



REQUEST FOR PROPOSALS

FOR

FINANCIAL AUDIT SERVICES

RFP Release Date: June 10, 2022

**RFP Submittal Deadline: Friday, July 8, 2022 at 5:00 PM
Pacific Time**

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2 - Silicon Valley Clean Energy Overview

Silicon Valley Clean Energy (SVCE), a Community Choice Energy agency, is redefining the local electricity market and providing our residents and businesses with new clean energy choices—renewable and carbon-free electricity at competitive rates. SVCE was formed as a Joint Powers Authority in 2016, and now serves approximately 270,000 residential and commercial electricity customers across a service area comprised of the following thirteen communities: Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and Unincorporated Santa Clara County. 97% of electricity customers in SVCE’s service area receive their electricity from SVCE. For more information on SVCE, please visit: <https://www.svcleanenergy.org/>.

As SVCE was formed to support our communities in reducing their greenhouse gas emissions, we aim to provide our customers with resources that can help them understand their energy use and how it relates to their carbon footprint, discover ways to reduce their carbon footprint and find products and contractors to help them save energy and money. SVCE is also in the process of launching a broad set of programs supporting decarbonization efforts and needs an online resource to enable customers to engage with these programs and related activities. For more information on SVCE’s overarching program strategy and planned programs, please visit: <https://www.svcleanenergy.org/programs/>.

3 - RFP Overview

With this request for proposals (RFP), SVCE seeks proposals from qualified firms (Bidder) to audit its financial statements as described in this RFP’s scope of work. Bidders should provide one proposal in response to this RFP. SVCE reserves the right to award work to multiple Bidders, or to award work to no Bidders.

SVCE contemplates an initial one-year term, and reserves the right to extend for additional years, subject to the annual review, the satisfactory negotiation of terms (including a price acceptable to both SVCEA and the selected firm), the concurrence of the Board of Directors and the annual availability of an appropriation.

With this RFP, SVCE is soliciting the services of qualified firms of certified public accountants to prepare and present an audit of its basic financial statements, accompanied by required supplemental information, encompassing the fiscal period(s) commencing October 1, 2022, through September 30, 2023. Additional years / periods may be negotiated through an extension to the agreement. This audit is to be performed in accordance with U.S. generally accepted auditing standards.

GENERAL EXPECTATIONS OF THE ENGAGEMENT

It is expected that the firm will have good standing in the community regarding integrity of work, independence of SVCE as defined by generally accepted auditing standards, no pending investigations, and preferably no pending litigations.

The firm will be expected to work directly with SVCE’s accountant, Maher Accounting, SVCE’s Chief Financial Officer, Amrit Singh, SVCE’s Deputy Director of Administrative Services, Kevin Armstrong, and possibly other SVCE staff on a regular and professional basis. Regular consultations may be required. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

4 - RFP Tentative Timeline

This tentative schedule is provided for the convenience of Bidders but may be subject to change at any time by SVCE. Any such changes will be stated in an addendum to this RFP or otherwise communicated to Bidders.

Date	Event
June 10, 2022	RFP Released
June 24, 2022	Deadline for questions, clarifications (see below)
July 1, 2022	Responses to Questions posted
July 8, 2022 @5:00 PM PT	Deadline for Bidders to submit proposals
July 22, 2022	Last day of possible interviews, if requested by SVCE
July 29, 2022	Anticipated date SVCE will notify awardees
August 2022 (tbd)	Staff presents recommendation to Audit Committee
August 31, 2022	Anticipated date contract finalized (to be sent to Board for approval)
September 9, 2022	Board Meeting – contract approval
Late September 2022 (tbd)	Audit Committee kick-off meeting (work begins)

Notes:

- Questions: Bidders may submit questions concerning the RFP to solicitations@svcleanenergy.org. All questions and answers will be shared with all Bidders and will be posted in the same location as the RFP, at <https://www.svcleanenergy.org/solicitations/>. Questions must be emailed and received by SVCE no later than June 24, 2022 @ 5:00 PM PT. SVCE shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by SVCE or its representatives.
- Proposal Review: SVCE may request clarifications of submitted proposals by email or phone. Prompt responses will be requested.
- Bidder Interviews: SVCE may choose to conduct in-person/phone interviews of the top Bidders, to occur no later than July 22, 2022.

5 – Minimum Qualifications

All proposers should be legally certified to perform financial auditing services for government agencies within in the State of California or be able to show certification will be attained by the August 2022 start date. In addition, the firm should affirm all staff to be assigned to the project are properly licensed and legally able to practice in California.

6 - High Level Scope of Work

NATURE OF SERVICES REQUIRED

A. Scope of Work to be Performed

SVCEA desires the auditor to express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles. SVCEA will provide the auditor with full disclosure financial statements be presented in accordance with current Governmental Accounting Standards Board pronouncements, as well as any subsequent pronouncements over the course of the agreement term. SVCEA will prepare supporting schedules and required documentation for use by the auditors.

B. Reports to be Issued

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue for SVCEA:

- a. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles. This report shall include, at a minimum, Management's Discussion and Analysis, the Basic Financial Statements, and Notes to the Basic Financial Statements.
- b. If applicable, a report or letter outlining any deficiencies in internal control.

C. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditors' expense, for a minimum of seven (7) years, unless the firm is notified in writing by the SVCEA of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

Silicon Valley Clean Energy Authority

In addition, the firm(s) shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

D. Conferences and Meeting Attendance

The firm may be required to meet independent of SVCE staff with SVCE Board members to discuss details of scope, intent, or expectations on behalf of the Board. This may be done by phone or video conference. However, the Consultant shall be prepared to attend an in-person final presentation of the audited financial statements to the Board at the end of the project. This presentation will likely be held at a Board meeting in the City of Cupertino. Additional meeting attendance may be required. Sufficient advance notice will be provided by SVCE staff.

DESCRIPTION OF THE ENTITY

Names and Contact Information

The auditors' principal contacts with the SVCEA will be Amrit Singh, Chief Financial Officer and Director of Administrative Services, and Michael Maher, CPA, Accounting Consultant. Girish Balachandran, CEO, and other staff will be available as needed.

Background Information

The Silicon Valley Clean Energy Authority was created as a California Joint Powers Authority on March 31, 2016. SVCEA was established to provide electric power and related benefits within Santa Clara County, including developing a wide range of renewable energy sources and energy efficiency programs.

SVCE began providing electric power to customers in April 2017. Electric power is delivered to SVCEA's customers through a contractual arrangement with Pacific Gas & Electric Company (PG&E). PG&E is also responsible to read electric meters, to send invoices to customers and to collect payments on behalf of SVCE. SVCE contracts with another service provider for customer account data management and a customer service call center. SVCE currently is under contract to purchase electric power from several suppliers. It is anticipated that purchases from additional suppliers will occur in future periods. SVCE currently has thirty employees and does not expect to have more than fifty during the term of this contract.

The accounting and financial reporting functions SVCE are the responsibility of Maher Accountancy.

SVCE operates as an enterprise-type fund. Financial accounting is maintained on the accrual basis of accounting. Budgets are prepared on the modified accrual basis. Employees are eligible to participate in a defined contribution retirement plan and there is no obligation for other post-employment benefits.

PROPOSED PROJECT TIMELINE

September 2022	Kick-Off Meeting with SVCE Audit Committee – date TBD
December 1, 2022	SVCE to have records ready for audit and key personnel available to meet.
Progress Reports	Routine progress reports to be provided to SVCE and Maher Accountancy, or their designated representatives, at regular intervals, but no less than monthly.
Mid-January, 2023	Auditor shall have draft audit report and recommendations available for review by SVCE
February 1, 2023	Auditor shall have final report and recommendations available for SVCE to present at
Mid-February, 2023	SVCE and Auditor present report to Audit Committee – date TBD

Early March, 2023

SVCE and Auditor to present report to Board of Directors – date TBD

Subsequent distribution to the public shall be the responsibility of SVCE.

7 - Proposal Submittal

Proposals must be received on or before the above deadline and submitted by email to solicitations@svcleanenergy.org with the subject "Proposal - <Organization> - FINANCIAL AUDIT SERVICES".

Only electronic submittals in PDF format will be accepted.

Proposals must include the following sections (to be submitted in this order only):

1. Title Page with Administrative Information

- Provide administrative information, including at a minimum: date of proposal, firm name, mailing address, phone number, and email of designated point of contact.

2. Proposal summary

- Briefly discuss the highlights, key features and distinguishing points of the proposal.

3. Technical Proposal:

- An outline of the Scope of Work to be done
- Staff to be assigned to the project, with qualifications
 - Identify the principal supervisory and management staff, including engagement partners, managers, supervisors and others, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice as a certified public accountant in California. Provide information on the government auditing experience of each person, including information on continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of the audit(s).
 - Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. Indicate how the quality of staff over the term of the agreement will be assured.
 - Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of SVCEA.
 - Consultants and firm specialists mentioned in response to this request for proposal can only be changed with the express prior written permission of SVCEA.

- Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.
- Proposer qualifications and related experience
 - The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement.
 - The firm is required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.
 - The firm shall provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. The firm shall also provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations, or litigation whereby a court has ruled against the firm. In addition, the firm is asked to describe the nature, magnitude, and status of any litigation current or pending against the firm in any manner related to the firm's professional activities.
 - Proposer must disclose any debarment or other disqualification as a vendor for any federal, state or local entities. Proposer must describe the nature of the debarment/disqualification, including where and how to find such detailed information.
- A statement regarding the extent and duration of any direct experience with other CCA's

4. Description of Qualifications (can be an appendix)

- The firm should provide an affirmative statement that it is independent of SVCE as defined by generally accepted auditing standards.
- An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in California.
- Acknowledgement of understanding of the General Expectations stated in section 3, above
- A description of any subcontractors that may be used in relation to this project and the capacity in which they will be employed
- Years of operation and directly related experience, or most significant engagements similar to this, performed in the last five (5) years, for government clients.
- Three (3) references
- Sample of work

5. Project Timeline: Not to exceed the absolute deadline in SVCE's project timeline listed above

6. Project Budget: With a not to exceed, staffing cost table, subcontractor passthroughs (if applicable), and estimated hours

7. Confirmation of acceptance of contract terms or explanation of proposed contract modifications (see Section 7 of this RFP)
 - List all exceptions or requested changes that Bidder has to SVCE's standard contract. Items not excepted will not be open to later negotiation.
8. Inclusion of non-participating agencies (see Section 10 of this RFP)
 - Indicate Bidder's willingness to extend the terms of resulting contracts to other similar entities.

8 - Review and Selection Process

In addition to, or in reiteration of, the aforementioned minimum proposal requirements, all of which are mandatory, proposals will be evaluated based on the following non-exclusive list of criteria:

- Qualifications and experience of the Bidder providing similar products and services, including the capability and experience of key personnel as well as experience with other public and/or private agencies in similar capacities
- History of successfully performing services for public and/or private agencies and other Community Choice Energy agencies
- Financial viability of the Bidder
- Cost to SVCE for the products and services identified in this RFP
- Proposed approach, including a clearly-demonstrated understanding of the intended scope of products and services to be provided
- Ability to meet any required timelines or other requirements
- Existence of and circumstances surrounding any claims or violations of law or governmental regulations against the Bidder, its representatives and/or partners
- Pertinent references
- Acceptance of SVCE's standard contract terms and conditions

SVCE reserves the right to consider factors other than those specified above and to request additional information from any/all Bidders as a part of the selection process.

9 - Agreement Terms

Awardees will be required to enter into a contract using SVCE's standard contract terms. Modification of the contract terms may be proposed by the Bidder for consideration by SVCE but are not guaranteed to be accepted. Rejection of the final terms from SVCE is grounds for disqualification.

SVCE's standard contract terms are available for review in Appendix A.

10 - Inclusion of Non-Participating Agencies

SVCE is asking all responding Bidders to indicate their willingness to extend the terms of resulting contracts, inclusive of price, to other interested California-based municipalities, municipally-owned utilities and community choice energy programs. While this clause in no way commits these agencies to contract with SVCE's awarded consultant, nor does it guarantee any additional orders will result, it does allow other agencies, at their discretion, to make use of SVCE's competitive process (provided said process satisfies their own procurement guidelines) and enter into a contract directly with the awarded consultant. All contracts entered into by other agencies shall be understood to be transactions between that

agency and the awarded consultant; SVCE shall not be responsible or liable in any manner for any such contracts.

11 - California Public Records Act

All parties acknowledge that SVCE is a public agency subject to the requirements of the California Public Records Act, Cal. Gov. Code section 6250 et seq. ("CPRA"). SVCE will not disclose any part of any proposal before it announces a recommendation for an award, on the ground that there is a substantial public interest in not disclosing proposal during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure, with the exception of those elements in each proposal which are exempt from disclosure pursuant to the CPRA.

If a Bidder believes there are portion(s) of the proposal which are exempt from disclosure, the Bidder must plainly mark it as "Confidential", "Proprietary", or "Trade Secret." SVCE may also request that the Bidder state the specific provision of the CPRA which provides the exemption, and the factual basis for claiming the exemption. Any proposal which contains language purporting to render all or significant portions of the proposal as "Confidential," "Trade Secret," or "Proprietary," will be considered non-responsive and a public record in its entirety.

Although the CPRA recognizes that certain confidential trade secret information may be protected from disclosure, SVCE may not be in a position to establish that the information a Bidder submits is a trade secret. If a public records request is made for information marked "Confidential," "Proprietary," or "Trade Secret," SVCE will provide the Bidder(s) who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. The Bidder shall be solely responsible for taking such legal steps; if the Bidder takes no such action after receiving notice of the public records request, SVCE will disclose all records it deems subject to disclosure, even if marked "Confidential," "Trade Secret," or "Proprietary."

12 - Ex Parte Communication

Please note that to insure the proper and fair evaluation of a proposal, SVCE prohibits ex parte communication (i.e., unsolicited) initiated by the Bidder to an SVCE Official or Employee evaluating or considering the proposals prior to the time a bid decision has been made. Communication between Bidder and SVCE will be initiated by the appropriate Agency Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the proposal. Ex parte communication may be grounds for disqualifying the offending Bidder from consideration or award of the proposal, then in evaluation, or any future proposal.

13 - Insurance Requirements

All insurance shall be secured from or countersigned by an agent or surety company recognized in good standing and authorized to do business in the State of California.

All proposers should be able to show the following minimum insurance requirements will be maintained through the duration of the project:

- \$1,000,000 of Commercial General Liability and a general aggregate limit of \$2,000,000 per project or location
- \$1,000,000 of Automobile Liability for any owned, non-owned, or hired vehicle to be used in connection with the performance of this project
- \$1,000,000 of Worker's Compensation as required by the State of California
- \$2,000,000 of Professional Liability/Errors & Omissions

The Bidder shall, within thirty (30) days of notification of award and prior to commencement of work, take out and maintain in full force and effect minimum insurance coverage as specified in the attached requirements. This insurance shall remain in force and effect throughout the duration of the contract.

A certificate of existing insurance coverage should be submitted with the proposal as proof of insurability. If the current coverage does not meet the RFP requirements, then the Bidder should request an affidavit of insurability from the Bidder's insurance agent that certifies the requirements can and will be met. Failure to provide adequate insurance coverage may be cause for disqualification as non-responsive to the RFP requirements.

14 - Conflict of Interest/Statement of Non-Collusion

All bidders must disclose with their proposal the name of any officer, director, or agent who is also an employee of SVCE. Further, all bidders must disclose the name of any SVCE employee who owns, directly or indirectly, an interest of five percent (5%) or more of the bidder's firm or any of its branches.

The Bidder shall certify that he/she has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the proposal and that the bidder is not financially interested in, or otherwise affiliated in a business way with any other bidder on the same land or improvements.

15 - Addenda

It is the Bidder's responsibility to contact SVCE prior to submitting a proposal to ascertain if any addenda have been issued, to obtain all such addenda and return executed addenda with the proposal.

The failure of a Bidder to submit acknowledgement of any addenda that affects the proposal price(s) may be considered an irregularity and may be cause for rejection of the proposal.

16 - Certifications

The submission of a proposal shall be deemed a representation and certification by the Bidder that it:

- Has read, understands and agrees to the information and requirements set forth in this RFP.
- Has the capability to complete the responsibilities and obligations of the proposal being submitted
- Represents that all information contained in the proposal is true and correct

- Acknowledge that SVCE has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Bidder, and Bidder hereby grants SVCE permission to make these inquiries
- Will provide any and all documentation related to the proposal in a timely manner
- Is eligible to submit a proposal because he/she is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a transaction by any Federal, State, or local department or agency

17 - Rights of SVCE

SVCE is not obligated to respond to any proposal submitted as part of the RFP. **SVCE at its sole discretion reserves the right to waive technicalities or irregularities, to reject any or all proposals, and/or to accept that proposal which is in the best interest of SVCE.** The award of this proposal, if made, may be based on considerations other than total cost and may be awarded based on various considerations, including without limitation; Bidder's experience and/or qualifications, past experience, administrative cost, standardization, technical evaluation and oral and/or written presentations as required. SVCE reserves the right to accept all or part, or to decline the whole, and to award this RFP to one (1) or more Bidders. There is no obligation to buy. The RFP, if awarded, will be in the judgement of SVCE the most responsive to the agency's needs.

Attachment A – Standard Contract

(See Attached Contract Template)

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
FOR
S**

THIS AGREEMENT (“Agreement”), is entered into this **Click here to enter DAY.** day of **ENTER MONTH., ENTER YEAR.,** by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and **Click here to enter Consultant's name.,** a **Click here to enter entity type (California corporation, partnership, etc.).** whose address is **Click here to enter address.** (hereinafter referred to as "Consultant") (collectively referred to as the “Parties” and individually as a “Party”).

RECITALS:

A. Authority is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*) (“Act”) with the power to conduct its business and enter into agreements.

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. Authority and Consultant desire to enter into an agreement for **Click here to enter a description of work to be performed.** upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM

The term of this Agreement shall commence on **Click here to enter beginning of term.,** and shall terminate on **Click here to enter end of term.,** unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference.

3. COMPENSATION TO CONSULTANT

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed **Click here to enter amount of compensation in words.** dollars (\$**Click here to enter amount of compensation in numerals..00**) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

Consultant and Authority agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area under similar circumstances and in a manner reasonably satisfactory to Authority and agrees that all services shall be performed by qualified and experienced personnel. Consultant shall be responsible to Authority for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Consultant be found in such services or products, Consultant shall correct the errors at no additional charge to Authority by redoing the professional work and/or revising the work product(s) called for in the Scope of Services to eliminate the errors. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by Authority, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, Authority may deduct the cost of such correction from any retention amount held by Authority or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

6. **INDEPENDENT PARTIES**

Authority and Consultant intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by Authority to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from Authority to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant. Consultant shall indemnify and hold harmless Authority and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of Authority officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. Authority shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Authority from Consultant as a result of Consultant's failure to promptly pay to Authority any reimbursement or indemnification arising under this section.

7. **NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members.

Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority's constituent members in connection with this Agreement.

8. NON-DISCRIMINATION

In the performance of this Agreement, Consultant, and any subconsultant under the Consultant, shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Consultant shall have responsibility for compliance with this Section.

9. HOLD HARMLESS AND INDEMNIFICATION

A. General Indemnification. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify Authority and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those Authority agents serving as independent contractors in the role of Authority officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

B. Intellectual Property Indemnification. Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights"), except as otherwise expressly provided by this Agreement. Consultant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall indemnify, defend, and hold

Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party's IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys' fees of counsel of Authority's choice, expert fees and all other costs and fees of litigation.

C. The acceptance of the services by Authority shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

D. Consultant's indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

10. INSURANCE

A. General Requirements. On or before the commencement of the term of this Agreement, Consultant shall furnish Authority with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant's indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the Authority by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Authority and licensed to do insurance business in the State of California. Endorsements naming the Authority as additional insured shall be submitted with the insurance certificates.

B. Subrogation Waiver. Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her/its insurance for recovery. Consultant hereby grants to Authority, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or Authority with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of Consultant may acquire against Authority by virtue of the payment of any loss under such insurance.

C. Failure to Secure or Maintain Insurance. If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, Authority shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. Authority, its members, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Sufficiency of Insurance. The insurance limits required by Authority are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

F. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

11. **CONFLICT OF INTEREST**

Consultant warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the Authority Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this section into any subcontract that Consultant executes in connection with the performance of this Agreement. Consultant understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff Authority, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. **PROHIBITION AGAINST TRANSFERS**

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written

consent of Authority. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from Authority under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to Authority by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL**

Unless prior written consent from Authority is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and Authority in the same manner and to the same extent as Consultant is bound to Authority under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to Authority.

14. **REPORTS**

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of Authority. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Authority the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of Authority, and all publication rights are reserved to Authority. Consultant may retain a copy of any Report furnished to the Authority pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by Authority in execution or implementation of: (1) The original project for which Consultant was hired; (2) Completion of the original project by others; (3) Subsequent additions to the original project; and/or (4) Other Authority projects as Authority deems appropriate in its sole discretion.

C. Consultant shall, at such time and in such form as Authority may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Consultant without prior approval by Authority.

F. Authority shall be the owner of and shall be entitled upon request to immediate possession of accurate reproducible copies of Reports or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

15. **RECORDS**

Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by Authority that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of Authority or its designees at all proper times, and gives Authority the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Consultant receives final payment from Authority for all services required under this agreement

16. **PARTY REPRESENTATIVES**

The Chief Executive Officer (“Authority Representative”) shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. [Click here to enter the name of Consultant representative.](#) (Consultant Representative”) shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION AND DOCUMENTS**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by

Consultant without prior written authorization by Authority. Authority shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the Authority Representative or unless requested in writing by the Authority Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the Authority. Response to a subpoena or court order shall not be considered “voluntary,” provided Consultant gives Authority notice of such court order or subpoena.

B. Consultant shall promptly notify Authority should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the Authority. Authority may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with Authority and to provide Authority with the opportunity to review any response to discovery requests provided by Consultant. However, Authority’s right to review any such response does not imply or mean the right by Authority to control, direct or rewrite the response.

C. In the event Authority gives Consultant written notice of a “litigation hold”, then as to all data identified in such notice, Consultant shall, at no additional cost to Authority, isolate and preserve all such data pending receipt of further direction from the Authority.

D. Consultant agrees to comply with the confidentiality and data protection provisions set forth in Exhibit “E,” attached hereto and incorporated herein by this reference.

E. Consultant’s covenants under this section shall survive the expiration or termination of this Agreement.

18. **NOTICES**

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant’s and Authority’s regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

TO AUTHORITY:
333 W. El Camino Real
Suite 330
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO CONSULTANT:

[Click here to enter consultant name.](#)
[Click here to enter company name.](#)
[Click here to enter street number and street name.](#)
[Click here to enter city, state, and zip code.](#)

19. **TERMINATION**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If Consultant fails to cure the default within the time specified (which shall be determined by the Authority but shall be not less than 10 days) and according to the requirements set forth in Authority's written notice of default, and in addition to any other remedy available to the Authority by law, the Authority Representative may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The Authority Representative shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance.

In the event of Authority's termination of this Agreement due to no fault or failure of performance by Consultant, Authority shall pay Consultant for services satisfactorily performed up to the effective date of termination. Upon termination, Consultant shall immediately deliver to the Authority any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of Authority. Consultant shall have no other claim against Authority by reason of such termination, including any claim for compensation.

20. **COMPLIANCE WITH LAWS**

Consultant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, et seq., California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100 *et seq.* Authority, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to Authority that it has all licenses, permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other

approvals during the term of this Agreement.

21. **CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the Parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara, State of California.

22. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from Authority to do otherwise.

23. **WAIVER**

A waiver by Authority of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. **INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both Authority and Consultant.

25. **AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal Authority and authority to do so on behalf of their respective legal entities.

26. **INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either Party.

27. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

28. **AUTHORITY'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

Authority reserves the right to employ other consultants in connection with the subject matter of the Scope of Services.

29. **EXHIBITS**

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

30. **FORCE MAJEURE**

Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in Authority's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of Authority from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of Authority's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by Authority shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by Authority for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

32. **ATTORNEY FEES**

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts'

fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

33. **SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

34. **SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

36. **COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

37. **DRAFTING PARTY**

This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

RECOMMENDED FOR APPROVAL

Enter Your Name, Enter Your Title

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
Enter Consultant's Name

By: _____
Name: _____
Title: _____
Date: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: _____
Name: Girish Balachandran
Title: Chief Executive Officer
Date: _____

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Clerk

Exhibit A
Scope of Services

[Click here to enter text.](#)

Exhibit B
Schedule of Performance

[Click here to enter text.](#)

This schedule may be modified with the written approval of the Authority.

Task	Begin	Complete
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Exhibit C
Compensation

Authority shall compensate Consultant for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of **Click here to enter dollar amount in words.** dollars (**\$Click here to enter dollar amount in numerals.**), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Task	Estimated Budget
1.	\$ XX,000
2.	\$ XX,000
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
Total	

Rates

Personnel	Title	Hourly

Invoices

Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked,

task(s) for which work was performed). Authority shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Authority does not pay interest on past due amounts.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Authority

Additional Services

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority Representative prior to commencement of any additional services. Consultant shall submit, at the Authority Representative's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

[Review insurance coverage and amounts to confirm they are appropriate for each scope of service]

Exhibit D
Insurance Requirements and Proof of Insurance

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

- (1) **Workers' Compensation:**
Statutory coverage as required by the State of California.
- (2) **Liability:**
Commercial general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.
- (3) **Automotive:**
Comprehensive automotive liability coverage with minimum limits of \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
- (4) **Professional Liability**
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.
- (5) **Privacy and Cybersecurity Liability** **[May be reduced or eliminated based on scope of services]**

Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs of at least \$5,000,000 US per occurrence.

Exhibit E
Confidentiality and Data Security Requirements

Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Authority regarding customers of Authority (“Authority Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to Consultant from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by Consultant:

1. The Confidential Information disclosed to Consultant in connection herewith may include, without limitation, the following information about Authority Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Authority Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by Authority, regardless of the form of media in which it is prepared, recorded or retained.
2. Except for electric and gas usage information provided to Consultant pursuant to this Agreement, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
3. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth in the Agreement.
4. Consultant shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of

their duties with respect to the Consultant program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. Consultant shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Consultant's employee or representative (a "Third Party"), except where that Third Party has separately entered into a nondisclosure agreement with Authority. Without limiting Consultant's obligation of confidentiality as further described herein, Consultant shall be responsible for establishing, maintaining, and providing a written description to Authority of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the Authority's Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of Data; and, (e) ensure that all employees, agents, and subcontractors of Consultant, if any, comply with all of the foregoing. In no case shall the safeguards of Consultant's data privacy and information security program used to protect Data be less stringent than the safeguards used by Consultant for its own data. If the services include handling credit card information, then the Consultant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Consultant agrees and warrants that it is responsible for the security of "cardholder data" that Consultant possesses, stores, processes or transmits on behalf of the Authority, and for any impact on the security of Authority's cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the services. No less than annually, Consultant shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to Authority. The required audit shall be a SAS-70 (or successor standard) compliant audit, and Consultant shall provide the audit findings in the form of an SAS-70 Type II report.

5. Notwithstanding the above, Consultant may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Consultant notifies Authority immediately upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.
6. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of the Authority's Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of the Data, Consultant shall, as applicable: (a) notify Authority as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Authority in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise

required by Authority; (c) in the case of Confidential Information, at Authority's sole election, (i) notify the affected individuals who comprise the Confidential Information as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse Authority for any costs in notifying the affected individuals; (d) in the case of Confidential Information, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the Confidential Information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Consultant's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Authority for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Authority in connection with the occurrence; (g) be responsible for recreating lost Data in the manner and on the schedule set by Authority without charge to Authority; (h) provide to Authority a detailed plan within ten (10) calendar days of the occurrence describing the measures Consultant will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at Authority's request, provide to Authority a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by Authority, which shall be executed by Consultant and may be relied upon by Authority as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

7. It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Authority finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Authority receives a customer complaint about Consultant's misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer's information to Consultant and shall notify the California Public Utilities Commission of the complaint.
8. Consultant shall be liable for the actions of, or any disclosure or use by, its employees or

representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Consultant's compliance with the terms of this Agreement.

9. Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority's written request, and at Authority's option, Consultant will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed.
11. Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.
12. In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
13. When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Authority requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.