



Cleaner electricity • Local control • Competitive rates

**REQUEST FOR PROPOSALS
RFP No. 2021-01**

**BEHIND-THE-METER
DISTRIBUTED ENERGY RESOURCES PROGRAM:**

Interested bidders should submit proposals to:

DESERT COMMUNITY ENERGY
ATTN: ERICA FELCI
efelci@cvag.org

**Proposals must be received to the email address above by
5:00 pm PST on Thursday, December 23, 2021**

Late proposals will not be accepted.

Technical questions regarding this Request for Proposals should be directed by email to
Erica Felci, efelci@cvag.org

REQUEST FOR PROPOSALS

BEHIND-THE-METER DISTRIBUTED ENERGY RESOURCES PROGRAM

DESERT COMMUNITY ENERGY

1.0. INVITATION

Desert Community Energy (DCE) seeks proposals from qualified organizations and business entities to develop and implement a safe and affordable battery energy storage program for DCE customers. This Distributed Energy Resources (DER) program would be implemented on behalf of Desert Community Energy member agencies, the cities of Palm Springs and Palm Desert, in the Coachella Valley, Riverside County, California.

The goal of the proposed DER program is to increase local resiliency and reliability, protect vulnerable customers and critical facilities, enhance DCE's peak load management strategies, support DCE's decarbonization strategies, and support statewide efforts to improve overall grid health. In partnership with the program implementer(s) selected through this solicitation, DCE intends for this program to provide its eligible customers with innovative, valuable, and affordable energy storage programming options that offer significant incentives to priority market segments and enhanced resiliency and reliability. This RFP includes a scope of work for implementation tasks necessary to achieve the goals of this DER program.

DCE is seeking qualified industry partners capable of providing end-to-end project development and installation services necessary to implement an innovative program to deploy distributed energy resources, including battery energy storage. The proposal should describe programmatic approach to increasing local resilience and reliability and supporting active peak load management through the deployment of behind-the-meter (BTM) dispatchable battery energy storage systems within DCE's service territory

Respondents should submit their proposals by email no later than 5 pm on Thursday, December 23, 2021. Proposals should be submitted to the attention of Erica Felci (efelci@cvag.org).

All requirements necessary to respond to this request for proposals are listed in Section IV, under Proposal Requirements, and posted on the DCE website. Additional information on DCE is available on our website: <https://desertcommunityenergy.org>. The requirements for submitting a Proposal are stated in this RFP. Please review them carefully.

I. BACKGROUND AND GENERAL DESCRIPTION

Desert Community Energy (DCE) is a Joint Powers Authority (JPA) comprised of the cities of Palm Desert and Palm Springs which was formed to offer a Community Choice Aggregation (CCA) program. Community Choice Aggregation (CCA) allows cities and counties to pool or aggregate their buying power to purchase electricity on a region-wide basis, to offer competitive rates to their consumers with the option of purchasing power from greener sources. Desert Community Energy launched and began serving customers in Palm Springs in April 2020. The City of Palm Desert is considering whether it will begin serving customers, with the earliest possible launch date in 2023. DCE contracts with Coachella Valley Association of Governments (CVAG) for administrative services and staff.

DCE promotes ongoing regional efforts to provide cleaner, greener energy at competitive rates, and advance energy efficiency, renewable energy, and climate action goals. Through DCE, local governments and their constituents can achieve a powerful range of objectives:

- Enhance local control of electricity rate structure, and sources of power.
- Provide electric power and other forms of energy to customers at a competitive cost.
- Reduce greenhouse gas emissions related to the use of power and provide an electricity supply with a lower carbon footprint.
- Carry out programs to reduce energy consumption and increase the use of renewable energy.
- Stimulate and sustain the local economy by developing local jobs in renewable and conventional energy; and
- Promote long-term electric rate stability, energy security and reliability for residents through local control of electric generation resources.

II. PURPOSE

The purpose of the program is to strategically deploy battery energy storage systems to increase local resiliency and to provide new tools and capabilities that support DCE's ongoing efforts to provide affordable portfolio of clean energy options to the communities and customers we serve. DCE is seeking industry partners to provide the implementation of an innovative, safe, and accessible battery energy storage program that provides meaningful benefits to its customers, while also supporting DCE's day-to-day operations, decarbonization strategies, enhancing local resiliency and overall grid health.

Program Goals

- Provide significant financial incentives for customers with no upfront out-of-pocket costs and simple, affordable repayment options to repay any balance after all incentives are received;
- Provide a program that offers eligible customers the opportunity to receive an affordable battery energy storage system that provides cost savings through demand management, backup power during planned grid outages, and any other values that the selected program partners are able to offer; and
- Develop suite of local distributed energy resources (DERs) that either DCE or the program implementer can monitor and dispatch to support DCE's overall portfolio and procurement needs, peak load management, and demand response strategies. DER resource types could include photovoltaic, wind, energy storage, electric vehicles, microgrids.
- Provide an analysis of options for battery optimization. DCE is open to a variety of potential value streams for battery optimization, including options where the program developer or DCE control the battery optimization.

Market Segments

The focus for DCE's energy storage program offering will be delivering dispatchable battery energy storage systems to:

1. Large Commercial and Industrial customers,
2. Local government agencies providing critical resiliency and/or emergency services throughout its service territory,
3. Small and Medium Commercial customers, and
4. Net Energy Metering (NEM) customers in these segments.
5. A secondary focus will be offering energy storage programs for Residential customers.

III. SCHEDULE

Item	Date
1. Release of Request for Proposals	November 19, 2021
2. Deadline for Submittal of Questions	November 29, 2021 (5 pm PST)
3. Response to Questions Posted	December 6, 2021 (by 5 pm PST)
4. Deadline for Receipt of Proposals	December 23, 2021 (5 pm PST)
5. Evaluate Proposals and Potential Interviews	December 27, 2021 – January 19, 2022
6. Expected contract award	January / February 2022

IV. PROPOSAL REQUIREMENTS

You are encouraged to keep your proposal brief and relevant to the specific work required. The requirements of this section are mandatory and failure to comply completely may result in the proposal being deemed non-responsive. Proposals should include the following, as appropriate:

- A. Cover Letter / Introduction including:
 - 1. The name, address, and phone number of the contact person for the remainder of the selection process.
 - 2. Provide background on your firm and its capacity to provide the Distributed Energy Resources program that DCE is seeking.
 - 3. Descriptions of the roles, credentials, and relevant experience of team members who will be involved in the project, including any sub-contractors.

- B. Organization Profile/Qualifications
 - 1. Organization name.
 - 2. A brief history of the organization, including the number of years in operation under the present organization name, as well as prior names and number of years' experience providing the proposed, equivalent, or related services.
 - 3. Organizational chart, including staffing structure.
 - 4. Organization size – total number of personnel and proposed number of personnel that could be available to provide services.
 - 5. Describe qualifications, experience and expertise of principal team members.
 - 6. Provide a list of all energy companies including municipal electric companies that you have provided services for within the past five years.
 - 7. Total capacity of battery energy storage systems installed to date in kW/kWh
 - 8. Provide a list of all subcontractors and/or suppliers that your firm has used to support distributed energy resource or energy storage projects over the past three years.
 - 9. Provide description of any relevant energy storage projects that demonstrate your firm's ability to implement DCE's Distributed Energy Program. Please include project name, description, project owner, and project partners.

10. Describe experience in working with the various agencies that may be stakeholders that could help DCE achieve the goals and complete the tasks specified in this RFP. Please include specialized experience and professional competence in areas directly related to this RFP.
 11. Provide a list of references - name, company, current phone number, and email address for existing and past clients. Please include how long your firm has provided services and the nature of those services.
- C. Project Approach. This section of the Proposal should provide a detailed description of the proposed approach and scope of work for implementing the program. The Project approach should include the following:
- Estimated Costs – Describe estimated total cost per customer and/or per unit of battery energy storage deployed and include anticipated annual savings per customer.
 - Cost Proposal:
Proposers shall provide a detailed cost proposal, identified as Exhibit B, which should include a description of consultant costs by task, including but not limited to job titles, estimated hours per person, hourly rates, travel time/costs, and other expenses related to these tasks. As part of the Cost Proposal, consultants may propose an option for a performance incentive based on enrollment success.
 - Customer Offering: Provide details on what participating customers will receive and what they will be required to do to move through the process to a successful outcome. For example, information on technical assistance provided, assessment report, recommended equipment, financing, and contracting mechanism. Proposer should describe a turn-key approach to inform participating customers of all incentives available to them and how Proposer will assist customers to take advantage of these incentives.
 - Customer Outreach/Recruitment: Describe plan for recruiting program participants and anything needed from DCE to implement customer engagement plan.
 - Financing: Provide a summary of proposed approach to financing project installations, including high-level proforma outlining itemized cashflow on a per project basis. Include details on all anticipated incentives (such as Investment Tax Credit (ITC) and/or California Self-Generation Incentive Program (SGIP), and any contingency plans and projected impacts if those incentives are not received.
 - Proforma: Provide total cost structure per installed system for three (3) standardized battery energy storage systems, assuming 4-hour discharge configuration (i.e., 20 kWh, 200 kWh, 500 kWh). Provide all assumptions, including cost of capital (interest rates), equipment costs, labor costs, permitting and interconnection costs, expected incentives, remaining costs after all incentives, customer payments needed to payoff remaining costs, if any.
 - Implementation: Provide detailed process for customer acquisition and development, permitting, and installation of behind-the-meter batter energy storage systems.
 - Scalability: Provide estimate of annual customer enrollment (based on any past experience) and describe any key factors that would enable scale in subsequent years, including key risks and challenges anticipated in meeting these targets.
 - Data Needs: Provide a table with headings indicated data you will need from DCE to implement proposed approach and include expected timeline for receiving such requests.

- Measurement and Verification: Include plan for facilitating measurement and verification of installed Battery Energy Storage System (BESS) performance over the useful life of the installed equipment. Provide reliable information on the performance of the assets to support asset management, reporting, settlement processes, etc.
- Critical Path/Risk Factors: Include any critical path issues and risk factors that could negatively affect implementation of the proposed approach, and any viable mitigation measures for managing such risks.
- Asset Maintenance, Warrantees, and Performance Guarantees: Include plan for providing asset maintenance to participating customers for the life of the installed battery energy storage systems, including any planned asset services or replacements. Provide summary of an/all applicable warrantees and/or performance guarantees.

Please highlight any innovations, special processes or technologies, competitive advantages, and value-added services that will enhance program delivery and/or customer participation. Should include a detailed description of embedded metering, telemetry, and communications standards and protocols. Include Resource Adequacy Values and/or Ancillary Market participation values or any other innovative technologies or strategies that might create additional value.

General Requirements

- D. The submittal will be concise, well-organized and clearly demonstrate the skills and experience of the Proposer. You may refer us to your website for organization history, resumes, and other background information.
- E. The proposal will include the name of the authorized individual submitting proposal, mailing address, telephone number, and email address if further information is desired.
- F. The prospective Proposer will designate the project manager by name. The selected consultant will not substitute the project manager or other members of the project team without prior approval of DCE.
- G. The Proposer shall obtain city business license(s) if required.
- H. Public Records. All documents submitted in response to this Request will become the property of DCE upon submittal and will be subject to the provisions of the California Public Records Act and any other applicable disclosure laws. Upon submission, all proposals shall be treated as confidential until the selection process is completed. Once a contract is awarded, all proposals shall be deemed public record. DCE is required to comply with the California Public Records Act as it relates to the treatment of any information marked "confidential." Respondents requesting that portions of its submittal should be exempt from disclosure must clearly identify those portions with the word "Confidential" printed on the lower right-hand corner of the page. Each page shall be clearly marked and separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. DCE will consider a respondent's request for an exemption from disclosure; however, if DCE receives a request for documents under the California Public Records Act, DCE will make a decision based upon applicable laws. Respondents should not over-designate material as confidential, and any requests or assertions by a respondent that the entire submittal, or significant portions thereof, are exempt from disclosure will not be honored.

- I. All proposals submitted in response to this RFP will remain valid until March 2021.

V. DEADLINE FOR SUBMISSION OF PROPOSALS

All proposals must be received by DCE by 5:00 pm (PST) Thursday, December 23, 2021. Late proposals will not be accepted. Proposals must be submitted by email as a PDF file. PDFs should be compressed as much as possible. Please identify in the subject line as “DCE Distributed Energy Resources Response to RFP” and submit proposals to:

Desert Community Energy
Attn: Erica Felci
efelci@cvag.org

Proof of receipt before the deadline is a time and date receipt on the email. Please allow adequate time for your email submittal to be received and confirmed.

VI. INQUIRIES

Any questions, technical or otherwise, pertaining to this RFP must be submitted via email by Monday, November 29, 2021. Please include “DCE Distributed Energy Resources RFP Question” in subject line and direct to Erica Felci (efelci@cvag.org).

Responses to such questions will be posted at <https://desertcommunityenergy.org/about/rfp/> by Monday, December 6, 2021 by 5 pm PST, via an addendum.

Prospective respondents are encouraged to promptly notify DCE of any apparent inconsistencies, problems, or ambiguities in this RFP. Please monitor the website for all information regarding this RFP. It is the sole responsibility of the prospective respondents to remain apprised of changes to the RFP and acknowledge any addendum(s) issued.

No Proposer, or anyone representing a Proposer, is to discuss this RFP with any official or employee of DCE / CVAG, other than the person named in this RFP. Neither Proposers, nor anyone representing a Proposer, is to discuss this RFP with any contractor engaged by DCE for assistance in preparing the RFP documents or any cost estimate associated with this procurement. Violation of this prohibition may result in disqualification of the contractor even if the contract has already been awarded.

VII. RESPONSIBILITY OF PROPOSER

If it is found that a Proposer is not responsible (i.e., has not paid taxes, is not a legal entity, submitted a proposal without an authorized signature, falsified any information in the proposal package, etc.), the proposal will be rejected.

VIII. SELECTION PROCESS

- A. Each proposal will be reviewed by an evaluation group to determine if it meets the proposal requirements. Failure to meet the requirements of the Request for Proposals may be cause for rejection of the proposal.

- B. The evaluation group may conduct interviews from a short-list of respondents during the selection process which may include a video conference (e.g., Zoom) or teleconference interview.
- C. The prospective consultant(s) is advised that should this RFP result in award of a contract, the contract will not be in force until it is approved and fully executed by the DCE Board.
- D. The selected consultant(s) will work closely with DCE staff and DCE consultants through the duration of the project.
- E. Proposers will be evaluated in accordance with the following evaluation criteria:
 - 1. Experience and Qualifications (40%)
 - 2. Responsiveness to Request for Proposal / Scope of Work: (40%)
 - Proposed approach to the project including the expected time commitment of key personnel and technical approach.
 - 3. Pricing/Cost Evaluation (20%)

IX. GENERAL CONDITIONS

- A. DCE shall not, in any event, be liable for any pre-contractual expenses incurred by the consultant. Pre-contractual expenses are defined as expenses incurred by the consultant in:
 - Preparing the Proposal;
 - Submitting the Proposal to DCE; and,
 - Any other expenses incurred by the consultant prior to an executed agreement
- B. DCE reserves the right to withdraw this RFP at any time without prior notice.
- C. Any contract awarded for this role will be made to the organization that, in the opinion of DCE, is best qualified.
- D. DCE reserves the right to reject all proposals if it determines, in its sole discretion, that adequate services cannot be obtained at a fair and reasonable cost that is within the budget available for the project.
- E. DCE further reserves the right to waive any irregularities in the proposals received in this response for Request for Proposals (RFP).
- F. DCE reserves the right to split or award the contract in any manner determined to be the most advantageous to DCE and its members.
- G. DCE makes no representations that any agreement will be awarded to any organization responding to this RFP. DCE expressly reserves the right to postpone reviewing the proposal for its own convenience and to reject any and all proposals responding to this RFP without indicating any reasons for such rejection(s).

X. INSURANCE

Before signing a contract or commencing work on this project, the contractor shall submit the following insurance requirements. Please indicate if your organization would be able to provide proof of the DCE insurance requirement as follows:

- A. Commercial General Liability policy in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily injury, personal injury and property;

- a. Additional Insured Endorsement
- b. Waiver of Subrogation Endorsement
- B. Professional Liability/Errors and Omissions in an amount not less than \$1,000,000.00 per claim and in the aggregate;
- C. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);
- D. Workers' compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per accident or disease,
 - a. Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

Each policy of insurance required by this section shall provide for no less than 30 days advance notice to DCE prior to cancellation. Each policy shall be endorsed to waive all right of subrogation against DCE by reason of any payment made for claims under the above coverage. DCE will work with the selected consultant(s) to confirm that appropriate insurance requirements are met. Additional insurance requirements are provided in the Sample Services Contract.

XI. ATTACHMENTS

- A. Sample DCE Services Agreement

**ATTACHMENT A
DESERT COMMUNITY ENERGY
SAMPLE PROFESSIONAL SERVICES
AGREEMENT**

The following is a sample DCE Agreement that will be negotiated between DCE and selected Proposer. Additional terms and conditions may be incorporated dependent on circumstances.

This Professional Services Agreement (“**Agreement**”) is made and entered into on [INSERT DATE], 2022, by and between DESERT COMMUNITY ENERGY, a California joint powers authority (“**DCE**”) and [INSERT NAME AND CORPORATE ORGANIZATION], a _____ Corporation (“**Consultant**”). DCE and Consultant are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

RECITALS

- A. Consultant desires to perform and assume responsibility for the provision of certain professional services required by DCE on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing technical services for DCE’s community choice energy program, is licensed in the State of California, and is familiar with the plans of DCE.
- B. DCE desires to engage Consultant to render such professional services for the implementation of DCE’s community choice energy program (“**Project**”) as set forth in this Agreement.

AGREEMENT

1. Scope of Services and Term.

1.1 General Scope of Services. Consultant promises and agrees to furnish to DCE all labor and services and incidental and customary work necessary to fully and adequately supply DCE the implementation services necessary for the Project (“**Services**”). The Services are more particularly described in Exhibit A attached hereto, and which are stated in the proposal to DCE. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2 Term. The term of this Agreement shall be from [INSERT DATE] to [INSERT DATE], unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

2. Responsibilities of Consultant.

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall

be performed by Consultant or under its supervision. DCE retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of DCE and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services, which is stated in the proposal to DCE and set forth in Exhibit B attached hereto. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, DCE shall respond to Consultant's submittals in a timely manner. Upon request of DCE, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of DCE.

2.4 Substitution of Key Personnel. Consultant has represented to DCE that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of DCE. In the event that DCE and Consultant cannot agree as to the substitution of key personnel, DCE shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to DCE, or who are determined by DCE to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of DCE. The key personnel for performance of this Agreement are as follows:

[INSERT PERSONNEL]

2.5 DCE's Representative. DCE hereby designates the Executive Officer, or designee, to act as its representative for the performance of this Agreement ("**DCE's Representative**"). DCE's Representative shall have the w to act on behalf of DCE for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than DCE's Representative, or designee.

2.6 Consultant's Representative. Consultant hereby designates **[INSERT NAME]**, or his or her designee, to act as its Representative for the performance of this Agreement ("**Consultant's Representative**"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and

attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.7 Coordination of Services. Consultant agrees to work closely with DCE staff in the performance of Services and shall be available to DCE's staff, consultants and other staff at all reasonable times.

2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from DCE, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subcontractors who is determined by DCE to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to DCE, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to DCE, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold DCE, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

2.10 Insurance.

2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to DCE that it has secured all insurance required under this section, in a form and with insurance companies acceptable to DCE. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to DCE that the subcontractor has secured all insurance required under this section.

2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and

maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence, \$2,000,000 for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability Coverage of at least \$1,000,000 per accident for bodily injury or disease.

2.10.3 Professional Liability. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim and in the aggregate. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by DCE to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give DCE, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from DCE’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) DCE, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects DCE, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by DCE, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(C) Workers’ Compensation and Employers Liability Coverage.

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against DCE, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to DCE, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance

policy or proceeds available to the named insured; whichever is greater.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of DCE (if agreed to in a written contract or agreement) before DCE's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(ii) Consultant shall provide DCE at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to DCE at least ten (10) days prior to the effective date of cancellation or expiration.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by DCE, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(v) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, DCE has the right but not the duty to obtain the insurance it deems necessary and any premium paid by DCE will be promptly reimbursed by Consultant or DCE will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, DCE may cancel this Agreement. DCE may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(vi) Neither DCE nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance

shall not contain any special limitations on the scope of protection afforded to DCE, its directors, officials, officers, employees, agents and volunteers.

2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by DCE. Consultant shall guarantee that, at the option of DCE, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects DCE, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, licensed to do business in California, and satisfactory to DCE.

2.10.8 Verification of Coverage. Consultant shall furnish DCE with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to DCE. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by DCE if requested. All certificates and endorsements must be received and approved by DCE before work commences. DCE reserves the right to require complete, certified copies of all required insurance policies, at any time.

2.10.9 Subcontractor Insurance Requirements. Consultant shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to DCE that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name DCE as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, DCE may approve different scopes or minimum limits of insurance for particular subcontractors.

2.10.10 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3. **Fees and Payments.**

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C,

attached hereto. The total compensation shall not exceed [INSERT CAP] without written approval of DCE's Board of Directors. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Consultant shall submit to DCE a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. DCE shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by DCE.

3.4 Extra Work. At any time during the term of this Agreement, DCE may request that Consultant perform Extra Work. As used herein, "**Extra Work**" means any work which is determined by DCE to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from DCE's Representative.

4. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of DCE during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

5. **General Provisions.**

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. DCE may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to DCE, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, DCE may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other

information within fifteen (15) days of the request.

5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, DCE may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

DCE: Desert Community Energy
73710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5.3 Ownership of Materials and Confidentiality.

5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for DCE to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“**Documents & Data**”). Consultant shall require all subcontractors to agree in writing that DCE is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by DCE. DCE shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at DCE’s sole risk.

5.3.2 Intellectual Property. In addition, DCE shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“**Intellectual Property**”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property

prepared or developed by or on behalf of Consultant under this Agreement.

DCE shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by DCE, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of DCE.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of DCE.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

DCE further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

5.3.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of DCE, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use DCE's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DCE.

5.3.4 Infringement Indemnification. Consultant shall defend, indemnify and hold DCE, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by DCE of the Documents & Data, including any method, process, product, or concept specified or depicted.

5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

5.6 Indemnification.

5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of DCE's choosing), indemnify and hold DCE, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against DCE, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against DCE or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse DCE and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, DCE, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County, California.

5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

5.10 DCE's Right to Employ Other Consultants. DCE reserves right to employ other consultants in connection with this Project.

5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of DCE. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to DCE include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DCE shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DCE, during the term of his or her service with DCE, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.19 Equal Opportunity Employment and Subcontracting. Consultant represents that it is an equal opportunity employer and it shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of applicants, employees, subcontractors, vendors, or suppliers. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Further, Consultant shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation, or to undertake self- insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

5.21 DCE to Enter Agreement. Consultant has all requisite power and DCE to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and DCE to make this Agreement and bind each respective Party.

5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

5.23 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of DCE. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have made and executed this Agreement as of the date first written above.

DESERT COMMUNITY ENERGY

CONSULTANT

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

ATTEST:

Secretary, DCE

APPROVED AS TO FORM:

General Counsel

EXHIBIT A
SCOPE OF SERVICES

[INSERT]

EXHIBIT B

SCHEDULE OF SERVICES

[INSERT]

EXHIBIT C

COMPENSATION BILLING RATES

<u>Name</u>	<u>Title</u>	<u>Hourly Rate</u>
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