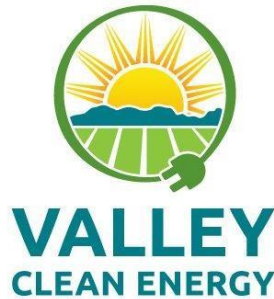


**Valley Clean Energy Alliance  
604 2<sup>nd</sup> Street, Davis, California 95616  
Phone: (530) 446-2750**



**REQUEST FOR PROPOSALS  
FOR  
100% CARBON FREE PORTFOLIO STUDY**

**PROPOSALS ARE DUE:  
Friday, May 21, 2021 BY 4:00 P.M. (Pacific Daylight Time)  
Proposals must be e-mailed in PDF form to [Gordon.Samuel@ValleyCleanEnergy.org](mailto:Gordon.Samuel@ValleyCleanEnergy.org)**

**Valley Clean Energy Alliance is a Joint Powers Authority  
consisting of the Cities of Davis, Woodland, and Winters and the County of Yolo.**

**Scope of Services****100% CARBON FREE PORTFOLIO STUDY****I. INTRODUCTION**

Valley Clean Energy is seeking a qualified consultant (Contractor) to explore the feasibility, cost and benefit of pursuing a 100% carbon free portfolio. This 100% carbon free portfolio will be developed as an option to be considered as part of VCE's Strategic Plan and in VCE's upcoming Integrated Resource Plan (IRP). It is intended that all elements of the generation portfolio will be renewable and/or carbon free as defined below.

**II. BACKGROUND**

**2.1** Valley Clean Energy Alliance or Valley Clean Energy (VCE), is a joint powers authority providing a state-authorized Community Choice Energy (CCE) program. Participating VCE governments include the City of Davis, the City of Woodland, the City of Winters and the unincorporated areas of Yolo County. PG&E continues to deliver the electricity procured by VCE and to perform billing, metering, and other electric distribution utility functions and services. Customers within the participating jurisdictions have the choice not to participate in the VCE program.

**2.2** Since VCE started serving load in June 2018, VCE has added resources under long term contracts and is gradually building up a portfolio of short and long term assets in line with its vision and the demand of its customers. To date, VCE has relied mainly on market purchases of energy, Resource Adequacy (RA), and Renewable Energy Credits (RECs) in order to serve its electric demand and meet regulatory requirements with respect to resource adequacy and renewable energy. Starting in 2021 VCE will increasingly meet electric demand with resources under long term contracts. VCE has contracted for 50 MW of new solar resource (PV – photovoltaic) located in Kings County, CA and a 3 MW PV + 3 MW storage (BESS – battery energy storage system) project in Yolo County, CA to come online before the end of 2021. In 2022, two additional solar + storage power purchase agreements (PPAs) have been executed (90 MW PV + 75 MW BESS in San Bernardino County, CA and 20 MW PV + 6.5 MW BESS in Yolo County, CA). Finally, two other long-term RA capacity contracts have been executed - 7 MW of demand response beginning in the Summer 2021 and another 2.5 MW of stand-alone battery storage by Summer 2022.

**III. DETAILED SCOPE OF WORK**

The scope of work for this project includes the following:

- Develop a 100% renewable portfolio study report
  - o Net zero and 24x7 by 2030
- Develop a 100% carbon free portfolio study report
  - o Net zero and 24x7 by 2030
- Use production cost model to simulate generation of existing and future resources

- o Develop lowest cost resource mix at different renewable/carbon free penetrations levels
- Perform risk analysis of the scenarios/contingencies
  - o Contractor invited to present scenarios/contingencies to consider
- Provide industry trends for renewable resources, large hydro, storage, etc.

**3.1 Renewable Electricity** – includes “biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current”, [(Public Resources Code § 25741), Renewables Portfolio Standard (RPS). (Public Utilities Code § 399.11 et seq.)] Renewable electricity is assumed to be free of GHG emissions.

**3.2 Carbon Free Electricity** – Any electricity that meets the definition of renewable electricity above plus other sources considered zero emission. These zero emission sources now in California include existing large hydro (greater than 30 MW) and existing nuclear. New technologies not now included in the zero-emission category can be added in the future. Carbon Free power uses no fossil fuel generation. See <https://focus.senate.ca.gov/sb100/faqs> for FAQs on existing large hydro and existing nuclear and their inclusion in SB 100. The percent of the power that must meet RPS is governed by SB 100 (De Leon, 2018) and shall be equal to or greater than 60% for 2030 and beyond. By 2045 all electricity in California is to be Carbon Free.

**3.3 Hour by Hour // 24/7** – The Carbon Content of the Electricity provided is analyzed on an hour by hour basis. And for our purposes is either Renewable or Carbon Free Electricity each and every hour of the day.

**3.4 Carbon Neutrality** – The net carbon content of the electricity is analyzed over a period of time (usually a year) and the net carbon content is zero. During this period both sources that emit carbon and those that do not can be used, but the net carbon emissions are zero. Net zero can be achieved if zero carbon electricity is overproduced at certain times and that excess zero carbon electricity is demonstrated through available data to displace carbon emitting electricity on the grid at that time. If enough zero carbon electricity is overproduced, the net carbon emissions can be zero.

- This area purposely left blank -

POWER SOURCE	<b>RENEWABLE</b>	<u>R/HBH</u>	<u>R/CN</u>
	<b>CARBON-FREE</b>	<u>CF HBH</u>	<u>CF/CN</u>
		<b>HOUR BY HOUR</b>	<b>CARBON NEUTRAL</b>

ANAYLYSIS    TIME FRAME

“R/HBH/CF/CN”: Renewable /Hour by hour/Carbon free/Carbon neutral

#### IV. PROFESSIONAL SERVICES

The following tasks and are incorporated into the Scope of Work.

##### 4.1 Project Tasks

Contractor shall prepare and provide the following:

##### 4.2 Portfolio Study Reports

The Portfolio Study Report (Report) shall describe at a high level the method used to perform the work. The fundamental algorithmic assumptions and approach must however be logical, consistent and explained in narrative form. The inputs used by the Contractor should align with the inputs provided by VCE. Reports and supporting documents shall be provided in .pdf, WORD, Excel or other commonly used formats.

Potential resources that could be included in the portfolios

- Solar (Front of meter, FOM/Behind the meter, BTM)
- Wind
- Hydro
- Pump Storage

- Geothermal
- Biomass
- Battery Storage (FOM/BTM)
- Nuclear
- Energy Efficiency
- Demand Response
- Demand Management

#### **4.3 Scenario Scope**

The Contractor must use a production cost model to simulate the generation of existing and future resources. The results for each scenario must be summarized in the Report to at least include the following: costs, generation of each resource (GWh), market purchases (GWh), demand response deployment, behind the meter deployments, nameplate capacity of new resources, battery configurations (capacity and duration), imports, amount of local generation and CO2 equivalent tons.

The Contractor shall propose and discuss with VCE any viable scenarios based on Contractor's experience and expertise. These proposed scenario submittals will be reviewed by VCE. Each scenario shall include all costs on an annual basis for PPA energy costs, transmission or other delivery costs, fuel costs and any fixed and variable O&M. Contractor shall complete a quantitative evaluation for each scenario. Each scenario, unless otherwise noted, shall be modeled on an hourly basis. The Loss of Load Expectation (LOLE) for each scenario should not exceed one (1) day in ten (10) years.

#### **4.4 Model VCE reference case. Align with the assumptions made for the reference case and identify any differences.**

Contractor will solve for the mix of renewable or carbon free resources that results in the lowest cost plan. All loads will be served by assets procured by VCE. VCE will not rely on spot energy purchased from outside resources.

#### **4.5 Risk Analysis**

Attempting to achieve a 100% carbon free portfolio entails risks and unknowns, some of which VCE is able to anticipate, and others that may not be obvious. This section lists some of the potential risks that VCE has so far identified. The Contractor shall explain the risk and mitigation for each concern listed below.

It is also anticipated that the list below is likely incomplete, and for that reason the Contractor is expected to address and explain in the Report any additional risks and mitigations that it may be aware of or discover during the course of the study.

**4.5.1** Particular attention shall be paid to the capacity and duration of output of any energy storage facilities proposed. There is some concern for instance, that solar

sources of supply may not be available or adequate for extended times, during some winter peak conditions. The storage must be capable of covering the deficit.

**4.5.2** If large amounts of storage are necessary through the variability of renewable sources, how will it be ensured that storage can be kept sufficiently charged using only the renewables? Would access to a greater amount of renewables, either from the grid or locally connected, be required to charge the storage and maintain a 100% renewable posture? What would be the estimated cost?

For instance, if renewable resources are installed or purchased only in quantities sufficient to serve VCE's peak load, when and how often would it be assumed those resources could be successfully diverted to keep the storage charged to acceptable levels? Would it be necessary to purchase more renewables strictly to serve storage?

**4.5.3** There could be a risk in purchasing access to renewables or carbon free in quantities sufficient to ensure the ability to reliably serve load for the full 8760 hours of the year. The risk is having significant excess energy at certain times of the year or day. What would be the best strategy for dealing with this issue? Exporting to the grid? Curtailing the renewable/carbon free energy?

The Contractor shall identify in each scenario evaluated the magnitude in MWs and the risk in annual hours of having significant excess energy.

**4.5.4** How will demand response programs be deployed? What is the magnitude, duration (per day/per year), and time of day that these programs are expected to be implemented?

#### **4.6 Discussion of possible future industry trends in renewable resources, carbon free resources and storage**

Contractor shall also gather input on trends and emerging technologies that could reach maturity by 2030, and which could help in achieving the 100% renewable or carbon free goal.

The Contractor shall provide in the Report a separate discussion of what is considered to be emerging and future trends in renewable energy, carbon free energy, storage and other potential technologies that could aid in achieving a goal of 100% carbon free portfolio. The discussion should include future factors such as, but not limited to, pricing, capacity factor, efficiency, new inverter technology, operating capabilities, and whatever else the Contractor may consider to be relevant.

The Contractor shall provide in support of this discussion of future trends a survey or summary of pertinent industry sources, referenced as appropriate.

**V. PROPOSER MINIMUM QUALIFICATIONS**

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
	<b>Experience and Qualifications</b> <ol style="list-style-type: none"> <li>1. Experience of firm</li> <li>2. Resumes of staff designated to support this scope</li> <li>3. CCA/Public Power/Energy experience</li> </ol>	<b>45%</b>
	<b>Compliance with VCE Sample Contract</b>	<b>10%</b>
	<b>Price</b>	<b>45%</b>
	<b>Total</b>	<b>100%</b>

**5.1 Proposal Submittal Requirements**

1. Ten pages maximum submitted electronically. Executive Summary with brief description of company including Firm or individual name and contact information, including e-mail and website addresses, year organized, principals with the firm, types of work performed, number of employees.
2. Resumes of key staff that would work on VCE projects.
3. Information on any previous experience or services provided, including CCA experience.
4. Other factors or special considerations you feel would influence the selection of your proposal.
5. List of references and contact information.

**5.2 Miscellaneous****1. Additional Information**

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

**2. 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.

### 3. Request for Proposal Schedule

VCE anticipates that the process for selection of Carbon Free Portfolio Study and awarding the contract will be according to the following tentative schedule.

#### 5.3 Schedule

Milestone Description	Date
Issue RFP	4/30/2021
Return NDA	5/12/2021
Responses due	5/21/2021
Consultant selection	6/17/2021
Study work	Q3 2021
Final report complete	Q4 2021

#### 5.4 Instructions to Proposers

##### 1. Time and Manner of Submission

**The Proposal shall be submitted electronically to and received by VCE's office no later than 4:00 p.m. (PDT) on Friday, May 21, 2021.**

**Submit to:**

Gordon Samuel, Assistant General Manager  
Email: [gordon.samuel@ValleyCleanEnergy.org](mailto:gordon.samuel@ValleyCleanEnergy.org)

- Each proposal shall include the full business legal name, DBA, and address 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.
- 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. **Address all communications to Gordon Samuel ([gordon.samuel@valleycleanenergy.org](mailto:gordon.samuel@valleycleanenergy.org)).** To ensure that written requests are received and answered in a timely manner, email correspondence is required.

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 an electronic 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 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.

Within fourteen (14) calendar days after notice of award, the successful Proposer shall deliver to VCE the required insurance certificates as per section 3.10 of the sample contract and the signed copies of the contract. The contract forms will be forwarded to the Proposer with the award notification.

**6. Duration of Contract**

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

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, 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**

At completion of the scope, Contractor shall submit an invoice for the lump sum of the work performed.

**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 as Attachment A - *Sample Contract* of this Request for Proposal. VCE may reject proposals that contain exceptions to the Terms and Conditions included in the sample contract.

**5.5 Performance Requirements**

Performance Requirements/Acceptance Criteria

- a. All Milestones shall be completed in accordance with approved schedule.
- b. Deliverable items must be complete, legible, comprehensible, and satisfy all requirements set forth in the scope of work.

**5.6 Reference Documents**

VCE will provide reference documents to aid in the preparation of RFP responses after execution of the non-disclosure agreement (NDA) – a sample NDA is attached as Attachment B.

**5.7 Resource and Submittal Requirements**

Contractor shall provide all resources required to complete the work described herein, including but not limited to skills, services, supervision, tools, documents, information, labor, materials, equipment, computing capability, transportation, and any other necessary item or expense to fulfill the work requirements.

**5.8 Project Cost**

***Contractor shall provide a not to exceed lump sum price.*** If VCE modifies the scope and additional study work needs to be performed, Contractor shall provide a change order price before initiating the work.

**ATTACHMENT A - *SAMPLE* CONTRACT**

A *SAMPLE* CONTRACT IS ATTACHED HERETO.

## AGREEMENT FOR CONSULTANT SERVICES

This **Agreement** is made and entered into as of [REDACTED], 20[REDACTED] by and between **Valley Clean Energy Alliance**, a Joint Powers Authority organized and operating under the laws of the State of California with its principal place of business at 604 Second Street, Davis, California, 95616 (“VCE”), and [REDACTED], a [REDACTED] - **CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY** with its principal place of business at [REDACTED] (hereinafter referred to as “Consultant”). VCE and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

### RECITALS

**WHEREAS**, Consultant desires to perform and assume responsibility for the provision of certain services required by VCE 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 VCE with respect to the Project, as defined below.

**WHEREAS**, VCE 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**, VCE and Consultant agree as follows:

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

1.1 Scope of Services. Consultant promises and agrees to furnish to VCE 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. VCE 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 VCE. 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 VCE Board of Directors approves this Agreement with a term period of (Month), Day, Year through (Month, Day, Year) or when terminated as provided in Article 5.

## **2. PROJECT COORDINATION.**

**2.1 VCE 's Representative.** VCE 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 VCE for all purposes under this Agreement. VCE 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 VCE has a reasonable objection.

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

### **3. RESPONSIBILITIES OF CONSULTANT.**

3.1 Independent Contractor. VCE 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 VCE; 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 VCE with every reasonable opportunity to determine that Consultant's services are being performed

in accordance with this Agreement. VCE'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 VCE 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 VCE's written approval. In the event that VCE and Consultant cannot agree as to the substitution of key personnel, VCE 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 VCE, 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 VCE 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 VCE, 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 VCE,



Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the VCE, 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 VCE 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 VCE that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for VCE 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 VCE 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 VCE, 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 VCE, 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 VCE, 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 VCE, 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 VCE, 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 VCE, 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 VCE, 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 VCE, 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 VCE. Consultant shall guarantee

that, at the option of the VCE, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the VCE, 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 VCE .

3.10.8 Verification of Coverage. Consultant shall furnish VCE with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to VCE. 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 VCE if requested. All certificates and endorsements must be received and approved by VCE before work commences. VCE 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 VCE, 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 VCE 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 (\$XXX) without written approval of VCE. 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. VCE 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 VCE 's Right to Withhold Payment. VCE 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 VCE properly withholds payment pursuant to this Section 4.3, provided that VCE continues to make payment of undisputed amounts.

4.4 Payment Disputes. If VCE disagrees with any portion of a billing, VCE shall promptly notify Consultant of the disagreement, and VCE and Consultant shall attempt to resolve the

disagreement. VCE's payment of any amounts shall not constitute a waiver of any disagreement and VCE shall promptly pay all amounts not in dispute.

**4.5 Extra Work.** At any time during the term of this Agreement, VCE may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by VCE 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 VCE 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. VCE 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 VCE, 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.** VCE 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 VCE 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 VCE'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, VCE 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 VCE 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 VCE elects to terminate, VCE 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 VCE in obtaining the Services necessary to complete the Project exceed such unpaid balance, then Consultant shall promptly pay to VCE 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 VCE in causing the Services called for under this Agreement to be provided by others, and for any costs or damages sustained by VCE by reason of Consultant's default or defective work.

5.2.4 If VCE fails to make timely payment to the Consultant or otherwise fails to perform fully any and all of the material agreements herein contained, VCE 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 VCE shall pay the Consultant all amounts due for services satisfactorily provided to VCE 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, VCE 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 VCE 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 VCE working together in good faith, plus (2) payment for Additional Work satisfactorily completed and accepted by the VCE, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the VCE . The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deduced from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against VCE or the Project for



any additional compensation or damages in the event of such termination and payment. In addition, the VCE'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 VCE 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. VCE 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 VCE. Consultant assumes no liability for VCE'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 VCE. VCE 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 VCE. Consultant shall deliver to VCE 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 VCE.

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 VCE 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 VCE without the written consent of VCE before any such release, unless Consultant is required to do so under applicable law.

6.2 Assignment; Successors. Upon mutual written consent, VCE 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 VCE. 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 VCE 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 VCE (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 VCE 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 VCE, its directors, officials, officers, employees, agents, or volunteers.

6.4 Consultant Not Agent. Except as VCE may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of VCE in any capacity for VCE whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind VCE 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 VCE . 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 VCE.

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  
[Redacted]  
Street Address  
City, State, Zip  
Attn: XXXXX XXXXX

VCE: Valley Clean Energy Alliance  
604 2<sup>ND</sup> Street  
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 VCE 's Right to Employ Other Consultants. VCE 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 VCE.

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 VCE 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 VCE 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 VCE 's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, VCE shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the VCE, during the term of his or her service with the VCE, 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 VCE 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**, VCE and Consultant have entered into this Agreement as of the date first stated above.

VCE

\_\_\_\_ (Consultant Name)

By: \_\_\_\_\_  
Mitch Sears  
VCE Interim General Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Eric May  
VCE Legal Counsel

**EXHIBIT A**

**SCOPE OF SERVICES**

SAMPLE

**EXHIBIT B**

**FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY VCE**

SAMPLE

**EXHIBIT C**

**SCHEDULE OF SERVICES**

SAMPLE

**EXHIBIT D**

**BUDGET, PAYMENT, RATES**

SAMPLE

**ATTACHMENT B – SAMPLE NON-DISCLOSURE AGREEMENT**

A SAMPLE NON-DISCLOSURE AGREEMENT IS ATTACHED HERETO.



## NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE Agreement (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2021 (the “**Effective Date**”) between and among Valley Clean Energy, a California joint powers authority (“**VCE**”) and [Respondent name] a [state of formation] [type of entity] (“[**Name of party**]”).

The parties to this Agreement intend to enter into discussions regarding consulting and study services to be negotiated between VCE and [Name of party] in connection with the VCE Strategic Plan (the “**Transaction**”). In connection with the Transaction, the parties may receive certain Confidential Information (as defined below) from each other, the confidentiality of which the parties desire to protect. For purposes of this Agreement, the party making the disclosure of Confidential Information is referred to as “**Disclosing Party**” and the party receiving such Confidential Information is referred to as “**Receiving Party**.” For purposes of this Agreement, “**Affiliate**” means, as to any party hereto, any person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that party. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

### 1. **Confidential Information.**

(a) Defined. “**Confidential Information**” means all secret, proprietary, confidential or otherwise nonpublic information of or relating to a party or its Affiliates, in any form whether written, electronic, visual or oral pertaining to the contemplated Transaction, and all notes, analyses, compilations, studies, reports, interpretations, or other material prepared by Receiving Party or its employees or agents which contain or reflect or are based upon, in whole or in part, the foregoing.

(b) Exclusions. Confidential Information does not include information (i) that is or becomes generally known to the public other than as a result of disclosure by Receiving Party or any of its Representatives (as defined below) in violation of the terms of this Agreement; (ii) that is in the possession of Receiving Party at the time of disclosure by Disclosing Party, as reasonably evidenced by a prior or contemporaneous writing and other than as a result of Receiving Party’s breach of any legal obligation; (iii) that becomes known to Receiving Party through disclosure by sources other than Disclosing Party which, to the knowledge of Receiving Party, are not subject to any obligation of confidentiality or other duty not to disclose such information; or (iv) that is independently developed by Receiving Party without reference to the Confidential Information and through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information, as reasonably evidenced in writing by Receiving Party.

### 2. **Obligation of Confidentiality.** Receiving Party will not use or disclose any



Confidential Information of Disclosing Party except for purposes of carrying out Receiving Party's duties and obligations with respect to, and otherwise as reasonably necessary to implement, the Transaction, except that Receiving Party may disclose such Confidential Information where it is under a legal or regulatory obligation to do so. Subject to the foregoing, without the prior written consent of Disclosing Party, Receiving Party will not disclose any portion of the Confidential Information to any person, other than to employees, consultants, Affiliates, advisors, attorneys, auditors, lenders or agents of Receiving Party who have a need to know in connection with the Transaction or otherwise (collectively, to the extent Receiving Party discloses, or provides access to, Confidential Information to any of the foregoing, its "**Representatives**"), provided such Representatives are informed of this Agreement and agree to be bound by the terms hereof or are otherwise bound by obligations of confidentiality with regard to the Confidential Information which are at least as protective as the confidentiality obligations set forth herein.

**3. Compliance with the Law.** If Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of Disclosing Party, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. Each party hereto acknowledges and agrees that information and documentation provided in connection with the Transaction may be subject to the California Records Act (Government Code Section 6250 et seq.).

**4. Return of Materials.** Upon termination of the Agreement or upon the earlier written request of Disclosing Party, Receiving Party shall, and shall cause its Representatives to, promptly upon the written request of Disclosing Party, deliver to Disclosing Party all documents, files or other materials furnished by or on behalf of Disclosing Party to Receiving Party constituting Confidential Information, without retaining any copies of them. Receiving Party shall then and shall cause its relevant Representatives to destroy all other documents, files or materials constituting Confidential Information of Disclosing Party (including all electronic records containing or describing any Confidential Information), and shall confirm in writing to Disclosing Party that all Confidential Information and records have been returned or destroyed. The obligations of Receiving Party contained in this Agreement will survive any return or destruction of documents, files or other materials containing Confidential Information; provided, however, an archival copy of the Confidential Information and copies, notes, summaries, or extracts may be retained (and subsequently destroyed) in the files of Receiving Party in accordance with its record retention policies, so long as such policy does not conflict with the terms of protection of Receiving Party for the periods described in this Agreement.

**5. Governing Law and Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the internal laws of the State of California, without regard to





conflicts of laws. The parties hereby consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Sacramento County for the purposes of adjudicating any matter arising from or in connection with this Agreement. Each party expressly waives any right to a trial by a jury in any proceeding arising directly or indirectly out of this Agreement.

**6. No Representation, Warranty or Obligation.** Disclosing Party makes no representation or warranty, express or implied, as to the Confidential Information, including without limitation to any warranty against infringement, accuracy or completeness, and Disclosing Party shall have no liability based upon the Confidential Information; provided, that Disclosing Party represents it has the right to disclose the Confidential Information to Receiving Party hereunder. Nothing in this Agreement obligates Disclosing Party to make any particular disclosure of Confidential Information or to complete, revise or update any Confidential Information. Nothing herein obligates any party hereto to enter into or continue discussions or transactions related to the Transaction, or prevents Disclosing Party from disclosing its Confidential Information to any other person or entity.

**7. Term.** This Agreement will continue in full force and effect for a term of three (3) years from the Effective Date. This Agreement shall survive any change or termination of the parties' business relationship.

**8. Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

**9. Miscellaneous.** The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof. This Agreement supersedes all prior written and oral agreements and all other communications between the parties. Amendments and modifications to this Agreement will be effective only if written and signed by the parties hereto. This Agreement will be binding upon and inure to the benefit of each party's successors or permitted assigns. Except as expressly stated herein, each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties hereto, and their successors and permitted assigns. If any provision in this Agreement is invalid or unenforceable in any circumstances, its application in any other circumstances and the remaining provisions of this Agreement will not be affected thereby. All



notices, requests, consents and other communications required or permitted to be delivered hereunder must be made in writing and delivered by hand, via overnight delivery service or by registered or certified mail, postage prepaid. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. The parties may rely on electronic signatures and a signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Each party represents and warrants that the individual signing below has the necessary authority to bind the party set forth below.

IN WITNESS WHEREOF, the parties hereto have executed this Non-Disclosure Agreement as of the Effective Date.

**VALLEY CLEAN ENERGY, a California  
joint powers authority**

[ ] a [State of Formation] [Entity  
Type]

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_