California Community Choice Financing Authority

California Community Choice Financing Authority (CCCFA)
Board of Directors Meeting
Thursday, December 7, 2023
1:00 P.M.

Via Teleconference at the Following Locations:

- Pioneer Community Energy - 2510 Warren Dr., Suite B, Rocklin, CA 95677 (Zakary Liske)
- Marin Clean Energy - 1125 Tamalpais Ave, San Rafael, CA 94901 (Garth Salisbury)
- Ava Community Energy (formally East Bay Community Energy) - 1999 Harrison St. Ste 2300, Oakland CA, 94612 (Nick Chaset)
- 1389 Gibou Rd, Montgomery Vt 05471 (David McNeil)

Members of the public who wish to observe the meeting may do so at one of the locations listed above or telephonically via the following teleconference call-in number and meeting ID:

For Viewing Access Join the Zoom Meeting:
https://us02web.zoom.us/j/87343304744

Dial-in: (669) 900-6833
Webinar PIN: 873 4330 4744

In compliance with the Brown Act, Directors may participate at one of the meeting locations listed above. In either case, please: 1) post this Agenda at a publicly accessible location at the participation location no later than 72 hours before the beginning of the meeting, and 2) have a speaker phone available for members of the public who wish to attend at your location.

Agenda

1. Call to Order & Roll Call
2. Agenda Update and/or Changes

3. Public Comment
This item is reserved for persons wishing to address the Board of Directors on any CCCFA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker.

4. Consent Calendar (Discussion/Action)
- C.1 Consider Approval of 10/26/23 Meeting Minutes
- C.2 Consider Approval of First Amendment to Second Agreement by and between California Community Financing Authority and Colantuono, Highsmith & Whatley, PC for General Counsel Legal Services
- C.3 Working Group Project List: The Board will receive an update on the Working Group's current and planned projects.

5. Consider Approval of Resolution 2023-12: Resolution of the California Community Choice Financing Authority Authorizing the Execution and Delivery of Certain Commodity Swap Agreements with BP Energy Company in Connection with the Financing of the Acquisition of a Long-Term Supply of Electricity for Silicon Valley Clean Energy Authority and Other Matters Relating Thereto

6. Consider Approval of FY 2024 Budget

7. Board Member Announcements (Discussion)

8. Adjourn

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation, or an alternative format, please contact the Clerk of the Board at (510) 906-0491, 72 hours prior to the scheduled meeting to ensure reasonable accommodations are provided.

Materials related to an item on this agenda submitted to the Board of Directors, or a majority of the Board, after distribution of the agenda are available for public inspection at the Clerk's Office, Ava Community Energy (formally East Bay Community Energy),1999 Harrison St. Ste 2300, Oakland CA, 94612, during normal business hours.

California Community Choice Financing Authority (CCCFA)
Board of Directors Meeting
Thursday, October 26, 2023
1:00 P.M.
Draft Minutes

Via Teleconference at the Following Locations:

- Central Coast Community Energy - 70 Garden Court, Suite 300, Main Conference Room - Monterey, CA 93940 (Robert Shaw)
- Silicon Valley Clean Energy - 333 W. El Camino Real, Suite 330, Sunnyvale, CA 94087 (Monica Padilla)
- Marin Clean Energy - 1125 Tamalpais Ave, San Rafael, CA 94901 (Garth Salisbury)
- Clean Power Alliance - 801 S. Grand Ave., Ste. 400. Los Angeles, CA 90017 (Ted Bardacke)
- Ava Community Energy (formally East Bay Community Energy) - 1999 Harrison St. Ste 2300, Oakland CA, 94612 (Nick Chaset)

Monica Padilla has been temporarily appointed as Silicon Valley Clean Energy's representative with authority to vote on Board matters for the October 26, 2023 California Community Financing Authority Board of Directors meeting.

Members of the public who wish to observe the meeting may do so at one of the locations listed above or telephonically via the following teleconference call-in number and meeting ID:

For Viewing Access Join the Zoom Meeting:
https://us02web.zoom.us/j/87343304744

Dial-in: (669) 900-6833
Webinar PIN: 873 4330 4744

In compliance with the Brown Act, Directors may participate at one of the meeting locations listed above. In either case, please: 1) post this Agenda at a publicly accessible location at the participation location no later than 72 hours before the beginning of the meeting, and 2) have a speaker phone available for members of the public who wish to attend at your location.

Agenda

1. Call to Order & Roll Call
Robert Shaw – Central Coast Community Energy (CCCE)
Monica Padilla, alternate for Girish Balachandran – Silicon Valley Clean Energy
Garth Salisbury – Marin Clean Energy (MCE)
Ted Bardacke – Clean Power Alliance (CPA)

Excused:
Nick Chaset – East Bay Community Energy (EBCE)

Staff and Others:
David McNeil – Clean Power Alliance (CPA)
Adrian Bankhead – Board Clerk
David Ruderman – General Counsel

2. Acceptance of Agenda
Action: It was M/S/C (Shaw/Salisbury) to accept the agenda. The motion carried:

Acceptance of Agenda Vote:
CCCE –Yes
SVCE – Yes
MCE – Yes
CPA – Yes
EBCE – Excused

3. Public Comment
This item is reserved for persons wishing to address the Board of Directors on any CCCFA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker.

David Ruderman, General Counsel, CCCFA, opened the public comment period. There were no comments.

4. Consent Calendar (Discussion/Action)
C.1 Approval of 7/27/23 Meeting Minutes
C.2 Resolution 2023-9: Resolution of the California Community Choice Financing Authority Adopting a Conflict-of-Interest Code

Action: It was M/S/C (Bardacke/Shaw) to approve the Consent Calendar. The motion carried:

Acceptance of Agenda Vote:
CCCE –Yes
SVCE – Yes
MCE – Yes
CPA – Yes
EBCE – Excused

5. Consider Approval of Resolution 2023-10: Resolution of the California Community Choice Financing Authority Authorizing the Issuance of One or More Series of Clean Energy Project Revenue Bonds in an Aggregate Principal Amount Not to Exceed $1,250,000,000 to Finance the Acquisition of a Long-Term Supply of Electricity for Marin Clean Energy and Other Matters Relating Thereto. (Action)

Action: It was M/S/C (Shaw/Bardacke) to approve Resolution 2023-10. The motion carried:

Acceptance of Agenda Vote:
CCCE –Yes
SVCE – Yes
MCE – Yes
CPA – Yes
EBCE – Excused

6. Consider Approval of Resolution 2023-11: Resolution of the California Community Choice Financing Authority Authorizing the Issuance of One or More Series of Clean Energy Project Revenue Bonds in an Aggregate Principal Amount Not to Exceed $1,500,000,000 to Finance the Acquisition of a Long-Term Supply of Electricity for Silicon Valley Clean Energy Authority and Other Matters Relating Thereto (Action)

Action: It was M/S/C (Salisbury/Shaw) to approve Resolution 2023-11. The motion carried:

Acceptance of Agenda Vote:
CCCE –Yes
SVCE – Yes
MCE – Yes
CPA – Yes
EBCE – Excused

7. Working Group Project List: The Board will receive an update on the Working Group's current and planned projects. (Discussion)

Garth Salisbury provided an update on the following projects the Working Group is currently engaged in:

- Financial Statements for FY2022 – (Garth Salisbury) The audit is nearly complete, just awaiting final approval from the auditors. The financial statements will be provided to CCCFA members in the next few days.
- Insurance for CCCFA – (David McNeil) A broker has indicated there is an insurer willing to provide directors and officers liability insurance. The next step is to share the audited financials and assess the risk. The Working Group will also explore other potential insurable risks for CCCFA.
    - *Ted Bardacke asked the Working Group to discuss establishing contracting authority within the Treasurer/Controller or the Board Chair so that the Board could move more nimbly and establish boundaries and controls.*
- CCCFA Joint Contracting – (David McNeil) The Working Group discussed the possibility of doing a joint solicitation for underwriter services. This idea is still under consideration.
- New Member Onboarding Packet – (Garth Salisbury) Counsel has been engaged to assist with developing onboarding materials for new members. Efforts are underway to finalize these documents and make them available on the website.
- New Member Selection Criteria – (Howard Chang) Discussed developing standards around new member financial, operational, and administrative capabilities to ensure all members can fulfill contract requirements. Also discussed evaluating current CCCFA membership fees and whether they should be adjusted.
    - *Ted Bardacke asked for the Working Group to examine if joining fees are too low.*
- CCA Prepay Savings Measurement – (David McNeil) Developing a consistent framework to compare savings across different prepay structures.
- Working Group and Board Communications – (Garth Salisbury) The Working Group will provide regular updates to the Board on active projects and upcoming items for consideration. Consideration for allocating more funds to outsource certain tasks like IT, legal, and administrative support.
- Website Management – (Adrian Bankhead) No member agency has stepped up to take over management of the CCCFA website. This is commonly outsourced.
    - *Ted Bardacke suggested that the Working Group consider outsourcing management of the website.*
- Email Policies – (Adrian Bankhead) Discussion around setting up dedicated CCCFA email addresses for board members and staff to keep CCCFA communications

separate. This would simplify records retention and Public Records Act requests. Members can choose to only use CCCFA emails for CCCFA business or continue using their agency emails. No decision was made yet whether CCCFA would require using the dedicated emails.

- Continuing Disclosure – (Garth Salisbury) For completed bond deals, ongoing disclosure requirements are handled by BLX Group, which will periodically contact staff and board members about providing updated financials and other information. Those involved need to respond on time so that all necessary filings to EMMA are completed as legally mandated. While important, continuing disclosure is considered an operational responsibility not needing board action.

There was no public comment for this item.

8. Board Member Announcements (Discussion)

- Robert Shaw announced that Juan Lopez, Central Coast Community Energy's Finance Director, would be joining the Working Group and attending the next meeting.
- Robert Shaw also announced that Central Coast Community Energy officially closed their first prepay transaction in the amount of $660 million. He congratulated Juan Lopez and Dwayne Woods on getting the deal done.
- The next regular CCCFA Board meeting is scheduled for December 7, 2023, at 1pm.

9. Adjourn at 1:39pm

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation, or an alternative format, please contact the Clerk of the Board at (510) 906-0491, 72 hours prior to the scheduled meeting to ensure reasonable accommodations are provided.

Materials related to an item on this agenda submitted to the Board of Directors, or a majority of the Board, after distribution of the agenda are available for public inspection at the Clerk's Office, Ava Community Energy (formally East Bay Community Energy),1999 Harrison St. Ste 2300, Oakland CA, 94612, during normal business hours.

PASSED AND ADOPTED at a regular meeting of the CCCFA Board of Directors on this 7th day of December, 2023, by the following vote:

	YES	NO	ABSTAIN	ABSENT
Robert M. Shaw				
Nick Chaset				
Garth Salisbury				
Girish Balachandran				
Theodore Bardacke				

____
CHAIR, CCCFA

Attest:

____
SECRETARY, CCCFA

Staff Report – Item 4 - C.2

Item X:	First Amendment to Second Agreement by and between California Community Financing Authority and Colantuono, Highsmith & Whatley, PC for General Counsel Legal Services
From:	Garth Salisbury, Treasurer/Controller
Date:	12/7/2023
Attachment:	1. First Amendment to Second Agreement by and between California Community Financing Authority and Colantuono, Highsmith & Whatley, PC 2. Second Agreement by and between California Community Financing Authority and Colantuono, Highsmith & Whatley, PC

RECOMMENDATION

By motion, adopt the First Amendment to Second Agreement by and between California Community Financing Authority and Colantuono, Highsmith & Whatley, PC for general counsel legal services to increase the not-to-exceed amount by $100,000 for a total of $145,000 for the three-year term of the Second Agreement.

BACKGROUND

CCCFA and Colantuono, Highsmith & Whatley ("CHW") entered into an agreement on January 13, 2023, to provide general counsel services ("Agreement") for a three-year term. David Ruderman of CHW was designated as General Counsel for CCCFA. The Agreement was CCCFA's second agreement with CHW because CHW previously provided special counsel services to CCCFA and its former General Counsel, Michael Callahan, under the First Agreement.

Although the Agreement has a term of three years, expiring on January 31, 2026, the Agreement provided for CHW to be compensated in an amount not to exceed $45,000 total. Upon further review, the Treasurer/Controller has determined that the $45,000 was the estimated budget for **one year** of general counsel services, not three years. Indeed, to date, CCCFA has incurred approximately $40,000 in general counsel legal services. There was accordingly an inadvertent error in the Agreement's not-to-exceed amount.

ANALYSIS & DISCUSSION

To correct the oversight in the Agreement regarding the not-to-exceed, and ensure CCCFA is able to avail itself of CHW's services for the Agreement's term, CCCFA will need to amend the Agreement to increase the contract amount. The Treasurer/Controller estimates no more than $50,000 per year will be required, a slight increase from the original estimate based on the increased number of prepay deals CCCFA is undertaking and the anticipated increase in the number of associate members CCCFA may admit over the next two years. The proposed amendment therefore would increase the not-to-exceed by $100,000 for the remaining two years, for a total consideration not to exceed $145,000 for the three-year term of the Agreement. This will provide for approximately $50,000 in legal services per year for the term of the Agreement.

FISCAL IMPACT

The amendment increases the maximum CCCFA could pay for general counsel services absent approval by the Board. It does not obligate CCCFA to pay this amount if services rendered cost less. The amendment is consistent with CCCFA's budget and would entail a possible additional expenditure of up to $100,000.

RECOMMENDATION

Recommend that the Board move to approve the First Amendment to Second Agreement by and between California Community Financing Authority and Colantuono, Highsmith & Whatley, PC and authorize the Chair to sign.

FIRST AMENDMENT TO SECOND AGREEMENT
BY AND BETWEEN CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY AND COLANTUONO, HIGHSMITH & WHATLEY, PC

This FIRST AMENDMENT is made and entered into on December 7, 2023, by and between CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY (hereinafter referred to as "CCCFA") and COLANTUONO, HIGHSMITH & WHATLEY, PC (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, CCCFA and Contractor entered into an agreement on January 13, 2023, to provide general counsel services ("Agreement") for a three-year term; and

WHEREAS, Section 3 and Exhibit B to the Agreement provided for Contractor to be compensated in an amount not to exceed $45,000 for the legal services described within the scope therein; and

WHEREAS, the parties desire to amend the Agreement to increase the contract amount by $100,000 for total consideration not to exceed $145,000 for the three-year term of the Agreement.

NOW, THEREFORE, the parties agree to modify Section 3 and Exhibit B as set forth below.

AGREEMENT

1. Section 3 is hereby amended to read as follows:

   MAXIMUM COST TO CCCFA:
   In no event will the cost to CCCFA for the Services to be provided herein exceed the maximum sum of **$145,000**.

2. The last sentence of Exhibit B is hereby amended to read as follows:

   In no event shall the total cost to CCCFA for the services provided herein exceed the **maximum sum of $145,000** for the term of the Agreement.

3. Except as otherwise provided herein all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day first written above.

[Signatures on following page]

APPROVED BY: **California Community Choice Financing Authority:**	**CONTRACTOR:**
By: ___________________________________	By: _________________________________
Name: ________________________________	Name: ______________________________
Title:___________________________________	Title: ________________________________
Date: __________________________________	Date: _______________________________

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
STANDARD SHORT FORM CONTRACT

SECOND AGREEMENT
BY AND BETWEEN
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY AND COLANTUONO, HIGHSMITH & WHATLEY, PC

THIS SECOND AGREEMENT ("Agreement") is made and entered into on January 13, 2023 by and between CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY (hereinafter referred to as "CCCFA") and Colantuono, Highsmith & Whatley, PC, a California professional corporation with principal address at: 420 Sierra College Drive, Suite 140, Grass Valley, CA 95945 (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

RECITALS:

WHEREAS, CCCFA previously retained Contractor to provide special legal counsel services as requested and directed by CCCFA General Counsel under the First Agreement by and between CCCFA and Contractor dated March 11, 2022 ("First Agreement"), which agreement terminated by its terms on December 31, 2022;

WHEREAS, CCCFA now desires to retain Contractor to provide General Counsel services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

WHEREAS, Contractor desires to provide the Services to CCCFA;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. SCOPE OF SERVICES; DESIGNATION OF GENERAL COUNSEL:
Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include any other work performed by Contractor pursuant to this Agreement. David J. Ruderman is designated as General Counsel for CCCFA. The parties understand and agree that Contractor may, from time to time, utilize other attorneys within Contractor's firm to assist Mr. Ruderman in the performance of this Agreement but that Mr. Ruderman will attend all regularly scheduled CCCFA Board meetings and make best efforts to attend all special Board meetings unless excused by the Board or CCCFA staff or absent due to illness, an annual vacation or to a once-or-twice-per-year business commitment (such as a professional conference) and will supervise all services rendered under this Agreement. The parties will cooperate to avoid unnecessary travel for meetings, especially when substantially similar service can be provided remotely via teleconference or video conference.

2. FEES AND PAYMENT SCHEDULE; INVOICING:
The fees and payment schedule for furnishing Services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement ("Term"). Contractor shall provide CCCFA with Contractor's Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing CCCFA in a timely and accurate manner. Contractor shall email invoices to CCCFA on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services or termination of this Agreement. CCCFA will process payment for undisputed invoiced amounts within thirty (30) days.

3. MAXIMUM COST TO CCCFA:
In no event will the cost to CCCFA for the Services to be provided herein exceed the maximum sum of **$45,000**.

4. TERM OF AGREEMENT:
This Agreement shall commence on February 1, 2023 ("Effective Date") and shall terminate on January 31, 2026, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor represents, warrants and covenants that (a) it is a professional corporation duly organized, validly existing and in good standing under the laws of the State of California, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

5.2. COMPLIANCE WITH APPLICABLE LAW: At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")

5.3. LICENSING. At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to CCCFA at the request of CCCFA.

5.4. NONDISCRIMINATORY EMPLOYMENT: Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.

5.5. ASSIGNMENT OF PERSONNEL. The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to CCCFA, as is evidenced in writing.

6. **INSURANCE**:

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to CCCFA. The general liability policy shall be endorsed naming CCCFA and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to CCCFA prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Each certificate of insurance shall provide for thirty (30) days' advance written notice to CCCFA of any cancellation or reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only, except those required by Section 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 17 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, CCCFA may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance coverage.

6.1. GENERAL LIABILITY. The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **two million dollars ($2,000,000) with a four million dollar ($4,000,000)** aggregate limit. "California Community Choice Financing Authority" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).

6.2. AUTO LIABILITY (REQUIRED IF CHECKED ☒). Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit ($1,000,000).

6.3. WORKERS' COMPENSATION. The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, it shall comply with this requirement and a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to CCCFA prior to commencement of Services.

6.4. PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒). Contractor shall maintain professional liability insurance with a policy limit of not less than $1,000,000 per incident. If the deductible or self-insured retention amount exceeds $1,000,000 CCCFA may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund, or that Contractor's general insurance reserves are adequate to provide the necessary coverage and CCCFA may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

7. RESERVED

8. <u>SUBCONTRACTING</u>:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of CCCFA, except for any subcontract work expressly identified herein in Exhibit A. If Contractor hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

8.1. Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.

8.2. Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (as may be modified to be applicable to Subcontractor with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.

8.3. Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name CCCFA as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to CCCFA current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.

8.4. Subcontractor shall be contractually obligated to indemnify the CCCFA Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.

8.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by CCCFA, Contractor shall promptly forward to CCCFA evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between CCCFA and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from CCCFA's obligation to make payments to Contractor. As a result, CCCFA shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

9. <u>RETENTION OF RECORDS AND AUDIT PROVISION</u>:

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). CCCFA shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at CCCFA's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from CCCFA. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by CCCFA based on undisputed audit findings.

10. <u>DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY</u>:

10.1. OWNERSHIP AND USE RIGHTS.

a) **CCCFA Data.** Unless otherwise expressly agreed to in writing by the Parties, CCCFA shall retain all of its rights, title and interest in CCCFA's Data. "CCCFA Data" shall mean all data or information provided by or on behalf of CCCFA, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of CCCFA to Contractor as CCCFA may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. CCCFA Data shall also include all data and materials provided by or made available to Contractor by CCCFA's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between CCCFA and their licensors.

b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by CCCFA on behalf and for the benefit of CCCFA's respective customers. CCCFA shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at CCCFA's expense, provide Intellectual Property to CCCFA or to any party CCCFA may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for CCCFA solely for legal purposes and if otherwise agreed to in writing by CCCFA. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by CCCFA.

c) **Intellectual Property shall be owned by CCCFA upon its creation.** Contractor agrees to execute any such other documents or take other actions as CCCFA may reasonably request to perfect CCCFA's ownership in the Intellectual Property.

d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants CCCFA on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of CCCFA's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to CCCFA prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by CCCFA.

10.2. EQUITABLE RELIEF. Each Party acknowledges that a breach of this Section 10 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that CCCFA shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of CCCFA Data, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

11. FORCE MAJEURE:

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

12. TERMINATION:

12.1. If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then CCCFA may terminate this Agreement by giving five (5) business days' written notice to Contractor.

12.2. Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.

12.3. In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall CCCFA be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancelation or termination costs without prior written approval of CCCFA, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by CCCFA under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by CCCFA under this Section 12, Contractor shall have delivered to CCCFA any and all Intellectual Property (as defined in Section 10.1(b)) prepared for CCCFA before the effective date of such termination.

12.4. CCCFA may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

12.5. Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.

12.6. Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by CCCFA and shall return all CCCFA Data (as defined in Section 10.1(a) above) and Intellectual Property to CCCFA. CCCFA agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in any action in which the Contractor may represent the CCCFA. The Contractor agrees to cooperate fully in any such transition, including the transfer of files. Notwithstanding the termination of the Contractor's representation, CCCFA will remain obligated to pay to the Contractor all fees and costs incurred prior thereto.

12.7. Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case CCCFA shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.

12.8. Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24, and Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

13. ASSIGNMENT:

The rights, responsibilities, and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of CCCFA.

14. AMENDMENT; NO WAIVER:

This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

15. DISPUTES:

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and CCCFA's contract representative by good faith negotiation efforts shall be referred to the Chairperson of the Board of Directors of CCCFA and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If CCCFA and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), CCCFA and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

16. JURISDICTION AND VENUE:
This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California.

17. INDEMNIFICATION:
To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold CCCFA and its employees, officers, directors, representatives, and agents ("CCCFA Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement or Applicable Law; or c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party.

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF CCCFA:
CCCFA is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to CCCFA's Joint Powers Agreement, CCCFA is a public entity separate from its constituent members. CCCFA shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of CCCFA's constituent members in connection with this Agreement.

19. INVOICES; NOTICES:
This Agreement shall be managed and administered on CCCFA's behalf by the Treasurer/Controller or their designee. All invoices and notices shall be submitted by email to:

Email Address:	invoices@CCCFA.org

Notices shall be given to Contractor at the following address:

Contractor:	David Ruderman,
Address:	420 Sierra College Drive, Suite 140
	Grass Valley, CA 95945
Email Address:	DRuderman@chwlaw.us
Telephone No.:	(530) 432-7357

20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:
This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement shall govern.

	☒	*Check applicable Exhibits*	CONTRACTOR'S INITIALS	CCCFA'S INITIALS
EXHIBIT A.	☒	Scope of Services	DS MC	DS MC
EXHIBIT B.	☒	Fees and Payment	DS MC	DS MC
EXHIBIT C.	☒	Additional Disclosures	DS MC	DS MC

21. SEVERABILITY:
Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

22. INDEPENDENT CONTRACTOR:
Contractor is an independent contractor to CCCFA hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between CCCFA and any Contractor Party. Neither CCCFA nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

23. TIME:
Time is of the essence in this Agreement and each and all of its provisions.

24. THIRD PARTY BENEFICIARIES:
The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

25. FURTHER ACTIONS:
The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

26. PREPARATION OF AGREEMENT:
This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

27. COUNTERPARTS:
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

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

APPROVED BY

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY:

DocuSigned by:
By: [signature]
9DF6BA3222CE44F...

Name: Nick Chaset

Title: CEO

Date: 1/24/2023

CONTRACTOR:

DocuSigned by:
By: Michael Colantuono
2DFD0B76110B4AA...

Name: Michael Colantuono

Title: President

Date: 2/3/2023

MODIFICATIONS TO STANDARD SHORT FORM

☒ **Standard Short Form Content Has Been Modified**

List sections affected:* *1, 4, 12.6, 15

DocuSigned by:
Approved by CCCFA Counsel: Michael Callahan
A671BF56683E42C...

Date: 1/24/2023

EXHIBIT A
SCOPE OF SERVICES

Contractor shall provide the following General Counsel Services under the Agreement as requested and directed by CCCFA's Board of Directors or CCCFA staff, up to the maximum time/fees allowed under this Agreement:

- Contractor shall discharge the duties of the office of General Counsel of the California Community Choice Financing Authority and shall use its best efforts to provide legal services in a competent and professional manner. Contractor shall provide all legal services to the CCCFA of the kind and nature typically provided by an in-house General Counsel's office unless specifically stated otherwise in this Agreement or otherwise directed in writing by CCCFA. Except where conflict of interest rules require otherwise, Contractor shall supervise the activities of all other counsel retained by or for CCCFA and shall review the work of such counsel on behalf of CCCFA.

- These General Counsel Services shall also include:
    - Provide routine legal assistance, advice, and consultation to the Board of Directors and to CCCFA staff relating to general public law issues, potential tort liability and risk management.
    - Prepare and review legal opinions, ordinances, resolutions, agreements, and related documents.
    - Attend all meetings of the Board of Directors. Attend additional such meetings of other Committees and Commissions of CCCFA as may from time to time be requested by CCCFA, not to exceed 2 per month.
    - Monitor pending state and federal legislation and regulations, and new case law, as appropriate.
    - Prepare and / or review correspondence to be sent by CCCFA staff on legal matters such as public records requests, open meeting provisions, ethics questions, conflicts of interest, or state law interpretations.
    - Legal services pertaining to labor, employment and personnel matters.
    - Perform such other or additional general legal services as may be requested by CCCFA, acting by and through the Board of Directors or CCCFA staff.
    - Administer contracts that CCCFA may have with other legal counsel, as directed by CCCFA.
    - Provide general legal advice in the following areas of municipal law:
        - Joint Powers Authorities generally;
        - Joint Powers Authority formation requirements;
        - The Joint Exercise of Powers Act;
        - Brown Act/open meetings law compliance;
        - Employment benefits for public employees;
        - California Public Records Act compliance;
        - Government ethics including the Conflict of Interest Code, the Fair Political Practices Commission, and
        - Government Code section 1090;
        - Public contracting and procurement;
        - Land use planning, zoning, and CEQA;
        - Records retention and destruction; and
        - Public-private partnerships.

Contractor shall provide the following Litigation Legal Services under the Agreement as requested and directed by CCCFA's Board of Directors or CCCFA staff, up to the maximum time/fees allowed under this Agreement.

- Contractor will provide litigation services to CCCFA in any and all matters assigned by CCCFA, except as delegated
- pursuant to Sections 8 and 13 of the Agreement, or as otherwise agreed in writing by Contract and CCCFA. Litigation oversight services such as review of invoices, coordination of activities, communication of Board direction, and similar administrative tasks will be included in General Counsel Legal Services.
- The Litigation Legal Services shall be billed at the regular hourly rates of the attorneys and other professionals providing such services at the time those services are provided to a maximum of $395 per hour.

Contractor does not provide bond or disclosure counsel services.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For General Counsel Services, as defined in Exhibit A, provided under this Agreement, CCCFA shall pay Contractor the regular hourly rates of the attorneys and other professionals providing such services at the time those services are provided to a maximum of $345 per hour in accordance with the amount(s) and the payment schedule as specified below:

Hourly Billing Rates as of January 1, 2023:

Shareholders and Senior Contract Attorneys	$345
14th Year and more Senior Associates	$345
11th–14th Year Associates	$345
9–10th Year Associates	$345
8th Year Associates	$345
7th Year Associates	$340
6th Year Associates	$330
5th Year Associates	$300
4th Year Associates	$285
3rd Year Associates	$270
2nd Year Associates	$260
1st Year Associates	$250
Law Clerks	$220
Paralegals	$195
Legal Assistants	$150–175

Additional Costs:

In-house copies	$0.20 per page
Outgoing faxes	$1.00 per page

For Litigation Legal Services, as defined in Exhibit A, CCCFA shall pay Contractor the regular hourly rates of the attorneys and other professionals providing such services at the time those services are provided to a maximum of $395 per hour.

Contractor will not charge an additional fee for basic computer-assisted research or investigation. In the event a separate fee is charged to Contractor for unusual research, Contractor will pass the fee to CCCFA without mark-up. All other costs incurred by Contractor, including mileage at the IRS rate, will be charged to CCCFA at-cost, without mark-up.

Contractor shall bill monthly in .10-hour increments. Contractor’s federal employer identification number is 75-3031545.

In no event shall the total cost to CCCFA for the services provided herein exceed the **maximum sum of $45,000** for the term of the Agreement.

EXHIBIT C
ADDITIONAL DISCLOSURES

1. CONFLICTS OF INTEREST.

A. Contractor maintains a conflict of interest index which lists all Contractor's clients and matters in which Contractor represents them. Contractor will not represent any party with an interest that may be adverse to an indexed person without first determining if a professional conflict of interest would arise. Contractor proposes to index the following with respect to this matter:

Client:

California Community Choice Financing Authority

Client-Affiliated Parties (CCCFA members agencies):

Central Coast Community Energy

East Bay Community Energy

Marin Clean Energy

Silicon Valley Clean Energy

Adverse Parties:

None

CCCFA agrees to inform Contractor if any of these names are incorrect or if there are other parties with an interest in this matter that Contractor should list such as, for example, any additional constituent members of CCCFA. Unless CCCFA informs Contractor to the contrary, Contractor will assume that the above listing is accurate and complete.

2. CCCFA acknowledges that Contractor represents the following client-affiliated party in special counsel matters unrelated to Contractor's representation of CCCFA for the services provided under this Agreement:

Marin Clean Energy

Contractor is not aware of any adversity between CCCFA and these current or former clients of Contractor that would require consent to Contractor's representation of CCCFA under this Agreement. CCCFA agrees to inform Contractor of any such adversity so Contractor may consider the possibility of conflicts of interest.

3. Contractor has informed CCCFA that it provides advisory and litigation services to cities and counties that are members of CCCFA's constituent members. For example, Contractor serves as City Attorney or Town Attorney to the City of Novato, City of Martinez, and Town of Yountville, which are members of Marin Clean Energy. Contractor provides special counsel or litigation services to many other cities and some counties within the service area of CCCFA's members. Contractor is generally in the business of providing general and special counsel services to local governments in Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Solano counties, as well as elsewhere in California. Provided that Contractor does not provide services to any local government within the service areas of CCCFA's members which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential project of CCCFA, Contractor may continue its practice of providing legal services to local governments without further consent of CCCFA. Contractor shall not provide services in the service areas of CCCFA's members which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential CCCFA project without the informed, written consent of CCCFA.

2. RESOLUTION OF FEE DISPUTES.

CCCFA is entitled to require that any fee dispute be resolved by binding arbitration in Marin County pursuant to the arbitration rules for legal fee disputes of the County Bar Association.

3. FILE MAINTENANCE.

CCCFA agrees that Contractor may, in Contractor's discretion, maintain all or part of CCCFA's client file in electronic format. Contractor may store part or all of CCCFA's documents using secure cloud storage services. If so, Contractor will apply all reasonable methods to maintain the confidentiality of CCCFA's files, just as it does for CCCFA's non-digital information. CCCFA's data will be password protected and encrypted using currently available technology. Clients requiring information from their files may obtain that information only by written request to Contractor.

CCCFA Projects List for 12/7/23 BOD Meeting

1. FY 2022 Financial Statements (Salisbury)
    1. 2022 Audited financial statements completed by Baker Tilly US LLP, sent to Board on 11/10 and will be posted to website.

2. Insurance (McNeil)
    1. Broker AJ Gallager has provided a quote for Directors and Officers insurance. Broker now has 2022 Financial Statements and is reviewing.
3. CCCFA Joint Contracting (McNeil)
    1. WG is exploring the cost/benefit/feasibility of CCCFA issuing an RFP and creating a pool of qualified respondents to provide underwriting / prepay supplier and/or funding recipient services. Discussions are ongoing and no action is recommended at this time.

       No update at this time

4. New Member On-Boarding Packet (Salisbury)
    1. CCCFA has contract with Doug Bird to develop packet for new associate members of CCCFA. No update at this time.
    2.
5. New Member Selection Criteria (Chang)
   Howard is developing some potential criteria for Working Group consideration.

6. CCA prepay savings measurement (McNeil)
    1. WG is researching a “best practice” methodology to measure and compare savings on different prepay transactions on an apples to apples basis

       No update. Garth will distribute slides to working group members for further information.

7. Working Group / Board Communications (Salisbury)
    1. Ongoing Board Meetings
        1. Present project updates on consent as a standing item
        2. Present new projects on regular agenda

8. CCCFA Website Updates (Bankhead–Temp.)
    1. Board Members
        1. Rob Shaw’s replaced Tom Habashi. Rob’s bio is pending
    2. Recent News / Press Releases
        1. Updates to recent news section of website is pending
    3. General Management of website

    1. WG continuing to discuss to “owns” oversight responsibility for website updates

9. CCCFA Email Addresses (Bankhead)

    1. Everyone should have a CCCFA email address now.

RESOLUTION NO. R-2023-12

RESOLUTION OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN COMMODITY SWAP AGREEMENTS WITH BP ENERGY COMPANY IN CONNECTION WITH THE FINANCING OF THE ACQUISITION OF A LONG-TERM SUPPLY OF ELECTRICITY FOR SILICON VALLEY CLEAN ENERGY AUTHORITY AND OTHER MATTERS RELATING THERETO

WHEREAS, pursuant to the provisions of the Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the "Act"), Central Coast Community Energy, East Bay Community Energy Authority (renamed Ava Community Energy Authority on October 24, 2023), Marin Clean Energy, and Silicon Valley Clean Energy Authority, each a joint powers authority established pursuant to the Act, entered into a joint powers agreement (the "Agreement") pursuant to which the California Community Choice Financing Authority (the "Issuer") was organized for the purpose, among other things, of entering into contracts and issuing bonds to assist its members in financing or refinancing energy prepayments;

WHEREAS, Clean Power Alliance of Southern California was previously admitted as a Founding Member (as such term is defined in the Agreement) of the Issuer in accordance with the terms of the Act and the Agreement;

WHEREAS, the Issuer is authorized by its Agreement to purchase and sell electric energy and associated capacity and environmental attributes and to issue revenue bonds to finance or refinance the cost of such transactions, and is vested with all powers necessary to accomplish the purposes for which it was created;

WHEREAS, the Issuer previously adopted Resolution No. R-2023-11 on October 26, 2023 (the "Authorizing Resolution"), approving the issuance of its Clean Energy Project Revenue Bonds, Series 2023, in an aggregate principal amount not to exceed one billion five hundred million dollars ($1,500,000,000), in one or more series (collectively, the "Bonds"), and approving the execution and delivery of certain documents and other matters in connection with the financing of the purchase of certain quantities of electricity from Morgan Stanley Energy Structuring, L.L.C. (the "Energy Supplier") on a prepaid basis pursuant to a Prepaid Energy Supply Agreement between the Issuer and the Energy Supplier (the "Prepaid Energy Supply Agreement") and the selling of such electricity to Silicon Valley Clean Energy Authority (the "Project Participant") pursuant to a Power Supply Contract between the Issuer and the Project Participant (the "Power Supply Contract"), as contemplated in the Authorizing Resolution;

WHEREAS, pursuant to the Authorizing Resolution, the Issuer authorized the execution and delivery of, among other documents, (i) an ISDA Master Agreement, a Schedule thereto and a related Confirmation between the Issuer and Natixis relating to a commodity swap (collectively, the "Natixis Commodity Swap Agreements"), and (ii) a Custodial Agreement (the "Natixis Front-End Custodial Agreement") among the Issuer, Natixis, The Bank of New York Mellon Trust Company, as trustee, and The Bank of New York Mellon Trust Company, as custodian;

WHEREAS, in connection with entering into the Prepaid Energy Supply Agreement and Power Supply Contract, the Issuer has further determined to execute and deliver, in addition to the Natixis Commodity Swap Agreements, the Natixis Front-End Custodial Agreement and the other documents so contemplated by the Authorizing Resolution, an (i) ISDA Master Agreement, together with a Schedule thereto and a related Confirmation between the Issuer and BP Energy Company, as guaranteed by BP Corporation North America, Inc. (the "BP Commodity Swap Counterparty") relating to a commodity swap and any related guaranty (collectively, the "BP Commodity Swap Agreements"), and (ii) a Custodial Agreement (the "BP Front-End Custodial Agreement"), among the Issuer, The Bank of New York Mellon Trust Company, N.A., as trustee, The Bank of New York Mellon Trust Company, N.A., as custodian, and the BP Commodity Swap Counterparty; and

WHEREAS, there have been made available to the Board of Directors of the Issuer (the "Board of Directors") the proposed forms of the BP Commodity Swap Agreements and BP Front-End Custodial Agreement.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the California Community Choice Financing Authority, as follows:

Section 1. The proposed forms of the BP Commodity Swap Agreements and BP Front-End Custodial Agreement, as made available to the Board of Directors for this meeting, are hereby approved. The Chair of the Issuer, the Vice Chair of the Issuer, the Treasurer/Controller of the Issuer, the Secretary of the Issuer or any other person or persons designated by the Board of Directors by resolution to act on behalf of the Issuer (each, including the designees thereof, an "Authorized Officer") is hereby authorized and directed, for and on behalf of the Issuer, to execute and deliver the BP Commodity Swap Agreements and BP Front-End Custodial Agreement in substantially said forms, with such changes and insertions therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof. The Board of Directors hereby finds and determines, pursuant to Section 5922 of the California Government Code, that due consideration has been given for the creditworthiness of the BP Commodity Swap Counterparty, and that the BP Commodity Swap Agreements are designed to reduce the amount or duration of rate, spread or similar risk and result in a lower cost of borrowing when used in combination with the issuance of the Bonds, including entering into the Prepaid Energy Sales Agreement between the Issuer and Energy Supplier and the Power Supply Contract between the Issuer and the Project Participant, the execution and delivery of which was authorized by the Authorizing Resolution, and, in particular, to reduce the rate, spread or similar risk between the variable payments to be made by the Project Participant under the Power Supply Contract and the fixed payments to be made on the Bonds and related interest rate swaps.

Section 2. The Authorized Officers, each acting alone, are hereby authorized and directed, for and in the name and on behalf of the Issuer, to execute and deliver any and all documents necessary to effectuate the transactions contemplated hereby, including but not limited to the BP Commodity Swap Agreements and BP Front-End Custodial Agreement, and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which the Issuer has approved in this Resolution and the BP Commodity Swap Agreements and BP Front-End Custodial Agreement and to consummate by the Issuer the transactions contemplated thereby and hereby, and by BP Commodity Swap Agreements and BP Front-End Custodial Agreement, including any subsequent amendments, waivers or consents entered into or given under or in accordance with such documents, and the retaining of financial, legal or other consultants, as needed, the costs for which may be payable from proceeds of the Bonds.

Section 3. The Board of Directors hereby approves the execution and delivery of all agreements, documents, certificates and instruments, including the BP Commodity Swap Agreements and BP Front-End Custodial Agreement, referred to or otherwise authorized herein with electronic signatures as may be permitted under the California Uniform Electronic Transactions Act and digital signatures as may be permitted under Section 16.5 of the California Government Code using DocuSign.

Section 4. This Resolution shall take effect immediately.

PASSED AND ADOPTED at a regular meeting of the CCCFA Board of Directors on this 7th day of December, 2023, by the following vote:

	YES	NO	ABSTAIN	ABSENT
Robert M. Shaw				
Nick Chaset				
Garth Salisbury				
Girish Balachandran				
Theodore Bardacke				

____
CHAIR, CCCFA

Attest:

____
SECRETARY, CCCFA

December 7, 2023

TO: CCCFA Board of Directors

FROM: Garth Salisbury, Member, Board of Directors
and CCCFA Treasurer/Controller

RE: Fiscal Year 2024 Operating Fund Budget (Agenda Item #06)

ATTACHMENT: Proposed FY 2024 Operating Budget

Dear CCCFA Board of Directors:

SUMMARY:

Pursuant to Section 4.09 of the CCCFA Joint Powers Agreement, the CCCFA Board must approve the budget for the ensuing fiscal year. CCCFA's fiscal year runs from January 1 through December 31 (calendar year basis). CCCFA will need to adopt a budget for the 2024 fiscal year before the start of the ensuing fiscal year that begins on January 1, 2024. The Board may revise the budget from time-to-time as necessary to address contingencies and unexpected expenses. Approval of the Budget by the Board authorizes the expenditures of amounts within each budget line item and for the Treasurer/Controller to:

1. Spend funds within the limits and contingencies set forth in each budget line item; and
2. Invoice the Founding and Associate Members ("*Members*") to fund the budget

CCCFA has been operating with a single Operating Budget which will be funded by the Members annually or as needed throughout the fiscal year. The Treasurer/Controller will determine, after consultation with the Board, if additional funding will be required to fund the operating expenses of the Authority during the fiscal year.

It is currently anticipated that any amounts unspent at the end of the 2023 fiscal year will be rolled over into the ensuing fiscal year and applied to the 2024 Operating Fund Budget with the effect of reducing the cash calls to the Members. In December of 2022, the Board instituted a $20,000 fee for each new deal approved by the Board and issued through CCCFA. Transactions approved and executed subsequent to this date have been paying this fee which is funding the additional costs associated with approving and implementing new transactions. CCCFA collected $80,000 in new deal fees in 2023.

The attached proposed budget was prepared after reviewing contracts in place for various products and services, conversations with possible vendors of necessary services to CCCFA and estimates of costs for staff time provided by the Members to CCCFA in accordance with the memorandums of understanding (MOUs) executed by each Member. The proposed amount of the 2024 budget to fund the operations of CCCFA for the 2024 fiscal year totals $317,479.

However, there will be an anticipated surplus of approximately $107,479 that will remain in the Operating Fund at the end of the current fiscal year. Additionally, we are projecting three new deals in 2024 that will generate $60,000 in new deal fees. The $60,000 in new deal fees added to the surplus from the current fiscal year totals a projected $167,479. It is recommended that we maintain an Operating Fund Reserve in 2024 totaling $30,000. The net amount to be funded by the Members to fund fiscal 2024 operations is $180,000 or $30,000 per Member.

If the Board determines that CCCFA should not maintain a Reserve, the net amount funded by Members would be $150,000 or $25,000 per Member

Ongoing Transaction Specific Costs:

Since the 2022 budget was approved by the Board, it has been determined that costs incurred for each prepayment transaction will be paid exclusively by those Members directly involved in each transaction. Initial costs related to structuring, pricing and closing the transaction will be paid at closing from bond proceeds. Ongoing transaction-specific costs such as rating agency surveillance fees, trustee fees, accounting fees, arbitrage rebate, dissemination agent fees, etc. are to be paid by the participating CCA in each transaction through amounts paid to the Trustee and collected in an Administrative Fee Account or other such account in each respective Trust Indenture. Ongoing deal specific expenses invoiced to CCCFA will be paid through requisitions by the CCA to the Trustee and paid from the monies collected in the Administrative Fee Account or other such account. Members that are not participating in a specific prepayment transaction will not be responsible for any transaction-specific costs arising therefrom either at closing or on an ongoing basis.

Operating Fund Budget Highlights:

Attached at the end of this staff report is the proposed 2024 Operating Fund Budget designed to cover estimated costs through the end of 2024. The following descriptions provide detail into how the budget line items were derived:

Accounting: CCCFA has engaged Maher Accountancy to provide ongoing accounting, billing and reconciliation services to CCCFA for ongoing operations. Maher Accountancy provides these services to a number of the Members in their day-to-day operations. Maher Accountancy charges a $2,000 monthly fee for these services to CCCFA including the necessary work to complete the annual audit for an annual total of $24,000. Maher Accountancy will also absorb the costs of the ongoing use of Bill.com for invoice approvals and for QuickBooks accounting software in the $2,000 monthly fee.

Additionally, Maher Accountancy charges an additional $2,000 month for each prepayment transaction completed through CCCFA as a transaction-specific cost. These and other transaction-specific incremental costs are to be paid by the CCA from its respective Administrative Fee Account or other such account held by their deal Trustee.

Financial Audit: CCCFA has a contract with Baker Tilly to perform the annual financial audit at a cost of $10,000/year plus other incidental expenses. Given the number of transactions completed in 2023 (7) we expect that Baker Tilley will require additional amounts for the audit. We have budgeted a total of $15,000 for any additional costs incurred by Baker Tilly and billed to CCCFA to complete the 2023 audit.

Liability Insurance including Cyber and Directors and Officers Liability/Errors and Omissions coverage: The working group continues to face significant difficulty in procuring insurance for CCCFA. CCCFA has engaged an insurance consultant, Woodruff Sawyer, who has advised on the nature and amounts of insurance that we should try to secure. David McNeil has requested that the risk management firm of Arthur J. Gallagher request quotes from carriers. We have received one quote so far with a number of other carriers declining and others are still reviewing. The cost for $3 million in coverage is approximately $140,000 plus possibly additional placement fees. The 2023 budget includes an amount of $150,000 as an estimate of the cost of insurance for the year.

The issue of insurance, specific types and the amounts of coverage to be secured will be brought back to the Board once we have compiled all final bids/offers. Depending upon the outcome of this procurement process and the Board's decision about coverages, additional amounts may need to be budgeted during Fiscal 2024 to cover the cost of insurance for CCCFA.

Professional Services (Outside Counsel) $75,000: CCCFA's General Counsel, David Ruderman of Colantuono, Highsmith & Whatley, PC, provides his services through a contract that expires at the end of 2025. It is anticipated that the cost for General Counsel services will cost approximately $50,000/year and the contract will need to be amended to increase the "not-to-exceed" amount to facilitate this annual cost.

Additionally, CCCFA has entered into a contract with Chapman and Cutler to provide various services for the Authority related to member education, resolution templates, continuing disclosure education and other services. The contract is for a not-to-exceed amount of $25,000. These amounts were not expended in 2023 and so are assumed to be carried over into 2024 as additional Outside Counsel Costs.

CCA Staff Reimbursements: Staff Reimbursements refers to Members' professional staff time provided to CCCFA subject to reimbursement by CCCFA in accordance with the Member MOUs. This amount has been estimated based upon a combination of working group staff time needed to prepare for Board meetings and other general Authority business, processing hours per month for each month there is a Board meeting at fully loaded reimbursable staff time. Based upon member estimates of staff time needed for the 2024 Fiscal Year, the budgeted amount totals $25,000. Regarding staff time for the Treasure/Controller see Other Budget Line Items below.

Note that the JPA Agreement does not contemplate reimbursing the CCCFA Board Members for time/hours utilized to participate in Board meetings. Consequently, the assumed CCA staff time reimbursement does not assume hours related to Board member participation in monthly meetings.

Other Budget Line Items: Other anticipated budget items include $25,000 for Other Administrative costs including the staff reimbursable costs for the Treasurer/ Controller to process and facilitate the prepayment bond issues, securities and ISDA membership and filing fees, website maintenance, domain name and CCCFA phone number and voicemail, $1,479 for bank fees to maintain bank accounts, and $2,000 for Contingencies. The Treasurer/Controller will allocate previously appropriated contingency dollars as needed to satisfy expenditure requirements of the individual budget items.

Fiscal Impact: The total cost of the 2023 Operating Budget would be $317,479. With the anticipated carry-over from the 2022 budget in the amount of $107,479, estimated deal fees of $30,000 and maintaining a Reserve of $30,000, the net fiscal impact would be $180,000 or $30,000 per Member.

If the Board determines that CCCFA should not maintain a Reserve, the net amount funded by Members would be $150,000 or $25,000 per Member.

Recommendation: Approve the CCCFA Fiscal 2023 Operating Fund Budget with a Reserve of $30,000.

CCCFA California Community Choice Financing Authority

CCCFA Fiscal 2024 Operating Fund Budget

Fiscal Year: January 1 to December 31.

CCCFA Budget	Proposed Budget FY 2024	Budget Update Dec 1, 2023	Approved Budget FY 2023
Estimated Opening Balance	$107,479	27,845	27,845
Member Contributions and Fees*	240,000	185,325	57,555
Accounting	24,000	20,000	24,000
Audit	15,000	12,731	12,000
Bank Fees	1,479	130	3,000
O&D, E&O, Liability Insurance	150,000	-	20,000
Professional Services (Outside Counsels)	75,000	47,000	70,000
CCA Staff Reimbursement	25,000	20,000	26,325
Other Admin Costs	25,000	5,830	5,000
Contingency	2,000	-	5,000
Total Budget	317,479	105,691	165,325
Estimated Remaining Balance (Reserves)	**30,000**	**107,479**	

* Cash Call per member assuming 3 new deals	**$30,000**
* Cash Call per member without reserves	**$25,000**