

Valley Clean Energy Alliance
604 2nd Street, Davis, California 95616
Phone: (530) 446-2750



**REQUEST FOR PROPOSALS
FOR
COMMUNITY OUTREACH AND MARKETING SERVICES**

BID PROPOSALS ARE DUE:

MONDAY, AUGUST 20, 2018 BY 4:00 P.M.

at VCEA, 604 2nd Street, Davis, CA 95616

(No facsimile or emailed proposals will be accepted.)

Scope of Services

Community Outreach and Marketing Services

I. BACKGROUND

Valley Clean Energy (VCE) is a Community Choice Aggregator (CCA) that began serving electricity customers in the cities of Woodland, Davis, and the unincorporated areas of Yolo County in June 2018. VCE offers choice in the electric utility market; empowers local control of electricity procurement decisions; reduces the carbon footprint associated with electricity service; and helps support the growth of local energy projects.

VCE is governed by a six-member Board of Directors, two each from the Woodland City Council, Davis City Council, and the Yolo County Board of Supervisors. As a community-governed entity, VCE gives customers access to the people who make the rate and service decisions: supervisors and council members whom they already know.

The Board is advised by its nine-member Community Choice Energy Advisory Committee. Board meetings are held monthly, alternating between the Cities of Davis and Woodland.

II. DETAILED SCOPE OF SERVICES

The firm selected as Contractor will perform professional services for Valley Clean Energy. The Contractor will have the staff capable of meeting the requirements of this RFP. To the extent that the Contractor lacks specific expertise in any of the disciplines needed by VCE, a professional group of subcontractors or associate firms should be assembled by the Contractor to complement their technical expertise.

Under the direction of VCE staff and in collaboration with VCE vendors, the selected firm will develop, enhance, implement and maintain a multi-faceted plan for building program awareness, engaging potential VCE residential, commercial and agricultural customers, supporting the program website and design needs, promoting VCE's 100% renewable program, UltraGreen, and participating in customer notification/enrollments. Efforts in this service category are intended to build brand and program awareness, minimize customer opt-outs, maximize opt-ups to UltraGreen and set a framework for the development of a long-term community engagement program for VCE.

Tasks in this service category include but are not limited to the following:

1. Program Branding, Design, Identity:

- a. Working with existing program name and mission statement, develop brand refinements/style guides, and create sub-brand names/logos for different product offerings and programs.
- b. Maintain and update multi-functional, multi-lingual website (English and Spanish) that includes a rate calculator and ability to opt-out of the program.
- c. Develop and maintain social media presence for VCE utilizing existing platforms in VCE member communities (e.g. Facebook, Nextdoor, etc.)
- d. Develop/update program collateral including FAQs, program brochures, fact sheets and power point templates.
- e. If budget allows, develop short informational videos for use on website, social media and community meetings.

2. Community Outreach/Stakeholder Engagement:

- a. At the direction of VCE staff, work with the County, Cities and other VCE member jurisdictions to support local stakeholder and public outreach which may include but is not limited to: 1:1 meetings with key stakeholder groups, public workshops/webinars, local presentations, event tabling, newsletter articles, and other key outreach/engagement activities.
- b. Develop and maintain VCE list-serve to facilitate outreach/engagement activities. Refine/expand use of e-newsletters and info blasts to VCE list-serve and other local communication outlets.
- c. Support efforts to train/partner with local advocates and community-based organizations to build local capacity and augment VCE's efforts to plan and carry out outreach/engagement activities.
- d. Develop long-term community engagement framework and local capacity development strategy.

3. Marketing Campaigns:

- a. Develop multi-lingual (English/Spanish) and multi-cultural advertising campaign to raise public awareness of VCE and its offerings; this will include both paid and earned media, print and digital, in a variety of mediums which could include newspapers, on-line ads, radio spots, billboards, bus backs/bus shelters, social media, etc.

b. Manage and conduct press outreach - schedule editorial board meetings, draft press releases, op-eds and news articles.

c. Maintain a social media presence for VCE on Facebook, Twitter, Next Door, etc.

4. Communication Outreach Plan:

Consultant may be required to develop a communications and outreach plan appropriate to the demographics of Davis, Woodland and unincorporated Yolo County and include a detailed set of deliverables, timelines and estimated budget. The outreach plan should address post-launch communications and outreach under low/moderate/high opt-out scenarios. The final scope, deliverables and budget presented to the VCE Board for consideration will be based upon discussions with VCE staff and others on the selection team.

Consultant should assume ~66,000 meters. The marketing and communications consultant(s) should be available for regular planning calls and presentations to the VCE Board as necessary.

III. BIDDER QUALIFICATIONS

1. Bidder shall demonstrate expertise and experience with graphic design, web design and public communications campaigns of this size, scope, complexity, and unique VCE customer base (e.g. rural, agricultural, urban). Preference will be given to bidders with previous experience working in the energy field and/or for a community choice energy program that has already launched in California.
2. Bidder shall demonstrate experience with effective use of digital, video-based and social media as well as more traditional methods of print, radio and television media.
3. Bidder shall demonstrate experience with multi-cultural communications campaigns and translation.
4. Bidder shall have experience with content development, design and management of direct mail on specific timelines.
5. Experience working with local and regional press outlets, print shops, and mail houses is desirable.

///

///

///

IV. PROPOSAL EVALUATION CRITERIA

PROPOSAL EVALUATION CRITERIA: The proposals submitted in response to this Request for Proposals shall be evaluated for award based on the following criteria and weighting.

Item	Criteria Description	Weighting
	Mandatory Requirements*	Pass/Fail
	<p>Experience and Qualifications</p> <ol style="list-style-type: none"> 1. Experience in the areas identified in the “Detailed Scope of Services” 2. Meets “Bidder Qualifications” section 3. Resumes of staff performing the work 4. CCA/Energy experience 	65%
	Proposer’s Approach to Working with VCE	15%
	Commercial Terms (Price)** and Compliance with VCE Contractual Terms***	20%
	Total	100%

* Proposal must achieve a Passing score on Evaluation Criteria 1 listed above to be declared responsible.

** More weight has been given to the management and technical ability of the Proposer than on price. In the event it is evident that the prices proposed are unbalanced as to items charged or are otherwise determined by VCE to be unfair or unreasonable, VCE reserves the right to reject the proposal and award to the Proposer who otherwise meets the requirements of this Request for Proposal.

*** Non-compliance may result in VCE’s rejection of a Proposer’s proposal.

///

///

///

V. PROPOSAL SUBMITTAL REQUIREMENTS

Proposals will be submitted in the following order on 8-½ x 11 inch paper:

1. Executive Summary with brief description of company including number of years in business, principals with the company, types of work performed, number of employees (no more than three pages).
2. Description of qualifications that align with the “Detailed Scope of Services” (up to 8 pages plus collateral examples).
3. Description of experience in the energy or related field and approach to working with VCE (up to 3 pages plus collateral examples).
4. Description of company’s proposed approach to working with VCE. This is up to each proposer to identify their approach to addressing the needs of VCE and its customers (up to 4 pages).
5. Resumes of staff that would work on VCE projects (no more than two pages per employee).
6. Listing of hourly rates for employees that will work on VCE projects and percentage of work each employee would be expected to complete, e.g. 20% Principal, 75% project manager, 5% clerical.

VI. MISCELLANEOUS

1. Travel

Travel expenses will be reimbursed without mark-up.

2. Additional Information

This Scope of Services may be revised upon mutual agreement between the Contractor and the VCE Contract Manager.

3. Ownership of Work Products

All notes, documents, and final products in all native formats (e.g. Word, Excel, PowerPoint, databases, handwritten notes) produced in the performance of this agreement shall be the property of VCE, and shall not be shared with other entities without permission from VCE staff.

4. Project Schedule

Event	Completion Date
Proposals Due	Monday, August 20, 2018
Proposal Review	Starting Tuesday, August 21, 2018
Anticipated Contract Award Date	Thursday, October 11, 2018
Contract Duration	October 2018 – September 2021

VII. INSTRUCTIONS TO PROPOSERS

1. Time and Manner of Submission

The Proposal shall be submitted to and received by VCE's office no later than 4:00 p.m. on Monday, August 20, 2018, at 602 2nd Street, Davis, CA 95616. Postmarked items with the date of August 20, 2018, facsimile and/or emailed proposals will not be accepted. No late proposals will be accepted for any reason. No exceptions will be allowed.

- Proposals must be enclosed in a sealed envelope and addressed as follows:

By U.S. Mail or Overnight Delivery:

Valley Clean Energy
 Attention: Jim Parks
 604 2nd Street
 Davis, CA 95616

By Hand Delivery:

Valley Clean Energy
 Attention: Jim Parks
 604 2nd Street
 Davis, CA 95616

- The proposal-mailing envelope must be *clearly marked* with “**RFP No. 2018COMS**” on the front of the envelope. The envelope shall also show the Contractor's name and address.
- Each proposal shall give the full business address of the Proposer and shall be signed by an authorized official of the company. The name of each person signing the proposal shall be typed or printed below the signature. When requested by VCE, satisfactory evidence of the authority of the person signing on behalf of the Proposer shall be furnished.
- Proposals shall cover the entire scope of the Request for Proposals, shall be printed 8-1/2 X 11” size and easily removable from any binding -- E.G. no glued or spiral binding.
- All proposals submitted become the property of VCE.

2. Explanations to Proposers

All requests, questions or other communications regarding this RFP shall be made in writing to VCE via email or U.S. Mail. Address all communications to Alisa Lembke, Board Clerk. To ensure that written requests are received and answered in a timely manner, email correspondence is preferred. Ms. Lembke will distribute questions and the answers to all potential proposers.

Alisa Lembke, Board Clerk
604 2nd Street
Davis, CA 95616
Email: Alisa.Lembke@ValleyCleanEnergy.org

VCE will not be bound by any oral interpretation of the Request for Proposal, which may be made by any of its representatives or employees, unless such interpretations are subsequently issued in the form of an addendum to this Request for Proposal.

3. Withdrawal or Modification of Proposals

Proposals may be modified or withdrawn only by a written request received by VCE prior to the Request for Proposal due date.

4. Revisions and Supplements

Addenda: If it becomes necessary to revise or supplement any part of this Request for Proposal an addendum will be provided.

5. Proposal Evaluation and Selection Process

The proposals submitted in response to this solicitation shall be evaluated for award based on the criteria described in the Proposal Evaluation Criteria section of this Request for Proposal.

VCE may request additional information from any or all Proposers after the initial evaluation of the proposals to clarify terms and conditions.

Based on VCE's review of the proposals received, a "short listed" group of Proposers may be selected. The "short listed" firms may be required to make verbal presentations of their qualification to VCE. If a presentation is determined to be required, the presentation will be considered in the overall technical rating. The contract will be awarded to the best-qualified Proposer, after price and other factors have been considered, provided that the proposal is reasonable and is in the best interests of VCE to accept it.

The right is reserved, as the interest of VCE may require, to reject any or all proposals and to waive any irregularity in the proposals received. VCE will post a “Notification of Intent to Award” and “Evaluation Summary” of the Proposals received and evaluated on the VCE Bid Website in the Bid Results category (or any successor VCE web portal) at least five (5) business days prior to awarding the contract. After the “Notification of Intent to Award” and the “Evaluation Summary” are posted, any unsuccessful Proposers may request the reason(s) their proposal was not selected. In the event a Proposer elects to protest VCE’s selection, the protest must be submitted in writing to VCE within five (5) business days of the posting of the “Notification of Intent to Award” and “Evaluation Summary”.

Within fourteen (14) calendar days after notice of award, the successful Proposer shall deliver to VCE the required insurance certificates and the signed copies of the contract. The contract forms will be forwarded to the Proposer with the award notification. VCE will not issue the Notice to Proceed until VCE has received all the above-required documents.

6. Duration of Contract

This contract shall be for approximately a three-year period, subject to approval by VCE's Board of Directors of the corresponding annual budget, unless otherwise mutually agreed upon in writing.

VCE prepares its Annual Budget on a calendar year basis. The Budget is subject to the approval of VCE's Board of Directors.

7. Qualifications of Proposers

VCE expressly reserves the right to reject any proposal if it determines that the business and technical organization, equipment, financial and other resources, or experience of the Proposer, compared to the work proposed justifies such rejection.

8. Proposal Preparation Costs

The costs of developing proposals are entirely the responsibility of the Proposer and shall not be charged in any manner to VCE.

9. Conflicts

If conflicts exist between the contract and the other elements of this Request for Proposal, the contract prevails. If conflict exists within the contract itself, the Terms and Conditions govern, followed by Scope of Services. If conflict exists between the contract and applicable Federal or State law, rule, regulation, order,

or code; the law, rule, regulation, order, or code shall control. Varying levels of control between the Terms and Conditions, drawings and documents, laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement(s) shall control.

10. Manner and Time of Payment

Billing shall be submitted monthly. Proposer will also be required to submit (concurrently) a monthly report showing project status describing the current status of each task, an updated schedule, and major project issues.

11. Subcontractors

The Proposers must describe in their proposals the areas that they anticipate subcontracting to specialty firms. Identify the firms and describe how Proposer will manage these subcontracts.

Contractor will pay subcontractors in a timely manner.

Nothing contained in the Contract shall create any contractual relation between any subcontractor and VCE.

12. Notice Related to Proprietary/Confidential Data

Proposers are advised that the California Public Records Act (the "Act", Government Code §§ 6250 et seq.) provides that any person may inspect or be provided a copy of any identifiable public record or document that is not exempted from disclosure by the express provisions of the Act. Each Proposer shall clearly identify any information within its submission that it intends to ask VCE to withhold as exempt under the Act. Any information contained in a Proposer's submission which the Proposer believes qualifies for exemption from public disclosure as "proprietary" or "confidential" must be identified as such at the time of first submission of the Proposer's response to this RFP. A failure to identify information contained in a Proposer's submission to this RFP as "proprietary" or "confidential" shall constitute a waiver of Proposer's right to object to the release of such information upon request under the Act. VCE favors full and open disclosure of all such records. VCE will not expend public funds defending claims for access to, inspection of, or to be provided copies of any such records.

13. Contract

VCE's standard contract is included in the Sample Contract section of this Request for Proposal. VCE may reject proposals that contain exceptions to the Terms and Conditions included in the sample contract.

SAMPLE CONTRACT

A SAMPLE CONTRACT IS ATTACHED HERETO.

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the VCEA, a Joint Powers Agency existing under the laws of the State of California, hereinafter referred to as “VCEA,” and _____, a California Corporation, 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 approved by VCEA. 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 of Directors approves this Agreement with a term period of (Month), Day, 2018 through (Month), Day, 2021) or when terminated as provided in Article 5.

2. PROJECT COORDINATION.

2.1 VCEA's Representative. VCEA hereby designates _____ and/or its designee to act as its representative for the performance of this Agreement. _____ and/or its designee shall have the power to act on behalf of VCEA for all purposes under this Agreement. VCEA hereby designates _____ and/or its designee 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 _____ 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 personnel 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. 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 it 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 is determined by VCEA 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 all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all 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:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 8 and 9 (Hired & Non-Owned); 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:* \$1,000,000 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 Professional Liability. Consultant shall procure and maintain, and require its subconsultants to procure and maintain, for a period of five (5) years following completion of the Project 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 shall be endorsed to include contractual liability.

3.10.4 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:

3.10.4.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (a) the VCEA, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work; and (b) the insurance coverage shall be primary insurance as respects the VCEA, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the VCEA, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (a) the VCEA, 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 Consultant or for which Consultant is responsible; and (b) the insurance coverage shall be primary insurance as respects the VCEA, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the VCEA, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.3 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.

3.10.5 Separation of Insureds; No Special Limitations. All insurance required herein shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the VCEA, its directors, officials, officers, employees, agents, and volunteers.

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

3.10.7 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, and satisfactory to the VCEA .

3.10.8 Verification of Coverage. Consultant shall furnish VCEA with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to VCEA. 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 VCEA if requested. All 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.

3.10.9 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 the 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.

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 _____ Dollars (\$XX.XX) 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 VCEA. Consultant assumes no liability for VCEA's use of Documents in any manner not contemplated in the scope of the Project.

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 Hold Harmless

a. General Hold Harmless

Consultant shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every kind, and description resulting

from this Agreement, the performance of any work or services required of Consultant under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Consultant or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Consultant's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Consultant's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code

b. Intellectual Property Indemnification

Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement. Consultant warrants that the services it provides under this Agreement do not

infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided in the United States. Consultant's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Consultant promptly in writing of any notice of any such third-party claim; (b) County cooperates with Consultant, at Consultant's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgment of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Consultant's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Consultant will have no obligation or liability to VCEA under this Section to the extent any otherwise covered claim is based upon: (a) any aspect of the services under this Agreement which have been modified by or for VCEA (other than modification performed by, or at the direction of, Consultant) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by VCEA in a manner prohibited by this Agreement.

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 278 of the California Civil Code.

6.3.1 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 and any legal actions concerning this Agreement's validity, interpretation and performance 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: NAME

Street Address
City, State, Zip
Attn: XXXXX XXXXX

VCEA: VCEA
604 2ND Street
Davis, CA 95616
Attn: XXXXX XXXXX

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.

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: _____

Printed
Name: _____

Printed
Name: _____

Its: _____

Its: _____

Approved as to form:

VCEA Attorney

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY VCEA

EXHIBIT C

SCHEDULE OF SERVICES

EXHIBIT D

BUDGET, PAYMENT, RATES