



California Community Choice Financing Authority

**California Community Choice Financing Authority (CCCFA)
Board of Directors Meeting
Thursday, June 27, 2024
1:00 P.M.**

Via Teleconference at the Following Locations:

- Clean Power Alliance – 810 S. Grand, Ste 400, Los Angeles, CA 90017
- Ava Community Energy – 1999 Harrison Street, Suite 2300, Oakland, CA 94612
- Silicon Valley Clean Energy – 333 W. El Camino Real, Ste 330, Sunnyvale, CA 94087
- Central Coast Community Energy – Southern Office – 71 Zaca Lane, Suite 140, San Luis Obispo, CA 93401
- 1839 Iron Point Road, #120 Folsom, CA 95630

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

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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 5/23/24 meeting minutes

C.2 Working Group Project List: The Board will receive an update on the Working Group's current and planned projects

5. Consider Approval of Professional Services Agreement with Garth Salisbury to Provide Treasurer/Controller Services – (Discussion/Action)

6. Board Member Announcements (Discussion)

7. Adjourn

The next CCCFA meeting will be held on July 25, 2024 at 1pm.

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

Draft Minutes

**California Community Choice Financing Authority (CCCFA)
Board of Directors Meeting
Thursday, May 23, 2024
1:00 P.M.**

Via Teleconference at the Following Locations:

- Silicon Valley Clean Energy – 333 W. El Camino Real, Ste 330, Sunnyvale, CA 94087
- Marin Clean Energy – 1125 Tamalpais Ave, San Rafael, CA 94901
- Clean Power Alliance – 810 S. Grand, Ste 400, Los Angeles, CA 90017
- Central Coast Community Energy - 70 Garden Court, Suite 300, Main Conference Room - Monterey, CA 93940

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:

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Agenda

1. Call to Order & Roll Call

Present:

Robert Shaw – Central Coast Community Energy (CCCE)

Monica Padilla – Silicon Valley Clean Energy (SVCE)

Garth Salisbury – Marin Clean Energy (MCE)

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Ted Bardacke – Clean Power Alliance (CPA)

Not Present:

Nick Chaset – Ava Community Energy (Ava)

Staff and Others:

Adrian Bankhead – Board Clerk

David Ruderman – General Counsel

David McNeil – Clean Power Alliance

Brian Kimball – San Jose Clean Energy

Zach Struyk – San Jose Clean Energy

Juan Lopez – Central Coast Community Energy

Amrit Singh – Silicon Valley Clean Energy

Niels Zellers – Ava Community Energy

Dewayne Woods – Central Coast Community Energy

Zakary Liske – Silicon Valley Clean Energy

2. Agenda Update and/or Changes

No updates or changes were requested.

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.

Chair Bardacke opened the public comment period. There were no comments.

4. Consent Calendar (Discussion/Action)

C.1 Consider approval of 4/25/23 meeting minutes

C.2 Working Group Project List: The Board will receive an update on the Working Group's current and planned projects

Action: It was M/S/C (Shaw/Salisbury) to approve the consent calendar. The motion carried 4/0/1:

Approval of Consent Agenda Vote:

CCCE – Yes

SVCE – Yes

MCE – Yes

CPA – Yes

Ava – Not Present

5. Board will review and provide direction on draft membership criteria for CCCFA (Discussion)

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Chair Bardacke initiated the conversation by inviting an overview from the working group involved in drafting the criteria. **Director Salisbury** led the discussion about the draft membership criteria.

Director Padilla asked if new associate members would contribute to the initial setup costs of CCCFA. **Director Salisbury** explained that new members would pay a \$50,000 joining fee and \$20,000 per transaction.

Vice-Chair Shaw questioned the necessity of creating additional barriers to founding membership and having experience with a prepay transaction before becoming a founding member. He asked if the working group could think about alternative ways that new members can develop familiarity. Separately, he recommended against CCCFA selecting or determining the accreditation or qualifications of advisors for new members due to potential liability issues. Finally, Vice-Chair Shaw recommended utilizing ad hoc groups to evaluate new member applications.

Chair Bardacke recommended defining accreditation precisely, such as reference to a third-party accrediting agency, to avoid subjective judgments, which could lead to legal challenges. **David Ruderman** confirmed that CCCFA, as a market participant, could set reasonable criteria for its members but advised against vague qualifications.

Director Padilla asked if every prepay transaction deal should flow through CCCFA, or if a separate body should be created to complete prepay transactions in a way that limits CCCFA's risk.

Chair Bardacke stated that membership in the CCCFA does not guarantee that the body would approve issuances. He asked for the body to think about other checkpoints that can be built into the approval process.

6. Consider Approval of Resolution No. 2024-1 – A Resolution of the Board of Directors of the California Community Choice Financing Authority (CCCFA) approving the City of San Jose as an Associate Member of CCCFA (Discussion/Action)

Chair Bardacke introduced the item and invited **Brian Kimball** to provide an overview of the City of San Jose's status and its interest in membership. Mr. Kimball detailed the city's readiness, noting contracts with Morgan Stanley as its prepay supplier, PFM, Inc. as the lead Municipal Advisor, and additional advisors, including Prag, Orrick, and Hall Energy Law.

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Action: It was M/S/C (Padilla/Shaw) to approve Resolution No. 2024-1. The motion carried 4/0/1:

Approval of Resolution No. 2024-1 Vote:

CCCE – Yes

SVCE – Yes

MCE – Yes

CPA – Yes

Ava – Not Present

7. Board Member Announcements (Discussion)

Director Salisbury proposed raising the hourly reimbursement rate to better reflect the current staffing levels involved in CCCFA activities. **Vice-Chair Shaw** asked for the item to be brought back as a future budget 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.

**CCCFA Treasurer/Controller's Working Group Projects List for
June 27, 2024 Board of Directors Meeting**

1. Treasurer/Controller
 - a. Salisbury leaving MCE in June and beginning at SCP in July, but remains Treasurer/Controller.
 - b. McNeil, Salisbury, Ruderman to confer regarding options for Chair, including services agreement, Board action, and potential services agreement with SCP.

2. Change to annual remediation/true-up for Morgan Stanley deals
 - a. Older Ava and SVCE deals seeking to move to annual rather than monthly remediation/true-up.
 - b. No new credit review required, this is solely a tax issue.
 - c. Salisbury will ensure we have obtain bond counsel opinion that such a change does not affect bondholder security before approving amendment.

3. CPA new prepay deals planned for CCCFA Board consideration at July meeting
 - a. At the July CCCFA Board meeting CPA plans to submit for approval prepay docs for each of RBC, Morgan Stanley, and Goldman Sachs.
 - b. Above Prepay docs will be approved by CPA's board at its July 11 meeting.

4. New Member Selection Criteria
 - a. Debrief on Board discussion and next steps.
 - b. Proposal to create a separate policy governing approval of new transactions separate and apart from new member selection criteria.
 - c. Ruderman incorporated suggested revisions and distributed to WG for feedback—awaiting feedback.
 - d. Once complete, drafts of both new member and new transaction criteria will go to Board for discussion and direction.

5. WG considering whether transaction fee is the best method for funding due to its intermittent nature and is considering more consistent revenue streams.
 - a. Possible options include a monthly/quarterly fee based on prepayment flows or deal size. An ongoing fee based upon flows — and savings that a CCA is experiencing — may make more sense to the ongoing viability and financial stability of CCCFA.
 - b. McNeil to begin list of the activities performed by CCCFA.
 - c. Once we have a list we can ensure the work is spread equitably across WG members and hire outside help as needed. May also assist with budget and Board education.

6. Insurance (McNeil)
 - a. No update.
 - b. Will contact broker for other insurance product options.

7. CCA prepay savings measurement (McNeil)
 - a. No update. WG is researching a “best practice” methodology to measure and compare savings on different prepay transactions on an apples to apples basis.
 - b. Discussed alternative saving metrics and seeking feedback from WG in July.
8. CCCFA Joint Contracting (McNeil)
 - a. 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.
 - b. CPA plans to receive its board’s authorization to transact with multiple banks this summer and will be coming to CCCFA Board in July—see above.
9. New Member On-Boarding Packet (Salisbury)
 - a. Doug Bird under contract with CCCFA to prepare on-boarding packet. Work remains in process.
10. Update on potential new CCCFA members (Salisbury)
 - a. No updates.
11. Distribution list protocol and consistency (Chang)
 - a. WG worked with members and IT to update and deal distribution lists and establish consistent policy for same.
 - b. Bankhead to follow-up on a few outstanding deals and work with IT (Jelar) to update.
12. CCCFA Website Updates (Lamb Consulting/)
 - a. Website updated. WG and others may send website updates/concerns to Adrian who will forward to Lamb Consulting.
13. Preparation of records and email retention policy (Ruderman)
 - a. Work in progress to prepare draft for WG consideration



California Community Choice Financing Authority

Staff Report – Item 5

Item 5: Approval of Professional Services Agreement with Garth Salisbury to Provide Treasurer/Controller Services

From: David J. Ruderman, General Counsel

Date: 6/27/2024

Attachment: Professional Services Agreement with Garth Salisbury

RECOMMENDATION

The Board is being asked to approve a Professional Services Agreement with Garth Salisbury to continue to provide services as Treasurer/Controller.

BACKGROUND

Garth Salisbury was appointed by CCCFA's Board as its Treasurer/Controller at its first meeting in 2021. Concurrently, Mr. Salisbury served as Marin Clean Energy's (MCE) representative on CCCFA's Board and was employed by MCE as its Chief Finance Officer and Treasurer. On June 18, 2024, Mr. Salisbury left his position at MCE and, on July 16, 2024, will begin a new position as the Chief Financial Officer of Sonoma Clean Power. MCE replaced Mr. Salisbury as its representative on the CCCFA Board with Vicken Kasarjian on June 7, 2024 in light of his pending resignation.

While Mr. Salisbury was an MCE employee, CCCFA reimbursed MCE for Mr. Salisbury's time spent on his CCCFA Treasurer/Controller duties. Because Mr. Salisbury is no longer at MCE, I have prepared a Professional Services Agreement (PSA) to allow Mr. Salisbury to continue performing the duties of Treasurer/Controller.

ANALYSIS & DISCUSSION

CCCFA's Joint Powers Agreement (JPA) and Bylaws permit Mr. Salisbury to remain as Treasurer/Controller irrespective of whether he is a CCCFA Board member or employed by a member of CCCFA. Section 4.06(b) of the JPA and Section 2.5 of the Bylaws specify the Treasurer/Controller

need not be a Director of the CCCFA. The JPA and Bylaws do not impose any limitations on hiring an outside consultant to perform the duties of the Treasurer/Controller.

For Mr. Salisbury to continue performing the duties of Treasurer/Controller, staff has prepared the attached PSA which provides:

- Compensation at a rate of \$150 per hour;
- A "not-to-exceed amount" of \$25,000 (~166 hours of work);
- CCCFA will indemnify Mr. Salisbury against any third party claims arising out of his performance of Treasurer/Controller services; and
- Mr. Salisbury will be covered by CCCFA's Directors & Officers Liability Insurance.

BOARD OPTIONS

In addition to the recommended action, the Board has additional options, such as:

1. CCCFA could pursue a lease of Mr. Salisbury's services from his new employer, Sonoma Clean Power (SCP), once he begins employment there on July 15, 2024. This would require SCP and CCCFA to enter into a services agreement wherein CCCFA reimbursed SCP for Garth's time spent on CCCFA business, though he would remain an employee of SCP. This would be similar to how CCCFA currently reimburses its member CCAs for time devoted to the working group, etc. However, it would not address Mr. Salisbury's Treasurer/Controller services for the period between employment from June 18 to July 16.
2. CCCFA could hire Garth as a part-time employee. This would entail additional expense and complexity for CCCFA, which currently has no employees.
3. CCCFA could appoint a new Treasurer/Controller. This would require time to train and onboard a new Treasurer and there will likely be items that will nonetheless require Mr. Salisbury's institutional knowledge. This would likely cause disruption to CCCFA's day-to-day operations.

FISCAL IMPACT

CCCFA may compensate Mr. Salisbury for services performed in an amount up to \$25,000. The rate at which Mr. Salisbury would be compensated is commensurate with the amount CCCFA would have reimbursed MCE had he remained an employee there.

RECOMMENDED MOTION

Move to approve the attached Professional Services Agreement with Garth Salisbury for Treasurer/Controller Services.

Attachments:

1. Professional Services Agreement with Garth Salisbury for Treasurer/Controller Services

**PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTANT SERVICES**

California Community Choice Financing Authority (CCCFA) / Garth Salisbury

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into as of the last date indicated below by and between California Community Choice Financing Authority, a California Joint Powers Authority (“CCCFA”), and Garth Salisbury, an individual (“Consultant”) (collectively, “parties”).

2. RECITALS

- 2.1** CCCFA has determined that it requires the following professional services from a consultant: Treasurer/Controller services
- 2.2** Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3** Consultant represents that it has no known relationships with third parties, CCCFA Board members, or employees of CCCFA which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 et seq.), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, CCCFA and Consultant agree as follows:

3. DEFINITIONS

- 3.1** “Agreement Administrator” means **Ted Bardacke, Chair of the Board of Directors**. The Agreement Administrator shall be the principal point of contact at CCCFA for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. CCCFA reserves the right to change this designation upon written notice to Consultant.

- 3.2** “Approved Fee Schedule” means such compensation rates as are set forth in “Exhibit B,” attached hereto and fully incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.3** “Commencement Date” means June 18, 2024.
- 3.4** “Maximum Amount”: The highest total compensation and costs payable to Consultant by CCCFA under this Agreement. The Maximum Amount under this Agreement is Twenty-Five Thousand Dollars (\$25,000.00).
- 3.5** “Scope of Services” means such professional services as are set forth in “Exhibit A,” attached hereto and fully incorporated herein by this reference.
- 3.6** “Termination Date” means June 18, 2025.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall terminate at 11:59 p.m. on the Termination Date unless extended in writing by mutual agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by CCCFA in writing and incorporated in written amendments to this Agreement.

5. CONSULTANT’S SERVICES

- 5.1 Services.** Consultant shall perform the services identified in the Scope of Services. CCCFA shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.
- 5.2 Coordination with CCCFA.** In performing services under this Agreement, Consultant shall coordinate all contact with CCCFA through its Agreement Administrator.
- 5.3 Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.

- 5.4 Professional Standards.** Consultant shall perform all work to the standards of Consultant's profession and in a manner reasonably satisfactory to CCCFA. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.5 Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such work would present a conflict interfering with performance under this Agreement. However, CCCFA may consent in writing to Consultant's performance of such work.
- 5.6 Campaign Contributions.** This Agreement is subject to Government Code Section 84308, as amended by SB 1439. That statute requires Consultant to disclose any campaign contribution by the Consultant or the Consultant's agent to CCCFA Board members or other CCCFA officials of more than two-hundred and fifty dollars (\$250) in the aggregate within the preceding twelve (12) months. Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form, Exhibit C, with Consultant's execution of this Agreement.
- 5.7 CCCFA Retains Responsibility for Contracting.** Consultant's duties and services under this Agreement shall not include preparing or assisting the CCCFA with any portion of the CCCFA's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with CCCFA. CCCFA entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with CCCFA to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this Agreement.
- 5.8 Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Garth Salisbury shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without CCCFA's prior written consent.

- 5.9 Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to CCCFA that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of CCCFA. If CCCFA and Consultant cannot agree as to the substitution of key personnel, CCCFA may terminate this Agreement for cause.
- 5.10 Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits, licenses, and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional and/or business licenses, encroachment permits and building and safety permits and inspections. Contractor shall promptly provide copies of such licenses and registrations to CCCFA at the request of CCCFA.
- 5.11 Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 5.12 Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to CCCFA under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of CCCFA. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of CCCFA or as part of any audit of CCCFA, for a period of three (3) years after final payment under this Agreement.
- 5.13 Skilled and Trained Workforce Requirement.** When the use of a skilled and trained workforce is required to complete a contract pursuant to existing law, this contract is subject to such requirement and Consultant agrees to use a skilled and trained workforce.

6. SUBCONTRACTING

- 6.1 General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.

- 6.2 Consultant Responsible.** Consultant shall be responsible to CCCFA for all services to be performed under this Agreement.
- 6.3 Identification in Fee Schedule.** All subcontractors shall be specifically listed and their billing rates identified in the Approved Fee Schedule, Exhibit B. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.
- 6.4 Compensation for Subcontractors.** CCCFA shall pay Consultant for work performed by its subcontractors, if any, only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. CCCFA shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.

7. COMPENSATION

- 7.1 General.** CCCFA agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by CCCFA in advance.
- 7.2 Invoices.** Consultant shall submit to CCCFA an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.
- 7.3 Taxes.** CCCFA shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4 Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5 Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by CCCFA through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of CCCFA.

7.6 CCCFA Satisfaction as Precondition to Payment. Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until CCCFA is satisfied that the services are satisfactory.

8. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. This Agreement is subject to Prevailing Wage Laws, for all work performed under this Agreement for which the payment of prevailing wage is required by those laws.

9. DATA, CONFIDENTIALITY, AND INTELLECTUAL PROPERTY

9.1 Ownership and Use Rights.

9.1.1 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.

9.1.2 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. 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.

9.1.3 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.

9.1.4 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.

9.2 Equitable Relief. Each Party acknowledges that a breach of this Section 9 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.

10. RELATIONSHIP OF PARTIES

- 10.1 General.** Consultant is, and shall at all times remain as to CCCFA, a wholly independent contractor.
- 10.2 No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of CCCFA or otherwise to act on behalf of CCCFA as an agent. Neither CCCFA nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of CCCFA.
- 10.3 Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the CCCFA as an employer. Consultant shall not be entitled to any benefits. CCCFA makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.

11. INDEMNIFICATION

CCCFA agrees to indemnify, defend and hold harmless Consultant from and against any and all claims, actions, and damages that may be asserted by any third party against Consultant arising out of the services Consultant renders under this Agreement.

12. INSURANCE

CCCFA and Consultant agree that Consultant, serving as an officer at the direction of and with the consent of CCCFA, shall constitute an "Insured Person" within the scope of CCCFA's Directors and Officers Liability Insurance with regards to any and all liability arising out of services Consultant renders under this Agreement. CCCFA's insurance policies shall be primary as respects any claims related to or as the result of Consultant's work.

13. 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 shall have rights and nor shall any Contractor make any claims, take any actions, or assert any remedies against any of CCCFA's constituent members in connection with this Agreement.

14. MUTUAL COOPERATION

14.1 CCCFA Cooperation in Performance. CCCFA shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

14.2 Consultant Cooperation in Defense of Claims. If any claim or action is brought against CCCFA relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that CCCFA may require in the defense of that claim or action.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and CCCFA's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to CCCFA:

Ted Bardacke
Chair, Board of Directors
CCCFA
1125 Tamalpais Ave,
San Rafael, CA 94901

Telephone: (415) 335-6115
E-mail: tbardacke@cleanpoweralliance.org

If to Consultant:

Garth Salisbury
405 Tennessee Glen Way
Mill Valley, CA 94941

Telephone: 415-713-8456

Facsimile:

E-mail: garth.a.salisbury@gmail.com &
gsalisbury@cccfa.org

With courtesy copy to:

David J. Ruderman, CCCFA General Counsel
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, California 95945-5091
Telephone: (530) 432-7357
Facsimile: (530) 432-7356
E-mail: druderman@chwlaw.us

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 5.12 (Records), Section 11 (Indemnification), Section 13 (No Recourse Against Constituent Members of CCCFA), Section 14.2 (Consultant Cooperation in Defense of Claims), Section 16 (Surviving Covenants), Section

17 (Interpretation of Agreement), and Section 19 (General Provisions) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

17. TERMINATION

- 17.1 Termination.** CCCFA may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All CCCFA data, documents, objects, materials or other tangible things shall be returned to CCCFA upon the termination or expiration of this Agreement.
- 17.2 Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement by CCCFA upon 30 days' notice.
- 17.3 Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. CCCFA shall have the benefit of such work as may have been completed up to the time of such termination.
- 17.4 Remedies.** CCCFA retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

18. INTERPRETATION OF AGREEMENT

- 18.1 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.2 Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and its exhibits, the provisions of this Agreement shall prevail. In the event of any material discrepancy between the express provisions of this Agreement and the exhibits of this Agreement, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between CCCFA and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by CCCFA and Consultant.
- 18.3 Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears,

the language of the section or paragraph shall control and govern in the construction of this Agreement.

- 18.4 Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.5 Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.6 No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this Agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

19. GENERAL PROVISIONS

- 19.1 Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by CCCFA. CCCFA shall grant such consent if disclosure is legally required. All CCCFA data shall be returned to CCCFA upon the termination or expiration of this Agreement.
- 19.2 Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with CCCFA's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, CCCFA shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of CCCFA, during the term of his or her service with CCCFA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 19.3 Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without CCCFA's prior written consent, and any attempt to do so shall be void and of no effect. CCCFA shall not be obligated or liable under this Agreement to any party other than Consultant.
- 19.4 Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 19.5 No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 19.6 Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 19.7 Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, sexual orientation, or any other unlawful basis. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 19.8 Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by CCCFA or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by CCCFA or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.
- 19.9 Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in CCCFA's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 19.10 Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or

remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.

19.11 Attorneys' Fees. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs expended in the action.

19.12 Venue. The venue for any litigation shall be Marin County, California and Consultant hereby consents to sole jurisdiction in Marin County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

19.13 Counterparts; Electronic Signatures. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

19.14 Recitals. The Recitals are incorporated by this reference.

[Signature page follows]

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

“CCCFA”

California Community Choice Financing Authority

By: _____
Signature

Printed: _____

Title: _____

Date: _____

“Consultant”

Garth Salisbury

By: _____
Signature

Printed: _____

Date: _____

Attest:

By: _____
Adrian Bankhead, CCCFA Clerk

Date: _____

Approved as to form:

By: _____
David J. Ruderman, General Counsel

Date: _____

“EXHIBIT A” SCOPE OF WORK

Contractor shall provide the following Treasurer/Controller 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 Treasurer/Controller of the California Community Choice Financing Authority and shall use his best efforts to provide such services in a competent and professional manner. Contractor shall provide all services to CCCFA of the kind and nature typically provided by an in-house Treasurer/Controller unless specifically stated otherwise in this Agreement or otherwise directed in writing by CCCFA.

These Treasurer/Controller Services shall also include:

- Provide all services delegated to the Treasurer/Controller in CCCFA’s Joint Powers Agreement, including but not limited to section 4.06(b), and CCCFA’s Bylaws, including but not limited to section 2.5;
- In the absence of a General Manager, provide for CCCFA’s day-to-day operations and management.
- Supervise the activities of all contractors retained by CCCFA, other than legal counsel supervised by General Counsel, and review the work of such contractors on behalf of CCCFA.
- Provide regular oversight of CCCFA’s prepay issuances and respond to inquiries from counterparties and third parties regarding same.
- Review individual transaction documentation as required to provide necessary representations and certificates as needed for continuing disclosure, arbitrage rebate and other related bond or ISDA contract documentation.
- Ensure timely completion of CCCFA’s annual audit of financial statements by CCCFA’s independent auditor.
- Ensure that participant CCAs are providing on a timely basis documentation, representations, invoices and certifications as required under individual deal documents.
- Oversee and ensure timely payment and invoicing for CCCFA’s accounts payable and accounts receivable.
- Ensure that all required memberships and registrations for an issuer of bonds and participant in interest rate and commodities swaps in the State of California including but not limited to the International Swap Dealers Association, CDIAC, Legal Entity Identifier code through LEI Worldwide and others are maintained in good standing.
- Prepare annual budget for review and approval by CCCFA’s Board of Directors, including any necessary budget adjustments during the fiscal year.
- Meet regularly with the Treasurer/Controller’s working group to assist with CCCFA’s day-to-day operations and provide recommendations to CCCFA’s Board of Directors.
- Provide regular reports on CCCFAs’ operations to the Board of Directors or upon request by the CCCFA Board.

**“EXHIBIT B”
APPROVED FEE SCHEDULE**

Garth Salisbury shall provide Treasurer/Controller services at a billing rate of \$150.00 per hour.

**“EXHIBIT” C
CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Local governments are subject to the campaign disclosure provisions detailed in Government Code Section 84308.

Please carefully read the following information to determine if the provisions apply to you. If you determine that the provisions are applicable, the Campaign Disclosure Form must be completed and returned to the CCCFA with your application.

No CCCFA Board member or other CCCFA official shall accept, solicit, or direct a campaign contribution of more than \$250 from any party¹ or agent² for 12 months after the CCCFA approves a contract. This prohibition commences when an application is filed, or a proceeding is otherwise initiated.

A party to a CCCFA proceeding shall disclose on the record of the proceeding any campaign contribution of more than \$250 by a party or agent to any CCCFA member or other CCCFA official during the preceding 12 months. No party to a CCCFA proceeding, or agent, shall make a campaign contribution to a CCCFA Board member or other CCCFA official during a proceeding and for 12 months after the CCCFA approves a contract.

A CCCFA Board member or other CCCFA official who received a campaign contribution of more than \$250 within the preceding 12 months from any party, or agent, to a proceeding shall disclose that fact on the record of the proceeding, and shall abstain from participating in the proceeding. However, if he or she returns the portion of a campaign contribution in excess of \$250 within 30 days of knowing about the contribution and the relevant proceeding, he or she may participate in the proceeding.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding.

² "Agent" is defined as a person who represents a party in connection with a proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closed corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

To determine whether you or your agent made a campaign contribution of more than \$250 to a CCCFA Board member or other CCCFA official within the preceding 12 months, you must aggregate all such contributions.

Names of current CCCFA Board members and other CCCFA officials are available on CCCFA's website. If you have questions about Government Code Section 84308, FPPC regulations, or the Campaign Disclosure Form, please contact the CCCFA Clerk.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Document:

- License
- Lease
- Permit
- Franchise
- Other Contract
- Other Entitlement

Name and address of any party, or agent, who has contributed more than \$250 to any CCCFA Board Member or other CCCFA official within the preceding 12 months:

1. _____
2. _____
3. _____

(b) Date and amount of contribution:

Date _____ Amount \$ _____

Date _____ Amount \$ _____

(c) Name of CCCFA Board member or other CCCFA official to whom contribution was made:

1. _____
2. _____
3. _____

(d) Check here If no contributions have been made to any member or other CCCFA official in the preceding 12 months.

(e) I certify that the above information is provided to the best of my knowledge.

Printed Name _____

Signature _____

Date _____ Phone _____