



SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

SOLICITATION FOR

EXECUTIVE SEARCH FIRM SERVICES

ISSUANCE
DATE:

September 22, 2023

PROPOSAL
DEADLINE:

October 6, 2023

I. Introduction

The Southern California Public Power Authority (“SCPPA”) seeks proposals from qualified executive search firms (“Respondents”) to conduct a recruitment for an Executive Director.

This vacancy is due to the planned retirement of the existing Executive Director who has been in the position for 7 years. **The SCPPA Executive Director Job Description is attached as Exhibit A.**

SCPPA is interested in learning as much as possible about each Respondent’s experience and capabilities in executive-level recruitment in the utility industry and the public sector, including recruitment for positions comparable to this one.

Proposals are due no later than 4:00 PM Pacific Time on October 6, 2023.

II. About SCPPA

SCPPA is a joint powers authority and public entity created in 1980 by agreement of its member agencies (“Members”) pursuant to the Joint Exercise of Powers Act found in section 6500 *et seq.* of the California Government Code. The Members of SCPPA consist of eleven cities and one irrigation district, each having its own publicly-owned electric utility. Members are the cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside, and Vernon, and the Imperial Irrigation District.

SCPPA was formed for the purposes of planning, financing, developing, acquiring, constructing, operating, and maintaining projects for the generation or transmission of electric energy. SCPPA currently owns or manages 49 projects for its Members, ranging from conventional natural gas-fired generation to utility-scale wind, solar, storage, and geothermal projects. SCPPA also facilitates joint service contracts, at the request of its Members, to aggregate like project efforts among its Members for the purposes of developing energy efficiency, demand response and resource procurement programs or projects to improve operating efficiencies and reduce costs. SCPPA Members collaborate on matters of common interest through various

working groups such as Finance, Risk Management, Resource Planning, Transmission and Distribution, Engineering and Operations, Legislative, Regulatory, Natural Gas, and Renewable Energy Resources.

SCPPA is governed by a Board of Directors which consists of a representative from each Member. The management of SCPPA is under the direction of the Executive Director, who is appointed by the Board.

SCPPA currently has 16 employees, not including the position that is the subject of this recruitment. SCPPA's main offices are located in Glendora, California, and it also maintains an office in Sacramento. Additional information about SCPPA can be found at www.scppa.org.

III. Areas of Interest

SCPPA intends to engage the services of an executive search firm with proven expertise in electric utility industry and public sector recruitment (or equivalent), a demonstrated comprehensive national reach, and a demonstrated ability to conduct a successful recruitment for the position of SCPPA Executive Director. The selected firm will recruit candidates, screen and evaluate applicants, and present its recommendations for candidates to be interviewed by SCPPA's Board of Directors. The selected firm will support the Board of Directors in interviewing and evaluating the top candidates and perform other evaluative functions as required in the course of the search process.

IV. Proposal Content Requirements

Proposals should be simple and economical, without unnecessary promotional materials. Please include the following in your proposal:

1. Transmittal Letter Content:

- a. A brief statement of the Respondent's understanding of the objectives of this Solicitation, the scope of work to be performed and a commitment to perform the work in a timely manner.
- b. An officer authorized to bind must sign the proposal on behalf of the Respondent and must include the following declarations on the transmittal letter:

"This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the Respondent has not directly or indirectly induced or solicited any other Respondent to put in a sham bid, or any other person, firm or corporation to refrain from submitting a proposal; and the Respondent has not in any manner sought by collusion to secure for themselves an advantage over any other Respondent."

2. Respondent Information: Provide the legal name of the Respondent, physical street address, state of incorporation or organization (if any), the name(s) and title(s) of the individual(s) authorized to represent your firm, including telephone number(s) and email address(es).

3. Experience:

- a. Describe Respondent's history, including number of years it has been in business, and its experience and track record in recruiting executive-level electric utility industry and public sector personnel as

may be applicable to this Solicitation, including recruitments for positions comparable to the Executive Director position SCPPA is seeking to fill.

- b. Give an overview of Respondent's organizational structure and other services it provides to its clients.
- c. Specify key employees whom Respondent would use and describe their qualifications, experience, and duties related to this Solicitation, including the office location(s) where work will be performed.
- d. State whether Respondent will use subcontractors or other third parties to perform services.
- e. Indicate any and all pending litigation or investigations that could affect the viability of Respondent's proposal, continuance of existing contracts, operations, or financial stability.

4. Description of Proposed Services (no more than 1 page):

- a. Include a description of the means and methods the Respondent intends to employ to conduct the recruitment and how such means and methods will best generate interest from qualified candidates. The proposed timeline for the Executive Director recruitment is specified in Section V of this Solicitation. Please discuss any concerns or issues with the proposed timeline.
- b. Respondents may propose additional services or tasks that may not be part of or included in this Solicitation but are considered by the Respondent to be pertinent and potentially valuable to SCPPA or its Members. SCPPA shall have no obligation to consider or include such additional services in any contract awarded pursuant to this Solicitation.
- c. Include a description of Respondent's policies and practices for maintaining confidentiality of information about prospective candidates for employment.

5. Fees:

- a. Specify the fee that will be charged for Respondent's recruitment services. SCPPA seeks a flat rate fee for the services.
- b. Reimbursable expenses should be limited to reimbursements to be made for Executive Director candidates that will be paid through the executive recruitment firm. All other reimbursable expenses should be included in the flat rate for the services.

6. References:

- a. Indicate whether you have, within the last five (5) years, rendered any service to SCPPA or to any SCPPA Member, either as a contractor or subcontractor, either under your current name or any other name or organization. If so, please provide details (brief description of the contract, contract start and end dates, the contract administrator's name, and total actual contract expenditures).
- b. If you have not rendered any service within the last five (5) years to SCPPA or to any SCPPA Member, then please provide references over that period with the details described above including the party for which services were provided.

7. **Professional Services Agreement:** Indicate whether your firm is prepared to enter into a Professional Services Agreement with SCPPA substantially in the form attached as Attachment B. State any exceptions you have to the terms and conditions thereof or any additional terms and conditions you would request.

8. **Conflicts of Interest and Collusion:**

- a. Respondent must address in its Proposal possible conflicts of interest with SCPPA and SCPPA Members or which may limit or affect the executive recruitment services Respondent proposes to provide to SCPPA. Although the Respondent will not be automatically disqualified by every circumstance that may raise a conflict of interest, SCPPA reserves the right to consider the nature and extent of such work in evaluating the proposal.
- b. Respondent must not offer nor provide SCPPA's or its Members' respective elected or appointed officials, officers, employees, or representatives with gifts or promises of remuneration, no matter how small, while Respondent's proposal is under consideration.
- c. Respondent must not collude, directly or indirectly, with or among other respondents in regard to the amount, terms, or conditions of its proposals. Respondent must not share its proposal with any other entity other than SCPPA.

V. **Timeline / Schedule***

Timeline for SCPPA SOLICITATION for Executive Recruitment for Executive Director	
Schedule of Requirements/Milestones	Target Date(s)
Issue Solicitation	September 22, 2023
Proposals Due	October 6, 2023
Review and Ranking of Proposals	Week of October 9, 2023
Short-listing of Proposals	October 19, 2023
Interview Short-Listed Executive Recruiter Candidates	October 26, 2023
SCPPA Board Approval and Authorization to Proceed	October 26, 2023
Candidate Interviews by SCPPA Board	January 18, 2024
Desired Completion of Recruitment	January 25, 2024

* (subject to change at SCPPA's discretion)

VI. Delivery Requirements and Deadline

One (1) electronic copy of your proposal and any supporting documentation must be received by **ExecutiveRecruitmentSolicitation@scppa.org** by no later than **4:00PM (PDT) on Friday, October 6, 2023.**

Additionally, one (1) hard copy of your proposal, including a transmittal letter of authentic offer, and any supporting documentation may be, but is not required to be, submitted with the electronic copy of your submittal, by no later than the time and date referenced above, to:

Southern California Public Power Authority
Executive Recruitment Solicitation
1160 Nicole Court
Glendora, California 91740

VII. Communications Regarding the Solicitation

Any questions regarding this Solicitation must be directed to: ExecutiveRecruitmentSolicitation@scppa.org. **SCPPA's policy is to provide fair and open competition and to ensure that accurate and complete information is communicated to all interested parties. From the time the Solicitation is issued until award of contract, communications with SCPPA or its Members pertaining to this Solicitation, other than in the manner specified in this Solicitation, are prohibited. No contact shall be made with the SCPPA Board of Directors, SCPPA staff, committees, or working group representatives, or SCPPA Members concerning this Solicitation. Failure to abide by this requirement may result in disqualification of the Proposal.**

VIII. Additional Terms and Conditions

1. SCPPA reserves all rights in connection with this Solicitation, including its right to cancel this Solicitation, to waive irregularities in any proposal, to accept or reject any or all proposals for any reason without explanation to the Respondent, and to make an award to that Respondent who, in the opinion of SCPPA, will provide the best value to SCPPA and its Members. SCPPA may decline to enter into an agreement or contract with any Respondent, terminate negotiations with any Respondent, or to abandon the solicitation process in its entirety.
2. SCPPA shall determine at its sole discretion the value of any and/or all proposals including price and non-price attributes.
3. SCPPA may submit follow up questions or inquiries to request clarification of information submitted and to request additional information from any one or more of the Respondents.
4. Those Respondents who submit proposals agree to do so without legal recourse against SCPPA, its Members, their directors, officers, employees and agents for rejection of their proposal(s) or for failure

to execute or act on their proposal for any reason SCPPA shall not be liable for any costs incurred by any Respondents in preparing any information for submission in connection with this Solicitation process or any and all costs resulting from responding to this Solicitation. Any and all such costs whatsoever shall remain the sole responsibility of the Respondent.

5. Submission of a Proposal constitutes acknowledgement that the Respondent has read and agrees to be bound by the terms and specifications of this Solicitation and any addenda subsequently issued by SCPPA.
6. Information in this Solicitation is accurate to the best of SCPPA's knowledge but is not guaranteed to be correct. Respondents are expected to complete all of their due diligence activities prior to entering into any final contract negotiations with SCPPA.
7. All information received by SCPPA in response to this Solicitation is subject to the California Public Records Act and may be subject to the Ralph M. Brown Act and all submissions may be subject to review in the event of an audit. Respondent must identify all copyrighted material, trade secrets, or other proprietary information ("protectable documents") that the Respondent included in its Proposal which Respondent believes should be exempt from disclosure under the California Public Records Act. By listing the documents, Proposer agrees to indemnify, defend, and hold harmless SCPPA, its Members, and their respective officers, agents, and employees from and against any action, claim, lawsuit, or proceeding, including costs and expenses, arising out of or connected with SCPPA's refusal to disclose the protectable documents to any party making a request for those items. SCPPA will treat any Respondent who fails to identify documents that the Respondent believes should be exempt from disclosure as having waived its right to an exemption from disclosure, as the Public Records Act provides.

ATTACHMENT A:

Job Description SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY Executive Director

Job Title: Executive Director

Effective Date: September 2023

JOB SUMMARY:

The Executive Director sets the professional “tone” for the entire enterprise. This position must consistently elevate performance metrics, financial results, and service delivery for the benefit of Member/Owners in each of the affiliated energy entities that make up Southern California Public Power Authority (SCPPA). The Executive Director is responsible for attracting and hiring competent staff, developing “best in class” business practices, working effectively with multiple Members and external stakeholders, and fostering a stimulating, creative work experience for all employees. The Executive Director is the public face of SCPPA.

ESSENTIAL FUNCTIONS AND DUTIES:

1. Ensure the continuing development of SCPPA as a Member-driven joint action agency providing for cost-effective conventional and renewable power supplies and transmission service, fuel supplies, and other energy resources and services
2. Procure advantageous financing for SCPPA projects by maintaining high credit ratings, developing financial options, including, as may be directed by SCPPA’s Members, Environmental, Social, and Governance (ESG)-focused options, and providing timely issuance on behalf of its Members
3. Lead legislative and regulatory initiatives at state and national levels to protect and promote the interests of Member utility systems. Effectively advocate as the SCPPA representative for Member positions by developing strategic relationships with key decision makers and stakeholders in the legislative and regulatory arena
4. Comply with all contractual and legal requirements necessary to execute business activities. Proactively act to ensure SCPPA is ethical and consistently pursuing the goal of local control and public benefit
5. Develop the short- and long-term business plans for all functional areas in SCPPA including operating plans, budgets, rates, and expense control mechanisms

6. Determine optimization of the organization's personnel resources to cost effectively deliver the energy products and services required by member communities. Maximize opportunities to share resources across SCPPA and the membership to reduce costs and create a highly functioning teamwork environment
7. Plan, organize, staff, direct, and coordinate SCPPA's operations to ensure accomplishment of goals and objectives approved by the Board of Directors in SCPPA's strategic plan
8. Actively monitor energy industry trends and best practices of other electric utilities and identify innovative options for Members
9. Develop and maintain excellent relations and communications with Board Members and other utilities and industry stakeholders
10. Administer the annual operating budget, annual capital budget, and the expenditure of all funds as approved by the President and Vice President of the Board of Directors and the Board of Directors
11. Ensure that SCPPA financial procedures and financial books and records meet all standards of Generally Accepted Accounting and Auditing Practices as well as conform to California statutes
12. Manage SCPPA personnel in the execution of their duties and evaluate the performance of those staff no less than annually, in accordance with SCPPA policies
13. Implement operating policies and procedures incidental to conducting SCPPA's business and recommend new or amendments to existing policies and procedures to the Board of Directors as necessary
14. Perform other duties as may be assigned by the Board of Directors to ensure the effective and efficient operation of SCPPA

EDUCATION, TRAINING AND EXPERIENCE:

A Bachelor of Science in an applicable field, such as accounting, business, economics, engineering, public administration, or other related disciplines is required. An advanced degree in similarly related fields is desired.

KNOWLEDGE, SKILLS, AND ABILITIES:

1. Progressively senior executive level leadership experience preferably with a public power utility providing comparable power supply, rates, and financing services in an organization of similar size, scope, and complexity

2. Proven experience as a collaborative consensus builder, mentor, and team player. Proven successes in building credibility with board members, diverse employees at all levels of the organization, legislators, regulators, local elected officials, customers, and the public is essential
3. Experience working with, and preferably reporting to, a similar governing body, presenting findings and reporting conclusions
4. Demonstrated and respected success in long-term strategic business planning that integrates competitive cost control development, power resources, renewable energy alternatives, and multi-year fiscal planning and management. The next Executive Director must envision, investigate, and develop joint ventures, strategic alliances, public/private partnerships, and other undefined opportunities.
5. Exemplary interpersonal skills that include professional and executive level listening and oral and written communication talents. The Executive Director must be able to strategize and work with Board members, employees, legislators, administrators, local elected officials, and the media to convey complex technical and industry issues to lay people
6. Proven team building and organizational development skills are vital.

COMPETENCIES:

1. Problem Solving - Identifies and resolves problems in a timely manner; Gathers and analyzes information skillfully; Develops alternative solutions; Works well in group problem solving situations; Uses reason even when dealing with emotional topics
2. Oral Communication - Speaks clearly and persuasively in positive or negative situations; Listens and gets clarification; Responds well to questions; Demonstrates group presentation skills; Participates in meetings
3. Written Communication - Writes clearly and informatively; Able to read and interpret written information
4. Teamwork - Balances team and individual responsibilities; Exhibits objectivity and openness to others' views; Gives and welcomes feedback; Contributes to building a positive team spirit; Puts success of team above own interests; Able to build morale and group commitments to goals and objectives; Supports everyone's efforts to succeed
5. Visionary Leadership - Displays passion and optimism; Inspires respect and trust; Mobilizes others to fulfill the vision; Provides vision and inspiration to peers and subordinates

6. Delegation - Delegates work assignments; Matches the responsibility to the person; Gives authority to work independently; Sets expectations and monitors delegated activities; Provides recognition for results
7. Managing People - Includes staff in planning, decision-making, facilitating and process improvement; Takes responsibility for subordinates' activities; Makes self available to staff; Provides regular performance feedback; Develops subordinates' skills and encourages growth; Solicits and applies customer feedback (internal and external); Fosters quality focus in others; Improves processes, products, and services.; Continually works to improve supervisory skills
8. Strategic Planning – Demonstrated ability to develop and implement a strategic plan; Understands business implications of decisions; Displays orientation to profitability; Demonstrates knowledge of market and competition; Aligns work with strategic goals
9. Ethics - Treats people with respect; Keeps commitments; Inspires the trust of others; Works with integrity and ethically; Upholds organizational values
10. Judgement - Displays willingness to make decisions; Exhibits sound and accurate judgment; Supports and explains reasoning for decisions; Includes appropriate people in decision-making process; Makes timely decisions
11. Motivation - Sets and achieves challenging goals; Demonstrates persistence and overcomes obstacles; Measures self against standard of excellence; Takes calculated risks to accomplish goals

PHYSICAL, MENTAL AND VISUAL REQUIREMENTS:

1. Be capable of working long hours in both professional administrative offices and in other areas of the state and country
2. Be capable of travel by air, automobile, or other necessary means of transportation
3. Exercise a high degree of discretion and emotional control during periods of extreme stress in working with Member cities, Board members, Executive Working Group¹ members, and other individuals, as well as working with professional staff, regulatory staff, political agencies, legislators, and oversight agencies
4. Exhibit consistently balanced and fair judgment, leadership skills, and steady emotional temperament under periods of great stress and possible confrontation in dealing with and meeting with any of the groups listed above

¹ The Executive Working Group is a group formed by the Executive Director and comprised of the leadership of the SCPPA Board of Directors.

5. Be able to speak publicly at a wide variety of official functions as the chief spokesman for the Agency, including annual meeting, meetings of the Board of Directors, and numerous other trade and professional association groups
6. Must be able to project and present a professional image as the Executive Director and leader of the Agency

SUPERVISION RECEIVED AND EXERCISED:

The SCPPA Executive Director receives general guidance and direction from the President of the Board of Directors, the Executive Working Group, and the SCPPA Board of Directors. The SCPPA Executive Director works closely with SCPPA's General Counsel, who reports directly to the SCPPA Board of Directors.

The SCPPA Executive Director's direct reports include:

1. Chief Financial and Administrative Officer
2. Government Affairs Director
3. Program Development Manager
4. Project Development Manager
5. Senior Asset Manager
6. Administrative Services Manager

This position description is not intended to be all-inclusive; an employee will also perform other job responsibilities as assigned by the immediate supervisor or management.

Management reserves the right to change position descriptions, specifications, or work schedules to accommodate individuals with disabilities or as the need arises.

This position description does not constitute a written or implied contract of employment.

ATTACHMENT B

SCPPA PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY AND [CONSULTANT NAME]

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is dated and effective [DATE], by and between [CONSULTANT NAME] ("Consultant"), [LEGAL CAPACITY], located at [ADDRESS], and Southern California Public Power Authority ("SCPPA"), a joint powers agency created pursuant to the laws of the State of California, with offices at 1160 Nicole Court, Glendora, California 91740. SCPPA and Consultant are also referred to herein individually as "Party" and together as "Parties." Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

WHEREAS, SCPPA member utilities ("Members") are engaged in the generation, transmission, and distribution of electrical energy to retail customers; and

WHEREAS, SCPPA has been formed for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation, or maintenance of projects involving the generation, transmission, and distribution of electrical energy for the benefit of its Members ("Purpose"); and

WHEREAS, SCPPA has a need for professional and technical services including studies and reports to facilitate SCPPA's Purpose and that support its Members' procurement of generation and transmission resources and their obligation to first acquire energy efficiency and demand reduction resources that are cost effective, reliable, and feasible as mandated by Section 9615 of the California Public Utilities Code; and

WHEREAS, Consultant is qualified and capable of providing the services specified herein which are consistent with SCPPA's Purpose.

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

1. Services to be Provided:

SCPPA engages Consultant to provide the services and related tasks (“Services,”) outlined in Exhibit A. The Services performed and provided by Consultant shall be based upon the price terms listed in Exhibit B, provided that in no event shall the payments to Consultant exceed the designated maximum amount listed in Exhibit B..

2. Consultant’s Services and Personnel:

- (a) Independent Contractor. Consultant is an independent contractor. Neither the Consultant nor the Consultant’s employees or agents are employees of SCPPA or any Member and shall not be entitled to any employment benefits or rights afforded by SCPPA or Members to their employees, including, but not limited to, sick leave, vacation leave, paid leave, holiday pay, retirement benefits, worker’s compensation, or other insurance benefits. Consultant hereby warrants that: (1) The Consultant and its employees and agents are free from the control and direction of SCPPA and its Members in connection with the performance of the Services, both under this contract and in fact, (2) The Consultant and its employees and agents perform work that is outside the usual course of SCPPA’s business, and (3) the Consultant and its employees and agents performing Services under this Agreement are customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services to be performed under this Agreement. Consultant shall furnish the Services according to its own manner and methods except as required by applicable laws and this Agreement. Consultant shall have no authority, express or implied, to act on behalf of or bind SCPPA or Members to any obligation in any capacity whatsoever as agent or otherwise.
- (b) Subcontractors. Consultant may use the services of subcontractors to perform a portion of its obligations under this Agreement with the prior written approval of SCPPA. All subcontractors retained by Consultant shall be duly licensed as required by law. Subcontractors shall be provided with a copy of this Agreement and Consultant shall cause all subcontractors to comply with the same and agree in a separate writing to be bound by its terms. Consultant shall be the responsible party with respect to all actions of its subcontractors. Consultant’s visit to and time spent at SCPPA, Member, or project site locations shall be subject to normal business hours, appropriate safety standards, and security requirements.
- (c) Prevailing Wages. Services by persons deemed to be employees of Consultant may be subject to prevailing wages under California Labor Code 1770 et seq. Consultant is solely responsible for compliance with prevailing wage requirements, where applicable.
- (d) Indemnity. Consultant shall indemnify, defend, and hold harmless SCPPA and Members, and their respective officers, employees, assigns, and successors in interest from and against any and all liability, claims, suits, demands, damages, fines, penalties, wages, costs or expenses pertaining to (i) prevailing wage laws and (ii) the payment of any employee and/or employer contributions for the California Public Employees Retirement System (“PERS”) benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions which would otherwise be the responsibility of SCPPA or Members. This indemnification is intended to supplement and is not intended to limit or exclude the application of the indemnification requirements provided in Section 8 hereof.

3. Standard of Care:

The Consultant will perform Services under this Agreement with the degree of skill and diligence normally practiced in the same industry by consultants performing the same or similar work. Consultant shall comply with all Federal, State, County, local and other governing laws, rules, and regulations applicable to the performance of the Services under this Agreement, including but not limited to, equal opportunity practices, living wage ordinances, applicable business licenses, taxpayer protection acts (limiting gifts or campaign contributions), and assignment of antitrust causes of action. Consultant represents and warrants that it is appropriately licensed, qualified, and experienced to provide the Services. Consultant acknowledges that it may be subject to the requirements of the California Consumer Privacy Act (“CCPA”) and the California Privacy Rights Act and represents that all Services performed hereunder shall comply with such requirements where applicable. If requested, Consultant agrees to execute a non-disclosure agreement or other ancillary agreement to document Member-specific requirements for purposes of addressing CCPA, California Public Records Act (“CPRA”), California Privacy Rights Act, confidentiality and/or cybersecurity concerns.

4. Amendments:

Amendments to this Agreement must be in writing and signed by both Parties.

5. Payment:

SCPPA shall pay Consultant for Services in accordance with the terms of this Agreement. [Consultant is not authorized to perform any Services or incur any costs whatsoever until: (1) a written purchase order providing authorization for the start of Services has been issued to the Consultant by the SCPPA designated representative]. In addition, each invoice from Consultant shall include the following:

- a. A reference to the [purchase order number issued by SCPPA for such Services to be performed under the Agreement and any other] number assigned by SCPPA for invoices under this Agreement;
- b. The basis for the amount invoiced, including a description of the Services provided.

Consultant shall submit all invoices to SCPPA. Invoices delivered to SCPPA shall be sent to billinginvoices@scppa.org. Invoices received by SCPPA on or before the 15th day of a given month and subsequently approved on or before the 25th day of the same month, shall be paid by SCPPA before the end of the following month. All other properly invoiced amounts shall be paid not more than sixty (60) calendar days after delivery of an invoice. SCPPA shall inform Consultant of any disputed invoice amounts within thirty (30) calendar days of receipt of the invoice by SCPPA. SCPPA may withhold payment of such disputed amounts until both Parties have reached agreement on the proper amount of the invoice.

6. Taxes:

All taxes imposed on Consultant’s income, imposed, or assessed by reason of this Agreement or its performance, including but not limited to sales or use taxes, shall be paid by Consultant. Consultant shall be responsible for any taxes or penalties assessed by reason of any claims that Consultant is an employee of SCPPA.

7. Audit:

During the Agreement's term and for a period of four years after the termination or expiration of the Agreement, Consultant shall (a) maintain all records, books, papers, or documents related to Consultant's performance of the Agreement ("Records"); and (b) provide SCPPA or its representatives, at all reasonable times, the right to examine, excerpt, photocopy, photograph, or transcribe such Records, including but not limited to direct and indirect charges and detailed documentation for Services that Consultant has performed or will perform under the Agreement.

8. Indemnity:

To the maximum extent permitted by law, Consultant shall defend, indemnify, and hold harmless SCPPA and Members and their respective officers, employees, assigns and successors in interest (collectively, "Indemnified Parties") from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, whether actual or alleged, arising out of, or incident to, the performance of Services under this Agreement ("Claims"), excluding only those Claims arising from the gross negligence or willful misconduct of Indemnified Parties. Consultant shall promptly notify SCPPA of any Claim(s) against the Consultant or any of Consultant's directors, employees, subcontractors of any tier, or agents, arising out of or related to Services being performed under this Agreement.

9. Intellectual Property Infringement:

Consultant shall defend, indemnify, and hold harmless SCPPA from and against any loss, cost, and expense that SCPPA incurs because of a claim that any deliverables, materials, software, or hardware or equipment (hereinafter "Product") provided pursuant to this Agreement infringes on the intellectual property rights of others. Consultant's indemnification obligation under this Section 9 is conditioned on the following: (i) SCPPA must notify Consultant of any such claim and (ii) the claim must not arise from modifications to or misuse of the Product by SCPPA. In the event of an infringement claim, Consultant, at its sole option and expense, may (A) retake title and possession of the Product and refund all compensation paid by SCPPA, or (B) obtain for SCPPA the right to continue using the Product under the terms of this Agreement as was being used prior to the infringement claim; or (C) replace for SCPPA the Product with another that is substantially equivalent in function, or modify the Product so that it becomes non-infringing and substantially equivalent in function. Consultant's election in response to an infringement claim as described in this Section 9 shall not result in any additional costs or liability to SCPPA.

10. Insurance:

Consultant shall at its sole cost and expense procure, provide, and maintain, and shall require each subcontractor (regardless of tier) to provide and maintain, in effect during the performance of any Services under this Agreement, and with respect to subparagraphs (d) and (e) below, the period of time specified therein, insurance coverage with carriers reasonably satisfactory to SCPPA, as follows:

- (a) Workers' Compensation insurance in accordance with statutory limits, as required by the state in which the services are to be performed, including a waiver of subrogation favoring SCPPA, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) each employee for accident, \$1,000,000 each employee for disease, and \$1,000,000 policy limit for disease.

- (b) Commercial General Liability insurance providing coverage for bodily injury, property damage, personal injury, advertising liability, blanket contractual liability, Consultant's obligations under this Agreement, products and completed operations, and coverage for independent contractors with limits of not less than one million dollars (\$1,000,000) for each occurrence. Such policy shall cover SCPPA as an additional insured, include a severability of interest provision, and be primary and not contributory with respect to any insurance carried by SCPPA.
- (c) Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles used by Consultant in the performance of the Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury and property damage.
- (d) Errors & Omissions/Professional Liability insurance, including coverage for liability arising from intellectual property infringement, information technology and software development services, with limits of one million dollars (\$1,000,000) per claim and in the aggregate. The policy must be kept in force during the life of the contract and for three years (either as a policy in force with "prior acts" coverage covering the Agreement's term, or under an extended reporting provision) after contract termination.
- (e) Cyber Security Coverage including technology / professional liability insurance, intellectual property infringement, and data protection liability insurance. Consultant shall procure and maintain coverage for cyber liabilities and financial loss resulting or arising from acts, errors, or omissions, in connection with data maintenance, hosting, software development and other information technology services provided under this agreement. Coverage shall include protection for liability arising from:
 - 1. intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets);
 - 2. breaches of security;
 - 3. violation or infringement of any right, privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; and,
 - 4. data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on a third party.

The minimum limits shall be three million dollars (\$3,000,000) for each claim and in the aggregate.

Such insurance must address all of the foregoing without limitation if caused by an employee of the Consultant or an independent contractor working on behalf of the Consultant in performing Services under this contract. Policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world. The policy must be kept in force during the life of the contract and for three years (either as a policy in force with "prior acts" coverage covering the Agreement's term, or under an extended reporting provision) after contract termination.

- (f) All required policies shall provide not less than thirty (30) calendar day notice of cancellation to SCPPA.

The insurance to be provided by Consultant under this Agreement shall not include any of the following: except for Professional Liability Insurance, any claims-made insurance policies; any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by SCPPA; any endorsement limiting coverage available to SCPPA that is otherwise required by this Section 10; and any policy or endorsement language that (i) negates coverage to SCPPA for SCPPA's own negligence; (ii) limits the duty to defend SCPPA under the policy; (iii) provides coverage to SCPPA only if Consultant is negligent, or (iv) permits the recovery of defense costs from any additional insured. The insurance provided under this Agreement shall not contain any restrictions or limitations which are inconsistent with SCPPA's or the rights under this Agreement.

Consultant shall furnish SCPPA proof of all specified insurance evidencing the required coverages prior to commencement of Services under this Agreement. Consultant shall provide SCPPA a new or renewed certificate of insurance upon any changes or modifications to coverage including any extension or renewal of required insurance coverage; provided that any changes or modifications to coverage shall be consistent with the requirements of this Agreement.

The insurance requirements set forth in this Section 10 are separate and independent from the indemnification and defense provisions of this Agreement. The insurance provisions do not limit the applicability, scope, or obligations of indemnification and defense obligations of this Agreement, and this Agreement's indemnification and defense obligations do not limit the insurance coverage requirements of this Agreement.

11. Term and Termination; Survival:

- (a) The term of this Agreement shall be three (3) years from the date hereof at which time it shall either expire or be extended by written agreement of the Parties for one (1) or more additional terms totaling no more than three (3) years, unless sooner terminated in accordance with this Section 11.
- (b) Either Party may terminate this Agreement, with or without cause, upon thirty (30) calendar days' written notice to the other Party. Upon such termination, (i) Consultant shall reimburse SCPPA for all payments made by SCPPA for Services not yet completed and supplied, or (ii) if outstanding payments are owed to Consultant, SCPPA shall pay Consultant for all Services satisfactorily performed and supplied in accordance with this Agreement up to the date of termination.
- (c) Termination for Conflicts of Interest. Consultant confirms that it understands the conflicts of interest codes and requirements applicable to its profession, as well as the requirements of California Government Code Section 1090, et seq. and Section 87100, et seq. Consultant represents and certifies that it is unaware of any conflict of interest relating to this Agreement and that SCPPA, its Members, and their respective officers, agents, employees, representatives, and elected and appointed officials do not, and will not, have any indirect or indirect financial interest in this Agreement. Consultant will immediately inform SCPPA about any conflict of interest that may arise as a result of any change in circumstances. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such conflict of interest does exist or develop, SCPPA may immediately terminate this Agreement by giving Consultant written notice thereof.

- (d) Survival. Any rights or obligations pursuant to Sections 2(d) 3, 5-12, 14, 17-19 shall survive the termination or expiration of this Agreement.

12. Use and Ownership of Work Product:

- (a) As used in this agreement, the term “Work Product” means any and all deliverables or materials fixed in a tangible medium of expression, including software code, written procedures, written documents, abstracts, and summaries thereof, or any portions or components of the foregoing created, written, developed, conceived, perfected, or designed in connections with the Services provided under this Agreement.
- (b) SCPPA shall retain all rights, title, and interest in and to the Work Product, including all intellectual property rights therein and any and all enhancements, improvements, and derivative works thereof, and Consultant obtains no rights therein.

13. Information Provided by Others:

To the extent reasonably available to SCPPA, and not otherwise subject to any confidentiality requirement, SCPPA, upon Consultant’s request, shall provide to the Consultant in a timely manner any information reasonably needed to perform the Services hereunder. Consultant may rely on the accuracy of information provided by SCPPA. Any Customer Data (as defined in Section 13 herein) furnished to Consultant by SCPPA shall be deemed Confidential Information subject to Section 14 of this Agreement.

14. Confidential Information:

As used herein, “Customer Data” shall mean any and all data that describes anything whatsoever about an individual customer of a Member, such as address, employment, contact information, usage history, financial transactions and/or credit history, or that affords a clear basis for inferring things done by or to an individual or entity such as a record of a person’s presence in a place, or requests for temporary changes in service. “Customer Responses” shall be all information or opinion collected or gathered from an individual customer of a Member, either verbally, in writing, or electronically.

Either Party (as to information disclosed, the “Disclosing Party”) may provide the other (as to information received, the “Receiving Party”) with information in connection with this Agreement that it may deem to be “Confidential Information” as defined herein. Confidential Information shall mean any and all: (1) Customer Data provided by SCPPA or any Member to Consultant or any of Consultant’s subcontractors; (2) Customer Responses collected by Consultant or any of Consultant’s subcontractors from customers of any Members; and (3) any information provided to one Party from another that is labeled and/or marked confidential. Receiving Party agrees: (a) to use or reproduce the Confidential Information only as necessary to realize the benefits of or perform its obligations under this Agreement and for no other purpose, (b) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (c) not to disclose the Confidential Information to a competitor of Disclosing Party.

Notwithstanding the foregoing, Confidential Information does not include information which (i) at the time of disclosure is within the public domain through no breach of this Agreement by either Party; (ii) has been known or independently developed by and is currently in the possession of recipient prior to disclosure or receipt thereof; (iii) was or is acquired by recipient from a third party (other than from a Member or from a Member customer contacted by Consultant in the course of performance of this Agreement) or (iv) disclosed pursuant to a legal requirement or order. The recipient may disclose the Confidential Information on a need-to-know basis to its contractors, agents and affiliates who agree to confidentiality and non-use terms that are substantially similar to these terms.

In the case of a *bona fide* request received by SCPPA under the California Public Records Act (“CPRA,”) Cal. Gov’t Code § 7920.000 *et seq.*) from a third party for access to Consultant’s Confidential Information subject to this Agreement, or as may otherwise be required by the California Ralph M. Brown Act (“Brown Act”) (California Government Code §§ 54950 *et. seq.*), SCPPA shall notify Consultant of such request and shall seek to follow Consultant’s reasonable instructions in responding thereto subject to the understanding that SCPPA cannot delegate the responsibilities imposed on it by the CPRA or Brown Act to Consultant. SCPPA’s responsibilities under both the CPRA and Brown Act shall be determined in the sole discretion of SCPPA. In the event access to such Confidential Information is denied and the third party requesting the same initiates litigation to compel access under the CPRA, SCPPA shall promptly advise Consultant of such litigation, and SCPPA shall have no other duty or obligation to Consultant under this Agreement with respect to the denial of access to such Confidential Information or to oppose or defend any such litigation. Consultant, at its own cost and expense, shall indemnify, defend, and hold SCPPA free and harmless from such litigation or any claim, suit, cost, expense, attorneys’ fees, judgment, or order related thereto or otherwise arising from the denial of access to Consultant’s Confidential Information to said third party.

If Consultant is requested or required, pursuant to any order, rule, ruling, discovery request, subpoena, civil investigation or similar process to disclose any of SCPPA’s or Members’ Confidential Information, Consultant shall provide prompt written notice to each of SCPPA and the affected Members of such request or requirement so that SCPPA and the affected Members may, at their own expense, seek a protective order or other appropriate remedy concerning such disclosure.

Confidential Information must be kept in a secure location. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. Consultant shall, when directed by SCPPA, create aggregated data derived from Confidential Information in such a way that individual customer responses or data cannot be determined. Consultant shall retain the Confidential Information only so long as it is necessary to perform Consultant’s tasks under the Agreement, and after such time, the Confidential Information shall be returned to SCPPA or at SCPPA’s written request, destroyed, and Consultant shall retain no copies of the Confidential Information. Under no circumstance may Consultant, or its officers, employees, subcontractors, or agents use Confidential Information of SCPPA or its Members for any commercial purpose not related to the primary purpose of this Agreement.

Consultant shall be responsible for ensuring that any subcontractors used to provide Services that have access to Confidential Information or who shall collect Customer Responses comply with the provisions of this Section 13.

Notwithstanding these restrictions, only where permitted by law, including as limited by Section 1798.98 of the California Civil Code and Section 8381 of the California Public Utilities Code, (a) Consultant may disclose Confidential Information to its affiliates and subcontractors to the limited extent necessary for the performance of the Agreement, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) SCPPA may disclose Confidential Information to Members, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Each Disclosing Party warrants that it has the right to disclose the information that it discloses.

15. Dispute Resolution:

In the event of a dispute between the Parties either Party may deliver to the other Party a notice of dispute with a detailed description of the underlying circumstances for the dispute. The dispute notice shall include a schedule of availability of the notifying Party's officers having a title of senior vice president or equivalent or higher duly authorized to settle the dispute during the thirty (30) calendar day period following delivery of the dispute notice. The recipient Party shall, within five (5) business days of receipt of the dispute notice, provide to the notifying Party a parallel schedule of availability of its officers having a title of senior vice president or equivalent or higher duly authorized to settle the dispute. The senior officers of the Parties shall meet and confer as often as reasonably necessary during the thirty (30) day period in good faith negotiations to resolve the dispute. In the event the dispute is not resolved within the thirty (30) calendar day period then either Party may pursue any legal remedy available to it; provided further, however, nothing herein shall prohibit either Party from pursuing temporary, injunctive, or equitable relief during this thirty (30) calendar day period.

16. Representatives:

SCPPA's representative for administration of this Agreement:

[fill in], (626) 793-9364, and e-mail address is [fill in]. All questions to SCPPA pertaining to this Agreement shall be referred to the person named above.

Consultant's representative for this Agreement:

[fill in], [telephone number], and [e-mail address is].

All questions to Consultant pertaining to this Agreement shall be referred to the person named above.

The representatives set forth herein shall have authority to give all notices required herein.

17. Notices:

Notices, requests, demands and other communications made pursuant to this Agreement shall be deemed given only if in writing signed by an authorized representative of the sender and delivered by first class mail, electronic mail, or by a courier or service guaranteeing overnight delivery to the receiving party, addressed as follows:

To SCPPA:

General Counsel
1160 Nicole Court
Glendora, CA 91740
cgodinez@scppa.org

To Consultant:

[fill in name]
[Title]
Street Address
City, State Zip
XXX@YYY.com-net-org-gov

Either party may change its contact information for the purposes of this Agreement by giving written notice of such change to the other party in the manner provided in this Section.

Notice shall be deemed effective: 1) immediately, upon personal delivery or upon transmission by electronic mail accompanied by a telephone call to the intended recipient; 2) one (1) calendar day after transmission by electronic mail not accompanied by a telephone call; 3) five (5) calendar days after deposit in first class mail, if mailed within the United States; and 4) ten (10) calendar days after deposit in the mail, if mailed from outside the United States.

18. Miscellaneous:

- (a) Assignment – This Agreement is binding upon and shall inure to the benefit of SCPPA and Consultant and their respective successors and assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party; provided, however, that either Party may assign this Agreement to a successor of the Party's entire business relating to this Agreement.
- (b) Integration; Conflicts – This Agreement, including Exhibits hereto, contains the entire agreement between the Parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of any conflict between the terms of this Agreement and the Exhibits hereto, or purchase order issued hereunder, the order of precedence shall be (1) the Agreement; (2) the Exhibits; and (3) any purchase order issued hereunder, with the Agreement having the highest precedence.
- (c) Waiver – The failure to enforce any terms of this Agreement or the waiver of any breach of this Agreement shall not constitute a waiver of any other breach or a relinquishment of right to enforce the same or any other provision of this Agreement.
- (d) Severability – If any provision of this Agreement is rendered invalid or unenforceable under any circumstance, the remainder of this Agreement shall continue to be in full force and effect and the provision declared invalid or unenforceable shall continue to be in full force and effect as to other circumstances in accordance with the laws of the State of California.
- (e) Governing Law – This Agreement is entered into in Los Angeles County in the State of California and shall be governed by, and construed in accordance with, the laws of the State of California.

- (f) Venue – All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California, and both Parties waive any defense of forum non conveniens.

19. Execution in Counterparts, Electronic Signatures and Document Transmission:

This Agreement may be executed in counterparts, and, upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

The Parties may execute this Agreement by manual signature or by electronic signature, each of which shall have the same force and effect. A signed copy of this Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes, to the extent provided under applicable law, including California's Uniform Electronic Transactions Act.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
MICHAEL S. WEBSTER
Executive Director

Approved as to Legal Form:

CHRISTINE GODINEZ General Counsel

[LEGAL ENTITY NAME

By: _____
[PRINTED NAME IN CAPS]
[Printed Title]

Professional Services Agreement Exhibits [To Be Attached]

EXHIBIT A – SCOPE OF SERVICES

EXHIBIT B – FEE SCHEDULE