NOTICE OF REQUEST FOR QUALIFICATIONS

TO:     All Prospective Respondents
SUBJECT:  Request for Qualifications: Professional architectural and engineering design services – SCP Energy Marketplace
DATE ISSUED:   [September 4, 2018]
RESPONSES DUE:   [September 24, 2018] by [5:00] PM.

1.   PROJECT SUMMARY

   Sonoma Clean Power Authority (known as “SCP”) issues this Request for Qualifications (“RFQ”) for design teams (“Firms”) to provide architectural and engineering design services for a renovation of an approximately 9,500 +/- sq. ft. space to include a store, demonstration and classroom space and office space in downtown Santa Rosa currently targeted by SCP for lease (“Project”). The space will serve as SCP's Lead Locally Energy Marketplace and includes an interactive showcase of zero-carbon technologies, including heat pumps, induction cooktops, and other advanced efficiency measures. The space will also include an entry/reception area, small planning room, office space, secured storage space for minimal supplies, cooking demonstration area, restrooms, and a training room for seating approximately 50 people with an AV system capable of video conferencing, recording, display and audio components. SCP is targeting the downtown Santa Rosa space described herein for Lease; however, depending on lease negotiations it is possible that SCP may, in its sole discretion, select an alternate site for the purposes described in this RFQ. SCP’s goal is to select a Firm in September 2018 to negotiate a final scope and contract with. SCP’s target date for move-in date is April 2019.

   Minority-owned, women-owned and locally-headquartered businesses are encouraged to respond.

2.   ABOUT SCP
SCP is a public agency that provides electricity for and customer programs to most electricity customers in Sonoma and Mendocino Counties. The mission of the agency is to help solve the climate crisis while keeping energy affordable.

3. TENTATIVE RFQ TIMELINE

Dates below are subject to change by SCP, in its sole discretion, in accordance with the terms of this RFQ:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>RFQ Issued</td>
<td>September 4, 2018</td>
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<tr>
<td>Deadline for Questions, Clarification from Proposing Firms</td>
<td>September 18, 2018</td>
</tr>
<tr>
<td>SOQs Due</td>
<td>September 24, 2018 at 5:00 p.m.(PST)</td>
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<tr>
<td>Finalists notified</td>
<td>September 25, 2018</td>
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<tr>
<td>Finalists interviewed</td>
<td>October 1 through October 5, 2018</td>
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<tr>
<td>Selected Firm (if Any) notified</td>
<td>October 5, 2018</td>
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<tr>
<td>Contract Preparation</td>
<td>October 5 through October 10, 2018</td>
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<tr>
<td>Target Date for CEO/ Board Consideration of Agreement</td>
<td>October 10, 2018</td>
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<tr>
<td>Work Commences</td>
<td>October 10, 2018</td>
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4. PROPOSED PROJECT SCOPE

SCP provides the following information related to the existing building currently being targeted by SCP for lease, representative scope of renovations and potential design challenges and objectives to facilitate submission of a Statement of Qualifications (hereinafter also referred to as a “Qualifications Statement” or (“SOQ”)) by interested Firms. The information provided is based on SCP’s initial Project assessment and are intended to be representative, rather than comprehensive. SCP intends to refine and negotiate the scope of work for the Project, including potential additions and deletions, in the event SCP elects to select a Firm through this RFQ. As noted in the Project Summary, SCP is targeting a storefront space for lease in downtown Santa Rosa. If SCP cannot reach agreement on the terms of any such lease, SCP plans to pursue the project in an alternate space, ideally located and situated in a similar manner. In the case an alternate space is required, SCP will work with the successful proposer, if any is selected, to update site specific information and conditions set forth in this RFQ.

4.1 Existing Building

The existing property is located at 741 4th Street in Santa Rosa, California and is approximately 9,500 square feet in the building’s first floor. While the building does have a second floor space, SCP is not contemplating using the second floor space at this time. The original building’s immediate prior use was a retail space. Photos of the existing building are included in Exhibit A.

4.2 Representative Scope of Renovations
Based on SCP's initial Project assessment, the following provides a representative rather than comprehensive scope of work. The final scope of work will be refined in the event SCP selects a Firm through this RFQ:

(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.

### 4.3 Representative Design Challenges and Objectives

The identified issues below are representative, and will be more fully described with SCP staff working together, should SCP select a Firm through this RFQ.

(a) **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.

(b) **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.

(c) 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.

(d) 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.

(e) 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.

(i) Lighting will be completely replaced with high efficiency LED fixtures and controls. Mixed light with daylighting controls and local task light or other similarly efficient solutions. Where possible, lighting controls should be visible/accessible to the public. It is anticipated that 240v service will need to be routed to various locations on the main Marketplace floor.

(ii) The existing natural gas water heater shall be removed. Plumbing shall be reconfigured so (2) new heat pump water heaters can be located in the main Marketplace floor while still serving the demonstration kitchen area and restrooms.

(iii) While it is anticipated the existing HVAC and ductwork will remain, system should be evaluated for potential zoning or control improvements. New HVAC displays (1-2) should be accommodated for in the main Marketplace area which are anticipated to serve the bulk of the heating/cooling loads such that use of the older, inefficient system can be minimized.
Water

All water fixtures should be designed to the most current water efficiency standards. All appliances should be Energy Star rated at a minimum.

Waste

High standards for use of minimizing landfill shall be used.

(i) **Construction Waste** - Recycle 90% of non-hazardous debris or per current green building standard.

(ii) **Building Materials** - use high recycled content materials for: toilet partitions, carpeting, ceiling tiles/acoustic panels, etc.

(iii) **Recycling** - Provide recycling bins at all locations where possible.

Green Building Certification

At this time, SCP does not anticipate seeking LEED or other green building certification.

5. PUBLIC CONTRACTS CODE, PREVAILING WAGE

5.1 The successful Firm, if any, would be assisting SCP with a project that will be subject to the competitive bidding requirements of the California Public Contracts Code and prevailing wage requirements.

5.2 Pursuant to Labor Code sections 1720 and 1771, the work under the agreement is subject to the payment of prevailing wages and will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR). Each firm submitting an RFQ must be a DIR-registered contractor pursuant to Labor Code section 1725.5. An RFQ from any firm that is not already a DIR-registered contractor will be rejected for non-responsiveness. Pursuant to Labor Code section 1725.5, all subcontractors identified in a firm’s RFQ shall be DIR-registered contractors as well.

5.3 Prevailing wage requirements are further detailed in Section 28 of SCP’s Sample Agreement, attached as Exhibit B to this RFQ.

6. CALIFORNIA ENERGY COMMISSION

This Project is partially funded by a grant from the California Energy Commission. As such, it is required that the successful Firm, if any, must comply with all requirements set forth in the CEC’s Electric Program Investment Charge (EPIC) Standard Grant Terms and Conditions (the “CEC Terms”). The CEC Terms are included in this RFQ as an attachment (Appendix D) to SCP’s Sample Agreement (Exhibit B attached to this RFQ). Because SCP must comply with the CEC Terms as a condition of receipt of grant funding, SCP will not consider any exceptions to these terms.
7. CONTRACT

7.1 SCP's standard contract is included as Exhibit B. The contract will be subject to negotiation and finalization following selection of a design team. SCP reserves the right not to contract with any firm. If SCP decides to contract, SCP will contract with the firm whose response best meets the needs of SCP.

7.2 Exceptions

As part of your Firm's Statement of Qualifications, your Firm must identify any exceptions or requested changes your firm has to SCP's project, conditions, requirements, sample contract and/or insurance requirements. If there are no exceptions noted, it is assumed the firm will accept all conditions and requirements identified in the sample contract and insurance requirements. Items not excepted will not be open to later negotiation.

8. BUDGET

The project budget for design services with the successful firm, if any is selected, will be established with the successful Firm, if any, before a final decision to proceed with construction documents will be issued.

9. ANTICIPATED PROJECT SCHEDULE AND PHASES

The overall Project schedule is subject to change, in SCP’s sole discretion, but is currently planned for:

- Design: October 2018 start, running 2 to 4 months.
- Construction & Commissioning: Approximately December 2018 start, running 4 to 5 months.

SCP anticipates the Project will be split into five phases, as follows, but the final scope will be negotiated with the selected Firm, if any.

9.1 Phase 1 Programming & Schematic Design

Initial space needs assessment is already largely completed. Phase 1 work will validate the existing program (e.g., major decisions about accommodating a training room, cooking demonstration area, office area, small planning room and possibly relocating interior hallways, and general public access), and will include schematic design sufficient for completing a detailed cost estimate. Authorization to proceed to Phase 2 will not be given until SCP decides to proceed.

9.2 Phase 2 Design Development

Design development documents in two stages of completion (50% and 100%). A cost estimate validation will be performed at 50% DD. All programming decisions will be made before work on the 100% DD set begins, and the project budget should be reasonably certain by this
point. Authorization to proceed with Phase 3 will not be given until SCP decides to proceed.

9.3 Phase 3 Construction Documents / Permitting and Bid Set

The construction documents and permitting and bid set are planned as a single set of documents with no distinction between them, to be completed in two stages (50% and 100%). Initial Division 0 & 1 language to be provided by SCP for review by the selected Firm, if any. Authorization to proceed with Phase 4 will not be given until SCP decides to proceed.

9.4 Phase 4 Construction Administration Services

The scope of CA services will be refined in discussions with SCP staff and the selected firm, if any, but are anticipated to include bidding support, progress meetings and site visits to review work, coordination of finishes, furnishings and equipment, contractor submittal review and processing, responding to contractor RFIs, initial processing of contractor pay applications (with payment issued directly by SCP), and project close-out including punch list, warranty review and a marked drawing set showing any substantial deviations from the permit set.

9.5 Phase 5 Commissioning

Participation in development of building commissioning documents and procedures; and participation in commissioning program. (Specialized Commissioning agent services are not part of this RFQ).

SCP reserves the right to negotiate an agreement that covers all, or just a portion of the phases identified above. Should SCP elect to re-bid any portion of the scope, proposing Firms acknowledge and understand that conflict of interest laws may limit a previously selected Firm’s ability to re-bid on any subsequent phase.

10. GENERAL QUALIFICATION STATEMENT REQUIREMENTS

Proposers should submit a Qualification Statement (sometimes referred to herein as a “Statement of Qualifications” or “SOQ”) in the order shown below, using a maximum of twenty (20) pages. A Table of Contents and page numbers should be included with all SOQs.

10.1 Project Experience

(a) Provide a representative list, up to 5 of similar projects where at least 3 are in the State of California, complete with details of the scope and outcome. Emphasis should be placed on projects involving office and store designs, public spaces such as training rooms, projects using public funding or grants, and deeply energy efficient and green buildings.

(b) Demonstrate your firm’s experience with projects that are subject to the competitive bidding requirements of the California Public Contracts Code, including specifically the drafting of construction, contract, and bid documents meeting the
requirements of the Code, and experience assisting public entities in addressing bid challenges, issues arising during construction inspection and oversight, change order disputes, and contract close-out disputes. SCP has opted in to the provisions of the Uniform Public Construction Cost Accounting Act.

(c) Provide a comprehensive list of owner references on similar past projects, including at least two public agency owners if available.

(d) Identify the services you expect to perform in-house, using your own staff members, and those you anticipate hiring sub-consultants to perform. Proposing Firms must show experience with daylighting, HVAC, and plumbing on the team to be considered. Include an organization chart showing key in-house staff and subconsultants, and an estimate of the total Project hours needed.

10.2 Personnel/Team

(a) List key personnel assigned to the Project, their experience on projects of similar size and scope and hourly rates. The project will require collaboration with SCP staff.

(b) Demonstrate your Firm’s available resources to meet the Project schedule and scope.

(c) Provide a brief firm profile and discussion on the principals and their role, including a statement of their qualifications, and project management experience on public projects.

(d) Legal name of company, how organized (non-profit, LLC, etc.), and where company is incorporated. Not required for individuals.

10.3 Other

(a) Evidence of registration with the Department of Industrial Relations (See Section 5 of this RFQ.)

(b) Provide the location of the office you will use for providing services on this Project.

(c) SCP has attached a sample agreement to this RFQ as Exhibit B. Any proposed exceptions to the indemnification, insurance, or other terms of the agreement. Please make comments as specific as possible. If no exceptions are included in the SOQ the standard terms will be considered acceptable.

(d) List any lawsuit, litigation, notice of violation or enforcement action, debarment or other significant legal issue as applicable in connection with (i) any public project undertaken by your Firm or by your subcontractors where such actions are still pending or occurred within the last five (5) years; or (ii) any type of project where claims or settlements were paid by your Firm, subcontractors or insurers thereof within the last five (5) years.
11. EVALUATION

11.1 SOQs that do not include all of the information requested cannot be adequately evaluated, and may be considered, in SCP's sole discretion, to be non-responsive. Evaluations will be based on the criteria described below, information provided in each SOQ, possible oral interviews with finalist Firms, mail or email requests or other follow-up inquiries from SCP with finalists, information already known by SCP, and other publicly available information such as credit ratings or other information.

11.2 Evaluation will be based on:

(a) Thoroughness of SOQ.
(b) Professional qualifications, overall performance commitment and demonstrated ability to perform the work (See RFQ section 10).
(c) Responsiveness to work requirements.
(d) Exceptions to standard terms in the sample agreement (See RFQ section 7.2).
(e) Firm's financial stability.

11.3 A 5% weighting will be provided in the total rating score for local firms. A Local Service Provider (local firm) is defined as a business or consultant who has a valid physical address located within Sonoma County from which the vendor or consultant operates or performs business on a day-to-day-basis, and holds a valid business license if required by a city within the jurisdiction of Sonoma County. A business shall affirm it qualifies as a local business in a form reasonably requested by SCP.

11.4 A proposal and presentations by the top firms may be required before a final selection is made. Final terms of the agreement and contract price may then be negotiated with the Firm selected. A final agreement may be offered to the Firm selected, if any. If a selected firm is not willing to accept the SCP's offer, other qualified firms may be contacted or SCP, may in its sole discretion, elect to re-bid the Project.

12. PUBLIC RECORDS

All SOQs and any related documents submitted in response to this Request for Qualifications shall be subject to disclosure under the California Public Records Act. In the event that your Firm desires to claim portions of its Statement of Qualifications or related documents exempt from disclosure, it is incumbent upon your Firm to clearly identify those portions with the word "confidential" printed on the lower right-hand corner of the page. SCP will consider your Firm's request for exemption from disclosure; however, SCP will make a decision based upon applicable laws. Assertions by a firm that the entire Statement of Qualifications and/or related documents or large portions thereof are exempt from disclosure will not be honored.

All responses to this Request for Qualifications shall become the property of SCP and will be retained or disposed of accordingly. SCP reserves the right to
release such information to its agents, contractors, or members for the purpose of evaluating a response. Under no circumstances will SCP, its Board, managers, agents, contractors or Members be liable for any damages resulting from any disclosure of Firm’s claimed confidential information during or after this RFQ process.

13. WITHDRAWAL OF STATEMENT OF QUALIFICATIONS

A Firm may withdraw its Statement of Qualifications at any time before the Responses are due by delivering a written request for withdrawal signed by, or on behalf of the Firm.

14. RIGHTS OF SCP

14.1 This Request for Qualifications does not commit SCP to enter into a contract, nor does it obligate SCP to pay for any costs incurred in the preparation and submission of a qualifications statement or in anticipation of a contract.

14.2 SCP reserves the right to:

(a) Make the selection based on its sole discretion;
(b) Reject any and all Statements of Qualifications;
(c) Issue subsequent solicitations;
(d) Postpone any of the time periods set forth in this RFQ, for its own convenience;
(e) Remedy technical errors in the RFQ;
(f) Approve or disapprove the use of particular subconsultants;
(g) Negotiate with any, all, multiple or none of the Proposers that respond;
(h) Negotiate a final project scope that includes all, just a portion or related additional items relative to the Proposed Project Scope set forth in this RFQ;
(i) Select a different location for the project than the current space described herein and currently targeted for lease by SCP;
(j) Waive informalities and irregularities in the Qualification Statement;
(k) Utilize others to perform or supply work of the type contemplated by this RFQ;
(l) Request proposals from others with or without requesting proposals from contractors for the work of the type contemplated by this RFQ; and/or
(m) Enter into an agreement with another Firm or re-solicit the Project in the event the originally selected firm defaults or fails to execute an agreement with SCP.

14.3 SCP reserves the right not to contract with any Firm. If SCP decides to contract, SCP will contract with the Firm whose response best meets the needs of SCP, consistent with the selection process set forth below.

14.4 An agreement is not binding or valid with SCP unless and until it is executed by authorized representatives of SCP and the Firm selected.

14.5 Evaluation of a response does not constitute a commitment by SCP to acquire such services from any source. SCP is not obligated in any way
to proceed with this RFQ or consider or enter into any agreement or undertake any liability to any firm in connection with this RFQ and any and all responses, whether qualified or not, may be rejected without any liability whatsoever to any firm on the part of SCP. SCP shall not be responsible for any costs incurred by a firm to prepare, submit, negotiate, contract or otherwise participate in this RFQ process.

15. QUESTIONS

Please direct any questions, need for additional information, clarification of the RFQ, or requests to tour the Project location in writing, to Chad Asay, Programs Manager, at programs@sonomacleanpower.org. Questions or comments must be received no later than [September 18, 2018 at 5:00 p.m.].

Information provided to firms by anyone other than the above contact may be invalid and Qualified Statements which are submitted in accordance with such information may be declared non-responsive. Responses from SCP will be communicated via email to all recipients of this RFQ. Inquiries received after the date and time stated above will not be accepted.

In the event that it becomes necessary to revise any part of this RFQ, written addenda will be issues. Any amendment to this RFQ is valid only if it is in writing and issued by SCP. No oral interpretations or answers shall bind SCP unless confirmed by SCP in writing. All addenda shall become a part of this RFQ.

16. INTERVIEWS

Interviews with short-listed teams will be scheduled for one of the following dates: [October 1, 2, 3, 4, & 5th, 2018]. If none of these dates work, please provide possible dates in advance of the submittal deadline to find out if SCP can accommodate.

17. EXHIBITS, EXAMINATION OF RFQ DOCUMENTS

17.1 The following Exhibits are included in this RFQ:

(a) *Exhibit A* – Photos, Site Plan of Project Site
(b) *Exhibit B* – SCP Standard Contract
   (i) *Appendix A* - Scope of Services
   (ii) *Appendix B* - Compensations Schedule
   (iii) *Appendix C* - Insurance
   (iv) *Appendix D* - CEC grant terms and conditions (CEC’s Electric Program Investment Charge (EPIC) Standard Grant Terms and Conditions.)

17.2 Submission of an RFQ by a proposing Firm shall be deemed a representation that the Firm:

(a) Has carefully read and fully understands the information provided by SCP as part of this RFQ, including all Exhibits;

(b) Represents that all information submitted is true and correct;
(c) Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Firm in regard to the amount, terms or conditions of an SOQ; and

(d) Acknowledges that SCP has the right to make any inquiry it deems appropriate to substantiate or supplement information as necessary.

17.3 No request for modification of a SOQ shall be considered after submission on the grounds that a Firm was not fully informed about any fact or condition.

18. QUALIFICATION STATEMENT SUBMITTAL

Statements are due to SCP on [September 24], 2018 by [5:00] PM.

Electronic submittals are preferred as a single PDF to programs@sonomacleanpower.org.

Paper submittals must be fully recyclable (e.g., no plastic sheets) and shall be addressed to:

Sonoma Clean Power -- Lead Locally Energy Marketplace RFQ
50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, CA 95404

SCP may in its sole discretion reject any late or incomplete SOQ.
Exhibit A

(Floorplan and interior photos)
The photos above and below display an exterior view of the main entry.
Interior view from the entry door into the dedicated store space.
Back of the store space view of the entry way.

Side view of the back store space that displays the existing restroom doors.
A view from the back store space into the back mezzanine doorway.

Back door view into the mezzanine hallway and doorway into the store space. Note: doors to left lead to two existing office spaces.
Existing electrical panel.

View inside one of the existing restrooms.
PROFESSIONAL SERVICES AGREEMENT FOR

THE SONOMA CLEAN POWER AUTHORITY

With

XXXXXXX

for the

SONOMA CLEAN POWER AUTHORITY ENERGY MARKETPLACE

NOTE TO DRAFTERS (8/25/2018):

THIS CONTRACT FORM IS TO BE USED FOR PROFESSIONAL SERVICES PROVIDED BY THE FOLLOWING ENTITIES:

ARCHITECTURAL, ENGINEERING,
LAND SURVEYING,
ENVIRONMENTAL and
CONSTRUCTION MANAGEMENT

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)
This Agreement is made this ______ day of ______, 2018 (“Effective Date”), in the City of Santa Rosa, State of California, by and between ________________, A [Corporate Form], located at ________________, hereinafter referred to as “Consultant” and the Sonoma Clean Power Authority located at 50 Santa Rosa Avenue, 5th Floor, Santa Rosa, California 95404, a California Joint Powers Authority, hereinafter referred to as “SCP”. SCP and Consultant may be individually referred to as a “Party” or collectively as “Parties”.

AGREEMENT

1 Definitions

1.1 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.

1.2 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”) and “C,” attached hereto.

1.3 Consultant ________________________________

1.4 SCP Sonoma Clean Power Authority.

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

1.6 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”.

1.7 Subconsultants Consultant’s consultants, and subconsultants, including:

____________________________
____________________________
____________________________

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 ______ (___) months from the Effective Date, whichever is shorter.

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. SCPA may set off against payments due Consultant under this Agreement any sums that SCPA determines that Consultant owes to SCPA because of Consultant’s errors, omissions, breaches of this Agreement, delays or other acts which caused SCPA 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 ____________; 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 listed in its proposal, Exhibit 1 to Appendix “A” and/or 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 “brought 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 Representations 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 SCP 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 SCP’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
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 re-perform 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 Conflicts of Interest/Other Agreements

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.

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: _____________________

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 its Statement of Qualifications and Proposal (exhibits to Appendix “A”), below 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 Services, without the written consent of SCP.

21 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
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 (collectively referred to herein as “ADA”), 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.

24 Disputes.

24.1 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,
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.

[SIGNATURE BLOCKS]

END OF DOCUMENT
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**

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.

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

1.2 **Consultant Team**

Consultant's team consists of the following subconsultants:

_________________  ___________________________
_________________  ___________________________
_________________  ___________________________
_________________  ___________________________
_________________  ___________________________
_________________  ___________________________

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

*Project Manager.*

Principal in charge:

_________________  ___________________________
_________________  ___________________________
_________________  ___________________________

Project Manager:

_________________  ___________________________
_________________  ___________________________
_________________  ___________________________

_________________  ___________________________
In future phases the following services may be added: 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 **Scope of Project – Schematic Design Phase**

**Tasks**

[TBD]

Exclusions: 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”):

[TBD]

**Meetings and Presentations**

Duration [TBD]

Meetings [TBD]

Presentations [TBD]

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.

1.4 **Consultant’s Milestone Schedule**

[TBD]

1.5 **Deliverables**

[TBD]

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

1.7 **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.

1.8 **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 SCP grants a written exemption to a specific standard or regulation.

2.2.3 Consultant shall review existing SCP 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 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
PROFESSIONAL SERVICES AGREEMENT - APPENDIX B

COMPENSATION SCHEDULE

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 $____ 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 $______ dollars ($______) 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 $______ dollars ($______).

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

Budget to be provided by Consultant

PROFESSIONAL SERVICES AGREEMENT - APPENDIX “B-2”
HOURLY RATES

Hourly Rates to be provided by Consultant
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
ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) STANDARD GRANT TERMS AND CONDITIONS

(See separate-attached standalone document)