

## Desert Community Energy Notice

# Desert Community Energy Board Meeting Agenda Monday, February 26, 2018 2:30 p.m.

Coachella Valley Association of Governments  
73-710 Fred Waring Drive, Palm Desert  
Suite 200 Conference Room  
(760) 346-1127

THIS MEETING IS HANDICAPPED ACCESSIBLE.  
ACTION MAY RESULT ON ANY ITEMS ON THIS AGENDA.

1. **CALL TO ORDER**

2. **ROLL CALL**

A. **Member Roster**

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3. **PUBLIC COMMENTS**

This is the time and place for any person wishing to address Desert Community Energy on items not appearing on the agenda to do so.

4. **BOARD MEMBER / DIRECTOR COMMENTS**

5. **CONSENT CALENDAR**

A. **Approve minutes of January 22, 2017 Desert Community Energy Board Meeting**

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**6. DISCUSSION / ACTION**

- A. Update on Our Progress/Status of CPUC Decision – Tom Kirk P7**

**RECOMMENDATION:** Information only.

- B. Approve Services Agreements with Lean Energy US and Calpine Energy Solutions, LLC – Katie Barrows P9**

**RECOMMENDATION:** Approve the attached Services Agreements between Desert Community Energy and LEAN Energy US (LEAN), and Desert Community Energy and Calpine Energy Solutions, LLC (Calpine), to provide operational services for a Community Choice Aggregation (CCA) program and authorize Executive Director to make changes to the contract language in consultation with the Chair.

- C. Authorize release of Request For Proposals for Banking Services – Benjamin Druyon P46**

**RECOMMENDATION:** Authorize DCE Staff to release Request For Proposals for Banking Services.

- D. Review of DCE Schedule Prior to Launch and Upcoming Decisions – Jeff Fuller**

**RECOMMENDATION:** Presentation.

**7. INFORMATION**

- 1) Attendance Roster P48
- 2) 2018 DCE Board Meeting Schedule – there may be a possible change to the March meeting date. P49

**8. ANNOUNCEMENTS**

Upcoming Meetings at 73-710 Fred Waring Drive, Suite 200, Palm Desert

The next Board Meeting of Desert Community Energy will be on March 19, 2018 at 2:30 p.m.

**9. ADJOURNMENT**

ITEM 2A



# DESERT COMMUNITY ENERGY

Board Meeting  
February 26, 2018

Desert Community Energy Board Members	
City of Cathedral City	<b>Shelley Kaplan</b> Councilmember
City of Palm Desert	<b>Sabby Jonathan</b> Mayor
City of Palm Springs	<b>Geoff Kors</b> Councilmember

Ex-Officio / Non-Voting Members	
City of Desert Hot Springs	<b>Yvonne Parks</b> Councilmember

Staff
Tom Kirk, Executive Director
Katie Barrows, Director of Environmental Resources
Erica Felci, Governmental Projects Manager
Benjamin Druyon, Management Analyst



# DESERT COMMUNITY ENERGY

## Board Meeting Minutes

### January 22, 2018

The audio file for this meeting can be found at: <http://www.cvag.org/audio.htm>

1. **CALL TO ORDER**

The meeting of the Desert Community Energy Board was called to order by Chair Kaplan at 2:34 p.m. on January 22, 2018.

2. **ROLL CALL**

Roll call was taken and it was determined that a quorum was present.

**Members Present**

Councilmember Shelly Kaplan  
Mayor Sabby Jonathan  
Councilmember Geoff Kors

**Agency**

City of Cathedral City  
City of Palm Desert  
City of Palm Springs

**Others Present**

Luke Rainey  
Lauri Aylaian  
Ryan Stendell  
Jay Virata  
Jeff Fuller  
Kim Floyd  
Charlie McDaniel  
Charlie McClendon

City of Desert Hot Springs  
City of Palm Desert  
City of Palm Desert  
City of Palm Springs  
The Energy Authority  
Sierra Club  
IBEW  
City of Cathedral City

**CVAG Staff**

Tom Kirk  
Katie Barrows  
Erica Felci  
Benjamin Druyon

3. **PUBLIC COMMENTS**

This is the time and place for any person wishing to address Desert Community Energy on items not appearing on the agenda to do so.

4. **BOARD MEMBER / DIRECTOR COMMENTS**

No comments were made.

5. **CONSENT CALENDAR**

**IT WAS MOVED BY COUNCILMEMBER KORS, SECONDED BY MAYOR JONATHAN, TO:**

- A. Approve minutes of December 4, 2017 Desert Community Energy Board Meeting**

**THE MOTION PASSED WITH 3 AYES.**

Councilmember Shelly Kaplan	Aye
Mayor Sabby Jonathan	Aye
Councilmember Geoff Kors	Aye

**6. DISCUSSION / ACTION**

- A. Update on Our Progress**

**IT WAS MOVED BY MAYOR JONATHAN, SECONDED BY COUNCILMEMBER KORS, TO APPOINT DESERT HOT SPRINGS AS AN EX OFFICIO BOARD MEMBER**

It will be left up to Desert Hot Springs to appoint a representative from their city to fulfill this role.

- B. Agreement with The Energy Authority consultant team to provide CCA Implementation, Wholesale Power Procurement, and Associated Technical Operating Services**

**IT WAS MOVED BY COUNCILMEMBER KORS, SECONDED BY MAYOR JONATHAN, TO APPROVE THE ATTACHED RESOURCE MANAGEMENT AGREEMENT BETWEEN DESERT COMMUNITY ENERGY (DCE) AND THE ENERGY AUTHORITY (TEA), AND ASSOCIATED TASK ORDERS 1 THRU 5, TO PROVIDE CCA LAUNCH, IMPLEMENTATION, WHOLESALE POWER PROCUREMENT, AND OPERATIONAL SERVICES FOR A COMMUNITY CHOICE AGGREGATION (CCA) PROGRAM. AUTHORIZE EXECUTIVE DIRECTOR TO: 1) MAKE CHANGES TO THE CONTRACT LANGUAGE IN CONSULTATION WITH THE CHAIR; AND 2) ADJUST THE IMPLEMENTATION AND LAUNCH SCHEDULE AS NEEDED PENDING OUTCOME OF CPUC DECISION ON RESOLUTION E-4907.**

**THE MOTION PASSED WITH 3 AYES.**

Councilmember Shelly Kaplan	Aye
Mayor Sabby Jonathan	Aye
Councilmember Geoff Kors	Aye

- C. Authorize Executive Director to Negotiate and Sign Agreements to Address Resource Adequacy Capacity**

**IT WAS MOVED BY COUNCILMEMBER KORS, SECONDED BY MAYOR JONATHAN, TO AUTHORIZE EXECUTIVE DIRECTOR TO ENTER INTO NEGOTIATIONS AND SIGN AGREEMENTS WITH SOUTHERN CALIFORNIA EDISON (SCE) OR OTHER ENTITIES TO ENABLE FUTURE ACQUISITION OF RESOURCE ADEQUACY CAPACITY AS NEEDED TO MEET DCE'S REGULATORY OBLIGATIONS.**

**THE MOTION PASSED WITH 3 AYES.**

Councilmember Shelly Kaplan	Aye
Mayor Sabby Jonathan	Aye
Councilmember Geoff Kors	Aye

**D. Authorize a Start-up Funding Agreement with Calpine Energy Solutions**

**IT WAS MOVED BY COUNCILMEMBER KORS, SECONDED BY MAYOR JONATHAN, TO AUTHORIZE EXECUTIVE DIRECTOR TO SIGN AN AGREEMENT WITH CALPINE ENERGY SOLUTIONS FOR START-UP FUNDING FOR DESERT COMMUNITY ENERGY DURING IMPLEMENTATION.**

**THE MOTION PASSED WITH 3 AYES.**

Councilmember Shelly Kaplan	Aye
Mayor Sabby Jonathan	Aye
Councilmember Geoff Kors	Aye

**7. INFORMATION**

- 1) Attendance Roster
- 2) 2018 DCE Board Meeting schedule

**8. ANNOUNCEMENTS**

Upcoming Meetings at 73-710 Fred Waring Drive, Suite 200, Palm Desert

The next Board Meeting of Desert Community Energy will be on February 26, 2018 at 2:30 p.m.

**9. ADJOURNMENT**

The meeting adjourned at 3:30 pm.

Respectfully submitted,

Benjamin Druyon  
Management Analyst



# DESERT COMMUNITY ENERGY

## Board Meeting

### February 26, 2018

#### Staff Report

**Subject:** Update on Our Progress

**Contact:** Tom Kirk, Executive Director ([tkirk@cvag.org](mailto:tkirk@cvag.org))

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**Recommendation:** Information only.

**Background:** Here is a brief summary of our progress since our December meeting and upcoming activities.

**Status of City Approvals.** Here is the status for each city:

Palm Springs – approved July 5

Cathedral City – approved July 26

Palm Desert – approved December 14

Indian Wells – voted to wait and see

Desert Hot Springs – city plans to join at a later date; Ex-officio member

Blythe – may be interested at a later date

Rancho Mirage – Implementing a CCA with City of Lancaster/California Choice Energy Authority

Riverside County – Implementing their own CCA

**Implementation Plan:** The Board approved and authorized submittal of the DCE Implementation Plan on December 4, 2017. On December 8, 2017, California Public Utilities Commission (CPUC) staff released a draft proposed resolution that would delay implementation of Desert Community Energy and other CCA programs. CPUC Draft Resolution E-4907 was proposed to address concerns about Resource Adequacy as customers shift from Southern California Edison (SCE) and other investor-owned utilities (IOUs) to CCAs. Of greatest concern, the proposal imposes a delay to January 2019 on new CCAs or CCA expansions where implementation plans have not been filed as of Dec. 8, 2017; with no warning, this deadline was announced on December 8. Upon learning of this proposal, we immediately submitted our Implementation Plan to the CPUC on December 11, 2017.

Despite our efforts and all those who were in opposition to Resolution E-4907, a modified version was released on February 2, 2018 and was unanimously approved by the CPUC on February 8, 2018. The modified version allows for CCA's who have submitted their Implementation Plan in 2017 to file a waiver with the CPUC to launch as planned. All other CCA's will be unable to launch until 2019.

**PCIA/Exit Fee – CPUC Proceeding R. 17-06-026:** The CPUC continues with the proceeding on the Power Cost Indifference Adjustment (PCIA), the “exit fee” charged to customers leaving the incumbent utility to join a CCA. The intent of the proceeding is to revise the methodology for calculating the PCIA. CVAG/DCE is a part to the proceeding and staff continues to be involved in meetings and workshops. A 2-day public workshop held on January 16/17 provided a forum

for discussion of data provided by the IOUs, cost responsibilities, and solutions to address concerns of utilities and stakeholders. This discussion is ongoing.

Community Outreach: Given the uncertainty introduced by the CPUC draft resolution, continued work on community outreach has been paused. The presentation on the marketing program requested by the Board at the December 4 meeting will be postponed to the March meeting.

In the near future, a full website will be unveiled that includes interactive features, information about electricity options (lower rates, 100% renewable), information for residential and business customers, a way to opt out, as well as background information about CCA. The website will launch in early 2018, coinciding with outreach materials mailed to individual customers. A Frequently Asked Questions/FAQ is available on the CVAG website to answer common questions about CCAs. The marketing team will also handle development of a brochure, collateral, and information for potential customers, including a minimum of four opt-out notices explaining how a CCA works and their choices to join the CCA or stay with SCE.

Other Steps to CCA Implementation. We continue to move toward our goal of launching the program in summer 2018. Coordination with SCE has been ongoing since 2016. SCE has reviewed the Implementation Plan and has developed a schedule for DCE to provide for launch in July 2018, pending the outcome of the Resolution E-4907 proposal. A meeting with SCE and our consultant team occurs weekly to initiate key launch activities and keep us on schedule for our launch date.

Community Advisory Committee. At a prior meeting, the Board suggested that staff look into the potential for formation of a Community Advisory Committee. A number of existing CCA programs statewide have established Community Advisory Committees to provide input and guidance, assist with community outreach, and involve stakeholders in CCA implementation. At the direction of the Board, staff will prepare a recommendation for an advisory committee and bring that back at a future meeting.

CVAG staff appreciates the commitment of time and valuable input by elected officials and jurisdiction staff throughout this process

**Fiscal Analysis:** No impact.





# DESERT COMMUNITY ENERGY

Board Meeting  
February 26, 2018

## Staff Report

**Subject:** Agreements with LEAN Energy US and Calpine Energy Solutions, LLC consultant team to provide CCA Operating Services

**Contact:** Katie Barrows, Director of Environmental Resources, CVAG  
([kbarrows@cvag.org](mailto:kbarrows@cvag.org))

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**Recommendation:** Approve the attached Services Agreements between Desert Community Energy and LEAN Energy US (LEAN), and Desert Community Energy and Calpine Energy Solutions, LLC (Calpine), to provide pre-launch and operational services for a Community Choice Aggregation (CCA) program and authorize Executive Director to make changes to the contract language in consultation with the Chair.

**Background:** At the October 30, 2017 Desert Community Energy (DCE) meeting, the Board authorized staff to negotiate an agreement with the TEA team and bring the documents back for approval. At the January 22, 2018 DCE meeting, the Board approved an agreement with The Energy Authority (TEA) along with five Task Orders describing the services of their consultant team. Since those approvals, staff has determined that it is more effective to enter into separate agreements with both LEAN and Calpine for their services, thus eliminating invoicing delays and providing more direct DCE oversight.

An essential CCA milestone is attaining business and technical capabilities in order to conduct CCA program implementation and launch activities, and to subsequently perform the full array of wholesale power procurement, scheduling coordination, customer service, credit support, California Independent System Operator (CAISO) interface and settlements, data interchange with Southern California Edison (SCE), load forecasting, legislative and regulatory involvement, resource planning, risk management, budgeting and rates, and other CCA related activities. Subject to CCA size and internal staffing, it is generally not cost effective to self-perform most of these tasks although the DCE Board and management has full authority and responsibility over all CCA business functions and outcomes. For certain infrastructure and program support, DCE intends to leverage available CVAG expertise.

- Calpine Energy Solutions, LLC provides Data Management and Customer Call Center Services as required by DCE for both Phase II (launch) and Phase III (operations). These services include the initial setting up and testing of requisite data transfer protocols between DCE and SCE, the ongoing monthly administration and data transfer associated with CCA billing activities, and call center/customer service functions including customer relationship management. Calpine will also provide up to \$500,000 for DCE to cover start-up costs, primarily focused on our outreach and marketing. The CPUC requires any new CCA post a \$100,000 bond. Calpine will post this bond on behalf of DCE. DCE will pay back any used portion of the \$500,000 plus a 5% interest rate per annum.

- LEAN Energy US provides services related to CCA program start-up, program and policy support and other activities as directed by DCE on a time and materials basis. It includes community outreach and marketing tasks including website development, branding, CCA messaging, development of collateral, and stakeholder outreach as requested by DCE. Community outreach and marketing will be handled by Green Ideals and Burke Rix Communications, with separate agreements under LEAN.

**Conclusion:** The Energy Authority and subconsultants bring together a team that provides a reasonable and necessary foundation and technical service suite for the successful launch and operation of DCE's CCA Program. Advantages in working with this team include their experience, their ability to provide their credit and upfront capital for power procurement, their knowledge of CCA best practices, and their collaborative approach to providing support for our emerging CCA.

Staff recommends the DCE Board approve the attached Services Agreements between Desert Community Energy and LEAN Energy US (LEAN), and Desert Community Energy and Calpine Energy Solutions, LLC (Calpine), to provide operational services for a Community Choice Aggregation (CCA) program and authorize Executive Director to make changes to the contract language in consultation with the Chair.

**Fiscal Analysis:** The funding for CCA operations will come from payment of utility bills by customers once the CCA launch occurs and we begin serving customers. The initial expenses will cover the first months of operations, staffing, legal and other administrative functions until a revenue stream is established. A primary goal will be development of a reserve fund to hedge against changing conditions and to build credit worthiness for the CCA. CVAG is tracking all expenses related to initial formation of the DCE CCA; these costs would be reimbursed once the CCA collects sufficient revenues. CVAG, in concert with TEA, will track all TEA and subconsultant expenses prior to and after program launch. CVAG/DCE and TEA staffs will track such costs, prepare budget estimates and budget tracking procedures, and periodically report to the DCE Board. CVAG and TEA staff will prepare a detailed repayment plan for cumulated CCA expenditures incurred during the pre-launch through approximately 3 months post launch period to be presented to the Board at a future meeting.

**Contract Finalization:** Authorize the Executive Director and/or CVAG legal counsel to make minor changes/revisions to the agreement as needed for clarification purposes.

**Attachments:**

- 1) DCE and LEAN Energy US Agreement.
- 2) DCE and Calpine Energy Solutions Agreement.

# SERVICES CONTRACT

between

DESERT COMMUNITY ENERGY (DCE)  
and  
LEAN ENERGY US (LEAN)

THIS AGREEMENT is made and effective as of January 1, 2018 between the Desert Community Energy ("DCE") and LEAN Energy US ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

## 1. TERM

This Agreement shall commence on January 1, 2018 and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2019 unless sooner terminated or extended pursuant to the provisions of this Agreement.

## 2. SERVICES

Consultant shall perform services consistent with the provisions of the Request for Proposals released in March, 2017, (the "RFP,") and any modification thereto adopted in writing by the parties and identified herein as an exhibit to this Agreement, upon issuance by DCE of written authority to proceed (a "Work Order") as to either (a) a portion of the work if separate and independent tasks are contemplated or (b) all work if it constitutes a single project.

Except as amended by the exhibits hereto, Consultant is bound by the contents of the RFP and Consultant's response thereto. In the event of conflict, the requirements of this Agreement, including any exhibits, then the Request for Proposals, shall take precedence over those contained in Consultant's response.

The following exhibit(s), which amend or modify the RFP and/or Consultant's response thereto, are attached and incorporated herein by reference:

Exhibit A: Scope of Services, Compensations and Expenses

## 3. PRICE FORMULA

DCE agrees to pay Consultant at the rates set forth in Exhibit A, Scope of Services, Compensations and Expenses.

#### 4. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all tasks required hereunder. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

Consultant shall submit informal progress reports to DCE's Project Manager by telephone, e-mail or in person, on a weekly basis, in a form acceptable to DCE, describing the state of work performed. The purpose of the reports is to allow DCE to determine if the contract objectives and activities are being completed in accordance with the agreed upon schedule, and to afford occasions for airing difficulties or special problems encountered.

The Consultant's Project Manager shall meet with the DCE Project Manager as needed.

#### 5. PAYMENT

(a) If independent and separate Work Orders are contemplated, DCE shall pay Consultant upon satisfactory completion of each Work Order; and, unless Consultant provides a performance bond, progress payments will not be made on individual or a collection of Work Orders. If all the work constitutes a single project, Consultant shall submit invoices for work completed on a periodic basis, no more frequently than monthly.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth in a duly issued Work Order.

(c) Consultant shall submit invoices for LEAN and subconsultant services performed in accordance with the payment rates and terms set forth in Exhibit A. The invoice shall be in a form approved by DCE.

(d) A formal report of tasks performed and tasks in process, in a form acceptable to DCE, shall be attached to each invoice.

(e) All invoices shall be consistent with current progress reports as well as the budget and work schedule set out in the RFP and, if modified or supplemented thereby, the exhibits to this Agreement.

(f) Upon approval by DCE's Project Manager, payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If DCE disputes any of Consultant's invoiced fees it shall give written notice to Consultant within thirty (30) days of receipt of the invoice.

6. INSPECTION OF WORK

Consultant shall permit DCE the opportunity to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

7. SCOPE OF WORK CHANGES

The scope of work shall be subject to change by additions, deletions or revisions by DCE. Consultant shall be advised of any such changes by written notice. Consultant shall promptly perform and strictly comply with each such notice. If Consultant believes that performance of any change would justify modification of the Agreement price or time for performance, Consultant shall comply with the provisions for dispute resolution set out hereinbelow.

8. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) DCE may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Consultant fourteen (14) days prior written notice. Upon tender of said notice, Consultant shall immediately cease all work under this Agreement, unless further work is authorized by DCE. If DCE suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement or the sub agreements between LEAN and DCE marketing consultants.

(b) In the event this Agreement is terminated pursuant to this Section, DCE shall pay Consultant only for work that has been accepted by DCE. Work in process will not be paid unless DCE agrees in writing to accept the partial work, in which case, prorated fees may be authorized. Upon termination of the Agreement pursuant to this Section, Consultant will submit a final invoice to DCE. Payment of the final invoice shall be subject to approval by the DCE Project Manager as set out above.

9. DEFAULT OF CONSULTANT

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, DCE shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to Consultant. Provided, however, if such failure by Consultant to make progress in the performance of work hereunder arises out of causes beyond Consultant's control, and without fault or negligence of Consultant, it shall not be considered a default.

(b) As an alternative to notice of immediate termination, the DCE Executive Director or his/her delegate may cause to be served upon Consultant a written notice of the default. Consultant shall then have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure

its default within such period of time, DCE shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

#### 10. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to work performed, costs, expenses, receipts, and other such information that relates to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of DCE or its designees at reasonable times to such books and records; shall give DCE the right to examine and audit said books and records; shall permit DCE to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Unless the RFP or exhibits hereto expressly provide otherwise, upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of DCE and may be used, reused, or otherwise disposed of by DCE without the permission of Consultant. With respect to computer files, Consultant shall make available to DCE, at Consultant's office and upon reasonable written request by DCE, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

#### 11. INDEMNIFICATION FOR PROFESSIONAL LIABILITY

To the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless DCE, its members and any and all of their officials, employees and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs, which arise out of, pertain to, or relate to Consultant's alleged act(s) or failure(s) to act.

#### 12. INSURANCE

Throughout the term of this Agreement, Consultant shall procure and maintain insurance, including:

- (a) Workers' Compensation as required by law for its personnel (if applicable)
- (b) A one million dollar (\$1,000,000.00) commercial general liability policy.
- (c) Consultant shall include DCE, its member agencies and any other interested and related party designated by DCE, as additional insureds on this commercial liability policy for liabilities caused by Consultant in its

performance of services under this Agreement and shall provide DCE with a certificate verifying such coverage. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least five (5) days notice prior to said expiration date and, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for no less than the remainder of the term of the Agreement, or for a total period of not less than one (1) year. New certificates of insurance are subject to the approval of DCE. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, DCE may, in addition to any other remedies it may have, terminate this Agreement.

- (d) DCE, member agencies and any other interested and related party designated by DCE are to be covered as additional insured as respects liability arising out of automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the said additional insureds. Minimum requirements are \$100,000/\$300,000/\$25,000.
- (e) Consultant's insurance coverage shall be primary insurance as respects DCE, its member agencies, and any other interested and related party designated by DCE as additional insureds. Any insurance or self-insurance maintained by said additional insureds shall be in excess of Consultant's insurance and shall not contribute with it and, to the extent obtainable, such coverage shall be payable notwithstanding any act of negligence of DCE, its members, or any other additional insured, that might otherwise result in forfeiture of coverage. Any failure to comply with reporting or other provisions of the policies, including breach of warranties, shall not affect coverage provided to said additional insureds. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by any party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to DCE.
- (f) Consultant and its subconsultants shall provide worker's compensation insurance or a California Department of Insurance-approved self-insurance program in an amount and form that meets all applicable Labor Code requirements, covering all employees providing services on behalf of Consultant and all risks to such persons or entities. If Consultant does not have employees, this section is not applicable.
- (g) Said insurance policy or policies shall be issued by a responsible insurance company with a minimum A. M. Best Rating of "A-" Financial Category "X", and authorized and admitted to do business in, and regulated by, the State of California.
- (h) Evidence of all insurance coverage shall be provided to DCE prior to issuance of the first Work Order. Consultant acknowledges and agrees that such insurance is in addition to Consultant's obligation to fully indemnify and

hold DCE, its members and any other additional insureds free and harmless from and against any and all claims arising out of an injury or damage to property or persons caused by the acts or omissions of Consultant.

13. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to DCE a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither DCE, its members, nor any of their officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of DCE or its members. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against DCE or its members, or bind DCE or its members in any manner except as expressly authorized by DCE.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, DCE shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder. DCE shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

14. LEGAL RESPONSIBILITIES

Consultant shall keep itself informed of State, Federal and local laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. DCE, its members, and their officers and employees, shall not be liable at law or in equity for any liability occasioned by failure of Consultant to comply with this Section.

Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, or any other unlawful basis.

15. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was or will be used against or in concert with any officer or employee of DCE in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of DCE will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling DCE to any and all remedies at law or in equity.



16. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of DCE, nor its designees or agents, and no public official who exercises authority over or responsibilities with respect to the subject of this Agreement during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the services performed under this Agreement.

17. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without DCE's prior written authorization. Consultant, its officers, employees, agents, or sub-consultants, shall not without written authorization from the DCE Task Manager or unless requested by the DCE Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property of DCE. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives DCE notice of such court order or subpoena.

(b) Consultant shall promptly notify DCE should Consultant, its officers, employees, agents, or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property of DCE or its members. DCE retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with DCE and to provide the opportunity to review any response to discovery requests provided by Consultant. However, DCE's right to review any such response does not imply or mean the right by DCE to control, direct, or rewrite said response.

(c) Consultant covenants that neither it nor any officer or principal of Consultant's firm has any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by Consultant as an officer, employee, agent, or subcontractor.

18. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To DCE: Executive Director  
Desert Community Energy  
73-710 Fred Waring Drive, Suite 200  
Palm Desert, CA 92260

To Consultant: Shawn Marshall, Executive Director  
LEAN Energy US  
PO Box 961  
Mill Valley CA 94941

19. ASSIGNMENT/PERSONNEL

Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of DCE.

Because of the personal nature of the services to be rendered pursuant to this Agreement, there shall be no change in Consultant's Project Manager or members of the project team without prior written approval by DCE.

20. MANAGEMENT

DCE's Executive Director shall represent DCE in all matters pertaining to the administration of this Agreement, review and approval of all services submitted by Consultant.

During the term of this Agreement, Consultant shall provide sufficient executive and administrative personnel as shall be necessary and required to perform its duties and obligations under the terms hereof.

21. SUBCONTRACTS

As expressly authorized by DCE and described in Exhibit A, Consultant has engaged in contracts with Burke Rix Communications and Green Ideals to perform communications and marketing services on behalf of DCE. DCE reserves the right to contract directly with these or any other subcontractors in the unlikely event it becomes necessary.

22. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses required of it by law for the performance of the services described in this Agreement.

23. GOVERNING LAW

DCE and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the Riverside County Superior Court, Desert Branch.

Any dispute arising under this Agreement shall first be decided by the DCE Executive Director or designee. Consultant shall give DCE written notice within seven (7) days after any event which Consultant believes may give rise to a claim for an increase in compensation or a change in the performance schedule. Within fourteen (14) days thereafter, Consultant shall supply DCE with a statement supporting the claim. DCE shall not be liable for and Consultant hereby waives any claim or potential claim which Consultant knew or should have known about and which was not reported in accordance with the provisions of this paragraph. Consultant agrees to continue performance of the services during the time any claim is pending. No claim shall be allowed if asserted after final payment.

24. FINAL PAYMENT CERTIFICATION AND RELEASE

DCE shall not be obligated to make final payment to Consultant until Consultant has fully performed under this Agreement and has provided DCE written assurances that Consultant has paid in full all outstanding obligations incurred as a result of Consultant's performance hereunder. All obligations owing by DCE to Consultant shall be deemed satisfied upon Consultant's acceptance of the final payment. Thereafter, no property of DCE shall be subject to any unsatisfied lien or claim arising out of this Agreement.

25. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

26. FORCE MAJEURE

Neither party hereto shall be liable to the other for its failure to perform under this Agreement when such failure is caused by strikes, accidents, acts of God, fire, war, flood, governmental restrictions, or any other cause beyond the control of the party charged with performance; provided that the party so unable to perform shall promptly advise the other party of the extent of its inability to perform. Any suspension of performance by reason of this paragraph shall be limited to the period during which such cause of failure exists.

27. AUTHORITY TO EXECUTE THIS AGREEMENT

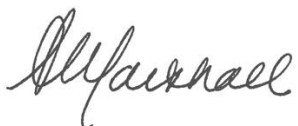
The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

DESERT COMMUNITY ENERGY

By: \_\_\_\_\_,  
Chair

LEAN ENERGY US



By: Shawn Marshall, Director

February 18, 2018

**Exhibit A**  
**Scope of Services, Compensation and Expenses**  
**LEAN Energy US**

LEAN Energy US (LEAN) and Desert Community Energy (DCE) agree that the following terms and conditions constitute Exhibit A of DCE's contract for LEAN Services which includes sub-consultant services in the areas of marketing and regulatory support.

**Section 1.     Scope of Services.**

**Section 1.1     Program Implementation Services**

LEAN will work with staff from Coachella Valley Association of Governments (CVAG) and other service vendors to provide program advisory services, administrative and logistical support for the organizational start-up of Desert Clean Energy (DCE). Tasks under this scope area include but are not limited to:

- Review JPA Agreement, recommend amendments, and provide support for governance issues that may arise
- Update and track project implementation timeline to ensure all project partners are completing their various tasks within identified timeframes
- Support local government outreach and information requests as needed
- Work with staff and Board to define program goals and objectives
- Support interview and selection process of local marketing/communications firm
- Manage marketing subcontracts
- Draft relevant DCE policies to guide operations and program administration
- Serve as a CCA information resource for DCE, working with CVAG staff and the DCE Board, responding to questions and research tasks as needed
- Review and assist with submission of DCE implementation Plan
- Assist staff with completion of utility forms including service agreement, et al
- Work with DCE staff on budget and staffing plan, including preparation and posting of job descriptions and hiring process
- Support solicitation and selection of bank/credit partner(s)
- Participate in weekly team calls and planning meetings as requested
- Handle any requests or tasks as may be required by Client during DCE start up and launch phase.

**Section 1.2     Regulatory and Legislative Support**

LEAN will collaborate with Cal-CCA, the statewide CCA trade association and engage, as approved by Client, the services of Braun Blasing Smith and Wynne, PC, to provide regulatory monitoring and support to DCE. Tasks under this scope area may include but are not limited to:

- Regulatory tracking of key regulatory proceedings before the California Public Utilities Commission (CPUC).
- E-mails, phone calls, and action alerts to DCE staff regarding priority issues and recommended actions on regulatory actions or bill(s) before the CA legislature.
- Respond to regulatory or legislative questions/research as requested by Client.

**Section 1.3     Marketing and Communications**

LEAN will engage the services of Burke Rix Communications and Green Ideals to provide marketing, branding, communications, collateral and web design, community outreach and customer noticing, as detailed in the attached Scopes of Services for Burke Rix and Green Ideals. Tasks under this scope area include, but are not limited to:

- Finalize communications and outreach strategies and identify specific task lists and budget(s)
- Design DCE logo, product branding and program style guide
- Email and social media design and content
- Website content and design
- Video content and design
- Core messaging and content development for program collateral and customer notifications
- Content development and execution of public outreach/paid and earned media campaign
- Manage and implement customer noticing and mailing process, requirements and timelines
- Development of ongoing/post-launch media and communications strategy

**Section 2.      Compensation for Services.**

**Section 2.1**      DCE shall pay LEAN Energy the following amount as fees (“Service Fees”) for the Services provided in Exhibit A, as follows:

- Costs for services provided by LEAN Energy US shall be billed on a time and materials basis and shall not exceed \$85,000, inclusive of a 5% sub contract management fee, during the initial term of this Contract. 2018/2019 Hourly rates are as follows:
  - Executive Director - \$186 per hour.
  - Administrative Assistant – \$60 per hour.
- Pre-authorized, regulatory services provided by BBSW shall be billed on a time and materials basis at the following 2018 rates:
  - Senior Partner - \$405 per hour.
  - Junior Partner - \$335 per hour.
  - Senior Associates - \$295 per hour.
  - Junior Associates - \$265 per hour.
- Costs for services provided by Green Ideals shall be billed on a time and materials basis and shall not exceed a total of \$85,375 during the initial term of this Contract. 2018/2019 hourly rates are as follows:
  - Principal, Communication Strategist, Project Director - \$175 per hour
  - Design Director – \$150 per hour
  - Website Development Director – \$125 per hour
- Costs for services provided by Burke Rix shall be billed on a time and materials basis and shall not exceed \$213,300 during the initial term of this Contract. 2018/2019 hourly rates are as follows:
  - Senior Partner- \$185 per hour
  - Senior Associate - \$145 per hour

- Associate - \$110 per hour
- Photography - \$100 per hour
- Design sub consultant - \$125 per hour
- Videographer sub consultant - \$150.00 per hour

**Section 2.2** For Compensation under this Section, LEAN, BBSW, Green Ideals, and Burke Rix shall each shall provide an itemized invoice which reflects the amount due and a description of the services performed on a monthly basis, unless the parties agree upon a different billing period or terms.

**Section 2.3** Budget estimates in Exhibit A do not include direct costs associated with paid advertising and media buys, printing or mail-house/postage costs. Those expenses will be direct billed to DCE.

**Section 3. Pricing Assumptions.**

The Service Fees defined in Section 2 of Exhibit A include only the services and items expressly set forth in Exhibit A. Unless otherwise agreed to by the Parties in an amendment to the Contract or this Exhibit A, the cost of any additional deliverables provided by LEAN, BBSW, Green Ideals or Burke Rix for CCA services shall be billed at the labor rates outlined above, inclusive of agreed-upon CPI or percentage increase for work beyond 2018, plus out-of-pocket costs incurred by LEAN and its subcontracts (without mark-up), provided, however, that such additional deliverables must be authorized in writing by DCE.

**Section 4. Expenses and Reimbursement.**

Reasonable, actual out-of-pocket expenses for travel and participation in on-site meetings, authorized by DCE, will be reimbursed in addition to the compensation outlined in this Exhibit A. Travel costs such as airfare, hotel, ground transportation, per diem or meals (hereinafter, "Expenses") will be billed in the amount incurred by LEAN for actual out-of-pocket cost, without any additional mark-up. Any Expenses incurred shall be billed for the month in which the Expenses are incurred. Air travel will be purchased at coach class fares, with advance purchase discounted tickets used when scheduling permits. Expense reports detailing all Expenses, along with receipts, will be presented to DCE for reimbursement.

**Section 5. Amendment.**

This Exhibit A may only be amended by an instrument in writing signed by each Party's authorized representative.

## **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (the "Agreement") is entered into effective February 26, 2018 (the "Effective Date"), by and between Calpine Energy Solutions LLC ("DM Services Provider") and Desert Community Energy ("DCE"). Each party listed above may be referred to individually as a "Party," and collectively as the "Parties."

### **WITNESSETH**

WHEREAS, DCE, a public agency formed by a Joint Powers Agreement ("DCE JPA"), pursuant to Government Code section 6500 et seq., seeks to develop, finance, implement, and operate a Community Choice Aggregation ("CCA") program for its DCE member jurisdictions and their respective residents (the "Program"); WHEREAS, DCE has solicited proposals from qualified entities to provide services related to the Program;

WHEREAS, DM Services Provider in partnership with The Energy Authority ("TEA") and LEAN Energy US ("LEAN") (collectively, DM Services Provider, TEA and LEAN shall be referred to herein as the "Core Team") submitted a proposal responsive to DCE's solicitation ("Proposal");

WHEREAS, DM Services Provider, TEA, and LEAN have been selected by DCE to provide specified services that are consistent with the Proposal, to be provided under individual contracts entered into concurrently herewith by DCE directly with DM Services Provider, with TEA, and with LEAN, respectively;

WHEREAS, DM Services Provider is willing to perform the Data Manager Services described in the Addendum, attached hereto and incorporated herein by this reference (the "Addendum");

WHEREAS, DM Services Provider is willing to reimburse DCE for those Program services necessary for CCA launch and operations, provided by LEAN and other contractors, up to the date of power delivery under the Program, subject to termination of the Agreement, as set forth herein ("CCA Services");

WHEREAS, DCE is willing to reimburse DM Services Provider with interest for such compensation to contractors for CCA Services, as set forth herein;

WHEREAS, DM Services Provider is willing to satisfy certain California Public Utilities Commission ("CPUC") bond requirements on DCE's behalf until the Program is generating revenue to DCE, and at such time will relieve DM Services Provider from such requirements, as set forth herein or in the Addendum; and

WHEREAS, TEA will be purchasing electricity on behalf of DCE for the Program from one or more electric energy suppliers ("Supplier").



NOW, THEREFORE, for and in consideration of the mutual benefits, obligations, covenants, and consideration, the receipt and sufficiency of which are hereby acknowledged, DM Services Provider and DCE hereby agree as follows:

1. **SCOPE.**

- a. **Services.** Subject to the terms and conditions of this Agreement and during the term of this Agreement, DM Services Provider shall provide to DCE the services described in the Addendum, including satisfying the CPUC bond requirements for CCA programs, and an additional service of reimbursing DCE for qualified CCA Services (collectively, the "Services"), provided by LEAN and other contractors, including governance and marketing services. Reimbursement by DM Services Provider will be only for those services related to implementation and operation of a CCA program by DCE. From time to time the parties may add new addenda, which upon execution by both parties, shall be subject to the terms and conditions of this Agreement.
- b. **Reimbursable Compensation to DCE for CCA Services.** DM Services Provider shall reimburse DCE for qualified CCA Services, up to a maximum of \$500,000. Reimbursement shall be made on terms as mutually decided between DM Services Provider and DCE. DCE shall, to the fullest extent permitted by law, indemnify and hold harmless DM Services Provider against any and all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively "Losses") incurred or sustained by DCE as a result of or in connection with other CCA consultant services. DCE shall reimburse DM Services Provider for all such compensation paid for CCA Services plus the additional sum of five percent (5%) interest per annum. DM Services Provider shall notify DCE of the total CCA Services reimbursement of the amount including interest owed as of the delivery date of power. The total CCA Services compensation amount including interest shall be reimbursed in twelve equal monthly installments beginning 90 days after the delivery date of power ("Reimbursement Payments"). Full reimbursement shall be made on or before fifteen (15) months after the power delivery date.

2. **CONDITIONS TO DM SERVICES PROVIDER'S PERFORMANCE.**

- (a) **Information and Assistance.** Upon DM Services Provider's reasonable request, DCE shall provide such information and assistance as is reasonably required for DM Services Provider to provide the Services. If DCE fails to provide DM Services Provider with such requested information or assistance, then DM Services Provider shall continue to provide in a timely manner any such portion(s) of the affected Services that DM Services Provider can reasonably provide to the extent possible in the absence of such information or assistance. Notwithstanding any provision to the contrary herein, failure by DCE to provide DM Services Provider with such information or assistance shall not constitute an Event of Default;

provided, however, that DM Services Provider's performance or lack of performance under this Agreement shall be excused to the extent that it is hindered, prevented or impacted as a result of DCE's failure or inability to provide such information or assistance.

- (b) Notification. DCE shall notify all other relevant parties, including but not limited to Supplier, the Utility Distribution Company ("UDC"), which is currently Southern California Edison, and DCE's lender(s), as necessary, of the existence of this Agreement and DM Services Provider's role as contemplated in this Agreement.
- (c) DM Services Provider acknowledges the existence of contracts between DCE and TEA and between DCE and LEAN, both of which are intended to complement the Services provided by DM Services Provider hereunder pursuant to the Proposal. DM Services Provider similarly acknowledges that its services provided hereunder are intended to complement those of TEA and LEAN.

### 3. **FEES AND BILLING.**

- (a) Fees. DCE shall pay all fees due in accordance with the Addendum.
- (b) Billing and Payment Terms. Unless otherwise indicated in the applicable Addendum, DM Services Provider shall submit an itemized invoice to DCE monthly for all fees related to Services performed during the previous month and DCE Reimbursement Payments starting after the power delivery date, to the DCE contract administrator specified in Section 31. Payment shall be due within thirty (30) days after the date of invoice. All payments must be made in U.S. dollars. Late payments hereunder shall accrue interest at the lower of the rate of one percent (1%) per month, or the highest rate allowed by law.
- (c) Taxes. Payments due to DM Services Provider under this Agreement shall be net of all sales, value-added, use or other taxes and obligations.

4. **REPRESENTATIONS AND WARRANTIES.** On the Effective Date and the date of entering into each Addendum, each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Addendum; (iii) the execution, delivery and performance of this Agreement and each Addendum are within its powers, have been duly authorized by all necessary action and do not violate any of 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; (iv) this Agreement, each Addendum, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (v) 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,

and (vi), in the case of DM Services Provider, that it has the qualifications, experience and ability to perform the Data Manager Services described in the applicable Addendum.

5. **INDEMNIFICATION.** Each party to this Agreement (each an “Indemnifying Party”) agrees, to the fullest extent permitted by law, to indemnify, hold harmless, protect and defend the other party (the “Indemnified Party”), and the Indemnified Party’s governing board, supervisors, officers, directors, agents, employees, and/or volunteers from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, to the extent resulting from the Indemnifying Party’s breach of any material term of this Agreement, or the Indemnifying Party’s negligence or willful misconduct in connection with the performance of this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from the Indemnified Party’s breach of any material term of this Agreement, or the Indemnified Party’s negligence or willful misconduct in connection with the performance of this Agreement. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party’s expense, subject to the Indemnifying Party’s approval, which shall not be unreasonably withheld, conditioned or delayed. For purposes of this Article, each Indemnifying Party shall be responsible for the negligent acts and/or omissions and/or willful misconduct of any person or entity over which it exercises direction and control, including without limitation, subcontractors and employees. Each Party’s indemnification obligations under this Article are conditioned upon the Indemnified Party: (i) promptly notifying the Indemnifying Party of any claim in writing; (ii) cooperating with the Indemnifying Party in the defense of the claim; and (iii) granting the Indemnifying Party sole control of the defense or settlement of the claim. The indemnity obligation set forth in this Section 5 shall survive termination of this Agreement.

6. **TERM.** This Agreement shall be effective on the date written in the first paragraph above (“Effective Date”). Unless earlier terminated pursuant to the terms of Section 7, this Agreement shall remain in effect for a period of [five] years (“Initial Term”) from the Effective Date. The Addendum shall become effective on the same date as the Effective Date of this Agreement. However, the provision of services under the Addendum shall commence and terminate on the dates specified in the Addendum. At the end of the Initial Term, the Agreement shall renew on an annual basis for successive one (1) year terms (each, a “Renewal Term”), unless otherwise agreed to by the Parties or terminated pursuant to the Termination Section.

7. **TERMINATION.**

- (a) **Early Termination Due to Failure or Good Faith Cancellation of DCE’s Program.** If at any time DCE determines not to proceed with the Program, DCE may terminate this Agreement by giving written notice to DM Services Provider as provided in Section 19 of this Agreement. In such event DCE shall not have any further obligations under the Agreement, except that DCE will pay Provider all outstanding Reimbursement Payments and replace the full amount of the CPUC bond posted by DM Services Provider (“Termination Fee”). Such Termination Fee

shall be due and payable thirty (30) days after the date of invoice by DM Services Provider to DCE.

- (b) Termination for Cause. If any one of the following events (each an “Event of Default”) occurs with respect to a Party, then the other Party may terminate this Agreement or the applicable Addendum upon written notice to the defaulting Party: (i) with respect to DCE, DCE fails to pay amounts due hereunder and such failure continues for seven (7) business days following written notice from DM Services Provider; (ii) either Party defaults in the observance or performance of any of its material covenants or agreements in this Agreement and such default continues uncured for twenty (20) business days following written notice to the defaulting Party; (iii) either Party makes an assignment for the benefit of creditors (other than a collateral assignment to an entity providing financing to such Party), 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 a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as they fall due; or (iv) with respect to DCE, DCE fails to satisfy UDC’s credit-worthiness requirements set forth in the UDC tariffs and such failure continues uncured for twenty (20) business days following written notice to DCE from UDC.
- (c) Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) DM Services Provider shall immediately cease providing Services hereunder; and (ii) any and all payment obligations of DCE under this Agreement, including, without limitation, any and all fees related to the Services for the balance of the term, replacement of the full amount of the CPUC bond posted by DM Services Provider, and all outstanding Reimbursement Payments will become due within thirty (30) days. Upon such expiration or termination, and upon request of DCE, DM Services Provider shall reasonably cooperate with DCE to ensure a prompt and efficient transfer of all data, documents and other materials to DCE or a new services provider, in a form as directed by DCE, in a manner such as to minimize the impact of expiration or termination on DCE’s customers. If DCE is the defaulting Party, DCE agrees to pay DM Services Provider reasonable compensation for additional services performed in connection with such transfer, to the extent not otherwise provided for or contemplated in the Addendum.

8. **LIMITATION ON DAMAGES.** FOR ANY BREACH HEREOF, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY

INDEMNITY, INCLUDING ANY CLAIMS FOR MONETARY PENALTIES ASSESSED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ASSOCIATED WITH THE SETTLEMENT QUALITY METER DATA REPORTING OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY CLAIM ARISING FROM A BREACH OF THE CONFIDENTIALITY PROVISIONS OF SECTION 13 OR THE INDEMNIFICATION PROVISIONS OF SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, WITH THE EXPRESS EXCLUSION OF ANY CLAIM FOR INDEMNITY OR BREACH OF CONFIDENTIALITY, IN NO EVENT SHALL DM SERVICES PROVIDER'S LIABILITY TO DCE HEREUNDER EXCEED THE AMOUNT OF THE FEES PAID TO DM SERVICES PROVIDER BY DCE FOR THE SERVICES PROVIDED HEREUNDER. THE PROVISIONS OF THIS ARTICLE 8 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

9. **FORCE MAJEURE EVENT.** A Party shall be excused from performance under this Agreement and shall not be considered in default with respect to any obligation hereunder (other than obligations to pay money), if, and to the extent, its failure of, or delay in, performance is due to a Force Majeure Event; provided, however, that (a) such claiming Party gives written notice and full particulars of such Force Majeure Event to the other Party promptly after the occurrence of the event relied on, (b) such notice shall estimate the expected duration and probable impact on the performance of such Party's obligations hereunder, (c) such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the delay in the affected Party's performance, (d) the suspension of such obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure Event, (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 occurrence; (f) the affected Party shall exercise all commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the other Party by promptly taking appropriate and sufficient corrective action; (g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall give the other Party written notice to that effect, and (h) the affected Party promptly shall resume performance under this Agreement. The term "Force Majeure Event" means the occurrence of any event beyond the reasonable control of the Party affected that results in the failure or delay by such Party of some performance under this Agreement, in full or part, including but not limited to the following: drought, flood, earthquake, storm, fire, volcanic eruption, lightning, epidemic, war, pests, riot, civil disturbance, sabotage, terrorism or threat of terrorism, strike or labor

difficulty, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a governmental authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include lack of financial resources, material cost increases in commodities or labor, or other economic conditions.

10. **RELATIONSHIP OF PARTIES.** DM Services Provider and DCE are independent contractors and this Agreement will not establish any relationship or partnership, joint venture, employment franchise or agency between DM Services Provider and DCE. Neither DM Services Provider nor DCE 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.

11. **ASSIGNMENT OF RIGHTS.** Neither Party shall assign any of its rights or delegate any of its responsibilities hereunder without first obtaining the consent of the other Party, except it may be assigned or transferred without such consent (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets of the transferring Party, whether by merger or acquisition, or (ii) by either Party to any wholly-owned affiliate; provided however, that in the event of such a non-consent transfer, notice shall be given to the other Party within 45 days after the conclusion of the transfer memorializing the transfer and identifying the successor in interest. Any request for consent to assign shall be made in writing and the consent, if any, shall be made in writing. Any transfer in violation of this provision shall be void.

12. **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.

13. **CONFIDENTIALITY.**

- (a) This Agreement and all information shared between the Parties regarding this Agreement and the Services to be provided hereunder (e.g., reports, etc.) is strictly confidential and shall not be disclosed by a Party (except to such Party's affiliates, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have a need to know the information and have agreed to treat such information as confidential) without the prior written consent of the other Party, except as required by Law, including but not limited to the California Public Records Act and the Brown Act; provided, however, that DM Services Provider expressly reserves all right, whether in law, equity or otherwise, to contest any such disclosure. In addition, DM Services Provider shall comply with the requirements of the customer information confidentiality policy adopted by DCE and shall take commercially reasonable efforts to ensure that such data remains confidential.
- (b) DM Services Provider acknowledges that the confidential information about DCE's customers to which it will have access under this Agreement could give it or a third party an unfair competitive advantage in the event that DM Services Provider or any third party were to compete with DCE in the provision of electrical or other

services to DCE's customers. DM SERVICES PROVIDER AGREES THAT IT WILL NOT USE ANY INFORMATION IT RECEIVES REGARDING DCE CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS AGREEMENT. DM Services Provider agrees not to use any of the CCA data provided to it by DCE for its own marketing purposes. DM Services Provider shall not use such customer information to compete with DCE in any manner, except as provided herein below. Upon termination of this Agreement, DM Services Provider shall (i) return all documents and other materials received from the DCE and all copies (if any) of such documents and tangible materials, and (ii) destroy all other documents or materials in DM Services Provider's possession that contain DCE customer data, and (iii) deliver to DCE a certificate, signed by an authorized representative of DM Services Provider, stating that DM Services Provider has returned or destroyed all such documents and materials; provided, however, that DM Services Provider may retain copies of information necessary for tax, billing or other financial purposes, to be used solely for such purposes. **Notwithstanding anything in the foregoing to the contrary, however,** DM Services Provider is not prohibited from conducting its business with potential customers in DCE's territory, either due to a business opportunity already known to DM Service Provider as of the date of this Agreement or made known to DM Services Provider in the ordinary course of DM Services Provider's business other than Services under this Agreement. For the avoidance of doubt, any information, including but not limited to customer names, usage, data, etc., that DM Services Provider receives from a third party in the ordinary course of DM Services Provider's business other than performance of the Services under this Agreement, shall not be deemed to be confidential information as between DCE and DM Services Provider, for purposes of this Agreement, even if it is the same or similar information such as would be confidential information pursuant to this Agreement.

- (c) The Parties agree that money damages would be an inadequate remedy for breach of the provisions in this Section 13 and that either Party shall be entitled to seek equitable relief in connection therewith and shall be entitled to recover any damages for such breach as may be provided by law.
- (d) **Exclusion for CCA Program customer account, usage and billing information.** DCE retains sole ownership of, and full access to (as reasonably requested from DM Services Provider), account, usage and billing information for customers of the CCA Program. DCE may share all such data with its Supplier or other parties and will assume full responsibility for compliance with customer data protection requirements in doing so. At the termination of this Agreement, DM Services Provider shall provide to DCE all such information and data requested by DCE in an electronic format as kept in the ordinary course of business, and as reasonably agreed to by the Parties.

14. **COMPLIANCE WITH LAW.** Each Party shall be responsible for compliance with all laws or regulations applicable to the Services being provided under this Agreement. 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; the remaining provisions of this Agreement will remain in full force and effect. Any such termination shall not constitute a basis for termination for cause as defined in Section 7, above.

15. **CHOICE OF LAW.** This Agreement, and the rights and duties of the Parties arising hereunder, shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law rules that may require the application of the laws of another jurisdiction.

16. **INTEGRATION.** This Agreement contains the complete understanding between the Parties, supersedes all previous discussions, communications, writings and agreements related to the subject matter of this Agreement, and, except to the extent otherwise provided for herein, may not be amended, modified or supplemented except in a writing signed by both Parties.

17. **WAIVER.** No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.

18. **GOVERNMENTAL ENTITY.** DCE shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Except as provided in Section 7(a) above, DCE's failure to obtain any necessary budgetary approvals, appropriations, or funding for its obligations under this Agreement shall not excuse DCE's performance hereunder.

19. **NOTICES.** All notices and other communications required under this Agreement shall be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or email and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by facsimile or email, provided the original is concurrently sent by first class mail, and provided that notices received by facsimile or email after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third (3<sup>rd</sup>) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

	Calpine Energy Solutions LLC
If to DM	Attn: Legal Dept.
Services	401 West A Street, Suite 500
Provider:	San Diego, CA 92101
	619-684-8251 (Phone)



619-684-8350 (Fax)

If to DCE:  
Desert Community Energy  
Tom Kirk, Executive Director  
73710 Fred Waring Drive #200  
Palm Desert, CA 92260  
(760) 346-1127

With Copies  
to:  
Michael Jenkins  
JENKINS & HOGIN, LLP  
Manhattan Towers, 1230 Rosecrans Avenue, Suite 110  
Manhattan Beach, CA 90266  
(310) 643-8448  
(310.643.8441

20. **TIME.** Time is of the essence of this Agreement and each and all of its provisions. The parties agree that the time for performance of any action permitted or required under this Agreement shall be computed as if such action were "an act provided by law" within the meaning of California Civil Code §10, which provides: "The time in which any act provided by law to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded."

21. **LIMITATIONS.** Nothing contained in this Agreement shall in any way limit DM Services Provider from marketing any of its products and services outside of DCE's service territory.

22. **THIRD PARTY BENEFICIARIES.** The Parties agree that there are no third-party beneficiaries to this Agreement either expressed or implied.

24. **ATTORNEYS' FEES.** In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing party.

25. **NONDISCRIMINATORY EMPLOYMENT.** In connection with the execution of the Agreement, the DM Services Provider shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons.

26. **HEADINGS.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

27. **SEVERABILITY.** If any paragraph, section, sentence, clause or phrase contained in this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.

31. **CONTRACT ADMINISTRATORS.** Each Party shall appoint a contract administrator that will be responsible for administering this Agreement including having the authority to transmit instructions, receive information, and implement the Agreement on behalf of the respective party (the "Contract Administrator"). The Contract Administrators shall be identified in this Agreement. Either Party may change its respective Contract Administrator by giving advance written notice to the other Party, consistent with the terms of the Notice Section of this Agreement.

**Contract Administrator:**

**DCE:**

Katie Barrows, Director of Energy Resources  
(760) 346-1127  
kbarrows@cvag.org

**Calpine Energy Solutions LLC:**

Tony Choi, CCA Services Director  
(619) 684-8201  
tony.choi@calpinesolutions.com

32. **WARRANTY OF AUTHORITY.** Each Party represents and warrants to the other Party that it is and will remain duly organized, validly existing, and in good standing under the laws of the state of its organization throughout the term of this Agreement, and that the execution, delivery and performance of this Agreement are within its express or implied statutory powers, have been duly authorized by all necessary action, and do not violate any of the terms or conditions in its governing documents or applicable laws.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement as of the Effective Date provided herein.

Calpine Energy Solutions LLC

Desert Community Energy

By:

By:

Name: James Wood

Name: Shelley Kaplan

Title: President

Title: Chair

Date:

Date:

**ADDENDUM TO  
PROFESSIONAL SERVICES AGREEMENT (“AGREEMENT”)  
Between Calpine Energy Solutions LLC (“DM Services Provider”)  
And Desert Community Energy (“DCE”)**

**SCOPE OF SERVICES**

1. **TERM.** The services to be provided under this Addendum will commence upon execution of the Agreement. The delivery date for power (“Power Start Date”) will be July 1, 2018 or a date mutually agreed to by the Core Team. DM Services Provider will provide all services on a time schedule as necessary to meet the Power Start Date.
2. **DESCRIPTION OF DATA MANAGER SERVICES.** In accordance with the timing of Phase II, Phase III and the Power Start Date set out above, DM Services Provider shall provide the Data Manager Services listed below.
  - a. Start-Up Support Services. DM Services Provider shall:
    - i. Participate in coordination meetings to initiate Community Choice Aggregation service (“CCA Service”) in SCE’s territory. Such meetings may include the Core Team, DCE personnel, and/or SCE personnel, as necessary, and may require on-site participation by DM Services Provider personnel.
    - ii. Complete the technical testing of all necessary electronic interfaces with SCE, which provide for the communication by Internet and Electronic Data Interchange (“EDI”) between DM Services Provider and SCE to confirm system compatibility related to CCA Service Requests (“CCASRs”), billing collections, meter reading, and electricity usage data.
    - iii. Obtain all customer information data, including historical usage for enrolled customers, made available by SCE.
    - iv. Provide customer mailing list to DCE designated printer for customer notices during each Enrollment Phase using methodology agreed upon by DCE, DM Services Provider and DCE designated printer.
    - v. Provide DCE with an implementation schedule for key startup activities in the form of Appendix A, noting items that require program-specific information from DCE or SCE by a certain date. Parties understand that DM Services Provider is dependent on this information to perform certain services (e.g. setting up technology platform, training customer service representatives, etc.), and a delay in receiving the required information from DCE or SCE will delay the completion of certain services beyond the dates provided in Appendix A.
  - b. Electronic Data Exchange Services:
    - i. Process CCASRs from/to SCE for customer enrollment, customer initiated returns

- to bundled utility service or customer initiated returns to direct access service (814 Electronic Data Interchange Files).
  - ii. Obtain customer usage data from SCE to timely bill each customer according to SCE requirements (867 Electronic Data Interchange Files).
  - iii. Maintain and communicate the amount to be billed by SCE for services provided by CCA (810 Electronic Data Interchange Files).
  - iv. Receive and maintain data related to payment transactions toward CCA Service charges from SCE after payment is received by SCE from customers (820 Electronic Data Interchange Files).
  - v. Process updates from SCE when customer status changes.
- c. Customer Information System:
- i. Maintain an accurate database of all eligible accounts who are located in the CCA service area and identify each account's enrollment status (opt out, program enrollment), rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer CCA Service as mutually agreed to by parties from time to time.
  - ii. Allow CCA to have functional access to the online database to add customer interactions and other account notes.
  - iii. Allow CCA to view customer email or written letter correspondence within online database.
  - iv. Maintain and provide as needed historical usage data on all customers for a time period equal to the lesser of either (a) the start of service to present or (b) five years.
  - v. Maintain viewing access, available to appropriate CCA staff, to view SCE bills for CCA customers. Maintain accessible archive of billing records for all CCA customers from the start of CCA Service or a period of no less than five years.
  - vi. Maintain and communicate as needed records of customers who have been offered CCA Service with CCA but have elected to opt out, either before or after starting CCA Service.
  - vii. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.
  - viii. When requested by CCA, place program charges on the relevant customer account, identified by SAID.
  - ix. Capture each customer's participation in CCA Service programs in database.
  - x. Maintain all customer data according to CCA's customer privacy policy and the

requirements of California Public Utilities Commission Decision 12-08-045, including a daily backup process.

- xi. Maintain a Data Management Provider Security Breach Policy.

d. Customer Call Center Management & Staffing:

- i. Create and maintain professional Interactive Voice Response (“IVR”) recordings for CCA customer call center; CCA may update recordings once per calendar year.
- ii. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.
- iii. Staff a call center, during any CCA Statutory Enrollment Period, between the hours of 7 AM and 7 PM PPT weekdays to process opt out requests.
- iv. Staff a call center during Non-Enrollment Period between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding CCA and SCE holidays. Six months following the Power Start Date, Parties may mutually agree to modify the call center staffing hours based on an assessment of hourly call volumes.
- v. Provide sufficient call center staffing to meet the requirements set forth herein.
- vi. Provide sufficient number of Data Manager Experts are available to manage escalated calls between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding SCE and DM Services Provider holidays (“Regular Business Hours”).
- vii. During Non-Enrollment Periods, achieve the following service levels:
  - 1. A minimum of 75% of all calls will be answered within 20 seconds.
  - 2. 100% of voicemail messages answered within one (1) business day.
  - 3. 100% of emails receive an immediate automated acknowledgement.
  - 4. 95% of emails receive a customized response within one (1) business day.
  - 5. 100% of emails receive a customized response within three (3) business days.
  - 6. Achieve a no greater than 10% abandon rate for all calls.
- viii. Provide an automated ‘call back’ option for callers who will be put on hold for an estimated ninety seconds or longer. Provide callers with the estimated hold time, if applicable.
- ix. Record all inbound calls and make recordings available to CCA staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.
- x. Track call center contact quality with criteria including:
  - 1. Use of appropriate greetings and other call center scripts

2. Courtesy and professionalism
  3. Capturing key customer data
  4. Providing customers with correct and relevant information
  5. First-contact resolution
  6. Accuracy in data entry and call coding
  7. Grammar and spelling in text communication (email and chat)
- xi. Evaluate customer satisfaction through voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.
  - xii. Respond to customer emails pertaining to CCA Service enrollment, CCA Service programs and billing questions.
  - xiii. Receive calls from CCA Service customers referred to CCA by SCE and receive calls from CCA Service customers choosing to contact CCA directly without referral from SCE.
  - xiv. Request and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.
  - xv. Request permission (via live calls, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.
  - xvi. Respond to telephone inquiries from CCA Service customers using a script developed and updated quarterly by CCA. For questions not addressed within the script, refer inquiries either back to SCE or to CCA.
  - xvii. Respond to customer inquiries within 1 (one) business day, excluding weekends and holidays, including inquiries received either through telephone calls, email or web-portal.
  - xviii. Participate in call center coordination meetings hosted by SCE.
  - xix. Provide monthly call center statistics reports during the first full week of each month.
  - xx. Provide weekly call center statistics reports during Statutory Enrollment Periods.
  - xxi. Provide translation services for inbound calls for up to ten different languages to be identified by DCE no later than the date specified by DM Services Provider.
  - xxii. Create and maintain English-language web forms for the CCA website so that customers may change their account status to enroll or opt out of CCA Service programs. Forms may be updated once per calendar year by CCA.
  - xxiii. Host CCA meetings with call center management and representatives on a quarterly basis if requested by CCA.

- e. Billing Administration:
  - i. Maintain a table of CCA Service rate schedules provided by CCA.
  - ii. Send CCA Service charges as a separate line item to SCE for placement on monthly bill.
  - iii. Apply SCE account usage for each CCA Service customer against applicable rates to allow for customer billing.
  - iv. Review application of CCA Service rates to SCE accounts to ensure that the proper rates are applied to the accounts.
  - v. Timely submit billing information for each customer to SCE to meet SCE's billing window.
  - vi. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner.
  - vii. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CCA designated printer.
  - viii. Provide customer mailing list to CCA designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
  - ix. Send a CCA-provided letter to customers with delinquent accounts stating that failure to pay will result in customer being returned to SCE. DCE shall identify the length of delinquency that triggers such notice, as well as the time period allowed to bring the account current.
- f. Settlement Quality Meter Data Services:
  - i. DM Services Provider shall provide DCE or DCE's designated Scheduling Coordinator ("SC") with Settlement Quality Meter Data ("SQMD") as required from SC's by the California Independent System Operator ("CAISO").
  - ii. Obtain historical usage data for enrolled customers, from SCE, and utilize for estimation in SQMD process. In the absence of current historical usage, DCE to provide DM Services Provider with usage received from Schedule CCA-INFO in order to calculate Default Usage. DCE will approve Default Usage.
  - iii. Upon DCE's request, DM Services Provider shall submit the SQMD directly to the CAISO on behalf of DCE or DCE's designated SC
  - iv. DCE agrees that DM Services Provider shall have no responsibility for any charges or penalties assessed by the CAISO associated with the SQMD under an indemnity or otherwise.
  - v. DM Services Provider shall prepare the SQMD in accordance with Prudent Utility



Practice, however, DM Services Provider hereby disclaims in advance that any representation is made or intended that the SQMD is necessarily complete, or free from error.

g. Qualified Reporting Entity ("QRE") Services:

- i. DM Services Provider may serve as a QRE for up to ten (10) locally situated, small--scale renewable generators that: a) are metered by SCE, b) are interconnected to the SCE distribution system in accordance with SCE's requirements and c) supply electric energy to DCE through its feed-in tariff or are owned and/or controlled by DCE. QRE Services will be performed under terms and conditions set forth in a Qualified Reporting Entity Services Agreement mutually agreed to by the Parties.
- ii. Submit a monthly generation extract file to the Western Renewable Energy Generation Information System ("WREGIS") on DCE's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
- iii. For the purpose of collecting applicable generation and usage data for DCE's renewable energy projects and consistent with SCE's applicable meter servicing agreement, serve as designated "subcontractor" for certain renewable energy projects: DM Services Provider shall receive applicable electric meter data from SCE and shall provide such data to DCE for purposes of performance tracking and invoice creation.
- iv. Assist DCE in completing requisite generator registration materials, as such materials may be required by WREGIS, the California Energy Commission, the California Public Utilities Commission and/or other entities to effect the successful crediting of renewable energy certificates, as appropriate, to DCE's WREGIS account. These services shall be limited to assistance with the process and shall not involve providing regulatory or legal advice.

h. Reporting – DM Services Provider Shall include the following reports, frequency and delivery methods:

<b>Report</b>	<b>Frequency</b>	<b>Delivery Method</b>
Aging	Weekly, Monthly	SFTP
Call Center Statistics	Weekly, Monthly	Email
Cash Receipts	Weekly, Monthly	SFTP
Invoice Summary Report	Weekly, Monthly	SFTP
Monthly Transaction Summary	Monthly	Email
Opt Out with Rate Class	Ad hoc	CRM
Retroactive Returns	Monthly	Email
Sent to Collections	Monthly	Email
Customer Account Snapshot	Ad hoc	CRM

Customer Account Snapshot with Addresses	Ad hoc	CRM
Unbilled Usage	Monthly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP

- i. Ensure monthly status reports are provided during the first week of each month.
- ii. Ensure weekly status reports are provided during all enrollment periods.

**3. FEES.**

For the month of the Power Start Date, and each month thereafter, DCE shall pay DM Services Provider the following fees:

\$1.15 per meter per month, for each meter served by DCE in the month, up to 250,000;

\$1.10 per meter per month, for each meter served by DCE in the month, above 250,000.

**4. BONDS.**

DM Services Provider will post a \$100,000 bond to the California Public Utility Commission, or cash equivalent, on behalf of DCE, as part of the CCA Services initiation. DCE will replace such bond or cash within 90 days following the Power Start Date and in accordance with the Agreement. In the event DCE fails to replace or reimburse DM Services Provider for such bond or cash as required above, such failure shall constitute a default under the Agreement.

**5. PRICING ASSUMPTIONS.**

The Fees defined in Section 3 include only the services and items expressly set forth in this Agreement. Unless otherwise agreed to by the Parties in an amendment to the Agreement, the cost of any additional deliverables provided by DM Services Provider to DCE shall be passed through directly to DCE without mark-up. A labor rate of \$150.00 per hour will be utilized for labor costs unless otherwise agreed upon in writing by both parties prior to the commencement of additional work

**6. DEFINITIONS.**

“CCA Service” means DCE’s Community Choice Aggregation Service which permits cities, counties or a joint powers agency whose governing boards have elected to acquire their electric power needs, hereinafter referred to as Community Choice Aggregation (CCA), to provide electric services to utility end-use customers located within their service area(s) as set forth in California Public Utilities Code Section 366.2 and other Commission directives.

“CCA Service Request (“CCASR”)” means requests in a form approved by SCE to change a CCA Service customer’s, utility customer’s or direct access customer’s choice of services which could include returning a CCA Service customer to bundled utility service or direct access service.

“Mass Enrollment” means the automatic enrollment of customers into a CCA Service program where new service is being offered for the first time to a group of eligible customers.

“Meter Data Management Agent (MDMA) Services” means reading SCE’s customers’ meters, validating the meter reads, editing the meter reads if necessary and transferring the meter reading data to a server pursuant to SCE standards.

“Prudent Utility Practice” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of similar generating facilities in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, any governmental requirements or guidance, including CAISO, applicable laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Utility Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“SCE” is the local Utility Distribution Company.

“Statutory Enrollment Period” means three months prior to a Mass Enrollment, the month in which the Mass Enrollment occurs, and two billing cycles following Mass Enrollment. The Statutory Enrollment Period takes place over a six month period.

“Default Usage” means the average monthly usage value, by rate schedule, used for estimation in the absence of actual historical usage data.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have executed the Addendum as of the Addendum Date provided herein.

Calpine Energy Solutions LLC

Desert Community Energy

By: \_\_\_\_\_  
Name: Jim Wood \_\_\_\_\_  
Title: President \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Shelley Kaplan \_\_\_\_\_  
Title: Chair \_\_\_\_\_  
Date: \_\_\_\_\_

DRAFT

**APPENDIX A  
FORM OF CCA IMPLEMENTATION SCHEDULE**

Launch Date	July 1, 2018		Start	End	
Task No.	Implementation Task	Duration (days)	Days from Launch	Days from Launch	Responsible Party
1	Designated as Calpine with the Utility	7	187	180	CCA
2	Complete and submit required Utility Forms	7	187	180	CCA
3	Infrastructure & Application Configuration	90	150	60	Calpine
4	CRM Install and Configuration	90	180	90	Calpine
5	FAQ Creation and Approval	28	155	127	CCA
6	IVR Scripting Creation and Approval	28	155	127	CCA
7	Website Forms Template Review and Approval	28	155	127	CCA
8	IVR Script Translation	7	127	120	CCA
9	Website iFrames Translation	7	127	120	CCA
10	Website iFrames Design and Construction	42	117	75	Calpine
11	IVR Recordings	10	120	110	CCA
12	Print Vendor Selection	0	90	90	CCA
13	IVR Programming	35	110	75	Calpine
14	Bank Vendor Selection	0	90	90	CCA
15	EDI Certification (Utility and Bank)	42	102	60	Calpine
16	List of phase 1 customers	0	75	75	CCA
17	Print Vendor Collaboration and Testing	14	89	75	Calpine
18	Rate Design and Approval	0	90	90	CCA
19	Contact Center Training	21	88	67	Calpine
20	Program Rates	30	60	30	Calpine
21	1st Opt Out Period	30	60	30	Calpine
22	2nd Opt Out period	30	30	0	Calpine
23	Report Programming	30	30	0	Calpine
24	Utility Account Set Up	14	21	7	Utility
25	<b>Power Flow</b>	<b>0</b>	<b>0</b>	<b>0</b>	
26	Accounts Switch	37	7	+30	Utility/Calpine
27	3rd Opt Out Period	30	0	+30	Calpine
28	1st Full Cycle Bills	30	+30	+60	Calpine
29	4th Opt Out Period	30	+30	+60	Calpine



# DESERT COMMUNITY ENERGY

Board Meeting  
February 26, 2018

## Staff Report

**Subject:** Request for Proposals for Banking Services

**Contact:** Benjamin Druyon, Management Analyst, CVAG ([bdruyon@cvag.org](mailto:bdruyon@cvag.org))

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**Recommendation:** Authorize DCE Staff to release a Request For Proposals for DCE Banking Services.

**Background:** Desert Community Energy (DCE) is now about 5 months from its scheduled launch date and there are many items that will need to be addressed before then. One of them requires banking services for the many transactions which will take place.

DCE is seeking a bank and financial partner to facilitate transactions which will include, but are not limited to:

- Lockbox(es) – secured accounts for daily deposits from SCE of cash collected from DCE customers and monthly payment to the power suppliers under contract;
- Depository and cash management operations;
- Line(s) of Credit;
- Medium-term fixed loans;
- EDI compatibility with SCE – most, if not all, deposits will come through ACH deposits/wire transfer and EDI files from SCE on a daily basis.

Along with general requirements, the bank must also:

- Be a Federal or State chartered commercial banking institution and a member of the Federal Reserve System or the Federal Deposit Insurance Corp;
- Be a qualified depository for public funds pursuant to the applicable State codes;
- Provide online reporting that includes a detailed report of prior day transactions.

Other requirements will be listed in more detail in formal bid request.

Staff has received Banking RFP's from other CCA's and anticipates releasing a similar Request For Proposal packet by the end of February. The RFP will accept responses within 10 business days.

**Conclusion:** Staff is seeking authorization from the Board to release a Request for Proposals for DCE Banking Services.

**Fiscal Analysis:** The funding for CCA operations will come from payment of utility bills by customers once the CCA launch occurs and we begin serving customers. The initial expenses will cover the first months of operations, staffing, legal and other administrative functions until a revenue stream is established. A primary goal will be development of a reserve fund to hedge

against changing conditions and to build credit worthiness for the CCA. CVAG is tracking all expenses related to initial formation of the DCE CCA; these costs would be reimbursed once the CCA collects sufficient revenues. CVAG, in concert with TEA, will track all TEA and subconsultant expenses prior to and after program launch. CVAG/DCE and TEA staffs will track such costs, prepare budget estimates and budget tracking procedures, and periodically report to the DCE Board. CVAG and TEA staff will prepare a detailed repayment plan for cumulated CCA expenditures incurred during the pre-launch through approximately 3 months post launch period to be presented to the Board at a future meeting.

**Contract Finalization:** Authorize the Executive Director and/or CVAG legal counsel to make minor changes/revisions to the agreement as needed for clarification purposes.

**Attachments:** None.

Desert Community Energy  
Attendance Roster  
2018

<b>Jurisdictions</b>											
<b>Voting Members</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>Sept</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
Cathedral City	X										
Palm Desert	X										
Palm Springs	X										
<b>Ex Officio Member</b>											
Desert Hot Springs	(A)										

<b>(X)</b>	Voting member present
<b>(E)</b>	Ex Officio member present
<b>(A)</b>	Absent





## DESERT COMMUNITY ENERGY Board Meeting Dates - 2018

Meeting Time: 2:30 p.m.

Location: Coachella Valley Association of Governments  
73-710 Fred Waring Drive, Suite 200, Palm Desert – Phone: 760.346.1127

### Fourth Monday (due to holidays)

January 22

February 26

### Remaining dates are third Monday

March 19

April 16

May 21

June 18

July 16

August - DARK

September 17

October 15

November 19

December 17