

CONSULTING SERVICES AGREEMENT
BETWEEN
California Municipal Utilities Association
AND

This CONSULTING SERVICES AGREEMENT (“Agreement”) is dated as of _____, 2018, by and between _____ (“Consultant”), a corporation, located at _____, and California Municipal Utilities Association (“CMUA”), a Non-Profit Association created pursuant to the laws of the State of California, located at 915 L Street, Suite 1460, Sacramento, California 95814. CMUA and Consultant are also referred to individually as (“Party”) and together as (“Parties”).

WHEREAS, certain CMUA member utilities, Northern California Power Agency (“NCPA”) and Southern California Public Power Authority (“SCPPA”) (NCPA and SCPPA are individually referred to as a “Participant” and jointly as “Participants”), each of whom is a California joint powers agency composed of public agencies operating a municipally owned electric utility, are involved in the planning, development, and administration of energy efficiency programs for their respective electric utility members; and

WHEREAS, the member electric utilities of the Participants are required by Section 9505 of the Public Utilities Code to annually report to the California Energy Commission (“CEC”) on their investments in energy efficiency and demand reduction programs, including program expenditures, the cost-effectiveness of each program, as well as energy savings and demand reduction results; and

WHEREAS, the Participants have a need for professional and technical services for updating and developing an energy efficiency database tool to calculate the cost-effectiveness of energy efficiency and demand reduction measures and programs, and to summarize and report program expenditures, energy savings, and demand reductions in order to report this information to the CEC; and

WHEREAS, Consultant is qualified and capable of providing these services, and Consultant is willing to provide such services at a price **not to exceed** _____ **dollars (\$_____)**, including all costs.

NOW, THEREFORE, in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

1. **Services to be Provided:** CMUA engages the Consultant to prepare and deliver _____ as described in Consultant’s Proposal which is attached hereto marked Exhibit “A” and is incorporated herein by this reference. Detailed procedures and practices to be followed while performing the Services defined within the Proposal, including tasks and budgeting, shall be as set forth in the Proposal or a work order issued thereunder. Consultant will perform the services at the direction of and on behalf of CMUA and Participants.

2. **Independent Contractor:** Consultant is an independent contractor and is not an employee of CMUA or the Participants. Consultant shall not be entitled to any benefits or rights, including, but not limited to, sick leave, vacation leave, holiday pay, worker's compensation or other insurance benefits. Consultant shall furnish the services in its own manner and method except as required by this Agreement. Consultant shall have no authority, express or implied, to act on behalf of or bind CMUA or the Participants in any capacity whatsoever as agents or otherwise.
3. **Standard of Care:** The Consultant will perform services under this Agreement with the degree of skill and diligence normally practiced in the same industry by consultants performing the same or similar services. Consultant shall assign only competent personnel to perform the Services. In the event that CMUA, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from CMUA of such request, reassign such personnel. Consultant shall comply with all Federal, State, County, City and other governing laws, rules and regulations as applicable to the performance of services under this Agreement including Participant business practices or other ordinances including, but not limited to, equal opportunity practices, living wage ordinances, applicable business licenses, taxpayer protection acts (limiting gifts or campaign contributions), and assignment of antitrust causes of action. Consultant is not required to perform the services during fixed hourly or daily times, nor at CMUA or Participant premises unless as provided in the Scope of Work. Consultant's time spent at CMUA, a Participant site or the sites of the Participants' members, or project location premises shall be subject to normal business hours and security requirements.
4. **Changes/Amendments:** This Agreement may not be changed except by written amendment signed by both Parties. Services not expressly set forth in this Agreement are excluded. If Consultant determines that changes should be made to the Project, the Consultant will notify CMUA of such proposed changes in writing, including the effects on the schedule, level of effort and payment for such changes. Thereafter, Consultant and CMUA shall agree in writing on which changes, if any, shall be included in an amendment to the Project and both Parties shall sign the amendment. If Consultant is delayed in performing the services by any act of war, force majeure or other unforeseen and immitigable circumstance beyond its control, then Consultant shall not be considered to be in default of the performance of its obligations under this Agreement while such circumstance is in effect, provided that Consultant shall provide notice to CMUA of the existence of such event or circumstance within 3 days of its occurrence.
5. **Payment:** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. CMUA agrees to pay Consultant for services described in the Proposal. Each invoice shall state the basis for the amount invoiced, including services completed, units of time and costs, and any work performed. CMUA shall pay properly invoiced amounts not more than sixty (60) days after delivery of an invoice. The total cost shall not exceed _____ dollars (\$_____) including all costs and reimbursable expenses.
6. **Taxes:** Any and all taxes imposed on Consultant's income, imposed or assessed by reason of this agreement or its performance, including but not limited to sales or use taxes, shall be paid by Consultant. Consultant shall be responsible for any taxes or penalties assessed by reason of

any claims that Consultant is an employee of CMUA, and CMUA and Consultant specifically agree that Consultant is not an employee or agent of CMUA.

7. **Indemnity:** Consultant undertakes and agrees to defend, indemnify and hold harmless CMUA and Participants, and their respective member agencies, as well as their respective officers, agents, representatives, employees, assigns and successors in interest from and against any and all third-party suits and causes of action, claims, charges, damages, demands, judgments, civil lines and penalties, or losses of any kind or nature whatsoever for death, bodily injury or personal injury to any person, including Consultant's employees and agents, or damage or destruction to any property of either party hereto, or third person in any manner directly arising by reason of negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of the Consultant, or the Consultant's officers, agents, employees, or subcontractors of any tier, except for the sole active negligence or willful misconduct of CMUA, its Board, officers, agents, representatives or employees.
8. **Limitation of Liability:** To the extent permitted by law, and except as provided in Section 9 of this Agreement the total liability of the Consultant to CMUA for any claims arising out of this Agreement, whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall be limited to direct damages and not exceed one hundred and fifty thousand dollars (\$150,000), provided however this limitation shall not apply in the event of gross negligence, willful misconduct, bad faith of the Consultant, or where occurrence is covered by insurance as provided in Section 9 below in which case the applicable limit pursuant to the insurance policy specified in Section 9 shall apply. In no event will Consultant or CMUA be liable for any indirect, consequential, punitive or special damages arising out of or related to this Agreement or the Services performed hereunder, whether in contract, tort (including negligence), strict liability or otherwise, even if such party has been advised of the possibility of such loss or damage.
9. **Insurance and Indemnification:** Consultant shall, at its own cost and expense, procure and maintain during the entire term of this Agreement, public liability insurance and property damage insurance (issued by an insurance company admitted in the State of California to issue such insurance) naming CMUA and the applicable Participant(s) as an additional insured against loss or liability caused by or connected with Consultant's use of an automobile in the performance of this Agreement for not less than \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000.

Consultant shall also maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000.

Additionally, Consultant shall, at its own cost and expense, produce and maintain during the entire term of this Agreement comprehensive general and professional liability insurance (issued

by an insurance company admitted in the State of California to issue such insurance) naming CMUA and the applicable Participant(s) as an additional insured against loss or liability caused by or connected with Consultant's performance under this Agreement for not less than \$1,000,000 per occurrence, \$3,000,000 annual aggregate.

Additionally, Consultant shall, at its own cost and expense, secure and maintain during the entire term of this Agreement, a policy or workers' compensation insurance with statutory limits or provide a waiver certifying that no employees and/or volunteers subject to the Labor Code provisions will be used in the performance of services under this Agreement.

The insurance policy shall contain the following provisions:

"It is agreed that any insurance maintained by CMUA shall apply in excess of and not contribute with insurance provided by this policy."

"CMUA, SCLPA, and NCPA, and their respective members, officers and employees are added as additional insureds with respect to the activities done pursuant to this agreement on behalf of the named insured."

Consultant shall provide an endorsement such that this insurance shall not be cancelled, limited in scope or coverage or non-renewed until insured provides thirty (30) days written notice to:

Executive Director
CMUA
915 L Street, Suite 1460
Sacramento, CA 95814
FAX: 916.326.5810

Further, Consultant shall indemnify, defend with counsel reasonably acceptable to CMUA, and hold harmless CMUA, Participants, and members from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Consultant, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of CMUA.

- 10. Term and Termination:** The term of this Agreement shall be for ____ (___) years from the date hereof, unless sooner terminated in accordance with this section, at which time, it shall either terminate or be extended for one (1) additional term of one (1) year subject, again, to earlier termination in accordance with this section. CMUA's determination to grant such an extension for an additional one (1) year term shall be at the sole discretion of the CMUA Executive Director and shall be carried forth through mutual execution, between CMUA and the Consultant of such an agreement. Notwithstanding anything to the contrary contained herein, either Party may terminate this Agreement, with or without cause, upon thirty (30) days' written notice to the other Party. CMUA shall pay Consultant for all services rendered up to the date of termination plus reasonable expenses for winding down the services, so long as the final amount does not exceed the total cost provided in Section 5. Any payment, indemnity, and work

product rights or obligations pursuant to Sections 5, 7, and 11, respectively, shall survive the termination of this Agreement.

11. Use and Ownership of Work Products:

- (a) **Work Product.** As used in this agreement, the term “Work Product” means any and all materials fixed in a tangible medium of expression, including software code, written procedures, written documents, abstracts and summaries thereof, or any portions or components of the foregoing created, written, developed, conceived, perfected or designed in connections with the Services provided under this Agreement. All Work Product may be used by CMUA, the Participants, and their of their respective members.
- (b) Upon payment in full to Consultant for the services, CMUA shall retain all rights, title and interest in and to the Work Product, including all intellectual property rights therein and any and all enhancements, improvements and derivative works thereof, and Consultant obtains no rights therein. Notwithstanding the foregoing, Consultant will retain sole and exclusive ownership of all rights, title and interest in Consultant’s work papers, proprietary information, and software, including such information as existed prior to the delivery of Consultant’s Services (“Consultant Knowledge”). To the extent Consultant’s reports or other documents delivered to CMUA contain Consultant Knowledge, Consultant grants CMUA and Participants a non-exclusive, non-assignable, royalty-free license for use.

12. Information Provided by Others: CMUA and/or Participants shall provide to the Consultant in a timely manner any information indicated is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by CMUA and its representatives.

13. Dispute Resolution: Consultant and CMUA shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator. Absent mediated resolution, the parties agree to submit any dispute to binding arbitration under the rules governing commercial arbitration as promulgated by the American Arbitration Association. Any arbitration shall be subject to the Federal Arbitration Act., and the locale of the arbitration shall be Northern California.

14. Miscellaneous:

- (a) This Agreement is binding upon and will inure to the benefit of the Parties and their respective successors and assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party; provided, however, that either Party may assign this Agreement to a successor of the Party’s entire business relating to this Agreement.
- (b) If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue in full force and shall continue as to other circumstances in accordance with, the laws of the State of California.

- (c) This Agreement is entered into in Sacramento County in the State of California and shall be governed by, and construed in accordance with, the laws of the State of California.
- (d) Each of SCPPA and NCPA shall be deemed to be third party beneficiaries of this Agreement. There are no other third-party beneficiaries.

[SIGNATURE PAGE TO FOLLOW]

15. Signature Clause:

IN WITNESS WHEREOF, each signatory hereto represents that he or she has been properly authorized to execute and deliver this Agreement on behalf of the Party for which he or she signs.

California Municipal Utilities Association

By: _____

Barry Moline
Executive Director
CMUA
915 L Street, Suite 1460
Sacramento, CA 95814
916.326.5800 FAX: 916.326.5810

Date: _____

CONSULTANT

By: _____

[Name]

Date: _____

EXHIBIT A

SCOPE OF SERVICES