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DESERT COMMUNITY ENERGY

REQUEST FOR PROPOSALS FOR COMMUNITY CHOICE AGGREGATION (CCA) PROGRAM MARKETING AND OUTREACH SERVICES

RFP 2023-02

Interested firms should submit proposals via email to:

**DESERT COMMUNITY ENERGY
C/O COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS**

Attn: Allen McMillen

amcmillen@cvag.org

**Proposals must be received by DCE to the email address above by
3:00 p.m. (PDT) on Thursday, October 12, 2023**

Late proposals will not be accepted

Questions regarding this Request for Proposals should be directed by email to
Allen McMillen at amcmillen@cvag.org

Issue Date: September 12, 2023

REQUEST FOR PROPOSALS

INVITATION

Desert Community Energy (DCE) seeks proposals from qualified firms to assist with marketing and outreach of its regional Community Choice Aggregation (CCA) program. This Request for Proposals (RFP) includes a scope of work for branding, marketing, and outreach tasks. It includes management of the DCE brand, website maintenance, and design / implementation of communications and outreach program for members of the public (DCE electricity customers), representatives of DCE's member cities, and community stakeholders.

Key Activities include:

1. Project Management for each of the following services
 - a. Marketing strategy implementation and brand management
 - b. Graphic design
 - c. Printing and mailing
 - d. English/Spanish translation
 - e. Video and photography
 - f. Support for community events
 - g. Social media management
2. Branding of customer program launches
3. Community outreach and stakeholder engagement
4. Website updates

Please submit your organization's proposal by email no later than **3:00 p.m. (PDT) on Thursday, October 12, 2023**. Proposals should be submitted to the attention of Allen McMillen, Contracts Analyst at amcmillen@cvag.org. You will receive a return email confirming receipt so please allow adequate time for your email submittal to be received and confirmed.

DCE is staffed by the Coachella Valley Association of Governments (CVAG), which also handles other administrative services such as the procurement process. DCE reserves the right to reject all proposals or to split or award the contract in any manner determined to be the most advantageous to DCE. As a result of the RFP process, DCE may select one or more consultants to complete the various tasks described in the scope of work.

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

Consistent with the California Public Utilities Code and California Public Utilities Commission (CPUC) policy objectives as set out in CPUC General Order 156, DCE encourages all eligible Proposers to get certified with the CPUC as a diverse business enterprise. For overview information on the CPUC Supplier Diversity Program, please visit the program homepage (<https://www.cpuc.ca.gov/supplierdiversity/>). For information on the certification process and requirements, please visit the Certifications page (<https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/business-and-community-outreach/supplier-diversity-program/certification>).

I. BACKGROUND AND GENERAL DESCRIPTION

Desert Community Energy (DCE) is a Joint Powers Authority (JPA) whose members are the cities of Palm Desert and Palm Springs, which was formed to offer a Community Choice Aggregation (CCA) program. CCAs are legal entities that allow communities to source their own electricity, putting an end to the monopolies held by traditional Investor-Owned Utilities such as Southern California Edison (SCE). DCE offers customers the choice to buy cleaner electricity at competitive rates, reducing greenhouse gases through development of robust renewable energy infrastructure. This adds to the local job market, while allowing programs like DCE to develop strategies to help customers boost energy efficiency and make clean energy more accessible. DCE works with SCE to provide transmission and distribution of electricity, as well as maintenance and customer service.

DCE 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 2027. DCE is committed to protecting the privacy of our customers. DCE is governed by a Board of Directors with equal representation by an elected official from each participating city. All meetings are open to the public. DCE may be required to disclose information received pursuant to this RFP in accordance with the requirements of the Ralph M. Brown Act or the California Public Records Act (CPRA, Cal. Gov't Code 6250 et seq.).

II. PURPOSE

DCE's CCA program is part of ongoing CVAG efforts to promote cost savings for energy consumers, energy efficiency and renewable energy, climate action goals, and regional collaboration. Through a CCA, local governments and their constituents can achieve a powerful range of objectives:

- Enhance local control of electricity rate structure, and sources of power;
- 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.

III. SCHEDULE

Item	Date
1. Release of Request for Proposals	Tuesday, September 12, 2023
2. Deadline for Submittal of Questions	September 28, 2023 (5:00 p.m. PDT)
3. Responses to Questions via Addendum	October 2, 2023 (by 3:00 p.m. PDT)
4. Deadline for Receipt of Proposals	Thursday, October 12, 2023 (3:00 p.m. PDT)
5. Potential Interviews (tentative)	October 23-26, 2023
6. Expected contract award	November 20, 2023

DCE anticipates awarding a three-year contract effective January 1, 2024, with the option of two one-year extensions.

IV. SCOPE OF WORK

Since the initial launch of DCE's CCA program serving customers in Palm Springs in April 2020, there are ongoing needs for a consultant to assist with customer support, outreach, website maintenance, CCA information, and customer communications. These operational activities are included in this RFP and the proposed contract.

Through this RFP, DCE is seeking a marketing, branding, and community outreach partner to assist DCE with development and implementation of its CCA program in the Coachella Valley. Proposals submitted should identify your firm's approach, recommendations, and budget for the following Scope of Work. The tasks set out in the Scope of Work are collectively referred to as the Project.

1. Project Management

Oversee and fulfill DCE needs including monthly accounting report (invoices and actual spending vs. expected spending) for each of the following services:

- a. **Marketing strategy implementation and brand management** - In collaboration with DCE staff and based on DCE's existing marketing strategy, design and deliver an annual marketing and advertising plan document that outlines campaigns, audiences, timeline, assets/resources needed, message focus, estimated costs for billable deliverables, and identifies overall goals and performance metrics.
- b. **Graphic design** – Provide design for presentations, fliers, posters, banners, mailers, cards, folders, and other printed and digital materials as needed.
- c. **Printing and mailing** – Design as required, including the Power Content Label Mailer and annual updates with SCE such as the Joint Rate Mailer.

- d. **English/Spanish translation** - Provide nuanced and culturally sensitive translations including promotional copy and advertising scripts, with a focus on English/Spanish translation.
- e. **Video and photography** - Provide concept, script, and full video production services as needed in support of advertising and communications plans. Provide still photography as needed including event settings, project builds, press conferences, clean energy business features, etc.
- f. **Support for community events** – Create and execute advertising/social media surrounding upcoming community events. Provide photography services during events.
- g. **Social media management** – Create and execute social media posts and engagement with customers, with a focus on energy efficiency strategies.

2. Branding of customer program launches

- a. Develop marketing strategy and implementation of branded program launches as needed.
- b. Execute customer outreach and engagement campaigns as needed.
- c. Graphic design as needed.

3. Community outreach and stakeholder engagement

- a. Develop a communications and outreach plan for staff and Board approval detailing the methods and timing of various local communications strategies.
- b. At the direction of DCE staff, work with member cities to support local stakeholder and public outreach which may include, but not limited to, meetings with key stakeholder groups, public workshops/webinars, local presentations, event tabling, newsletter articles, and other key outreach/engagement activities.
- c. Develop and maintain a DCE list-serve to facilitate outreach/engagement activities. Refine/expand use of regular e-newsletters and information blasts to DCE’s list-serve and other local communications outlets.

4. Website updates – reorganization and backup on routine postings

- a. Reorganize existing website.
- b. Assist DCE team with routine website updates and postings.

V. PROPOSAL REQUIREMENTS

Proposals shall be submitted by email in Adobe Printable Document Format (pdf), identified in the subject line as “**DCE Marketing and Outreach Services Proposal**” to Allen McMillen, amcmillen@cvag.org. Proposals shall consist of both a work proposal and a separate cost proposal and are to be submitted (emailed) in one email submission as two separate attachments. The file names shall designate the contents (Work Proposal or Cost Proposal) accordingly. Only one email submittal per Proposer consisting of the technical proposal and the fee proposals will be considered.

It is strongly recommended that the Proposer submit proposals in the format identified in this RFP to allow DCE to fully evaluate and compare the proposal. All requirements and questions in the RFP should be addressed and all requested information shall be supplied. DCE reserves the right to request additional information which, in DCE’s opinion, is necessary to assure that the

Proposer's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the Agreement.

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Proposer's demonstrated capability to perform the Services. Technical literature that supports the Proposer's approach to providing the Services and work plan may be submitted to DCE in conjunction with the Proposal. Emphasis should be concentrated on completeness, approach to the work and clarity of proposal.

The proposal shall be signed by an individual, partner, officer or officers authorized to execute legal documents on behalf of the Proposer.

A. Content and Format of Work Proposal

Proposals shall be concise, well organized and demonstrate qualifications and applicable experience. Proposals shall be organized and include page numbers for all pages in the proposal. The proposal shall be emailed (.pdf file) as an attachment(s) and submitted via email to the Procurement Manager.

Proposals shall be limited to a total of 25 pages. The Cover Page, Cover Letter, Appendices and page separators will not count toward the page limit. Proposals shall be presented in the following order and shall include:

1. Cover Letter. This letter has a two-page maximum and shall be addressed to Allen McMillen, Contracts Analyst and shall, at a minimum, contain the following:
 - Identification of Proposer that will have contractual responsibility with DCE. Identification shall include legal name of company, corporate address, telephone, and fax number. Include name, title, address, and telephone number of the contact person identified during period of proposal evaluation.
 - Identification of all proposed Subcontractors including legal name of company, contact person(s) name and mailing address, phone number and email address. Relationship between Proposer and Subcontractors, if applicable.
 - Acknowledgment of receipt of all RFP addenda (signed Acknowledgement shall be attached, if any and will not count toward the page total.
 - A statement to the effect that the proposal shall remain valid for a period of not less than 180 days from the date of submittal.
 - Signature of a person authorized to bind Proposer to the terms of the proposal.
 - Signed statement attesting that all information submitted with the proposal is true and correct.

2. Qualifications, Related Experience and References. This section of the proposal should establish the ability of Proposer to satisfactorily perform the required work by reasons of experience in performing work of the same or similar nature; strength and stability of the Proposer; staffing capability; workload; record of meeting schedules on similar projects; and at least three supportive client references. Proposer to:

- Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; number of employees.
 - Provide a general description of the firm's financial condition, identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Proposer's ability to complete the Project.
 - Describe the firm's experience in performing work of a similar nature to that solicited in this RFP and highlight the participation in such work by the key personnel proposed for assignment to this Project.
 - Describe experience in working with the various government agencies and private entities that may have jurisdiction over the approval of the work specified in this RFP. Please include specialized experience and professional competence in areas related to this RFP.
 - A minimum of three (3) references should be given. Furnish the name, title, address, and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Proposer also may supply references from other work not cited in this section as related experience.
3. Proposed Staffing and Project Organization. This section of the proposal should establish the method that will be used by the Proposer to manage the Project as well as identify key personnel and sub-consultants assigned. Proposer to:
- Provide education, experience, and applicable professional credentials of project staff. Include applicable professional credentials of "key" project staff.
 - Furnish brief resumes (not more than two (2) pages each) for the proposed Project Manager and other key personnel in the appendix, include copy of their certifications
 - Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this Project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
 - Include a project organization chart that clearly delineates communication and reporting relationships with DCE among the project staff and subconsultants.
 - Include a statement that key personnel will be available to the extent proposed for the duration of the Project, acknowledging that no person designated as "key" to the Project shall be removed or replaced without the prior written consent of DCE.
4. Work Plan. Proposer shall provide a narrative that addresses the Scope of Work and shows Proposer's understanding of DCE's needs and requirements. Proposer to:
- Describe the approach and work plan for completing the tasks specified in the Scope of Work. The work plan shall be of such detail to demonstrate the Proposer's ability to accomplish the Project objectives and overall schedule.
 - Outline sequentially, the activities that would be undertaken in completing the tasks and specify who would perform them and identify all deliverables.
 - Identify methods that Proposer will use to ensure quality control as well as budget and schedule control for the Project.
 - Identify any special issues or problems that are likely to be encountered during this Project and how the Proposer would propose to address them.

- Proposer is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the Project. Any modifications proposed to this solicitation are welcome provided they are innovative, advanced, and well thought out methodologies and shall be identified as optional and priced out separately in the Fee Proposal.
- Provide Schedule and Deadlines. The draft schedule shall be depicted in a Gantt chart format.

5. Appendices:

- Recent and Relevant Projects: Provide an example of a similar scoped project deliverable conducted within the last three (3) years, or in process if at least in the final draft stage. If published online, the Proposer may provide a link in lieu of inserting a lengthy document into the appendices.
- Litigation: Provide litigation history for any claims filed by your firm or against your firm related to the provision of Services in the last five (5) years.
- Project Team Resumes – Submit resumes of all key personnel/support staff that will produce work product for the Services. Describe their qualifications, education, and professional licensing.
- Changes to Professional Services Contract – DCE’s standard professional services agreement (Agreement) is included as [Attachment “A”](#) in this RFP. The Proposer shall review with proposed subconsultants and identify from Proposer or proposed subconsultants any objections to and/or request changes to the standard contract language in this section of the proposal.

B. Content and Format of Cost Proposal

Provide separate from the Work Proposal a Cost Proposal for required services described in [Section IV. Scope of Work](#) herein. The Cost Proposal shall be emailed (.pdf file) as an attachment together with the Work Proposal and submitted via email to Allen McMillen, amcmillen@cvag.org. The Cost Proposal shall be presented in a table format organized by task and shall include hours and hourly rates for all personnel including subconsultants, subtotals for each task, and a grand total for total proposed fee. The Cost Proposal shall also include proposed direct costs and subcontractor mark-up, if any.

Any modifications proposed to this RFP are welcome provided they are innovative, advanced, and well thought out methodologies and shall be identified as optional and priced out separately in the Cost Proposal.

C. No Deviations from the RFP

In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, the Agreement. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, Proposer is directed to carefully review the proposed Agreement, including the insurance and indemnification provisions therein.

D. General Requirements

- 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.
- The proposal will include the name of the authorized individual submitting the proposal, mailing address, telephone number, and email address if further information is desired.
- The prospective Proposer will designate the project manager by name. The selected Proposer will not substitute the project manager or other members of the project team without prior approval of DCE.

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 CPRA and any other applicable disclosure laws. Upon submission, all proposals shall be treated as confidential until the selection process is completed.

E. Additional Stipulations

DCE reserves the right to accept or reject all or any proposal and to waive any informality, incompleteness, or error in any proposal.

All proposals received become the property of DCE. Once a contract has been awarded, the name(s) of the successful applicant(s) may be made available to the public upon request. All costs incurred by applicants in the preparation and presentation of their proposal will be at their own expense, and applicant materials will not be returned.

DCE reserves the right to amend the RFP or issue to all Proposers addenda to answer questions for clarification.

Unless specifically requested by DCE, no amendment, addendum or modification will be accepted after a proposal has been submitted to DCE. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted prior to the deadline stated herein for receiving proposals.

A proposal may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the proposal.

DCE will not compensate any Proposer for the cost of preparing any proposal, and all materials submitted with a proposal shall become the property of DCE. DCE will retain all proposals submitted and may use any idea in a proposal regardless of whether that proposal is selected.

DCE reserves the right to cancel this RFP at any time prior to the contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP.

Prices provided by Proposers in response to this RFP are valid for 180 calendar days from the proposal due date. DCE intends to award the contract within this time but may request an extension from the Proposers to hold pricing, until negotiations are complete, and the contract is awarded.

Issuance of this RFP and receipt of proposals does not commit DCE to award a contract. DCE expressly reserves the right to postpone the proposal for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one Proposer concurrently, or to cancel all or part of this RFP.

DCE reserves the right to negotiate any price or provision, task order or service; accept any part or all of any proposals; waive any irregularities; and to reject any and all, or parts of any and all proposals; whenever, in the sole opinion of DCE, such action shall serve its best interests and those of the tax-paying public. The Agreement, if any is awarded, will go to the Proposer whose proposal best meets DCE's requirements.

VI. DEADLINE FOR SUBMISSION OF PROPOSALS

All proposals must be received by DCE **by 3:00 p.m. (PDT) Thursday, October 12, 2023**. Proposals must be submitted by email with separate attachments for the Work Proposal and Cost Proposal. The PDF attachments should be compressed as much as possible. Please identify in the subject line as "DCE - Marketing and Outreach Services Response to RFP" and submit proposals via email to amcmillen@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. A bid list of all proposals received will be recorded with the Company Name, Contact Name, email, date/time received.

VII. INQUIRIES

Any questions, technical or otherwise, pertaining to this RFP must be submitted via email by **Thursday, September 28, 2023, by 5:00 p.m. PDT**. Please include "DCE Marketing and Outreach Services RFP Questions" in subject line and direct to Allen McMillen (amcmillen@cvag.org).

Responses to such questions will be posted at <https://cvag.org/about/proposals/> by **Monday, October 2, 2023, by 3:00 p.m. PDT** via an addendum.

Prospective Proposers 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 Proposers 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 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.

VIII. SELECTION PROCESS

A. Evaluation

Work proposals will be reviewed by a Selection Committee (Committee). In reviewing submittals, the Committee may contact entities the firm(s) have performed contract work for in the past and consider previous work performance in ranking the firms.

The Committee will score and rank the proposals based on the scale below.

1. Qualifications, Related Experience and References (30%)

This section of the proposal should establish the ability of the proposed team to satisfactorily perform the required work by reasons of experience in performing work of the same or similar nature; demonstrated experience working with agencies directly involved in this Project; staffing capability; workload; record of meeting schedules on similar projects; and at least three (3) supportive client references.

For procurements that are solely for DCE, it is the policy of DCE to promote employment and business opportunities for local residents and local businesses on all contracts and give preference to local residents, workers, businesses, contractors, and consultants to the extent consistent with the law and the interests of DCE and its customers.

Successful proposers will demonstrate experience and success in comparable projects. References will support examples of success in comparable projects.

2. Proposed Staffing and Project Organization (25%)

This section of the proposal should establish the method that will be used to manage the Project as well as identify key personnel assigned.

3. Work Plan (25%)

This section of the proposal shall provide a narrative that addresses the Scope of Work and shows understanding of the Project needs and requirements.

4. Proposed fee (20%)

Successful proposers will propose fees that are cost-effective, sufficiently detailed, and feasible. Cost-effective proposals will be able to accomplish higher levels of planning and design with the available funds.

During the evaluation process, DCE reserves the right, where it may serve DCE's best interest, to request additional information or clarifications from Proposers, or to allow corrections of errors or omissions.

B. Selection

It is DCE's intent to select a Proposer best evidencing demonstrated competence and professional qualifications to perform the Services. DCE reserves the right to reject all proposals, select by proposal review only or interview as needed. Certain Proposers may be selected to

make a brief presentation and oral interview after which a final selection will be made. The successful Proposer will be selected on the basis of information provided in the RFP, in-person presentations, and the results of DCE's research and investigation.

Upon selection of a Proposer, DCE will endeavor to negotiate a mutually agreeable professional services agreement based on the attached Agreement with the selected Proposer. In the event that DCE is unable to reach agreement, DCE will proceed, at its sole discretion, to negotiate with the next Proposer selected by DCE. DCE reserves the right to contract for services in the manner that most benefits DCE including awarding more than one contract if desired.

C. Protests

Protest procedures and dispute resolution process will be in accordance with the DCE Procurement Policy. The protest must be submitted in writing to DCE's Executive Director via certified mail using the following address:

Executive Director
Desert Community Energy
74-199 El Paseo Drive, Suite 100
Palm Desert, CA 92260

Attachment A: DCE Professional Services Agreement

See following pages.

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], 2023, 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
74-199 El Paseo Drive, Suite 100
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. 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 Authority to Enter Agreement. Consultant has all requisite power and authority 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 authority 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: _____

APPROVED AS TO FORM:

General Counsel

EXHIBIT A

SCOPE OF SERVICES

[INSERT]

EXHIBIT B

SCHEDULE OF SERVICES

[INSERT]

EXHIBIT C

COMPENSATION BILLING RATES

Name	Title	Hourly Rate
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