

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND [PARTICIPANT]
FOR INNOVATION ONRAMP [SERVICE]**

THIS AGREEMENT (“Agreement”), is entered into [date] by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, (“SVCE”), and [Participant], a [type of entity], (hereinafter referred to as “Participant”) (collectively referred to as the “Parties” and individually as a “Party”).

RECITALS:

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

B. SVCE has launched an innovation pilot partnership program called Innovation Onramp in order to facilitate and support innovative research and the evaluation, testing, and implementation of innovative, emerging technologies and ideas, with the goal of accelerating decarbonization.

C. Participant has submitted a pilot project proposal to the Innovation Onramp program, pursuant to which Participant proposes to [description of proposal] (the “Project”).

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

E. SVCE and Participant desire to enter into an agreement to carry out the Project upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM

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

2. SERVICES TO BE PERFORMED

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

3. COMPENSATION TO CONSULTANT

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

4. **TIME IS OF THE ESSENCE**

Participant and SVCE agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

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

6. **INDEPENDENT PARTIES**

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

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

SVCE is organized as a Joint Powers SVCE in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. SVCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of SVCE's constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**

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

9. **HOLD HARMLESS AND INDEMNIFICATION**

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

B. **Intellectual Property Indemnification.** Participant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content,

and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights"), except as otherwise expressly provided by this Agreement. Participant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Participant shall indemnify, defend, and hold Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party's IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys' fees of counsel of SVCE's choice, expert fees and all other costs and fees of litigation.

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

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

10. **INSURANCE**

A. General Requirements. On or before the commencement of the term of this Agreement, Participant shall furnish SVCE 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 Participant'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 SVCE by certified mail, Attention: Chief Executive Officer." Participant 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 SVCE and licensed to do insurance business in the State of California. Endorsements naming the SVCE as additional insured shall be submitted with the insurance certificates.

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

C. Failure to Secure or Maintain Insurance. If Participant at any time during the term hereof should fail to secure or maintain the foregoing insurance, SVCE shall be permitted to obtain such insurance in the Participant's name or as an agent of the Participant and shall be compensated by the Participant for the costs of the insurance premiums at the maximum rate permitted by law

and computed from the date written notice is received that the premiums have not been paid.

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

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

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

11. CONFLICT OF INTEREST

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

12. PROHIBITION AGAINST TRANSFERS

Participant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of SVCE. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Participant from SVCE 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 SVCE by Participant.

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

13. **SUBCONTRACTOR APPROVAL**

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

In the event that Participant 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 Participant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Participant 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 Participant shall agree to be bound to Participant and SVCE in the same manner and to the same extent as Participant is bound to SVCE under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Participant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Participant 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 SVCE.

14. **REPORTS**

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

retain a copy of any Report furnished to the SVCE pursuant to this Agreement.

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

C. Participant shall share with SVCE data analytics, usage or and other information collected by any software component of the Project.

D. Participant shall, at such time and in such form as SVCE may require, furnish reports concerning the status of services required under this Agreement.

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

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

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

15. **RECORDS**

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

16. **PARTY REPRESENTATIVES**

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

17. **CONFIDENTIAL INFORMATION AND DOCUMENTS**

A. Participant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Participant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Participant without prior written authorization by SVCE. SVCE shall grant such authorization if applicable law requires disclosure. Participant, its officers, employees, agents, or subcontractors shall not without written authorization from the SVCE Representative or unless requested in writing by the SVCE’s General Counsel, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the SVCE. Response to a subpoena or court order shall not be considered “voluntary,” provided Participant gives SVCE notice of such court order or subpoena.

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

C. It is understood that SVCE is subject to the California Public Records Act (Gov. Code § 7920.000 *et seq.*). If a request under the California Public Records Act is made to view any documents Participant provided to SVCE, SVCE shall notify Participant of the request and the date that such records will be released to the requester unless Participant obtains a court order enjoining that disclosure. If Participant fails to obtain a court order enjoining that disclosure, SVCE will release the requested information on the date specified.

D. In the event SVCE gives Participant written notice of a “litigation hold” or request under the Public Records Act, then as to all data identified in such notice or request, Participant shall, at no additional cost to SVCE, isolate and preserve all such data pending receipt of further direction from the SVCE.

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

F. Participant’s covenants under this section shall survive the expiration or termination of this Agreement.

18. **NOTICES**

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Participant’s and

SVCE's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

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

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

19. **TERMINATION**

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

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

20. **COMPLIANCE WITH LAWS**

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

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

21. **CONFLICT OF LAW**

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

22. **ADVERTISEMENT**

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

23. **WAIVER**

A waiver by SVCE 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 SVCE and Participant.

25. **AUTHORITY**

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

26. **INSERTED PROVISIONS**

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

27. **CAPTIONS AND TERMS**

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

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

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

29. **EXHIBITS**

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

30. **FORCE MAJEURE**

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

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

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

by Participant, its employees, subcontractors and agents.

32. **ATTORNEY FEES**

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

33. **SEVERABILITY**

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

34. **SUCCESSORS AND ASSIGNS**

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

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

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

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

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

37. **DRAFTING PARTY**

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

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

RECOMMENDED FOR APPROVAL

Enter Your Name, Enter Your Title

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME

Enter Consultant's Name

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

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers SVCE

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

APPROVED AS TO FORM:

Counsel for SVCE

ATTEST:

SVCE Clerk

Exhibit A
Scope of Services

Pursuant to the terms and conditions of this Agreement, Participant will install the Equipment for an evaluation period of Insert length of evaluation period in days or months, with the following features and specifications and at the location identified below:

1. Evaluation Site Locations.
2. Equipment to be Installed.
3. Delivery, Installation, Inspection, and Maintenance of Equipment.
4. Equipment Warranty.
5. Ownership of Equipment.
6. Local Agency Approvals.
7. Compliance with Prevailing Wage, as Applicable.
8. Additional Services and Terms and Conditions Applicable to Software (as applicable, such as service levels, third party components, maintenance, training, etc.)
9. Additional Services and Terms and Conditions Applicable to Hardware.

Exhibit B
Schedule of Performance

[Click here to enter text.](#)

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

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

Exhibit C
Compensation

SVCE shall compensate Participant for Services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below.

The compensation to be paid to Participant under this Agreement for all Services described in Exhibit “A” shall not exceed a total of [dollar amount] as set forth below. Any work performed for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to SVCE unless previously approved in writing by SVCE. No reimbursable expenses are contemplated as a part of this Agreement.

Participant shall perform the categories of work and complete the Deliverables as outlined and budgeted below. SVCE’s Party Representative may approve in writing the transfer of budget amounts between any of the Deliverables below, provided that the total does not exceed the not-to-exceed amount above.

<u>Project Deliverables</u>	<u>Completion Amount</u>
1. Deliverable 1:	
2. Deliverable 2:	
3. Deliverable 3:	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
Total	

Invoicing: In order to request payment, Participant shall submit invoices to SVCE upon completion of each Deliverable, describing the Services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). SVCE shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. SVCE does not pay interest on past due amounts.

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

by written amendments to this Agreement.

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

Exhibit D
Insurance Requirements and Proof of Insurance

Participant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

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

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

Exhibit E
Confidentiality and Data Security Requirements

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

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

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

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

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

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

8. Participant shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by SVCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Participant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Participant shall immediately notify SVCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Participant or any of its employees or representatives. However, nothing in this Agreement shall obligate the SVCE to monitor or enforce the Participant's compliance with the terms of this Agreement.
9. Participant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of SVCE's written request, and at SVCE's option, Participant will either return to SVCE all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide SVCE with written certification that all such tangible Confidential Information of SVCE has been destroyed.
11. Participant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to SVCE and/or SVCE Customers, the amount of which may be difficult to assess. Accordingly, Participant hereby confirms that the SVCE shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Participant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the SVCE, in law or equity.
12. In addition to all other remedies, Participant shall indemnify and hold harmless SVCE, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Participant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
13. When Participant fully performs the purposes set forth in the Agreement, or if at any time Participant ceases performance or SVCE requires Participant cease performance of the purposes set forth in the Agreement, Participant shall promptly return or destroy (with written notice to SVCE itemizing the materials destroyed) all Confidential Information then in its possession at the direction of SVCE. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.