

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and
Calpine Community Energy, LLC**

**PRO.0297
SFPUC Customer Administrative Services
Community Choice Aggregation**

This Agreement is made this [Insert day] day of [Insert month], 2025, in the City and County of San Francisco (“City”), State of California, by and between Calpine Community Energy, LLC (“Contractor”) and City.

Recitals

WHEREAS, the San Francisco Public Utilities Commission, CleanPowerSF (“SFPUC” or “CleanPowerSF”) wishes to procure comprehensive and integrated customer data management, billing, and data exchange services from Contractor; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID PUC.PRO.0297; and

WHEREAS, this is a contract for Services and the Local Business Enterprise (“LBE”) subcontracting participation requirement for the Services has been waived by the Contract Monitoring Division of the City (CMD); and

WHEREAS, on January 30, 2024, the SFPUC obtained approval for the Agreement from the Civil Service Commission under PSC number 49686 – 23/24 in the amount of \$17 million for the period of five years and four weeks; and

WHEREAS, on March 25, 2025, the City’s Public Utilities Commission approved this Agreement by Resolution No. 25-0054; and

WHEREAS, on [Insert date of Board action], the City’s Board of Supervisors approved this Agreement pursuant to San Francisco Charter Section 9.118 by Resolution No. [Insert resolution number].

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Affiliate” means in relation to a Party, any entity directly or indirectly controlled by such Party, any entity that directly or indirectly controls such Party, or any entity directly or indirectly under common control with such Party. For this purpose, “control” of a Party means ownership of a majority of the voting power of the Party.

1.2 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.3 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the SFPUC.

1.4 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.5 “CMD” means the Contract Monitoring Division of the City.

1.6 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.7 “Contractor” or “Consultant” means Calpine Community Energy, LLC [Insert address of Contractor].

1.8 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.9 “Effective Date” means the Effective Date stated in the Notice of Contract Award issued by the SFPUC once this Agreement has been fully approved and executed.

~~1.10 “Mandatory City Requirements” means those City laws set forth in the San~~

Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.11 “Party” or “Parties” means the City and Contractor either collectively or individually.

1.12 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.13 “Subcontractor” means a third-party entity the Contractor contracts with to provide a specific Service(s) identified herein. “Subcontractor” does not include such third-party entities that the City has contracted with for services under or related to this Agreement or an entity that provides software services that Contractor uses for performance of the Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire three years later, unless earlier terminated as otherwise provided herein.

2.2 The City has the option to extend the term of the Agreement for up to three additional years, as approved by the SFPUC. The agreement may be extended for an additional period past such initial term via further written agreement of the Parties and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 **Guaranteed Maximum Costs.** The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified

maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the General Manager of the SFPUC, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed Seventeen Million Dollars (\$17,000,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges" and Appendix B-1, "Fee Schedule." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.1 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until SFPUC approves the Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.2 Withhold Payments. If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.3 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, the SFPUC, and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.4 Reserved (LBE Payment and Utilization Tracking System)

3.3.5 Getting paid by the City for Services.

(a) The City and County of San Francisco utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in SOLIS. For access to SOLIS, submit a request through

3.3.6 Reserved (Grant Funded Contracts)

3.3.7 Payment Terms.

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within thirty (30) calendar days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) Reserved (Payment Discount Terms)

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, records or other data related to the provision of the Services. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final invoice under this Agreement or until after final audit has been resolved, whichever is later. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts with Subcontractors.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 Reserved (Payment of Prevailing Wages for Trade Work)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 Personnel.

4.2.1 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. All personnel that are employees of the Contractor are supervised by Contractor in accordance with its internal policies and procedures. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement and the task orders.

4.3 Subcontracting.

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All subcontracts with Subcontractors must incorporate the terms of Article 10, "Additional Requirements Incorporated by Reference," of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 . City's execution of this Agreement constitutes its approval of the Subcontractors listed in Appendix B-1, Fee Schedule. Consistent with SFPUC policy, any modifications to the list of Subcontractors must be effectuated via City's approved invoice processing system, subject to the written approval of the City, and CMD, as needed.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to

control the means or the method by which Contractor performs work under this Agreement. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code, except that (a) Contractor may assign without such approval to an Affiliate, or to a successor acquiring all or substantially all of the shares, equity and/or the assets of the transferring Party, whether by merger or acquisition, provided that the Affiliate or successor expressly assumes all of Contractor's obligations under this Agreement; and (b) Contractor may assign the revenues owing to it hereunder without approval in connection with any financing or other financial arrangements; however, such assignment shall not release the Contractor from its obligations hereunder. The City's approval of any such Assignment requiring approval is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Technology Errors and Omissions Liability coverage, or Professional Liability coverage, with limits of \$10,000,000 for a claim and/or loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement.

(e) Cyber and Privacy Insurance with limits of \$10,000,000 for each claim and/or loss and \$10,000,000 in the aggregate, providing coverage for:

I. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

II. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon, and;

III. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, personal information, such as name, address, or other personally identifying information.

(f) Reserved. (Pollution Liability Insurance)

5.1.2 Additional Insured Endorsements.

(a) The Commercial General Liability policy must be endorsed to name

as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved (Pollution Auto Liability Insurance Additional Insured Endorsement)

5.1.3 Waiver of Subrogation Endorsements.

(a) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.4 Primary Insurance Endorsements.

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought. Notwithstanding the foregoing, Additional Insureds endorsement will be pursuant to such policy's blanket endorsement grant "as required by written contract".

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought. Notwithstanding the foregoing, waiver of subrogation will be pursuant to policy's blanket endorsement grant "as required by written contract".

(c) Reserved (Pollution Liability Insurance Primary Insurance Endorsement)

5.1.5 Other Insurance Requirements.

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements or blanket endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any Subcontractor(s) to provide Services, subcontractor insurance will be required as appropriate for the work scope as determined by the Contractor. Contractor shall require the Subcontractor(s) to include the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds on Subcontractor's Commercial General Liability and Commercial Automobile Liability policies.

5.2 Indemnification.

5.2.1 Subject to the limitations herein, Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all loss, cost, damage, injury, and liability that may arise from a third-party claim resulting from (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) non-compliance with applicable law as further described in Section 11.10 below, or (iv) strict liability imposed by any law or regulation, to the extent such loss, damage, injury, violation or strict liability arises directly from Contractor's performance of this Agreement, including but not limited to the use of facilities or equipment provided by City or others, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City or CleanPowerSF. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the

patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.2.4 If Contractor suffers loss, cost, damage, injury, liability, and claims of any kind of type attributable to the City's use of or access to, or the City's other third party contractor's use of or access to, Contractor's systems then City shall indemnify and save harmless Contractor and its officers, agents, and employees from and against any and all loss, cost, damage, injury, liability, and claims thereof.

Article 6 Liability of the Parties

6.1 Limitation of Liability.

(a) FOR BREACH OR DEFAULT BY A PARTY ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

(b) IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, CITY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

(c) IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, CONTRACTOR'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, EXCEPT AS SET FORTH IN APPENDIX A, TASK 1, SECTION 9, AND CONTRACTOR SHALL NOT BE LIABLE REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT, INDEMNITY, OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental Damages. Contractor shall not be responsible for incidental damages except as set forth in Appendix A, Task 1, Section 9.b.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest

taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience. [Reserved]

8.2 Termination for Default; Remedies.

8.1.1 Each of the below shall constitute an immediate event of default (“Event of Default”) by a Party under this Agreement. The Party responsible for the default is the “Defaulting Party”.

(a) A Party fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims
4.5	Assignment

(b) A Party fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default is not cured within ten days after written notice is received by the such Party.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of such Contractor or of any substantial part of such Contractor’s property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to a Contractor or with respect to any substantial part of such Contractor’s property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of such Contractor.

8.1.2 On and after any Event of Default, the non-defaulting Party shall have the right to suspend its obligations and/or exercise any legal remedies, including, without limitation, the right to terminate this Agreement and seek its damages. In addition, if the City is the non-defaulting Party, it shall have the right to calculate, and invoice Contractor for and/or offset from any amounts due to Contractor under this Agreement, all its damages, losses, costs or expenses incurred as a result of an Event of Default by the Contractor, subject to the limitations in this Agreement. If the Contractor is the non-defaulting Party, it shall have the right to calculate, and invoice the City for, its damages, losses, costs or expenses incurred as a result of an Event of Default by the City, subject to the limitations in this Agreement. The amounts calculated and invoiced by the non-defaulting Party under this Section shall be due by the Defaulting Party within 10 (ten) days of the date of the invoice. This Section 8.1.2 shall survive termination of this Agreement.

8.1.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Except as expressly stated herein, nothing in this Agreement shall constitute a waiver or limitation of any rights that either Party may have under applicable law.

8.1.4 Any notice of default must be sent by registered mail to the address set forth

in Article 11.

8.2 **Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.3 **Rights and Duties upon Termination or Expiration.**

8.3.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement

6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1	Termination for Default; Remedies	Article 13	Data and Security
9.1	Ownership of Results	--	--

8.3.2 Subject to the survival of the Sections identified in Section 8.3.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. Provided, however, that consistent with the below, Contractor's intellectual property, including, but not limited to, Contractor's internal systems, know-how, programs, and policy templates shall remain the exclusive property of Contractor. However, , Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Intellectual Property.** If, in connection with Services, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, including but not limited to Deliverables, then all right, title, and interest, including without limitation, any patent, trademark, and/or copyright in such works of authorship shall be vested exclusively in Contractor, provided however, that City shall have a perpetual, non-exclusive license to such works as may be needed to provide customer care services for CleanPowerSF, to the extent the City performs such services (e.g. call center telephone scripts and similar).

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4

of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this section.

10.5 Nondiscrimination Requirements.

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Articles 131 and 132 of the San Francisco Labor and Employment Code. Contractor shall incorporate by reference in all subcontracts the provisions of Article 131.2(a), 131.2(c) – (i), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Section 131.2(b). Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Section 131.2(b).

10.6 Local Business Enterprise and Non-Discrimination in Contracting

Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. If Labor and Employment Code Article 111 applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance (HCAO). If Labor and Employment Code Article 121 applies to this contract, Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City

elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved (Slavery Era Disclosure)

10.13 Reserved (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this section. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.14.2 The requirements of Article 142 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved (Public Access to Nonprofit Records and Meetings)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved (Distribution of Beverages and Water)

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 **Reserved (Preservative Treated Wood Products).**

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: [Insert name or title of department contact person, name of department, mailing address, and e-mail address]

To Contractor: [Insert name of Contractor, mailing address, and e-mail address]

Any notice of default must be sent by email or trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. Notice by email is effective on the business day it is actually received. Notice by trackable overnight mail shall be effective on the next business day after it was sent.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records in the City's possession related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. Seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any agreed to amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of

services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 Entire Agreement. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 Compliance with Laws. Contractor must at all times comply with applicable state and federal laws, and, in addition those local codes, ordinances and regulations described and agreed to herein (together, the "Law").

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 Order of Precedence. The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the Appendices to this Agreement include any term that conflicts with the main body of the Agreement, the terms in the main body of the Agreement shall take precedence. Any hyperlinked terms included in Contractor's proposal shall have no legal effect.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 12 Department Specific Terms

12.1 Reserved

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the performance of Services, Contractor may have access to, or collect on City's behalf, City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement, or as further described below. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Payment Card Industry ("PCI") Requirements.) [Reserved]

13.3 Management of City Data and Confidential Information.

13.3.1 Use of City Data and Confidential Information. Contractor agrees to hold City's Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Data outside the United States is subject to prior written authorization

by the City. Access to City's Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, except that Contractor shall have the right to use data collected and used to perform the Services in an aggregated and anonymized form and incorporate such a and a data within databases and processes. Except as stated herein, this Agreement does not confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.3.2 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall, after being notified of proper location for data relocation, promptly, but in no event later than sixty (60) calendar days, return all City Data, provided however that City Data need not be returned, deleted, or destroyed if i) it is only aggregated and anonymized, ii) it is found in electronic format as part of Contractor's (or Contractor's representatives or contractors) data storage/archival/retention process, or iii) Contractor is required to retain such information pursuant to law or regulation, in which case Contractor may retain one copy. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data, except as stated above, from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.4 Ownership of City Data. The Parties agree that, as between them, all rights to City Data that the City provided to Contractor for use in performance of this Agreement is the exclusive property of the City.

13.5 Loss or Unauthorized Access to City's Data; Security Breach Notification. Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature

reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride And Signature

14.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

Dennis J. Herrera
General Manager
San Francisco Public Utilities Commission

Approved as to Form:

David Chiu
City Attorney

By: _____
[Insert name of Deputy City Attorney]
Deputy City Attorney

Approved:

Sailaja Kurella
Director of the Office of Contract
Administration, and Purchaser

By: _____

CONTRACTOR

Calpine Community Energy, LLC

Sean Fallmer
President

City Supplier Number: [Supplier number]

Appendices

- A: Scope of Services
- B: Calculation of Charges
- B-1: Fee Schedule

Appendix A Scope of Services

- 1. Description of Services.** Contractor agrees to perform the following Services:

TASK 1 BILLING PROCESS MANAGEMENT

CleanPowerSF's customer billing process will be principally administered through Contractor, including critical processes outlined in CleanPowerSF's Services Agreement with PG&E and PG&E's Rule 23. Contractor will be responsible for:

1. Obtaining all customer usage data from PG&E's meter data management agent (MDMA) server to allow for timely billing (according to PG&E's requirements).
2. Maintaining and communicating the amount to be billed by PG&E for services provided by CleanPowerSF, according to PG&E's applicable billing window.
3. Receiving and maintaining all data related to payment transactions toward CleanPowerSF's charges from PG&E after payment is received by PG&E customers.
4. Completing the technical testing of all necessary electronic interfaces with PG&E, which provide for the communication by Internet and Electronic Data Interchange (EDI) between the Contractor and PG&E to confirm system compatibility related to CCASRs, billing collections, meter reading, and electricity usage data.
5. Demonstrating successful completion of all standard PG&E technical testing prior to the customer enrollment period, and have the capability and signed agreements necessary to communicate or exchange the information using EDI, Internet, or an electronic format acceptable to PG&E.
6. Maintaining rate schedules provided by CleanPowerSF, supporting rate changes as needed, and ensuring that rates are charged appropriately to CleanPowerSF customers.
7. Supporting billing related programs via reporting, adjustments to enrolled customers, and other related needs as requested by CleanPowerSF.
8. Managing ad hoc billing needs at the request of CleanPowerSF staff with ten business days prior notice.
9. Service Levels. In the performance of Services above:
 - a. Errors in the Billing Process Management Services above that do not result in an error on an actual bill will be corrected by the Contractor in a commercially reasonable manner but will not result in an Event of Default.
 - b. Contractor will bill with 98% accuracy on a monthly basis. Errors in the Billing Process Management Services that do not result in more than a 2% error in billing accuracy based on the number of accounts billed, as measured on a monthly basis, will not result in an Event of Default.
 - (i) For bill ready billing, accuracy means accurate bill calculations are

delivered to the utility.

(ii) For rate ready billing, to the extent applicable, accuracy is defined as confirmation of accurate rate applications and calculations. Any mismatches shall be raised with the applicable utility within 2 business days and commercially reasonable efforts shall be made to resolve them within 2 billing cycles.

c. Contractor will bill with 98% billing timeliness as measured on a monthly basis. For the avoidance of doubt, timeliness in the context of bill ready bills means accurate bill calculations are delivered by the close of the billing window with the utility. Errors that do not result in more than 2% untimely bills of the number of accounts billed, as measured on a monthly basis, will not be an Event of Default as long as any delayed bill calculations are delivered in a commercially reasonable timeframe.

d. Any billing error that can and is corrected through a rebill is not an Event of Default.

e. Any billing error that is not corrected through a rebill pursuant to direction from CleanPower SF will not be an Event of Default.

f. Contractor will apply commercially reasonable efforts to remedy billing errors for any customer in a timely manner and will remedy such errors in no more than two billing cycles once the error is known to the Contractor. Errors that are remedied in this manner will not result in an Event of Default.

g. For errors in that result in more than a 2% error in accuracy or timeliness as measured and that are not remedied in accordance with the provisions above (“Unremedied Errors”), Contractor shall pay City’s cost of funds (as defined below) incurred during any payment delay from a customer due to an Unremedied Error that was not caused by the utility or the CleanPowerSF and that did not result from a billing hold discussed by Contractor and CleanPowerSF. The City’s cost of funds shall be the simple interest accruing at the prime interest rate as established by the Wall Street Journal on any amounts that are not paid due to an Unremedied Error during a “Delinquent Period.” A “Delinquent Period” shall commence on the latest date that the amount(s) in question could have been paid to City without being delinquent, had the amount been accurately and timely billed. The Delinquent Period shall end when Contractor has corrected all such billing errors for the amounts in question and accurate information is delivered to PG&E.

TASK 2 CUSTOMER DATA MANAGEMENT

Data management and data exchanges with PG&E will be primarily managed through Contractor. Storage and management of customer data in a secure, scalable and accessible fashion is critical to CleanPowerSF’s operations. Contractor is not responsible or liable for a failure to perform the Customer Data Management Services as described below to the extent such failure to perform is due to the negligence, gross negligence, or willful misconduct of the applicable utility, or CleanPowerSF or its vendor. Under this Task, Contractor will be responsible for:

1. Maintaining an accurate customer database of all customers offered The City's CCA service. Identify each customer's contact and account information, enrollment status, tariff election(s), billed usage and demand, payment history, on-site generating capacity, if applicable, and any correspondence with the customer as well as other information as needed.

2. Processing requested changes to a customer's choice of services, or community choice aggregation service requests (CCASR), including but not limited to:

a. Enrollment in CleanPowerSF's default and voluntary rate schedule options;

b. Enrollment in Net Energy Metering (NEM), Net Billing Tariff, or other similar billing programs; and

c. Customer initiated returns to bundled utility service or customer initiated returns to direct access service.

d. To the extent there is failure to perform the Services outlined in this Task 2, Section 2, such failure to perform will not be an Event of Default, if Contractor uses commercially reasonable efforts to correct such failure in a timely manner once the failure to perform is known to the Contractor.

3. Maintaining an accessible archive, during the term of the Agreement, of billing and usage records of invoice details and invoiced usage volumes only for CleanPowerSF customers for no less than five (5) years and providing that archive to CleanPowerSF or its designee at the end of the term, in an industry standard output.

4. Maintaining and communicating as needed records of net-energy metering credits, as well as usage and generation on a monthly, annual and lifetime basis, during the term of the Agreement, for no less than five years, for CleanPowerSF customers participating in Net Energy Metering or similar programs, and providing these records to CleanPowerSF or its designee at the end of the term, in an industry standard output. As requested by CleanPowerSF staff, support data analysis and processing for NEM related processes or for similar programs.

5. Storing and maintaining all customer data in compliance with California Public Utilities Commission regulations (as outlined in D. 12-08-045 Attachment B), \ and Contractor's own data privacy policy.

6. Developing and deploying a data back-up system to provide risk management support.

7. Support data management planning, including providing recommendations to optimize the architecture of CleanPowerSF systems and data to support business optimization. Support for this task is subject to mutual agreement between the Parties.

8. Service Levels for Customer Data Management Services:

- a. Contractor will use commercially reasonable efforts to perform such Services in an accurate and timely manner.
- b. To the extent there is failure to perform these Services in

accordance with the above, Contractor will use commercially reasonable efforts to correct such failure to perform in a timely manner once such is known to the Contractor, to the extent such correction is necessary. As long as such failures are remedied as described above, they will not be an Event of Default.

- c. To the extent data is not retained consistent with the above Services, Contractor will contact the applicable utility to attempt to regain the lost data. Both parties acknowledge and agree that it may not be possible to gain or regain the historical billing volume data from the applicable utility.

TASK 3 TECHNICAL CUSTOMER COMMUNICATIONS SERVICES

Contractor will be responsible for providing functionality to support CleanPowerSF customer service and staff interactions with customers. This includes:

1. Providing and resourcing support for a Customer Relationship Management (CRM) system to support CleanPowerSF's in-house call center, key accounts managers, and program staff, with the following minimum characteristics:

- a. The CRM should provide functional access to customer account data in order to enable individual customer support; this includes usage and billing data as well as account details such as rate class and contact information;

- b. The CRM should provide the ability to track customer interactions through notes, call records and mailings;

- c. The CRM should provide the ability for users to easily create exportable reports and customer lists that include daily call stats that can be accessed at any time to maintain service quality;

- d. The CRM should provide the flexibility to support and record customer interaction with a variety of CleanPowerSF programs; and

- e. The CRM should be modifiable in response to enhancements or requests from CleanPowerSF staff.

2. Provide access to a configurable Interactive Voice Response (IVR) self-service system, according to parameters set by CleanPowerSF, and track how many customers start and complete self-service options without live-agent assistance. Update IVR process map and scripts as requested by CleanPowerSF and provide additional system support as needed.

3. Providing customer mailing lists for new move-in customer notices and opt-out confirmation letters as well as other CleanPowerSF mailing needs, within seven days.

4. Providing an email marketing platform that allows for regular and secure email communication with CleanPowerSF customers, and assisting with developing and managing

customer lists within the email marketing platform.

5. Providing an SMS (Text) messaging application that allows for regular and secure SMS messaging with CleanPowerSF customers.

6. Service Levels for Technical Customer Communications Services:

- a. Contractor will use commercially reasonable efforts to perform such Services in an accurate and timely manner and to provide for the system access and mailing lists identified above.
- b. If there is a system outage, then Contractor will use commercially reasonable efforts to make such systems available and responsive as soon as practicable.
- c. To the extent there is failure to perform these Services in accordance with the above, Contractor will use commercially reasonable efforts to correct such failure to perform in a timely manner once such is known to the Contractor. As long as such failures are remedied as described above, they will not be an Event of Default.

TASK 4 ENERGY DATA MANAGEMENT/REPORTING

CleanPowerSF will rely on Contractor to generate regular customer data and billing related reports and to comply with the requirements of the California Independent System Operator (CAISO) in regard to meter data settlements and other needs as dictated by CleanPowerSF's role as a load serving entity. Contractor will be responsible for:

1. Providing CleanPowerSF regular customer data and billing operations reports on a frequency and a delivery method, as agreed upon, including ensuring that weekly and monthly status reports are provided on a timely basis (e.g., monthly reports are provided within the first week of each calendar month).

- a. If Contractor fails to provide a required report, or there is an error in a report, it will not be an Event of Default, if Contractor uses commercially reasonable efforts to promptly provide the report or a corrected report.

2. Providing CleanPowerSF, or CleanPowerSF's Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required by the CAISO. Submit the SQMD directly to the CAISO on behalf of CleanPowerSF or directly to CleanPowerSF's designated SC.

3. Coordinating SQMD submissions with CleanPowerSF and will use commercially reasonable best efforts to submit total hourly data to CleanPowerSF at least three

business days in advance of required submission to CAISO for review and shadow settlement calculations.

4. Preparing the settlement quality meter data (SQMD) in accordance with prudent utility practice, and submitting it in accordance with CleanPowerSF's CAISO-approved SQMD plan to the extent such plan is provided to Contractor with 30 days prior notice.

5. Service Level Agreement for Services 2-4 above.

- a. Contractor will use commercially reasonable efforts to perform Services 2-4 above in an accurate and timely manner.
- b. Contractor will use commercially reasonable efforts to remedy any failure to perform Services 2-4 in an accurate and timely manner.
- c. Contractor will be liable for erroneous data that is submitted, unless the error is caused by the utility's data inaccuracy or incompleteness, but only to the extent the failure to perform is solely due to actions or inactions of the Contractor and such data is less than 95% accurate, as measured between the T52 and T214 settlements.
- d. For purposes of clarification, Contractor will not be liable or responsible for any late meter adjustment sanctions for erroneous data that is submitted to the extent the error was caused by CAISO or the utility's data inaccuracy or incompleteness.
- e. Additionally, Contractor will not be liable for erroneous data that is submitted based on an estimate for Services 2-4 above to the extent the error is attributable to a change in customers' usage due to circumstances that are unforeseen and are material in nature.

6. Serving as a Qualified Reporting Entity (QRE) for (a) certain locally situated, small scale renewable generators supplying electric energy to CleanPowerSF through a feed-in tariff; and/or (b) certain locally situated, small-scale renewable generators that may be owned and/or controlled by the San Francisco Public Utilities Commission (SFPUC) or CleanPowerSF, supplying electric energy to CleanPowerSF through such arrangements, should this service be deemed necessary by CleanPowerSF.

7. Submitting a monthly generation extract file to the Western Renewable Energy Generation Information System (WREGIS) on CleanPowerSF's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS interface control document for QREs.

8. Collecting applicable generation and usage data for CleanPowerSF's renewable energy projects and, consistent with PG&E's applicable meter servicing arrangement, serve as designated "subcontractor" for certain renewable energy projects.

9. Assist CleanPowerSF in completing requisite generation registration materials, as such materials may be required by WREGIS, the California Energy Commission, the California Public Utilities Commission and/or other entities to effect the successful crediting of renewable energy certificates, as appropriate, to CleanPowerSF's WREGIS account.

10. Service Levels for Services 6-9 above:

- a. Contractor shall use commercially reasonable efforts to perform such Services in an accurate and timely manner.
- b. However, Contractor is not responsible or liable for any failure to perform

the Services 6-9 that are due to the actions or inactions of the utility or the entity providing electricity to the CleanPowerSF.

TASK 5 SOCIAL IMPACT PARTNERSHIP

1. Terms and Conditions.

a. Contractor shall provide its Social Impact Partnership (SIP) Commitments (detailed in its SIP Proposal) during the term of the Agreement. The representations, warranties, and other terms contained in Contractor's SIP Proposal will be the basis for a SIP Plan, but are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other persons or entities.

b. Providing SIP Commitments is a deliverable, zero-dollar task. Contractor may not allocate or include any hours or dollars in Contractor's costs for the services under the Agreement in order to perform or deliver the voluntarily proposed SIP Commitments. Contractor shall fund the SIP Commitments independently and such funding shall neither be tied to, nor dependent upon, SFPUC funds or sources of funding, receivable from SFPUC, including retention associated with the Agreement. This requirement of independent funding includes direct financial contributions and any funding related to the performance or delivery of the SIP Commitments. The provision of SIP Commitments does not entitle Contractor to additional work beyond the services specified within the Agreement.

c. Contractor shall commence performance of the SIP Commitments promptly after issuance of the first Notice to Proceed (NTP) for the Agreement. SIP Commitments performed as part of previous contracts or prior to Contractor being awarded the Agreement cannot count towards Contractor's SIP Commitments for the Agreement. If Contractor has established programs or plans that are consistent with the SIP program areas described in the Request for Proposals (RFP), Contractor may continue those programs as part of its SIP Commitments and will be given credit for activities that are performed following the issuance of the first NTP by the SFPUC.

d. Contractor's progress on delivering SIP Commitments must keep pace with Contractor's progress of work on the project. If the SFPUC's SIP Program team determines that Contractor's delivery of SIP Commitments is 10% or more behind its percentage of completion of project work, the SFPUC may withhold from subsequent payments owed to Contractor for its work on the project an amount equal to the value of the portion of SIP Commitments that Contractor should have delivered in order for its delivery of SIP Commitments to keep pace with Contractor's project work.

e. During the term of the Agreement, if Contractor's delivery of SIP Commitments is 10% or more behind its percentage of completion of project work, the City, in its sole discretion, may deem Contractor in material breach of contract. The City's remedies for Contractor's breach may include, at City's sole discretion, but need not be limited to (1) revoke non-compliant Contractor's eligibility for SIP Commitment bonus points on future Covered Contracts; (2) assess liquidated damages; (3) withhold progress payments; (4) withhold release of retention; and/or (5) suspend or terminate the Covered Contract.

f. If Contractor fails to complete its SIP Commitments, the SFPUC may

withhold the value of the uncompleted SIP Commitments and deduct said amount from the sum the SFPUC owes to Contractor for performance of its work, which amount the SFPUC may reasonably determine in its sole discretion. If the SFPUC imposes actual or liquidated damages as a remedy against Contractor for non-compliance, the Controller shall withhold the damages assessed until such time as either Contractor has conceded to or acquiesced in the assessment or, in the event of an appeal, there is a determination no longer subject to judicial review. The Controller shall then deposit the amount withheld into a special account which shall be created for the sole purpose of receiving such funds. The funds deposited into this account shall be distributed by the Controller in accordance with the original SIP Commitments and by the process set forth in the SFPUC Social Impact Partnership Rules and Regulations.

g. If Contractor fails to perform any of its SIP Commitments, Contractor shall be liable for liquidated damages on the Agreement in an amount equal to 110% of the total value of unmet SIP Commitments as determined by the SFPUC in its sole discretion.

h. In the event that fulfillment of SIP Commitments becomes impossible or impracticable, Contractor may request a modification to its SIP Commitments by documenting the impossibility or impracticability of proceeding with its existing SIP Commitments and proposing one or more alternatives subject to review and approval by the SFPUC as provided in the Covered Contract.

i. If the SFPUC modifies or amends the Agreement with a resulting cumulative increase of the total value of the Agreement being 10% or more than its original value, Contractor shall propose an increase to its SIP Commitment. Such increase shall be (1) proportional to the increase in contract value under the amendment(s) or modification(s) and (2) consistent with San Francisco Administrative Code Section 21F.4, and not increase the costs for delivery of the SIP Commitments to the SFPUC.

j. Contractor shall save, keep, hold harmless, and fully indemnify the City and any of its officers or employees from all damages, costs, or expenses in law or equity, or claims for same, that may at any time arise from performance of SIP Commitments. Contractor shall bear sole responsibility and liability, if any, for any breach of the SIP Program provisions of its Covered Contract or San Francisco Administrative Code Chapter 21F.

2. Project Team.

Manager of CCA Account Sales shall serve as the Executive in Charge to manage Contractor's SIP Commitments and provide fiduciary oversight. The Executive in Charge shall ensure that the SIP Commitments listed in the Social Impact Partnership Commitments Table below are delivered to the communities that they are intended to benefit in a transparent and accountable manner. The Executive in Charge shall work with the SIP Coordinator, [Insert name], to organize, plan, track, measure, and report on Contractor's SIP Commitments.

3. SIP Commitments.

Contractor shall provide \$200,000 in direct financial contributions and \$0.00 in volunteer hours. Contractor commits to a minimum total contribution of \$200,000.00 over the term of the Agreement as stated in Contractor's SIP Proposal and the Social Impact Partnership Commitments Table below.

Social Impact Partnership Commitments Table

			(A)	(B)	(C)	(D)	(F)
Social Impact Partnership Program Area	Strategies and Expected Outcomes	Timetable & Duration	Direct Financial Contribution	Volunteer Hours	Volunteer Hourly Rate (rate is standardized and cannot be changed)	Total Value of Volunteer Hours (B x C)	Total Contributions (A + D)
					\$150/hr		
TOTAL			\$200,000.00				

4. Accountability and Deliverables.

Contractor shall provide a description of the accountability methods to ensure that the proposed SIP activities will be delivered in a transparent and accountable manner. Contractor shall provide reports and supporting documentation consistent with the reporting requirements detailed below to establish fulfillment of the SIP Commitments.

Contractor must provide the following deliverables during performance of the Agreement:

a. SIP Plan and Timeline.

Contractor must develop and submit to the SFPUC a SIP Plan and

Timeline within three months of issuance of the Notice of Contract Award. The SIP Plan and Timeline must provide details regarding expenditures, a schedule, and timelines for executing Contractor's SIP Commitments.

b. SIP Commitments and Reporting.

i. Contractor shall deliver the proposed SIP Commitments specified in the SIP Proposal and the SIP Plan. Any proposed changes to the SIP Commitments as set forth herein shall be submitted in writing for review by the SFPUC SIP Program team.

ii. Contractor must submit SIP Commitment progress reports at least quarterly during the term of the Agreement (including any revisions to the work plan and associated timelines as necessary to ensure Contractor completes the measurable commitments during the term of the Agreement) to the SFPUC SIP Program team. The progress reports must identify activities and detail the quantifiable outcomes, key metrics, and the total number of volunteer hours and/or financial commitments performed during that period. As part of the quarterly progress reports, Contractor must also submit documentation to substantiate that the SIP Commitments and any funds or volunteer hours associated therewith were delivered (a non-exhaustive, illustrative list of examples of substantiating documentation includes: timesheets, receipts, cancelled checks, sign-in sheets from events and trainings, formal agreement documents, agendas and presentations from meetings, and statements of activities). Contractor must submit progress reports by the last business day of the month following the close of the previous three-month period.

iii. Contractor shall submit the reports noted above and any other documentation requested by the SIP Program team so the SIP Program team can report on Contractor's progress to the SFPUC Commission, the public and all potentially interested stakeholders in a transparent, accessible and accountable manner. These reports and documentation shall be adequate to enable the SIP Program team, the SFPUC Commission, and all interested stakeholders to evaluate and measure the efficacy of Contractor's SIP Commitments. Contractor shall upon request publicly report all of the requested information to the SFPUC Commission, the public and any interested stakeholders or decision-makers regarding the results of Contractor's SIP Commitments.

iv. Contractor shall also submit a stand-alone annual newsletter to the SFPUC SIP Program team documenting the highlights of the SIP Commitments and outcomes for the year.

5. Statements of Understanding.

Contractor acknowledges that they agree with the following statements:

- a. Contractor is bound by all instructions in the RFP for the SIP Proposal.
- b. Contractor's SIP Commitments must directly benefit the communities, neighborhoods, and/or residents served by or impacted by the SFPUC.
- c. SIP Commitments must provide support by monetary donations or services to or through Beneficiaries (as that term is defined in Administrative Code Section 21F.2 as

follows: “Beneficiary” means an organization that is eligible to receive a Social Impact Commitment. A Beneficiary may be: (1) a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code Section 501(c)(3), as amended, and all rules and regulations promulgated under that section; (2) an organization that has a fiscal agent that is a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code section 501(c)(3), as amended, and all rules and regulations promulgated under said section and which provides that organization with fiduciary oversight, financial management, and administrative services related to its operation; or (3) a public school, which may include a public school district, County Office of Education, and/or a public college or university. The following are not eligible Beneficiaries: any (1) City department, office, board, commission, or other entity, or (2) City official or employee or Relative of a City official or employee, unless the resulting benefit is incidental to and not unique to the City official or employee or Relative, but rather benefits the general public or a particular community that is the focus or target of the Social Impact Commitment.

d. SIP Commitments shall not go to, nor benefit, any City department or employee.

e. SIP Commitments are separate from and in addition to any regulatory or legal requirements related to the Agreement.

f. Contractor must deliver its SIP Commitments at no cost to the SFPUC.

g. Contractor is contractually obligated to deliver the total commitment amount listed in the Social Impact Partnership Commitments Table in the Agreement.

h. Only activities commenced after the first NTP for the Agreement is issued will count towards the fulfillment of Contractor’s SIP Commitments.

i. Contractor is obligated to comply with SFPUC’s SIP Commitments reporting requirements.

j. Contractor is obligated to comply with the terms and conditions set forth in this section and in the Agreement.

Contractor shall provide all of the SIP Commitments, consistent with all of the terms of Contractor’s SIP Proposal dated August 15, 2024, which is incorporated herein by this reference. Should there be any conflicts or discrepancies between the language in this section and Contractor’s SIP Proposal, the terms of the language of this section shall prevail as

Contractor and SFPUC's final mutual understanding and agreement.

Contractor must submit all written Deliverables, including any copies, on recycled paper and printed on double-sided pages to the maximum extent possible.

6. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

7. Department Liaison. In performing the Services provided for in the Agreement, Contractor's liaison with the SFPUC will be CCA Client Services Manager.

8. Task Orders. Performance of the service under the Agreement will be executed according to a task order process, and Contractor is required to provide adequate quality control processes and deliverables in conformance with the technical requirements of the task order. The SFPUC Contract Manager will initially identify tasks and request Contractor to propose a project scope, sub tasks, staffing plan, Local Business Enterprise (LBE) utilization, schedule, deliverables, budget and costs to complete the task in accordance with Appendix B, Calculation of Charges. All costs associated with the development of the scope of work for each task order shall be borne by Contractor. A final task order will be negotiated between the SFPUC Contract Manager and Contractor and then submitted to the SFPUC Bureau Manager for approval. However, as provided in the Request for Proposals, the budget, if applicable, identified for tasks is an estimate, and the City reserves the right to modify the applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

The task order request will be processed for Controller certification of funding, after which a Notice to Proceed (NTP) will be issued. Contractor is hereby notified that work cannot commence until Contractor receives a written NTP in accordance with the San Francisco Administrative Code. ***Any work performed without an NTP will be at Contractor's own commercial risk.*** The calculations of costs and methods of compensation for all task orders under the Agreement shall be in accordance with Appendix B, Calculation of Charges, and Appendix B-1, Fee Schedule.

9. Reports. Contractor shall submit reports as specified in the Scope of Work, and as further requested by the SFPUC. Format for the content of such reports shall be determined by the SFPUC. The timely submission of all reports is a necessary and material term and condition of the Agreement. Written reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

10. Performance Evaluation. Performance evaluations support the SFPUC's objective of continuously improving the quality of Contractor services. The SFPUC may or may not, at its sole discretion, conduct evaluation(s) of Contractor's performance. Ratings are ultimately the decision of the SFPUC and are not subject to negotiation with Contractor. However, Contractor may provide comments on a performance evaluation form if an evaluation is performed. In the event that the SFPUC conducts performance evaluation(s) of Contractor, such performance evaluation(s) shall not confer any express or implied rights upon Contractor, nor shall they shift any liability to the SFPUC for Contractor's performance of the contract.

Appendix B

Calculation of Charges

As part of Contractor's proposal dated August 15, 2024, Contractor submitted proposed billing rates, attached hereto as Appendix B-1, Fee Schedule, for the requested tasks identified in Appendix A, Scope of Services, which are incorporated herein by this reference.

As provided in Appendix B-1, Fee Schedule, the budget identified for tasks is an estimate, and the City reserves the right to modify the budget allocated, if applicable, to any task as more specific information concerning the task order scope becomes available.

No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

1. Billing Rates. [Reserved]

2. Personnel Changes. [Reserved]

3. Effective Overhead and Profit Rate. [Reserved]

4. Other Direct Costs. Direct reimbursable expenses (or "other direct costs" (ODCs)) shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs must receive written pre-approval from the SFPUC Contract Manager.

a. The following items will be eligible for reimbursement as ODCs:

i. Task-specific out-of-town travel as requested by the SFPUC ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano). Out-of-town travel must be non-routine.

a) Rental vehicle or car share: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.

b) Personal vehicle use: The SFPUC will pay Contractor on a per mile basis as established by the United States Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties and non-routine. Should the travel begin or end on a normal workday, Contractor must subtract commuting mileage from total mileage to calculate reimbursable mileage. Contractor must submit to the SFPUC an approved mileage log and expense report with its monthly invoices.

c) Project vehicle rental/lease cost, gasoline, tolls and parking. Contractor must request the project vehicle and receive pre-authorization by SFPUC staff. The SFPUC will only reimburse the business portion of the vehicle use. Vehicle mileage log and an expense report are required for consideration of reimbursement. Since auto insurance is already part of the Agreement, the SFPUC will not reimburse any additional insurance costs. Commuting to Moccasin from Contractor's temporary home is not eligible for reimbursement.

ii. ~~Specialty printing ("specialty," as used herein, shall mean large volume~~
[Insert name of Contractor] 1 of _ [Insert date]
P-600 (1-22); Appendix B [Insert PeopleSoft ID]; PRO.0297

printing and color printing and requires prior written approval from SFPUC project staff and documentation of the written approval from the SFPUC must be included with the invoice);

- iii. Task-related permit fees;
- iv. Expedited courier services when requested by SFPUC staff; and
- v. Task-specific safety equipment.

b. Anything not listed above is not eligible for reimbursement. They include, but are not limited to:

i. All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area counties, and travel from Contractor's home office to SFPUC facilities not requested by the SFPUC;

ii. Routine travel from Contractor's home office to SFPUC facilities or to Moccasin;

iii. Contractor staff relocation costs;

iv. Any labor charges or pass-throughs including, but not limited to, administrative and clerical staff time;

v. Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment;

vi. All meals, including refreshments and working lunches with SFPUC staff;

vii. Equipment to be used by SFPUC staff;

viii. Ergonomic office equipment; and

ix. Postage and courier services that are not requested by SFPUC staff.

5. Subcontractor Make-up and Documentation. Second-tier and pass-through subcontracting is prohibited. Additional subcontractors may be added to Contractor's team after obtaining pre-authorization by the SFPUC Contract Manager, Bureau/Division Manager and the Contract Monitoring Division (CMD), as needed.

6. Subcontractor Fees.

a. Subject to the restrictions in this Section 6;

b. Shall be subject to written pre-approval by Contractor's liaison with the SFPUC;

c. Subcontractor administration markup is limited to five percent (5%) of subcontractors' actual labor costs.

7. Retention. [Reserved]

8. Invoice Requirements. As part of its contracting obligations, Contractor is required to utilize the City’s approved invoicing and time-keeping systems, as specified by the SFPUC project team, for the purposes for which they are intended. Contractor shall not bill the SFPUC to use these systems. Contractor shall not charge SFPUC to send appropriate personnel to user training.

Contractor shall follow the invoicing and supporting documentation instructions as prescribed by the SFPUC.

Invoice Supporting Documentation:

All labor hours must be substantiated by timesheet summaries extracted from Contractor’s accounting system. Each timesheet summary shall include the staff person’s name, company, dates of the days worked, and the number of hours worked each day.

Mileage ODCs must be accompanied by mileage logs providing the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. All other ODCs must be substantiated with copies of original receipts including a brief description for each receipt memorializing the purpose.

CMD Form 7 “Progress Payment Form” must be included with each invoice to identify the participation and amount payable to the subcontractors.

CMD Form 9 “Payment Affidavit” must be submitted within 10 days of receiving payment for each invoice to document the subcontractor's payment by the prime contractor.

No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Appendix B-1 Fee Schedule

In consideration of the services provided by Contractor described in Appendix A and subject to the terms of the Agreement, CleanPowerSF shall pay Contractor the following fees (“Fees”):

1. Service Fees

a. Data Management Service Fees

- i. CleanPowerSF shall pay Contractor \$0.8433 per month for each active customer meter that is enrolled and served by CleanPowerSF each month. For purposes of clarification, each customer account may have multiple customer meter(s).

b. Customer Communications System Fee

- i. CleanPowerSF shall pay Contractor \$0.0400 per month for each active customer meter that is enrolled and served by CleanPowerSF each month for use of Contractor’s customer communications technology platform.

- c. Beginning in [Effective Month] 2026, Contractor’s payment in effect for Services listed in this Agreement will escalate annually beginning [Effective Month] 1, 2026 by the Consumer Price Index West Region using [Effective Month] 2025 as the baseline.

2. Additional Services

a. Email Marketing

- i. Contractor may provide or may cause to be provided certain email marketing services to CleanPowerSF for mass-marketing and communications to customers. Services are subject to further written agreement.

b. Consumer Behavior Science Consulting Services

- i. Contractor may provide or may cause to be provided certain consumer behavior research and consulting services to CleanPowerSF. Services are subject to further written agreement.
- ii. Contractor will provide up to 50 hours of the service described above per year to CleanPowerSF at no cost. CleanPowerSF may request additional hours, and the cost of additional hours will be passed through to CleanPowerSF at cost.

c. Forecasting Services

- i. Contractor may provide or may cause to be provided certain forecasting services for short-term, long-term, and/or renewable generation. Services are

subject to further written agreement.

d. Customer Analytics and Program Management Services

1. Contractor may provide or may cause to be provided certain demand flexibility, customer targeting and/or, measurement and verification tools and services in support of CleanPowerSF's program and policy objectives. Services are subject to further written agreement.

3. Script Translation Services Fees

- a. Charges incurred by Contractor from engaging with vendors to translate scripts or other documents from English into other language(s) will be passed by Contractor to CleanPowerSF at cost.

4. Additional Data Storage Fee

- a. CleanPowerSF may elect to expand the included active data retention term of twenty-four months for customer data contained in the data warehouse to 60 months at a cost of \$0.015 per meter increase to the per meter per month service fee listed above.

5. Additional Deliverable Pricing Fees

- a. The Fees defined in Section 1 include only the services and items expressly set forth in this Agreement. Unless otherwise agreed to by the Parties in an amendment to the Agreement, the cost of any additional deliverables provided by Contractor to CleanPowerSF shall be passed through directly to CleanPowerSF without mark-up. A labor rate of \$200.00 per hour will be utilized for labor costs unless otherwise agreed upon in writing by both parties prior to the commencement of additional work.
 - i. Beginning in [Effective Month] 2026, Contractor's labor rate above will escalate annually by the Consumer Price Index West Region, using January 2025 as the baseline. However, the maximum labor rate is capped at \$220 per hour, unless the SFPUC Contract Manager and Contract Administration Bureau Manager authorizes an increase to the rate in writing.

6. List of Subcontractors

- a. See Change Institute
- b. LanguageLine Solutions, LLC.