><strong>Depreciable capital assets:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building</td>
<td>$2,264,086</td>
<td></td>
<td>$2,264,086</td>
</tr>
<tr>
<td>Furniture and equipment</td>
<td>$219,936</td>
<td>$85,469</td>
<td>$305,405</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>$74,640</td>
<td></td>
<td>$74,640</td>
</tr>
<tr>
<td>Accumulated depreciation</td>
<td>$(112,379)</td>
<td>$(60,116)</td>
<td>$(172,495)</td>
</tr>
<tr>
<td>Totals at historical cost</td>
<td>$182,197</td>
<td>$2,289,439</td>
<td>$2,471,636</td>
</tr>
</tbody>
</table>

In June 2018, SCPA purchased office property for approximately $3,125,000, including closing and other costs. A portion of property has been attributed to the value of the land, which is included on the Statement of Net Position in the nondepreciable capital assets category. The office property was not in use as of June 30, 2018 and depreciation expense has not been recognized during 2017-18.

## 5. DEFINED CONTRIBUTION RETIREMENT PLAN

The Sonoma Clean Power Authority Retirement Plan (Plan) is a defined contribution (IRC 457(b)) retirement plan established to provide benefits at retirement to its employees. The Plan is administered by Principal Financial Group. At June 30, 2018, there were 19 plan participants. SCPA is required to contribute up to 8% of covered payroll as a match to employee contributions. SCPA contributed $174,000 and $207,000 during 2017-18 and 2016-17, respectively. Plan provisions and contribution requirements are established and may be amended by the Board of Directors.

## 6. RISK MANAGEMENT
SONOMA CLEAN POWER AUTHORITY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2018 AND 2017

SCPA is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. SCPA purchases liability and property insurance from a commercial carrier. Coverage for property, general liability, errors and omissions and non-owned automobile was $2,000,000 with a $1,000 deductible.

7. COMMITMENTS AND CONTINGENCIES

SCPA had outstanding power purchase commitments of approximately $295 million, contingent upon construction of solar photovoltaic generation facilities, that continue for twenty to twenty-five years from the commencement of commercial operations of each project. SCPA will not own the operating system upon construction or have an option to buy the system after the contract period. Certain power purchase agreements required the posting of security deposits by the supplier to be held by SCPA as collateral in the event the facility is not operational within stipulated timeframes. These postings can be in the form of cash or letter of credit.

SCPA had additional outstanding non-cancelable power purchase-related commitments of approximately $920 million for energy that have not yet been provided under power purchase agreements that continue to June 30, 2043.

SCPA monitors and manages procurement cost risk consistent with industry practice, for the purpose of balancing the dual objectives of minimizing cost and protecting against low-probability adverse cost movements.

The following table is the approximated obligations on existing energy and renewable contracts.

<table>
<thead>
<tr>
<th>Year ended June 30,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>$ 132,000,000</td>
</tr>
<tr>
<td>2020</td>
<td>133,000,000</td>
</tr>
<tr>
<td>2021</td>
<td>101,000,000</td>
</tr>
<tr>
<td>2022</td>
<td>71,000,000</td>
</tr>
<tr>
<td>2023</td>
<td>70,000,000</td>
</tr>
<tr>
<td>2024-2043</td>
<td>708,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 1,215,000,000</strong></td>
</tr>
</tbody>
</table>

As of June 30, 2018, SCPA had outstanding non-cancelable commitments to professional service providers for services yet to be performed of $12 million through April 30, 2022.
8. OPERATING LEASE

During 2014-15, SCPA moved its office and entered into an 84 month non-cancelable lease for its office premises until June 30, 2022. The rental agreement includes an option to renew the lease for five additional years. Rental expense under this lease was $171,000 and $121,000 for 2017-18 and 2016-17, respectively.

Future minimum lease payments under the lease are as follows:

<table>
<thead>
<tr>
<th>Year ended June 30,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>$161,058</td>
</tr>
<tr>
<td>2020</td>
<td>165,890</td>
</tr>
<tr>
<td>2021</td>
<td>170,867</td>
</tr>
<tr>
<td>2022</td>
<td>175,993</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$673,808</strong></td>
</tr>
</tbody>
</table>

9. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statement are effective for future fiscal years ending after June 30, 2018:

GASB Statement No. 87, *Leases*, is effective for fiscal years beginning after December 15, 2019. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments’ financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, thereby enhancing the relevance and consistency of information about governments’ leasing activities. When the Statement becomes effective, restatement of these financial statements may be required.
10. SUBSEQUENT EVENTS

In September 2018, new legislation was passed in the California legislature that expands direct access for commercial customers throughout the State. It is unknown what the impact of this will be on SCPA or how much commercial load might be eligible under this direct access expansion.

On October 11, 2018, the California Public Utilities Commission (CPUC) passed an Alternative Proposed Decision (APD) regarding the calculation of the Power Charge Indifference Adjustment (PCIA). The decision will increase the PCIA for all of SCPA’s customers. SCPA is evaluating the specific changes that will be required to SCPA’s rates as a result of this decision.
To: Sonoma Clean Power Authority Community Advisory Committee
From: Stephanie Reynolds, Director of Internal Operations
Geof Syphers, CEO
Issue: Receive Operations Report and provide direction as appropriate
Date: November 29, 2018

CONTRACT FOR SERVICES WITH SONOMA COUNTY COUNSEL

The Office of the Sonoma County Counsel has provided legal services to SCP on an as-needed basis since June 25, 2013. This arrangement provides SCP with access to attorneys having deep expertise in on a variety of public law topics, including more complex areas involving the California Environmental Quality Act (CEQA), public contracting, real estate, fees, and litigation. Maintaining an active agreement with County Counsel is a cost-effective way for SCP to engage this broad expertise on more routine matters as they arise, but also in the event SCP is subject to an unanticipated or complex claim. Staff is working with County Counsel now to update a new agreement with a not-to-exceed annual amount of less than $50,000. Sections 4.3 and 4.4 of the SCP Third Amended JPA states authorize the CEO may approve a contract with a party or participant of SCP, if under $50,000 per year. Once staff finalizes the terms and executes any such agreement, staff will report back on the final deal points.

LOAD DEVIATIONS

Staff have learned that for the past several months, SCP customer load has been about 6% below forecast. This is more than triple normal deviation, and is the matter of an internal investigation into the quality of data we are
receiving from PG&E and the handling of load data in our systems. An initial review has ruled out weather related impacts, changes in numbers of customers, changes in behind the meter solar, and changes in large customer usage patterns. The deviation is largest in residential customers, which normally have good statistical diversity due to the large number of those customers. Staff will continue to report on this matter.

2017 VALIDATED EMISSION FACTORS

Sonoma Clean Power’s 2017 Emission factors were posted to The Climate Registry website. We are proud to have these numbers posted publicly. The Clean Start emissions rate, noted by an orange “R” is higher in 2017, due to 2016 being a banner year for hydroelectric power. The Green “S” represents our EverGreen product.
EVERGREEN OUTREACH TO MEMBERS

SCP staff continue to meet with members to discuss the value of registering accounts for EverGreen service. EverGreen is specifically identified as one of the most cost-effective measures in some adopted Climate Action Plans, such as the County of Sonoma. For member cities and counties, SCP staff are available to come discuss the details of SCP’s 100% locally-produced 100% renewable electricity. One factor staff have discovered is that EverGreen makes most other climate actions more effective, such as the use of electric buses or building electrification, because EverGreen further lowers the greenhouse gas emissions of those activities.

PROGRAM UPDATES

Drive EV

As of November 19, the chart below shows participation data for Drive EV:

<table>
<thead>
<tr>
<th>Make/Model</th>
<th>Lease</th>
<th>Purchase</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>208</td>
<td>263</td>
<td>471</td>
</tr>
<tr>
<td>BMW Subtotal</td>
<td>6</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>Chevrolet Subtotal</td>
<td>77</td>
<td>158</td>
<td>235</td>
</tr>
<tr>
<td>Chrysler Pacifica Hybrid</td>
<td>3</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Ford Subtotal</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Kia Subtotal</td>
<td>60</td>
<td>47</td>
<td>107</td>
</tr>
<tr>
<td>Nissan Subtotal</td>
<td>63</td>
<td>44</td>
<td>107</td>
</tr>
</tbody>
</table>

The program ended on November 16th. The total number of vehicles will probably climb a bit more as the dealers have two weeks to submit any remaining claims. An evaluation of the program, including surveys of those who purchase and those who did not, will be completed over the next several months.

Energy Education Program

The highly successful Energy Education Program continues. On November 5th, SCP staff were guests on a tour of the Water Education Facility run by Sonoma Water. A 5th grade class was present, so we were able to see the program in action!
**GridSavvy**

GridSavvy allows SCP to run automated demand response programs with customer-owned devices (like EV chargers) to provide grid reliability services. The program is in full swing now, and an update of progress is covered in Item 7. On November 16th, SCP launched a new and improved GridSavvy Community webstore, which will allow SCP customers to more easily purchase demand response capable technologies.

**Advanced Energy Rebuild**

Advanced Energy Rebuild continues to grow, with 137 applications received so far. Many more are reportedly being prepared and walk-in traffic with questions about the program has increased. The latest “Rebuilding for Greater Comfort and Affordability” class series, taught at the North Coast Builder’s Exchange in coordination with PG&E, has completed. Nearly 1,000 contractors, homeowners, architects, and engineers have been through the training series. SCP will also be helping to facilitate the Rebuild Green Expo in Santa Rosa in February.

**Lead Locally (CEC Grant)**

The Lead Locally grant team is finalizing a contract with TLCD to provide architectural and engineering design services for a renovation of the Energy Marketplace. Additionally, the lease for the Energy Marketplace at 741 4th street commenced on November 1, 2018.

The grant team publicly solicited a recruitment for 16 homes to participate in the applied research experiments for advanced technologies including: heat pump water heaters, radiant ceiling heating and cooling panels, residential attic phase change materials, and air to water heat pumps. As of November 18th there have been 163 applications from SCP customers. Site visits and final selection of those homes will be completed by Mid-December with pre-monitoring instrumentation to be installed by late December 2018. A Phase 2 research study on daylighting retrofits for 3 commercial properties will occur in the spring of 2019.

**Do-It-Yourself Energy and Water Saving Toolkits**

The Do-It-Yourself Energy and Water Saving Toolkits and electric induction cooktops continue to be popular items to check out. The toolkits are available at certain Sonoma and Mendocino County library branches for
patrons to check out and the cooktops are available to SCP customers to check out from our office.

**Electrification of Transit Vehicles**

The County of Sonoma and Santa Rosa City Bus have been awarded grants for the purchase of electric buses. In addition, there are mandates from the California Air Resources Board for bus fleets to convert to all electric buses in the near future. These two developments have prompted Programs staff to work with staff from the RCPA, as well as staff from the four transit systems that operate completely in SCP territory (Sonoma County Transit, Santa Rosa City Bus, Petaluma Transit, and the Mendocino Transit Authority) on a study to determine the infrastructure needs in the near and long term for charging fleets of electric buses. SCP would hire a consultant to study each of the transit system’s short and long term needs based on existing conditions and recommend strategies for achieving those needs. Staff are working with the RCPA and transit system staff on a scope of work for the study. SCP would issue an RFP for consulting services and bring a contract to the CAC and Board for approval in early 2019.

**MONTHLY COMPiled FINANCIAL STATEMENTS**

The summer rate season continues into September, a period where aggregate rates are more than in the winter season. The year-to-date growth in net position is above projections due primarily to lower than anticipated operating costs. Year-to-date operating revenues reached $49,941,000.

Electricity sales (as reported on the Statement of Revenues, Expenses and Changes in Net Assets) is being offset by our estimate of uncollectible accounts, which is currently set at approximately 0.5% of electricity sales. As historical data is gathered on the collection patterns specific to SCP customers, this rate will be revisited and adjusted as necessary. Note that the accounts receivable line on the Statement of Net Position is presented net of allowance for uncollectibles.

SCP continues to procure electricity from multiple sources. Net position reached a positive $84,208,000, which indicates healthy growth as SCP continues to make progress towards its reserve goals. Of this net position, approximately $42,478,000 and $7,496,000 is considered set aside for operating and project reserves, respectively. These reserve balances do not
include the contribution that will occur after the completion of the fiscal year 2017/18 audit.

Overall, other operating expenses continued near or slightly below planned levels for the year.

**BUDGETARY COMPARISON SCHEDULE**

The accompanying budgetary comparison includes the 2018/19 budget approved by the Board of Directors in May 2018.

The budget is formatted to make comparisons for both the annual and the year-to-date perspective. The first column, 2018/19 YTD Budget, allocates the Board approved annual budget at expected levels throughout the year with consideration for the timing of additional customers, usage volumes, staffing needs etc. This column represents our best estimates and this granular approach was not part of the Board approved budget.

Revenue from electricity sales to customers is under the year-to-date budget by approximately 7%.

The cost of electricity is also slightly under budget-to-date by less than 7%. Variation in this account is typically due to fluctuating market cost of energy on open position purchases.

Major operating categories of Data Management fees and PG&E Service fees are based on the customer account totals. While Data Management fees are closely aligned to the annual budgeted amount, PG&E fees exceed the year-to-date budget. SCP had anticipated a drop in the per meter fee charged by PG&E, but the final decrease was not as significant as expected. SCP intends to adjust the budget for this category in future months.

In addition to the items mentioned above, SCP continues its trend of remaining near or under budget for most of its operating expenses.

**UPCOMING MEETINGS:**

Proposed Board of Directors meeting dates for 2019 will be brought to the Board in December for approval.
ACCOUNTANTS’ COMPILATION REPORT

Board of Directors
Sonoma Clean Power Authority

Management is responsible for the accompanying special purpose statement of Sonoma Clean Power Authority (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended September 30, 2018, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of Sonoma Clean Power Authority.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user’s conclusions about the Authority’s results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy
San Rafael, CA
October 23, 2018
## REVENUE AND OTHER SOURCES:

<table>
<thead>
<tr>
<th>Description</th>
<th>2018/19 YTD Budget</th>
<th>2018/19 YTD Actual</th>
<th>2018/19 YTD Budget Variance</th>
<th>2018/19 Actual/Budget %</th>
<th>2018/19 Budget</th>
<th>2018/19 Budget Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue - Electricity (net of allowance) *</td>
<td>$52,986,838</td>
<td>$49,540,970</td>
<td>$(3,445,868)</td>
<td>93%</td>
<td>$182,736,000</td>
<td>$133,195,030</td>
</tr>
<tr>
<td>Revenue - Evergreen Premium (net of allowance)</td>
<td>119,465</td>
<td>103,380</td>
<td>$(16,085)</td>
<td>87%</td>
<td>412,000</td>
<td>308,620</td>
</tr>
<tr>
<td>CEC Grant Proceeds</td>
<td>350,000</td>
<td>263,436</td>
<td>$(86,564)</td>
<td>75%</td>
<td>2,600,000</td>
<td>2,336,564</td>
</tr>
<tr>
<td>BAAQMD grant</td>
<td>-</td>
<td>5,500</td>
<td>5,500</td>
<td>0%</td>
<td>-</td>
<td>(5,500)</td>
</tr>
<tr>
<td>Revenue - Interest income</td>
<td>153,250</td>
<td>190,579</td>
<td>37,329</td>
<td>124%</td>
<td>613,000</td>
<td>422,421</td>
</tr>
<tr>
<td>Total revenue and other sources</td>
<td>53,609,553</td>
<td>50,103,865</td>
<td>$(3,505,688)</td>
<td>93%</td>
<td>186,361,000</td>
<td>136,257,135</td>
</tr>
</tbody>
</table>

## EXPENDITURES AND OTHER USES:

### CURRENT EXPENDITURES

<table>
<thead>
<tr>
<th>Description</th>
<th>2018/19 YTD Budget</th>
<th>2018/19 YTD Actual</th>
<th>2018/19 YTD Budget Variance</th>
<th>2018/19 Actual/Budget %</th>
<th>2018/19 Budget</th>
<th>2018/19 Budget Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of energy and scheduling</td>
<td>41,953,832</td>
<td>39,124,811</td>
<td>$(2,829,021)</td>
<td>93%</td>
<td>154,377,000</td>
<td>115,252,189</td>
</tr>
<tr>
<td>Data management</td>
<td>772,250</td>
<td>787,343</td>
<td>15,093</td>
<td>102%</td>
<td>3,089,000</td>
<td>2,301,657</td>
</tr>
<tr>
<td>Service fees- PG&amp;E</td>
<td>141,000</td>
<td>128,309</td>
<td>$(12,691)</td>
<td>88%</td>
<td>564,000</td>
<td>317,701</td>
</tr>
<tr>
<td>Personel</td>
<td>915,250</td>
<td>944,827</td>
<td>$(31,573)</td>
<td>88%</td>
<td>3,661,000</td>
<td>2,856,806</td>
</tr>
<tr>
<td>Outreach and communications</td>
<td>301,000</td>
<td>298,562</td>
<td>2,438</td>
<td>99%</td>
<td>1,144,000</td>
<td>845,438</td>
</tr>
<tr>
<td>Customer service</td>
<td>152,000</td>
<td>130,454</td>
<td>$(21,546)</td>
<td>75%</td>
<td>440,000</td>
<td>326,546</td>
</tr>
<tr>
<td>Legal</td>
<td>77,500</td>
<td>88,255</td>
<td>$(10,755)</td>
<td>114%</td>
<td>310,000</td>
<td>221,745</td>
</tr>
<tr>
<td>Accounting and auditing</td>
<td>51,000</td>
<td>60,498</td>
<td>$(9,498)</td>
<td>127%</td>
<td>204,000</td>
<td>173,868</td>
</tr>
<tr>
<td>Technical consultants</td>
<td>47,500</td>
<td>60,498</td>
<td>$(12,998)</td>
<td>127%</td>
<td>190,000</td>
<td>129,502</td>
</tr>
<tr>
<td>Legislative and regulatory advocacy</td>
<td>32,000</td>
<td>29,500</td>
<td>$(2,500)</td>
<td>88%</td>
<td>128,000</td>
<td>108,500</td>
</tr>
<tr>
<td>Other consultants</td>
<td>65,000</td>
<td>33,646</td>
<td>$(31,354)</td>
<td>52%</td>
<td>260,000</td>
<td>226,354</td>
</tr>
<tr>
<td>Program implementation</td>
<td>1,377,500</td>
<td>1,094,092</td>
<td>$(283,408)</td>
<td>75%</td>
<td>5,510,000</td>
<td>4,912,151</td>
</tr>
<tr>
<td>Program - CEC grant</td>
<td>760,000</td>
<td>604,000</td>
<td>$(156,000)</td>
<td>79%</td>
<td>3,040,000</td>
<td>2,819,348</td>
</tr>
<tr>
<td>Program development and evaluation</td>
<td>43,750</td>
<td>(43,750)</td>
<td>0%</td>
<td>0%</td>
<td>350,000</td>
<td>350,000</td>
</tr>
<tr>
<td>General and administration</td>
<td>172,750</td>
<td>151,644</td>
<td>$(21,106)</td>
<td>88%</td>
<td>531,000</td>
<td>379,356</td>
</tr>
<tr>
<td>CalCCA Trade Association</td>
<td>75,000</td>
<td>175,000</td>
<td>$(100,000)</td>
<td>100%</td>
<td>348,000</td>
<td>273,000</td>
</tr>
<tr>
<td>Total current expenditures</td>
<td>46,937,332</td>
<td>42,641,839</td>
<td>$(4,295,493)</td>
<td>91%</td>
<td>174,146,000</td>
<td>246,756,350</td>
</tr>
</tbody>
</table>

### OTHER USES

<table>
<thead>
<tr>
<th>Description</th>
<th>2018/19 YTD Budget</th>
<th>2018/19 YTD Actual</th>
<th>2018/19 YTD Budget Variance</th>
<th>2018/19 Actual/Budget %</th>
<th>2018/19 Budget</th>
<th>2018/19 Budget Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collateral deposit payments</td>
<td>500,000</td>
<td>1,300,000</td>
<td>800,000</td>
<td>260%</td>
<td>1,000,000</td>
<td>(300,000)</td>
</tr>
<tr>
<td>Capital outlay</td>
<td>50,000</td>
<td>147,139</td>
<td>97,139</td>
<td>294%</td>
<td>200,000</td>
<td>52,861</td>
</tr>
<tr>
<td>Total expenditures, Other Uses and Debt Service</td>
<td>47,487,332</td>
<td>44,088,978</td>
<td>$(3,398,354)</td>
<td>93%</td>
<td>175,346,000</td>
<td>246,509,211</td>
</tr>
<tr>
<td>Net increase (decrease) in available fund balance</td>
<td>$6,122,221</td>
<td>$6,014,887</td>
<td>$(107,334)</td>
<td>98%</td>
<td>$11,015,000</td>
<td>($110,252,076)</td>
</tr>
</tbody>
</table>

* Represents sales of approximately 420,000 MWh for 2018/19 YTD actual.

## RESERVES

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Cash Reserve</td>
<td>$42,478,009</td>
</tr>
<tr>
<td>Program Cash Reserve</td>
<td>7,496,119</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$49,974,128</strong></td>
</tr>
</tbody>
</table>

See accountants' compilation report.
Net increase (decrease) in available fund balance per budgetary comparison schedule: $ 6,014,887

Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtract depreciation expense</td>
<td>(15,041)</td>
</tr>
<tr>
<td>Add back capital asset acquisitions</td>
<td>147,139</td>
</tr>
<tr>
<td>Add back collateral deposits</td>
<td>1,300,000</td>
</tr>
<tr>
<td>Change in net position</td>
<td>$ 7,446,985</td>
</tr>
</tbody>
</table>
ACCOUNTANTS’ COMPILATION REPORT

Management
Sonoma Clean Power Authority

Management is responsible for the accompanying financial statements of Sonoma Clean Power Authority (a California Joint Powers Authority) which comprise the statement of net position as of September 30, 2018, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the financial statements, they might influence the user’s conclusions about the Authority’s financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy
San Rafael, CA
October 23, 2018
# Statement of Net Position

**SONOMA CLEAN POWER AUTHORITY**

**Statement of Net Position**

As of September 30, 2018

## Assets

### Current assets

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$43,274,379</td>
</tr>
<tr>
<td>Investment in Sonoma County Pooled Investment Fund</td>
<td>15,175,272</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance</td>
<td>20,016,493</td>
</tr>
<tr>
<td>Other receivables</td>
<td>413,936</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>9,009,691</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>408,340</td>
</tr>
<tr>
<td>Deposits</td>
<td>689,365</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td><strong>88,987,476</strong></td>
</tr>
</tbody>
</table>

### Noncurrent assets

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>860,520</td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>2,603,734</td>
</tr>
<tr>
<td>Deposits</td>
<td>5,414,922</td>
</tr>
<tr>
<td><strong>Total noncurrent assets</strong></td>
<td><strong>8,879,176</strong></td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>97,866,652</strong></td>
</tr>
</tbody>
</table>

## Liabilities

### Current liabilities

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts payable</td>
<td>783,917</td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>11,460,618</td>
</tr>
<tr>
<td>Advanced from grantors</td>
<td>494,500</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>389,145</td>
</tr>
<tr>
<td>User taxes and energy surcharges due to other governments</td>
<td>530,360</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td><strong>13,658,540</strong></td>
</tr>
</tbody>
</table>

## Net Position

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment in capital assets</td>
<td>3,464,254</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>80,743,858</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td><strong>$84,208,112</strong></td>
</tr>
</tbody>
</table>
### OPERATING REVENUES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity sales, net</td>
<td>$49,540,970</td>
</tr>
<tr>
<td>Evergreen electricity premium</td>
<td>103,380</td>
</tr>
<tr>
<td>Electricity sales for resale</td>
<td>28,000</td>
</tr>
<tr>
<td>Grant revenue</td>
<td>268,936</td>
</tr>
<tr>
<td><strong>Total operating revenues</strong></td>
<td><strong>49,941,286</strong></td>
</tr>
</tbody>
</table>

### OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of electricity</td>
<td>39,152,811</td>
</tr>
<tr>
<td>Staff compensation</td>
<td>804,194</td>
</tr>
<tr>
<td>Data manager</td>
<td>787,343</td>
</tr>
<tr>
<td>Service fees - PG&amp;E</td>
<td>236,299</td>
</tr>
<tr>
<td>Consultants and other professional fees</td>
<td>511,015</td>
</tr>
<tr>
<td>Legal</td>
<td>88,255</td>
</tr>
<tr>
<td>Communications</td>
<td>485,149</td>
</tr>
<tr>
<td>General and administration</td>
<td>226,899</td>
</tr>
<tr>
<td>Program rebates and incentives</td>
<td>377,874</td>
</tr>
<tr>
<td>Depreciation</td>
<td>15,041</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td><strong>42,684,880</strong></td>
</tr>
<tr>
<td><strong>Operating income</strong></td>
<td><strong>7,256,406</strong></td>
</tr>
</tbody>
</table>

### NONOPERATING REVENUES (EXPENSES)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
<td>190,579</td>
</tr>
</tbody>
</table>

### CHANGE IN NET POSITION

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net position at beginning of period</td>
<td>76,761,127</td>
</tr>
<tr>
<td>Net position at end of period</td>
<td><strong>$84,208,112</strong></td>
</tr>
</tbody>
</table>

---

See accountant's compilation report.
CASH FLOWS FROM OPERATING ACTIVITIES
Receipts from electricity sales $ 48,071,846
Receipts from electricity sales for resale 59,013
Tax and surcharge receipts from customers 623,947
Payments to purchase electricity (40,966,699)
Payments for staff compensation (852,743)
Payments for data manager (787,529)
Payments for service fees - PG&E (236,072)
Payments for consultants and other professional fees (507,440)
Payments for legal services (125,202)
Payments for communications (659,899)
Payments for general and administration (244,238)
Payments for program rebates and incentives (501,024)
Tax and surcharge payments to other governments (586,589)
Deposits and collateral paid (1,300,000)
Payments for charitable contributions (108,000)

Net cash provided (used) by operating activities 1,879,371

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES
Acquisition of capital assets (69,350)

CASH FLOWS FROM INVESTING ACTIVITIES
Interest income received 191,812

Net cash provided (used) by investing activities 191,812

Net change in cash and cash equivalents (including County Pooled Investment Fund) 2,001,833
Cash and cash equivalents at beginning of year 56,447,818
Cash and cash equivalents at end of year $ 58,449,651

Reconciliation to the Statement of Net Position
Cash and cash equivalents $ 43,274,379
Investment in Sonoma County Pooled Investment Fund 15,175,272
Cash and cash equivalents $ 58,449,651
## RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating income</td>
<td>$ 7,256,406</td>
</tr>
<tr>
<td>Adjustments to reconcile operating income to net cash provided (used) by operating activities</td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>15,041</td>
</tr>
<tr>
<td>Revenue reduced for uncollectible accounts</td>
<td>249,470</td>
</tr>
<tr>
<td>Charitable contributions considered an operating activity for cash flow purposes only</td>
<td>(108,000)</td>
</tr>
<tr>
<td>(Increase) decrease in net accounts receivable</td>
<td>(2,401,815)</td>
</tr>
<tr>
<td>(Increase) decrease in other receivables</td>
<td>(232,423)</td>
</tr>
<tr>
<td>(Increase) decrease in accrued revenue</td>
<td>563,331</td>
</tr>
<tr>
<td>(Increase) decrease in prepaid expenses</td>
<td>122,191</td>
</tr>
<tr>
<td>(Increase) decrease in current deposits</td>
<td>(1,445,256)</td>
</tr>
<tr>
<td>Increase (decrease) in accounts payable</td>
<td>(258,819)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued cost of electricity</td>
<td>(3,161,409)</td>
</tr>
<tr>
<td>Increase (decrease) in advance from grantors</td>
<td>(5,500)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued liabilities</td>
<td>1,232,286</td>
</tr>
<tr>
<td>Increase (decrease) in user taxes and energy</td>
<td>53,868</td>
</tr>
<tr>
<td>Net cash provided (used) by operating activities</td>
<td><strong>$ 1,879,371</strong></td>
</tr>
</tbody>
</table>
LEGISLATIVE REPORT

With the General election behind us, and most of the votes counted, the California Legislature will become even bluer when the new class is sworn in on December 3rd. Both the Assembly and Senate are guaranteed a supermajority, even though all of the votes have not been counted. We might have to wait until December 7th when all counties have to certify their vote totals in order to know exactly who is in and who is out. As of this writing, there are still more than 3.6 million ballots left to count statewide.

Of the 20 Senate seats that were up for election, the Democrats came away with 13 of the 20 seats. It was always in question whether the Republicans would be able to hold former Senator Cannella’s seat (won by Democrat Anna Caballero), but the surprise came on election night when Republican Senator Andy Vidak lost his bid for re-election to Democrat Melissa Hurtado.

There are still five “too close to call” Assembly races. It appears that Catharine Baker from the Bay Area and Brian Maienschein from San Diego will be able to hold onto their seats. However, it looks like the Democrats will pick up an additional three seats, two of which are currently held by Republicans.

The Legislature will return to the Capitol to begin their legislative work on January 7th.
Governor-Elect Newsom

Thus far, Governor-elect Newsom has named three people to his transition team. He has named Ann O’Leary, a longtime policy advisor to Hillary Clinton to serve as his Chief of Staff and leader of the transition team. He also named Ana Matosantos as his Cabinet Secretary. Ms. Matosantos served as Director of Finance for both Governor Schwarzenegger and Governor Brown. Jason Kinney, who has been a long-time advisor to Governor-elect Newsom, has left his firm to also join the transition team. It is still unclear as to what position, if any, he will hold when Newsom takes over the Governor’s office. Since Newsom has spent the last eight years in statewide office, he has been exposed to some of the smartest people in California. Now is the time to renew those acquaintances, strengthen those relationships and build a solid management structure to help him govern. He has only eight-weeks to put his team together before he is sworn into office on January 7th.

State Budget

Three days after being sworn-in, Governor-elect Newsom will need to present the 2019-20 budget. The Legislative Analyst Office (LAO) released a report on California’s fiscal outlook on November 14th. The LAO stated California’s budget is in “remarkably good shape.” Under the LAO’s estimates of revenues and spending, the state’s constitutional reserve would reach $14.5 billion by the end of 2019-20. In addition, they project the Legislature will have an additional $14.8 billion in resources available to allocate the 2019-20 budget process. The Legislature may use these funds to build more budget reserves or make new one-time and/or ongoing budget commitments. Both Assembly Budget Committee Chairman Phil Ting and Senate Pro Tem Toni Atkins have both stated that we have to be very careful about spending and to save for a recession.

CalCCA Legislation

The members of CalCCA continue to work on developing legislation to protect ratepayers and CCAs. SCP’s Board provided numerous examples of potential legislative priorities, including:

- Removing the CPUC Commissioners ability to meet in secret in rate deliberative meetings;
- Switching to public elections for CPUC Commissioners;
Forcing the IOUs to mitigate costs relating to their owned generating assets and energy supply contracts;

Forcing the CPUC to enforce consequences on IOUs when they fail to actively mitigate costs feeding into the PCIA; and,

Creating transparency around all aspects of costs feeding into the PCIA, including public review.

The CalCCA members are continuing to gather input from each CCA’s elected board and committees, and welcomes further ideas.

**Potential Legislation in 2019**

SCP staff expect to see the IOUs, consumer groups and the CPUC advancing numerous bills in this next two-year session relating to IOU fire liability, power line undergrounding, CPUC reform, IOU exit from retail generation, and central procurement of all resource adequacy and renewables. No doubt this is a partial list.

**REGULATORY REPORT**

**Power Charge Indifference Adjustment (PCIA) and ERRA**

Changes to the PCIA normally go into effect beginning January of the following year. Last year, PG&E was two months late in implementing new PCIA rates which instead became effective March 1st, 2018. There is a likelihood that new PCIA rates could be delayed this year as well. This is due to expected changes including the complexity of implementing a new allocation methodology between customer classes, and including additional utility-owned resources which were previously excluded after ten years of cost recovery.

Also impacting timing are various pending regulatory interventions. CalCCA and a group of Northern CA CCAs filed an Applications for Rehearing of the PCIA Decision on the grounds that it was not consistent with statute nor did it uphold due process. Several CCAs, including SCP, are also protesting PG&E’s November update to the Energy Resource Recovery Account “ERRA” forecast, wherein they apply rates for 2019.

The budget and rate setting implications of changes to PCIA amount, allocation, and timing are discussed in Item #8 on the agenda for this meeting.
Low Carbon Fuel Standard

On November 28th, the Air Resources Board will host a workshop discussing implementation details for changes to the Low Carbon Fuel Standard “LCFS” program which go into effect January 1st, 2019.

The Board adopted staff’s recommendation that entities besides IOUs be able to generate LCFS credits from electric vehicle deployment and clean charging. The mechanics of this are still being finalized, but what is certain is that beginning January 1st of 2019, SCP will be eligible to earn financial credits as a result of customers charging electric vehicles from clean energy sources.

The Air Board was very receptive of SCP’s leadership in driving electric vehicle sales, and recognized that a point-of-sale program is critical to mass adoption. As a result, the Board directed IOUs to work with auto manufacturers to develop their own point-of-sale program. The IOUs expect to unveil this in the 4th quarter of 2019. CCA customers will remain eligible to take advantage of any IOU programs as well as those offered by their local CCA.
Staff Report – Item 05

To: Sonoma Clean Power Community Advisory Committee

From: Chad Asay, Programs Manager

Issue: Review and Recommend Board Approval of Contract with TLCD Architecture for Design of Building Renovation at 741 4th Street

Date: November 29, 2018

Requested Action

Recommend that the Board of Directors (“Board”):

1. Approve a Contract through October 31, 2019 with a not-to-exceed amount of $507,779 with TLCD Architecture for design and other services for the renovation of the SCP storefront at 741 4th Street, Santa Rosa; and

2. Delegate authority to the Chief Executive Officer (“CEO”) as provided for in this staff report.

Discussion

Earlier this month, SCP commenced a lease on a commercial space located at 741 4th Street in downtown Santa Rosa to serve as a storefront for the Lead Locally Grant Project. The space will require significant renovation before it is ready to occupy.

Following a competitive selection process for the full scope of design through construction for the project, SCP selected a team lead by TLCD Architecture, a local architectural firm from Santa Rosa to perform design and other services for the full duration of the renovation project of the storefront space.
The selection process began with a Request for Qualifications ("RFQ") covering schematic design through the end of construction administration. The RFQ was sent to a large number of architectural firms as well as advertised on the SCP website. TLCD was selected based on their broad experience in retrofitting existing buildings to a high level of energy efficiency, their experience with local government contracting and their project management experience.

The contract covers the entire design beginning with schematic design through the end of construction administration. The contract includes a not-to-exceed limit of $507,779 that will take the project through the full scope of the engagement. The term of the agreement is through October 31, 2019. At the end of the schematic design phase, both SCP and TLCD will establish a total construction budget for the project. At that time, staff will bring an updated expectation for costs including construction materials and construction labor. Schematic design is expected to take about two months to complete.

SCP staff will continue to communicate with the CAC and the Board on project progress as it develops.

Delegation of Authority to the CEO: Staff recommends delegation of authority to the CEO to (1) execute any contract with TLCD Architecture approved by the Board; and (2) to amend any such approved contract as necessary to administer or update the agreement as the project progresses provided that such amendment does not modify the not-to-exceed amount, term of the agreement and is in a form approved by the General Counsel.
PROFESSIONAL SERVICES AGREEMENT FOR
THE SONOMA CLEAN POWER AUTHORITY

With

TLCD ARCHITECTURE

for the

SONOMA CLEAN POWER AUTHORITY ENERGY MARKETPLACE

THIS CONTRACT FORM IS TO BE USED FOR PROFESSIONAL SERVICES PROVIDED BY THE FOLLOWING ENTITIES:
ARCHITECTURAL, ENGINEERING,
LAND SURVEYING,
CONSTRUCTION ADMINISTRATION

APPENDICES INCLUDED:
APPENDIX A (Scope of Services)
APPENDIX B (Compensation Schedule),
including:
EXHIBIT B1 (Fixed Fees for Base Services),
EXHIBIT B2 (Hourly Rates)
APPENDIX C (Insurance)
APPENDIX D (Electric Program Investment Charge (EPIC) Standard Grant Terms and Conditions)
AGREEMENT BETWEEN THE SONOMA CLEAN POWER AUTHORITY AND TLCD ARCHITECTURE

This Agreement is made this 6th day of December, 2018 (“Effective Date”), in the City of Santa Rosa, State of California, by and between TLCD Architecture, a a California Corporation, located at 520 Third St. #250, Santa Rosa, CA 95401 (“Consultant”) and the Sonoma Clean Power Authority located at 50 Santa Rosa Avenue, 5th Floor, Santa Rosa, California 95404, a California Joint Powers Authority (“SCP”). SCP and Consultant may be individually referred to as a “Party” or collectively as “Parties”.

AGREEMENT

1 Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Agreement. This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices “A,” “B,” (including Exhibits “B1” and “B2”), “C,” and “D” attached hereto.

Consultant TLCD Architecture

SCP Sonoma Clean Power Authority.

Project. SCP’s Energy Marketplace project as further described in Appendix “A,” Scope of Services.

Services. All work, labor, materials, and services required in order to perform under the terms and conditions of this Agreement, including architectural, engineering, coordination, administrative services, and other related services as set forth in Appendix “A”, “Scope of Services”.

Subconsultants Consultant’s consultants, and subconsultants, including:

Guttman & Blaevoet (mechanical & electrical)

TEECOM (building technology)

Gilleran Energy Management (energy consultant)

Cromb Associates (cost consultant)

Scott AG (educational signage)

ZFA Structural
2 Term of Agreement

Unless terminated earlier in accordance with sections 13 and 14 of this Agreement, the term of this Agreement (“Term”) shall begin on the Effective Date and shall end when all work comprising the Services is deemed performed under this Agreement or no later than October 31, 2019.

3 Services Consultant Agrees to Perform

3.1 Scope of Services. Consultant shall perform all Services described in Appendix “A,” “Scope of Services,” attached hereto and incorporated by reference as though fully set forth herein.

3.2 Milestone Schedule. Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix “A”. Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for SCP’s review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled milestones (as shown on the Milestone Schedule).

3.3 Progress Under the Agreement. Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional personnel, subcontractors and any other resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement.

4 Compensation

4.1 SCP shall pay Consultant compensation in accordance with the terms established in Appendix “B,” Compensation Schedule.

4.2 Monthly Payment. SCP shall pay Consultant in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and are due under Appendix “B.”

4.3 Deliverables Required. In conformance with the requirements in Appendix “B” and paragraph 4.4, SCP shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, unless SCP has received the deliverables required under the terms of Appendix “A”
for the monthly payment period, if any deliverables are required and SCP reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a monthly payment period, and if Consultant demonstrates diligent progress thereon, then SCP shall make a partial progress payment to Consultant in conformance with the requirements in Appendix “B” and paragraph 4.4.

4.4 Questioned Amounts. SCP will not withhold an entire payment if a questioned amount is involved but will issue payment in the amount of the total invoice less any questioned amount(s). SCP will make payment for questioned amount(s) upon SCP’s receipt of any requested documentation verifying the claimed amount(s) in a form acceptable to SCP and SCP’s determination that the amount is due under the terms of this Agreement.

4.5 Final Payment. Final payment will be made by SCP to Consultant when all Services required under this Agreement have been completed to the reasonable satisfaction of SCP including, without limitation, Consultant’s transmittal of all deliverables to SCP required by Appendix “A.”

4.6 Invoices. Invoices furnished by Consultant under this Agreement must be in a form acceptable to SCP, including being compliant with all applicable requirements set forth in Appendix “B”. All amounts paid by SCP to Consultant shall be subject to audit by SCP. Payment shall be made by SCP to Consultant at the address stated hereinabove.

4.7 Set Off for Errors and Omissions. Consultant is solely responsible for costs, including, but not limited to, increases in the cost of work or Services arising from or caused by Consultant’s errors and omissions, including, but not limited to, the costs of corrections of such errors and omissions, any change order markup costs or costs arising from delay caused by the errors and omissions or unreasonably delay in correcting the errors and omissions. SCP may set off against payments due Consultant under this Agreement any sums that SCP determines that Consultant owes to SCP because of Consultant’s errors, omissions, breaches of this Agreement, delays or other acts which caused SCP monetary damages.

5 Maximum Costs, Change in Services

5.1 Not-to-Exceed Amount. SCP’s obligation hereunder shall not at any time exceed the amount set forth as a Not-to-Exceed Amount (“NTE”) set forth in Exhibit “B”. 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.

5.2 Authority to Request Services. Except as may be provided by applicable law governing emergency conditions, SCP has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies
that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the SCP amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

5.3 No Compensation for Services beyond the Scope. SCP shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment, and supplies agreed upon in the Agreement. Failure of Consultant to secure written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment of compensation amounts or time to perform Services due to such unauthorized work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum merit for any and all extra work performed without such express and prior written authorization from SCP.

5.4 Requests for Changes in Services.

5.4.1 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants’ price proposals shall accompany Consultant’s price proposals.

5.4.2 Consultant and its Subconsultants shall, upon request by SCP, permit inspection of all original unaltered Agreement bid estimates, Subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

5.4.3 Changes in the Services and/or extensions of the Agreement time granted in SCP's sole discretion thereof shall not in any way otherwise release Consultant's representations and agreements pursuant to this Agreement.

6 Qualified Personnel

6.1 Project Manager. For purposes of this Agreement, except for notices specified under Section 17 below, SCP shall direct all communications to Consultant through TLCD's Principal, Don Tomasi, 520 Third St. #250, Santa Rosa, CA 95401, don.tomasi@tlcd.com, (707) 535-5267; and Consultant shall direct all communications to SCP through SCP's Project Manager, Chad Asay, Programs Manager, 50 Santa Rosa Avenue, Santa Rosa CA 95404, casay@sonomacleanpower.org, (707) 791-1346.

6.2 Assigned Personnel.

6.2.1 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. In the event that at any time, SCP
in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform Services under this Agreement, Consultant shall remove such person or person(s) immediately upon receiving written notice from SCP, but all personnel, including those assigned at SCP’s request, shall be supervised by Consultant.

6.2.2 Consultant agrees that all professional personnel assigned to the Project will be identified as part of the Consultant’s Team set forth in Appendix “A” attached hereto and by this reference incorporated herein, and that the listed personnel will be considered key personnel (“Key Personnel”) and continue their assignments on the Project during the entire term of this Agreement.

6.2.3 Consultant recognizes that such Key Personnel were a material inducement to SCP to enter into the Agreement, and without whose services SCP would not have entered into the Agreement. Consultant shall not remove, replace, substitute or otherwise change any key personnel without the prior written consent of SCP. In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements. Any costs associated with the reassignment of any personnel, including Key Personnel shall be borne exclusively by Consultant.

6.2.4 Consultant agrees that should the above Key Personnel not continue their assignments on the Project during the entire term of this Agreement; then Consultant shall not charge SCP for the cost of training or “bringing up to speed” replacement personnel. SCP may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant’s cost.

7 Representation and Warranties; Covenants

7.1 Review of Appendices. Consultant represents that it has reviewed Appendix “A”, “Scope of Services”, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix “B”, Compensation Schedule, and within the times specified in the Milestone Schedule set forth in Appendix “A”.

7.2 Licensing/Permitting. Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to the time such licenses and/or permits are required. Consultant also represents that it has requisite knowledge of all applicable building codes, laws, regulations, and ordinances.
7.3 Qualifications; Performance of Work and Warranty.

7.3.1 Consultant represents that it and its subconsultants have requisite expertise and experience in architectural or engineering services similar to those intended for the Project.

7.3.2 Consultant agrees that the Services shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality (“Standard of Care”).

7.3.3 Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services reasonably deemed by SCP to be defective and/or not meeting the above Standard of Care.

7.4 No Suspension or Debarment. Consultant represents that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also represents 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. If the Consultant becomes debarred, consultant has the obligation to inform SCP.

7.5 Payment Not a Waiver. The granting of any progress payment by SCP, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of SCP or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace defective Services or Services not meeting the Standard of Care to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8 Indemnification and General Liability

8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8) Consultant agrees to indemnify hold harmless and defend SCP, its officers, departments, officials, agents, representatives, and employees (collectively “Indemnitees”), from and against any and all claims, damages, injuries (including, injury to or death of an employee of Consultant or its Subconsultants), expenses, disabilities or liabilities of every kind, nature and description (including, without limitation, incidental special and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that may arise out of, pertain to, or relate to the
negligence, recklessness or willful misconduct of Consultant; provided, however, that the in no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SCP's part, but to the extent required by law, excluding liability due to SCP's conduct, including SCP's sole negligence, active negligence or willful misconduct.

The Parties also acknowledge that this Agreement is subject to California Civil Code 2782.8 as amended and effective January 1, 2018.

8.2 Consultant shall place in its subconsulting and/or subcontractor agreements and cause its subconsultants and/or subcontractors to agree to indemnities and insurance obligations in favor of SCP and other Indemnitees in the form and substance of those contained in this Agreement. Consultant shall require all subconsultants and/or subcontractors to comply with all indemnification and insurance requirements of this Agreement, including, without limitation, Exhibit “C”. Consultant shall verify subconsultant's compliance.

9 Liability of SCP

9.1 Liability Limited to Payment of Compensation. Except as provided in Appendix “A,” Services to be provided by Consultant, and Appendix “C,” “Insurance, SCP's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.

9.2 Damages. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement to the extent not arising from the other Party’s sole negligence, active negligence or willful misconduct.

9.3 Consultant's Use of Equipment. SCP shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by SCP to the extent not caused by the sole negligence, active negligence or willful misconduct of SCP. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless SCP from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, SCP employees or third parties,
or to property belonging to any of the above.

9.4 No Waiver. Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which SCP may have under this Agreement or any applicable law. All rights and remedies of SCP, whether under this Agreement or other applicable law, shall be cumulative.

10 Independent Contractor; Payment of Taxes and Other Expenses

10.1 Independent Contractor Status. Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its subconsultants, its employees, and its agents.

10.2 No Agency, Employment or Joint Venture. Nothing contained herein shall be construed as creating employment, agency or joint venture relationship between SCP and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be SCP employees, and shall not be entitled to receive any benefits conferred on SCP employees, including without limitation workers’ compensation, pension, health, insurance or other benefits. In the event SCP exercises its right to terminate this Agreement pursuant to sections 13 or 14, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

10.3 Taxes. Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, City of Santa Rosa and/or County of Sonoma business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and 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 the State of California as a consequence of Consultant’s failure to pay, when due, all such taxes and obligations. In case SCP is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SCP with proof of payment of taxes on these earnings.

10.4 Direction to Consultant. Consultant shall be available as much as reasonably possible to SCP staff during the SCP’s normal working hours or as otherwise requested by SCP. Terms of this Agreement referring to direction from SCP shall be construed as providing for direction as to policy and the result of Consultant’s Services only and not as to the means by which such a result is obtained.

11 Insurance. Prior to execution of this Contract, Consultant shall furnish to SCP
satisfactory proof that it maintains the insurance required by this Agreement as set forth in Appendix C “Insurance,” which is attached and made a part of this Agreement. In the event Consultant fails to maintain any required insurance, SCP may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Agreement (or, at SCP’s discretion, Consultant shall promptly reimburse SCP for such expense.)

12 Suspension of Services

12.1 SCP may, without cause, order Consultant to suspend, delay or interrupt (“Suspend” or “Suspension”) Services pursuant to this Agreement, in whole or in part, for such periods of time as SCP may determine in its sole discretion. SCP shall deliver to Consultant written notice of the extent of the Suspension at least seven (7) calendar days before the commencement thereof. Where SCP Suspends Services, SCP agrees to coordinate with Consultant to adjust the Milestones Schedule and other dates as reasonably needed.

12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that a Suspension is, was or would have been for a cause for which Consultant is responsible.

13 Demand for Assurance. If at any time SCP believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, has provided written notice of observed deficiencies in Consultant’s performance, or has other reasonable grounds for insecurity arise with respect to Consultant’s performance, SCP may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant’s performance. Consultant shall provide such written assurances and written plan within ten (10) calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement. SCP’s acceptance of any improper delivery, service, or payment does not prejudice SCP’s right to demand adequate assurance of future performance, and does not limit SCP’s rights to terminate the Agreement pursuant to section 14.

14 Termination of Agreement

14.1 For Cause. Consultant shall be in default of this Agreement (“Default”) and SCP may, in addition to any other legal or equitable remedies available to SCP, terminate Consultant’s right to proceed under the Agreement, for cause:

14.1.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition for bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation,
file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or

14.1.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from SCP to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of ten (10) calendar days, Consultant must provide SCP within the ten (10) day period a written plan acceptable to SCP to cure said breach, and then diligently commence and continue such cure according to the written plan); or

14.1.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from SCP to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of ten (10) calendar days, Consultant must provide SCP within the ten (10) day period a written plan to cure said violation acceptable to SCP, and then diligently commence and continue performance of such cure according to the written plan.)

14.1.4 In the event of termination by SCP as provided herein for cause:

(a) Subject to the terms and conditions set forth throughout this Agreement, SCP shall compensate Consultant for Services delivered to SCP prior to the date of notice of termination as determined in accordance with the Agreement, but SCP shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties.

(b) Consultant shall deliver to SCP possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and
all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period, but only when SCP has paid Consultant in full for all services rendered and invoiced, excluding disputed sums withheld by SCP pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set off for errors and omissions).

(c) Consultant shall remain fully liable for the failure of any defective and/or negligent Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which SCP may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate SCP for all loss, cost, damage, expense, and/or liability suffered by SCP as a result of such termination and failure to comply with the Agreement.

14.1.5 In the event a termination for cause is determined to have been made wrongfully, or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

14.2 For Convenience.

14.2.1 SCP may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever SCP shall determine that termination is in the SCP’s best interests. Termination shall be effected by SCP delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.

14.2.2 If the termination for convenience hereunder is partial, before the settlement of the terminated portion of this Agreement, Consultant may file with SCP a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. SCP may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of SCP and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit SCP’s rights and remedies at law.
14.3 **Obligations upon Receipt of Notice of Termination.**

14.3.1 After receipt of a Notice of Termination, whether for cause or for convenience, and except as otherwise directed by SCP, Consultant shall:

(a) Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;

(b) Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;

(c) Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;

(d) Assign to SCP in the manner, at times, and to the extent directed by SCP, all right, title, and interest of Consultant under orders and subcontracts so terminated. SCP shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;

(e) Settle all outstanding liabilities, and all claims arising out of such termination of orders and subcontracts, with approval or ratification of SCP to the extent SCP may require. SCP's approval or ratification shall be final for purposes of this clause;

(f) If Consultant has been paid in full for all services rendered (excluding disputed sums withheld by SCP pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set off for errors and omissions)), Consultant shall transfer title and possession to SCP, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by SCP, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to SCP; and

(g) Complete performance of any part of the Services.
which were not terminated by the Notice of Termination.

14.4 Termination Claim Process.

14.4.1 After receiving a Notice of Termination, Consultant shall submit to SCP a termination claim, in the form and with the certification SCP prescribes. The claim shall be submitted promptly but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by SCP upon Consultant’s written request made within such 3-month period or authorized extension. However, if SCP determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, SCP may determine, on the basis of information available to it, the amount, if any, due to Consultant because of the termination. SCP shall then pay to Consultant the amount so determined.

14.4.2 Subject to provisions of Section 14.4, Consultant and SCP may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.

14.4.3 If Consultant and SCP fail, under Section 14.4.2, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant’s entitlement to compensation for Services specified in the Agreement which is performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of:

(a) Reasonable value of Consultant’s Services performed prior to Notice of Termination, based on Consultant’s entitlement to compensation under Appendix “B,” “Compensation Schedule”; and

(b) Reasonable cost to Consultant of handling material returned to vendors, delivered to SCP or otherwise disposed of as directed by SCP.

(c) Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated.
Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by defective and/or negligently performed Services, the cost of materials to be retained by Consultant, amounts realized by the sale of materials, and for other appropriate credits against the cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant’s total costs of performing the Services.

(d) When, in reasonable opinion of SCP, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective and/or negligently performed Services (including having to reperform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.

14.5 Miscellaneous Provisions Related to Termination.

14.5.1 Except as provided in this Agreement, in no event shall SCP be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney’s fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgement interest, or any other expense which is not reasonable or authorized under Section 14.5.

14.5.2 In arriving at amount due Consultant under this Section 14, SCP may deduct:

(a) All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement, and

(b) Any substantiated claim which SCP may have against Consultant in connection with this Agreement.

14.5.3 Notwithstanding any provision in this Agreement, Consultant retains the right, upon five (5) days written notice, to either discontinue its services or withhold its Instruments of Service where payment has not been received from SCP for any invoiced fees for services rendered within ninety (90) days of its invoice, excluding disputed sums withheld by SCP pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set off for errors and omissions).
15.1 Consultant represents that it is familiar with Section 1090 and Section 87100, et seq, of the Government Code of the State of California and that it does not know of any facts that constitute a violation of said sections.

15.2 Consultant represents that it has completely disclosed to SCP all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of SCP, or other officer, agent or employee of SCP or any department presently has or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute a ground for termination of this Agreement by SCP for cause. Consultant agrees to comply with all conflict of interest codes adopted by the SCP of Alameda and their reporting requirements.

15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the SCP that Consultant has no present, and will have no future, conflict of interest between providing the SCP the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the SCP, as determined in the reasonable judgment of the SCP. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the SCP hereunder.

15.4 If requested to do so by SCP, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a “Statement of Economic Interest” with SCP disclosing Consultant’s or such other person’s financial interests.

16 Proprietary or Confidential Information of SCP; Publicity

16.1 Proprietary or Confidential Information. Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by SCP and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to SCP. Consultant agrees that all information disclosed by SCP and specifically identified as confidential to Consultant shall be held in strict confidence and used only in the performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the SCP’s interests where such confidential information could be used adversely to the SCP’s interests. Consultant agrees to notify the SCP immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance
of or in connection with this Agreement.

This section shall not apply to information in the public domain by means not caused by an act or omission of Consultant, nor shall it restrict the Consultant from giving notices required by law or complying with an order, administrative agency or other authority with proper jurisdiction, or where the use is reasonably necessary for the Consultant to defend itself from any suit or action.

16.2 Publicity. Any publicity or press releases with respect to the Project or Services shall be under the SCP's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without SCP's prior written consent. Consultant shall have the right, however, without SCP's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the SCP hereunder.

16.4 Conflicts of Interest. Notwithstanding any provision in this Agreement, and in accordance with Codes of Professional Conduct (Title 16, California Code of Regulations Section 400, et. Seq.) SCP acknowledges that when Consultant provides professional services for two or more clients on a project or related projects, Consultant has the legal obligation to disclose in writing to those clients the Consultant's relationship to those clients. Should all or portions of those projects be sold or acquired by others, SCP acknowledges that Consultant may provide services to prospective buyers or new owners and that additional disclosure need not be provided. SCP also acknowledges that Consultant is providing services or may in the future provide services to others in the Project area, and that additional disclosure need not be provided.

17 Notice to the Parties

17.1 Notices. All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.

17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:

(a) When personally delivered to the recipient, notice is effective on delivery.

(b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.

(c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
(d) When delivered by overnight delivery service, including Federal Express, and United Parcel Service, with charges prepaid or charged to the sender’s account, notice is effective on delivery if delivery is confirmed by the delivery service.

(e) When sent by email to the last email address of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by email shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient’s time) or on a nonbusiness day.

17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or other aspects of its contact information by giving the other party notice of the change in any manner permitted by this paragraph 17.

To SCP: Chad Asay, Programs Manager
50 Santa Rosa Avenue
Santa Rosa, CA 95404
casay@sonomacleanpower.org

To Consultant: Don Tomasi
520 Third St. #250
Santa Rosa, CA 95401
don.tomasi@tlcd.com

17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18 Ownership of Results/Work for Hire

18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection
with Services to be performed under this Agreement shall become the property of and will be transmitted to SCP at the conclusion of this Agreement and only upon full and final payment of all undisputed invoices for all work performed by Consultant, excluding disputed sums withheld by SCP pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set off for errors and omissions). The Consultant may, however, retain one copy for its files.

18.2 Notwithstanding the foregoing, in the normal course of the Consultant’s activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project.

19 Audit and Inspection Records

19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five (5) years (or to the extent required by law, whichever is longer) following final completion and acceptance of the Project. All such records (except for materials subject to the attorney-client privilege, if any) shall be available to SCP, and SCP’s authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant’s personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be available to SCP, and SCP’s authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising SCP and allowing SCP to accept and store the records.

19.2 Consultant agrees to maintain full and adequate records in accordance with SCP requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to SCP during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to SCP or relative to Consultant’s activities under this Agreement. The consultant will furnish to SCP, its authorized agents, officers and employees such other evidence or information as SCP may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit SCP, and SCP’s authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole
or in part under this Agreement

19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five (5) years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from SCP's headquarters, Consultant shall, upon SCP's request and at Consultant's sole cost and expense, make such items available to SCP, and SCP's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius or Consultant shall pay SCP its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon SCP by this Section.

19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20 Subcontracting/Assignment/SCP Employees

20.1 Consultant and SCP agree that Consultant's unique talents, knowledge, and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign, transfer or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by SCP in a written instrument executed and approved by the SCP in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

20.2 Consultant shall use the subconsultants for the scopes of work listed in Appendix "A" and shall not substitute Subconsultants unless approved by a written instrument executed and approved by the SCP in writing.

20.3 To the extent Consultant is permitted by SCP in writing to subcontract, assign or subcontract any portion of this Agreement or any duties or obligations hereunder; Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section California §3321). Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project as if it engaged in the acts and omissions directly.

20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by SCP or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the
Non-Discrimination, Equal Employment Opportunity and Business Practices

Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran’s status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, SCP ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action, and occupational safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

Drug-Free Workplace Policy

Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on SCP premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.

Compliance with Americans with Disabilities Act

Consultant acknowledges that, pursuant to the Americans with Disabilities Act (“ADA”) and other similar state accessibility laws and statutes (“Accessibility Laws”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the Standard of Care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

SCPA acknowledges and understands, however, that the Accessibility Laws are subject to various and possibly contradictory interpretation. Furthermore, compliance may involve factors beyond the control of the Consultant including SCPA’s use and operation of the completed project. Consultant shall not be responsible for any inaccessibility issues caused by SCPA’s use and operation of the completed project.

Disputes

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the SCP CEO or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either Party. A meeting between the SCP representative, and
principal of the Consultant shall then be scheduled within ten (10) business days of the request, unless such time is extended by mutual agreement of the Parties.

24.2 Provided that SCP continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute, and Consultant’s failure to continue Services during any and all disputes shall be considered a material breach of this Agreement, except in the case of SCP’s non-payment for Services exceeding ninety (90) days where such non-payment is not pursuant to section 4.6 (Questioned Amounts) and/or section 4.9 (Set offs for Errors and Omissions) of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. The consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, SCP may terminate this Agreement for cause as provided herein.

24.3 This dispute provision is not intended to nor shall it be construed to change any time periods for filing a claim or action specified by California Government Code section 900 et seq.

25 Agreement Made in California; Venue

25.1 This Agreement shall be deemed to have been executed in the City of Santa Rosa, County of Sonoma. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules.

25.2 The venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in the County of Sonoma. Consultant waives California Code of Civil Procedure §394.

26 Compliance with Laws

26.1 Consultant represents that it will comply with all applicable federal, state and local laws, codes, regulations, statutes, policies, permits and any other conditions (collectively, “Laws”) in the performance of the Services, regardless of whether such Laws are specifically stated in this Agreement and regardless of whether such Laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

26.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable Laws, consistent with the Standard of Care in this Agreement. To the extent there is a conflicting Law, Consultant shall perform its Services applying the more stringent requirement.
27 Compliance with the California Energy Commission (CEC) Electric Program Investment Charge (EPIC) Grant Terms

27.1 California Energy Commission (CEC) Requirements: Consultant understands and agrees that compensation paid to Consultant under this Agreement comes from a grant to SCPA from the California Energy Commission. Consultant shall review the grant terms and conditions included in Appendix “D” (entitled “EXHIBIT C, ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) STANDARD GRANT TERMS AND CONDITIONS”) and in the performance of services under this Agreement shall comply with all requirements applicable to Consultant under the terms and conditions.

27.2 To assist with SCP’s compliance with CEC Requirements, Consultant agrees to ensure that any and all subconsultants have a copy of and agree to comply with all the same CEC Requirements set forth in Appendix “D”, and to provide SCP with a copy of resumes of all subconsultants prior to starting work along with any additional information reasonably requested by SCP in order to comply with grant terms and conditions.

28 Prevailing Wages.

28.1 General. Consultant shall pay to any worker on the job for whom prevailing wages have been established an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Water Agency to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement.

28.2 Consultant shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed, in addition to all other job site notices prescribed by regulation. Copies of the prevailing wage rate of per diem wages are on file at Water Agency and will be made available to any person upon request.

28.3 Subcontracts. Consultant shall insert in every subcontract or other arrangement which Consultant may make for performance of such work or labor on work provided for in the Agreement, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code section 1775(b)(1), Consultant shall provide to each Subcontractor a copy of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
28.4 Compliance Monitoring and Registration. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations Consultant shall furnish and shall require all subcontractors to furnish the records specified in Labor Code section 1776 (e.g., electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly (Labor Code 1771.4 (a)(3)). Consultant and all subcontractors performing work that requires payment of prevailing wages shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any services under this Agreement.

28.5 Compliance with Law. In addition to the above, Consultant stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code sections 1725.5, 1775, 1776, 1777.5, 1813, and 1815 and California Code of Regulations, Title 8, section 16000, et seq.

29 Construction.

29.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

29.2 Whenever the words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood as the direction, requirement, or permission of SCP. The words “approval,” “acceptable,” “satisfactory,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to SCP, unless otherwise indicated by the context.

29.3 Each Party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

30 Miscellaneous

30.1 Statute of Limitations. As between the Parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by SCP of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§337.1 and 337.15, shall continue to apply.

30.2 Severability. Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are
hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

30.3 **Waiver.** Either Party’s waiver of any breach, or the omission or failure of either Party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party’s right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

30.4 **Entire Agreement; Modifications of Agreement.** The Agreement, and any written modification to the Agreement shall represent the entire and integrated Agreement between the Parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the Parties’ Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, which relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

30.5 **Amendment.** This Agreement may not be modified or otherwise amended or changed, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both SCP and Consultant.

30.6 **Time of the Essence.** Time is and shall be of the essence in the performance of this Agreement and every provision hereof.

30.7 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

30.8 **No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the Parties hereto, with no intent to benefit any non-signator third parties.
30.9 **Controlling Provisions.** In the event of any conflict between the terms of this Agreement and the Appendices hereto, the Agreement shall control.

30.10 **Professional Seal.** Where applicable in the determination of SCP, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

30.11 **Survival.** All express representations, waivers, indemnifications, errors/omissions provisions, limitations of liability and other obligations arising prior to termination or otherwise included in this Agreement will survive its expiration, completion or termination for any reason.

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto have executed this Agreement as of the Effective Date.

**CONSULTANT**

TLCD Architecture, A California Corporation

By: _________________________
    Don Tomasi, President
    License # C-14948

**SCPA**

Sonoma Clean Power Authority

By: _________________________
    Geof Syphers, Chief Executive Officer

APPROVED AS TO FORM

By: _________________________
    General Counsel

END OF DOCUMENT
PROFESSIONAL SERVICES AGREEMENT - APPENDIX A
SCOPE OF SERVICES

This is an appendix attached to, and made a part of and incorporated by reference with the Agreement as follows:

1. BASE SERVICES.

1.1 SONOMA CLEAN POWER AUTHORITY ENERGY MARKETPLACE

1.1.1 Consultant agrees to provide engineering, architectural, design, and other related support services for SCP’s renovation of a 9,400+/- sq. ft. commercial building in downtown Santa Rosa. The building will serve as SCP’s Energy Marketplace and include a showcase of zero-carbon technologies, including heat pumps, induction cooktops, and energy efficiency measures.

1.1.2 The subject property is located at 741 4th Street, Santa Rosa CA. The target date for move-in is October 2019.

1.1.3 Based on SCP’s initial Project assessment, the following provides an overview of the Base Services for the Project. The scope of the Base Services will be further refined throughout the Schematic Design (“SD”) and Design Development (“DD”) Phases:

(a) **Site** – Verify existing main entry route for ADA compliance. Upgrade security lighting to LED and check for other needed safety and security measures. All sitework to be completed consistent with CA Title 24 provisions.

(b) **Building Exterior** – Design and incorporate signage at building entry and rear.

(c) **Building Interior** – Move/demo interior walls and possibly portions of T-bar ceiling to create +/-1,200 sf training room, offices, storage, and main Marketplace floor. Add interior windows and glass partitions to bring natural light and visibility into training space. New lighting throughout. Some new trim, flooring and painting throughout.

(d) **Interior Style Objective** -- Contemporary, relatively open, light. Up to 3 workspaces (1 at front entry) that consist of either private work spaces and collaborative work spaces based on design. Some flexibility built into design, but many existing walls can remain. Space for educational materials and signage is required. The desired aesthetic is professional, organic and simple. Quality of finishes should be “Class A-”. Not as fancy or expensive as in a typical Class A space office, but generally nicer than typical Class B office space. Creative, unexpected and innovative use of materials is encouraged.

(e) **Restrooms**-- Verify ADA compliance for existing restrooms. Design work to include replacement of toilets, sinks and possibly partitions. May require a full gut.
(f) **Cooking Demonstration Area** - In main Marketplace floor, create an interactive, ADA-compliant area where up to 3 induction ranges can be installed. Ranges should be installed such that a group of 10-15 students can easily observe cooking lessons. Ranges shall be fully ventilated to the building’s exterior. Area shall include space for (1) mini-refrigerator and storage for cooking-related equipment.

(g) **Lighting** - Redesign and replace with daylighting integration and super-efficient equipment and controls. Lighting plan for offices to integrate furniture and task lighting. Classroom lighting to be coordinated with AV systems.

(h) **Electrical** - Review, upgrade, and consolidation of existing electrical service to provide for the installation of up to 10 interactive displays that will need power. The main Marketplace floor shall also include technologies that use 240v service (ie: heat pumps, induction cooking, etc), which would need to be extended to this area.

(i) **Plumbing** - Removal of existing gas storage water heater and installation of two heat pump water heaters that will be capable of serving a demonstration kitchen area and restroom spaces while still being visible to customers on the main Marketplace floor. Water heaters should be installed in parallel for redundancy/switching of water heater.

(j) **HVAC** - Include space and electrical service for up to 2 mini-split and/or heat pump systems in main Marketplace area that can be zoned to provide dedicated service to either the classroom space and/or main Marketplace floor. Existing HVAC system located on roof and associated ductwork shall be evaluated for further zoning or controls such that HVAC system’s use would be minimal.

(k) **IT and AV** - Full data, telephone, and audio/visual design for large conference rooms, office space, entry/reception area and planning room.

(l) **Furniture** - Full furniture design for storefront, offices, planning room, training room, kitchen demonstration area, etc. Use of recycled or low-carbon intensive furniture is encouraged.

(m) **Training Room** - A large open training room for public classes and meetings is a necessary element of the Project. The room should be generally rectangular and between 800 and 1,600 sf with an ideal size of 1,200 sf. The public will access the training room, making some consideration of security for the remainder of the office and storefront necessary during public events. The room should accommodate at least one large screen for projection and sufficient room darkening to allow easy viewing (but total darkness is not necessary). A storage room of 100 to 150 sf should be near the training room for storing tables, chairs, white boards, AV equipment, etc. The design should address seating for approximately 50 people and an additional
refreshment area. The room will be frequently reconfigured, and will not include a raised dais. A/V needs include hardwired microphones with looping, built-in projection with screen, video equipment capable of taping all meetings, and teleconferencing.

(n) Marketplace Area - The design should include retail space of a minimum 5,000 sq. ft., including display areas for multiple energy efficiency products including: heat pump water heaters, HVAC systems, induction cooking, etc. to be provided by vendors at a later date. Retail spaces should be designed with an eye for adaptability. The space shall include an induction cooking area where up to 3 induction ranges can be installed. Ranges should be installed such that a group of 10-15 students can easily observe cooking lessons. A secure storage area of approximately 150 to 200 sq. ft. for locking up vendor materials and equipment (HVAC equipment, portable induction cooktops, etc.) is desirable. The front area (off 4th) should include space for 1-2 staff members and 1-2 members of the public to be seated, including a desk and computer and chairs.

(o) Main Entry - The existing main and rear entries will lead directly to public access areas. Design should propose a defined solution to security concerns from public access to training rooms and the storefront while considering that the storage space and office areas should have a modest amount of defensible/security considerations. Design should also include a robust security system needed for the exterior and all commercial space.

(p) Daylighting and Views - A design that can increase opportunity for natural lighting, such as through the raising of the existing drop ceiling or the addition of interior glass partitions into the training room would be ideal.

(q) Building as a Learning Tool - Beyond the classes taught in the classroom space, SCP sees the opportunity to use the building as an education tool. Where feasible, installed mechanical, electrical, and plumbing equipment to be located in a manner that can be seen/tested by the public and described with educational signage.

(r) Demolition - will include all non-load bearing partitions, ceilings, finishes, interior and exterior windows, electrical fixtures and distribution, MEP distribution and equipment, and plumbing fixtures and distribution. Restroom locations will remain as-is and comply with ADA requirements. Shear walls, columns and other structural elements will remain undisturbed unless otherwise noted.

1.2 CONSULTANT TEAM

Consultant’s team consists of the following subconsultants:

- Guttman & Blaevoet (mechanical & electrical)
- TEECOM (building technology)
- Gilleran Energy Management (energy consultant)
Cromb Associates (cost consultant)
Scott AG (educational signage)
ZFA Structural Engineers (structural engineers)
Brelje & Race Consulting Engineers (civil engineers)
Quadriga Landscape Architecture (landscape architects)

Consultant shall provide architectural services, and is the prime consultant, with the other consultants listed above serving as subconsultants.

Project Management:

Principal in charge: Don Tomasi, Principal In Charge, 520 Third St. #250, Santa Rosa, CA 95401, don.tomasi@tlcd.com, (707) 535-5267.

Project Manager: Don Tomasi, Principal in Charge, 520 Third St. #250, Santa Rosa, CA 95401, don.tomasi@tlcd.com, (707) 535-5267.

Consultant Coordination: Jeff Blechel, Project Architect, 520 Third St. #250, Santa Rosa, CA 95401, jeff.blechel@tlcd.com, (707) 535-5232.

Lead Designer: Stacey Walker, Interior Designer, 520 Third St. #250, Santa Rosa, CA 95401, Stacey.walker@tlcd.com, (707) 535-5216.

Additional services as needed: signage + wayfinding; architectural specifications; architectural lighting; fire alarm; telecommunications and security (performance specifications only), fire protection (performance specifications only), furniture design (FF&E).

1.3 SCHEMATIC DESIGN PHASE

1.3.1 Tasks

(a) Validation of client-provided program requirements and refinement of project vision and goals;

(b) Development of concept design options for interior space planning and scope of modifications/ additions;

(c) Development of floor plans through test fits confirming all program spaces and sizes, locations adjacencies and support/ back of house spaces;

(d) Development/ refinement of exterior design including confirmation of materials, openings, signage locations and preliminary details for confirmation of cost and zoning/ planning code requirements;

(e) Preliminary ceiling and sectional concepts;

(f) Preliminary selection and description of all major building materials and assemblies to convey design intent and establish parameters for pricing;

(g) Preliminary code analysis and egress/ accessibility plans;
(h) Planning/ zoning analysis, preliminary project review meeting, and determination of site permit requirements;

(i) Sustainability options, goal-setting, and basis of design narrative, including energy modeling to set targets;

(j) Preliminary coordination and collaboration with consultant team, including confirmation of all program space requirements and development of design criteria and preliminary options for all building systems and infrastructure. Basis of design narratives and preliminary drawings to be provided for 100% schematic design;

(k) 100% schematic design architectural documents to include; (i) floor plans, demolition plans, conceptual furniture plans, building sections and elevations; (ii) basis of design narratives describing architectural design and sustainability goals/ features; (iii) preliminary building code analysis and egress plans;

(l) Final program space allocation summary;

(m) Establishment of project budget through benchmarking studies of local construction market; identification of “value add” items and associated costs;

(n) Review and phase cost estimate by Cost Estimator and develop value engineering options upon request by SCP.

1.3.2 Meetings and Presentations

Duration: Approximately five (5) weeks

Meetings
- Three (3) in-person client team meetings including Consultant and appropriate subconsultants as necessary
- Design team meetings as needed, online or in-person
- One (1) cost review meeting with Consultant, including key subconsultants for cost estimating and other areas as appropriate

Unless otherwise noted above, all meetings shall be held at SCP offices or the Project Site, subject to change based on mutual agreement of the Parties.

1.3.3 Consultant’s Milestone Schedule

(a) **Month 1**

(i) **Client Team Meeting #1.** Program confirmation and goal setting.

(ii) Confirmation of Program
(iii) Initial Test Fits, Site Plan, and Renovation Concepts
(iv) Development of baseline budget (cost to renovate existing building space to Class A- office standards based on current Title 24 requirements
(v) Client Team Meeting #2: Present Program, Concepts and Baseline Budget

(b) Month 2
(i) Selection and development of schematic plan and section
(ii) Narrative Development of envelope, daylighting, comfort and MEP strategies.
(iii) Client Team Meeting #3: Present two (2) refined options with cost estimates; select schematic design approach.
(iv) Issuance of Plan Backgrounds
(v) Issuance of draft 100% Schematic Design drawings and narrative
(vi) Preparation and submittal of cost estimate based on 100% Schematic Design documents
(vii) Client Team Meeting #4: Final Cost Review (possibly by video-conference, upon consent from SCPA)
(viii) Issuance of final 100% Schematic Design drawings and narrative and final cost estimates.

1.3.4 Deliverables
(a) Design presentations, including 2D drawings and 3D sketches to convey design intent
(b) 100% Schematic Design Drawings and Narratives

1.3.5 Preliminary Field Investigation. Project team members to visit the site to gather field information sufficient to develop Project deliverables.

1.3.6 Cost Estimates. The consultant will provide a baseline budget, cost estimates for refined options to be considered by SCP and a cost estimate at 100% schematic design to assist the SCP in any necessary adjustment, if necessary, to the scope of work or to the cost estimate.

1.4 DESIGN DEVELOPMENT (“DD”) PHASE

1.4.1 Tasks.
(a) Development and refinement of approved schematic design in collaboration with Consultant team and SCPA stakeholder input;
(b) Design studies and options to establish a direction for the look & feel of the building interior and finish/material selections;

(c) Prepare design presentations to convey design intent including 2D drawings and 3D views/sketches;

(d) Consultant collaboration and coordination to develop the function and technical details of the design and documentation for the 100% DD pricing set;

(e) Develop architectural design documentation including plans, sections, elevations, reflected ceiling plans, enlarged plans, interior elevations, wall/partition/window & door schedules, preliminary details, and preliminary specifications to identify major materials and systems;

(f) Refine code analysis and documentation with development of design;

(g) Prepare cost estimates and reconcile with Owner’s cost consultant; develop value engineering options if required to adjust scope qualidade schedule to meet budget;

(h) Collaboration with client project team in development of design and community/board process (refer to meetings/presentations above);

(i) Consultant will provide furniture and associated equipment services in collaboration with a furniture vendor selected by SCPA for all systems furniture and ancillary furniture for the 741 4th Street renovation project;

(j) Confirmation of minimum program space requirements for furniture program;

(k) Programming, develop process/format for user input and furniture requirements;

(l) Develop/present look & feel furniture concepts;

(m) Develop/present preliminary furniture sections and presentation furniture plans; and

(n) Refine furniture selections based on client/user input.

1.4.2 Meetings and Presentations

(a) Meeting

(i) One (1) in-person team meetings with SCPA representatives, involving Consultant and any necessary Subconsultants.

(ii) SCPA design team meetings, as needed. Online or in-person as appropriate.
(iii) One (1) cost-review meeting

(b) Presentations

(i) To supply presentation materials for one (1) Meeting with SCPA governing boards with Consultant only (Community Advisory Committee and Board of Directors)

1.4.3 Milestone Schedule. Subject to further refinement with development of a specific Milestone Schedule by the Parties for this phase in accordance with section 1.8 below, the estimated start for this phase of January 2019. Duration for this phase is expected to last for approximately four (4) weeks.

1.4.4 Deliverables. Consultant agrees to provide any documents and other deliverables identified in this Section 1.4, including, specifically the following:

(a) Design presentations including 2D drawings and 3D sketches to convey design intent.

(b) 100% Design Development documents (including first round of full specifications)

(c) Cost estimate

1.5 CONSTRUCTION DOCUMENTS, PERMITTING, AND BIDDING PHASE

1.5.1 Tasks

(a) Develop and finalize documentation of approved Design Development documents in collaboration with consultant team for permitting and bidding;

(b) Finalize code analysis and documentation required for building permit submission, including incorporation of all code requirements into the design;

(c) Construction Documents to include drawings and specifications to describe in detail the quantity and quality levels of all materials, systems and other requirements for the construction of the Work;

(d) Assist in the development and preparation of bidding information and documentation;

(e) Reconcile cost estimates;

(f) Respond to bid RFIs prepared by Contractor/Owner;

(g) Provide input on agenda and attend one (1) pre-bid conference;

(h) Issue addenda to provide clarifications and interpretations of bidding documents;
(i) Submit documents for building permit;

(j) Respond to questions and secure building permit for construction;

(k) Refine furniture plans based on final furniture selections;

(l) Development/confirmation of furniture schedule;

(m) Develop furniture specifications; and

(n) Coordinate power/data requirements + locations with electrical/telecom consultants.

1.5.2 Meetings and Presentations

(a) Meeting

(i) Two (2) in-person team meetings with SCPA representatives, involving Consultant and any necessary Subconsultants.

(ii) SCPA Design team meetings, as needed. Online or in-person as appropriate.

(iii) One (1) cost-review meeting

(iv) Participate in site walk

(v) Participate in bid review

(b) Presentations

(i) Two (2) Meetings total with SCPA governing boards with Consultant only (Community Advisory Committee or Board of Directors)

1.5.3 Milestone Schedule. Subject to further refinement with development of a specific Milestone Schedule by the Parties for this phase in accordance with section 1.8 below, the target start for this phase is February 2019, with an estimated four (4) to six (6) weeks duration.

1.5.4 Deliverables. Consultant agrees to provide any documents and other deliverables identified in this Section 1.5, including, specifically the following:

(a) Design presentations including 2D drawings and 3D sketches to convey design intent

(b) 50% Construction Documents and cost estimate

(c) 100% Construction Documents - for permitting and bidding

1.6 CONSTRUCTION ADMINISTRATION PHASE
1.6.1 **Tasks**

(a) Owner, Architect, Consultant (“OAC”) meetings by phone and in person;

(b) Site visits, observation of work and preparation of site visit reports;

(c) Respond to Requests for Information (“RFIs”);

(d) Review Shop Drawings, Product Data, Samples and other similar submittals;

(e) Prepare Bulletins;

(f) Document any changes to Construction Documents;

(g) Review change order requests;

(h) Confirm and issue certificate for substantial completion of work;

(i) Punch list site walk and assistance to Construction Manager and/or General Contractor in documentation of punch list items;

(j) Vendor proposal solicitation/selection;

(k) Showroom tours, evaluate dealer/system options;

(l) Coordination of preliminary furniture options + budgeting package with selected dealer;

(m) Coordinate furniture + finish sample review/sit tests with dealer;

(n) Updated pricing by dealer;

(o) Coordinate/review final quote from dealer;

(p) Confirm procurement + installation schedule;

(q) Review final installation drawings;

(r) Attend OAC meetings and respond to questions during construction regarding furniture systems integration and installation;

(s) Field review + respond to questions during installation; and 

Punch list site walk with dealer; contribute comments to dealer-generated punch list.

1.6.2 **Meetings and Presentations**

(a) Owner-Architect-Contractor (“OAC”) Meetings (3 per month onsite)
(b) Total of twelve (12) meetings (combined in person and by phone) assumed for Consultant. Additional meetings with Subconsultants not included within 32 meeting limit.

1.6.3 **Milestone Schedule.** Subject to further refinement with development of a specific Milestone Schedule by the Parties for this phase in accordance with section 1.8 below, the target date for initiation of this phase is April 2019 with an estimated duration of 12 weeks.

1.6.4 **Deliverables.** Consultant agrees to provide any documents and other deliverables identified in this Section 1.6, including, specifically the following:

(a) RFI and submittal responses

(b) Architect Supplemental Instructions (“ASIs”) and other documentation of necessary changes to Contract Documents.

1.7 **EXCLUSIONS, ASSUMPTIONS & PROJECT LIMITATIONS:** The following services are excluded from Base Services, and may be added by SCP as Additional Services in accordance with the procedures set forth in section 3 of this Appendix “A”, at the rates set forth in Exhibit “B-2” (“Hourly Rates”):

1.7.1 The primary focus will be on residential products;

1.7.2 There will be no electric vehicles or charging stations inside of the space. It is understood that the small rooms at the north end of the building cannot be significantly modified;

1.7.3 The 2nd floor will need to remain accessible only for fire and maintenance purposes, and is not a part of this project. There is no need for an elevator;

1.7.4 It is assumed that the suspended ceiling will be removed. Consultant’s goal should be to keep the space open, meaning all mechanical will be exposed to view. Daylighting is desired, to the extent that it is easy to achieve;

1.7.5 The majority of the main, open space will be devoted to vendor-provided displays;

1.7.6 Consultant should assume that this will be a space within the larger space, with its own ceiling.

1.7.7 Consultant should plan for seating for 50, and a roll-up or other type of operable door in order to connect it to the main space and Cooking Area. Presentations will be recorded. There may be a raised access floor (4-5 inches) at the classroom;

1.7.8 Consultant should plan for cooking classes with 3 or 4 induction ranges, a range hood that may serve all of the ranges, sink, dishwasher - all residential;
1.7.9 Consultant should assume there will, at times, be children present in the main, open floor area;

1.7.10 Consultant understands that the landlord/building owner for the space plans to replace the rooftop HVAC unit, in consultation with SCP and SCP’s design team. SCP may fund an upgrade to a traditional system or possibly work with vendor supplied units;

1.7.11 Consultant understands that the landlord/building owner will replace the sewer line from the exterior to the existing plumbing locations (not in our scope). Consultant agrees to design plumbing and sewer to serve the kitchen showroom, which is included in TLCDs scope;

1.7.12 Consultant assumes that the brick façade will remain at the south elevation, but that the storefront will be replaced with a new glazing system, with clear glass, and likely a Nanawall or other type of operable wall; however, SCP will make a final decision on this issue during the SD phase;

1.7.13 Consultant understands that the building is not sprinkled, and assumes that fire sprinklers will not be required. Design of fire protection system, if required, shall be done utilizing schematic diagrams, limited piping layouts (risers and horizontal fire mains), and the provision of a specification to SCPA for use with its construction contractor;

1.7.14 A Geotechnical Report may be recommended but Consultant is assuming one is not required;

1.7.15 SCPA is not including any work on site walls and structures as part of the Project;

1.7.16 Structural upgrade drawings to be provided by Consultant (on file at City);

1.7.17 SCP agrees to pay all governmental plan application, review, and inspection fees;

1.7.18 SCP, and/or its Contractor will make the encroachment permit application to the City of Santa Rosa Public Works department;

1.7.19 Consultant will include a survey of the 5th Street entrance, but the survey will not depict the location or size of underground utilities. The survey will not include features (cleanouts, manholes, drop inlets, etc.) that are obscured by vegetation, debris, or otherwise hidden. The topographic survey will not include a boundary survey;

1.7.20 Consultant assumes that roof drains and surface drainage will be allowed to flow to the existing drainage system and that no wet utility (sewer, water, storm drain) design is required;

1.7.21 Consultant assumes that no ADA path of travel improvements, other than from the Fifth Street doorway to the public right of way (if required by the City of Santa Rosa), are associated with this project;

1.7.22 Consultant assumed that base building systems, such as normal power,
water, and drainage are adequate and available to accommodate tenant improvement. Consultant assumes Street water main pressure is adequate for a new sprinkler system (if required by the City of Santa Rosa) without a fire pump;

1.7.23 Consultant assumes that the existing building envelope will not require T-24 compliance documentation;

1.7.24 Consultant assumes that the new HVAC system will either be packaged rooftop units, or heat recovery ventilators with VRF fan-coils;

1.7.25 Design of fire alarm system shall be done using. Schematic diagrams and plans and Consultant will provide SCPA with necessary specifications;

1.7.26 Services in relation to asbestos discovery, identification, or abatement or other hazardous materials issues are not included;

1.7.27 Life cycle cost analysis is not included;

1.7.28 Design of solar thermal energy systems is excluded;

1.7.29 Design of chilled water storage, ice storage systems, or ground source heat pump systems are excluded;

1.7.30 Design of systems to support a commercial kitchen are not included;

1.7.31 Design of photovoltaic or battery systems is not included;

1.7.32 System design, analysis, documentation, meeting(s), and other services performed as part of LEED® certification or other green design certifications of the project is not included;

1.7.33 Outdoor lighting including roadways is not included;

1.7.34 Commissioning of energy and water systems is not included;

1.7.35 Design of the security system is excluded.

1.7.36 Design of emergency services communication system is excluded;

1.7.37 Design of distributed audio systems, such as overhead paging, public address, and/or background music is excluded;

1.7.38 Design of a sound masking system is excluded;

1.7.39 Design of an in-building Distributed Antenna System (DAS) for wireless carriers/services (e.g., cellular, 3G, 4G, GSM, CDMA) is excluded;

1.7.40 Design of a Wi-Fi system, including WAP layout is excluded;

1.7.41 Design of a network (LAN or WAN) is excluded;

1.7.42 Design of a telephone/voice system (VoIP system, terminals) is excluded;
1.7.43 Design of a wired and/or wireless clock system is excluded;

1.7.44 Acoustical engineering services are excluded;

1.7.45 The following structural engineering services are included as follows: review mezzanine framing to determine if non-structural items can be removed, exterior signage anchorage, interior non-bearing wall framing and slab modifications for restrooms, training rooms and offices, glass panel PV canopy at entry, new glazing at entry, remove drop ceiling, review the possibility of a new entry at the parking lot, review loads imposed by new rooftop HVAC unit, review HVAC ducting; and

1.7.46 Owner and vendor supplied equipment anchorage is not included.

1.7.47 Civil engineering is limited to a survey and concept design for ADA access to Fifth Street. Any work identified in that survey will be an Additional Service.

1.7.48 SCP will remove or cause to be removed all ceiling tiles from space so that Consultant can have visual access to structure, and building systems.

1.8 MILESTONE SCHEDULE. Prior to commencement of each Project phase, or promptly thereafter, Consultant and SCPA agree to develop by mutual agreement, a specific, written schedule for the completion of tasks for the Project phase (each, the “Milestone Schedule”). The dates and tasks set forth in the Milestone Schedule for each phase developed pursuant to this section shall be binding on Consultant, as is fully set forth herein.

1.9 REVISIONS. Consultant agrees to prepare revisions to the documents during the Schematic Design phase as part of its Base Services; provided, however, that revisions that are inconsistent with written approvals previously given by SCP may be considered Additional Services.

2. GENERAL REQUIREMENTS

2.1 PERSONNEL AND SUBCONSULTANTS. Consultant shall use only the personnel and subconsultants identified in this Appendix in performing the Services.

2.2 GENERAL CRITERIA GOVERNING CONSULTANT’S SERVICE.

2.2.1 Plans, material specifications, design calculations, site data and any cost estimates required to be prepared by Consultant shall be prepared by licensed personnel or personnel under the direction of licensed personnel. As required by the California Code of Regulations, “Responsible Charge” for such Services shall be with a Registered Architect or Engineer licensed in the State of California.

2.2.2 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the SCPA grants a written exemption to a specific standard or regulation.
2.2.3 Consultant shall review existing SCPA data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall review the information provided by the SCP concerning existing conditions (including but not limited to existing utilities and structures) and inform SCP if further investigations of existing conditions as are necessary for Consultant to perform the Services. Consultant shall also reasonably rely on the information provided by SCP. Consultant shall review supplied design information and advise SCP of its adequacy for Consultant’s work and advise SCP of any further design or other services necessary to complete the Project.

2.2.4 Unless otherwise permitted in writing by SCP, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide SCP with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can normally be performed and without excessive cost or time. SCP will consider such evaluation in making its decision.

2.3 GENERAL SCOPE OF CONSULTANT’S SERVICES

2.3.1 Consultant’s services shall include professional services within the scope of Consultant’s professional discipline (including Consultant’s team’s professional disciplines) necessary to accomplish the tasks defined throughout this Appendix. Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant’s Services.

2.3.2 Performance of Services will require Consultant to work with, meet with, and attend meetings with SCP staff, with other governmental agencies, and with such other consultants as Consultant determines necessary, to the extent necessary for performance of Consultant’s duties under this Agreement (including, but not limited to, Consultant’s express duties of coordination with other consultants).

2.3.3 Consultant shall engage appropriate specialty subconsultants as are necessary for proper completion of Consultant’s Services in accordance with the scope of work specified herein and utilizing the subconsultants as specified section 1.2 of this Appendix “A”, at the sole expense of Consultant. Consultant’s contracts with its subconsultants (and their contracts with their subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with the subconsultant’s scope of work. Consultant shall secure SCP’s approval for any subconsultants not listed in this Appendix. Consultant shall require each of its subconsultants to execute agreements containing a standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold SCP harmless from any negligent errors or omissions of the Subconsultants.

2.3.4 Consultant shall provide SCP with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation into
the Project, including but not limited to, all requirements imposed by the Office of Statewide Health Planning & Development (OSHPD), Division of State Architect, Regional Water Quality Control Board, California Uniform Building Code and California Regulations (including but not limited to Title 24). Consultant may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

2.4 COORDINATION OF SERVICES WITH THE PROJECT, SCP’S CONSULTANT TEAM, AND SCP STAFF

2.4.1 Consultant shall coordinate its Services with the services of all engineering disciplines and subconsultants involved in completing the Project. The objective of this coordination shall be the development of a comprehensive and workable design for the site work portion of the Project and preliminary design for the balance of the Project, with consistency in engineering standards, anticipated construction details, materials specifications, and approaches, to secure practical, consistent and economic design solutions. Consultant shall immediately advise SCP in writing if any SCP staff or consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-compliance. SCP will have a responsibility to then enforce compliance.

2.4.2 Consultant shall provide appropriate safety training for Consultant’s personnel. Consultant shall review and train Consultant’s personnel in appropriate safety procedures for work in the Project construction area. Consultant shall require all personnel under Consultant’s direction to wear white hard hats when entering the construction area, and any other safety equipment such as orange vests and appropriate shoes, ear and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment for Consultant’s personnel.

2.5 DELIVERABLES AND COMPLETION DATES REQUIRED UNDER THIS AGREEMENT

Required deliverables are discussed in Section 1.5 of this Appendix “A”. Each deliverable shall be reviewed with representatives of the SCP. The SCP shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that SCP reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to SCP, and the cost thereof is included in the fee for Basic Services. If Consultant should disagree with SCP’s determination, Consultant shall make the changes requested by SCP under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge.

2.6 MONTHLY PROGRESS UPDATE

With each request for payment, Consultant shall provide SCP with a written Monthly Progress Update. The Monthly Progress Update shall cover the Consultant’s percent complete for each phase of the work as outlined in the “Monthly Billing Breakdown” in accordance with Appendix B, section 2. If applicable, the Monthly Progress Update shall identify any actions and
approvals needed, and any problems in performing the Services (whether by Consultant, SCP or any third party) of which Consultant becomes aware.

3. ADDITIONAL SERVICES

All Services identified in the Agreement, including but not limited to the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are “Base Services.” The SCP may request Consultant to provide services in addition to Base Services, referred to hereafter as (Additional Services). Additional Services must be authorized by SCP in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein unless the parties agree on lump sum compensation for particular work activities.

Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant’s defective and/or negligent errors, or omissions in Consultant’s work product. All such services shall be performed at no cost to SCP, including, but not limited to, any required corrections or revisions to reports, drawings or specifications that are a result of any defective and/or negligent errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services.

END OF APPENDIX A
1 **Amount of Compensation for Services of Consultant.**

1.1 Excluding Additional Services only, the amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed five hundred and seven thousand seven hundred and seventy-nine dollars ($507,779) referred to hereafter as the Not-To-Exceed Amount (“NTE”). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.

1.2 “Reimbursable Expenses” means job-related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs and similar. Normal travel expenses to and from the site and/or for meetings with SCP under the Agreement are Reimbursable Expenses. Any Reimbursable Expenses exceeding the value of Seven Thousand dollars ($7000.00) and/or Out-of-State travel in connection with the project shall be approved in advance, in writing by SCP. Reimbursable expenses will be billed at cost. Reimbursable Expenses shall not exceed Seven Thousand dollars ($7000.00)

1.3 Compensation for Base Services will be on a fixed fee basis, as set forth in Exhibit “B-1” (“Fixed Fees for Base Services”) attached to this Appendix “B”.

1.4 Additional Services, if any are engaged in accordance with the procedures set forth in section 3 of Appendix “A”, will be compensated at the rates set forth in Exhibit “B-2” (“Hourly Rates”) attached to this Appendix “B”.

2 **Monthly Billing Breakdown**

2.1 SCP shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for SCP’s approval prior to the first monthly invoice. The “Monthly Billing Breakdown” shall itemize separate categories for each consultant, each design and construction phase, along with a project schedule defining the timeline and cost for each category.

2.2 All invoices must include:

2.2.1 Purchase Order Number;
2.2.2 Project Name;
2.2.3 Project Address;
2.2.4 SCP’s Project Number;
2.2.5 Project Manager Name;
2.2.6 Description of service performed;
2.2.7 Date range of services performed;
2.2.8 Invoices, receipts, or other reasonably requested documentation related to Reimbursable Expenses;
2.2.9 Time spent in .25 hour increments;
2.2.10 Such other information necessary for SCPA to comply with California Energy Commission requirements; and
2.2.11 Sent electronically to: casay@sonomacleanpower.org or via mail to Sonoma Clean Power, ATTN: Chad Asay, 50 Santa Rosa Avenue, 5th Floor, Santa Rosa CA 95404.

3 Methods of Payment to Consultant

3.1 For Basic Services on the Project, Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.

3.2 For Additional Services. In the event Additional Services are authorized, SCP shall pay Consultant for Additional Services, as defined below, as follows:

3.2.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at SCP’s option, based on hourly rates per Consultant’s Billing schedule with an agreed Not-to-Exceed amount.

3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount, billed to Consultant.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultant billing will be limited to a not-to-exceed amount upon prior written approval of the SCP.

END OF APPENDIX B
# Professional Services Agreement - Appendix “B-1”

## Fixed Fees for Base Services

**SCP Energy Marketplace Fee Worksheet**

November 20, 2018

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<tr>
<th></th>
<th>Programming &amp; SD</th>
<th>DD</th>
<th>CD / Permitting and Bid Set</th>
<th>GL Services</th>
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Estimated Administrative Expenses: $7,000
## Schedule of Hourly Rates

2018

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These rates are effective for the calendar year 2018 and are subject to change one time annually.
### SCHEDULE OF HOURLY RATES

**2019**

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These rates are effective for the calendar year 2019 and are subject to change one time annually.
PROFESSIONAL SERVICES AGREEMENT - APPENDIX C
INSURANCE

A. Consultant is required to maintain at all times during the performance of this Agreement the following insurance coverage:

1. Workers’ Compensation Employers’ Liability limits of $1,000,000 each occurrence, $1,000,000 per disease, and $1,000,000 each employee. Consultant’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California. Employers’ Liability Coverage endorsement shall specify as entity and endorsement holder the SCP, its Board of Directors, the individual members thereof, and all SCP officers, agents, employees, and volunteers.

2. Occurrence-based Commercial General Liability Insurance or Business Owners Policy with limits of $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and $2,000,000 Aggregate. This liability insurance shall include but shall not be limited to protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from Consultant’s or subcontractor’s or subconsultant’s operations.

3. Occurrence-based Comprehensive or Business Owners Automobile Liability Insurance with limits not less than $1 million each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

4. Professional Liability Insurance with limits not less than $1,000,000 each claim and $2,000,000 in the aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, with deductible amounts reasonably acceptable to the SCP. Acceptance of Consultant’s Insurance by SCP shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.

B. General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:

1. Name as Additional Insured SCP, its Board of Directors, the individual members thereof, and all SCP officers, agents, employees, and volunteers.

2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the addition of one or more entities shall not affect the insurer’s limit of liability.
C. All policies shall be endorsed to provide thirty (30) days advance written notice to SCP of cancellation, and certificates of all policies and endorsements shall be mailed to SCP as provided in the Agreement per paragraph 17.1.3.

D. SCP may, at its sole option, terminate this Agreement on 15 days’ notice to Consultant (but during such 15 day period Consultant has the opportunity to cure the default), in the event of any lapse of required insurance coverage. SCP may, at its option, secure sufficient insurance coverage to replace any required insurance coverage which has lapsed, and Consultant hereby acknowledges its liability to reimburse SCP for all costs associated with such replacement insurance coverage.

E. Insurance shall be maintained through an insurer and with deductible amounts acceptable to SCP. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously or be ordinarily renewed throughout the term of this Agreement, without lapse, and shall provide a discovery period for a period of three years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made within four-years after expiration of the Agreement, such claims shall be covered by such claims-made policies.

F. Certificates of insurance, in form and with insurers satisfactory to SCP, evidencing all coverages above shall be furnished to SCP before commencing any operation under this Agreement, with complete copies of policies promptly upon SCP request.

G. Approval of the insurance by SCP shall not relieve or decrease the liability of Consultant hereunder.

H. If Consultant is an association or partnership, the association or partnership shall be insured by any one of the following methods:

1. Separate insurance policies issued with the association or partnership as named insured.

2. All insurance policies required by this Agreement of one of the participants to include the association or partnership as named insured.

3. The association or partnership must be a named insured on all of the policies required by this Agreement.

I. If Consultant maintains higher limits than the minimums specified herein, SCP is entitled to coverage for the higher limits maintained by Consultant.

END OF APPENDIX C
PROFESSIONAL SERVICES AGREEMENT - APPENDIX D
ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) STANDARD GRANT TERMS AND CONDITIONS

(See separate-attached standalone document)
EXHIBIT C
ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) STANDARD
GRANT TERMS AND CONDITIONS

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ATTACHMENT 1: CONFIDENTIAL PRODUCTS AND PROJECT-RELEVANT PRE-
EXISTING AND INDEPENDENTLY FUNDED INTELLECTUAL PROPERTY
EXHIBIT C
TERMS AND CONDITIONS

1. **Introduction**
This grant agreement (Agreement) between the California Energy Commission (Energy Commission, or Commission) and the Recipient is funded by the Electric Program Investment Charge (EPIC), an electricity ratepayer surcharge authorized by the California Public Utilities Commission (CPUC).

This Agreement includes: (1) the Agreement signature page (form CEC-146); (2) the scope of work (Exhibit A); (3) the budget (Exhibit B); (4) these terms and conditions (Exhibit C); (5) any special terms and conditions that address the unique circumstances of the funded project (Exhibit D); (6) a contacts list (Exhibit E); (7) all attachments; and (8) all documents incorporated by reference.

All work and expenditure of funds (Commission-reimbursed and/or match share) must occur within the Agreement term specified on the CEC-146 form.

2. **Documents Incorporated by Reference**
The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsection (f). Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

**Solicitation Documents (if applicable)**
a. The funding solicitation for the project supported by this Agreement
b. The Recipient’s proposal submitted in response to the solicitation

**CPUC Decision**
c. Decision 13-11-025 (Decision Addressing Applications of the California Energy Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of their Triennial Investment Plans for the Electric Program Investment Charge Program for the Years 2012 through 2014) [http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M081/K773/81773445.PDF](http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M081/K773/81773445.PDF)

**Federal Cost Principles (applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations)**
d. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

**Federal Acquisition Regulations (applicable to commercial organizations)**
e. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

**Nondiscrimination**
f. 2 California Code of Regulations, Section 8101 et seq.: Contractor Nondiscrimination and Compliance
General Laws

g. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. **Standard of Performance**

In performing work under the Agreement, the Recipient, its subcontractors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

4. **Due Diligence**

The Recipient must take timely actions that, taken collectively, move this project to completion. The Commission Agreement Manager will periodically evaluate the project schedule for completion of Scope of Work tasks. If the Commission Agreement Manager determines that: (1) the Recipient is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, the Commission Agreement Manager may recommend that this Agreement be terminated, and the Commission may terminate this Agreement without prejudice to any of its other remedies.

5. **Products**

a. **“Products”** are any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as reports and summaries.

   - The Recipient will submit all products identified in the Scope of Work to the Commission Agreement Manager, in the manner and form specified in the Scope of Work.
   
   - The Recipient will also submit all products prepared during the invoicing period to the Accounting Office along with the invoice, as specified in subsection (c) of Section 8 (Payment of Funds).

   If the Commission Agreement Manager determines that a product is substandard given its description and intended use as described in the Scope of Work, the Commission Agreement Manager may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

b. Confidential Products

   Please see Section 19 (Confidentiality) for instructions regarding confidential products.

c. Rights in Products

   The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.” The Recipient owns all intellectual property developed under this Agreement (please see the “Intellectual Property” section).

   The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce products that do not fall within the definition of “intellectual property.”
d. Failure to Submit Products

Failure to submit a product required in the Scope of Work will be considered material noncompliance with the Agreement terms, unless the Commission Agreement Manager waives the failure in writing. Noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Final Report and Payment

The Recipient may only submit a request for the final payment (including any retention) after the final report is completed and the Commission Agreement Manager has verified satisfactory completion of work.

f. Legal Statements on Products

1) All documents that result from work funded by this Agreement and are released to the public must include the following statement to ensure no Commission endorsement of documents:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. Neither the Commission, the State of California, nor the Commission’s employees, contractors, or subcontractors makes any warranty, express or implied, or assumes any legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This document has not been approved or disapproved by the Commission, nor has the Commission passed upon the accuracy of the information in this document.

2) The Recipient will apply copyright notices to all documents prepared for this Agreement that are released to the public (including reports, articles submitted for publication, and all reprints) using the following form or any other form that may be reasonably specified by the Energy Commission.

“©[Year of first publication of product] [the Copyright Holder’s name]. All Rights Reserved.”

6. Amendments

a. Procedure for Requesting Changes

The Recipient must submit a written request to the Commission Agreement Manager for any change to the Agreement. The request must include:

• A brief summary of the proposed change;
• A brief summary of the reason(s) for the change; and
• The revised section(s) of the Agreement, with changes made in underline/strikethrough format.
b. Approval of Changes

Certain changes to the Agreement (e.g., changes that increase the Agreement amount or substitute one Recipient for another) must be approved at a Commission business meeting or by the Executive Director (or his/her designee). Generally, changes that are not significant to the Agreement may be documented in a Letter of Agreement signed by both parties (electronic signatures are acceptable).

The Commission Agreement Manager or Commission Agreement Officer will provide the Recipient with guidance regarding the level of Commission approval required for a proposed change.

c. Personnel or Subcontractor Changes

All changes below require advance written approval by the Commission Agreement Manager, in addition to the appropriate level of Commission approval as described in subsection (b).

1) Replacement of Key Personnel, Subcontractors, and Vendors

The Commission Agreement Manager must provide advance written approval of the replacement of personnel, subcontractors, and vendors who are identified in the Agreement and are critical to the outcome of the project, such as the Project Manager.

2) Assignment of New Personnel to an Existing Job Classification

If the Recipient or a subcontractor seeks to assign new personnel to a job classification identified in Exhibit B, the Recipient or subcontractor must submit the individual’s resume and proposed job classification and rate to the Commission Agreement Manager for approval. The proposed rate may not exceed the maximum rate identified for the job classification. Neither the Recipient nor any subcontractor may use the job classifications or rates of their subcontractors for personnel.

If the individual performs any work prior to the effective date of the amendment documenting the change, the Recipient will bear the expense of the work.

3) Promotion of Existing Personnel to an Existing Job Classification

Recipient or subcontractor personnel that are identified in Exhibit B may be assigned to a higher-paying job classification identified in Exhibit B. If the Recipient performs any work under the new rate prior to the effective date of the amendment documenting the change, the Recipient will bear the expense of the difference between the new and old rates.

4) Addition of Subcontractors

In order to add subcontractors to Exhibit B, the Commission Agreement Manager must submit a “Subcontractor Addition” form to the Commission Agreement Officer. The form identifies the new subcontractor, bidding method used (competitive or non-competitive), and the tasks the new subcontractor will perform.

5) Addition of Job Classifications and Changes in Hours

6) Increased Direct Operating Expenses and Rates that Exceed the Expenses and Rates Identified in Exhibit B
7. **Contracting and Procurement Procedures**

This section provides general requirements for agreements entered into between the Recipient and subcontractors for the performance of this Agreement.

a. **Contractor’s Obligations to Subcontractors**

1) The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into for the performance of this Agreement.

2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any subcontractors, and no subcontract may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the Commission for the acts and omissions of its subcontractors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.

    The Recipient’s obligation to pay its subcontractors is an independent obligation from the Commission’s obligation to make payments to the Recipient. As a result, the Commission has no obligation to pay or enforce the payment of any funds to any subcontractor.

3) The Recipient is responsible for establishing and maintaining contractual agreements with and reimbursing each subcontractor for work performed in accordance with the terms of this Agreement.

b. **Flow-Down Provisions**

Subcontracts funded in whole or in part by this Agreement must include language conforming to the provisions below, unless the subcontracts are entered into by the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. UC may use the terms and conditions negotiated by the Energy Commission with UC for its subcontracts. DOE national laboratories may use the terms and conditions negotiated with DOE (please contact the Commission Grants Officer for these terms).

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, “Products”)
- Travel and Per Diem (Section 9)
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Disputes (Section 15)
- Indemnification (Section 18)
- Confidentiality (Section 19)
- Pre-Existing and Independently Funded Intellectual Property (Section 20)
- Intellectual Property (Section 21)
- Royalty Payments to the Commission (Section 22)
- Access to Sites and Records (included in Section 23, “General Provisions”)
- Nondiscrimination (included in Section 24, “Certifications and Compliance”)
- Survival of the following sections:
  - Equipment (Section 14)
Subcontracts funded in whole or in part by this Agreement must also include the following:

- A clear and accurate description of the material, products, or services to be procured.
- A detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors breach contract terms, in addition to sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- A statement that further assignments will not be made to any third or subsequent tier subcontractor without additional advance written consent of the Commission.

### Audits

All subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission and/or Bureau of State Audits for a period of three (3) years after payment of the Recipient's final invoice under this Agreement. The Energy Commission may audit subcontracts that are relevant to the Recipient's royalty payment obligations (see Section 22) for a period of ten (10) years after the Agreement's end date.

### Copies of Subcontracts

The Recipient must provide a copy of its subcontracts upon request by the Energy Commission.

### Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the Commission Agreement Manager of any known or reasonably foreseeable conflicts between this Agreement and its agreements with any subcontractors (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the Commission Agreement Manager of the conflict within fifteen (15) days of discovery. The Energy Commission may terminate this Agreement if any conflict impairs or diminishes its value.

### Penalties for Noncompliance

Without limiting the Commission's other remedies, failure to comply with the above requirements may result in the termination of this Agreement.

### Payment of Funds

#### Definitions

For purposes of this Section 8, the following terms have the following meaning:
• “Advance Payment” means the Energy Commission pays Recipient prior to the Recipient Incurring or Paying the expense.

• “Incurred Cost” means an expense for which the Recipient has become liable (legally obligated) to pay. Here are examples of incurred costs:
  o The Recipient’s staff has completed work during the month but has not been paid by the Recipient. These labor and associated costs (e.g., fringe benefits) are considered Incurred Costs.
  o The Recipient has purchased a piece of equipment and received an invoice, bill, or receipt. The Recipient has not yet paid the invoice. The invoice shows the amount to be paid and confirmation of the sale. This is an Incurred Costs.

Incurred costs for equipment DO NOT include purchase orders unless accompanied by an invoice, bill, or receipt that shows the payment amount due to the seller for the equipment.

• “Paid Cost” means an expense for which the Recipient has already made payment.

b. Advance Payments

Recipients can receive Advance Payments only for subcontractors with the U.S. Department of Energy laboratories. Otherwise, Advance Payments are NOT allowed under this Agreement. The Energy Commission in its sole discretion, and not the Recipient, decides if the Commission will make an Advance Payment.

c. Reimbursable Cost Requirements

In addition to any other requirements in this Agreement, the Energy Commission is only obligated to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement’s Budget; and (4) actual and allowable expenses under this Agreement.

ALL of the items in the Budget, including without limitation labor rates, fringe and indirect and individually listed items are caps (i.e., maximums), and the Recipient can only bill its ACTUAL amount up to capped amounts listed in the Budget. For example, if the Budget includes an employee’s hourly rate of $50/hour but the employee is only paid $40/hour, the Recipient can only bill for $40/hour. Under the same example, if the employee earned $70/hour but the Budget only lists $50/hour, the Recipient can only bill for $50. Another example is if the maximum fringe rate listed in the budget is 20% but the Recipient’s actual fringe rate is only 15%, the Recipient can only bill at 15%.

d. Recipient’s 14-Day Payment Requirement for Incurred Costs

The Recipient shall pay ALL Incurred Costs for which it has invoiced the Energy Commission within 14 calendar days of receiving payment under this Agreement for the Incurred Costs. For example, if the Recipient invoices and then receives payment from the Commission on September 15 for an Incurred Cost of $10,000, the Recipient shall pay the entire $10,000 by September 29. This requirement is needed to prevent Recipients from creating long lead times for Incurred Costs (e.g., invoicing and receiving payment from the Commission but not paying for the Incurred Costs for weeks or months).
The Recipient shall only invoice the Commission for Incurred Expenses the Recipient shall pay with 14 calendar days of receiving payment from the Commission. For example, assume the Recipient has an Incurred Cost for a piece of equipment that costs $300,000 and will pay in three installments of $100,000 each over three months. The Recipient shall only invoice the Commission for $100,000 each month. The Recipient shall not invoice for the entire $300,000 and retain the balance over the three months.

For any Incurred Costs for which the Recipient has received funds from the Energy Commission and does not pay within 14 calendar days, the Recipient shall on the very next business day after the 14 calendar days submit repayment of the unpaid amount back to the Energy Commission. Repaid funds will be placed back into the agreement and will be available to reimburse allowable costs in accordance with this agreement. When making a repayment under this provision, the Recipient shall specify “Repayment of Unspent Funds under Agreement [EPC-17-008].” Recipient shall remit the repayment to:

California Energy Commission
Accounting Office
1516 Ninth Street, MS-2
Sacramento, CA 95814

This repayment requirement of the Recipient is in addition to any other rights the Energy Commission can enforce relative to this Agreement. Recipient agrees and acknowledges that time is of the essence in paying Incurred Costs and submitting repayments and the Energy Commission can treat the Recipient’s breach of either requirement as a material breach. Recipient can contact the Commission Agreement Manager for any questions about the logistics of making repayments.

e. Payment Requests

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement but no more frequently than monthly. It is preferred that payment requests be submitted with the progress reports. The final payment request, including retention, MUST be received by the Energy Commission no later than the agreement end date.

Recipient agrees and acknowledges that time is of the essence in submitting the final payment request. The Commission has a limited period of time, set by law, in which it can reimburse funds under this Agreement. Without prejudice to the Commission’s other rights, the Recipient risks not receiving any funds, and relieves the Commission of any duty and liability whatsoever to pay, for any payment requests received after the end of the Agreement.

No reimbursement for food or beverages shall be made other than allowable per diem charges.

All Recipient expenditures, reimbursable and match, must occur within the approved term of this Agreement.
f. Invoice Approval and Disputes:

Each request for payment is subject to the Commission Agreement Manager’s approval. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for work performed, for which project expenditures and products meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified via a Dispute Notification Form within fifteen (15) working days of receipt of the Commission Agreement Manager’s invoice.

g. Recipient’s headquarters:
For purposes of payment, the Recipient’s headquarters is the location of the Recipient’s office where the majority of its employees assigned responsibilities for this Agreement are permanently assigned.

h. Multiple Non-Energy Commission Funding Sources:
No payment will be made for costs identified in recipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

“Government Entity” means: (1) a state governmental agency; (2) a state college or university; (3) a local government entity or agency, including those created as a Joint Powers Authority; (4) an auxiliary organization of the California State University or a California community college; (5) the federal government; (6) a foundation organized to support the Board of Governors of the California Community Colleges; and (7) an auxiliary organization of the Student Aid Commission established under California Education Code Section 69522.

i. Reduced funding:
If the Energy Commission does not receive sufficient funds under the Budget Act or from the investor-owned utility administrators of the EPIC program to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

a) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).

b) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.
j. Allowability of Costs

a) Allowable Costs

The costs for which the Recipient will be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of the work identified in the Scope of Work. Costs must be incurred within the Agreement term. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, including necessity of the item for the work; (ii) applicable federal cost principles or acquisition regulations incorporated by reference in Section 2 of this Agreement; and (iii) the terms and conditions of this Agreement.

b) Unallowable Costs

Below are examples of unallowable costs. Details concerning the allowability of costs are available from the Energy Commission’s Accounting Office.

a) Profit of the Recipient or fees (this restriction does not apply to subcontractors);
b) Contingency costs;
c) Imputed costs (e.g., cost of money);
d) Fines and penalties;
e) Losses;
f) Excess profit taxes; and
g) Unapproved, increased rates and fees for this Agreement

c) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

k. Payment Request Format

Each request for payment will consist of, but not be limited to, the following:

1) An invoice that includes a list of Incurred and Paid Costs. Backup documentation is required at the time of invoice submittal, such as time cards, vendor invoices, and proof of payment (e.g., cancelled checks). Unless otherwise specified in Exhibit B or the invoice template, the invoice must include the following:

a) Agreement number;
b) Date prepared;
c) Recipient’s Federal tax ID number;
d) Billing period;
e) Recipient’s actual labor expenditures, including hourly unloaded labor rates by individual name and classification, hours worked, and benefits (fully loaded rates may only be used if they are included in the grant budget);
f) Non-labor expenses, including fringe benefits, indirect overhead, and general/administrative expenses;
g) Operating expenses, including travel, equipment, materials, and other;
h) By budget line item (cost component) category, the budgeted amount, amount billed to date, currently billed amount, and balance of funds;

i) Match fund expenditures (if applicable);

j) Receipts for travel (including departure and return times), equipment, materials, and miscellaneous; and

k) Subcontractor invoices that include all items above, for correspondence with the budget (e.g., if the budget lists hourly labor rates, the subcontractor’s invoice should include hourly labor rates).

2) A progress report that documents evidence of progress, as described in the Scope of Work.

3) Products prepared by the Recipient during the invoicing period, as described in the Scope of Work.

The Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that the Recipient mails a hard copy the same day.

The Recipient must submit all invoices to the following address:

California Energy Commission  
Accounting Office  
1516 Ninth Street, MS-2  
Sacramento, CA 95814

If the Recipient has not otherwise provided to the Commission documentation showing the Recipient’s payment of Incurred Costs, the Recipient shall provide such documentation as soon as possible and not later than three working days from a request from Commission personnel.

I. Certification

The following certification will be included on each payment request form and signed by the Recipient’s authorized officer:

The documents included in this request for payment are true and correct to the best of my knowledge and I, as an agent of [Company Name] have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract, or other procurement method. For projects considered to be a public work, prevailing wages were paid to eligible workers who provided labor for the work covered by this invoice; the Recipient and all subcontractors have complied with prevailing wage laws.

m. Fringe Benefit, Indirect Overhead, General and Administrative (G&A), and Facilities and Administration (F&A) Rates

Indirect cost rates must be developed in accordance with generally accepted accounting principles and the applicable federal cost principles or acquisition regulations (see the provisions incorporated by reference in Section 2). If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead, G&A, or F&A) from its cognizant federal agency, the Recipient may bill at the federal rate up to the budget rate caps if the following conditions are met:
• The Recipient may bill at the federal provisional rate but must adjust annually to reflect its actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions contained in the budget (Exhibit B).

• The cost pools used to develop the federal rates must be allocable to the Agreement, and the rates must be representative of the portion of costs benefiting the Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient’s manufacturing facility and the Agreement is for research and development at the Recipient’s research facility, the federal indirect overhead rate would not be applicable to the Agreement.

• The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Agreement.

• The Recipient may only bill up to the Agreement budget rate caps, unless and until an amendment to the budget is approved.

n. Retention

The Energy Commission shall retain 10 percent of any payment request or 10 percent of the total Energy Commission award at the end of the project. The Energy Commission has the sole discretion to decide which of these methods of retention will be used in this Agreement. The Recipient must submit a completed payment request requesting release of the retention within the required timeframe (see part e “Payment Requests” above in this term). The CAM will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget).

When the Commission withholds 10% retention from each invoice, the Recipient can choose to flow down the retention requirement to its subcontractors subject to the following restrictions and any other requirements in this Agreement:

• The Recipient shall not flow down retention requirements to U.S. Department of Energy national laboratory subcontractors.

• The retention flowed down to subcontractors can only be up to a total of 10% of the amount of Commission funds the subcontractor is to receive. The Recipient is responsible for carrying the retention for its funded portion of the entire Agreement and cannot pass its share of retention to subcontractors. Here are three examples:

  i. A subcontractor submits an invoice for $100,000 to the Recipient, and the Recipient in turn submits it to the Commission. The Commission will only pay $90,000 of the invoice and the Recipient can elect to pay only $90,000 to the subcontractor.
ii. The subcontractor is the U.S. Department of Energy national laboratory and it submits an advance request for $100,000 to the Recipient, including any other documents required in the Energy Commission’s U.S. Department of Energy Terms and Conditions. The Recipient in turn submits the advance requests to the Commission for payment. The Commission will pay the full amount of the advance requests to the Recipient and the Recipient must pay the full amount to the U.S. Department of Energy.

iii. The Recipient’s submits an invoice for its own staff in the amount of $20,000. The Commission will only pay $18,000 to the Recipient, and the Recipient cannot withhold the $2,000 difference from subcontractor reimbursements.

These requirements apply to all levels of subcontractors (e.g., a subcontractor to a subcontractor).

9. Travel and Per Diem

a. Travel not listed in the budget requires prior written authorization from the Commission Agreement Manager.

b. No reimbursement for food or beverages will be made other than for allowable per diem charges.

c. The Recipient will be reimbursed for authorized travel and per diem up to, but not to exceed, the rates allowed nonrepresented state employees. Current allowable travel reimbursement rates can be obtained from the Commission’s web site at http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.

d. Travel expense claims must detail expenses using the allowable rates, and the Recipient must sign and date each travel expense claim before submitting it to the Commission for payment. Expenses must be listed by trip, including dates and times of departure and return. Travel expense claims supporting receipts and expense documentation must be attached to the Recipient’s Payment Request. A vehicle license number is required when claiming mileage, parking, or toll charges. Questions regarding allowable travel expenses or per diem should be addressed to the Commission Agreement Manager.

10. Prevailing Wage

a. Requirement

Projects funded by the Energy Commission often involve construction, alteration, demolition, installation, repair, or maintenance work over $1,000. Such projects might be considered “public works” under the California Labor Code (See California Labor Code Section 1720 et seq. and Title 8 California Code of Regulations, Section 16000 et seq.). Public works projects require the payment of prevailing wages. Prevailing wage rates can be significantly higher than non-prevailing wage rates.

b. Determination of Project’s Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the Recipient is unsure whether the project funded by the Agreement is a “public work” as defined in the California Labor Code, it may wish to seek a timely determination from DIR or an appropriate court. As such processes can be time consuming, it may not be possible to obtain a timely determination before the date for performance of the Agreement.
By accepting this grant, the Recipient is fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wage. As a material term of this grant, the Recipient must either:

1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or

2) Assume that the project is a public work and ensure that:
   - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
   - The project budget for labor reflects these prevailing wage requirements; and
   - The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when such payment is required.

c. Subcontractors and Flow-down Requirements

The Recipient will ensure that its subcontractors also comply with the public works/prevailing wage requirements above. The Recipient will ensure that all agreements with its subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. The Recipient is responsible for any failure of its subcontractors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Recipient or its subcontractors to comply with the above requirements will constitute breach of this Agreement which excuses the Commission’s performance of this Agreement at the Commission’s option, and will be at the Recipient’s sole risk. In such a case, the Commission will refuse payment to the Recipient of any amount under this award and the Commission will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the Energy Commission and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Recipient and/or any of its subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Recipient’s budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

For public works projects, the Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.
g. Questions

If the Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship, or other significant requirements of California prevailing wage law, the Recipient should consult DIR and/or a qualified labor attorney before entering into this Agreement.

h. Certification

The Recipient will certify to the Energy Commission on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws; or (b) the project is not a public work requiring the payment of prevailing wages. In the latter case, the Recipient will provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and Commission will be relieved of any obligation to pay any funds.

11. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the project and any match-funded portion of the project. The Commission or its agent will have the right to examine the Recipient’s books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Recipient’s reports.

b. Accounting Procedures

The Recipient’s costs will be determined on the basis of its accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient uses generally accepted accounting principles and cost reimbursement practices. The Recipient’s cost accounting practices used in accumulating and reporting costs during the performance of this Agreement will be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Recipient’s accounting system will distinguish between direct and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.
c. Audit Rights

The Recipient will maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in the performance of this Agreement. The Energy Commission, another state agency, and/or a public accounting firm designated by the Energy Commission may audit the Recipient's accounting records at all reasonable times, with prior notice by the Energy Commission.

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit. The Energy Commission may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 22) for a period of ten (10) years after payment of the Recipient's final invoice.

The Recipient will allow the auditor(s) to access such records during normal business hours, and will allow interviews of any employees who might reasonably have information related to such records. The Recipient will include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.

d. Refund to the Energy Commission

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable incurred costs, the Recipient will repay the amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and the Recipient. If the Energy Commission does not receive such repayments, it will be entitled to take actions such as withholding further payments to the Recipient and seeking repayment from the Recipient.

e. Audit Cost

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The Energy Commission will bear the cost of conducting the audit unless the audit reveals an error detrimental to the Energy Commission that exceeds more than ten percent (10%) or $5,000 (whichever is greater) of: (1) the amount audited; or (2) if a royalty audit, the total royalties due in the period audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the Energy Commission for reasonable costs and expenses incurred by the Commission in conducting the audit.

f. Match or Cost Share

If the budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. The funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind, non-cash services), and report on match share expenditures on its request for payment.
12. **Workers’ Compensation Insurance**

a. The Recipient warrants that it carries Worker’s Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Agreement Manager satisfactory evidence of this insurance upon the Commission Agreement Manager’s request.

b. If the Recipient is self-insured for worker’s compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Agreement Manager satisfactory evidence of the insurance upon the Commission Agreement Manager’s request.

13. **Permits and Clearances**

The Recipient is responsible for ensuring that all necessary permits and environmental documents are prepared and that clearances are obtained from the appropriate agencies.

14. **Equipment**

Title to equipment acquired by the Recipient with grant funds will vest in the Recipient. The Recipient may use the equipment in the project or program for which it was acquired as long as needed, regardless of whether the project or program continues to be supported by grant funds. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without the Commission Agreement Manager’s prior written approval.

The Recipient may refer to the applicable federal regulations incorporated by reference in this Agreement for guidance regarding additional equipment requirements.

15. **Disputes**

In the event of an Agreement dispute or grievance between the Recipient and the Energy Commission, both parties may follow the procedure detailed below. The Recipient will continue with its responsibilities under this Agreement during any dispute.

a. **Commission Agreement Manager/Commission Agreement Officer**
   - The Recipient must first discuss the problem informally with the Commission Agreement Manager.
   - If the problem cannot be resolved at this stage, the Recipient must submit a Contractor Dispute Statement, along with any evidence, to the Commission Agreement Officer. The statement must include: (1) a summary of the issues in dispute; (2) the legal authority or other basis for the Recipient’s position; and (3) the remedy sought.

b. **Commission Agreement Officer/ Program Office Manager**
   - The Commission Agreement Officer and the Program Office Manager must make a determination on the problem within ten (10) working days of receipt of the Recipient’s Dispute Statement.
   - The Commission Agreement Officer will submit a Dispute Finding to the Recipient that includes: (1) a decision; and (2) an explanation of the decision.
   - The Recipient may appeal to the Commission’s Executive Director if it disagrees with the Commission Agreement Officer’s decision.
c. Executive Director

- The Recipient must submit an Appeal to the Commission’s Executive Director within ten (10) working days of receipt of the Commission Agreement Officer’s Dispute Finding. The Appeal must explain why the Commission Agreement Officer’s decision is unacceptable. The Recipient must include the following as attachments to the Appeal: (1) the Recipient Dispute Statement; (2) any supporting documents; and (3) the Dispute Finding.
- The Executive Director or his/her designee will meet with the Recipient to review the issues raised.
- A written decision signed by the Executive Director or his/her designee will be sent to the Recipient within twenty (20) working days of receipt of the Appeal. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting.
- If the Recipient disagrees with the Executive Director’s decision, it may appeal to the Commission at a regularly scheduled business meeting. The Commission Agreement Officer will inform the Recipient of the procedure for placing the appeal on a Commission Business Meeting Agenda.

16. Stop Work

The Commission Agreement Officer may, at any time by written notice to the Recipient, require the Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, noncompliance with the standard of performance, out of scope work, project delays, and misrepresentations.

a. Compliance. Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to minimize the incurrence of costs allocable to the work stopped.

b. Equitable Adjustment. The Energy Commission will make an equitable adjustment based upon a written request from the Recipient. The Recipient must make the adjustment request within thirty (30) days from the date of the stop work order.

c. Canceling a Stop Work Order. The Recipient may resume the work only upon receipt of written instructions from the Commission Agreement Officer.

17. Termination

a. Purpose

Because the Energy Commission is a state entity and provides funding on behalf of all California ratepayers, it must be able to terminate the Agreement upon the default of the Recipient and to proceed with the work required under the Agreement in any manner it deems proper. The Recipient agrees that upon any of the events triggering the termination of the Agreement by the Energy Commission, the Energy Commission has the right to terminate the Agreement, and it would constitute bad faith of the Recipient to interfere with the immediate termination of the Agreement by the Energy Commission.
b. Breach

The Energy Commission will provide the Recipient written notice of intent to terminate due to the Recipient’s breach. The Recipient will have fifteen (15) calendar days to fully perform or cure the breach. If the Recipient does not cure the breach within fifteen (15) days, the Energy Commission may, without prejudice to any of its other remedies, terminate this Agreement upon five (5) calendar days written notice to the Recipient. In this event, the Energy Commission will pay the Recipient only the reasonable value of the services performed satisfactorily by the Recipient before the notice of termination, as may be agreed upon by the parties or determined by a court of law, but not to exceed the maximum payable Agreement amount.

c. For Cause

The Energy Commission may, for cause, terminate this Agreement upon giving thirty (30) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Energy Commission will pay the Recipient for any services rendered and expenses incurred within thirty (30) days after notice of termination that the Recipient could not have avoided by reasonable efforts, in an amount not to exceed the maximum payable Agreement amount. The Recipient will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Recipient may purchase the equipment as provided by the terms of this Agreement, with approval of the Energy Commission.

The term “for cause” includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient’s inability to pay its debts as they become due and/or the Recipient’s default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

d. Without Cause

The Energy Commission may terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. Also, the Energy Commission will pay the Recipient for all satisfactory services rendered and expenses incurred within thirty (30) calendar days after notice of termination that the Recipient could not avoid by reasonable efforts, in an amount not to exceed the maximum payable under this Agreement.
18. **Indemnification**

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement.

19. **Confidentiality**

a. **Identification of Confidential Information**

1) Prior to the effective date of this Agreement, the Recipient will identify all products (or information contained within products) that it considers to be confidential, in addition to the legal basis for confidentiality, in Attachment 1 to this Exhibit. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in subsection (b).

2) During the Agreement, if the Recipient develops additional products (or information contained within products) not originally anticipated as confidential, it will follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission’s Executive Director will make the confidentiality determination. Following this determination, the confidential information may be added to Attachment 1 through a Letter of Agreement (see the “Amendments” section). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in subsection (b).

3) When submitting products containing confidential information, the Recipient will mark each page of any document containing confidential information as “confidential”, and present it in a sealed package to the Contracts, Grants, and Loans Office.

The Commission Agreement Manager may require the Recipient to submit a non-confidential version of the product, if it is feasible to separate the confidential information from the non-confidential information. The Recipient is not required to submit such products in a sealed package.

b. **Disclosure of Confidential Information**

The Energy Commission will only disclose confidential information under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508. All confidential information that is legally disclosed by the Recipient or any other entity will become a public record and will no longer be subject to the Energy Commission’s confidentiality designation.

c. **Waiver of Consequential Damages**

In no event will the Energy Commission, the California Public Utilities Commission, or the state of California be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of the Recipient’s confidential information, even if the Commission has been advised of the possibility of such damages.
Damages that the Energy Commission, the California Public Utilities Commission, and the state of California will not be responsible for include but are not limited to: lost profit; lost savings or revenue; lost goodwill; lost use of the product or any associated equipment; cost of capital; cost of any substitute equipment, facilities, or services; downtime; the claims of third parties including customers; and injury to property.

d. Limitations on the Recipient’s Disclosure of Products

1) During the Agreement, the Recipient must receive approval from the Commission Agreement Manager prior to disclosing the contents of any draft product to a third party. However, if the Energy Commission makes a public statement about the content of any product provided by the Recipient and the Recipient believes the statement is incorrect, the Recipient may state publicly what it believes is correct.

2) After any document submitted has become a part of the public records of the state, the Recipient may publish or use it at its own expense.

3) Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, the Recipient may not disclose any information provided to it by the Energy Commission for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential designation. At the election of the Commission Agreement Manager, the Recipient, its employees, and its subcontractors must execute a confidentiality agreement provided by the Commission Agreement Manager.

4) The Recipient will ensure that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement are informed about these disclosure limitations and will abide by them.

20. Pre-Existing and Independently Funded Intellectual Property

a. Ownership

The Energy Commission makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property. “Ownership” means exclusive possession and control of all rights to property, including the right to use and transfer property. Intellectual property licenses and royalties are discussed in Sections 21 and 22.

1) “Pre-existing intellectual property” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
2) “Independently funded intellectual property” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such products regardless of their funding source.

3) “Project-relevant pre-existing intellectual property” and “project-relevant independently funded intellectual property” mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

b. Project-Relevant Pre-Existing and Independently Funded Intellectual Property

1) Identification of Property

a) The Recipient will identify all project-relevant pre-existing intellectual property in Attachment 1 to this Exhibit prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement. Attachment 1 may be amended by a Letter of Agreement (see the “Amendments” section).

b) The Recipient will identify all project-relevant independently funded intellectual property and the source of funding for the property in Attachment 1 to this Exhibit within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

c) Failure to identify project-relevant pre-existing or independently funded intellectual property in Attachment 1 to this Exhibit may result in the property’s designation as “intellectual property” that is subject to licenses and royalties, as described in Sections 21 and 22.
2) **Access to Property**

The extent of Energy Commission and California Public Utilities Commission access to project-relevant pre-existing and independently funded intellectual property is limited to that reasonably necessary to: (a) demonstrate the validity of any premise, postulate, or conclusion referred to or expressed in any product; or (b) establish a baseline for repayment purposes.

Upon the Commission Agreement Manager’s request, the Recipient will provide the Commission Agreement Manager and any reviewers designated by the Energy Commission or the California Public Utilities Commission with access to review the Recipient’s project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 19, the Energy Commission will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) **Preservation of Property**

The Recipient will preserve any project-relevant pre-existing or independently funded intellectual property at its own expense for at least ten (10) years from the Agreement’s end date, unless the Recipient agrees to a longer retention period.

The Energy Commission and the California Public Utilities Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period.

### 21. **Intellectual Property**

a. **Ownership**

1) The Recipient owns all intellectual property, subject to the licenses described in subsection b.

   “**Intellectual property**” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

   “Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

2) The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.”

   “**Product**” means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
b. Intellectual Property Licenses

1) Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes. The licenses are transferable only to load-serving entities for the purpose described below.

2) Both the Energy Commission and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property to enhance the entities’ service to EPIC ratepayers. “Load-serving entity” means a company or other organization that provides electricity to EPIC ratepayers.

The licenses are transferable to third parties only for the purpose of facilitating the load-serving entity’s enhancement of service to EPIC ratepayers. Load-serving entities must obtain prior written approval from the Energy Commission or California Public Utilities Commission (whichever agency granted the load-serving entity the license) in order to transfer the license to a third party.

3) The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce written products created for Agreement reporting and management purposes, such as reports and summaries.

d) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 19, all license holders will only disclose the intellectual property under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508. All license holders will ensure that their officers, employees, and subcontractors who have access to the intellectual property are informed of and abide by the disclosure limitations in Section 19.

c. Energy Commission’s Rights to Inventions

“Invention” means intellectual property that is patentable.

1) March-In Rights

At the Energy Commission’s request, the Recipient will forfeit and assign to the Energy Commission all rights to any invention (with the exception of U.S. Department of Energy reserved rights) if the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention. The Energy Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the invention into the marketplace, including but not limited to seeking patent protection or licensing the invention.

2) Notice of Patent

If any patent is issued for an invention, the Recipient will send the Commission Agreement Manager written notice of the issuance within three (3) months of the issuance date. The notice must include the patent title, issuance number, and a general description of the invention.
3) Legal Notice

The Recipient and all persons and/or entities obtaining an ownership interest in patentable intellectual property must include the following statement within the specification of any United States patent application, and any subsequently issued patent for the invention:

“This invention was made with State of California support under California Energy Commission grant number EPC-17-020. The Energy Commission has certain rights to this invention.”

d. Access to and Preservation of Intellectual Property

1) Access to Intellectual Property

Upon the Commission Agreement Manager’s request, the Recipient will provide the Commission Agreement Manager and any individuals designated by the Energy Commission or the California Public Utilities Commission with access to the Recipient’s intellectual property in order to exercise the license and march-in rights described above, and to determine any royalty payments due under the Agreement.

2) Preservation of Intellectual Property

The Recipient will preserve intellectual property at its own expense for at least ten (10) years from the Agreement’s end date, unless the Recipient agrees to a longer retention period.

e. Intellectual Property Indemnity

The Recipient may not, in supplying work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party, and will take reasonable actions to avoid infringement.

The Recipient will defend and indemnify the Energy Commission and the California Public Utilities Commission from and against any claim, lawsuit, or other proceeding, loss, cost, liability, or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a product infringes any patent, copyright, trade secret, or other intellectual property right of any third party; or (ii) any third party claim arising out of the negligent or other tortious acts or omissions by the Recipient or its employees, subcontractors, or agents in connection with or related to the products or the Recipient’s performance under this Agreement.

22. Royalty Payments to the Commission

“Sale,” “sales,” and “sold” mean the sale, license, lease, or other transfer of intellectual property. “Sales Price” means the price at which intellectual property is sold, excluding sales tax.

a. The Recipient will pay the Energy Commission a royalty of one and one-half percent (1.5%) of the sales price of all sales for which the Recipient receives a payment, beginning on the Agreement’s effective date and extending for ten (10) years from the Agreement’s end date.

b. The Recipient will make payments in annual installments due on the first day of March in the calendar year immediately following the year during which the Recipient received any payment for sales.
c. The Recipient is not required to make a royalty payment for any calendar year in which payments for sales are less than $1000. Total royalty payments will be limited to three (3) times the amount of funds paid by the Energy Commission under the Agreement.

d. If intellectual property was developed in part with match funds during the Agreement term, the royalty payment will be reduced in accordance with the percentage of intellectual property development activities that were funded with match funds. For example, if 10% of the development activities were funded with match funds during the Agreement and payments for sales totaled $100,000 in one year, the Recipient would owe the Energy Commission $1350 for the year (1.5% of $100,000 = $1500; 10% of $1500 = $150; $1500 - $150 = $1350).

If the Energy Commission is providing funds to the Recipient under this Agreement as a project match partner and Energy Commission funds are used in part to develop intellectual property, the royalty payments will be reduced in accordance with the percentage of intellectual property development activities that were funded with non-Energy Commission funds during the Agreement term. For example, if 80% of the development activities were funded with Recipient and/or third party funds during the Agreement and payments for sales totaled $100,000 in one year, the Recipient would owe the Energy Commission $300 for the year (1.5% of $100,000 = $1500; 80% of $1500 = $1200; $1500 - $1200 = $300).

e. The Recipient may make an early buyout payment to the Energy Commission without a pre-payment penalty, as an alternative to making annual royalty payments for ten (10) years following the Agreement’s end date. The payment must be in a lump sum amount equal to one and a half (1.5) times the amount of funds paid by the Energy Commission under the Agreement and made within five (5) years of the Agreement’s end date. The payment amount due under the early buyout option will not be reduced by the percentage of match funds as described above.

f. The Recipient may not make any sale of intellectual property for consideration other than fair market value. Such activity constitutes breach of this Agreement, and will obligate the Recipient to repay within sixty (60) days the early buyout amount due. In the event of breach, the Energy Commission may exercise all rights and remedies available to it under law and at equity.

g. Royalty payments not made within fifteen (15) days of the due date will constitute breach of this Agreement. The payments will become debt obligations of the Recipient to the Energy Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.

h. The Recipient will maintain separate accounts within its financial and other records for the purpose of tracking components of sales and royalties due to the Energy Commission under this Agreement.

i. Payments to the Energy Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting, and Auditing section.

j. The Recipient will include these royalty provisions in its agreements with all subcontractors who develop or assist with the development of intellectual property.
23. **General Provisions**

a. **Governing Law**
   
   This Agreement is governed by the laws of the State of California as to interpretation and performance.

b. **Independent Capacity**

   In the performance of this Agreement, the Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the State of California.

c. **Assignment**

   This Agreement is not assignable or transferable by the Recipient either in whole or in part without the consent of the Energy Commission in the form of an amendment.

d. **Timeliness**

   Time is of the essence in this Agreement.

e. **Severability**

   If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

f. **Waiver**

   No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

g. **Assurances**

   The Commission reserves the right to seek further written assurances from the Recipient and its team that the work under this Agreement will be performed in accordance with the terms of the Agreement.

h. **Change in Business**

   1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:
      
      a) A change of address.
      b) A change in business name or ownership.
      c) The existence of any litigation or other legal proceeding affecting the project or Agreement.
      d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.
      e) Receipt of notice of any claim or potential claim against the Recipient for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.
2) The Recipient must provide the Commission Agreement Manager with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the Energy Commission does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the Commission is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the “Termination” section.

i. Access to Sites and Records

Energy Commission and California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.

j. Prior Dealings, Custom, or Trade Usage

These terms and conditions may not be modified or supplemented by prior dealings, custom, or trade usage.

k. Survival of Terms

Certain provisions will survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:

- Legal Statements on Products (included in Section 5, “Products”)
- Payment of Funds (Section 8)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Disputes (Section 15)
- Termination (Section 17)
- Indemnification (Section 18)
- Pre-Existing and Independently Funded Intellectual Property (Section 20)
- Intellectual Property (Section 21)
- Royalty Payments to the Commission (Section 22)
- Change in Business (see this section)
- Access to Sites and Records (see this section)

24. Certifications and Compliance

a. Federal, State, and Local Laws

The Recipient will comply with all applicable federal, state and local laws, rules and regulations.
b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).

2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
   • The dangers of drug abuse in the workplace;
   • The person’s or organization’s policy of maintaining a drug-free workplace;
   • Any available counseling, rehabilitation, and employee assistance programs; and
   • Penalties that may be imposed upon employees for drug abuse violations.

3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
   • Will receive a copy of the company’s drug-free policy statement; and
   • Will agree to abide by the terms of the company’s statement as a condition of employment on the project.
Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. National Labor Relations Board Certification (Not applicable to public entities)

The Recipient, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Recipient within the immediately preceding two year period because of the Recipient's failure to comply with an order of a federal court that orders the Recipient to comply with an order of the National Labor Relations Board.

e. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of $100,000, the Recipient acknowledges that:

1) It recognizes the importance of child and family support obligations and will fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

f. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;

2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or

3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

g. Americans With Disabilities Act

By signing this Agreement, the Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

25. Definitions

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).

- **Budget Reallocation** means the movement of funds between tasks identified in the budget (Exhibit B).
• **Confidential Information** means information that the Recipient has satisfactorily identified as confidential in Attachment 1 to this Exhibit and that the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505.

• **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement’s effective date.

• **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.

• **EPIC** means the Electric Program Investment Charge, an electricity ratepayer-funded surcharge authorized by the California Public Utilities Commission in December 2011.

• **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least $5,000. “Equipment” includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.

• **Independently Funded Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such products regardless of their funding source.

• **Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

• **Invention** means intellectual property that is patentable.
• **Load-serving entity** means a company or other organization that provides electricity to EPIC ratepayers.

• **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation’s discussion of match funding for guidelines specific to the project.

• **Materials** means the substances used to construct a finished object, commodity, device, article, or product, such as equipment.

• **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.

• **Pre-existing intellectual property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

• **Product** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.

• **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.

• **Project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property** mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

• **Sale, Sales, and Sold** mean the sale, license, lease, or other transfer of intellectual property.

• **Sales Price** means the price at which intellectual property is sold, excluding normal returns and allowances such as sales tax.

• **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.
Staff Report – Item 06

To: Sonoma Clean Power Authority Community Advisory Committee

From: Cordel Stillman, Director of Programs

Issue: Recommend Board Approval of a Contract for Construction Management Services with Sixth Dimension, LLC.

Date: November 29, 2018

Requested Action

Recommend that the Board of Directors (“Board”)

1. Approve a Contract for Construction Management Services with Sixth Dimension, LLC (“6th Dimension”), including a not-to-exceed amount of $547,483 with a term ending on September 30, 2020; and

2. Delegate authority to the Chief Executive Officer (“CEO”) as provided for in this staff report.

Discussion

Project Goal – To provide a headquarters for Sonoma Clean Power (“SCP”) that maintains a healthy workplace while showcasing energy efficiency and fuel switching in the built environment.

Staff issued an RFQ for construction management services on October 1, 2018. Responses to the RFQ from interested firms were received on October 19, 2018. Response were received from four firms. Three of those firms were interviewed on October 29th and 6th Dimension was selected as the most qualified firm to perform construction management. The 6th Dimension contract includes a not-to-exceed amount of $547,483. This cost will be spread over at least 2 fiscal years with a term ending on September 30, 2020, with the majority of cost expected in FY19/20.
Services will include the day-to-day management of interactions with the building contractor, including managing submittal review, payment applications, requests for information, change order review, and all of the other activities required for a successful construction project. In addition, during the design process they will provide constructability reviews of our architect’s work. They will also provide Industrial Hygiene services and estimating support.

**Delegation of Authority to the CEO:** Staff recommends delegation of authority to the CEO to (1) execute any contract with the 6th Dimension approved by the Board; and (2) to amend any such approved contract as necessary to administer or update the agreement as the project progresses provided that such amendment does not modify the not-to-exceed amount, term of the agreement and is in a form approved by the General Counsel.
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 (“SCPA”), a California joint powers authority, and Sixth Dimension, LLC a California limited liability company (“Consultant”). SCPA and Consultant may be individually referred to as a “Party” or collectively as “Parties.”

1. Scope of Services: Consultant agrees to provide any and all of the services as described in Exhibit A.

2. Performance Standard: Consultant warrants that it possesses the necessary training, experience and skill to competently and professionally provide the services described in Exhibit A. If SCPA determines that any of Consultant’s work is not in accordance with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession, SCPA, in its sole discretion, shall have the right to do any or all of the following:

   a. require Consultant to meet with SCPA to review the quality of Consultant’s work and resolve matters of concern;

   b. require Consultant to repeat the work at no additional charge until the work meets the level of competency and standard of care normally observed by a person in Consultant’s profession;

   c. terminate this Agreement pursuant to Section 6; or

   d. pursue any and all other remedies at law or in equity.

3. Payment: Consultant shall submit one invoice for 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; and

   c. Time spent in 1/10th hour increments.

Upon receipt of properly prepared invoicing, SCPA shall pay Consultant within thirty (30) calendar days for services provided in accordance with this Agreement, applying the following rates:

   a. Fees based on the Fee Schedule, as set forth in Exhibit B; and

   b. Reimbursable expenses must be pre-approved by SCPA.
4. NOT TO EXCEED AMOUNT. IN NO EVENT SHALL THE AMOUNT PAYABLE FOR SERVICES PERFORMED DURING THE TERM OF THIS AGREEMENT EXCEED FIVE HUNDRED FORTY-SEVEN THOUSAND, FOUR HUNDRED AND EIGHTY-THREE DOLLARS ($547,483). This dollar amount is not a guarantee that SCPA will pay that full amount to Consultant, but is merely a limit of potential SCPA expenditures under the Agreement.

5. Term of the Agreement: The initial term of this Agreement shall be from the Effective Date to September 30, 2020, unless terminated pursuant to Section 6 or amended by a written, executed amendment to the Agreement. Consultant understands and agrees that funding for costs under this Agreement after July 1, 2017 is subject to approval by SCPA’s Board of Directors of a budget including such funding, and that SCPA may terminate this Agreement pursuant to Section 6 below if such funding is not approved.

6. Termination:
   a. For Convenience. Notwithstanding any other provision of this Agreement, at any time and without cause, the CEO of SCPA shall have the unequivocal right to terminate this Agreement by giving thirty (30) calendar days written notice to the other Party.
   b. For Cause. Notwithstanding any other provision of this Agreement, should Consultant (i) fail to perform any of its material obligations and fails to cure such material default within fourteen (14) days, (ii) if the default cannot be cured within fourteen (14) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following notice from SCPA; or (iii) violate any of the terms of this Agreement, Consultant is in “Default” under the Agreement. In the event of Default, the CEO of SCPA may, upon providing Consultant written notice stating the reason for termination, immediately terminate this Agreement. In the event of termination, Consultant, within fourteen (14) calendar days following the date of termination, shall deliver to SCPA all materials and work product subject to Section 16 and shall submit to SCPA a final invoice for all outstanding payments.

7. Indemnification: Consultant agrees to accept all responsibility for loss or damage to any person or entity, including the SCPA, and to indemnify, hold harmless, and release the SCPA, its officers, agents, and employees, 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 Consultant’s performance of or obligations omissions under the Agreement. Consultant agrees to provide a complete defense for any claim or action brought against the SCPA based upon a claim relating to Consultant’s performance or obligations or omissions under this Agreement. Consultant’s obligations under this Section apply whether or not there is concurrent negligence on the SCPA’s part, but to the extent required by law, excluding liability due to the SCPA’s conduct, specifically SCPA’s sole
negligence, active negligence or willful misconduct. The SCPA shall have the right to select its legal counsel at Consultant’s expense, subject to Consultant’s approval, which shall not be unreasonably withheld.

8. 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 SCPA.

   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.

   b. **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 Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, SCPA requires and shall be entitled to coverage for the higher limits maintained by Consultant.

      i. 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 SCPA. Consultant is responsible for any deductible or self-insured retention and shall fund it upon SCPA’s written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving SCPA.

      ii. SCPA shall be an additional insured for liability arising out of operations by, or on behalf of, the Consultant in the performance of this Agreement.

      iii. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.

      iv. 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.

   c. **Automobile Liability.** Automobile Liability Insurance with Minimum Limit of $1,000,000 combined single limit per accident. Automobile Insurance shall apply to all owned autos. 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.
d. **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 SCPA. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

e. **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.

ii. The Certificate of Insurance must include the following reference: Sonoma Clean Power Authority.

iii. All required Evidence of Insurance shall be submitted to SCPA within 3 business days of the Effective Date. Consultant agrees to maintain current Evidence of Insurance on file with SCPA for the entire term of this Agreement.

iv. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma Clean Power Authority, Attn: Contract Administration, 50 Santa Rosa Avenue, Fifth Floor, 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 SCPA 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.
9. **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 SCPA and at no time shall Consultant be entitled to participate in any pension plan, worker’s compensation plan, insurance, bonus, or similar benefits SCPA provides its employees. In the event SCPA 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.

10. **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.

11. **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 SCPA 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 SCPA is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to, in a timely fashion, furnish SCPA with proof of payment of taxes on these earnings.

12. **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 SCPA for inspection at any reasonable time. Consultant shall maintain such records for a period of five (5) years following the expiration or termination of this Agreement.

13. **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 state 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 California Fair Political Practices Act requirements.

14. **Statutory Compliance:** Contractor shall comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the Services provided under this Agreement.
15. Nondiscrimination: Without limiting any other provision of this Agreement, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by reference.

16. Confidentiality, Ownership and Disclosure of Work Product: All information obtained by Consultant under this Agreement shall be deemed confidential (“Confidential Information”). Unless SCPA 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 SCPA, Consultant shall not share Confidential Information with any other person or entity outside of SCPA staff and SCPA authorized representatives. Consultant further agrees to execute non-disclosure agreements related to protecting Confidential Information as requested by SCPA. 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 (“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 shall be the property of SCPA. SCPA 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 SCPA all such Documents, which have not already been provided to SCPA in such form or format, as SCPA deems appropriate. Such Documents shall be and will remain the property of SCPA without restriction or limitation.

17. Assignment and Delegation: Parties shall not assign, delegate, sublet, or transfer any interest in, or duty under, this Agreement without the prior written consent of the other.

18. Written Communications: All written communications, including notices, bills and payments, may be made via electronic mail or to the following addresses:

TO SCPA: Sonoma Clean Power Authority
Attn: Contract Administration
50 Santa Rosa Avenue, 5th Floor
Santa Rosa, CA 95404
cstillman@sonomacleanpower.org

With Copies to: Sonoma Clean Power Authority
ATTN: General Counsel
50 Santa Rosa Avenue, 5th Floor
Santa Rosa, CA 95404
jmullan@sonomacleanpower.org
19. No Waiver of Breach: The waiver by SCPA 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.

20. 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.

21. Consent: Wherever in this Agreement the consent or approval of one Party is required to an act of the other Party, such consent or approval shall not be unreasonably withheld or delayed.

22. 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.

23. 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 Santa Rosa, California, or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

24. 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 Terms and Conditions.
☒ 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 24(a) applies.

25. 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.

26. 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. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.

27. 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.

28. Time of Essence: Time is and shall be of the essence of this Agreement and every provision within this Agreement.

29. Joint Powers Authority. Consultant hereby acknowledges that SCPA 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 SCPA 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 SCPA. Consultant agrees that SCPA 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 SCPA’s members, any cities or counties participating in SCPA’s community choice aggregation program, or any of SCPA’s retail customers in connection with 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

BY: ___________________________
   Geof Syphers
   Chief Executive Officer

DATE: ________________________

CONSULTANT

BY: ___________________________

TITLE: _________________________

DATE: ________________________

APPROVED AS TO FORM

BY: ___________________________
   General Counsel

DATE: ________________________

SCP - Sixth Dimension  151 of 224  9
EXHIBIT A

SCOPE OF SERVICES

This Exhibit A (Scope of Services) is attached to, and made a part of and incorporated by reference into the Agreement.

1 Definitions

1.1 “Agreement” means that Agreement for Professional Services between SCPA and Consultant dated December 7, 2018.

1.2 “Applicable Law” means those statutory and other obligations referenced in section 14 of the Agreement.

1.3 “Architect of Record” or “AOR” means the Architect of Record engaged by SCPA in connection with the Project.

1.4 “Construction Contract” means that contract(s) entered into by SCPA for demolition and construction in connection with the Project.

1.5 “Construction Contractor” means those contractor(s) engaged by SCPA to perform demolition and construction in connection with the Project.

1.6 “Contract Documents” means the Advertisement for Bids, Instruction to Bidders, Supplementary Instructions to Bidders, Bid Form, Agreement, General Conditions, Supplementary Conditions, Affirmative Action Program, Exhibits to the Construction Documents, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion and all other documents related to the solicitation and execution, and administration of the Construction Contract.

1.7 “Consultant” means Sixth Dimension

1.8 “Daily Reports” means the reports described in section 6.4.9(a).

1.9 “Deliverables” means the documents, reports and other items identified in section 4 of this Exhibit A.

1.10 “Monthly Project Update” has the meaning set forth in section 5.12.

1.11 “Project” means the SCPA Headquarters Project, located at 431 E Street, Santa Rosa, Ca., including all phases of work described as part of the Basic Services set forth herein, beginning with design and constructability reviews, demolition and construction and construction completion and closeout.

1.12 “Project Budget” means the document described in section 4.1 of this Exhibit A, as the same may be amended as provided for herein, and as reasonably requested by SCPA.

1.13 “Project Manager” means the individuals set forth in section 18 of the Agreement, as the same may be amended from time to time with advance written notice of one party to the other.
1.14 “Project Schedule” means the document described in section 4.2 of this Exhibit A, as the same may be amended as provided for herein, and as reasonably requested by SCPA.

1.15 “SCPA” means the Sonoma Clean Power Authority.

1.16 “Services” means the services to be provided by Consultant described in this Exhibit A, including Basic Services and any Additional Services requested by SCPA.

1.17 “Subconsultant” means those individuals and/or entities identified in section 2.2.2 below. “Subconsultants” may be used interchangeably with Subcontractor.

1.18 “Weekly Construction Impact Report” has the meaning set forth in section 6.4.9(c).

1.19 Any items not defined in this Exhibit A has the meaning set forth in the Contract Documents.

2 Consultant Team and Subconsultants

2.1 Adequate Personnel, Engagement of Subconsultants. Consultant shall have adequate personnel to complete Consultant’s Services. Consultant agrees to engage all appropriate Subconsultants, including in various specialized service areas, as are necessary for proper completion of Consultant’s Services. Consultant agrees to utilize its Subconsultants at Consultant’s sole expense.

2.2 Consultant’s Team. Consultant’s team consists of the following personnel working on the Project and the listed Subconsultants and Subcontractors below:

2.2.1 Consultant’s personnel:

(a) **Principal-in-Charge**: Mani Subramanian, to support the Project in an advisory capacity, services to be provided at no charge to SCPA.

(b) **Project Director**: Karl Schultz, assumes eight (8) hours per month, plus an additional forty (40) hours starting December 2018 to assist with the development of the prequalification package and general contractor documents.

(c) **Construction Manager**: Karl Schultz, at one-quarter time during design, full-time for the first three months of construction, and three-quarter time post-construction for the remainder of the Project.

(d) **Project Engineer**: Vamshi Boorla
2.2.2 Consultant’s Subconsultants, Subcontractors (collectively referred to as Subconsultants): Saylor Consulting, Integral Group, Consolidated/ATI

2.3 Management of Subconsultants. Consultant shall provide Construction Management Services, and is the prime consultant, with the other Subconsultants and Subcontractors serving as subconsultants.

2.4 Substitution, Addition of Personnel or Subconsultants. Consultant shall use only the personnel and subconsultants identified in this section, in performing the Services. If Consultant desires to substitute or add other personnel and/or Subconsultants, SCPA must provide advance, written approval to such changes.

2.5 Flow-Down Provisions, Subconsultants. Consultant shall require each of its Subconsultants to execute agreements containing a standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold SCPA harmless from any negligent errors or omissions of the Subconsultants.

3 Standard of Care

Consultant shall perform such Services consistent with the Performance Standard set forth in section 2 of the Agreement.

4 Consultant’s Project Budget, Project Schedule, and Deliverables

4.1 Project Budget. Consultant agrees to assist SCPA with review of a budget for the Project, which will include, among other details, the anticipated total of all of the separate contracts for the Project, existing budget data and possible contingencies. Consultant agrees to report regularly, on a schedule approved by SCPA, concerning the Project Budget, and any shortfalls or surpluses in the budget, recommendations for cost reductions, value engineering, or revisions, and/or reasonable adjustments in the scope of the Project. Consultant’s initial Project Budget is set forth in Exhibit A-1.

4.2 Project Schedule. Consultant agrees to assist SCPA with review of a schedule showing, among other details, the Project milestones, funding, design, design review, construction, and other deadlines applicable to the Project, and update the Project Schedule on a schedule and as requested by SCPA. Consultant’s initial Project Schedule is set forth in Exhibit A-1.

4.3 Deliverables.

4.3.1 General Requirements for Deliverables.

(a) Consultant is required to provide SCPA with the Deliverables identified below, and in some cases discussed in more detail in section 6 (Basic Services).

(b) Each Deliverable shall be reviewed by the SCPA. The SCPA shall determine the acceptability of the Deliverables.
(c) Consultant shall promptly correct deficiencies that SCPA identifies in the Deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of Deliverables to SCPA. Such corrections are considered Basic Services.

4.3.2 List of Deliverables. Consultant agrees to provide all Deliverables reasonably requested by SCPA, including, without limitation the following:

(a) Daily Reports, as described in section 6.4.9(a).
(b) Weekly Construction Impact Report, as described in section 6.4.9(c).
(c) Monthly Progress Updates, as described in section 5.12.
(d) Schedule of Submittals for AOR, Regulatory, and such other schedules of submittals reasonably requested by SCPA.
(e) Change Order and Claims Protocol, consistent with SCPA agreements, contracts and other Applicable Law.
(f) Change Order and Claims Logs, in a form acceptable to SCPA.
(g) Final Project Report, as described in section 6.5.5.
(h) Such other Deliverables as SCPA may request as the Project proceeds.

5 General Requirements

5.1 Except as expressly set forth in this Exhibit, Consultant agrees to provide full-time on-site construction management staff, including a representative of Consultant present at the Project site anytime construction on the Project occurs. SCPA and Consultant agree that Consultant is not responsible for provision of the construction field office or related equipment.

5.2 Consultant agrees to provide other Services as are reasonable and necessary to assist SCPA in the maintenance of a Project Budget and Project Schedule, as described in more detail below.

5.3 As part of the Consultant’s Services, Consultant agrees to carry out all duties and responsibilities listed herein; however, Consultant does not have authority to:

5.3.1 Authorize a change in the cost, scope, or time of performance under the Construction Contract;
5.3.2 Issue Notices of Completion;
5.3.3 Issue contracts; and/or
5.3.4 Approve pay requests.

Consultant shall make findings and recommendations associated with such effort, or any effort requested by SCPA to carry out the duties listed herein.

5.4 Consultant agrees to promptly report to SCPA any non-conformity or potential problems with SCPA’s Project objectives of quality construction, timely completion, and economy, with SCPA’s Project Program, Construction Budget, and Project Schedule.

5.5 Review of Project Documents. Consultant shall review SCPA data, reports, plans, and other information regarding the Project at SCPA’s request, including as specifically described in this Agreement.

5.6 Professional Services Covered. Services shall include all professional services within the scope of Consultant’s professional discipline (including the professional disciplines of Consultant’s Subconsultants) necessary to accomplish the tasks and deliverables defined in this Exhibit A.

5.7 Ability to Complete Services. Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant’s Services.

5.8 Stakeholder and Staff Meetings. Performance of Services will require Consultant to work with, meet with, and attend meetings with SCPA staff, the SCPA Board of Directors, the SCPA Community Advisory Committee, with other governmental agencies, the AOR, Construction Contractor, and with such other consultants as SCPA determines necessary, for performance of Consultant’s Services under this Agreement, including, but not limited to, Consultant’s Services related to coordination with other consultants.

5.9 Written Evaluations. Consultant shall provide SCPA with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Consultant’s Services and its incorporation of services with the Project.

5.10 Coordination of Services. Consultant shall fully coordinate its Services with the services of all Subconsultants and other SCPA consultants involved in completing the Project under the Agreement. The objective of this coordination, among other goals, shall be to develop and provide the Deliverables set forth in the Agreement. Consultant shall immediately advise SCPA in writing if any SCPA staff, Subconsultants or other SCPA consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-compliance.

5.11 Safety Training, Protocols and Requirements for Consultant, Subconsultants.

5.11.1 Consultant agrees to provide appropriate safety training for Consultant’s personnel and Subconsultants.
5.11.2 Consultant shall review and train Consultant’s personnel and Subconsultants in appropriate safety procedures for work in the Project construction area.

5.11.3 Consultant shall require all personnel and Subconsultants under Consultant’s direction to wear personal protection equipment (PPE) when entering the construction area, such as hard hats and any other safety equipment such as vests and appropriate shoes, ear and eye protection whenever these precautions are required by Applicable Law, including specifically Occupational Safety and Health Administration safety standards.

5.11.4 Consultant shall provide all safety equipment for Consultant's personnel and Subconsultants.

5.11.5 Consultant agrees to maintain current Injury, Illness Prevention Program (“IIPP”) forms/documentation required under OSHA for all of Consultant and Subconsultant staff and for SCPA staff working on site.

5.12 Monthly Project Update. Consultant agrees to provide SCPA with a monthly Project Update, which will be a written report in a format acceptable to the SCPA, describing the general status, problems, concerns, and progress including, but not limited to, Project description, executive summary, Project status summary, Project Budget and costs, Project Schedule, Project summaries, support information (as appropriate such as Project tracking logs), agency/staff updates, communications of significance, and outreach/procurement reports. In addition, the Monthly Project Update will include, without limitation, the Consultant’s percent complete for each phase of the work, identify any actions and approvals needed, and any problems in performing the Services (whether by Consultant, SCPA or any third party) of which Consultant becomes aware. The Monthly Project Update

6 Basic Services. Consultant shall provide and perform these generally described and specified Basic Services as indicated below for the Project:

6.1 Basic Services includes the performance of any, and all tasks necessary to comply with the General Requirements set forth above.

6.2 PRE-CONSTRUCTION ASSISTANCE

6.2.1 Design Submittal and Constructability Review

(a) Consultant agrees to review the AOR’s submittals for purposes of determining consistency with the Project program, Project Budget, and Project Schedule. Consultant agrees to report inconsistencies reported in writing to SCPA. As requested by SCPA, Consultant agrees to meet with Design Professional to discuss its review findings.

(b) Consultant agrees to consult with SCPA, AOR, and others, as approved by SCPA, to analyze, evaluate, and make recommendations regarding elements of the Project site, including Construction Contractor access, storage, site
offices, Project site limit lines, coordination with existing or proposed utility systems, and the effect of construction on adjacent buildings, walkways, and streets.

(c) Consultant agrees to review the AOR's submittals of design development documents and evaluate the proposed Project design features, systems and materials, and recommend alternatives that would, in the Consultant's opinion, increase constructability, lessen the construction time, or reduce the Project Budget without deviating from minimum Project program requirements ("Constructability Review"). Consultant's Constructability Review will be a written evaluation to SCPA that includes conclusions, alternatives, and recommendations. As requested by SCPA, Consultant agrees to meet with AOR to discuss Constructability Review findings.

(d) Consultant agrees to confirm that the Drawings and Specifications are consistent with the SCPA's Contract Documents.

(e) Consultant agrees to check for coordination of the documents in terms of consistency and conformity each part with all other parts.

(f) Consultant agrees to develop a recommendation list of cost items that the Construction Contractor should include in its cost breakdown (as required by the Contract Documents). Consultant agrees to submit this list to SCPA for inclusion in the Contract Documents.

(g) Upon request from SCPA, Consultant agrees to prepare a draft Project Schedule for inclusion in the Contract Documents.

(h) Consultant agrees to schedule and conduct a final Constructability Review on the 100% construction documents.

6.2.2 Project Construction Solicitation.

(a) In general, Consultant agrees to provide SCPA with assistance in advance of and during preparation of the solicitation and award of the Construction Contract(s) for the Project, including multiple solicitation should SCPA elect to complete construction on the Project in phases.

(b) In particular, Consultant agrees to:

(i) Assist SCPA and its consultants in developing prequalification criteria, and preparation of prequalification documents, as requested by SCPA;
(ii) Assist SCPA and its consultants in preparation of documents related to the solicitation of construction work on the Project;

(iii) Actively encourage contractors with known expertise on projects of similar size and scope to bid on the Project; and

(iv) As requested by SCPA, Consultant agrees to assist with preparation and conducting the pre-bid conferences, and assist in the preparation of required Addenda to be issued by SCPA, and with bid review. SCPA and Consultant agree that Consultant is not responsible for the costs associated with bid package reproduction services or extensive large scale document reproduction.

6.3 PROJECT SUPPORT SERVICES

6.3.1 Management Systems and Controls

(a) Consultant shall in consultation with the SCPA and according to any applicable SCPA approved policies, procedures, and standards, implement procedures, forms and reporting requirements for the Project.

(b) Consultant agrees to work with SCPA to develop a communication protocol for the Project that allows for decision making at appropriate levels of responsibility and accountability.

(c) Consultant agrees to develop and implement a management controls systems to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Project.

(d) Meetings: Consultant agrees to participate in Project management team meetings, and construction management team meetings conducted by SCPA and attended by principal representatives of SCPA, and others, at a frequency that SCPA deems necessary. Consultant may be required to maintain and distribute written minutes of the meeting(s) within five (5) calendar days of each meeting. Consultant shall attend and manage weekly or bi-weekly meetings with Project management staff, users and applicable other project consultants as required, and shall prepare agendas, maintain records and distribute minutes of such meetings.

(e) Permits and Regulatory Requirements: Consultant agrees to coordinate and attend meetings with SCPA staff, governmental agencies, including those necessary to assist SCPA in obtaining the requisite permits for Project and managing the permits and utilities service
agreements/connections process. At SCPA’s request, Consultant agrees to assist SCPA, and its AOR, Construction Contractor, or consultants/contractors with any aspect of the permitting and Project approvals process.

6.3.2 Project Scheduling

(a) With SCPA, Consultant agrees to develop, update and maintain the Project Schedule, in coordination with AOR, other SCPA Construction Contractors, or other SCPA consultants/contractors, to include milestones and activities determined for the Project.

(b) In connection with development and maintenance of the Project Schedule, Consultant agrees to monitor any schedule(s) of development from the AOR, Construction Contractor or other SCPA contractors/consultants for conformance with the Project Schedule, including relevant milestone dates.

(c) As necessary, Consultant agrees to advise SCPA on methods to adjust progress to meet Project Schedule milestone dates, including recommendations to adjust the Project Schedule to be consistent with current conditions.

6.3.3 Project Cost Reporting and Project Budget Coordination

(a) At SCPA’s request, Consultant agrees to review AOR, Construction Contractor, other SCPA contractors or consultant’s invoices and provide recommendations for payment to the SCPA.

(b) Consultant agrees to review with SCPA monthly or quarterly cost reporting of forecasted expenditures for the project.

(c) Consultant agrees to provide the SCPA with a Monthly Project Update, as described in more detail in this Exhibit A.

6.3.4 Construction Contractor Labor Compliance. Consultant agrees to oversee and ensure Construction Contractor compliance with any prevailing wage and related requirements, to the extent required by Applicable Law (including the California Labor Code), the Contract Documents, or Construction Contract.

6.4 CONSTRUCTION PHASE

6.4.1 Construction Management

(a) Consultant agrees to perform any administrative and management functions in the Construction Contract or Contract Documents for the Project, as may be assigned by SCPA. Consultant agrees to use Consultant’s best efforts to enforce all Construction Contract and Contract Document requirements including, but not limited to, scheduling,
claims submission, warranties, and contract close out requirements, and shall do so consistent with the latest approved budget and Project Schedule and Project Budget. Consultant services include, but are not limited to, the following:

(i) Provide overall management control and coordination of all the parties involved in the construction phase including, but not limited to Construction Contractor, SCPA’s material, equipment or furniture suppliers/vendors, inspection and/or quality control consultants.

(ii) Provide overall coordination with state and local authorities.

(iii) Prepare and process letters, paperwork and other related elements for the administration of the Project.

(iv) Maintain construction files to properly organize and keep all necessary Project documents.

(v) Maintain at the Project site a current copy of approved documents including but not limited to: Project drawings and all such related documents.

(vi) Consultant agrees to confirm that the Construction Contractor prepares “Record Drawings” and “As-Built” documents in conformance with the Construction Contract and Contract Documents.

(vii) Monitor Contractors’ compliance with Construction Contract and Contract Document requirements and recommend courses of action to SCPA when Construction Contractor fails to fulfill contractual requirements.

(viii) In coordination with Construction Contractor, document pre-construction conditions of the site and adjacent improvements through photographs. Consultant shall advise SCPA if other measures are reasonably necessary.

(ix) Monitor Construction Contractor’s compliance with SCPA’s Construction Waste Management requirements.

6.4.2 Meetings and Conferences

(a) Consultant agrees to coordinate the pre-construction conferences, weekly coordination meetings and other meetings as necessary with the Construction Contractor and its sub-contractors, Subconsultants and SCPA representatives to discuss procedures, progress, problems, scheduling, quality and other appropriate matters.
Consultant agrees to prepare agendas for each meeting; take minutes of each meeting, indicating actions items and responsible parties, transcribe, and distribute copies to all participants for meetings led by Consultant.

(b) Consultant agrees to schedule, coordinate and participate in meetings and conferences with SCPA, its departments and consultants, SCPA affiliated groups, government agencies, and private groups as required by the SCPA during the administration of the Construction Contract and Contract Documents and provide action minutes from these sessions when appropriate.

(c) As required by SCPA, all Consultant personnel assigned to the Project shall have cellular/mobile telephones sufficient to permit 24 hour a day access for response to emergency situations that may arise.

6.4.3 Shop Drawings and Submittals

(a) Consultant agrees to coordinate the submittal review process required in the Construction Contract. Consultant agrees to maintain records of required submittals, dates and actions taken, and shall notify any party in writing who is delaying any submittal in process.

(b) Consultant agrees to coordinate the submittal review process with AOR. Consultant agrees to maintain records of AOR submittal reviews, dates and actions taken, and shall notify AOR and SCPA in writing if AOR review is delaying any submittal in process.

(c) Consultant agrees to coordinate the submittal review process with governmental agencies. Consultant agrees to maintain records of governmental agency submittal reviews, dates and actions taken, and shall notify SCPA in writing if governmental agency review is delaying any submittal in process.

6.4.4 Project Schedules

(a) Consultant agrees to receive, forward to SCPA and review the Construction Contractor’s schedule of submittals. Consultant shall review Construction Contractor’s schedule(s) for conformity with the Construction Contract, Contract Documents and conformity with the Project Schedule and make recommendations to SCPA regarding acceptance. Where Construction Contractor’s schedule(s) do not conform, Consultant will take appropriate measures to secure compliance, subject to SCPA approval. However, Consultant’s review shall not dictate Construction Contractor’s means and/or methods of performance.

(b) Consultant agrees to recommend to SCPA Project Schedule adjustments and actions to be taken by SCPA in case of
changed or unexpected conditions, or otherwise as necessary to maintain schedule or mitigate delays.

(c) Consultant agrees to receive and review the Construction Contractor’s weekly schedule submittals and compare progress against latest accepted Project Schedule updates.

(d) Consultant agrees to incorporate Construction Contractor’s schedule updates and revisions into the Project Schedule.

6.4.5 Proposed Change Order/Change Orders

(a) Assist SCPA in developing and managing the owner-initiated change order process for project(s).

(b) Recommend to SCPA the issuance of Requests for Change Order Proposals to Construction Contractor whenever it appears necessary. Prepare and issue Requests for Change Order Proposal upon concurrence from SCPA.

(c) Upon receipt of a change order proposal from a Construction Contractor, Consultant agrees to conduct negotiations with Construction Contractor and provide SCPA with written recommendations on acceptance, rejection, price, time, and any other appropriate decision and/or action, with reasonable supporting documentation including, where appropriate, schedule analysis, calculations, takeoffs, etc.

(d) Consultant agrees to maintain a change order log for the Project and implement procedures to expedite processing of proposed change orders.

(e) Consultant may authorize minor variations in the work from the requirements of the Contract Documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the Contract Documents. Consultant agrees to provide to the SCPA copies of these authorizations.

(f) Consultant agrees to log Construction Contractor submittals to governmental agencies and any subsequent actions. Consultant agrees to notify SCPA promptly if governmental agency review has the potential to impact the Project Schedule.

(g) Consistent with the timeframes set forth in the Construction Contract and Contract Documents, Consultant agrees to: (i) immediately notify SCPA of any potential or actual claim on the Project; and (ii) review, in consultation with SCPA and SCPA Counsel, all Construction Contractor claims and recommend to SCPA in writing a course of action including acceptance, rejection, price, time, or other appropriate decision or response.
6.4.6 Quality Assurance

(a) Consultant shall implement a quality assurance program to monitor work of the Construction Contractor to determine that the work is being performed in accordance with the requirements of the respective Contract Documents. As appropriate, with assistance of the AOR, Consultant agrees to make recommendations to SCPA regarding special inspection or testing of work that is not in accordance with the provisions of the Contract Documents.

(b) To guard SCPA against defects in the work of the Construction Contractor, Consultant agrees to establish and implement a quality assurance program to monitor the quality and workmanship of construction for conformity with:

(i) The Contract Documents;

(ii) Applicable Law; and

(iii) Accepted industry standards.

(c) Where the work of Construction Contractor does not conform as set forth above, Consultant shall:

(i) Notify SCPA of any non-conforming work;

(ii) Maintain a list of observed defects and omissions on the Project and provide a copy of the list to the SCPA and the Construction Contractor monthly, or more often as needed;

(iii) With SCPA approval, Consultant shall take action(s) necessary to compel the Construction Contractor to correct non-conforming work including recommending that SCPA issue a Stop Work Notice when necessary.

(d) Perform daily Project inspections and maintain copies of daily inspection reports, daily logs and other documentation of inspections as available.

(e) Consultant agrees to facilitate coordination of all Construction Contractor start up, testing and training activities with SCPA whenever arising, whether at Project commencement, Project close-out or during Construction Contract performance.

6.4.7 Governmental Agency Coordination. Consultant agrees to verify that the Project’s construction adheres to Applicable Law, including, without limitation, environmental requirements such as those promulgated by the Environmental Protection Agency ("EPA"), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management and State of California and
Regional Water Quality Control Board laws, regulations and rules. Consultant shall verify that Construction Contractor and its subcontractors comply with any requirements applicable to the Project.

6.4.8 Project Safety

(a) Construction Contractor’s Safety Programs. Consultant agrees to verify that Construction Contractor develops and administers safety programs as required by Construction Contract and/or Contract Documents.

(b) Other Safety Programs. Consultant agrees to verify that other contractors, consultants or subconsultants working on the Project develop and implement project specific safety programs that include, without limitation: precautions, plans and safety measures specifically directed towards public safety and precluding public access to construction site or public exposure to construction hazardous conditions.

6.4.9 Project Reporting

(a) Consultant agrees to record the progress of work on the project throughout the project duration when construction activity is taking place, including, without limitation: preparation of Daily Reports for the Project containing a record of weather, the presence of Construction Contractor, consultants and/or subconsultants, major equipment utilized, work accomplished, problems encountered, and other relevant data.

(b) In connection with Consultant’s Daily Reports, Consultant agrees to provide SCPA with a photographic record of progress on the project, problem areas, work involved in disputes, changed or nonconforming work, and other work items or areas of work which need an enhanced or visual means of recording to provide a full and complete record.

(c) Consultant agrees to provide SCPA with a Weekly Construction Impact Report for the project which includes a summary of construction activities with potential impact to facility operations and personnel in a format acceptable to the SCPA.

6.5 PROJECT COMPLETION

6.5.1 Punchlist. Following Construction Contractor’s written notice of Substantial Completion, Consultant shall, in consultation with SCPA, prepare a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents (“Punchlist”). Following SCPA approval of the Punchlist, Consultant shall provide this list to the Construction Contractor and monitor Construction Contractor’s performance and completion of work to address the Punchlist. Upon
completion of work to address the Punchlist, Consultant will review it with the SCPA and verify, in consultation with SCPA, whether the work addresses Punchlist items and otherwise complies with applicable provisions of the Construction Contract and Contract Documents.

6.5.2 At the conclusion of all corrective actions to address all Punchlist items, Consultant agrees to make a final comprehensive review of the Project, prepare a report to SCPA which will indicate whether Consultant finds the work performed acceptable under the Contract Documents, and also make recommendations to SCPA about issuance of Notice of Completion to the Construction Contractor and assist SCPA with preparation and processing of final payment consistent with Contract Documents.

6.5.3 Consultant shall participate in documentation tracking, transmission and delivery to SCPA of all keys, manuals, record drawings and maintenance stock in a timely manner and obtain all such documentation and other closeout submittals from Construction Contractor and transmit all to SCPA in a timely manner.

6.5.4 At the conclusion of the Project, Consultant shall provide SCPA a Final Project Report, which will include final cost of the project and explanation of any deviations from originally estimated costs; summary of the scheduled and actual completion dates and reasons for variations.

6.5.5 In addition to the Final Project Report, as requested by SCPA, Consultant will assist SCPA in preparing final project accountings and close out reports for all above indicated report systems.

6.5.6 Occupancy/Move-In after Construction

(a) Consultant agrees to assist SCPA in obtaining all necessary permits and licensing including occupancy or operating Permits and final approvals from governmental agencies, including, without limitation: accompanying governmental officials (for example: Fire Marshal, Licensing Authorities, etc.) during inspections of the Project, assisting and preparing and submitting proper documentation to the appropriate approving agencies, and assisting in final testing and other necessary activities.

(b) Consultant agrees to observe, with SCPA, the Construction Contractor and its subcontractors check-outs of utilities, operational systems and equipment, and start-up and testing. Consultant will maintain records of start-up and testing as provided by the Construction Contractor, notify SCPA of compliance with applicable provisions of the contract that all work has been performed and accepted, and that all systems are complete and operative.
(c) Consultant will assist SCPA and its consultants with transition planning and move-in activities pertaining to construction.

6.5.7 Facility Systems Training, Orientation & Education. Consultant will coordinate the facilities systems training efforts for orientation and education of building maintenance personnel and occupant users, as applicable.

6.6 FINAL DOCUMENTS

Consultant agrees to review, monitor and compile final copies of all as-built drawings, maintenance and operations manuals, and other closeout documents upon completion of the Project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.

6.7 WARRANTY

6.7.1 Consultant will develop and implement warranty inspection and warranty work procedures that Construction Contractor and its subcontractors are to follow. Unless otherwise approved by SCPA, such warranty procedures shall include a twelve (12) month call back period and a final warranty inspection nine (9) months after project completion date to inspect the Project and identify any outstanding warranty work.

6.7.2 Consultant shall identify all warranty items, length of warranty periods, names and addresses of contact personnel. Consultant also agrees to establish procedures for SCPA tracking of Construction Contractor provided maintenance during the warranty period.

6.7.3 Consultant shall participate in initial implementation of the project warranty period(s) for the management of any warranty compliance measures, call backs, and/or conformance requirements.

6.8 CONSULTANT’S RECORDS, POST-CONSTRUCTION ASSISTANCE

6.8.1 SCPA and SCPA’s authorized representative shall have access to, the right to audit and the right to copy pertinent parts of the Consultant’s books and records. Consultant’s records shall include but not be limited to accounting records (hard copy, as well as computer readable data); contracts; payroll records; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this Agreement.

6.8.2 All such books and records shall be preserved for a period of at least 3 years from the date of Final Payment under this Agreement.

6.8.3 Consultant agrees to make files available for inspection and copying by SCPA upon reasonable notice. SCPA or SCPA’s
authorized representative shall have access to the Consultant's premises and records for inspection and auditing during normal business hours, shall be allowed to interview Consultant's employees, and be provided adequate and appropriate work space in order to conduct audits in compliance with this Article.

6.8.4 Consultant agrees to provide reasonable assistance to SCPA in connection with disputes between SCPA, its AOR, Construction Contractor and other parties connected with the Project that may arise following completion of the Project. Such reasonable assistance shall be considered part of Basic Services.

7 Additional Services

7.1 All Services identified in the Agreement, including but not limited to the foregoing sections of this Exhibit A are “Basic Services.” Any services in addition to Basic Services, are referred to hereafter as “Additional Services”. Additional Services must be authorized by SCPA in writing prior to performance.

7.2 Consultant shall provide additional services only by advanced, written request from SCPA. Consultant at SCPA’s request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort and Consultant’s proposed maximum compensation amount Reimbursable Expense(s), for such services based on any rates previously provided to SCPA. The Additional Services scope, schedule and maximum compensation shall be negotiated and agreed to by SCPA and Consultant prior to commencement of any of the Additional Services. Payment for Additional Services is subject to all requirements and restrictions in this Agreement.

7.3 Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant’s errors, omissions or conflicts of any type in Consultant’s work product. Any such services shall be performed at no cost to SCPA, including, but not limited to, any required corrections or revisions to reports, drawings or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to receipt from SCPA of written notice, agreement and authorization to perform the Additional Services.

END OF EXHIBIT A
EXHIBIT B

FEE SCHEDULE

This Exhibit B (Fee Schedule) is attached to, and made a part of and incorporated by reference into the Agreement.

1  Amount of Compensation for Services of Consultant

   1.1 THE AMOUNT OF COMPENSATION TO BE PAID TO CONSULTANT FOR ALL SERVICES UNDER THIS AGREEMENT SHALL NOT EXCEED THE NOT-TO-EXCEED AMOUNT (“NTE”) SET FORTH IN SECTION 4 OF THE AGREEMENT.

   1.2 Total compensation due Consultant shall be the actual amount invoiced, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all Subconsultants and their reimbursables and shall constitute full compensation for the Services.

   1.3 “Reimbursable Expenses” means job-related expenses directly incurred by Consultant in the performance of Services provided under the Agreement.

       1.3.1 Reimbursable Expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs and similar, as requested by the SCPA. Reimbursable Expenses shall be billed at actual cost.

       1.3.2 Without limitation, Reimbursable Expenses does not include normal travel expenses for Consultant and Subconsultants to and from the Project site and to SCPA offices or Consultant and Subconsultants costs for the use/service of their electronic equipment/devices (owned or leased). Consultant and Subconsultant office space, office supplies, computers, or any office function/administration overhead costs are not Reimbursable Expenses.

2  Additional Services. SCPA only agrees to compensate Consultant for Additional Services, to the extent and under the terms such Additional Services are approved by SCPA in accordance with the requirements for Additional Services set forth in Exhibit A.

END OF EXHIBIT B
EXHIBIT D
PREVAILING WAGE REQUIREMENTS

1 General. Pursuant to California Labor Code § 1720 et seq., this Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.

2 Rates. These prevailing rates are on file with SCPA and are available online at http://www.dir.ca.gov/DLSR. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.

3 Compliance. The Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.

4 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Consultant and its Subconsultants are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5. This requirement is in addition to those set forth in Section 15 of the Agreement.

5 Labor Code Requirements.

5.1 Eight Hour Day. Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day’s work under this Agreement.

5.2 Pursuant to Labor Code § 1813, Consultant will forfeit to SCPA as a penalty, the sum of $25.00 for each day during which a worker employed by Consultant or any Subconsultant is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.

5.3 Apprentices. Consultant is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.

5.4 Notices. Pursuant to Labor Code § 1771.4, Consultant is required to post all job site notices prescribed by Laws.

5.5 Prevailing Wages. Each worker performing Work under this Agreement that is covered under Labor Code §§ 1720 or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with SCPA and available online at http://www.dir.ca.gov/dlsr. Consultant must post a copy of the applicable prevailing rates at the Project site.
5.6 Penalties. Pursuant to Labor Code § 1775, Consultant and any Subconsultant will forfeit to SCPA as a penalty up to $200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Consultant must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

5.7 Federal Requirements. If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Consultant and its Subconsultants are required to pay the higher of the currently applicable state or federal prevailing wage rates.

5.8 Payroll Records. Consultant must comply with the provisions of Labor Code §§ 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.

5.9 Consultant and Subconsultant Obligations. Consultant and each Subconsultant must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Services. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

5.9.1 The information contained in the payroll record is true and correct; and

5.9.2 Consultant or the Subconsultant has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Services performed by its employees on the Project.

5.10 Certified Record. A certified copy of an employee’s payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to SCPA, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

5.11 Enforcement. Upon notice of noncompliance with Labor Code § 1776, Consultant or Subconsultant has ten (10) days in which to comply with the requirements of this section. If Consultant or Subconsultant fails to do so within the ten (10) day period, Consultant or Subconsultant will forfeit a penalty of $100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Consultant.

END OF EXHIBIT D
To:       Sonoma Clean Power Authority Community Advisory Committee
From:    Rachel Kuykendall, Program Manager
Item:    Receive an Update and Provide Feedback on the GridSavvy Community; Ratify Prior Contract and Recommend Board Authorization for the CEO to Negotiate and Execute Updated, Expanded Agreement with Olivine, Inc. to Support the GridSavvy Community
Date:    November 29, 2018

Requested Actions

Staff requests that the Community Advisory Committee (“CAC”):

1. Receive an Update and Provide Feedback on Sonoma Clean Power Authority’s (“SCP”) GridSavvy Community;

2. Recommend that the SCP Board of Directors Ratify SCP’s Prior Contract with Olivine, Inc. (“Olivine”) for GridSavvy Community Services; and

3. Recommend that the SCP Board of Directors (“Board”) Delegate Authority to the Chief Executive Officer (“CEO”) to Negotiate, Execute and subsequently amend an Updated, Expanded Contract with Olivine to Reflect the Current GridSavvy Community Scope, Subject to the Conditions set forth in this Staff Report with an aggregate not-to-exceed amount of $737,000 over the term.

Discussion

1. **Update on SCP GridSavvy Community**

In Summer of 2017, SCP staff began conversations with Olivine around the potential for the creation of a distributed energy resource (“DER”) platform and assistance with bidding DERs into California Independent System Operator (“CAISO”) markets. SCP’s goals for the program include:
Make demand response ("DR") easy for SCP customers. Customers should be able to easily enroll, unenroll, and transition between multiple demand response offerings.

Allow multiple providers and their technologies to participate. Private companies offering DER products, controls and software should see the SCP DER Community as a valuable means of accelerating customer adoption, and this value is greater than “capturing” a customer by making it difficult for them to leave a current program.

Build a portfolio of resources. Provide a variety of technologies and resources that can participate in CAISO markets and, eventually serve as resource adequacy ("RA") resources for SCP.

Mitigate compliance risk. SCP could face liability for poorly performing actors in the DR space relating to CAISO compliance. Generally, DER market participation causes a load deduction which must be integrated into SCP’s CAISO load forecast. When 3rd party providers do not file their program impacts through SCP, then SCP is liable for the error in forecast caused by the 3rd party.

The first step in the GridSavvy Community was building a GridSavvy Community centered around the approximately 2,000 residential electric vehicle ("EV") chargers deployed to SCP customers since November 2016. Each of these EV chargers is able to receive a remote signal to ramp up or down charging speed based on grid needs. Currently, 526 of SCP’s customers with EV chargers are enrolled in the GridSavvy Community.

In Summer of 2018, SCP began to “test” the chargers by scheduling its first DR events. The team has generally found that not many of the available chargers are in use (i.e., have a car plugged in and charging) during the event windows. The information received back from the chargers during an event is valuable in determining how the chargers could interact with other GridSavvy technologies like thermostats and water heaters.

On November 16, 2018, a new GridSavvy webstore went live. The new webstore has the benefit of being able to directly sign customers up for participation in DR at the same time the customer purchases the equipment (e.g. smart thermostats and grid-responsive EV chargers). With the new GridSavvy webstore, SCP and Olivine hope that the escrow account for customer incentive payments will become essentially self-balancing—a customer pays 50% of the charger price upfront into the escrow account; once a charger is active, Olivine then issues an incentive of 50% of the charger price from the escrow account to the customer.
SCP’s updated agreement will reflect both parties’ intent with respect to managing webstore payments in this manner, and where necessary to delegate sufficient authority to the CEO to update the contract as necessary to provide staff with the flexibility to adjust offerings for current and future GridSavvy technologies.

2. The Future of the GridSavvy Community

Now that SCP staff have become more comfortable working with the EV chargers, SCP and Olivine are looking at diversifying the GridSavvy Community by adding technologies such as smart thermostats and heat pump water heaters. SCP and Olivine have started working to create standardized templates for these vendors to join the GridSavvy Community and have begun work on designing customer incentives based on the value of these resources. Currently, contract negotiations are in progress with Nest/Google (smart thermostats), as well as AO Smith and Rheem (heat pump water heaters). Staff will update the public of progress of these contracts in the Operations Report moving forward. Other technology partners may include additional thermostat vendors and battery storage vendors.

Over the next year, staff hopes to start bidding the GridSavvy resources into CAISO markets to prove the value of customer owned resources. SCP staff will continue to push for valuation of customer resources with the CPUC, CEC, and CAISO. SCP Program Manager Rachel Kuykendall is also currently serving on the technical advisory committee of a California Energy Commission (CEC) funded research roadmap on DERs.

3. Prior SCP Contract with Olivine for the GridSavvy Community

SCP has engaged Olivine to assist with both establishment and management of the GridSavvy Community. Since July 2017, SCP has entered into an initial contract, as well as two amendments to facilitate the GridSavvy Community’s initiation, operation and expansion, as follows:

- **Initial Contract ($156,000 for Program Services).** SCP’s initial contract with Olivine for assistance with establishment of the GridSavvy Community was effective July 31, 2017. The initial contract term was through December 31, 2020 and it included a not-to-exceed budget of $156,000 for the first 15 months of services under the agreement.

- **First Amendment ($100,000 to Establish Escrow Account).** As SCP developed and tested the program, SCP determined that it needed assistance with payment, monitoring and tracking of customer incentives for the GridSavvy Community. In furtherance of that
goal, SCP amended its original agreement with Olivine on December 18, 2017. Under the first amendment, Olivine established an escrow account through which Olivine can directly pay incentives to SCP customers based on the market value of technologies participating in GridSavvy. Under the first amendment, SCP allocated $100,000 to this escrow account, which has now been completely drawn down.

- **Second Amendment (Additional $25,000 for Escrow Account to Avoid Customer Interruption).** At the time SCP executed the first amendment with Olivine, the enrollment incentive that Olivine was paying was set to $150 per charger. In July 2018, the incentive structure for the chargers was shifted to weight more heavily towards a back-end rebate. Because of this change to the incentive structure, Olivine now pays a greater amount per customer (approximately $300-$500), depleting the escrow account at a higher rate than anticipated. Staff recognized the need to take a revised agreement to the CAC and Board for approval, but wanted to avoid interruption in customer incentive payments. To bridge the intermediate period between escrow account depletion and Board approval of a new agreement, the second amendment added an additional $25,000 to the escrow account to cover customer payments.

After SCP’s initial work to establish the program, the nature of the GridSavvy Community quickly evolved, and the rapid expansion of the GridSavvy Community also meant an increased demand for incentive payments for participating SCP customers. As noted above, SCP needed to draw down funds for services faster than anticipated on the initial contract and SCP had to move quickly to establish the GridSavvy Community escrow account managed by Olivine to ensure that incentive payments for the GridSavvy Community were not disrupted. As a result, the initial contract and subsequent amendments exceeded the $100,000 threshold for CEO contracting authority set by SCP’s Financial Policy B.1 (CEO Spending Authority).

For those reasons, Staff now request that the CAC recommend that the Board ratify SCP’s existing contract with Olivine, including the initial agreement and the subsequent modifications made by the two amendments for, in summary (a) a term through December 31, 2020; (b) the provision of GridSavvy Community-related services as well as establishment of an escrow account for use in payment of incentives to the GridSavvy Community; and (c) an aggregate not-to-exceed amount of $256,000, including $156,000 for GridSavvy Community-related services.
and $125,000 for payment of customer incentives under the program through the GridSavvy escrow account.

Staff recommends the CAC ratify the contract and associated amendments now in order to satisfy the requirements of SCP’s Financial Policy B.1 and ensure the validity of the agreement. Public entities can ratify actions that they possess the power to perform, so long as the ratification takes the form required for the original act. (See, e.g. *Los Angeles Dredging Co. v. City of Long Beach* (1930) 210 Cal. 348.)

3. **Delegation of Authority to the CEO to Negotiate and Execute an Updated, Expanded Contract with Olivine**

Staff also requests that the CAC recommend that the Board delegate authority to the CEO to negotiate and execute an updated, expanded contract with Olivine substantially in the form attached to this staff report so the agreement will better reflect the current scope of the GridSavvy Community, provide adequate funding for GridSavvy Community services and back up the self-balancing escrow account going forward. Such delegation to negotiate a revised and updated agreement with Olivine would be subject to the conditions set forth below:

- An aggregate not-to-exceed amount of $737,000 over the term of the Agreement, with a target allocation of $400,000 total to GridSavvy Community services and $337,000 to the escrow account. This aggregate not-to-exceed amount already includes the $156,000 for GridSavvy Community services and $125,000 for the escrow account that SCP has allocated under the initial contract and prior two amendments.
- A term for the agreement through December 31, 2020.
- Delegate authority to the CEO to negotiate further amendments to the agreement to address programmatic needs, add new technologies or make other adjustments provided the amendment does not otherwise revise the aggregate not-to-exceed amount or the agreement term.
- The agreement, and any subsequent amendments are in a form approved by the General Counsel.

**Attachments**

- Initial Olivine Contract
- First Amendment with Olivine
- Second Amendment with Olivine
- Amended and Restated Agreement with Olivine
AGREEMENT FOR DISTRIBUTED ENERGY RESOURCE SERVICES

This Agreement for Distributed Energy Resource Services ("Agreement"), dated as of July __, 2017 ("Effective Date") is made by and between the Sonoma Clean Power Authority ("SCPA"), a California joint powers authority, and Olivine, Inc. ("Contractor" or "Olivine"), a California corporation. SCPA and Contractor may be individually referred to as a "Party" or collectively as "Parties."

1. **Scope of Agreement**: Parties agree that Olivine will provide the services and perform the obligations as described in Exhibit A, and that SCPA will pay the fees and perform the obligations as described in Exhibit A. SCPA and Olivine agree that Exhibit A may be amended by mutual agreement to conform to the Operational Procedures to be developed pursuant to Section 8 of Exhibit A, or to conform to changes mutually-agreed to during the implementation process.

2. **Performance Standard**: Contractor warrants that it possesses the necessary training, experience and skill to competently and professionally provide the services described in Exhibit A. If SCPA determines that any of Contractor’s work is not in accordance with the level of competency and standard of care normally observed by a person practicing in Contractor’s profession, SCPA, in its sole discretion, shall have the right to require Contractor to meet with SCPA to review the quality of Contractor’s work and resolve matters of concern.

3. **Staffing and Coordination**: Contractor shall cooperate, and closely coordinate, with SCPA staff in providing all services under this Agreement. Primary coordination shall be through SCPA’s Director of Programs, Cordel Stillman.

4. **Payment**: Contractor shall submit one invoice for each calendar month in which services are performed. Invoices shall be signed by Key Staff, include copies of receipts for pre-approved reimbursable expenses. Upon receipt of properly prepared invoicing, SCPA shall pay Contractor within 30 calendar days for services provided in accordance with this Agreement, applying the following rates:

   a. Fees based on Fee Schedule as set forth in Exhibit A.
   b. Reimbursable expenses must be pre-approved in writing by SCPA.
In no event shall the amount payable for services performed under this Agreement exceed $156,000 for the first 15 months of services. Limitations or fees for additional services will be mutually agreed upon in writing and incorporated into this agreement.

5. **Term of the Agreement:** The initial term of this Agreement shall be from the Effective Date to December 31, 2020, unless terminated pursuant to Section 6 or amended by a written, executed amendment to the Agreement. Contractor understands and agrees that funding for costs under this Agreement after July 1, 2018 is subject to approval by SCPA’s Board of Directors of a budget including such funding, and that SCPA may terminate this Agreement pursuant to Section 6 below if such funding is not approved.

6. **Termination:** Notwithstanding any other provision of this Agreement, at any time after the first 15 months of this Agreement and without cause, each party shall have the unequivocal right to terminate this Agreement by giving ninety (90) calendar days written notice to the other party. Notwithstanding any other provision of this Agreement, should either Party fail to perform any of its obligations or violate any of the terms of this Agreement (Termination for Cause), the non-breaching Party may, upon providing the breaching Party written notice stating the reason for termination, immediately terminate this Agreement. In the event of termination, Contractor, within fourteen (14) calendar days following the date of termination, shall deliver to SCPA all materials and work product subject to Section 15, other than materials or information required for Olivine’s compliance with regulatory requirements, and shall submit to SCPA a final invoice for all outstanding payments; notwithstanding this provision, SCPA will remain liable post-termination of this Agreement for any obligations related to the contract term. Upon notice of termination, unless there is a mutually agreed upon termination date, Contractor will cease market activities. Subsequent operational activities must continue for 90 days after the last market trade to meet regulatory requirements. Contractor will retain necessary access to customer and any other data required to meet these obligations and SCPA will be responsible for operational fees during this transition period.

7. **Indemnification:** Contractor agrees to accept all responsibility for loss or damage to any person or entity, including the SCPA, and to indemnify, hold harmless, and release the SCPA, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any
person or entity, including Contractor, that arise out of, pertain to, or relate to Contractor’s performance or obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against the SCPA based upon a claim relating to Contractor’s performance or obligations under this Agreement. Contractor’s obligations under this Section 7 apply whether or not there is concurrent negligence on the SCPA’s part, but in that case Contractor’s obligations shall be proportionally reduced based upon the respective fault of Contractor and the SCPA.

8. **Insurance:** Contractor shall maintain and shall require all of its subcontractors, Contractors, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by SCPA.

   a. If Contractor 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.

   b. 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 Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, SCPA requires and shall be entitled to coverage for the higher limits maintained by Contractor.

      i. 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 SCPA. Contractor is responsible for any deductible or self-insured retention and shall fund it upon SCPA’s written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving SCPA.

      ii. SCPA shall be an additional insured for liability arising out of operations by, or on behalf of, the Contractor in the performance of this Agreement.

      iii. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
iv. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a “separation of insureds” or “severability” clause which treats each insured separately.

c. Automobile Liability Insurance with Minimum Limit of $1,000,000 combined single limit per accident. Automobile Insurance shall apply to all owned autos. If Contractor currently owns no autos, Contractor 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.

d. 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 SCPA. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

e. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A: VII.

f. The Certificate of Insurance must include the following reference: Sonoma Clean Power Authority.

g. All required Evidence of Insurance shall be submitted to SCPA within 3 business days of the Effective Date. Contractor agrees to maintain current Evidence of Insurance on file with SCPA for the entire term of this Agreement.

h. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma Clean Power Authority, Attn: Contract Administration, 50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, CA, 95404.

i. 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.

j. Contractor shall provide SCPA immediate written notice if:
   1. any of the required insurance policies are terminated;
   2. the limits of any of the required policies are reduced; or
   3. the deductible or self-insured retention is increased.
k. Upon written request, certified copies of required insurance policies must be provided within thirty (30) calendar days.

l. Contractor's indemnity and other obligations shall not be limited by these insurance requirements.

9. **Status of Contractor:** Contractor, 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 Contractor work as an employee of SCPA and at no time shall Contractor be entitled to participate in any pension plan, worker’s compensation plan, insurance, bonus, or similar benefits SCPA provides its employees. In the event SCPA exercises its right to terminate this Agreement pursuant to Section 6, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

10. **Taxes:** Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement. Contractor 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. Contractor agrees to indemnify and hold SCPA harmless from any liability which it may incur to the United States or to any US State as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In the event SCPA is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to, in a timely fashion, furnish SCPA with proof of payment of taxes on these earnings.

11. **Records Maintenance:** Contractor 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 SCPA for inspection at any reasonable time. Contractor shall maintain such records for a period of seven (7) years following the expiration or termination of this Agreement.

12. **Conflict of Interest:** Contractor 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 state law or that would otherwise conflict in any manner or degree with Contractor’s performance under this Agreement. Contractor further warrants that in the performance of this Agreement no person having any such interests shall be assigned by Contractor to perform work under this Agreement.
nor be given access to the information described in Section 15. Contractor shall comply with any and all applicable California Fair Political Practices Act requirements.

13. **Statutory Compliance:** Each Party shall comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under and obligations imposed by this Agreement. Contractor shall make all necessary compliance or regulatory filings required for Contractor by any entity, department, or agency under State or Federal law related to Contractor’s services. SCPA shall work with Contractor to provide necessary data and documentation or facilitate such documentation from third party aggregator.

14. **Nondiscrimination:** Without limiting any other provision of this Agreement, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by reference.

15. **Confidentiality and Disclosure of Work Product:** All information obtained by Contractor or by SCPA under this Agreement shall be deemed confidential ("Confidential Information"). Unless the disclosing party provides written permission, the receiving party is compelled by a court of law or regulatory agency, or the receiving party obtained Confidential Information from a source or sources other than disclosing party, the receiving party shall not share Confidential Information with any other person or entity except its employees or authorized representatives, without first obtaining the written consent of the disclosing party. Each party further agrees to execute reasonable non-disclosure agreements related to protecting Confidential Information as requested. Provisions related to Confidential Information shall survive expiration or termination of the Agreement for a period of seven (7) years. Upon expiration or termination of this Agreement, each party shall promptly deliver to the other all such Confidential Information. The Parties agree that Confidential Information may be disclosed to the extent necessary for the Parties to comply with their obligations hereunder or with any applicable law or regulation, including the California Public Records Act.
16. **Assignment and Delegation:** Parties shall not assign, delegate, sublet, or transfer any interest in, or duty under, this Agreement without the prior written consent of the other.

17. **Written Communications:** All written communications, including notices, bills and payments, may be made via electronic mail or to the following addresses:

   TO: SCPA: Sonoma Clean Power Authority  
   Attn: Contract Administration  
   50 Santa Rosa Avenue, 5th Floor  
   Santa Rosa, CA 95404

   TO: CONTRACTOR: Olivine, Inc.  
   2120 University Avenue,  
   Berkeley, CA 94704  
   Attn: Beth Reid

18. **No Waiver of Breach:** The waiver by a Party 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.

19. **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.

20. **Consent:** Wherever in this Agreement the consent or approval of one Party is required to an act of the other Party, such consent or approval shall not be unreasonably withheld or delayed.
21. **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.

22. **Applicable 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 Santa Rosa, California, or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

23. **Exhibits:** 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.

24. **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.

25. **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. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.

26. **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.

27. **Time of Essence:** Time is and shall be of the essence of this Agreement and every provision within this Agreement.
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.

Contractor

_____________________________
Date: _______________________

Sonoma Clean Power Authority:

By: _____________________________
   Geof Syphers
   Chief Executive Officer
Date: _____________________________

APPROVED AS TO FORM FOR SCPA:

By: _____________________________
   General Counsel
Date: _____________________________
Exhibit A

Scope of Work and Obligations

Whereas, SCPA has been approached by several Demand Response (DR) providers whose technology allows for the remote curtailment of electricity use, and this has an economic value which can accrue to SCPA and its customers.

Whereas, the operation and management of distributed energy resources, including but not limited to DR programs and management of technology/DR providers and their assets, require data processing, scheduling, compliance, and other capabilities that SCPA does not have in-house.

Accordingly, SCPA is entering into this contract with Olivine to provide such capabilities for SCPA, as more fully described below, and Olivine will provide such services for SCPA with respect to distributed energy resource programs, including but not limited to DR programs, owned by or contracted for by SCPA. It is SCPA’s intention for Olivine to be the exclusive DRP, DERP and SC for these programs during the life of this contract. Options for other providers to participate within these programs will be as aggregators according to terms defined in the program design and according to the work scope described below.

1. Overview of Program and Purpose of Contract:
   a. SCPA wishes to create an umbrella SCPA distributed energy resources program (SCPA DER Program) that will educate SCPA customers about different distributed energy resource options and assist customers to participate in distributed energy resource programs that are beneficial to SCPA and its customers. Distributed energy resources include, but are not limited to, energy efficiency, demand response, customer generation (e.g., rooftop solar), energy storage, and alternative fuel vehicles (e.g., electric vehicles). Olivine will manage all technical and contractual interfaces with the distributed energy resource programs on SCPA’s behalf and will provide data processing, scheduling coordinator, and compliance services for SCPA related to the distributed energy resource programs, including but not limited to demand response programs, selected by SCPA’s customers through the SCPA DER Program.
b. Olivine will assist SCPA in developing standards for technologies and aggregator participation within SCPA sponsored programs.

c. Olivine will oversee compliance for participants within the SCPA programs.

d. SCPA and Olivine will enter into contracts with third party demand response aggregators as part of Olivine’s administration of the SCPA DER Program. SCPA wishes to ensure that customers have choice for participation as a distributed energy resource, and as demand response leveraging different technologies, within the umbrella SCPA DER Program designed to provide value to all customers; SCPA wishes to ensure that its customers may freely enter and exit program modules without the risk of long-term contractual obligations to third parties.

e. Olivine will support SCPA’s inclusion of information and other enrollment capabilities on its website which will list the types of distributed energy resource programs, including but not limited to DR programs, in which SCPA customers may participate. Olivine will be responsible for the execution and management of appropriate customer contracts (pursuant to section 10.a below) and customer data access requirements such as the Customer Information Service Request (CISR) and/or future similar requirements such as the online ‘click through’ process to be implemented in California in 2018. Olivine will integrate its capabilities with SCPA’s website to create a seamless experience for SCPA customers providing program information, enrollment, data access authorizations and interfaces for merchant store or related capabilities acting as an interface with technology aggregators or other mutually approved parties to provide services to SCPA customers. Olivine’s system will maintain and provide information regarding these purchases, services and enrollments to support marketing, customer service and program evaluation efforts.

f. Olivine will monitor the CAISO DRRS for SCPA customers being entered by third parties in a timely manner. Olivine will communicate with SCPA to ensure that a contract is in place with any third party who may be selecting our LSE. When a resource dispatch is requested by CAISO, manage that request per the operating procedures.
2. Olivine shall provide demand response provider (DRP), Distributed Energy Resources Provider (DERP) and scheduling coordinator (SC) services for all Distributed Energy Resources (DER) for SCPA; Olivine shall be SCPA’s exclusive DRP, DERP, and (with respect to demand response or distributed energy resources) SC. Activities include contracting, enrolling customers, forming and registering resources in CAISO systems, managing scheduling and settlement activities within the CAISO, dispatching resources and providing settlement for incentive calculations. Olivine will bid resources into the applicable CAISO markets and manage all communications as appropriate (e.g. for Day Ahead market awards SCPA and any applicable technology aggregations will be notified within one hour of receipt of dispatch by Olivine). As Scheduling Coordinator, Olivine will meet CAISO reporting requirements and work with SCPA as necessary for other jurisdictional requirements.

3. The Parties agree to abide by any rules, tariffs, orders, decisions, procedures or protocols to which they are directly obligated in connection with carrying out their mutual responsibilities for participation in the CAISO wholesale markets, including maintaining confidentiality of customer data.
   a. Parties will use customer data in a manner consistent with applicable law, statutes, codes and jurisdictional agency requirements, including maintaining confidentiality of customer personal identification data, such as customer name, address, email, phone number, unique utility identifiers, voltage level, customer utility rate, utility program enrollment, metering interval, grid-related locational information and electric meter data.
   b. Parties will protect customer data from unauthorized access and will use reasonable means to protect the customer data in accordance with industry standards, California law, and California Public Utility Commission orders.
   c. Parties will not use customer data for any other purposes, unless expressly permitted to do so by the customer.
   d. SCPA will ensure that language expressly authorizing the sharing of customer data with Olivine to enable Olivine to provide the DRP, DERP and SC services is included in SCPA’s agreements with customers. Olivine shall review and approve the proposed language.

4. Olivine will design DER programs, manage SCPA customer enrollment and customer data, develop metrics for evaluation of DER programs and assist SCPA (or SCPA’s selected independent evaluator) in program evaluation.
5. Olivine will waive any credit or collateral associated with SCPA’s minimum participation in CAISO markets; if incremental credit or collateral is required by the CAISO due to SCPA’s program, SCPA will be responsible for those incremental credit or collateral requirements that are required of Olivine. Any such incremental credit or collateral requirements would be calculated in advance by the CAISO and can be provided in the form of a mutually acceptable monetary reserve instrument to fulfill requirements.

6. Olivine will operate as the DER program administrator, DRP, DERP, and (with respect to demand response or distributed energy resources) SC, which includes:
   - Enrollment of customers in customer-selected distributed energy resource programs including but not limited to demand response programs (including ongoing enrollment changes), evaluation of customer eligibility and customer training
   - Registration of customers/resources with the CAISO, based on the CAISO’s rules and pursuant to SCPA’s direction
   - Execution of the necessary forms, contracts and/or documents to gain access to customer data and/or investor-owned utility revenue quality meter data (‘the Data’)
   - Translating the Data into settlement quality meter data as defined in the CAISO tariff
   - Submitting the settlement quality meter data to the CAISO within the CAISO prescribed timelines.

7. Olivine will perform performance calculations for any SCPA program (e.g. CCA retail performance settlements). All resource performance in the wholesale market is measured through the settlement process performed by the CASIO.

8. Within 60 days of the effective date of this Agreement, Olivine, with input from SCPA, will develop operational procedures inclusive of settlement transactions for the Parties’ mutual agreement. These procedures will be updated from time to time based on circumstances and program design needs.

9. Upon request by Olivine, SCPA shall provide information to Olivine as is reasonably necessary for Olivine to comply with Olivine’s obligations as DRP, DERP, and (with respect to demand response or distributed energy resources) SC in a timely manner to meet regulatory requirements.
10. Customers/program participants or SCPA are responsible for all resource performance in the CAISO market and for dispatching resources in conformance with CAISO dispatch instructions upon notification of such instructions by CAISO or Olivine. Olivine has the right to hold resource owners, aggregators or other program participants responsible for any Failure to Comply with CAISO dispatch instructions or a failure of any resource performance in CAISO markets as settled through the CAISO settlement process, unless such failures are caused by the negligence of Olivine or the failure of Olivine to provide notice of dispatch instructions where Olivine had a duty to provide such notice.

   a. SCPA shall require customers/program participants to execute specific customer agreements with SCPA; these customer agreements will be developed and approved jointly by SCPA and Olivine and drafted to ensure customers/program participants agree to follow CAISO or SCPA/Olivine dispatch instructions and other applicable resource performance or program requirements.

11. SCPA will be responsible for any and all charges or fees that may be assessed on Olivine by the CAISO in connection with Olivine’s provision of DRP services, DERP services, or (with respect to demand response or distributed energy resources) SC services to SCPA; provided, however that Olivine (and not SCPA) shall be responsible for such charges and fees to the extent that the charges and fees result from a failure of Olivine to perform its obligations under this Agreement or the negligence of Olivine in connection with the performance of services under this Agreement. The remittance of such fees by SCPA to Olivine may be included in the program design or SCPA may remit directly to Olivine payment in full for such charges upon receipt of Olivine’s submission of an invoice and copy of assessed charges from the CAISO outlining these charges.

   a. DRP fees or charges would be implemented for the first full month of delivery and continue for three months after the last transaction date, to compensate Olivine for work performed in supporting meter data processing, settlement and dispute management. SC service fees or charges would apply only during months of active bidding.

12. Olivine is not responsible for costs or losses caused by systematic delays created by SCPA, the investor-owned utilities, CAISO or CPUC, except to the extent Olivine was responsible for such delays.
13. Olivine will employ its DER Platform and related technology and the Olivine Applications Program Interface to provide these services; Olivine’s DER Platform is the active server and software that administers Olivine’s services that is owned and maintained by Olivine. The Olivine Applications Program Interface is Olivine’s technology that enables third parties and other devices to interface with the Olivine DER Platform. Olivine is the sole owner of its DER Platform and related technology and the Olivine Applications Program Interface. Olivine will, subject to the terms and conditions of this Agreement, grant SCPA a restricted, non-transferable right to use the Olivine DER Platform and any related technology. Olivine will waive its training fee and charges for training SCPA, its employees, agents, independent contractors and affiliates to use the Olivine DER Platform and related technology, subject to reasonable limits on the number of individuals to be trained.

a. SCPA’s employees, agents, independent contractors and affiliates are subject to the same obligations hereunder to the extent they are required to use Olivine’s DER Platform and related technology.

b. Olivine will issue system identification numbers or passwords for SCPA’s internal use only. SCPA will take reasonable measures to detect and prevent any unauthorized publication or use of system identification numbers or passwords. SCPA will be responsible for the losses or damages caused by any unauthorized use of Olivine’s DER Platform and related technology by SCPA employees, contractors, subcontractors or agents.

c. Olivine retains all rights, title and interest in and to the Olivine DER Platform and related technology, including any derivative works thereof. SCPA agrees to not take any action to jeopardize, limit or interfere with Olivine’s ownership rights of the DER Platform and related technology or derivative works thereof.

14. Olivine and SCPA shall permit their market communications to each other to be recorded in accordance with state and federal law.

15. In consideration for SCPA and Olivine working cooperatively to develop this program model Olivine agrees to the reduced fee schedule as follows. This schedule is confidential and may not be extended to other similar parties.
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Due</th>
</tr>
</thead>
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<tr>
<td>Program Transition</td>
<td>Transition plan, Operating Procedures, LSE DRRS access</td>
<td>$15,000</td>
<td>60 days after contract signing</td>
</tr>
<tr>
<td>Customer Interface</td>
<td>Execution of contracts with customers who currently have CISRs on file; website update</td>
<td>$15,000</td>
<td>60 days after contract signing</td>
</tr>
<tr>
<td>Program Design</td>
<td>Technology Incentive requirements, additional client options</td>
<td>$15,000</td>
<td>90 days after contract signing</td>
</tr>
<tr>
<td>Operational Go-Live</td>
<td>Initial bidding or dispatch</td>
<td>$10,000</td>
<td></td>
</tr>
<tr>
<td>Off Peak Service Fees 2017-2018</td>
<td>Ongoing service fees including planning and outreach</td>
<td>$8,000</td>
<td>Monthly October 2017-April 2018</td>
</tr>
<tr>
<td>Summer Service Fees 2018</td>
<td>Ongoing service fees including market operations</td>
<td>$10,000</td>
<td>Monthly May 2018 - September 2018</td>
</tr>
<tr>
<td>Future Service fees</td>
<td>Effective after initial 15 months of service</td>
<td>$10,000</td>
<td>Monthly after initial 15 months</td>
</tr>
</tbody>
</table>
FIRST AMENDMENT

to

AGREEMENT FOR DISTRIBUTED ENERGY RESOURCE SERVICES

between

Olivine, Inc. and Sonoma Clean Power Authority

This First Amendment to Agreement for Distributed Energy Resource Services ("Amendment"), dated as of December 18, 2017 ("Effective Date") amends and supplements the Agreement for Distributed Energy Resource Services ("Agreement"), dated July 31, 2017, and is made by and between the Sonoma Clean Power Authority ("SCPA"), a California joint powers authority, and Olivine, Inc. ("Contractor" or "Olivine"), a California corporation.

The following section is added to Exhibit A, Scope of Work:

SCPA will provide Olivine an initial $100,000 pre-payment to fund incentives to be paid to SCPA customers for enrolling in SCPA’s “GridSavvy Community.” (GridSavvy Community is referred to as the “SCPA DER Program” in the Agreement; the Parties agree that GridSavvy Community and SCPA DER Program are interchangeable terms.) Olivine shall deposit the initial $100,000 pre-payment and any later funds provided by SCPA for payment of customer incentives or other costs in one or more FDIC-insured accounts. Olivine will use these pre-paid funds to pay customer enrollment incentives, and will provide regular accounting to SCPA on Olivine’s use of the funds, as follows:

- Olivine will pay enrollment incentives to SCPA customers after Olivine validates customers’ entitlement to incentives, based upon defined eligibility requirements and coordination with equipment vendors; Olivine will communicate with customers as needed to confirm their qualification for enrollment incentives.

- Olivine will make enrollment incentive payments once per week to all validated customers that have not yet received payments.

- Once per week, Olivine will provide SCPA a list in Excel, “csv” format, or other reporting method approved by SCPA showing all customer enrollment incentives paid, including the name and account number of customers receiving the enrollment incentive payments, the amounts of each enrollment incentive payment made, the amount of remaining payment fund balance, and the
number of customer enrollment incentive payments in process (i.e., received but unpaid).

* SCPA will provide additional funds for enrollment incentive payments as reasonably necessary upon Olivine’s request, based on customer demand. Olivine shall monitor the fund balance and the amount of paid and outstanding SCPA enrollment incentives to ensure that adequate funds exist to pay future enrollment incentives to customers. SCPA will provide Olivine with advance notice of any anticipated change in enrollment qualifications, program structure or funding.

Except as expressly set forth herein, the remaining terms and conditions of the Agreement remain in full force and effect.

Olivine:

[Signature]

Date: 12/21/17

Sonoma Clean Power Authority:

By: [Signature]

Geof Syphers
Chief Executive Officer

Date: 1-9-2018

APPROVED AS TO FORM FOR SCPA:

By: [Signature]

General Counsel

Date: 1-8-18
SECOND AMENDMENT TO THE AGREEMENT FOR DISTRIBUTED ENERGY RESOURCE SERVICES BETWEEN THE SONOMA CLEAN POWER AUTHORITY AND OLIVINE, INC.

This Second Amendment ("Second Amendment") to the Agreement for Distributed Energy Resource Services (the "Agreement") is entered into between the Sonoma Clean Power Authority ("SCPA"), a California Joint Powers Authority, and Olivine, Inc, a California corporation ("Consultant" or "Olivine") as of ______________, 2018 ("Second Amendment Effective Date"). SCPA and Consultant are, at times individually referred to herein as "Party" and collectively as "Parties".

WHEREAS, the GridSavvy Community ("Program") offers a platform to offer assorted distributed energy resource ("DER") offerings to SCPA customers. GridSavvy Community is referred to as the "SCPA DER Program" in the Agreement. The Parties agree that "GridSavvy Community" and "SCPA DER Program" and "Program" are all interchangeable terms; and

WHEREAS, SCPA and Consultant entered into the Agreement dated effective July 31, 2017 for Consultant to assist development and management of the Program; and

WHEREAS, SCPA and Consultant entered into an amendment ("First Amendment") to the Agreement dated effective December 18, 2017 establishing an escrow account through which Consultant could directly pay SCPA customer incentives (the "GridSavvy Escrow Account" defined below) with an initial funding amount of $100,000; and

WHEREAS, due to rapid growth and evolution of the Program, the GridSavvy Escrow Account has been depleted; and

WHEREAS, The Parties now desire to amend the Agreement in order to clarify use and re-fund of the GridSavvy Escrow Account to ensure there is no disruption of customer incentive payments.

NOW, THEREFORE, the Parties agree as follows:

1. The language added to Exhibit "A" of the Agreement by the First Amendment, is hereby replaced and superseded in its entirety as set forth in Exhibit "A" attached to this Second Amendment.

2. Except as set forth above, all terms and conditions of the Agreement and First Amendment remain in full force and effect.

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

BY: ________________________
Geof Syphers
Chief Executive Officer

DATE: ________________________

APPROVED AS TO FORM

BY: ________________________
____________
General Counsel

DATE: ________________________

OLIVINE, INC.

BY: ________________________

TITLE: ________________________

DATE: ________________________
EXHIBIT A

ESCROW ACCOUNT MANAGEMENT

Scope of Work

1. Olivine Administration of GridSavvy Escrow Account
   a. At the discretion of SCPA’s Director of Programs, Olivine agrees to collect direct payment from SCPA customers for products sold through the GridSavvy Community webstore. Payment collected may include direct sales fees, credit card fees, taxes, fees, or any associated payment necessary for proper operation of the GridSavvy Community webstore.
   b. At the discretion of SCPA’s Director of Programs, Olivine agrees to pay SCPA customers out of the GridSavvy Escrow Account after Olivine validates customers’ entitlement to such payment, based upon defined eligibility requirements articulated in writing by SCPA and Olivine in the latest version of the “GridSavvy Terms and Conditions”. SCPA will provide advance written notice to OLIVINE of any change in AER Program enrollment qualifications, program structure or funding. Payments may include incentive payments, enrollment payments, credit card processing fees, and other non-enumerated costs associated with management of the Program.
   c. Olivine will communicate with customers as needed to confirm their qualification for enrollment incentives.
   d. Olivine agrees to make enrollment incentive payments to customers as needed to meet SCPA timeline targets for incentive payments, but under no circumstances less frequently than once per week.
   e. Once per week, Olivine agrees to provide SCPA a list in Excel, “csv” format, or other reporting method approved by SCPA showing, at a minimum, customer incentives paid, the name and account number of customers receiving the incentive payments, the amounts of each incentive payment made, the amount of remaining payment fund balance, and the number of outstanding (that is, requested but not yet issued) customer enrollment incentive applications credits.

2. Establishment of GridSavvy Escrow Account. Olivine will establish an FDIC-insured escrow account that Olivine will use to collect funds from SCPA and/or its customers (the “GridSavvy Escrow Account”). Olivine will use the GridSavvy escrow account to pay customers for payments related to the GridSavvy Community (the “GridSavvy Escrow Account”).

3. Initial Payment by SCPA to GridSavvy Escrow Account. SCPA agrees to provide an initial $100,000 payment to Olivine for deposit into the GridSavvy Escrow Account to fund GridSavvy Community customer payments.

4. Ongoing Payments by SCPA to GridSavvy Escrow Account.
a. Olivine agrees to monitor the GridSavvy Escrow Account balance, as well as the amount of GridSavvy Community payments paid and outstanding and report to SCPA concerning the same.

b. Olivine agrees to promptly notify SCPA when the balance in the GridSavvy Escrow Account drops below $25,000.

c. When the balance of the GridSavvy Escrow Account drops below $25,000, SCPA agrees to replenish the GridSavvy Escrow Account balance with a one-time payment up to $25,000.

5. **Not-to-Exceed Limit.** In no event shall the amount payable to the GridSavvy Escrow Account under this Agreement exceed $125,000.
This Amended and Restated Agreement for Distributed Energy Resource Services ("Agreement"), is made by and between the Sonoma Clean Power Authority ("SCPA"), a California joint powers authority, and Olivine, Inc. ("Contractor" or "Olivine"), a California corporation as of ________, 2018 ("Effective Date"). SCPA and Contractor may be individually referred to as a "Party" or collectively as "Parties."

**RECITALS**

WHEREAS, the GridSavvy Community ("Program") offers a platform for assorted distributed energy resource ("DER") offerings to SCPA customers.

WHEREAS, the GridSavvy Community is at times referred to as the "SCPA DER Program" in the Agreement and the Parties agree that "GridSavvy Community" and "SCPA DER Program" and "Program" are all interchangeable terms; and

WHEREAS, SCPA and Contractor entered into an Agreement dated effective July 31, 2017 for Contractor to assist development and management of the Program ("Original Agreement"); and

WHEREAS, SCPA and Contractor entered into an amendment ("First Amendment") to the Agreement dated effective December 18, 2017 establishing an escrow account through which Contractor could directly pay SCPA customer incentives (the "GridSavvy Escrow Account" defined below) with an initial funding amount of $100,000; and

WHEREAS, due to rapid growth and evolution of the Program, the GridSavvy Escrow Account has been depleted and the Parties entered into a subsequent amendment on November 20, 2018 to clarify use and re-fund of the GridSavvy Escrow Account to ensure there is no disruption of customer incentive payments (the "Second Amendment"); and

WHEREAS, the Parties now desire to update and expand the Original Agreement to more closely reflect the current scope of the work Contractor is performing in support of the Program and include increases in the not-to-exceed amount for the GridSavvy Escrow Account to $400,000 total, the GridSavvy Program Services to $337,000, for a new total not-to-exceed amount of $737,000 over the term of the Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Scope of Agreement:** Parties agree that Olivine will provide the services and perform the obligations as described in Exhibit A, and that SCPA will pay the fees and perform the obligations as described in Exhibit A. SCPA and Olivine agree that Exhibit A may be amended by mutual agreement to conform to the Operational Procedures to be developed pursuant to Section 8 of Exhibit A, or to conform to changes mutually-agreed to during the implementation process.
2. **Performance Standard:** Contractor warrants that it possesses the necessary training, experience and skill to competently and professionally provide the services described in Exhibit A. If SCPA determines that any of Contractor’s work is not in accordance with the level of competency and standard of care normally observed by a person practicing in Contractor’s profession, SCPA, in its sole discretion, shall have the right to require Contractor to meet with SCPA to review the quality of Contractor’s work and resolve matters of concern.

3. **Staffing and Coordination:** Contractor shall cooperate, and closely coordinate, with SCPA staff in providing all services under this Agreement. Primary coordination shall be through SCPA’s Director of Programs, Cordel Stillman.

4. **Payment:** Contractor shall submit one invoice for each calendar month in which services are performed. Invoices shall be signed by Key Staff, include copies of receipts for pre-approved reimbursable expenses. Upon receipt of properly prepared invoicing, SCPA shall pay Contractor within 30 calendar days for services provided in accordance with this Agreement, applying the following rates:

   a. Fees based on Fee Schedule as set forth in Exhibit A.
   
   b. Reimbursable expenses must be pre-approved in writing by SCPA.
   
   c. GridSavvy Escrow Account. As described in Exhibit A, Contractor shall invoice SCPA in order to replenish the GridSavvy Escrow Account (as defined and described in more detail in Exhibit A). SCPA’s agreement to replenish the GridSavvy Escrow Account is subject to not-to-exceed amount limit of $400,000 over the term of the Agreement.
   
   d. GridSavvy Program Services. In no event shall the amount payable for services performed under this Agreement exceed $337,000. Limitations or fees for additional services will be mutually agreed upon in writing and incorporated into this agreement. For purposes of payment and the not-to-exceed amounts established in this section, GridSavvy Program Services does not include amounts SCPA pays to the GridSavvy Escrow Account.
   
   e. Aggregate Not-To-Exceed Amount for Agreement. The total aggregate not-to-exceed amount paid to Contractor under this Agreement, inclusive of all payments for services provided, Reimbursable Expenses (if any) and GridSavvy Escrow Account payments shall be $737,000.

5. **Term of the Agreement:** The initial term of this Agreement shall be from the Effective Date to December 31, 2020, unless terminated pursuant to Section 6 or amended by a written, executed amendment to the Agreement. Contractor understands and agrees that funding for costs under this Agreement after July 1, 2019 is subject to approval by SCPA’s Board of Directors of a budget including such funding, and that SCPA may terminate this Agreement pursuant to Section 6 below if such funding is not approved.
6. Termination:

   a. Notwithstanding any other provision of this Agreement and without cause, each Party shall have the unequivocal right to terminate this Agreement by giving ninety (90) calendar days written notice to the other Party.

   b. Notwithstanding any other provision of this Agreement, should either Party fail to perform any of its obligations or violate any of the terms of this Agreement (Termination for Cause), the non-breaching Party may, upon providing the breaching Party written notice stating the reason for termination, immediately terminate this Agreement.

   c. In the event of termination, Contractor, within fourteen (14) calendar days following the date of termination, shall deliver to SCPA all materials and work product subject to Section 15, other than materials or information required for Olivine’s compliance with regulatory requirements, and shall submit to SCPA a final invoice for all outstanding payments; notwithstanding this provision, SCPA will remain liable post-termination of this Agreement for any obligations related to the contract term. Upon notice of termination, unless there is a mutually agreed upon termination date, Contractor will cease market activities. Subsequent operational activities must continue for 90 days after the last market trade to meet regulatory requirements. Contractor will retain necessary access to customer and any other data required to meet these obligations and SCPA will be responsible for operational fees during this transition period.

   d. Should this Agreement be terminated by either party, Contractor agrees to request termination of the release of any SCPA DER Community customer data from PG&E within one (1) business day and shall disenroll all SCPA customers from its DRP services such that customers may enroll with other DRPs or demand response offerings within the SCPA service area. This shall include terminating all participating customer’s service account registrations in the CAISO DRRS. Contractor agrees to effectuate customer disenrollment within one (1) business day.

   e. Should this Agreement be terminated by either party, (1) if requested by SCPA, Contractor shall provide reasonable assistance to SCPA to allow for the transfer of SCPA customers participating in the SCPA DER Program to another vendor, and (2) SCPA shall retain the ability to use the SCPA DER Program Webstore, including, but not limited to, any APIs created for the webstore and all software, code, or technologies included within the webstore.

7. Indemnification: Contractor agrees to accept all responsibility for loss or damage to any person or entity, including the SCPA, and to indemnify, hold harmless, and release the SCPA, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Contractor, that arise out of,
pertain to, or relate to Contractor’s performance of or obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against the SCPA based upon a claim relating to Contractor’s performance or obligations under this Agreement. Contractor’s obligations under this Section 7 apply whether or not there is concurrent negligence on the SCPA’s part, but in that case Contractor’s obligations shall be proportionally reduced based upon the respective fault of Contractor and the SCPA.

8. Insurance: Contractor shall maintain and shall require all of its subcontractors, Contractors, and other agents to maintain insurance as described below unless such insurance has been expressly waived in writing by SCPA.

a. If Contractor 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.

b. 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 Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, SCPA requires and shall be entitled to coverage for the higher limits maintained by Contractor.

i. 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 SCPA. Contractor is responsible for any deductible or self-insured retention and shall fund it upon SCPA’s written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving SCPA.

ii. SCPA shall be an additional insured for liability arising out of operations by, or on behalf of, the Contractor in the performance of this Agreement.

iii. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.

iv. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a “separation of insureds” or “severability” clause which treats each insured separately.

c. Automobile Liability Insurance with Minimum Limit of $1,000,000 combined single limit per accident. Automobile Insurance shall apply to all owned autos. If Contractor currently owns no autos, Contractor 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.

d. 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 SCPA. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

e. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A: VII.

f. The Certificate of Insurance must include the following reference: Sonoma Clean Power Authority.

g. All required Evidence of Insurance shall be submitted to SCPA within 3 business days of the Effective Date. Contractor agrees to maintain current Evidence of Insurance on file with SCPA for the entire term of this Agreement.

h. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma Clean Power Authority, Attn: Contract Administration, 50 Santa Rosa Avenue, Fifth Floor, Santa Rosa, CA, 95404.

i. 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.

j. Contractor shall provide SCPA immediate written notice if:
   i. any of the required insurance policies are terminated;
   ii. the limits of any of the required policies are reduced; or
   iii. the deductible or self-insured retention is increased.

k. Upon written request, certified copies of required insurance policies must be provided within thirty (30) calendar days.

l. Contractor’s indemnity and other obligations shall not be limited by these insurance requirements.
9. **Status of Contractor:** Contractor, 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 Contractor work as an employee of SCPA and at no time shall Contractor be entitled to participate in any pension plan, worker’s compensation plan, insurance, bonus, or similar benefits SCPA provides its employees. In the event SCPA exercises its right to terminate this Agreement pursuant to Section 6, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

10. **Taxes:** Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement. Contractor 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. Contractor agrees to indemnify and hold SCPA harmless from any liability which it may incur to the United States or to any US State as a consequence of Contractor’s failure to pay, when due, all such taxes and obligations. In the event SCPA is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to, in a timely fashion, furnish SCPA with proof of payment of taxes on these earnings.

11. **Records Maintenance:** Contractor 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 SCPA for inspection at any reasonable time. Contractor shall maintain such records for a period of seven (7) years following the expiration or termination of this Agreement.

12. **Conflict of Interest:** Contractor 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 state law or that would otherwise conflict in any manner or degree with Contractor’s performance under this Agreement. Contractor further warrants that in the performance of this Agreement no person having any such interests shall be assigned by Contractor to perform work under this Agreement nor be given access to the information described in Section 15. Contractor shall comply with any and all applicable California Fair Political Practices Act requirements.

13. **Statutory Compliance:** Each Party shall comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under and obligations imposed by this Agreement. Contractor shall make all necessary compliance or regulatory filings required for Contractor by any entity, department, or agency under State or Federal law related to Contractor’s services. SCPA shall work with Contractor to provide necessary data and documentation or facilitate such documentation from third party aggregator.

14. **Nondiscrimination:** Without limiting any other provision of this Agreement, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical
condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by reference.

15. Confidentiality and Disclosure of Work Product: All information obtained by Contractor or by SCPA under this Agreement shall be deemed confidential (“Confidential Information”). Unless the disclosing party provides written permission, the receiving party is compelled by a court of law or regulatory agency, or the receiving party obtained Confidential Information from a source or sources other than disclosing party, the receiving party shall not share Confidential Information with any other person or entity except its employees or authorized representatives, without first obtaining the written consent of the disclosing party. Each party further agrees to execute reasonable non-disclosure agreements related to protecting Confidential Information as requested. Provisions related to Confidential Information shall survive expiration or termination of the Agreement for a period of seven (7) years. Upon expiration or termination of this Agreement, each party shall promptly deliver to the other all such Confidential Information. The Parties agree that Confidential Information may be disclosed to the extent necessary for the Parties to comply with their obligations hereunder or with any applicable law or regulation, including the California Public Records Act.

16. Assignment and Delegation: Parties shall not assign, delegate, sublet, or transfer any interest in, or duty under, this Agreement without the prior written consent of the other.

17. Written Communications: All written communications, including notices, bills and payments, may be made via electronic mail or to the following addresses:

TO: SCPA: Sonoma Clean Power Authority
     Attn: Contract Administration
     50 Santa Rosa Avenue, 5th Floor
     Santa Rosa, CA  95404

TO: CONTRACTOR: Olivine, Inc.
     2120 University Avenue,
     Berkeley, CA 94704
     Attn: Beth Reid

18. No Waiver of Breach: The waiver by a Party 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.

19. 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.

20. Consent: Wherever in this Agreement the consent or approval of one Party is required to an act of the other Party, such consent or approval shall not be unreasonably withheld or delayed.

21. 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.

22. Applicable 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 Santa Rosa, California, or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

23. Exhibits: 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.

24. 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.

25. 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. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties.

26. 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.

27. Time of Essence: Time is and shall be of the essence of this Agreement and every provision within this Agreement.

28. Joint Powers Authority. Contractor hereby acknowledges that SCPA 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 SCPA 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 SCPA. Contractor agrees that SCPA shall solely be
responsible for all debts, obligations and liabilities accruing and arising out of the Agreement and Contractor agrees that it shall have no rights against, and shall not make any claim, take any actions or assert any remedies against, any of SCPA’s members, any cities or counties participating in SCPA’s community choice aggregation program, or any of SCPA’s retail customers in connection with 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

BY:
Geof Syphers
Chief Executive Officer

DATE:

CONSULTANT

BY: [Signature]

DATE:

APPROVED AS TO FORM

BY:
General Counsel

DATE:

Amended and Restated Agreement for Distributed Energy Resource Services

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EXHIBIT A
SCOPE OF WORK AND OBLIGATIONS

GENERAL SERVICES

Whereas, SCPA has been approached by several Demand Response (DR) providers whose technology allows for the remote curtailment of electricity use, and this has an economic value which can accrue to SCPA and its customers.

Whereas, the operation and management of distributed energy resources, including but not limited to DR programs and management of technology/DR providers and their assets, require data processing, scheduling, compliance, and other capabilities that SCPA does not have in-house.

Accordingly, SCPA is entering into this contract with Olivine to provide such capabilities for SCPA, as more fully described below, and Olivine will provide such services for SCPA with respect to distributed energy resource programs, including but not limited to DR programs, owned by or contracted for by SCPA. It is SCPA’s intention for Olivine to be the exclusive DRP, DERP and SC for these programs during the life of this contract. Options for other providers to participate within these programs will be as aggregators according to terms defined in the program design and according to the work scope described below.

1. Overview of Program and Purpose of Contract:

a. SCPA wishes to create an umbrella SCPA distributed energy resources program (SCPA DER Program) that will educate SCPA customers about different distributed energy resource options and assist customers to participate in distributed energy resource programs that are beneficial to SCPA and its customers. Distributed energy resources include, but are not limited to, energy efficiency, demand response, customer generation (e.g., rooftop solar), energy storage, and alternative fuel vehicles (e.g., electric vehicles). Olivine will manage all technical and contractual interfaces with the distributed energy resource programs on SCPA’s behalf and will provide data processing, scheduling coordinator, and compliance services for SCPA related to the distributed energy resource programs, including but not limited to demand response programs, selected by SCPA’s customers through the SCPA DER Program. Olivine will provide direct support to customers interested in enrolling in the SCPA DER Program and will set up a mechanism to forward technical customer questions to the relevant technology vendor.

b. Olivine will assist SCPA in developing standards for technologies and aggregator participation within SCPA sponsored programs. Through its DER Platform, Olivine will assist SCPA in assessing customer energy and cost savings associated with various DER technologies, determine appropriate customer incentives, and quantify the financial benefits to SCPA for bidding these technologies into the CAISO markets. Olivine
will work with technologies identified by SCPA to integrate them into the SCPA DER Program and will work with SCPA to identify additional technology vendors that can be integrated into the SCPA DER Program.

c. Within one month of contract signing, Olivine will work with SCPA and technology vendors to develop the customer communications for and schedule for between one and ten DR events in the following month. Thereafter, Olivine shall develop, schedule, and deploy a minimum of one DR event per month and a maximum of ten DR events per month, as agreed to among Olivine and SCPA. Olivine will assist SCPA in the “layering” of events between various technologies to provide maximum financial benefit to SCPA and its customers.

d. Olivine will oversee compliance for participants within the SCPA programs.

e. SCPA and Olivine will enter into contracts with third party demand response aggregators as part of Olivine’s administration of the SCPA DER Program. SCPA wishes to ensure that customers have choice for participation as a distributed energy resource, and as demand response leveraging different technologies, within the umbrella SCPA DER Program designed to provide value to all customers; SCPA wishes to ensure that its customers may freely enter and exit program modules without the risk of long-term contractual obligations to third parties. Olivine shall conduct this process electronically through the SCPA DER Program Webstore, once developed.

f. Olivine will support SCPA’s inclusion of information and other enrollment capabilities on its website which will list the types of distributed energy resource programs, including but not limited to DR programs, in which SCPA customers may participate. Olivine will be responsible for the execution and management of appropriate customer contracts (pursuant to section 10.a below) and customer data access requirements such as the Customer Information Service Request (CISR) and/or future similar requirements such as the online ‘click through’ process to be implemented in California in 2018. Olivine shall conduct this process electronically through the SCPA DER Program Webstore, once developed.

g. Olivine will monitor the CAISO DRRS for SCPA customers being entered by third parties in a timely manner. Olivine will communicate with SCPA to ensure that a contract is in place with any third party who may be selecting our LSE. When a resource dispatch is requested by CAISO, Olivine will manage that request per the operating procedures.

2. Olivine shall provide demand response provider (DRP), Distributed Energy Resources Provider (DERP) and scheduling coordinator (SC) services for all Distributed Energy Resources (DER) for SCPA; Olivine shall be SCPA’s exclusive DRP, DERP, and (with respect to demand response or distributed energy resources) SC. Activities include contracting, enrolling customers, forming and registering resources in CAISO systems, managing scheduling and
settlement activities within the CAISO, dispatching resources and providing settlement for incentive calculations. Olivine will bid resources into the applicable CAISO markets and manage all communications as appropriate (e.g. for Day Ahead market awards SCPA and any applicable technology aggregations will be notified within one hour of receipt of dispatch by Olivine). As Scheduling Coordinator, Olivine will meet CAISO reporting requirements and work with SCPA as necessary for other jurisdictional requirements.

3. The Parties agree to abide by any rules, tariffs, orders, decisions, procedures or protocols to which they are directly obligated in connection with carrying out their mutual responsibilities for participation in the CAISO wholesale markets, including maintaining confidentiality of customer data.

   a. Parties will use customer data in a manner consistent with applicable law, statutes, codes and jurisdictional agency requirements, including maintaining confidentiality of customer personal identification data, such as customer name, address, email, phone number, unique utility identifiers, voltage level, customer utility rate, utility program enrollment, metering interval, grid-related locational information and electric meter data.

   b. Parties will protect customer data from unauthorized access and will use reasonable means to protect the customer data in accordance with industry standards, California law, and California Public Utility Commission orders.

   c. Parties will not use customer data for any other purposes, unless expressly permitted to do so by the customer.

   d. SCPA will ensure that language expressly authorizing the sharing of customer data with Olivine to enable Olivine to provide the DRP, DERP and SC services is included in SCPA’s agreements with customers. Olivine shall review and approve the proposed language.

4. Olivine will design DER programs, manage SCPA customer enrollment and customer data, develop metrics for evaluation of DER programs and assist SCPA (or SCPA’s selected independent evaluator) in program evaluation.

5. Olivine will waive any credit or collateral associated with SCPA’s minimum participation in CAISO markets; if incremental credit or collateral is required by the CAISO due to SCPA’s program, SCPA will be responsible for those incremental credit or collateral requirements that are required of Olivine. Any such incremental credit or collateral requirements would be calculated in advance by the CAISO and can be provided in the form of a mutually acceptable monetary reserve instrument to fulfill requirements.

6. Olivine will operate as the DER program administrator, DRP, DERP, and (with respect to demand response or distributed energy resources) SC, which includes:
a. Enrollment of customers in customer-selected distributed energy resource programs including but not limited to demand response programs (including ongoing enrollment changes), evaluation of customer eligibility and customer training

b. Registration of customers/resources with the CAISO, based on the CAISO’s rules and pursuant to SCPA’s direction

c. Execution of the necessary forms, contracts, and/or documents to gain access to customer data and/or investor-owned utility revenue quality meter data ("the Data")

d. Translation of the Data into settlement quality meter data as defined in the CAISO tariff

e. Submission of the settlement quality meter data to the CAISO within the CAISO prescribed timelines.

7. Olivine will develop performance calculations for all SCPA programs (e.g. CCA retail performance settlements). All resource performance in the wholesale market is measured through the settlement process performed by the CAISO.

8. Under the previous SCPA-Olivine agreement, Olivine was to develop, with input from SCPA, operational procedures governing Olivine’s operations under the SCPA DER Program. Within 60 days of the effective date of this Agreement, Olivine, with input from SCPA, will finalize the operational procedures inclusive of settlement transactions, for the Parties’ mutual agreement. These procedures will be updated from time to time based on circumstances and program design needs.

9. Upon request by Olivine, SCPA shall provide information to Olivine as is reasonably necessary for Olivine to comply with Olivine’s obligations as DRP, DERP, and (with respect to demand response or distributed energy resources) SC in a timely manner to meet regulatory requirements.

10. Customers/program participants or SCPA are responsible for all resource performance in the CAISO market and for dispatching resources in conformance with CAISO dispatch instructions upon notification of such instructions by CAISO or Olivine. Olivine has the right to hold resource owners, aggregators or other program participants responsible for any Failure to Comply with CAISO dispatch instructions or a failure of any resource performance in CAISO markets as settled through the CAISO settlement process, unless such failures are caused by the negligence of Olivine or the failure of Olivine to provide notice of dispatch instructions where Olivine had a duty to provide such notice.

a. SCPA shall require customers/program participants to execute specific customer agreements with SCPA; these customer agreements will be developed and approved jointly by SCPA and Olivine and drafted to ensure customers/program participants agree to follow CAISO or
SCPA/Olivine dispatch instructions and other applicable resource performance or program requirements.

11. SCPA will be responsible for any and all charges or fees that may be assessed on Olivine by the CAISO in connection with Olivine’s provision of DRP services, DERP services, or (with respect to demand response or distributed energy resources) SC services to SCPA; provided, however that Olivine (and not SCPA) shall be responsible for such charges and fees to the extent that the charges and fees result from a failure of Olivine to perform its obligations under this Agreement or the negligence of Olivine in connection with the performance of services under this Agreement. The remittance of such fees by SCPA to Olivine may be included in the program design or SCPA may remit directly to Olivine payment in full for such charges upon receipt of Olivine’s submission of an invoice and copy of assessed charges from the CAISO outlining these charges.

a. DRP fees or charges would be implemented for the first full month of delivery and continue for three months after the last transaction date, to compensate Olivine for work performed in supporting meter data processing, settlement and dispute management. SC service fees or charges would apply only during months of active bidding.

12. Olivine is not responsible for costs or losses caused by systematic delays created by SCPA, the investor-owned utilities, CAISO or CPUC, except to the extent Olivine was responsible for such delays due to a failure of Olivine to perform its obligations under this Agreement or the negligence of Olivine in connection with the performance of services under this Agreement.

13. Olivine will employ its DER Platform and related technology and the Olivine Applications Program Interface to provide these services; Olivine’s DER Platform is the active server and software that administers Olivine’s services that is owned and maintained by Olivine. The Olivine Applications Program Interface is Olivine’s technology that enables third parties and other devices to interface with the Olivine DER Platform. Olivine is the sole owner of its DER Platform and related technology and the Olivine Applications Program Interface. Olivine will, subject to the terms and conditions of this Agreement, grant SCPA a restricted, non-transferable right to use the Olivine DER Platform and any related technology. Olivine will waive its training fee and charges for training SCPA, its employees, agents, independent contractors and affiliates to use the Olivine DER Platform and related technology, subject to reasonable limits on the number of individuals to be trained.

a. SCPA’s employees, agents, independent contractors and affiliates are subject to the same obligations hereunder to the extent they are required to use Olivine’s DER Platform and related technology.

b. Olivine will issue system identification numbers or passwords for SCPA’s internal use only. SCPA will take reasonable measures to detect and prevent any unauthorized publication or use of system identification numbers or passwords. SCPA will be responsible for the losses or damages caused by any unauthorized use of Olivine’s DER Platform and
related technology by SCPA employees, contractors, subcontractors or agents.

c. Olivine retains all rights, title and interest in and to the Olivine DER Platform and related technology, including any derivative works thereof. SCPA agrees to not take any action to jeopardize, limit or interfere with Olivine’s ownership rights of the DER Platform and related technology or derivative works thereof.

14. Olivine and SCPA shall permit their market communications to each other to be recorded in accordance with state and federal law.

15. In an effort to connect and incorporate electric vehicle supply equipment (“EVSE”) to the larger SCPA DER program, SCPA will migrate its current EVSE website to a new webstore operated by Olivine. This transition shall happen no later than November 16, 2018. SCPA shall notify Olivine of date of transition from Phase 1 (Use of eMotorWerks Webstore) to Phase 2 (Use of the SCPA DER Webstore) in writing at least 7 days in advance of transition. In the next month following this transition, monthly service fee paid to Olivine shall increase by $2,000 per month.

   a. Phase 1: Use of eMotorWerks Webstore. Olivine shall work with SCPA and its technology vendor to provide post-purchase customer communications for enrollment into the SCPA DER Program, including the distribution of customer facing forms, contracts and/or documents to gain access to customer data and/or investor-owned utility revenue quality meter data.

   b. Phase 2: Use of SCPA DER Program Webstore.

      i. Olivine will integrate its capabilities with SCPA’s DER Program website to create a seamless experience for SCPA customers providing program information, enrollment, data access authorizations and interfaces for merchant store or related capabilities acting as an interface with technology aggregators or other mutually approved parties to provide services to SCPA customers. Olivine’s system will maintain and provide information regarding these purchases, services and enrollments to support marketing, customer service and program evaluation efforts.

      ii. Olivine shall build, maintain, and improve the SCPA DER Program Website where customers may order technologies or services offered as a part of the SCPA DER Program. The Website shall be capable of allowing customers to execute the CISR form and all necessary participation agreements through a “click through” process. Upon receiving orders through the SCPA DER Program Website, Olivine shall conduct a full applicant review, including responding to applicant questions, providing online support, and verifying that the applicant is an SCPA customer. Olivine shall flag any suspicious orders—as defined in the operational procedures developed under Section 8 above—and notify SCPA of
these orders within 1 business day. Olivine will integrate with and use the SCPA database to provide customers with an online, real-time verification tool. Once SCPA customer status is verified, Olivine shall send a request for order fulfillment to the appropriate technology vendor through Application Programming Interfaces (APIs). Customer and order verification shall be conducted prior to Olivine sending an order via an API to the technology vendor. Customer sales tax on the retail value of the DER equipment, plus any shipping and handling fee, shall be charged by Olivine, with the shipping fee remitted to the technology vendor in a timely manner.

16. Each week, Olivine will provide an itemized list (via an Excel spreadsheet) containing the following information:

a. A cumulative list, as of the beginning of the fiscal year, that includes: order number, purchasing customer names, email addresses, PG&E account numbers, service addresses, shipping addresses, equipment(s) ordered and shipped, activation status, amounts, and changes since last report.

17. Within 1 business day, Olivine shall update the SCPA DER Program webstore to respond to technology vendor updates to equipment, equipment pricing, backorders of equipment.

   a. In consideration for SCPA and Olivine working cooperatively to develop this program model Olivine agrees to the reduced fee schedule as follows.

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<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Transition</td>
<td>Transition plan, Operating Procedures, LSE DRRS access</td>
<td>$15,000</td>
<td>60 days after contract signing</td>
</tr>
<tr>
<td>Customer Interface</td>
<td>Execution of contracts with customers who currently have CISRs on file; website update</td>
<td>$15,000</td>
<td>60 days after contract signing</td>
</tr>
<tr>
<td>Program Design</td>
<td>Technology Incentive requirements, additional client options</td>
<td>$15,000</td>
<td>90 days after contract signing</td>
</tr>
<tr>
<td>Operational Go-Live</td>
<td>Initial bidding or dispatch</td>
<td>$10,000</td>
<td></td>
</tr>
<tr>
<td>Off Peak Service Fees 2017-2018</td>
<td>Ongoing service fees including planning and outreach</td>
<td>$8,000</td>
<td>Monthly October 2017-April 2018</td>
</tr>
<tr>
<td>Monthly Service Fees (Before Webstore Hosting)</td>
<td>Ongoing service fees including market operations</td>
<td>$10,000</td>
<td>Monthly, May 2018- November 2018</td>
</tr>
<tr>
<td>Monthly Service Fees (After Webstore Hosting)</td>
<td>Ongoing service fees including market operations and webstore</td>
<td>$12,000</td>
<td>Monthly, after November 2018</td>
</tr>
</tbody>
</table>
ESCROW ACCOUNT AND MANAGEMENT

1. Olivine Administration of GridSavvy Escrow Account.
   a. At the discretion of SCPA’s Director of Programs, Olivine agrees to collect direct payment from SCPA customers for products sold through the GridSavvy Community webstore. Payment collected may include direct sales fees, credit card fees, taxes, fees, or any associated payment necessary for proper operation of the GridSavvy Community webstore.
   b. At the discretion of SCPA’s Director of Programs, Olivine agrees to pay SCPA customers out of the GridSavvy Escrow Account after Olivine validates customers’ entitlement to such payment, based upon defined eligibility requirements articulated in writing by SCPA and Olivine in the latest version of the “GridSavvy Terms and Conditions”. SCPA will provide advance written notice to Olivine of any change in GridSavvy Program enrollment qualifications, program structure or funding. Payments may include incentive payments, enrollment payments, credit card processing fees, and other non-enumerated costs associated with management of the Program.
   c. Olivine will communicate with customers as needed to confirm their qualification for enrollment incentives.
   d. Olivine agrees to make enrollment incentive payments to customers as needed to meet SCPA timeline targets for incentive payments, but under no circumstances less frequently than once per week.
   e. Once per week, Olivine agrees to provide SCPA a list in Excel, “csv” format, or other reporting method approved by SCPA showing, at a minimum, customer incentives paid, the name and account number of customers receiving the incentive payments, the amounts of each incentive payment made, the amount of remaining payment fund balance, and the number of outstanding (that is, requested but not yet issued) customer enrollment incentive applications credits.

2. Establishment of GridSavvy Escrow Account. Olivine will establish an FDIC-insured escrow account that Olivine will use to collect funds from SCPA and/or its customers (the “GridSavvy Escrow Account”). Olivine will use the GridSavvy escrow account to pay customers for payments related to the GridSavvy Community.

3. Initial Payment by SCPA to GridSavvy Escrow Account. SCPA agrees to provide an initial $100,000 payment to Olivine for deposit into the GridSavvy Escrow Account to fund GridSavvy Community customer payments.

4. Ongoing Payments by SCPA to GridSavvy Escrow Account.
   a. Olivine agrees to monitor the GridSavvy Escrow Account balance, as well as the amount of GridSavvy Community payments paid and outstanding and report to SCPA concerning the same.
b. Olivine agrees to promptly notify SCPA when the balance in the Grid-Savvy Escrow Account drops below $25,000.

c. When the balance of the GridSavvy Escrow Account drops below $25,000, SCPA agrees to replenish the GridSavvy Escrow Account balance with payment of up to $25,000, subject to the not-to-exceed amount limitation set forth in this Agreement.
Staff Report – Item 08

To: Sonoma Clean Power Authority Community Advisory Committee

From: Geof Syphers, CEO
       Rebecca Simonson, Power Services Manager

Issue: Recommendation that the Board Approve a Conditional Rate Adjustment and Provide Direction Concerning Subsequent Budget Adjustments Associated with Rate Implementation

Date: November 29, 2018

Recommended Actions

1. Recommend that the Board of Directors (“Board”) approve a conditional rate adjustment to protect customers from significant rate increases from changes in PG&E’s fees, including recommending that the Board authorize the CEO to take an exemption from financial policy B.2 on reserves as provided for in this Staff Report.

2. Provide direction to Staff concerning related budget adjustments to the Fiscal Year 2018-19 budget, which will subsequently return to the Board in 2019 for formal adoption in connection with rate implementation.

Background

Two PG&E fees/rates have the potential to be issued at the outset of 2019 with little notice, and would require SCP to move quickly to modify its rates, preferably using conditional rate adjustment authority proposed by Staff, to avoid unintentional customer rate impacts: (1) the increase in the PCIA; and (2) PG&E’s large annual generation rate change.

PCIA: In 2018, the California Public Utilities Commission (“Commission” or “CPUC”) rejected the assigned judge’s Proposed Decision on the exit fees known as the “PCIA.” In its place, the Commissioners adopted an Alternate
Proposed Decision (“APD”) which dramatically increases costs for CCA customers. Unfortunately, the Commission is implementing this PCIA fee hike before undertaking a review of whether PG&E and the other utilities took reasonable efforts to mitigate their costs, and without any public review of most costs. This means that SCP customers will see a large increase in their rates without having the ability to publicly audit the costs or know if any efforts were made to minimize them.

The new PCIA fee is scheduled to be implemented beginning January 1, 2019, though it could be delayed several months. Staff expects the PCIA fee to have a disproportionate impact on customers, with large commercial and agriculture customers facing very large increases, and residential customers a small change.

PG&E Generation Rates: In addition to the PCIA changes, PG&E’s large annual generation rate change also normally goes into effect on January 1. But this year, that change may also be delayed somewhat. PG&E continues to revise its forecasts of future rates, with a final update expected in late December.

The forecast of the PCIA and PG&E’s requested generation rates are shown in Table 1, but are still subject to adjustment prior to implementation. In addition, any under- or over-collection of fees and generation rates due to implementation later than January 1 would be trued up over time in the following year.

Table 1. PG&E Proposed Fees and Rates for 2019
(Annual Electric True-up, 9/4/2018)

<table>
<thead>
<tr>
<th></th>
<th>PG&amp;E $/kWh</th>
<th>PG&amp;E CCA Fees $/kWh</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Gen</td>
<td>Delivery</td>
</tr>
<tr>
<td>E1</td>
<td>0.10243</td>
<td>0.13376</td>
</tr>
<tr>
<td>E1L</td>
<td>0.10243</td>
<td>0.03360</td>
</tr>
<tr>
<td>A1</td>
<td>0.10283</td>
<td>0.14346</td>
</tr>
<tr>
<td>A10S</td>
<td>0.10842</td>
<td>0.11847</td>
</tr>
<tr>
<td>E19S</td>
<td>0.09914</td>
<td>0.09326</td>
</tr>
</tbody>
</table>

Impact of CPUC Decision

The CPUC’s adoption of the APD means that most CCAs are facing important financial challenges for the first time. To remain even roughly cost competitive with the higher fees, many CCAs are exploring delaying the
launch of customer programs and stopping buying new long-term renewable energy contracts. Since these are mission-critical to CCAs, a major focus for CalCCA is on how to remedy the situation and protect customers from inflated IOU costs.

For SCP, the PCIA decision does not appear to present an existential threat in the foreseeable future. But staff will likely recommend:

- Significant cuts to customer program expenditures;
- Moderate cuts across most agency spending;
- Customer rates that are slightly higher than PG&E’s; and
- Possibly no contributions to credit reserve funds for several years, or until ratepayers secure the right to force IOUs to actively mitigate costs.

Notwithstanding the near term steps identified above, SCP continues its challenges across various Commission proceedings to protect ratepayers and demand accountability for PG&E’s failure to manage their portfolio costs.

The Context of IOU Fire Liability

PG&E and its potential liability from wildfires continues to have a disruptive, unpredictable impact on California’s energy market. PG&E recently fueled speculation that it may be contemplating filing for bankruptcy protection by drawing its entire line of credit in advance of a Moody’s credit downgrade to Baa3, just above junk status. All sectors of the energy market are evaluating both direct and indirect effects of such a move, including, for instance, whether PG&E’s damaged credit will lead the development of new renewable energy to slow because banks will not want to take risks of selling to a low-rated utility and developers holding contracts with PG&E may be concerned about receiving future payments.

PG&E’s 2001 bankruptcy was a major factor in the vote on AB 117 creating CCAs to provide increased market stability and oversight, and CCAs are fulfilling that role today by continuing to build renewable energy when PG&E cannot. However, to succeed at a scale that protects California’s progress on renewable energy from PG&E’s situation will require an equitable PCIA that doesn’t allow IOUs to create unlimited costs without transparency or efforts to mitigate.

SB 901 adopted earlier in 2018 provides a mechanism for IOUs to recover fire liabilities from 2017 fires if they can demonstrate that is necessary to avoid bankruptcy. The bill did not extend that protection to 2018 fires, so this next
session will probably include a bill by the IOUs to extend that protection and revisit inverse condemnation. In addition, President Picker has publicly expressed his interest in ensuring that PG&E avoid bankruptcy in the context of discussing wildfire proceedings set to begin before the Commission.

**Recommended Rate Adjustment and Board Direction Regarding Budget**

For these reasons, staff has concluded that the best protection for customers is to have the Committee recommend that the Board approve a conditional rate adjustment that can be implemented within 30 days of any event that causes SCP customer rates to exceed a specific threshold relative to PG&E rates, as described in more detail below. The budgetary direction staff is seeking as part of the conditional rate adjustment is described more specifically in item four on the list of adjustments, and in Table 2.

Originally, the Committee had asked for staff to bring two or more scenarios for customer savings (e.g., 1.0% savings versus equal rates). However, there are too many unknowns to develop these scenarios at this time.

For the remainder of SCP’s fiscal year, from January 1 through June 30, 2019, if PG&E’s rates and/or PCIA changes cause any of SCP’s most common rate classes (E1, E1L, A1, A10S and E19S) to have no savings on total electric charges (the “Threshold”), then staff recommends implementing within 30 days the following adjustments in succession until forecast revenues and expenses (inclusive of any planned contribution to reserves) are equal (the “Balanced Budget”). Once the Balanced Budget is achieved, then staff would stop, and would not implement further adjustments. This list, therefore, is in order from what staff considers the least to most onerous.

**List of Adjustments (to be implemented in order, as noted above)**

1. Set all rates to provide 0.25% savings on total electric charges.
2. Cut reserve contributions to 3% of revenues, the minimum required in Financial Policy B2.
3. Set all rates to provide 0% savings on total electric charges.
4. Cut the remaining unspent balances for specific budget items by the percentages in Table 2.
5. Cut reserve contributions to 0%, where the Board delegates authority to the CEO to take the exemption from Financial Policy B2.
6. Increase customer rates up to 4% over PG&E on total electric charges.
If staff determines that taking all of these actions would nevertheless fail to produce a Balanced Budget, then staff anticipates returning with new, or additional proposals to the Committee and then the Board at the next meetings.

### Table 2. Budget Cuts

<table>
<thead>
<tr>
<th>Budget Category</th>
<th>FY18-19 Budget</th>
<th>Proposed Cut for Unspent Balances</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel</td>
<td>$3,661,000</td>
<td>5%</td>
<td>Defer hiring new staff</td>
</tr>
<tr>
<td>Outreach &amp; Comm.</td>
<td>1,144,000</td>
<td>20%</td>
<td>Cut ads and donations</td>
</tr>
<tr>
<td>Customer Service</td>
<td>440,000</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>General and Admin.</td>
<td>531,000</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Other Prof. Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal</td>
<td>310,000</td>
<td>(30%)</td>
<td>Increase in legal fees</td>
</tr>
<tr>
<td>Accounting</td>
<td>204,000</td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td>Technical</td>
<td>190,000</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Leg/Reg Advocacy</td>
<td>128,000</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Other consultants</td>
<td>260,000</td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td>Program Implement.</td>
<td>5,510,000</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Program Design/Eval.</td>
<td>350,000</td>
<td>30%</td>
<td></td>
</tr>
</tbody>
</table>

As noted above, the uncertainty over when PG&E rates and fees will be changed motivates staff’s request that the Committee recommend that the Board consider a conditional rate adjustment that could be made any time during the remainder of the current fiscal year. Should the Committee and the Board opt to approve the conditional rate adjustment, staff will report out to both the Committee and the Board on any instances when it was necessary to implement any of the actions identified on the list of adjustments. With respect to budget direction provided by the Committee and the Board in connection with the conditional rate adjustment, staff will integrate the direction into subsequent budget proposals for formal Committee and Board approval.