

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 10

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To: Valley Clean Energy Alliance Board of Directors  
From: Mitch Sears, Sustainability Manager, City of Davis  
Subject: Implementation and Operational Service Options  
Date: July 25, 2017

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### RECOMMENDATIONS

1. Direct staff to research and evaluate potential VCEA implementation and operational service options not offered in the responses to the VCEA request for proposals.
2. Add a Woodland Advisory Committee representative to the existing Advisory Committee RFP Subcommittee to assist staff in the comparative analysis of service options.
3. Authorize the Interim General Manager, in consultation with VCEA Legal Counsel, to finalize and enter into a short-term contract in an amount not to exceed \$15,000 with Don Dame, public utility expert, to support the development of a comparative analysis of service options.
4. Appoint up to three Board members to ad hoc subcommittee to evaluate service options for the August meeting.
5. Direct staff to return to the Board in August for discussion and direction regarding implementation and management services options.

### BACKGROUND & DISCUSSION

In December 2016, the City of Davis, on behalf of VCEA issued a multi-service RFP for program implementation services in the areas of technical and energy services, data management and call center, and marketing/community outreach. Bidders were permitted to submit proposals for one program category or all (bundled) categories. Nine qualified bids were received, all for a single program category. An RFP review team that included VCEA staff and 3 members of the VCEA advisory committee have evaluated the bids and narrowed the field in each service category. The RFP remains open at this time.

Meanwhile, in early 2017 the VCEA Board directed staff to accelerate the recruitment of an Executive Officer in order to make the hire in advance of vendor selection. The EO recruitment has not resulted in a selection at this time. During the VCEA's EO recruitment process, staff evaluated other public sector implementation and management services options. Staff believes these other options warrant further examination and comparison with the existing single

vendor service options that resulted from VCEA's RFP process. Staff notes that examination of new options is consistent with a fundamental reason why VCEA members chose to establish a local CCE program rather than join an existing program: the ability to make local decisions that create the most value for its customers.

If so directed, staff will work with its existing consulting team from LEAN Energy US and Don Dame, independent consultant with deep experience in public utility management, to develop the comparative analysis of the different options for Board consideration at its August meeting.

#### Fiscal Impact

No more than \$15,000 in consultant time from Don Dame to prepare a comparative analysis of VCEA implementation and operational management options. The time for LEAN Energy is covered by their existing contract.

#### Attachments:

- Bio for Don Dame
- Contract for Consultant Services with Don Dame

# Valley Clean Energy Alliance (VCEA)

## COVER CHECKLIST—AGREEMENT FOR CONSULTANT SERVICES

Remove this checklist prior to execution of Contract

- \_\_\_ 1. Introductory Paragraph: Insert Date
- \_\_\_ 2. Introductory Paragraph: Insert name of Consultant and form of legal entity
- \_\_\_ 3. 1st Recital: Insert general types of services provided by Consultant
- \_\_\_ 4. 2nd Recital: Insert name of Project
- \_\_\_ 5. Sec. 1.1: Insert brief description of Services to be provided by Consultant
- \_\_\_ 6. Sec. 2.1: Insert VCEA Project Manager
- \_\_\_ 7. Sec. 2.2: Insert Consultant Representative
- \_\_\_ 8. Sec. 3.4: Insert names of Key Personnel for Consultant, or replace language with "Intentionally Omitted"
- \_\_\_ 9. Sec. 3.10.3: Determine whether Profession Liability Insurance language is necessary. If not necessary replace with "Intentionally Omitted."
- \_\_\_ 10. Sec. 4.1: Insert written and numerical dollar amount for Not to Exceed Amount
- \_\_\_ 11. Sec. 6.6: Insert contact information for Consultant and VCEA
- \_\_\_ 12. Sec. 6.15: Confirm that Consultant has provided a list of all subconsultants and key personnel for all subconsultants to confirm no conflict of interest.
- \_\_\_ 13. Exhibit A: Insert Scope of Services
- \_\_\_ 14. Exhibit B: Insert Facilities, Equipment and Other Materials provided by VCEA or state "Not Applicable"
- \_\_\_ 15. Exhibit C: Insert Schedule of Services
- \_\_\_ 16. Exhibit D: Insert Terms of Payment

## AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this \_\_\_\_th day of July, 2017, by and between the VCEA, a Joint Powers Agency existing under the laws of the State of California, hereinafter referred to as "VCEA," and Don Dame, hereinafter referred to as "Consultant."

### RECITALS

WHEREAS, Consultant desires to perform and assume responsibility for the provision of certain services required by VCEA on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing energy advisory services to public clients and is familiar with the plans of VCEA with respect to the Project, as defined below.

WHEREAS, VCEA desires to engage Consultant to render such services in connection with the Valley Clean Energy Alliance (CCE) project ("Project") as set forth in this Agreement.

NOW, THEREFORE, VCEA and Consultant agree as follows:

#### 1. SCOPE OF SERVICES AND TERM.

1.1 Scope of Services. Consultant promises and agrees to furnish to VCEA all labor, services, and incidental and customary work necessary to fully and adequately perform the Energy Advisory services necessary for the Project ("Services"). The Services are more particularly described in Exhibit A. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. In the event of a conflict between a provision in this Agreement and a provision in Exhibit A or in any other exhibit to this Agreement, the provision in this Agreement shall control.

1.2 Facilities, Equipment, and Other Materials. Except as specifically provided in Exhibit B, Consultant shall, at its sole cost and expense, furnish all facilities, tools, equipment, and other materials necessary for performing the Services pursuant to this Agreement. VCEA shall furnish

to Consultant only those facilities, tools, equipment, and other materials specifically listed in Exhibit B, according to the terms and conditions set forth in that exhibit.

1.3 Schedule of Services. Consultant shall perform the Services expeditiously and in accordance with the Schedule of Services set forth in Exhibit C and any updates to the Schedule of Services mutually approved by the VCEA and Consultant. Time is of the essence in the performance of this Agreement. Consultant's failure to perform any Service required under this Agreement within the time limits set forth in Exhibit C shall constitute a material breach of this Agreement.

1.4 Term. The term of this Agreement shall begin on the date VCEA Board approves this Agreement and shall expire upon completion of and final payment for the Services or when terminated as provided in Article 5.

## 2. PROJECT COORDINATION.

2.1 VCEA's Representative. VCEA hereby designates VCEA Interim General Manager to act as its representative for the performance of this Agreement. VCEA Interim General Manager shall have the power to act on behalf of VCEA for all purposes under this Agreement. VCEA hereby designates Mitch Sears as the "Project Manager," who shall supervise the progress and day-to-day performance of this Agreement.

2.2 Consultant's Representative. Consultant hereby designates Don Dame 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 Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services under this Agreement, 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 to be performed under this Agreement. Should the Consultant's Representative need to be substituted for any reason, the proposed new Consultant's Representative shall be subject to the prior written acceptance and

approval of the Project Manager. The Consultant shall not assign any representative to whom VCEA has a reasonable objection.

2.3 Coordination of Services. Consultant agrees to work closely with VCEA staff in the performance of the Services and shall be available to VCEA staff at all reasonable times.

### 3. RESPONSIBILITIES OF CONSULTANT.

3.1 Independent Contractor. VCEA 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. Nor shall any additional personnel performing the Services under this Agreement on behalf of Consultant be employees of the VCEA; such personnel shall at all times be under Consultant's exclusive direction and control. Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

3.2 Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant 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.

3.3 Conformance to Applicable Requirements. All services performed by Consultant shall be subject to the Project Manager's review and reasonable approval. Consultant shall furnish VCEA with every reasonable opportunity to determine that Consultant's services are being performed in accordance with this Agreement. The VCEA's review of Consultant's services shall not relieve Consultant of any of its obligations to fulfill this Agreement as prescribed.

3.4 Substitution of Key Personnel. Consultant has represented to VCEA that he will perform and coordinate the Services under this Agreement. Should such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon the VCEA's written approval. In the event that VCEA and Consultant cannot agree as to the substitution of key personnel, VCEA shall be entitled to terminate this Agreement for cause.

3.5 Licenses and Permits. Consultant represents that it, its employees and subconsultants 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, at Consultant's sole cost and expense.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the VCEA, 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 Consultant or its subconsultants who VCEA determines, in its sole discretion, 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 the VCEA, 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.

3.7 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 Services, including any applicable Cal/OSHA requirements, and shall give any applicable notices required by law. Consultant shall be liable for any applicable violations of such laws and regulations by Consultant in connection with the Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the VCEA, Consultant shall be solely responsible for all costs arising

therefrom. Consultant shall defend, indemnify and hold the VCEA, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability to the extent arising out of any failure or alleged failure of Consultant to comply with such laws, rules or regulations.

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

3.9 Non-Discrimination. No discrimination shall be made in the employment of persons under this Agreement because of that person's race, color, national origin, ancestry, religion, age, marital status, disability, gender, sexual orientation, or place of birth.

3.10 Insurance.

3.10.1 Time for Compliance. Consultant shall not commence the performance of Services under this Agreement until it has provided evidence satisfactory to VCEA that it has secured all insurance required herein. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to VCEA that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for VCEA to terminate this Agreement for cause.

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

3.10.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (a) General Liability: General Liability coverage (occurrence form CG 0001); (b) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (c) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

3.10.2.2 Minimum Limits of Insurance. Consultant shall maintain limits no less than: (a) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (b) Automobile Liability: \$500,000 per accident for bodily injury and property damage; and (c) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

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

3.10.3.1 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the VCEA, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Consultant.

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

3.10.5 Verification of Coverage. Consultant shall furnish VCEA with copies of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to VCEA. All copies of certificates and endorsements must be received and

approved by VCEA before work commences. VCEA reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.10.6 Reporting of Claims. Consultant shall report to the VCEA, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with any Services under this Agreement.

3.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, 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 subconsultants, 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.

3.12 Records. Consultant shall allow a representative of VCEA during normal business hours to examine, audit and make transcripts of 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 this Agreement for a period of three (3) years from the date of final payment under this Agreement. The costs of any such audit and or inspection of Consultant's records shall be solely borne by VCEA.

#### 4. FEES AND PAYMENT.

4.1 Compensation. This is a "time and materials" based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in Exhibit D.

Notwithstanding the provisions of Exhibit D, the total compensation shall not exceed Fifteen Thousand Dollars (\$15,000) without written approval of VCEA. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

4.2 Payment of Compensation. VCEA shall, within 45 days of receiving an invoice for services rendered by CONSULTANT in accordance with this Agreement, review the invoice and pay all approved charges thereon.

4.3 VCEA's Right to Withhold Payment. VCEA reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services past the milestones established in the Schedule of Services (Exhibit C), or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement if VCEA properly withholds payment pursuant to this Section 4.3, provided that VCEA continues to make payment of undisputed amounts.

4.4 Payment Disputes. If VCEA disagrees with any portion of a billing, VCEA shall promptly notify Consultant of the disagreement, and VCEA and Consultant shall attempt to resolve the disagreement. VCEA's payment of any amounts shall not constitute a waiver of any disagreement and VCEA shall promptly pay all amounts not in dispute.

4.5 Extra Work. At any time during the term of this Agreement, VCEA may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by VCEA 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 the VCEA Manager.

4.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 1600 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance"

projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. VCEA shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services, and shall post copies at the Consultant’s principal place of business and at the Project site. Consultant shall defend, indemnify and hold the VCEA, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability to the extent arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

## 5. SUSPENSION AND TERMINATION.

5.1 Suspension. VCEA may suspend this Agreement and Consultant’s performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any material provision of this Agreement. Consultant will be paid for satisfactory services performed hereunder through the date of temporary suspension pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCEA working together in good faith. In the event that Consultant’s services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant’s reasonable control, Consultant may terminate this Agreement and collect payment for any satisfactory services provided through the date of temporary suspension pro rating for any payment in connection with the next milestone as described above.

### 5.2 Termination for Cause.

5.2.1 If Consultant at any time refuses or neglects to prosecute its services in accordance with the Schedule of Services, or is adjudicated a bankrupt, or commits any act of

insolvency, or makes an assignment for the benefit of creditors without the VCEA's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any material respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the material agreements herein contained, Consultant shall be in default.

5.2.2 If Consultant fails to cure the default within thirty (30) days after written notice thereof, VCEA may, at its sole option, take possession of any documents and data (as more specifically described in Section 6.1) or other materials (in paper and electronic form) prepared for VCEA or used by Consultant exclusively in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

5.2.3 In the event VCEA elects to terminate, VCEA shall have the right to immediate possession of all documents and data and work in progress prepared by Consultant pursuant to this Agreement, whether located at the Project, at Consultant's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses reasonably incurred by VCEA in obtaining the Services necessary to complete the Project exceed such unpaid balance, then Consultant shall promptly pay to VCEA the amount by which such expense exceeds the unpaid balance of the not-to-exceed amount reflected in Section 4.1. The expense referred to in the previous sentence shall include expenses incurred by VCEA in causing the Services called for under this Agreement to be provided by others, and for any costs or damages sustained by VCEA by reason of Consultant's default or defective work.

5.2.4 If VCEA fails to make timely payment to the Consultant or otherwise fails to perform fully any and all of the material agreements herein contained, VCEA shall be in default.

If such default is not cured within thirty (30) days after written notice thereof, the Consultant may, at its sole option, terminate this Agreement and VCEA shall pay the Consultant all amounts due for services satisfactorily provided to VCEA as of the date of Consultant's written notice of default.

### 5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, VCEA reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by VCEA pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCEA working together in good faith, plus (2) payment for Additional Work satisfactorily completed and accepted by the VCEA, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the VCEA. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against VCEA or the Project for any additional compensation or damages in the event of such termination and payment. In addition, the VCEA's right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

5.3.2 If this Agreement is terminated by VCEA for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

5.3.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in

fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; and (g) national or regional emergency (a "Force Majeure Event"). The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

## 6. OTHER PROVISIONS.

### 6.1 Documents and Data.

6.1.1 Ownership of Documents. VCEA shall be the owner of the following items produced exclusively pursuant to this Agreement, whether or not completed: all data collected, all documents prepared, of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of the VCEA.

6.1.2 Copyright. No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of the VCEA. VCEA shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

6.1.3 Release of Documents to VCEA. Consultant shall deliver to VCEA all materials prepared by Consultant exclusively in connection with this Agreement, including all drafts, memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from VCEA.

6.1.4 Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with its performance under this Agreement are confidential until released by VCEA to the public, and Consultant shall not make any of these documents or information available to any individual or organization not employed by Consultant or VCEA without the written consent of VCEA before any such release, unless Consultant is required to do so under applicable law.

6.2 Assignment; Successors. Upon mutual written consent, VCEA and Consultant may assign this agreement and its obligations to a Joint Powers Agency formed for the purpose of forming and operating a CCE program. Otherwise, Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the VCEA. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

### 6.3 Indemnification.

6.3.1 Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the VCEA, its directors, 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 to the extent arising out of, pertaining to, or incident to any alleged acts, errors or omissions 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 consequential damages, expert witness fees and reasonable attorneys fees and other related costs and expenses, other than to the extent caused by the negligence or willful misconduct of any Indemnified Party. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above defense and indemnity obligations shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

6.3.2 Additional Indemnity Obligations. Consultant shall defend, with counsel reasonably approved by VCEA and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 6.3.1 that may be brought or instituted against VCEA or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against VCEA or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse VCEA for the cost of any settlement paid by VCEA or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. VCEA shall not enter into any settlement for any claim, suit, action or other proceeding without the prior written approval of Consultant. Such reimbursement shall include payment for the VCEA's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse VCEA and its directors, officials, officers, employees, agents, and/or volunteers, for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

6.3.3 Survival of Obligation. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the VCEA, its directors, officials officers, employees, agents, or volunteers.

6.4 Consultant Not Agent. Except as VCEA may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of VCEA in any capacity for VCEA whatsoever as

an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind VCEA to any obligation whatsoever.

6.5 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the VCEA. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by the Parties hereunder. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the VCEA.

6.6 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:  
Donald Dame  
2022 Pierpont Blvd.  
Ventura, CA 93001

VCEA: VCEA  
23 Russell Boulevard  
Davis, CA 95616  
Attn: Mitch Sears

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.

6.7 Incorporation by Reference. All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein.

6.8 VCEA's Right to Employ Other Consultants. VCEA reserves the right to employ other consultants in connection with the Project, provided that such other consultants shall not be performing the work set forth in the Scope of Services of this Agreement.

6.9 Construction; References; Captions. 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. The captions of the various sections 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.

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

6.11 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.

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

6.13 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.

6.14 Interest of Consultant. Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the VCEA.

6.15 Interest of Subconsultants. Consultant further covenants that, in the performance of this Agreement, no subconsultant or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed. Consultant has provided VCEA with a list of all subconsultants and the key personnel for such subconsultants that are retained or to be retained by Consultant in connection with the performance of the Services, to assist VCEA in affirming compliance with this Section.

6.16 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. If required, Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the VCEA's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, VCEA shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the VCEA, during the term of his or her service with the VCEA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.17 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.

6.18 Attorneys' 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 attorneys' fees and all other costs of such action.

6.19 Authority to Enter Agreement. Each party has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

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

6.21 Entirety of Agreement. This Agreement contains the entire agreement of VCEA and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

[Signatures on following page]

SIGNATURE PAGE TO CONSULTANT SERVICES AGREEMENT

IN WITNESS WHEREOF, VCEA and Consultant have entered into this Agreement as of the date first stated above.

VCEA

CONSULTANT

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Harriet A. Steiner  
VCEA Attorney

## EXHIBIT A

### SCOPE OF SERVICES

VCEA requires professional consulting services from a qualified party to provide technical review, electric utility expertise, services agreements and relationships, and oversight structure recommendations regarding VCEA's development and implementation of VCEA's new CCA program. VCEA may also require other CCA program implementation assistance from time to time as VCEA's CCA program becomes further established. Consultant's tasks on behalf of VCEA include, but are not limited to, the following:

- Evaluate CCA technical services options available to VCEA and present results to VCEA staff and, as directed, to the VCEA Board and applicable VCEA committees.
- Assist VCEA, as directed, in meeting the goals and objectives of VCEA's CCA program.
- Assist VCEA in evaluating the results of any RFPs and or solicitations for CCA services when such responses are received by VCEA.
- Work together with VCEA staff, General Counsel, and other VCEA vendors and or consultants, as directed, to identify and define various CCA related business risk exposures and outline and discuss actions which may mitigate such exposures.
- Prepare, review and or otherwise assist VCEA in the preparation of materials for VCEA Board meetings, or other CCA related activities as requested by VCEA. Present such materials as requested by VCEA.
- Assist VCEA staff with the preparation and or review of draft CCA related documents which may include pro forma services contracts and other policies and procedures applicable to VCEA's CCA program.
- If requested, prepare materials and make recommendations with regard to potential governance and voting practices applicable to a JPA created CCA program.
- Advise VCEA staff and members regarding the status of other existing and incipient CCAs throughout California.
- Make recommendations to VCEA from time to time that Consultant deems may enhance VCEA's energy risk practices and technical operating performance.
- Provide VCEA information regarding any necessary steps to operate a CCA program.
- Provide other CCA related consulting services as requested and/or directed by VCEA.

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY VCEA

NOT APPLICABLE

EXHIBIT C

SCHEDULE OF SERVICES

The scope of this contract commences on the date of signature and runs through \_\_\_\_\_, 2017. The schedule may be extended by mutual agreement in writing by both parties.

EXHIBIT C

EXHIBIT D

PAYMENT

The Scope of Work shall be performed on an individual task, consulting time, travel time, materials, and actual direct expense basis with work assigned as needed.

Designated Employees and Rates:

Professional/Title	Hourly Consulting Rate
Donald B. Dame	\$175.00

Other Applicable Reimbursement Rates:

Particulars	Rate
Air Travel Time	\$87.50 / hour
Auto Travel Time (one hour or more)	\$87.50 / hour
Auto Mileage Rate (or current IRS reimbursement rate)	\$0.535 / mile
Actual Direct Expenses (Receipts required above \$25.00)	Actual Expense
Phone/postage/printing/office materials	No Charge

Total Not to Exceed Amount: \$15,000

The combined total of all rates and charges under this Agreement is not to exceed fifteen thousand dollars (\$15,000.00) without the prior written approval by VCEA.

# DONALD B. DAME

2022 Pierpont Blvd  
Ventura, CA 93001  
[donald.b.dame@gmail.com](mailto:donald.b.dame@gmail.com)

Office: (805)290-1470  
Cell: (916)718-8373

## **PHILOSOPHY**

Apply public sector technical, and management experience toward the development, implementation, and attainment of optimal and durable utility oversight / operating strategies.

## **MAJOR ACCOMPLISHMENTS**

- Manage 11 member power pool, oversee transmission/resource planning.
- Administer annual budget of approximately \$300 million.
- Prepare and present testimony before the FERC and CPUC.
- Manage real-time scheduling and dispatch operations.
- Perform shut down evaluation of nuclear plants under construction.
- Develop ancillary services strategies for 250MW hydro project.
- Establish Metered Subsystem operating structure within CAISO.
- Assist with development, construction and operation of 300 MW Lodi Energy Center gas fired combined cycle project.
- Consultant to Kirkwood Meadows PUD regarding interconnection into the CAISO grid.
- Consultant to Monterey County Water Resources Agency on a 4 MW hydro power sale to the Bay Area Rapid Transit District.
- Consultant to The Energy Authority development and management of the University of California's Direct Access campus power supply program and 80 MW solar acquisition.
- Consultant to City of Ukiah, PWRPA, Imperial Irrigation District, Coachella Valley AG.

## **PROFESSIONAL EXPERIENCE**

- Power Industry consulting efforts associated with Kirkwood Meadows CAISO grid interconnection; Monterey County Water Resources Agency power sale to the Bay Area Rapid Transit District; University of California's establishment of a Direct Access power supply program; the University of California's 80 MW solar power acquisition; and assisting The Energy Authority in its efforts to assist California public power organizations with needed technical and managerial services (10/2012 – Present)
- Assistant General Manager, Business Development, Northern California Power Agency, Roseville, CA (8/2007 – 8/2012, retired)
- Assistant General Manager, Power Management, Northern California Power Agency, Roseville, CA (9/1995 – 8/2007)
- Sr. Power Contracts Engineer (10/92 - 8/95)  
Northern California Power Agency, Roseville, California.
- Chief, Generation and Transmission Planning Section (5/86 - 10/92).  
California Department of Water Resources, Sacramento, California.
- Sr. Engineering Financial Analyst (8/82 - 5/86)  
Pacific Power and Light Company, Portland, Oregon.
- Public Utilities Specialist-Rates GS-12, (3/80 - 8/82)  
Bonneville Power Administration, Portland, Oregon.
- FERC Regulatory Engineer (10/78 - 3/80)  
Colorado Interstate Gas Company, Colorado Springs, Colorado.

## **EDUCATION**

- MS in Regulatory Economics, University of Wyoming (1978).
- BA in Economics, University of California (1975).
- EIT Cert. No. XE075629, Issued 7/14/89

## **TEACHING EXPERIENCE**

- Macro and Micro Economics, Consumnes Junior College, Sacramento, CA.,  
Portland Community College, Portland, Or. and Colorado Springs, CO.
- Regulatory Economics, University of Wyoming, Laramie, Wyoming.

## **SPECIAL SKILLS**

- Community Choice Aggregation Implementation and Operations
- Utility Management, Power Procurement and Strategic Decision Making.
- Real-time power system operations.
- Prepare and Present Expert Economic / Utility Rate Testimony.