



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council      **Date:** May 30, 2017  
**From:** Joseph Moon, Public Services Manager      **Item No:** 5  
Public Services Department  
**Subject:** APPLE VALLEY CHOICE ENERGY (AVCE) CONSULTANT SERVICES AGREEMENT

**T.M. Approval:** \_\_\_\_\_      **Budgeted Item:**  Yes  No  N/A

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### RECOMMENDED ACTION:

Staff recommends that the Town Council authorize the Town Manager to execute the Consultant Services Agreement contract with Pacific Energy Advisors to provide ongoing consulting services for Apple Valley Choice Energy (AVCE).

### BACKGROUND:

The Town contracted with Pacific Energy Advisors (PEA) in September, 2015 to conduct a Community Choice Aggregation (CCA) feasibility study to determine if establishing a CCA would be viable for the Town. A subsequent contract was approved in May 2016 to allow Pacific Energy Advisors to prepare an Implementation Plan and guide the Town in establishing Apple Valley Choice Energy (AVCE). AVCE launched services in April, 2017 and the existing Agreement with Pacific Energy Advisors expires on May 30, 2017. PEA has been instrumental in assisting in the successful operations of AVCE and is familiar with the work necessary to keep the program functioning efficiently and in compliance with CPUC requirements and regulations. Staff recommends that the Town Council authorize the Town Manager to execute the Consultant Services Agreement contract with Pacific Energy Advisors to provide consulting services for Apple Valley Choice Energy (AVCE).

### SUMMARY:

In summary, by creating the AVCE program, the Town is in the unique position of being able provide additional savings to the businesses and residents of our community as well as serve as an economic development incentive tool. Over 90% of eligible customers are participating in the program. PEA is a recognized leader in CCA establishment and advisory service and has participated with the majority of currently operating CCA's in

California. The services that will be provided by Pacific Energy Advisors (PEA) are outlined in Exhibit "A", Scope of Services. Those services include Power Resources Management, Rate Setting, Financial Modeling, Program Development and Administration Support in an amount not to exceed \$297,600. Other services including Regulatory Support will be billed at an hourly rate as needed. Each of the services proposed are essential for the successful operation of the AVCE program.

Staff is recommending that the Town Council authorize the Town Manager to execute the Consultant Services Agreement contract with Pacific Energy Advisors to provide consulting services for Apple Valley Choice Energy (AVCE) comencing May 31, 2017.

**ATTACHMENTS:**

1. Professional Services Agreement
2. Exhibit A, Scope of Services
3. Exhibit B, Schedule of Services
4. Exhibit C, Compensation

**TOWN OF APPLE VALLEY  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 30th day of May, 2017 by and between the Town of Apple Valley, a municipal corporation organized under the laws of the State of California with its principal place of business at 14955 Dale Evans Parkway, Apple Valley, California 92307 (“Town”) and Pacific Energy Advisors, Inc., a California Corporation with its principal place of business at 1839 Iron Point Road, Suite #120, Folsom, CA 95630 (“Consultant”). Town and Consultant are sometimes individually referred to as “Party” and collectively as “Parties”.

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing consultation services to public clients, is licensed in the State of California, and is familiar with the plans of the Town.

**2.2 Project.**

The Town desires to engage Consultant for the purpose of rendering technical consulting services to support the Town’s continued operation of the Apple Valley Choice Energy (“AVCE”) program (“Project”), which commenced customer service in April 2017.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the Town the labor, materials, tools, equipment, services, and incidental and customary work described in Exhibit “A” of this Agreement, which will be necessary to fully and adequately supply the professional consulting services of the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. 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.

3.1.2 Term. The term of this Agreement shall be from May 31, 2017 to May 31, 2018, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines, as agreed

to by the Parties. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

### **3.2 Responsibilities of Consultant.**

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

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Town shall respond to Consultant's submittals in a timely manner.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Town. The Town's approval of Consultant's work shall not be unreasonably withheld.

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

3.2.5 Town's Representative. The Town hereby designates Frank Robinson, Town Manager, or his designee, to act as its representative for the performance of this Agreement ("Town's Representative"). Town's Representative shall have the power to act on behalf of the Town and make any necessary non-substantive changes for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the Town's

Representative or his designee. The Town shall provide reasonable advanced notice to Consultant, which shall be no less than thirty (30) days, in the event of any anticipated change to the Town's Representative.

3.2.6 Consultant's Representatives. Consultant hereby designates John Dalessi or Kirby Dusel to act as its representatives for the performance of this Agreement ("Consultant's Representatives"). Consultant's Representatives shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representatives shall supervise and direct the Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, 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, including a Town Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the Town, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Town 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 Town, 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.

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

3.2.9.1 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 agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

### 3.2.10 Insurance.

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

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

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

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence 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; (2) *Automobile Liability*: 1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. N/A.

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

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance with respect to the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

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

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

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (1) insurer shall endeavor to provide thirty (30) days prior written notice of cancellation, suspension or reduction of coverage to the Town; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its directors, officials, officers, employees, agents, and volunteers.

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

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. Consultant shall

guarantee that, at the option of the Town, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.7 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 Town.

3.2.10.8 Verification of Coverage. Consultant shall furnish the Town with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Town. 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 the Town if requested. All certificates and endorsements must be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (1) adequate life protection and life saving equipment and procedures; (2) 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 (3) adequate facilities for the proper inspection and maintenance of all safety measures.

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

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit “C” attached hereto and incorporated herein by reference. The total compensation shall not exceed Two Hundred Ninety-Seven Thousand Six Hundred Dollars (\$297,600), excluding reasonable travel expenses which may be necessary for Consultant to complete the Services described in this Agreement, without prior written approval of the Town Manager received by Consultant via letter or electronic mail. Extra Work may be authorized, as described below, subject to mutual agreement of the Parties. If Extra Work is authorized, Consultant will be compensated based on the Consultant’s Rate Schedule provided in Exhibit “C” of this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to the Town a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. The Town shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing (received by Consultant via letter or electronic mail) by the Town.

3.3.4 Extra Work. At any time during the term of this Agreement, the Town may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by the Town 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 prior written authorization from the Town’s Representative.

3.3.5 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. The Town 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 copies of the prevailing rates of per diem wages for each craft; classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the Town, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Termination of Agreement.**

3.4.1 Grounds for Termination. The Town may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to the Town, and Consultant shall be entitled to no further compensation. Consultant may, by written notice to the Town, terminate this Agreement at any time and without cause by giving written notice to the Town of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, Town may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request. In the event of termination, the Town shall pay Consultant for all work/services performed by Consultant and approved by the Town prior to termination of the Agreement. The Town shall not unreasonably withhold approval.

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

### **3.5 Ownership of Materials and Confidentiality.**

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for the Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). All Documents & Data shall be and remain the property of the Town, and shall not be used in whole or in substantial part by Consultant on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to the Town reproducible copies of all Documents & Data, in a form and amount required by the Town. The Town reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Town at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to the Town upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to the Town any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of five (5) years following completion of the Project, and shall make copies available to the Town upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall

make a reasonable effort to notify the Town and provide the Town with the opportunity to obtain the documents. Notwithstanding the foregoing, the Town and Consultant recognize and agree that certain documents, designs, spreadsheets, drawings, maps, models, computer files, surveys, notes, spreadsheets, and other intellectual property has been or will be developed, produced, or discovered by Consultant prior to the execution of this Agreement or in connection with services provided outside of this Agreement (“Consultant’s Intellectual Property”). Consultant’s Intellectual Property shall not be subject to the provisions of Section 3.5 of this Agreement.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the sub consultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the Town.

3.5.3 Right to Use. The Town shall not be limited in any way in its use or reuse of the Documents & Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at the Town’s sole risk. If the Town uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant’s seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the Town upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

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

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of the Town, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the Town’s name or insignia, photographs of the Project, or any materials pertaining to the Services

or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the Town.

### **3.6 General Provisions.**

3.6.1 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 Party may provide in writing for this purpose:

**Consultant:**

John Dalessi  
Pacific Energy Advisors  
1839 Iron Point Road, Suite#120  
Folsom, CA 95630

**Town:**

Frank Robinson, Town Manager  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, California 92307

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.

### 3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, resulting in personal injury, physical damage to property or wrongful death, caused by Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, reasonable expert witness fees and reasonable attorney's fees and other related costs and expenses, to the extent caused by Consultant's negligence, recklessness, or willful misconduct.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with counsel of the Town's choosing (with such choice being reasonable in cost) and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against the Town or its directors, officials, officers, employees, volunteers and agents to the extent caused by Consultant's negligence, recklessness, or willful misconduct. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Town or its directors, officials, officers,

employees, volunteers and agents as part of any such claim, suit, action or other proceeding to the extent caused by Consultant's negligence, recklessness, or willful misconduct. Consultant shall also reimburse the Town for the cost of any settlement paid by the Town or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding to the extent caused by Consultant's negligence, recklessness, or willful misconduct. Such reimbursement shall include payment for the Town's reasonable attorney's fees and costs, including expert witness fees to the extent caused by Consultant's negligence, recklessness, or willful misconduct. Consultant shall reimburse the Town and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by Consultant's negligence, recklessness, or willful misconduct. 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 Town, its directors, officials, officers, employees, agents, or volunteers.

3.6.3 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

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

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

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

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

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

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

3.6.10 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.

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

3.6.12 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.

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

3.6.14 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.

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

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

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

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

**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE  
TO  
TOWN OF APPLE VALLEY  
PROFESSIONAL SERVICES AGREEMENT**

**TOWN OF APPLE VALLEY**

**Pacific Energy Advisors, Inc.**

By: \_\_\_\_\_  
Frank Robinson  
Town Manager

By: \_\_\_\_\_  
Kirby Dusel  
Vice President & Secretary

*ATTEST:*

\_\_\_\_\_  
Ms. La Vonda M. Pearson, Town Clerk

*APPROVED AS TO CONTENT:*

\_\_\_\_\_  
Joseph Moon  
Public Services Manager

*APPROVED AS TO FORM:*

BEST BEST & KRIEGER LLP

\_\_\_\_\_  
John Brown, Town Attorney

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

The following describes the services that will be provided by Pacific Energy Advisors, Inc. (PEA) to support operation of the Apple Valley Choice Energy program. Such services, as described below, will be provided by PEA throughout the term of agreement.

**1) Power Resources Management**

Working with AVCE and Town leadership as well as its designated Scheduling Coordinator, PEA will assist in managing AVCE’s power resources portfolio in accordance with AVCE’s adopted policies and applicable regulatory requirements. PEA will support AVCE in the areas of resource planning, portfolio management, electric procurement, and regulatory compliance activities related to electric power supply. The following tasks are included within this service area:

*(a) Maintain Annual and Long Term Sales Forecast:*

- Prepare and maintain AVCE customer and electric sales forecasts including forecast of: 1) monthly enrolled accounts, megawatt hours (“MWh”) and megawatts (“MW”) by load profile group; and 2) monthly coincident peak MW and hourly MW for the AVCE system.
- Update long term sales forecasts biannually and more frequently as necessary; monitor accuracy of load forecast on monthly basis; consider adjustment if variance exceeds threshold of 5% forecast error.

*(b) Electric Supply Management:*

- Maintain load and resource balance model to identify incremental electric procurement needs in consideration of quantified open positions, AVCE resource and risk management policies, and applicable regulatory requirements; coordinate with management to develop procurement strategies to address electric resource needs.
- Support procurement and/or sales of energy and capacity products including preparing requisite solicitation documents, participating in supplier/developer communications, providing analytical support during proposal/bid evaluation, supporting contract negotiations, and other related, as-needed activities.
- Annually, prepare and update internal resource plans, including ten-year load and resource projections.
- Review and validate periodic invoices received from AVCE’s Scheduling Coordinator and electric suppliers to ensure charges are consistent with contract terms; bring any identified discrepancies to management’s attention; and support attempts to resolve issues with counterparties.
- Monitor energy market activities, including pricing trends and forward curves related to market energy, renewable energy and capacity.
- Maintain/manage relationships with qualified suppliers of requisite energy products: participate in periodic calls, email exchanges and other communications with and/or on behalf of AVCE.

*(c) Regulatory Compliance:*

- Manage renewable energy portfolio per state/program standards; prepare Renewable Portfolio Standards (“RPS”) compliance filings and serve as AVCE’s liaison with pertinent regulatory agencies for matters related to RPS compliance.
- Manage AVCE’s Western Renewable Energy Generation Information System (“WREGIS”) account and various subaccounts, including report preparation, certificate transfer review and retirement (to facilitate mandatory and regulatory compliance), as-needed generator registration (example: Feed-In Tariff projects under contract with AVCE) and other account management activities. Provide support during third-party audit processes, if applicable, including data gathering and analysis, reporting and liaison activities with AVCE’s selected auditor and pertinent regulatory agencies.
- Manage Resource Adequacy portfolio per state/program standards; prepare year-ahead and month-ahead peak demand forecasts and resource adequacy compliance demonstration filings; coordinate with AVCE’s Scheduling Coordinator and regulatory agencies to resolve any discrepancies that may arise during compliance review.
- Provide data analysis and assist in preparing reports related to the California’s Power Source Disclosure Program, including technical elements of Power Content Label development and review; such support may also entail regulatory liaison activities required to successfully complete applicable reports.
- Prepare compliance filings pursuant to the California Energy Commission’s biennial Integrated Energy Policy Report, Quarterly Fuels and Energy Report, and the U.S. Energy Information Agency monthly EIA-826 and annual EIA-861 reports.
- Note: PEA’s regulatory compliance services generally do not include formal submission of filings to the appropriate regulatory body with the exceptions being resource adequacy filings and EIA reports; PEA assumes that AVCE regulatory staff or another designee will file/serve requisite reporting materials, as appropriate. Alternatively, PEA could arrange for such filing services on a cost pass-through basis as part of Task 3.

## **2) Rate Setting, Financial Modeling & Program Development Support**

PEA will maintain a financial model for the AVCE program for use in budgeting, cash flow planning, and scenario analyses. PEA will design customer electric rates and update on an annual basis as necessary to meet adopted financial targets. PEA will provide technical rate support including monitoring SCE rate changes as they impact customer cost comparisons and assistance with preparation of joint cost comparison models. The following tasks are included within this service area:

*(a) Rate setting*

- Annually, develop proposed AVCE rate schedules; cost of service modeling; SCE benchmarking; billing determinant (e.g., TOU energy) forecast; present and proposed rate revenue forecast.
- Collaborate with staff and AVCE Board, as necessary, in regards to rate changes and need for new rate designs or options.
- Monitor realized rate revenue vs. projections to identify need for rate changes.

- Monitor SCE rates and surcharges and assist AVCE with preparation of mandated joint cost comparisons reports.

*(b) Maintain Financial Model (pro forma)*

- Maintain pro forma financial model of monthly income/expense projections, cash flow and cash balances.
- Update biannually and more frequently as necessary; monitor accuracy of financial projections on monthly basis; assist in reconciling budget variances.
- Prepare forecast of power supply and other expenses for annual budget.
- Prepare draft annual budget for AVCE program in cooperation with AVCE management and accountants.
- As necessary, coordinate with AVCE and its financial advisors with regard to matters that may impact AVCE's financial standing, debt levels, electric rates, annual budget, resource planning and other key concerns.

*(c) Develop Complementary AVCE Energy Programs*

- Support for development and administration of certain AVCE customer programs, including Net Energy Metering, green energy (currently, AVCE's "More" service option) and Feed-In Tariff, if desired.
- Provision of analytical support for other AVCE-administered programs, including demand response, energy storage, alternative retail service options, etc.

### **3) Regulatory Support & Other Services**

This task includes as-needed regulatory and other consulting services not otherwise included in Task 1 or Task 2. These services are generally expected to fall within the following support areas:

*(a) Regulatory Support:*

- Provide technical expertise, analysis and advice in relation to pertinent regulatory proceedings. Such services shall entail periodic reviews and editorial support during comment/brief drafting as well as coordination with AVCE staff/advisors on such matters.
- Provide support for other regulatory compliance filings such as those that may relate to storage mandates or mandated resource plans.

*(b) Expert Witness Services*

- Includes preparing testimony and related expert witness services; representation in hearings and workshops; and lead/primary drafting responsibilities with regard to comments and briefs.

*(c) Other Implementation Support/Staff Augmentation, as needed.*

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

The scope of services, as described in Exhibit "A," will be completed throughout the term of agreement.

**EXHIBIT "C"**  
**COMPENSATION**

The scope of services identified in Exhibit "A" will be completed by PEA throughout the term of agreement in consideration of the following compensation schedule:

- 1) Power Resources Management: **\$19,800/month.**
- 2) Rate Setting, Financial Modeling, and Program Development & Administration Support: **\$5,000/month.**
- 3) Regulatory Support & Other Services: To be billed on a time and materials basis in consideration of the following hourly rate schedule:

**PEA Rate Schedule**

<b>Staff</b>	<b>AVCE Hourly Rate</b>
<b>John Dalessi</b>	<b>\$295</b>
<b>Kirby Dusel</b>	<b>\$250</b>
<b>Brian Goldstein</b>	<b>\$205</b>
<b>Consultant</b>	<b>\$130</b>