



**JOINT AGENCY REQUEST FOR PROPOSALS
FOR
SAN DIEGO COMMUNITY POWER AND CLEAN ENERGY ALLIANCE**

FOR

**Professional Services from Qualified Firms for
Regulatory Legal Counsel Services**

Date of Issuance: April 12, 2023

SUBMITTALS DUE:

**5 P.M. (PST)
May 12, 2023**

**CONTACT: BARBARA BOSWELL
CHIEF EXECUTIVE OFFICER
CEO@TheCleanEnergyAlliance.org**

**SDCP No. 2023-03
For Regulatory Legal Counsel Services
Issue Date: April 12, 2023
Proposal Submission Deadline: May 12, 2023**



I. INTRODUCTION AND BACKGROUND

The Clean Energy Alliance (CEA) and San Diego Community Power (SDCP) (the CCAs) are seeking responses to this Request for Proposals (RFP) from qualified firms to provide professional services, filling the duties of a community choice aggregation (CCA) energy regulatory legal consultant. The CCAs will ultimately contract separately with selected firm(s) from this solicitation, however the scope of services is similar or even directly overlapping for each CCA and requires collaboration. The CCAs are seeking opportunities for efficiencies or cost savings when a joint effort is applicable and also separate contracts in order to engage autonomously on regulatory items as needed.

About CEA

In October 2019, the cities of Carlsbad, Del Mar and Solana Beach formed CEA, a non-profit public entity that operates a Community Choice Energy (CCE) program within their city limits, in the San Diego Gas & Electric (SDG&E) service territory. Since then, CEA has added the cities of Escondido, Oceanside, San Marcos, and Vista to their membership and has the potential to expand further in the future. CEA's purpose is to meet the Climate Action Plan goals of its member agencies as an energy services provider, which benefits the community through the delivery of cleaner and more locally produced electricity, demand reduction, economic investment, and competitive rates for residents, businesses, and municipal facilities in the service territory. For more information on Clean Energy Alliance visit www.TheCleanEnergyAlliance.org.

About SDCP

SDCP is the default electricity provider for the Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, and San Diego and the County of San Diego which serves the unincorporated area (collectively, "member agencies"). SDCP's Joint Powers Agreement (JPA) is the first in California to explicitly state that it will reach 100 percent renewable energy availability and usage by no later than 2035 and beyond, in advance of current State targets. Five original member cities formed SDCP to achieve this and other goals collaboratively and with greater regional impact. SDCP began service in 2021 and completed enrolling customers from the five original cities in the middle of 2022 and will enroll unincorporated San Diego County and National City in 2023. Total enrollment will reach approximately 960,000 customer accounts. For more information, please visit SDCP's website at www.sdcommunitypower.org. Firms shall review SDCP's [Procurement Policy](#) and [Inclusive and Sustainable Workforce Policy](#) to ensure compliance when drafting proposals.



II. PROPOSAL SCHEDULE

The estimated timetable for this RFP is as follows:

Description	Date
Release of RFP	April 12, 2023
Deadline for Written Questions	April 23 at 9:00 a.m. PT
Responses to Questions Provided	April 28
Proposals Due	May 12 at 5:00 p.m. PT
Interviews (If Requested by the CCAs)	May 15-31
Execution of Contract	No later than June 30, 2023
Commencement of Work	No later than July 1, 2023

The above scheduled dates are tentative and the CCAs retain the sole discretion to adjust the above schedule. Nothing set forth herein shall be deemed to bind the CCAs to award a contract for the above-described Services, and the CCAs retain the sole discretion to cancel or modify any part of or all of this RFP at any time.

III. QUESTIONS AND RESPONSES

Prospective Proposers may submit questions regarding this RFP via email to CEO@TheCleanEnergyAlliance.org. All questions must be received by 9:00 a.m. (Pacific Time) on April 23. When submitting questions, please specify which section of the RFP you are referencing and quote the language that prompted the question. Questions may address issues or concerns that the evaluation criteria and/or business requirements would unfairly disadvantage Proposer or, due to unclear instructions, may result in the CCAs not receiving the best possible responses from Proposer.

The CCAs will post responses answers to questions on their respective websites by April 28. The CCAs reserve the right to group similar questions when providing answers.

IV. PROPOSAL SUBMISSION DEADLINE

The Proposer's proposal should be submitted electronically, as a single PDF document, via email to CEO@TheCleanEnergyAlliance.org by May 12 at 5:00 p.m. PT. Please title the email "Response to RFP for Regulatory Legal Counsel Services."



It is the sole responsibility of the submitting Proposer to ensure that its proposal is received before the submission deadline. Submitting Proposers shall bear all risks associated with delays in delivery. Any proposals received after the scheduled closing date and time for receipt of proposals may not be accepted.

V. REQUEST FOR PROPOSALS

A. Scope of Services

The Services sought under this RFP are set forth in more detail in **Attachment A**, attached hereto and incorporated herein by reference. Notwithstanding the inclusion of such Services in **Attachment A**, the final scope of Services negotiated between the CCAs and the successful Proposer shall be set forth in the Professional Service Agreement (“Agreement”) executed by and between each CCA and the successful Proposer. A copy of the SDCP Agreement is attached hereto as **Attachment B**. A copy of the CEA Standard Professional Services Agreement is attached hereto as **Attachment C**.

B. Content and Format of Proposal

Submittals should be concise, well-organized and demonstrate the qualifications, experience and approach necessary to provide the required scope of services. Submittals shall include the following items in the order listed:

General qualifications, key personnel & sub-consultants – Submit a general description of your firm’s qualifications to complete the Scope of Required Services, along with the qualifications and specific roles of any sub-consultants to be employed on this project. Summary of qualifications should speak to relevant experience with the California CCA or energy regulatory landscape or utility experience. Include the names and qualifications of the key individuals who will be responsible for delivering these services, their respective roles, specific relevant experience and the organizational structure of the team. Include resumes for key individuals who will provide service. Technical support staff should be included if they will perform a significant role in the preparation of the work products. If the firm has multiple offices, the office of record for each team member shall be listed, as well as the primary office location where the work is to be performed.

Experience – Provide summaries of up to three engagements that are similar in scope to the type of services required by the CCAs. The summaries should include client name, contact information, scope of service, team members, date completed (if completed) and total (or annual) cost of services. Please specify any experience in the San Diego region including experience working on behalf of public agencies with proceedings specific to San Diego Gas and Electric (SDG&E).



Approach – Describe your firm’s proposed approach to the scope of service and collaborative approach with the CCAs. Identify the methods to be used in the completion of and/or carrying out the Scope of Required Services. Proposers can include other services deemed relevant to the successful accomplishment of the Scope of Required Services.

Fee schedule – Include the firm’s billing rate fee schedule for all personnel likely to be engaged in completing the tasks described in the Scope of Required Services. Include the scope of work and cost for any sub-consultants proposed for the services, and the approximate percentage of the work (as a percentage of the total scope) to be performed by each sub-consultant.

Budget - Firms shall propose a budget, which identifies deliverables, and work hours estimated for the completion of each task or deliverable. Include the firm’s billing rate fee schedule for all personnel likely to be engaged in completing the tasks described in the Scope of Required Services. Include the scope of work and cost for any sub-consultants proposed for the services, and the approximate percentage of the work (as a percentage of the total scope) to be performed by each sub-consultant.

Additionally, as this is a joint agency solicitation, the CCAs prefer to see a proposed fee schedule or budget for each CCA separately to accomplish the Scope of Required Services. Identify where tasks in the Scope of Required Services will be shared between the CCAs and thus a shared/split cost.

C. Protests

1. **Protest Contents:** Proposer may protest a contract award if the Proposer believes that the award was inconsistent with the CCAs policies or this RFP is not in compliance with law. A protest must be filed in writing (email is not acceptable) within five (5) business days after receipt of notification of the contract award. Any protest submitted after 5 p.m. of the fifth business day after notification of the contract award will be rejected as invalid and the Proposer’s failure to timely file a protest will waive the Proposer’s right to protest the contract award. The Proposer’s protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.

2. **CCA Review:** The CCAs will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. The CCAs shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by the CCAs relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this Section are mandatory and are the Proposer’s sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute



a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

D. Submittal Requirements

1. General: It is strongly recommended that the Proposer submit proposals in the format identified in Section V(B) to allow the CCAs to fully evaluate and compare the proposals. All requirements and questions in the RFP should be addressed and all requested information should be supplied. The CCAs reserve the right to request additional information which, in the CCAs opinion, is necessary to assure that the Proposer's competence, qualifications, number of qualified employees, business organization and financial resources are adequate to perform the Services according to the terms of the Agreement.

2. Preparation: Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Proposer's demonstrated capability to perform work of this type. Expensive bindings and promotional materials, etc., are not necessary or desired. However, technical literature that supports the approach to providing the Services and work plan should be forwarded as part of the proposal. Emphasis should be concentrated on completeness, approach to the work, and clarity of the proposal.

3. Authorization: The proposal shall be signed by an individual, partner, officer or officers authorized to execute legal documents on behalf of the Proposer.

E. Miscellaneous

1. Exceptions Certification to this RFP: In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, the Agreement. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, Proposer is directed to carefully review the attached Agreement and, in particular, the insurance and indemnification provisions therein.

2. Amendments to Proposals: No amendment, addendum or modification will be accepted after a proposal has been submitted. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted to SDCP prior to the proposal due date and time.

3. Price Validity: Prices provided by Proposers in response to this RFP are valid for 90 days from the proposal due date. The CCAs intend to award the contract within this time but may request an extension from the Proposers to hold pricing, until negotiations are complete and the contract is awarded.



4. Right to Negotiate and/or Reject Proposals: The CCAs reserve the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of the CCAs, such action shall serve its best interests and those of the CCAs ratepayers. The Proposers are encouraged to submit their best prices in their proposals, and the CCAs intend to negotiate only with the Proposer(s) whose proposal most closely meets SDCP's requirements at the lowest estimated cost. The contract award, if any is awarded, will go to the Proposer whose proposal best meets the CCAs' requirements.

5. Prevailing Wages: Proposers shall take cognizance of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. To the extent applicable, the Proposer must agree to fully comply with and to require its subcontractors/subconsultants to fully comply with such Prevailing Wage Laws.

F. Proposal Evaluations & Criteria

Submittals will be reviewed and ranked by a selection committee composed of staff of the CCAs. During the evaluation process, the CCAs reserve the right to request additional information or clarification from firms responding to this RFP. All submittals deemed responsive will be evaluated using the following criteria (listed in no particular order of importance or value of rating):

- Best value
- Relevant experience and qualifications of the firm (including experience working in the San Diego region and familiarity with SDG&E)
- Proposed services and methodology
- Overall response to the RFP

Selection will be made by the respective CCAs' Board of Directors based upon the firm's current ability to provide the highest quality of service that meets the requirements and objectives of this RFP, the needs of the CCAs, and provide the best value to the CCAs.

Following the initial evaluation, the CCAs may select one particular Proposer or select a number of Proposers (with or without interviews); or conduct interviews with a "short list" of Proposers, consisting of those Proposers reasonably likely, in the opinion of the CCAs, to be awarded the contract. Any interview may include discussions about services offered, conflicts of interests with other clients, or fees/compensation amount or structure. Interviews may take



place through written correspondence, telephone or video conference, and/or face-to-face interviews, at the CCAs sole discretion. The CCAs reserve the right to not convene interviews or discussions, and to make an award on the basis of initial proposals received. References may be contacted at any point in the evaluation process.

Upon ranking of the submittals based on a review of the selection criteria, the selection committee will present a recommendation to the respective CCA Board of Directors. Staff will begin negotiations with the top firm(s) as to the final scope of work, schedule and price. The final top firm will be presented to the CCA Board of Directors for final contract award. If a satisfactory contract cannot be negotiated, the CCAs may, at their sole discretion, begin contract negotiations with the next qualified Proposer who submitted a proposal, as determined by the CCAs. Proposers are further notified that the CCAs may disqualify any Proposer with whom the CCAs cannot satisfactorily negotiate a contract.

This RFP does not commit the CCAs to award a contract for any costs incurred in the preparation of the submittal. The CCAs reserve the right to accept or reject any or all submittals, or any part of a submittal received as a result of this request, to waive minor defects or technicalities, to award multiple contracts, or to solicit new submittals for the same scope of work or a modified scope of work, or to extend, expand, or cancel in part, or its entirety, this RFP if it is in the best interest of the CCAs to do so. The CCAs will not reimburse any of the proposers for their costs to prepare and submit a proposal.

VI. RESERVATION OF RIGHTS

This RFP is a solicitation for proposals only and is not intended as an offer to enter into a contract or as a promise to engage in any formal competitive bidding or negotiations. The CCAs may, at their sole discretion, accept or reject any or all proposals submitted in response to this RFP. In addition, the CCAs may, at their sole discretion, only elect to proceed with contract negotiations for some of the services included in the proposal. The CCAs further reserve the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP. The CCAs also reserve the right to waive minor errors and omissions or inconsequential disparities in proposals, request additional information or revisions to offers, and to negotiate with any or all Proposers.

The CCAs shall not be liable for any costs incurred by the Proposer in connection with the preparation and submission of any proposal. SDCP has the right to amend the RFP, in whole or in part, by written addendum, at any time. The CCAs are responsible only for that which is expressly stated in the solicitation document and any authorized written addenda. Such addendum shall be made available to each person or organization which the CCAs records indicate have received



this RFP. Should such addendum require additional information not previously requested, failure to address the requirements of such addendum may result in the proposal being found non-responsive and not being considered, as determined in the sole discretion of the CCAs. The CCAs are not responsible for and shall not be bound by any representations otherwise made by any individual acting or purporting to act on its behalf prior to an award of contract by the CCAs. The CCAs have the right to reissue the RFP at a future date.

VII. CONFIDENTIALITY AND PUBLIC RECORDS

Proposals submitted in response to this RFP shall become the property of SDCP and CEA. The CCAs are subject to the California Public Records Act (“CPRA”). The proposal will become a matter of public record when contract negotiations are complete and when an agreement is executed by SDCP and/or CEA. Exceptions to disclosure may be available to those parts or portions of proposals that are justifiably and reasonably exempted under the CPRA, such as trade secrets. If a Proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the Proposer must prominently mark it “confidential” and state the specific provision in the California Public Records Act that provides the exemption as well as the factual basis for claiming the exemption. A blanket statement of confidentiality or the marking of each page of the proposal as confidential shall not be deemed sufficient notice of a CPRA exemption. A Proposer who indiscriminately and without justification identifies most or all of its proposal as exempt from disclosure or submits a redacted copy may be deemed non-responsive.

Although the CPRA recognizes that certain confidential information or other exempt records may be protected from disclosure, the CCAs are not in a position to establish that the information that a Proposer submits is exempt. If a request is made for information marked “Confidential,” the CCAs will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

The CCAs shall not, in any way, be liable or responsible for any resulting disclosure of any such record or any parts thereof pursuant to the CPRA or otherwise by law.

VIII. CONFLICTS OF INTEREST

The CCAs are governed by the Political Reform Act, Government Code Section 1090, Government Code Section 84308, and other requirements governing conflicts of interest, campaign contributions, and gifts. Proposers are required to review all applicable conflict of interest laws. In addition, SDCP has adopted policies governing procurement. Proposers are advised to review all policies, including the Procurement Policy, available at: <https://sdcommunitypower.org/resources/key-documents/>.



The Proposer may not contact or receive information outside of this RFP process. If it is discovered that the Proposer contacted and received information from anyone other mediums used to share information about this solicitation specified above and under the process specified herein regarding this solicitation, the CCAs may, in their sole discretion, disqualify the proposal from further consideration.

All contact regarding this RFP or any matter relating thereto must be in writing and emailed CEO@TheCleanEnergyAlliance.org.

IX. REPORTING OF SUPPLIER DIVERSITY INFORMATION

Public Utilities Code Section 366.2(m) requires community choice aggregators to annually submit to the California Public Utility Commission (“CPUC”): (1) a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises; and (2) a report regarding its procurement from women, minority, disabled veteran, persons with disabilities, and LGBT business enterprises.

General Order (GO) 156, adopted by the CPUC, requires certain California public utilities to engage in outreach activities and meet specific procurement goals from women, minority, disabled veteran, persons with disabilities, and LGBT business enterprises. Qualified businesses become GO 156 certified through the CPUC and are then added to the GO 156 Supplier Clearinghouse database (www.thesupplierclearinghouse.com).

To assist SDCP and CEA with their reporting obligations under Public Utilities Code Section 366.2(m) and with evaluating its supplier outreach and other activities, proposers that are awarded the contract will be asked to voluntarily disclose their certification status with the CPUC Clearinghouse, as well as their efforts to work with diverse business enterprises, including women business enterprises (WBEs), minority business enterprises (MBEs), disabled veteran business enterprises (DVBES), and lesbian gay bisexual transgender business enterprises (LGBTBES).

Except as otherwise expressly provided under this Policy and/or required by applicable state or federal law or funding requirements (including, without limitation, any grant or loan conditions), the CCAs shall not use any demographic information received from potential vendors in any way as part of its decision-making or selection process. Rather, the CCAs will use such information solely for compliance with reporting obligations to the CPUC and evaluation of outreach and other activities consistent with applicable law. Pursuant to Article I, Section 31 of the California Constitution, the CCAs shall not discriminate against or give preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin except as otherwise allowed therein.



X. NON-DISCRIMINATION

The CCAs will not discriminate and will require its contractors to not discriminate on the basis of race, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of contractors, subcontractors, vendors, or suppliers. The successful firm shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

XI. ATTACHMENTS

Attachment A – Scope of Services

Attachment B – SDCP Sample Professional Services Agreement

Attachment C – CEA Sample Professional Services Agreement



ATTACHMENT A SCOPE OF SERVICES

The scope of services will be to provide specialized legal counsel and representation on energy regulatory matters to the CCAs. This work will focus on regulatory proceedings at the California Public Utilities Commission (CPUC), California Energy Commission (CEC), and other regulatory agencies that may have direct control or influence over CCAs. Specific task areas include, but are not limited to:

- A. Monitoring, Reporting, and Direct Advocacy
 - 1. Proceedings that impact current and future operations, local decision making or authority, financial standings of CCAs.
 - 2. Review, analysis, interpretation of rules, and recommended actions for implementation and compliance of various regulatory obligations.
 - 3. Monitoring all regulatory actions by the CPUC and providing regular summaries of votes and other actions taken that relate to the CCAs.
 - 4. Provide recommendations or active engagement on regulatory activity unique to the CCA customer base and territory.
 - 5. Active engagement and representation in proceedings, testimony, Commissioner and agency staff briefings or education, etc.
 - 6. This scope of work excludes Energy Resource Recovery Account-related work and recurring compliance obligation monitoring and reporting such as the Renewable Portfolio Standard Plan, Integrated Resource Plan compliance, Power Content Label creation, and Resource Adequacy Waivers.
- B. Regulatory Compliance Support
 - 1. Review of best practices of other CCAs and utilities.
 - 2. Support with implementation of compliance including tracking and report preparation.
 - 3. Prepare and submit compliance filings.
- C. Monitor and engage in legal regulatory operational issues between CCA and SDG&E.
- D. Coordination with CCA General Counsel, staff, other legal service providers, and CalCCA (statewide CCA trade association).
- E. Review and advisement of CCA's energy transactions to ensure regulatory compliance.
- F. Provide state or federal legislative support, including review, analysis, and advice, as needed.

The initial term to provide the requested services will be three years, with an option to extend for two additional one-year terms.



ATTACHMENT B
SDCP SAMPLE PROFESSIONAL SERVICES AGREEMENT

**SAN DIEGO COMMUNITY POWER
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“**Agreement**”) is made and entered into this _____ day of _____ 20____, by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency (“**SDCP**”) and [INSERT NAME OF CONSULTANT], a [INSERT TYPE OF ENTITY] (“**Consultant**”). SDCP and Consultant are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

RECITALS

A. Consultant desires to perform and assume responsibility for the provision of certain professional services required by SDCP on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing [INSERT TYPE OF SERVICES], is licensed in the State of California [IF APPLICABLE], and is familiar with the plans of SDCP.

B. SDCP desires to engage Consultant to render such professional services for the [INSERT BRIEF PROJECT DESCRIPTION] (“**Project**”) as set forth in this Agreement.

AGREEMENT

1. Scope of Services and Term.

1.1 General Scope of Services. Consultant promises and agrees to furnish to SDCP all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the [INSERT BRIEF DESCRIPTION OF SERVICES TO BE PERFORMED] services necessary for the Project (“**Services**”). The Services are more particularly described in Exhibit A attached hereto, and which are stated in the proposal to SDCP. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2 Term. The term of this Agreement shall be from [INSERT START DATE] to [INSERT ENDING DATE; RECOMMEND AT LEAST ONE YEAR], unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

2. Responsibilities of Consultant.

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. SDCP retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of SDCP and shall at all times be under Consultant’s

exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit B attached hereto. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, SDCP shall respond to Consultant's submittals in a timely manner. Upon request of SDCP, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of SDCP.

2.4 Substitution of Key Personnel. Consultant has represented to SDCP that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of SDCP. In the event that SDCP and Consultant cannot agree as to the substitution of key personnel, SDCP shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to SDCP, or who are determined by the SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the SDCP. The key personnel for performance of this Agreement are as follows:

[INSERT NAME(S) OF KEY PERSONNEL]

2.5 SDCP's Representative. SDCP hereby designates **[INSERT NAME OR TITLE]**, or his or her designee, to act as its representative for the performance of this Agreement ("**SDCP's Representative**"). SDCP's Representative shall have the power to act on behalf of SDCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than SDCP's Representative, or designee.

2.6 Consultant's Representative. Consultant hereby designates **[INSERT NAME]**, or his or her designee, to act as its Representative for the performance of this Agreement ("**Consultant's Representative**"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.7 Coordination of Services. Consultant agrees to work closely with SDCP staff in the performance of Services and shall be available to SDCP's staff, consultants and other staff at all

reasonable times.

2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub- contractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from SDCP, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subcontractors who is determined by SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SDCP, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SDCP, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold SDCP, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

2.10 Insurance.

2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to SDCP that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SDCP. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to SDCP that the subcontractor has secured all insurance required under this section.

2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the

duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

2.10.3 Professional Liability. **[INCLUDE ONLY IF APPLICABLE - DELETE OTHERWISE]** Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. **[INCREASE IF NECESSARY - OTHERWISE LEAVE AS IS AND DELETE THIS NOTE]** This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by SDCP to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions

limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give SDCP, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from SDCP’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) SDCP, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects SDCP, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by SDCP, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(C) Workers’ Compensation and Employers Liability Coverage.

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against SDCP, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. 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 set forth herein shall be available to SDCP, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SDCP (if agreed to in a written contract or agreement) before SDCP's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(ii) Consultant shall provide SDCP at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to SDCP at least ten (10) days prior to the effective date of cancellation or expiration.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SDCP, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(v) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SDCP has the right but not the duty to obtain the insurance it deems necessary and any premium paid by SDCP will be promptly reimbursed by Consultant or SDCP will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, SDCP may cancel this Agreement. SDCP may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(vi) Neither SDCP nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to SDCP, its directors, officials, officers, employees, agents and volunteers.

2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by SDCP. Consultant shall guarantee that, at the option of SDCP, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SDCP, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, licensed to do business in California, and satisfactory to SDCP.

2.10.8 Verification of Coverage. Consultant shall furnish SDCP with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SDCP. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by SDCP if requested. All certificates and endorsements must be received and approved by SDCP before work commences. SDCP reserves the right to require complete, certified copies of all required insurance policies, at any time.

2.10.9 Subcontractor Insurance Requirements. Consultant shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to SDCP that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name SDCP as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, SDCP may approve different scopes or minimum limits of insurance for particular subcontractors.

2.10.10 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3. **Fees and Payments.**

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C, attached hereto. The total compensation shall not exceed [INSERT WRITTEN DOLLAR AMOUNT] (\$---) without written approval of SDCP's [INSERT TITLE]. Extra Work may be

authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Consultant shall submit to SDCP a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. SDCP shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by SDCP.

3.4 Extra Work. At any time during the term of this Agreement, SDCP may request that Consultant perform Extra Work. As used herein, “**Extra Work**” means any work which is determined by SDCP to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from SDCP’s Representative.

4. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of SDCP during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

5. **General Provisions.**

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. SDCP may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to SDCP, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, SDCP may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, SDCP may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: [INSERT NAME, ADDRESS & CONTACT PERSON]

SDCP: San Diego Community Power
Attn: Executive Director
815 E Street, Suite 12716
San Diego, CA 92112

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5.3 Ownership of Materials and Confidentiality.

5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for SDCP to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“**Documents & Data**”). Consultant shall require all subcontractors to agree in writing that SDCP is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by SDCP. SDCP shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at SDCP’s sole risk.

5.3.2 Intellectual Property. In addition, SDCP shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“**Intellectual Property**”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

SDCP shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by SDCP, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of SDCP.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the SDCP.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

SDCP further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

5.3.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use SDCP's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

5.3.4 Infringement Indemnification. Consultant shall defend, indemnify and hold SDCP, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by SDCP of the Documents & Data, including any method, process, product, or concept specified or depicted.

5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate

or convenient to attain the purposes of this Agreement.

5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

5.6 Indemnification.

5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of SDCP's choosing), indemnify and hold the SDCP, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SDCP, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against SDCP or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse SDCP and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the SDCP, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Diego County.

5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

5.10 SDCP's Right to Employ Other Consultants. SDCP reserves right to employ other consultants in connection with this Project.

5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of SDCP. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to SDCP include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration

contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, SDCP shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of SDCP, during the term of his or her service with SDCP, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.19 Equal Opportunity Employment and Subcontracting. Consultant represents that it is an equal opportunity employer and it shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of applicants, employees, subcontractors, vendors, or suppliers. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Further, Consultant shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation, or to undertake self- insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

5.23 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of SDCP. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO
SAN DIEGO COMMUNITY POWER
PROFESSIONAL SERVICES AGREEMENT**

IN WITNESS WHEREOF, the Parties have made and executed this Agreement as of the date first written above.

SAN DIEGO COMMUNITY POWER

[INSERT NAME OF CONSULTANT]*

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

ATTEST:

Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

SDCP General Counsel

**A corporation requires the signatures of two corporate officers.*

One signature shall be that of the Chairman of Board, the President or any Vice President, and the second signature (on the attest line) shall be that of the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to SDCP.

EXHIBIT A
SCOPE OF SERVICES

[INSERT]

EXHIBIT B

SCHEDULE OF SERVICES

[INSERT]

EXHIBIT C

COMPENSATION BILLING RATES

<u>Name</u>	<u>Title</u>	<u>Hourly Rate</u>
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ATTACHMENT C
CEA SAMPLE PROFESSIONAL SERVICES AGREEMENT

AGREEMENT BETWEEN THE CLEAN ENERGY ALLIANCE AND
Click to enter the consultant's name.FOR
Click to enter subject matter of the services. SERVICES

THIS AGREEMENT, is entered into this **Click here to enter DAY.** of **ENTER MONTH.,**
ENTER YEAR., by and between CLEAN ENERGY ALLIANCE, an independent joint powers
authority ("Authority"), and **Click here to enter Consultant's name.,** a California _____
("Consultant") (collectively referred to as the "Parties" or individually as a "Party"), with respect
to the following essential facts:

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 Sections 6500 *et*
seq.) ("Act") with the power to conduct its business and enter into agreements.

B. Consultant possesses the skill, experience, ability, background, and knowledge to
provide the services described in this Agreement pursuant to the terms and conditions described
herein and is duly authorized and registered to do business in the State of California.

C. Authority and Consultant desire to enter into this Agreement for **TYPE OF services.**

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 pursuant to Section
19 hereof or extended upon the written mutual agreement of the Parties.

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 fully 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 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 or exceeding the prevailing standards for a _____ consultant in California and agrees that all services shall be performed by qualified and experienced personnel in conformity with the applicable requirements of federal, state and local laws in effect at the time that the services are being performed.

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 as an independent contractor and in pursuit of Consultant's independent calling, except to the extent that they are limited by statute, rule or regulation or the express terms of this Agreement. The Consultant has and shall retain the right to exercise full control and supervision of all persons assisting the Consultant in the performance of the services required by this Agreement, Authority only being concerned with the finished results of the work being performed. 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, employer-paid payroll taxes, Social Security, retirement benefits, health benefits, unemployment insurance, workers' compensation plans, vacation and sick leave, nor any other benefits are available from Authority to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA 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. It is the intent of the Parties that neither Consultant nor its officers, employees or agents are to be considered employees of Authority, whether "common law" or otherwise, and Consultant shall indemnify, defend and hold Authority harmless from any such obligations related to its officers, employees and agents.

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 Sections 6500 *et seq.*) pursuant to a Joint Powers Agreement dated November 4, 2019, as amended from time to time, 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. Contractor 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**

Consultant agrees that it shall not harass or discriminate against a job applicant, an Authority employee or contractor, or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital or veteran status, medical condition, pregnancy, sex, age, sexual orientation, genetic information, gender expression, or any other protected class. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their sex, race, color, age, religion, ancestry, national origin, disability, military or veteran status, medical

condition, genetic information, gender expression, marital status, or sexual orientation and shall make reasonable accommodation to qualified individuals with disabilities or medical conditions. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**

A. General Indemnification. Consultant shall, to the fullest extent allowed by law indemnify, defend, and hold harmless the Authority, its members, and their respective officers, officials, agents, employees and volunteers (collectively “Indemnitees”) from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, demands, damages, judgments, liens, levies, costs, expenses and losses whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of or related to a breach of this Agreement or the negligence (whether active or passive) or willful misconduct of Consultant or Consultant’s employees, officers, officials, agents or independent contractors in the performance of or failure to perform this Agreement, except where caused by the sole or active negligence or willful misconduct of any of the Indemnitees. 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.

B. Employee Benefits Eligibility Indemnification. In the event that Consultant’s employee, subcontractor, independent contractor or other person providing services under this Agreement on Consultant’s behalf (collectively, “Consultant’s Personnel”) claims or is determined by a court of competent jurisdiction or administrative agency to be eligible for enrollment in or entitled to any benefits of the Authority or its constituent members, Consultant shall indemnify, defend, and hold harmless Authority or its constituent members for the payment of any employer and employee contributions for such benefits on behalf of the employee as well as for payment of any penalties and interest on such contributions that would otherwise be the responsibility of the Authority or its constituent members. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant’s Personnel providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation and benefit including, but not limited to, eligibility to enroll in any benefit program as an employee of Authority or its constituent members and entitlement to any contributions to be paid by Authority or its constituent members for employer contributions and/or employee contributions for any employee benefits.

C. Indemnification for Employee Payments. Consultant agrees to defend and indemnify the Authority and its constituent members for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to any retirement system, social security, salary or wages, overtime payment, or workers’ compensation payment which the Authority or its constituent members may be required to make for work done under this Agreement.

D. The acceptance of the services provided by this Agreement by Authority shall not operate as a waiver of the right of indemnification. The provisions of this Section 9 shall not be limited by any provision of insurance coverage that the Consultant may have in effect or be required to obtain and maintain during the term of this Agreement. The provisions of this Section 9 are continuing obligations and survive the completion of the services 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: General Counsel. Ten (10) days advance written notice for cancellation due to non-payment of premium shall be provided by the insurer to the Authority in the same manner." 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. All endorsements shall be on forms approved by Authority. Consultant shall provide certified copies of required insurance policies, which shall include the declaration pages, a schedule of forms listing all policy endorsements, and all policy forms, upon Authority's request.

B. **Subrogation Waiver.** Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to 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 that any such insurer of Consultant may acquire against Authority by virtue of the payment of any loss under such insurance.

C. **Primary and Non-contributory.** The commercial general liability, including any excess or umbrella policies being used to meet the required limits of insurance, and automobile liability policies shall contain, or be endorsed to contain, a provision that such policies are primary and non-contributory to any insurance that may be carried by the Authority or its members, as reflected in an endorsement at least as broad as CG 20 01 04 13, which shall be submitted to the Authority. Any insurance or self-insurance maintained by the Authority, its members or their respective officers, officials, employees, or representatives shall be excess of the Consultant's insurance and shall not contribute with it.

D. **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.

E. **Additional Insured.** Authority, its members, and their respective, 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.

F. Self-Insured Retentions. Any self-insured retentions are the responsibility of the Consultant and must be declared to and approved by Authority. At the option of Authority, either (1) the insurer shall reduce or eliminate such self-insured retentions as respects the Authority, its members and their respective officers, officials, employees and volunteers, or (2) the Consultant shall provide a financial guarantee satisfactory to Authority guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

G. 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.

H. 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.

I. Special Risks or Circumstances. Authority reserves the right to modify these requirements, including limits, based on the nature of risk, prior experience, insurer, coverage, or other special circumstances.

11. CONFLICT OF INTEREST

Consultant represents and warrants that it presently has 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 will not employ any person having such an interest. Consultant agrees to advise Authority immediately if any conflict arises and understands that it will be required to fill out a conflict of interest form under Authority's Conflict of Interest Code.

12. PROHIBITION AGAINST TRANSFERS

Consultant shall not assign, 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, 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 managing member or joint venturer or syndicate member or cotenant, if Consultant is a partnership or limited liability company 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 or partnership or limited liability company or other entity.

13. **SUBCONTRACTOR APPROVAL**

A. 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.

B. 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.

C. If Consultant subcontracts for any of the work to be performed under this Agreement, Consultant shall be as fully responsible to the Authority for the acts and omissions of Consultant's subcontractors and for the persons either directly or indirectly employed by the subcontractors, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in the Agreement shall create any contractual relationship between any subcontractors of Consultant and the Authority or its members. In any dispute between the Consultant and its subcontractor, neither the Authority nor any of its members shall be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend, hold harmless and indemnify the Indemnitees as described in Section 9 of this Agreement, should any of the Indemnitees be made a party to any judicial or administrative proceeding to resolve any such dispute.

D. 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, drawing, specification, 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 and is hereby assigned to the Authority. Consultant shall not copyright any Report prepared as part of the services required by this Agreement, except as may be requested on Authority's behalf. Consultant expressly waives and disclaims, any copyright in, and the right to reproduce all Reports, except upon the Authority's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The Consultant shall, upon request of the Authority, execute any further document(s) necessary to further effectuate this waiver and disclaimer. 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. Consultant shall, at such time and in such form as Authority may require, furnish reports concerning the status of services required under this Agreement.

C. All Reports also shall be provided in electronic format.

D. 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.

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 and copies 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. **SUPPLIER DIVERSITY**

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to procure at least 21.5% of their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises' ("WMDVLGBTBEs") in all categories. Qualified businesses become GO 156 certified through the CPUC and are then added to the GO 156 Clearinghouse database.

The CPUC Clearinghouse can be found here: www.thesupplierclearinghouse.com. While CEA is not legally required to comply with GO 156, CEA's policies and commitment to diversity are consistent with the principles of GO 156, and CEA has an Inclusive and Sustainable Workforce Policy, which can be found at <https://thecleanenergyalliance.org/key-documents>.

CEA will provide a link to a survey annually to each of its contract vendors, which may ask for disclosure of (a) their GO 156 certification status, (b) their efforts to work with diverse business enterprises, including those owned or operated by women ("WBE"), minorities ("MBE"), disabled veterans ("DVBE"), and lesbian, gay, bisexual, or transgender people ("LGBTBE"); and (c) other information regarding inclusivity in their workforce or related to CEA's goals as stated in CEA's Inclusive and Sustainable Workforce Policy. CEA will use the information obtained solely to help evaluate how well it is conforming to its own policies and goals. Pursuant to California Proposition 209, CEA does not discriminate against nor grant preferential treatment based on race, sex, color, ethnicity, or national origin.

17. **CONFIDENTIALITY AND SECURITY**

A. **Confidential Information**. Consultant shall maintain in confidence and not disclose to any third party nor use in any manner not required or authorized under this Agreement any and all proprietary or confidential information held by Authority or provided to Consultant by

Authority, including confidential information regarding Authority's customers and employees, except as may be required by law.

B. Security.

1. Implementation. Consultant shall implement commercially reasonable administrative, technical and physical safeguards designed to: (a) ensure the security and confidentiality of data and information provided by Authority or used in connection with providing services under this Agreement, including data or information about third parties ("Authority's Data"); (b) protect against any anticipated threats or hazards to the security or integrity of Authority's Data; and (c) protect against unauthorized access to or use of Authority's Data. Consultant shall review and test such safeguards on no less than an annual basis.

2. Network. If Consultant makes Authority's Data accessible through the Internet or other networked environment, Consultant shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of Authority's Data, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.

3. Personal Data. If Consultant processes or otherwise has access to any personal data or personal information on Authority's behalf when performing Consultant's services and obligations under this Agreement, then: (a) Authority shall be the data controller (where "data controller" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and Consultant shall be a data processor (where "data processor" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own); (b) Authority shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to Consultant so that Consultant may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on Authority's behalf in order for Consultant to provide the services and perform its other obligations under this Agreement; (c) Consultant shall process the personal data and personal information only in accordance with any lawful and reasonable instructions given by Authority from time to time and in accordance with the terms of this Agreement; and (d) each Party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal information being protected. If necessary, the Parties will cooperate to document these measures taken.

4. Information Security. Consultant represents and warrants that its collection, access, use, storage, disposal and disclosure of Confidential Information accessed and/or collected from Authority does and will comply with all applicable federal and state privacy and data protection laws. In the event of any security breach, Consultant shall: (a) Provide Authority with the name and contact information for an employee who shall

serve as Authority's primary security contact and shall be available to assist Authority twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a security breach; and (b) Notify Authority of a security breach as soon as practicable, but no later than twenty-four (24) hours after Consultant becomes aware of it. Immediately following Consultant's notification to Authority of a security breach, the Parties shall coordinate with each other to investigate the security breach. Consultant agrees to fully cooperate with Authority in Authority's handling of the matter. Consultant shall use best efforts to immediately remedy any security breach and prevent any further security breach at Consultant's own expense in accordance with applicable privacy rights, laws, regulations and standards. Consultant agrees to provide, at its expense, up to one year of credit monitoring services to third parties impacted by any data breach involving the loss of personally identifiable information.

C. Notice and Remedy of Breaches. Each Party shall promptly give notice to the other of any actual or suspected breach by it of any of the provisions of Section 16 of this Agreement, whether or not intentional, and the breaching Party shall, at its expense, take all steps reasonably requested by the other Party to prevent or remedy the breach.

D. Enforcement. Each Party acknowledges that any breach of any of the provisions of Section 16 of this Agreement may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured Party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach.

18. NOTICES

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO AUTHORITY:

Clean Energy Alliance
Chief Executive Officer
5857 Owens Ave, 3rd Floor
Carlsbad, CA 92008

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

A. In the event Consultant fails or refuses to perform any of the provisions hereof at the time or 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 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, Authority may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. Authority also shall 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 and within five (5) working days: (1) assemble all documents owned by Authority and in Consultant's possession, and deliver said documents to Authority; and (2) place all work in progress in a safe and protected condition.

B. This Agreement may be terminated by Authority, without cause, upon the giving of thirty (30) days' written notice to Consultant.

C. 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 is the property of Authority pursuant to Section 14 hereof.

20. **COMPLIANCE**

Consultant shall comply with all applicable local, state and federal laws, now existing or hereafter amended or enacted.

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 related to this Agreement shall be filed with the Superior Court of the County of San Diego, State of California. Consultant hereby waives any and all objections to personal jurisdiction and venue in said forum.

22. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, 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. **DRAFTING AMBIGUITIES**

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. **INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be incorporated 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. **CONSEQUENTIAL DAMAGES**

Neither Party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

29. **SEVERABILITY**

In the event that any part of this Agreement is found to be illegal or unenforceable under the law as it is now or hereafter in effect, either Party will be excused from performance of such portion or portions of this Agreement that is found to be illegal or unenforceable without affecting the remaining provisions of this AGREEMENT.

30. **COUNTERPARTS/ELECTRONIC SIGNATURES**

This Agreement may be executed electronically and in any number of counterpart, which together shall constitute one and the same agreement. A true and correct electronic copy of this Agreement may be used for all purposes as an original.

29. **SIGNATORY AUTHORITY**

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

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

NAME OF CONSULTANT

CLEAN ENERGY ALLIANCE
A Joint Powers Authority

By: _____
Name:
Title:

By: _____
Name: Barbara Boswell
Title: Chief Executive Officer

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Clerk

Exhibit A
Scope of Services

Exhibit B
Schedule of Performance

Task

Due Date

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 \$50,000 dollars. 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.

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 and hours worked).

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 and must include itemized receipts/documentation.

Additional Services

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority prior to commencement of any additional services. Consultant shall submit, at the Board's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.

Exhibit D
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority and its members and their respective officials, officers, employees, agents and volunteers named as additional insured.

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California and providing, at minimum, \$1,000,000.00 employers' liability coverage.

(2) **Liability:**

Commercial general liability ("CGL") coverage with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury and property damage, including ongoing and completed operations. ISO occurrence Form CG 0001 or equivalent is required. If limits apply separately to this Agreement (CG 25 03 or 25 04), the general aggregate limit shall not apply. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. If Consultant or subcontractor maintains higher limits than the limits shown above, Authority shall be entitled to coverage for the higher limits maintained by the Consultant and their subcontractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Authority. Any excess or umbrella policies being used to meet the required limits of insurance will be evaluated separately and must meet the same qualifications as the Consultant's primary policy.

(3) **Automotive:**

Commercial Automobile Liability Insurance for all of the Consultant's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit no less than \$1,000,000.00 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

(4) **Professional Liability**

Professional liability insurance that includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000 per claim and \$2,000,000 annual aggregate. Consultant shall ensure both that (1) the policy

retroactive date is on or before the date of commencement of the services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the services or termination of this Agreement, whichever occurs last. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase Authority's exposure to loss. All defense costs shall be outside the limits of the policy. If Consultant maintains higher limits than the limits shown above, Authority shall be entitled to coverage for the higher limits maintained by Consultant. Any available proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Authority.

(5) **Cyber Liability**

Consultant maintain Cyber Liability with a limit of \$2,000,000 per occurrence or claim and \$2,000,000 annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Consultant in this Agreement and shall include claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. All defense costs shall be outside the limits of the policy.